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Письмо Постоянного представительства Армении при Отделении Организации Объединенных Наций в Женеве от 18 ноября 2010 года на имя Председателя Совета по правам человека

Имею честь настоящим препроводить мнения Республики Армения в отношении письма Постоянного представителя Азербайджана и приложения к нему*, препровождающего мнения правительства Азербайджана относительно национального доклада, представленного Республикой Армения Рабочей группе по универсальному периодическому обзору на ее восьмой сессии (A/HRC/15/G/3).

Я был бы весьма признателен Вам за распространение настоящего письма и приложения к нему в качестве документа пятнадцатой сессии Совета по правам человека.

(подпись) Шарль **Азнавур**

* Воспроизводится в приложении в полученном виде и только на языке представления.

Просьба отправить на вторичную переработку

Annexe

1. The Government of the Republic of Armenia would like to note that the document circulated by the Government of Azerbaijan as a response to the information contained in the National Report of the Republic of Armenia submitted to the Working Group on the Universal Periodic Review contains totally fabricated accusations against Armenia and historically and factually incorrect information with the sole purpose of misleading the Human Rights Council and the international community on both the roots and causes of the Nagorno Karabakh conflict and the state of affairs with regard to protection of minority rights in Azerbaijan and the state-sanctioned discriminatory policies against the Armenian population in the country.

2. It is vexing to note that in its blunt policy of revision of anything related to the Nagorno Karabakh conflict and persistent attempts to politicize the Universal Periodic Review process by dragging in issues that have no bearing on this peer review mechanism, the Government of Azerbaijan attempts to reinterpret the UN General Assembly resolution 60/251 and the Human Rights Council resolution 5/1 clearly setting the basis for the Universal Periodic Review.

3. Armenia acted in full compliance with the UN GA resolution 60/251, HRC 5/1 resolution and HRC 6/102 decision clearly defining the modalities for presenting national reports and the issues to be covered, including implementation of international human rights obligations, voluntary commitments, and key national priorities among others.

4. We deem it important to remind Azerbaijan that it is the sovereign decision of the member-states which rights and to what extent they discuss them both in the national report presented to the UPR and during the review process, and that decision is taken irrespective of the fact whether it is to the liking of certain member-states. This is the core of this review process that provides for objective and transparent discussion of all human rights issues that the country undergoing review faces with. The inclusion of the right to self determination of peoples, the Nagorno Karabakh people's right in particular, is based both on international obligations and commitments of the Republic of Armenia and the direct and indirect effect of the issue on the human rights situation as a whole. The war unleashed by Azerbaijan in early 1990s against Nagorno Karabakh and Armenia, the policy of ethnically cleansing the entire Armenian population from Azerbaijan conducted by its authorities, the ensuing influx of more than 400 000 refugees from Azerbaijan amounting to over 13 percent of the entire population of Armenia, and internally displaced people that were forced to leave their places of permanent residence, as well as the continued blockade of Armenia are just some of the issues that create insurmountable obstacles towards the full enjoyment of economic, social, cultural and political rights by the Armenian population.

5. The international obligations derive from:

- The Charter of the United Nations
- Article 1 of the Covenant on Civil and Political Rights
- Article 1 of the Covenant on Economic, Social and Cultural Rights
- Relevant UNSC resolutions urging the Government of the Republic of Armenia to continue to exert its influence to achieve compliance by the Armenians of Nagorno Karabakh
- Relevant UNSC resolutions calling for unimpeded access for international humanitarian relief efforts in the region, in particular in all areas affected by the conflict, in order to alleviate the increased suffering of the civilian population and

reaffirming that all parties are bound to comply with the principles and rules of international humanitarian law;

- The commitments undertaken during the accession of Armenia to the Council of Europe on using its considerable influence over Nagorno Karabakh to foster a solution to the conflict,
- And making use of the OSCE Minsk Process to put forward constructive proposals for the peaceful settlement of the conflict in accordance with the relevant norms and principles of international law,
- OSCE Ministerial Statements committing to work intensively to resolve the remaining issues, to reach an agreement based on the principles of international law, in particular, Non-use of Force or Threat of Force, Territorial Integrity and the Equal Rights and Self-Determination of Peoples.
- EU Armenia Action Plan under European Neighborhood Policy.

6. Armenia regards the right of peoples to self-determination as a fundamental and indispensable human right and takes consistent steps towards its realization. Armenia is guided by the fact that the principle of the right of peoples to self-determination is currently a binding and universally recognized fundamental norm of international law for all states with no exception, and its implementation derives from international obligations assumed by the states.

7. The total blockade of the Nagorno Karabakh Republic by Azerbaijan since 1991 leaves no alternative for the Republic of Armenia but to provide with the only outlet to the world for the people of Nagorno Karabakh in order to ensure their survival and enjoyment of their human rights in all areas.

8. Additionally, the blockade imposed on Armenia by Azerbaijan and Turkey since early 1990s as a result of the drive of the people of Nagorno Karabakh to exercise peacefully its right to self-determination and the military attempts by Azerbaijan to stifle it at any cost by ethnically cleansing these territories from its rightful owners, has impacted the full enjoyment of the economic, social, cultural and religious rights in the Republic of Armenia.

