

“Armenian Lawyers’ Association” Non-Governmental Organization

**Offenses Committed by the Republic of Azerbaijan in NKR and
Opportunities to Apply to International Organizations**

REPORT

YEREVAN

May, 2016

© Armenian Lawyers’ Association, 2016

When using the materials a reference is mandatory.

This present report was prepared by an expert group from the Armenian Lawyers' Association. The expert group had the following composition:

1. Karen Zadoyan

President of the Armenian Lawyers' Association, Attorney

2. Artak Saribekyan

Executive Director of the Armenian Lawyers' Association

3. Mariam Zadoyan

Member of the Armenian Lawyers' Association, Attorney

4. Syuzanna Sghomonyan

Board Member of the Armenian Lawyers' Association, Attorney

5. Marat Atovmyan

Board Member of the Armenian Lawyers' Association, Attorney

6. Arpine Yeghikyan

Board Member of the Armenian Lawyers' Association, Attorney

7. Gevorg Tosunyan

Journalist at Iravaban.net, an independent professional news website operated by the Armenian Lawyers' Association

8. Aleksander Sargsyan

Operator at Iravaban.net, an independent professional news website operated by the Armenian Lawyers' Association

The report was approved by the Board of the Armenian Lawyers' Association on May 24th, 2016.

CONTENTS

ABBREVIATIONS	Error! Bookmark not defined.
INTRODUCTION	Error! Bookmark not defined.
REPORT PREPARATION METHODOLOGY.....	Error! Bookmark not defined.
1. VIOLATIONS OF INTERNATIONAL LAW	Error! Bookmark not defined.
1.1 Violation of the Principle of the Prohibition of the Use of Force and the Principle of Peaceful Settlement of Disputes.....	Error! Bookmark not defined.
1.2 Violation of the Principle of Self-Determination of Nations	9
1.3 Violation of the Principle of the Prohibition of Incitement to Discrimination, Hostility or Violence Based on Ethnic Origin	
1.4 Violation of Trilateral (NKR-Azerbaijan-Armenia) Agreements	Error! Bookmark not defined.
2. VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW	Error! Bookmark not defined.
2.1 Violation of the Principle of Distinction between Civilians and Combatants	Error! Bookmark not defined.
2.2 Violation of the Principle of Distinction between Civilian Objects and Military Objectives.....	Error! Bookmark not defined.
2.3 Violation of the Principle of Protection of Medical Transports	Error! Bookmark not defined.
2.4 Violations of Children's Rights.....	Error! Bookmark not defined.
2.5 Rules for the Treatment of Prisoners of War/Victims of Armed Conflicts	Error! Bookmark not defined.
2.6 Use of Human Shields.....	Error! Bookmark not defined.
3. OPPORTUNITY TO APPLY TO COURTS	Error! Bookmark not defined.
3.1 European Court of Human Rights	Error! Bookmark not defined.
3.2 International Criminal Court	Error! Bookmark not defined.
3.3 International Court of Justice	29
3.4 United Nations Ad-Hoc Criminal Tribunals and Hybrid Courts: Ad-Hoc Criminal Courts....	Error! Bookmark not defined.
4. RECOMMENDATIONS.....	Error! Bookmark not defined.
BIBLIOGRAPHY	Error! Bookmark not defined.

ABBREVIATIONS

NKR – Nagorno-Karabakh Republic

RA – Republic of Armenia

AR – Republic of Azerbaijan

ECHR – European Convention for the Protection of Human Rights and Fundamental Freedoms

ECtHR – European Court of Human Rights

ICC – International Criminal Court

UN – United Nations

OSCE – Organization for Security and Co-operation in Europe

INTRODUCTION

The Armenian Lawyers' Association strongly condemns the military operations initiated by Azerbaijan along the line of contact with Artsakh from April 2nd to April 5th, 2016, as well as the bombardment of settlements in the RA Tavush and Gegharkunik Regions. The operations by their nature violate international humanitarian law and human rights. Azerbaijan does not follow the rules of *jus in bello*.

Azerbaijan has violated the norms of the Geneva Conventions, the UN Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the OSCE Helsinki Final Act, etc. It should be noted that Azerbaijan is a State Party to all the international documents listed above.

This report discusses the violations of internationally recognized human rights and humanitarian rights committed by Azerbaijan, the opportunities to apply to regional and international courts. The report is concluded with respective recommendations.

REPORT PREPARATION METHODOLOGY

The report was prepared by combining the following methods:

1. **Research:** The staff of Iravaban.net, a professional independent news website operated by the Armenian Lawyers' Association, headed by the Executive Director of the Association, went to Artsakh to carry out a fact-finding mission.

2. **Study:**

A. International legal documents were reviewed: Conventions, among them the Geneva Conventions, and the case law of the ECtHR, the International Criminal Court and the International Court of Justice.

B. The articles on the subject matter published in the mass media, such as Iravaban.net and other media outlets, including international websites, were studied.

3. **Analysis:**

The existing facts and international legal documents were opposed to each other and the violations of these documents by Azerbaijan were revealed.

4. **Presentation of Recommendations:**

Based on the analysis, recommendations on applying to relevant international legal institutions are presented.

1. VIOLATIONS OF INTERNATIONAL LAW

1.1 Violation of the Principle of the Prohibition of the Use of Force and the Principle of Peaceful Settlement of Disputes

The prohibition of the use of force, as a principle of international law, was first stipulated in the UN Charter¹. It is also reflected in the Paragraph 2 of the OSCE Helsinki Final Act², which Azerbaijan ratified on July 8th, 1992³. Thus, pursuant to the Article 2, Paragraph 4 of the UN Charter, *all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.*

The principle of peaceful settlement of disputes is regulated by Article 2, Paragraph 3 of the UN Charter, according to which *all Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.*

First of all, the principle the prohibition of the use of force implies the prohibition of wars of aggression. According to the definition of aggression adopted in 1974, the first use of armed force by a state can be qualified as a war of aggression, which is an international crime and gives rise to international legal responsibility for the state and to international criminal responsibility for the individuals guilty. Starting from the 70s, it has specifically been noted in the normative content of this principle that it is the states' obligation to refrain from using threat of use of force with the intent of violating the borders of another state or as a means of resolving territorial disputes and problems concerning the state borders⁴.

¹ UN Charter which entered into force on May 2nd, 1992 (Resolution 46/227 of the General Assembly), http://www.un.org/Depts/da/pubs/UNCharter_eng.pdf

² Final Act of the Conference on Security and Co-operation in Europe, Helsinki, 1975, <http://www.osce.org/hy/mc/39507?download=true>

³ https://en.wikipedia.org/wiki/Organization_for_Security_and_Co-operation_in_Europe

⁴ <https://ysuinterlaw.wordpress.com/2010/12/03/%D5%B4%D5%AB%D5%BB%D5%A1%D5%A6%D5%A3%D5%A1%D5%B5%D5%AB%D5%B6->

The Helsinki Final Act envisages that *member states agree to respect the 10 principles and act in accordance with them*. The second principle included in the above-mentioned act declares *non-use of force or threat of use of force*, and the fifth principle declares *peaceful settlement of disputes*. Azerbaijan, by signing the document, undertook to respect and abide by these 10 principles. However, Azerbaijan has been trying for years to resolve the dispute concerning the status of Artsakh solely by military means. One striking evidence of it are the military actions initiated by Azerbaijan from April 2nd to April 5th, 2016 which resulted in many deaths both among the military and the civilian population, as well as the ravages caused by these actions.

1.2 Violation of the Principle of Self-Determination of Nations

According to the fundamental norms of international law, the principle of territorial integrity cannot contrast with the principle of self-determination of peoples. In Article 1 of the UN Charter the purposes of the organization are listed, including the respect for the principle of equal rights and self-determination of peoples.

Article 1 of the International Covenant on Civil and Political Rights⁵ which Azerbaijan ratified on August 13th, 1991, stipulates: “*All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*”

Paragraph 3 of Article 1 also stipulates that “*The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.*”

<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

⁵ International Covenant on Civil and Political Rights, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

Noteworthy is the formulation of the Principle 8 of the Helsinki Final Act⁶: “*All peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development,*” and “*All peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development,*” as well as the 13 “*participating States [...] recall the importance of the elimination of any form of violation of this principle.*”

The International Court of Justice noted in the *Kosovo* advisory opinion⁷ that unilateral declaration of independence does not violate international law.

In contrast to the above mentioned, Azerbaijan tries to drown in blood the right to self-determination of the Artsakh people.

1.3 Violation of the Principle of the Prohibition of Incitement to Discrimination, Hostility or Violence Based on Ethnic Origin

Azerbaijan's highest leadership raises their youth in an atmosphere of hatred and intolerance towards Armenians. One vivid proof of it is, for instance, the fact that R. Safarov, who had been sentenced to imprisonment for murdering Armenian G. Margaryan while the latter was asleep, was granted freedom and given the title of hero after returning to Azerbaijan. Another example is that the Azeri military serviceman, who had decapitated Armenian soldier Kyaram Sloyan, was rewarded by his state, etc. Other examples will be discussed in detail below.

Actions equivalent to those performed by Azerbaijan breach the principles of international law as stipulated in the UN Charter (1945), the Convention on the Elimination of All Forms of Racial Discrimination (1965), the International Covenant on Civil and Political Rights (1966), the

⁶ Final Act of the Conference on Security and Co-operation in Europe, Helsinki, 1975, <http://www.osce.org/hy/mc/39507?download=true>

⁷ Accordance with international law of the unilateral declaration of independence in respect of Kosovo (Request for Advisory Opinion), *ICJ*, 22 July 2010

Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States (1970), the OSCE Helsinki Final Act (1975), and in other international documents.

Among the above-mentioned documents of cornerstone importance is the Convention on the Elimination of All Forms of Racial Discrimination⁸ which Azerbaijan ratified in 1996, in particular its Article 4, which reads:

“States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.”

⁸ Convention on the Elimination of All Forms of Racial Discrimination, 1965,
https://treaties.un.org/doc/Treaties/1969/03/19690312%2008-49%20AM/Ch_IV_2p.pdf

In conformity with Paragraph 2 of Article 20 of the International Covenant on Civil and Political Rights, “*any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.*”

Azerbaijan not only does not consider actions of killings and other types of violence based on ethnic hatred against Armenians punishable by law, but it also encourages such actions and declares the executants heroes. High-ranking officials, as well as other public entities carry out consistent activities that promote hatred and violence. In addition, hatred is propagated by the mass media and in social networks.

As we have already mentioned, the result and proof of such upbringing is the brutal murder of an Armenian officer by Azeri Ramil Safarov who hit him with an axe multiple times while he was asleep. The murder happened during a training conducted in Budapest in the scope of NATO. According to the verdict of the Hungarian court, Ramil Safarov was sentenced to life imprisonment after which he was extradited to Azerbaijan. Once he landed in the airport he was released and awarded with an extraordinary military rank, receiving a lump-sum salary for the years spent in the Hungarian prison⁹. This act of Azerbaijan was harshly criticized not only by the leadership of the Minsk Group Co-Chair countries, but also by the vast majority of OSCE participating states, the EU¹⁰, the Council of Europe, NATO, and a number of other international organizations¹¹.

Objective assessments by reputable international organizations prove Azerbaijan’s incitement to hatred and violence against people of Armenian origin. In particular, the Committee on the Elimination of Racial Discrimination, which is the first body conducting oversight of the Convention aiming at the monitoring of the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, has expressed its concern in this regard¹².

⁹ Why the Nagorno-Karabakh Conflict Is Still Not Resolved? Shavarsh Kocharyan, 2013

¹⁰ Details here: <http://iravaban.net/en/135674.html>

¹¹ See at: <http://karabakhfacts.com/tag/ramil-safarov-case/>

¹² Concluding observations of the Committee on the Elimination of Racial Discrimination: Azerbaijan, CERD/C/AZE/CO/4. 14 Apr. 2005, para. 10.

Racial discrimination against the Republic of Armenia was also confirmed by the Commission against Racism and Intolerance of the Council of Europe¹³.

Thus, the Azerbaijani authorities have failed to fulfill their obligations assumed under the above-mentioned international documents on human rights.

1.4 Violation of Trilateral (NKR-Azerbaijan-Armenia) Agreements

The Republic of Azerbaijan periodically violates its trilateral (NKR, AR, RA) agreements on ceasefire regime (May 1994) and on strengthening the ceasefire regime (February 1995).

¹³ Report on Azerbaijan, adopted on 28 June 2002, European Commission against Racism and Intolerance, para. 51.

2. VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW

The 4 Geneva Conventions adopted on August 12th, 1949 and their Protocols Additional are among the most important sources of international humanitarian law. Azerbaijan has repeatedly gravely violated the norms of the Geneva Conventions and other humanitarian rules.

2.1 Violation of the Principle of Distinction between Civilians and Combatants

Stemming from Paragraph 3 and 4 of Article 1 of the Protocol Additional I to the Geneva Conventions of 12 August 1949, and relative to the Protection of Victims of International Armed Conflicts, 8 June 1977, the protocol shall also apply in *armed conflicts in which peoples are fighting (...), as a realization of their right to self-determination*.

According to Paragraphs 2 and 4 of Article 51 of the above-mentioned Protocol,

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

4. Indiscriminate attacks are prohibited. Indiscriminate attacks are:

(a) those which are not directed at a specific military objective;

(b) those which employ a method or means of combat which cannot be directed at a specific military objective...”

It should be noted that RA ratified the Protocol Additional in 1993 while Azerbaijan never ratified it¹⁴.

¹⁴ https://en.wikipedia.org/wiki/List_of_parties_to_the_Geneva_Conventions

The use of indiscriminate weapons is also prohibited by the Hague International Convention II with respect to the Laws and Customs of War on Land (1899). However, neither Armenia, nor Azerbaijan ratified this convention¹⁵.

Violations of obligations of distinction between civilians and combatants are also defined as war crimes in the Rome Statute of the International Criminal Court, Article 8, Paragraph 2, Sub-Paragraph a) and in the 2002 Elements of Crime Act¹⁶. The Elements of Crime Act helps the International Criminal Court in the interpretation and application of Articles 6, 7, and 8, by which elements of genocide, crimes against humanity, and war crimes are defined respectively.¹⁷

Even though Azerbaijan has not ratified the Protocols Additional of the Geneva Conventions, as well as the Statute of the International Criminal Court, it does not exempt Azerbaijan from liability for the cases of violation of the principle of distinction between civilians and combatants (which will be presented below) as the above-mentioned principle is regarded as a norm of customary practice by states. This is demonstrated by the fact that the above-mentioned principle is reserved in the International Committee of the Red Cross (ICRC) Study on Customary International Humanitarian Law¹⁸ as Rules 1 and 11.

The prohibition of non-distinction between civilians and combatants is also envisaged in the Advisory Opinion on Nuclear Weapons given by the International Court of Justice¹⁹.



According to Article 3 of the Universal Declaration of Human Rights, *everyone has the right to life, liberty, security of person*, and Article 5 stipulates that *no one shall be*

¹⁶ Rome Statute of the International Criminal Court, https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

¹⁷ <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>

¹⁸ Study on Customary International Humanitarian Law Conducted by the International Committee of the Red Cross (ICRC), Cambridge University Press, 2009, Volume II, Chapter 1, Section A.

¹⁹ Legality of the Threat or Use of Nuclear Weapons, *ICJ 8 July 1996*.

subjected to torture or to cruel, inhuman or degrading treatment or punishment.

According to Article 2 of the Geneva Convention IV relative to the Protection of Civilian Persons in Time of War (August 12th, 1949), “(...) *the present Convention shall apply 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 recognized by one of them. (...) Although one of the Powers in conflict may not be a party to the present Convention, **the Powers who are parties thereto shall remain bound by it in their mutual relations***”.

That is to say, even though NKR is not a state party to the above-mentioned convention, Azerbaijan is nevertheless obliged to abide by the norms of the convention.

According to Article 16 of the above-mentioned convention, the *wounded and sick (...) shall be the object of particular protection and respect. As far as military considerations allow, each Party to the conflict shall facilitate the steps taken to search for the killed and wounded, (...) to assist other persons exposed to grave danger, and to protect them against pillage and ill-treatment.*

Azerbaijan bombed the NKR Martakert²⁰ and Martuni towns, Talish and Mataghis villages, Karvachar, and other populated areas, as a consequence of which peaceful civilians, including children, were killed and wounded.



Thus, 16-year-old Kamo Ohanyan was wounded in Karvachar and Vaghinak Grigoryan²¹, born in 2004, was killed near his school as a result of the bombardment from the rocket launcher MM-21 (“Grad”) in the Martuni defense direction; two more children, 2-year-old Vardan Andreasyan and

²⁰ See the photos at: <http://iravaban.net/en/122904.html#ad-image-5>

²¹ See the official information at: <http://iravaban.net/en/121843.html>

11-year-old Gevorg Grigoryan, were injured²². The latter is deceased Vaghinak Grigoryan's brother.

Valera and Razmela Khalapyans, two elderly people dwelling in the Talish village of Martakert Region, were shot at home by Azeri servicemen who cut off their ears after having brutally killed the old people²³.

Azerbaijani Armed Forces bombed a volunteer bus from Sisian on its way to Martakert. As a result, six peaceful civilians died, including heads of village administration²⁴.

2.2 Violation of the Principle of Distinction between Civilian Objects and Military Objectives

Article 52 of Protocol 1 enshrines the general protection of civilian objects. According to the latter, *civilian objects shall not be the object of attack or of reprisals. Civilian objects are all objects which are not military objectives (...) Attacks shall be limited strictly to military objectives (...) In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.*

Violations of the principle of distinction between civilian objects and military objectives, are defined as war crimes also in the Rome Statute of the International Criminal Court, Article 8, Paragraph 2, Sub-Paragraph a) and in the 2002 Elements of Crime Act²⁵.

The above-mentioned principle is considered as a norm of customary practice by states. This is evidenced by the fact that the above-mentioned principle is enshrined in the International

²² See the details at: <http://iravaban.net/en/123329.html>

²³ See the official statement at: <http://iravaban.net/en/122901.html>

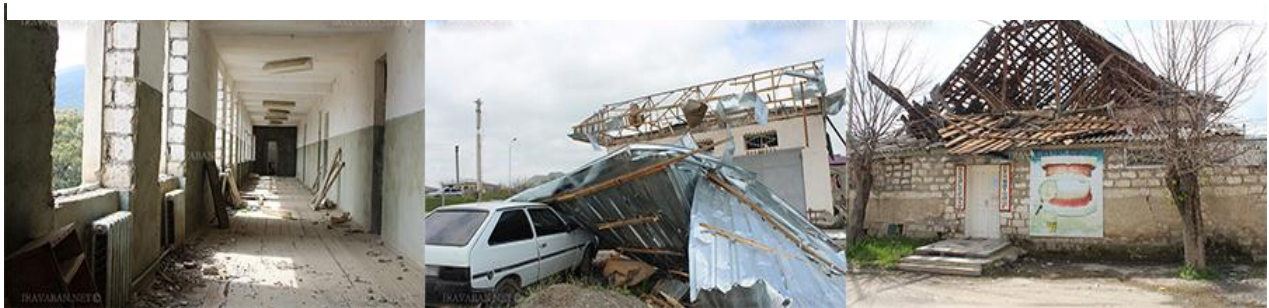
²⁴ See the details at: <http://iravaban.net/en/122339.html>

²⁵ Rome Statute of the International Criminal Court, https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

Committee of the Red Cross (ICRC) study²⁶ on Customary International Humanitarian Law as Rule 23.

Article 17 of the Universal Declaration of Human Rights reads: “1) *Everyone has the right to own property alone as well as in association with others.* 2) *No one shall be arbitrarily deprived of his property.*”

As a result of the bombardment carried out by Azerbaijan in Nagorno-Karabakh, many residential houses, public facilities, including schools and hospitals, were destroyed²⁷.



2.3 Violation of the Principle of Protection of Medical Transports

Some provisions of Protocol 1 refer to the protection of medical vehicles and medical institutions.

Thus, according to Article 12, *medical units shall be respected and protected at all times and shall not be the object of attack.*

Article 21 stipulates that *medical vehicles shall be respected and protected in the same way as mobile medical units under the Conventions and this Protocol.*

²⁶ Study on Customary International Humanitarian Law Conducted by the International Committee of the Red Cross (ICRC), Cambridge University Press, 2009, Volume II, Chapter 1, Section A.

²⁷ See all photos at: <http://iravaban.net/en/122904.html#ad-image-0>

According to Sub-Paragraph g), Article 8 of the Protocol, “*medical transports*” means any means of transportation, whether military or civilian, permanent or temporary, assigned exclusively to medical transportation and under the control of a competent authority of a Party to the conflict.

According to Sub-Paragraph h) of the above-mentioned article, “*medical vehicles*” means any medical transports by land.

The above-mentioned principle is also provided in the Rome Statute of the International Criminal Court, Article 8, Paragraph 2, Sub-Paragraph a) and the 2002 Elements of Crime Act²⁸.

Azerbaijani troops destroyed an Artsakh ambulance which had gone to provide medical assistance to the crew of the tank pierced by the Azerbaijani troops²⁹.

2.4 Violations of Children’s Rights

According to Protocol 1, children shall be the object of special protection.

Article 38³⁰ of the UN Convention on the Rights of the Child ratified by Azerbaijan on August 13th, 1992³¹ provides that *States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.*

As it has been mentioned above, 16-year-old Kamo Ohanyan was wounded in Karvachar and Vaghinak Grigoryan, born in 2004, was killed near his school as a result of the bombardment from the rocket launcher MM-21 (“Grad”) in the Martuni defense direction; two more children,

²⁸ Rome Statute of the International Criminal Court, https://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

²⁹ See the details at: <http://www.azatutyun.am/archive/news/20160407/2031/2031.html?id=27659840>

³⁰ UN Convention on the Rights of the Child, https://treaties.un.org/doc/Treaties/1990/09/19900902%2003-14%20AM/Ch_IV_11p.pdf

³¹ https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en

2-year-old Vardan Andreasyan and 11-year-old Gevorg Grigoryan, were injured. The latter is deceased Vaghinak Grigoryan's brother.

2.5 Rules for the Treatment of Prisoners of War/Victims of Armed Conflicts

According to Article 13 of the Geneva Convention III, relative to the Treatment of Prisoners of War³², *prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious breach of the present Convention. In particular, no prisoner of war may be subjected to physical mutilation.*

In 1993 Azerbaijan ratified the 4 Geneva Conventions³³ and the NKR adopted them unilaterally.

Such requirements are also set out in Article 50 of the Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field³⁴.

According to Paragraph 1 of Article 130 of the Geneva Convention IV³⁵, relative to the Protection of Civilian Persons in Time of War, *the detaining authorities shall ensure that internees who die while interned are honourably buried, if possible according to the rites of the religion to which they belonged, and that their graves are respected, properly maintained, and marked in such a way that they can always be recognized.*

All the 18 bodies returned by Azerbaijan had been subjected to physical mutilation and disrespect. Moreover, Azerbaijani servicemen published videos on social networks, where they were depicted next to the corpse of a beheaded Armenian soldier.

³² Geneva Convention III: relative to the Treatment of Prisoners of War, <http://un-documents.net/gc-3.htm>

³³ https://en.wikipedia.org/wiki/List_of_parties_to_the_Geneva_Conventions

³⁴ Geneva Convention I: for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, <http://www.un-documents.net/gc-1.htm>

³⁵ Geneva Convention IV: relative to the Protection of Civilian Persons in Time of War, <http://un-documents.net/gc-4.htm>

There are only hypotheses as to whether such horrific acts were performed on these people when they were captured alive or on their corpses. Therefore, not only did Azerbaijan gravely violate the provisions of the Geneva Convention III, relative to the Treatment of Prisoners of War, the Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, and the Geneva Convention IV, relative to the Protection of Civilian Persons in Time of War, but it also committed a grave crime under the criminal legislation of any legal state³⁶.

2.6 Use of Human Shields

According to Paragraph 7 of Article 51 of Protocol Additional 1, the presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.

Violations of the above-mentioned obligations are also provided as war crimes in the Rome Statute of the International Criminal Court, Article 8, Paragraph 2, Sub-Paragraph b) and the 2002 Elements of Crime Act³⁷.

The above-mentioned principle is regarded as a norm of customary practice by states. This is evidenced by the fact that the above-mentioned principle is also enshrined in the International Committee of the Red Cross (ICRC) Study on Customary International Humanitarian Law³⁸ as Rule 97. This principle is also reserved in the legislation of those

³⁶ See the official position at: <http://iravaban.net/en/135656.html>

³⁷ Rome Statute of the International Criminal Court, https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

³⁸ Study on customary international humanitarian law conducted by the International Committee of the Red Cross (ICRC), Cambridge University Press, 2009, Volume II, Chapter 1, Section A.

countries that both have not ratified the Protocols Additional of the Geneva Conventions and do not support the Statute of the International Criminal Court³⁹.

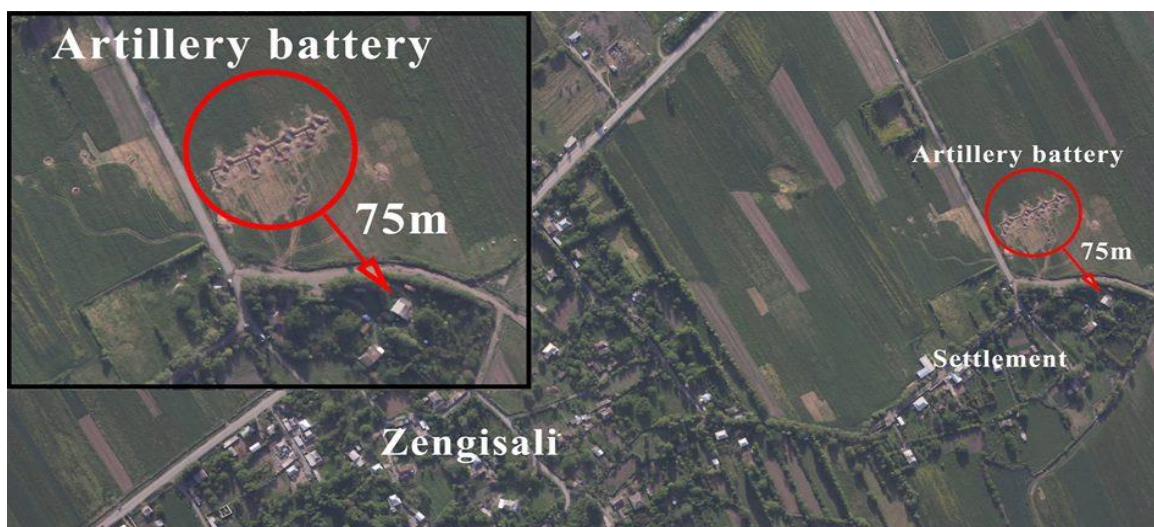
According to Article 58 of the above-mentioned Protocol 1, *the Parties to the conflict shall, to the maximum extent feasible:*

(a) without prejudice to Article 49 of the Fourth Convention, endeavour to remove the civilian population, individual civilians and civilian objects under their control from the vicinity of military objectives;

(b) avoid locating military objectives within or near densely populated areas;

(c) take the other necessary precautions to protect the civilian population, individual civilians and civilian objects under their control against the dangers resulting from military operations.

Azerbaijan deliberately locates its military objects very close to civilian settlements, thus turning citizens into human shields⁴⁰.



³⁹ ee, e.g., the military manuals of France, Kenya, United Kingdom and United States and the legislation of Azerbaijan, Bangladesh, Belarus, Democratic Republic of the Congo, Georgia, Lithuania, Peru, Poland, Tajikistan and Yemen; see also the draft legislation of Burundi.

⁴⁰ See the details at: <http://iravaban.net/en/125686.html>

3. OPPORTUNITY TO APPLY TO COURTS

3.1 European Court of Human Rights (ECtHR)

The European Court of Human Rights (ECtHR) is an international court set up in 1959 in Strasbourg. Its number of judges is equivalent to the number of state parties to the Council of Europe that ratified the European Convention on Human Rights (ECHR). The court puts the ECHR into effect⁴¹. Its mission is to ensure the respect of the states parties for the rights and guarantees as defined in the Convention. It is implemented by the Court through the examination of complaints filed by individuals and sometimes by countries. If the Court finds that one or more of the rights and guarantees have been violated by a state party then it makes a decision. The decisions have mandatory legal force and the countries that approve them are obliged to abide by them⁴².

According to Article 1 of the ECHR, *the High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention*⁴³. A question arises on whether the activities carried out outside the country fall within the jurisdiction of the country. If the answer is yes, then do the actions undertaken by Azerbaijan fall within the jurisdiction? This question must be answered under the light of the precedent decisions of the ECtHR.

For instance, in the *Case of Loizidou v. Turkey*⁴⁴ the ECtHR recalled that, *although Article 1 (obligation to respect human rights) of the European Convention on Human Rights set limits on the reach of the Convention, the concept of “jurisdiction” under that provision was not restricted to the national territory of the Contracting States. In particular, State’s responsibility might also arise when as a consequence of military action – whether lawful or unlawful – it*

⁴¹ Convention for the Protection of Human Rights and Fundamental Freedoms [1] (November 4th, 1950) and its Protocols, http://www.echr.coe.int/Documents/Convention_ENG.pdf

⁴² <http://www.echr.coe.int>

⁴³ http://www.echr.coe.int/Documents/Convention_ENG.pdf

⁴⁴ *Loizidou v. Turkey* (Judgment), App. No. 15318/89, 310 Eur. Ct. H.R. (ser. A), § 62 (1995)

exercised effective control over an area outside its national territory. One of the ways to exercise control is through the State's armed forces.

The ECtHR observed control exercised through the State's armed forces and applicability of the ECHR in the *Cyprus v. Turkey*⁴⁵, *Ilascu and Others v. Moldova and Russia*⁴⁶, *Chiragov and Others v. Armenia*⁴⁷, and in other cases.

Therefore, when applying to the ECtHR, it is necessary to understand whether those territories were under the control of Azerbaijan or the NKR.

To achieve that purpose, it is necessary to distinguish between the people killed and wounded by Azeris in those territories which were under the control of the NKR forces, and those killed and wounded in Talish which, though for a short period of time, was under the control of Azerbaijani forces.

Departing from the logic of the ECtHR precedent decisions listed above, we can state that the ECHR is not applicable in regard to the victims and the wounded in the territories under the control of the NKR forces. The ECHR would be applicable to these territories only in case the latter had come under the control of Azerbaijan. However, the ECHR is applicable to the civilians killed and wounded in Talish.

Nevertheless, it is worth mentioning that not all the precedent decisions of the ECtHR follow the logic mentioned above. To be more specific, as regards the earlier case *Bankovic and Others v. Belgium*⁴⁸, the ECtHR confirmed that the efficient control of the bombers had been missing and therefore jurisdiction over the bombed areas was absent as well. Thus, the ECHR cannot be applicable.

⁴⁵ *Cyprus v Turkey*, Application no. 25781/94, GC Judgement of 10 May 2001, Para 177.

⁴⁶ *Ilascu and others v Moldova and Russia Judgement*, Application no. 48787/99, GC Judgement of 8 July 2004.

⁴⁷ *Chiragov and Others v. Armenia*, 16 June 2015 (Grand Chamber – judgment on the merits).

⁴⁸ *Decision as to the admissibility of Application no. 52207/99 of 12 December 2001 (Grand Chamber) in the case Bankovic and Others v. Belgium and 16 Other Contracting States.*

According to Article 2 of the ECHR, *everyone's right to life shall be protected by law*. Article 3 of the same Convention stipulates that *no one shall be subjected to torture or to inhuman or degrading treatment or punishment*.

According to Article 1 of the First Protocol of the ECHR, *every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall deprive him of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law*.

Article 32 defines that *the jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the Protocols thereto which are referred to it as provided in Articles 33, 34, 46 and 47*.

According to Article 33, *any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Party*.

According to Article 34, *the Court may receive applications from any person, nongovernmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right*.

Therefore, it is possible to apply to the ECtHR for the legal protection as regards the breaches of the rights to life and to property of the civilians killed and wounded in Talish, as well as the breach of the prohibition of torture.

With these cases not only the legal successors of the victims have a practical opportunity to apply to the ECtHR, as reserved in Article 34 of the ECHR, but also the RA, represented by the RA Prosecutor General's Office, as reserved in the Article 33 of the ECHR.

According to the Article 35, Paragraph 1, *the Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.*

Nevertheless, the *remedies required to be exhausted according to Article 35, Paragraph 1 refer to the alleged breaches and are available and sufficient*⁴⁹. According to the generally recognized rules of international law, there are special circumstances in which the applicant is absolved from the obligation of using the remedy of domestic legal protection⁵⁰. The rule is not applicable also in case there is such an administrative practice when activities that are inconsistent with the Convention are ongoing and the state bodies seem to tolerate them. In this case the remedy becomes ineffective or inefficient⁵¹.

Considering the above-mentioned attitude displayed by Azerbaijan towards persons of ethnic Armenian origin, it is apparent that the consumption of the Azerbaijani domestic remedies is inefficient. Therefore, probably no issues will arise in this regard.

3.2 International Criminal Court

The International Criminal Court in The Hague was established on July 17th, 1998, in conformity with the Rome Statute adopted in the Rome Conference by the authorized representatives of the United Nations. The experience of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda proved to the international community the necessity of establishing a principal independent court. It is the first international body of criminal justice aiming at investigating individuals charged with genocides, war crimes, and crimes against humanity. It officially began its work on July 1st, 2002⁵².

The prohibition of war crimes, as well as aggression as international crimes, is defined in Article 5 of the Rome Statute of the International Criminal Court.

⁴⁹ E.g., see *McFarlane v. Ireland* Judgement, Application no. 31333/06, GC Judgment of 10 September, 2010, § 107.

⁵⁰ *Sejdovic v. Italy* [Grand Chamber], § 55

⁵¹ *Aksoy v. Turkey*, 18 December 1996, Reports 1996-V, § 52

⁵² International Criminal Court, <http://www.icc-cpi.int/>

The corpus delicti of aggression was not stipulated by the initial version of the Rome Statute. According to Article 5, Paragraph 2 of the Statute, *the Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime.* It was also envisaged that *such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.*

In the Review Conference that took place in Kampala, the capital of Uganda, in July 2010 the corresponding amendments to the Statute were adopted which defined the corpus delicti, the subject of responsibility, as well as the methods of exercising jurisdiction by the court against the crime of aggression⁵³. Therefore, the International Criminal Court has a subject-matter jurisdiction for the acts of aggression.

However, Article 15 ter of the Rome Statute also defines that the court can exercise its jurisdiction against the crime of aggression only after a year since the date of the ratification of the amendments by the 30 states parties and not earlier than January 1st, 2017, by the decision of the two thirds of the countries.⁵⁴

A question arises here: Can the military actions of Azerbaijan against the self-determined Nagorno-Karabakh Republic be characterized as aggression under international law given that the NKR is not recognized internationally. The definition of aggression was approved by the 1974 Resolution of the UN General Assembly⁵⁵ a reference to which is also given in Article 8 of the Rome Statute. The foreword of the Resolution reaffirms the obligation of the countries to refrain from using armed force in order to deprive peoples of their right to self-determination, freedom and independence. According to the definition set out in Article 1, *aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State.* According to the same Article, *the term "State" is used without prejudice to questions of recognition or to whether a State is a member of the United Nations.* It inevitably

⁵³ <http://www.jurist.org/paperchase/2010/06/icc-nations-adopt-crime-of-aggression.php>

⁵⁴ <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>

⁵⁵ 3314 (XXIX) Resolution of the UN General Assembly, 1974,
http://crimeofaggression.info/documents/6/1974_GA_RES_3314.pdf

follows from this definition that the implementation of military operations against a state that is not officially recognized and is not a member of the UN is also regarded as aggression.

The problem is that neither Azerbaijan nor NK nor Armenia are states parties to the Statute of the International Criminal Court. Not only did Azerbaijan not ratify the Rome Statute, but it has also never signed it. Although the RA signed the Rome Statute in October 1999 it has not ratified it yet either.

On August 13th, 2004, by the DCC-502 decision of the RA Constitutional Court, the liability stipulated in the agreement on the Statute of the International Criminal Court signed on July 17th, 1998, according to which the International Criminal Court is complementary to the bodies of the RA national criminal jurisdiction (Preamble, Part 10 and Article 1 of the Statute), has been recognized as inconsistent with Article 91 and Article 92 of the RA Constitution.

The liabilities assumed by the provisions of Article 105 of the Statute of the International Criminal Court which excludes the exercise of the rights to pardon and amnesty for the convicted through domestic procedure, have also been recognized as inconsistent with the requirements of Article 40, Article 55, Paragraph 17, and Article 81, Paragraph 1 of the RA Constitution⁵⁶.

It is worth mentioning that France had encountered the above-mentioned problem too and had settled it by recognizing the jurisdiction of the International Criminal Court as an exceptional case.

However, it does not mean that the International Criminal Court has no jurisdiction to investigate the offenses committed by Azerbaijan. It comes down to the cases when the UN Security Council can transfer a crime situation to the Court through a mediating resolution, in accordance with Article 13, Paragraph 2, and Article 15 of the Statute of the International Criminal Court.

The Case of Darfur is regarded as a precedent of such a case. Then, the UNSC exercised its right and transferred the case to the ICC which, after conducting an investigation, characterized what happened in the country as genocide and made a verdict⁵⁷.

⁵⁶ DCC-502 decision of the RA Constitutional Court of August 13th, 2004
<http://www.concourt.am/english/decisions/common/doc/sdv-502e.htm>

⁵⁷ https://en.wikipedia.org/wiki/United_Nations_Security_Council_Resolution_1593

However, under the Article bis 15, Paragraph 5 of the Rome Statute, as regards the State which is not a state party to the Statute, the Court has no jurisdiction over the crime of aggression, when it is committed by the citizens of the State or in the territory of the State.⁵⁸

Based on the statements mentioned above, the International Criminal Court in case of defining the actions undertaken by Azerbaijan as aggression will not have jurisdiction for two reasons. Firstly, based on Article bis 15, Paragraph 5, as it was previously mentioned, Azerbaijan is not a state party to the Rome Statute. And the second reason is that until January 7th, 2017 the International Criminal Court will not be investigating cases concerning aggression at all.

However, the International Criminal Court will have the jurisdiction to bring Azerbaijan to responsibility in the manner prescribed by Article 13, Paragraph 3, and Article 15 of the Rome Statute, through the mediating resolution of the Security Council if the offenses committed by Azerbaijan are characterized as war crimes which are defined in Article 8 of the above-mentioned Statute. For instance, under the Article 8, Paragraph 1, *the Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes*. And in Paragraph 2 war crimes are listed, the majority of which are grave violations of the Geneva Conventions which we have already discussed.

The “Four-day war” is the new term coined for the above-mentioned large-scale atrocities launched by Azerbaijan against Nagorno-Karabakh. We believe that it is beyond any doubt that the crimes mentioned above have been committed both at a large scale and as part of a previously elaborated plan. In particular, by the decision of the NKR Prosecutor General a criminal case has been initiated under Article 410 (War of Aggression) and Article 416 (Serious Breaches of Norms of International Humanitarian Law during Armed Conflicts) of the NKR Criminal Code⁵⁹. That is to say, the only possible option would be if the above-mentioned Court holds Azerbaijan responsible for war crimes through the mediating resolution of the Security Council.

⁵⁸

<https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>

⁵⁹ <http://www.tert.am/am/news/2016/04/04/moisian/1983157>

According to Article 71 of the Statute, *the people recognized as guilty with the crimes stipulated by the article may be given major or additional punishments. As a major punishment may be the imprisonment for not more than 30 years period of time or life imprisonment.*

However, it is worth mentioning that Article 25 of the Statute also provides for such a principle of criminal law that constitutes the basis of Court's activities as the principle of individual criminal responsibility. This may bring about difficulties as regards the question on who specifically committed certain crimes.

3.3 International Court of Justice

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations (UN). It was established in June 1945 by the Charter of the United Nations and began work in April 1946. It was founded to become the key component of the strategy of pacific settlement of international disputes and to ensure order and legality⁶⁰.

According to Paragraph 1 and Paragraph 2 of Article 36 of the Statute of the International Court of Justice, *the jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force. The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning: a. the interpretation of a treaty; b. any question of international law; c. the existence of any fact which, if established, would constitute a breach of an international obligation; d. the nature or extent of the reparation to be made for the breach of an international obligation.*

⁶⁰ International Court of Justice, <http://www.icj-cij.org>

However, neither the NKR nor the AR nor RA are states parties to the above-mentioned Statute⁶¹.

Considering the fact that the citizens subjected to torture were citizens of the NKR and the military servicemen had served in the NKR Defense Army, a question arises: How will other countries justify that they are entitled to represent the interests of these subjects in the above-mentioned court?

It should be noted that the international crimes mentioned above and particularly the violation of the principle of the prohibition of the use of force bear the nature of *jus cogens*⁶², that is to say, even if the state has not signed the convention, it nevertheless has to fulfill its requirements. Therefore, before the entire community arise the rights and obligations of other states (*erga omnes*) to raise the question of criminal responsibility of persons committing violations through universal law. The above-mentioned obligations include the prohibition of discrimination and have been defined by the International Court of Justice in the *Belgium v. Spain* case⁶³. In this respect, the problem may be considered to be solved.

As for the Covenant on Political and Civil Rights, we again encounter the problem of the applicability of the Covenant. Under the Article 2, Paragraph 1 of the Covenant, *each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant*.

The International Court of Justice stated in the *Advisory Opinion on the Wall*⁶⁴ and in the case of *Democratic Republic of the Congo v. Uganda*⁶⁵ that the above-mentioned Covenant has extra-territorial application in occupational situations when the element of efficient control is preserved. Thus, the Covenant mentioned above, along with the ECHR, is applicable to civilians

⁶¹ Statute of the International Court of Justice, <http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0>

⁶² Article 53 of the Vienna Convention on the Law of Treaties, U.N. Doc. A/CONF.39/27 (1969), repinted in 63 Am. J. Int'l L. 875 (1969).

⁶³ *Belgium v Spain* (Second Phase) ICJ Rep 1970 3, para 33:

⁶⁴ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ Advisory Opinion, 9 July 2004 (A/ES-10/273 and Corr.1), §§ 107-111

⁶⁵ *Case concerning Armed Activities on the Territory of the Congo (DRC v. Uganda)*, ICJ judgment, 2005, §§ 216 – 217.

killed and wounded in Talish and other places which, though for a short period of time, were under the control of Azerbaijani forces.

However, even if other countries apply to the above-mentioned court, the other party, which is Azerbaijan in this case, must admit that it is the respondent which is not very likely.

3.4 United Nations Ad-Hoc Criminal Tribunals and Hybrid Courts

Ad-Hoc Criminal Courts

Before the establishment of The Hague court, *situational, ad-hoc courts* were established for the investigation of crimes committed during genocides and civil wars, to complement international tribunals, taking into account international and domestic strategies. These courts have legal power only within the contracting parties. Examples of *ad hoc* criminal courts are:

- International Criminal Tribunal for the former Yugoslavia (ICTY), The Hague, established by the Resolution 827 of the UN Security Council on May 25th, 1993;
- International Criminal Tribunal for Rwanda (ICTR), Tanzania, established by Resolution 955 of the UN Security Council on November 8th, 1994;
- International Residual Mechanism for ad hoc Criminal Tribunals (MICT) established by the 1966 resolution of the UN Security Council; its activity may be suspended only after the enactment of the last decision on the cases within its jurisdiction.

Hybrid Courts

Third generation international criminal bodies are the so-called mixed international, semi-international or hybrid tribunals. They have the legal framework of national and international law and consist of national and international judges. The latter usually (but not always) are appointed by the UN. These hybrid courts mostly constitute a part of the national judiciary. The bearer is only the given state. The funding of almost all the mixed tribunals is ensured through the voluntary contributions of states parties (with the exception of the former special palaces for grave offenses in Timor-Leste).

Examples of such “hybrid courts” are the international courts of Dili (East Timor) (2000), Kosovo (2000), Sierra Leone (2002), Sarajevo (Bosnia and Herzegovina) Palaces of Justice established for investigating military crimes (2005), the international courts established in regard to cases in Lebanon (2007), East Timor, and Cambodia (2006), the Supreme Criminal Tribunal of Iraq (Baghdad), and others.

The activities of each of these judicial bodies differ from one another by their nature but all of them are implemented under the UN initiative and in accordance with the resolutions of the Security Council⁶⁶.

It is possible for the UN to establish a similar specialized tribunal which will be intended for imposing a criminal liability on Azerbaijan.

⁶⁶<https://hy.wikipedia.org/wiki/%D5%84%D5%AB%D5%BB%D5%A1%D5%A6%D5%A3%D5%A1%D5%B5%D5%AB%D5%B6%D5%A4%D5%A1%D5%BF%D5%A1%D5%AF%D5%A1%D5%B6%D5%B4%D5%A1%D6%80%D5%B4%D5%AB%D5%B6%D5%B6%D5%A5%D6%80>

4. RECOMMENDATIONS

- Apply to the UN Security Council, so as the latter applies to the International Criminal Court through a mediating resolution in the manner prescribed by Article 13, Paragraph 2, and Article 15 of the Rome Statute to bring Azerbaijan to responsibility for its committed war crimes, as defined in the Article 8 of the above-mentioned Statute.
- Apply to the ECtHR for the legal protection of the civilians killed and wounded in Talish and other places which, though for a short period of time, were under the control of Azerbaijani forces, for the breaches of these civilians' rights to life and to property, as well as the breach of the prohibition of torture respectively defined in Articles 2, 3, and 1 of the ECHR and the ECHR Protocol 1. The legal successors of the victims, the wounded, and the persons who have lost their property have a practical chance to apply to the ECtHR with these cases under Article 34 of the ECHR, as well as the RA that can apply to the ECtHR under Article 33 of the ECHR, represented by the RA Prosecutor General's Office.
- Apply to the UN Security Council to establish a specialized tribunal which will bring Azerbaijan to responsibility for the crimes committed by it.
- Following the precedent of France, add a separate article in the Constitution and recognize the adoption of the Statute of the Criminal Court as an exceptional case. By the way, the Secretary of the International Criminal Court also believes that if a state demonstrates the will then all obstacles can be overcome.

BIBLIOGRAPHY

International Conventions

1. UN Universal Declaration of Human Rights, adopted on December 10th, 1948.
2. UN International Covenant on Civil and Political Rights, adopted on December 16th, 1966.
3. UN Convention on the Elimination of All Forms of Racial Discrimination, adopted on December 21st, 1965.
4. OSCE Helsinki Final Act, adopted on August 1st, 1975.
5. European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted on November 4th, 1950.
6. Geneva Convention I: for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, adopted on August 12th, 1949.
7. Geneva Convention III: relative to the Treatment of Prisoners of War, adopted on August 12th, 1949.
8. Geneva Convention IV: relative to the Protection of Civilian Persons in Time of War, adopted on August 12th, 1949.
9. Protocol Additional I to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, adopted on August 12th, 1977.
10. II Hague International Convention with respect to Laws and Customs of War on Land, adopted on July 29th, 1899.
11. UN Convention on the Rights of the Child, adopted on November 20th, 1989.
12. Vienna Convention on the Law of Treaties, adopted on May 23rd, 1969.

Documents of International Institutions

13. 3314 (XXIX) Resolution of the UN General Assembly adopted in 1974.
14. 46/227 Resolution of the UN General Assembly, entered into force on March 2nd, 1992.
15. Statute of the International Court of Justice, adopted in June 1945.
16. Rome Statute of the International Criminal Court, adopted in July 17th, 1988.

17. Concluding observations of the Committee on the Elimination of Racial Discrimination: Azerbaijan, April 14th, 2005.
18. Report on Azerbaijan, European Commission against Racism and Intolerance, adopted on June 28th, 2002.

Domestic Legal Acts

19. DCC-502 decision of the RA Constitutional Court, adopted on August 13th, 2004

Judicial Precedents

20. Decision as to the admissibility of Application no. 52207/99 of 12 December 2001 (Grand Chamber) in the case *Bankovic and Others v. Belgium and 16 Other Contracting States*.
21. *Loizidou v. Turkey* (Judgment), App. No. 15318/89, 310 Eur. Ct. H.R. (ser. A), § 62 (1995),
22. *Öcalan v. Turkey*, Application no. 46221/99, GC Judgement of 12 May 2005 (Grand Chamber – judgment),
23. *Ilascu and others v Moldova and Russia Judgement*, Application no. 48787/99, GC Judgement of 8 July 2004,
24. *Chiragov and Others v. Armenia*, 16 June 2015 (Grand Chamber – judgment on the merits).
25. *Cyprus v. Turkey* (1976), 4 E.H.R.R. 482.
26. *McFarlane v. Ireland*, Application no. 31333/06, GC Judgment of 10 September, 2010.
27. *Sejdovic v. Italy* [Grand Chamber].
28. *Aksoy v. Turkey*, 18 December 1996, Reports 1996-V.
29. *Case Concerning Armed Activities on the Territory of the Congo* (DRC v. Uganda), ICJ, judgment, 2005.
30. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ Advisory Opinion, of 9 July 2004 (A/ES-10/273 and Corr.1).
31. *Accordance with international law of the unilateral declaration of independence in respect of Kosovo (Request for Advisory Opinion)*, ICJ, 22 July 2010.

32. *Barcelona Traction Case, Belgium v Spain* (Second Phase), ICJ Rep 1970.

Papers

33. Study on Customary International Humanitarian Law Conducted by the International Committee of the Red Cross (ICRC), Cambridge University Press, 2009, Volume II, Chapter 1, Section A.

34. Why the Nagorno-Karabakh Conflict Is Still Not Resolved? Shavarsh Kocharyan, 2013

Internet Sources

35. <http://iravaban.net/en/135674.html>

36. <http://karabakhfacts.com/tag/ramil-safarov-case/>

37. https://en.wikipedia.org/wiki/List_of_parties_to_the_Geneva_Conventions

38. https://en.wikipedia.org/wiki/Organization_for_Security_and_Co-operation_in_Europe

39. https://en.wikipedia.org/wiki/List_of_parties_to_the_Hague_Conventions_of_1899_and_1907

40. <http://iravaban.net/en/122904.html#ad-image-5>

41. <http://iravaban.net/en/121843.html>

42. <http://iravaban.net/en/123329.html>

43. <http://iravaban.net/en/122901.html>

44. <http://iravaban.net/en/122339.html>

45. <http://iravaban.net/en/122904.html#ad-image-0>

46. <http://www.azatutyun.am/archive/news/20160407/2031/2031.html?id=27659840>

47. https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en

48. https://en.wikipedia.org/wiki/List_of_parties_to_the_Geneva_Conventions

49. <http://iravaban.net/en/135656.html>

50. <http://iravaban.net/en/125686.html>

51. <http://www.jurist.org/paperchase/2010/06/icc-nations-adopt-crime-of-aggression.php>

52. https://en.wikipedia.org/wiki/United_Nations_Security_Council_Resolution_1593
53. <http://www.tert.am/am/news/2016/04/04/moisian/1983157>
54. https://hy.wikipedia.org/wiki/%D5%84%D5%AB%D5%BB%D5%A1%D5%A6%D5%A3%D5%A1%D5%B5%D5%AB%D5%B6_%D5%A4%D5%A1%D5%BF%D5%A1%D5%AF%D5%A1%D5%B6_%D5%B4%D5%A1%D6%80%D5%B4%D5%AB%D5%B6%D5%B6%D5%A5%D6%80