9. The refugees and internally displaced people in the country as a result of the Nagorno Karabakh conflict continue to be among the most vulnerable groups in need of protection of their basic rights. The issue is also duly reflected in the Compilation for the UPR prepared by the Office of the High Commissioner for Human Rights / A/HRC/WG.6/8/ARM/2/.

10. And finally, the issue of the self-determination of the people of the Nagorno Karabakh Republic is a vital issue in the domestic politics of Armenia and has its direct implication on the enjoyment of political rights in the country. Moreover, the consistent refusal by Azerbaijan to withdraw the snipers from the borderline, increased war rhetoric and provocative military activities grossly violating the ceasefire regime resulting in loss of life is a constant threat to the right to life and its unhindered enjoyment.

11. It should be noted that the Azerbaijani attempts to give a new nature to the Nagorno Karabakh conflict by depicting it as a conflict between Armenia and Azerbaijan goes in line with its policy of revision of history, roots and causes of the conflict, its aggression against Nagorno Karabakh and Armenia and the full-scale war unleashed in 1992 with the only purpose of cleansing the Armenian population of Nagorno Karabakh from its ancestral home. Regrettably, despite the loss of thousands of innocent lives as a result of the Azerbaijani aggression, tremendous suffering of those who became refugees and internally

displaced people, the same mentality still persists with the Azerbaijani leadership as witnessed by unabating threats to solve the conflict militarily.

12. It is unfortunate that the Government of Azerbaijan engages itself in useless mental exercise of trying "to prove" the superiority of certain fundamental principles over the others. This amounts to futile efforts to revisit the fundamentals of the current legal order based on the UN Charter, the Bill of Human Rights and other international legal instruments.

13. It is perplexing to see selective references to the UN Charter and the Helsinki Final Act in an awkward effort to justify superiority of the principle of territorial integrity over the principle of self-determination of peoples. While recalling the 1970 Declaration on Principles of International Law Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, the Azerbaijani side "comfortably forgets" to mention very specific clauses in this document which stipulate:

> "By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.
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> Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order:
>
> (a) To promote friendly relations and co-operation among States; and
>
> (b) To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned;
>
> and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter.
>
> Every State has the duty to promote through joint and separate action universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter.
>
> The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.
>
> Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter."

14. Notwithstanding the fact that the Azerbaijani government has done everything that goes against the above-mentioned provisions in order to subjugate the people of Nagorno Karabakh to a rule not of the latter's choice, it still attempts to claim some rights over the territory. Azerbaijan forgets the discriminatory policies, harassment and abuses it had carried out in all spheres of life during the seventy years of the Soviet rule aimed at depopulation of the region from its original Armenian population the same way it

succeeded in Nakhijevan. By the end of 1970s Armenians were totally driven out of Nakhijevan, monuments of Armenian culture were regularly misappropriated or destroyed with an effort to erase all the signs of Armenian historical existence on those lands. Azerbaijan forgets the extensive efforts exerted aimed at ethnically cleansing the whole territory of its Armenian population as an answer to the Nagorno Karabakh people's peaceful call for self-determination, and the war of aggression unleashed that has resulted in the loss of thousands of lives and hundred thousands of people becoming refugees and internally displaced people from both sides.

15. The Azerbaijani side extensively quotes a paragraph from the 1970 Declaration on Principles of International Law conveniently overlooking the fact that it has long lost any right to claim any jurisdiction over Nagorno Karabakh as a State in strict violation of a mandatory provision in the given clause that stipulates: "… States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour." Azerbaijani authorities do not represent a government "representing the whole people belonging to the territory", i.e. the Armenians of Nagorno Karabakh. The latter has its legally elected authorities that rule the Nagorno Karabakh Republic according to its Constitution and legislation in place.

16. Moreover, any claim of Azerbaijan for its territorial integrity and sovereignty over Nagorno Karabakh is deficient, legally unjustified and unfounded. Nagorno Karabakh has never been part of independent Azerbaijan. The non-applicability of the principle of territorial integrity in the case of the Nagorno Karabakh conflict is well grounded in the principles of international law and the documents of the League of Nations.

(a) Before 1918 Azerbaijan has never been a recognized state with internationally recognized borders. The Memorandum of the Secretary General of the League of Nations clearly states: "The Transcaucasian territory in which the Republic of Azerbaijan has arisen appears to be the territory which formerly composed the Russian provinces of Baku and Elisabethopol...Its population according to the last Russian statistics, is estimated at 4,615,000 inhabitants, including 3,482,000 Musulman Tartars, 765,000 Armenians, 26,580 Georgians and scattered minorities of Russians, Germans and Jews. It may be interesting to note that this territory, occupying a superficial area 40,000 square miles, appears to have **never formerly constituted a State**."[1]

(b) It should be noted, that the Republic of Azerbaijan was declined admission to the League of Nations, some of the reasons for it being the absence of the effective control over the territories it claimed to be comprised of, and Karabakh, among others.

(c) At its forth meeting on December 1, 1920, the 5th Committee elected by the Assembly of the League of Nations having examined the request for admission of Azerbaijan arrived at the following conclusion:

(i) "Within the meaning of Article 1 of the Covenant of the League of Nations **Azerbaijan can not be considered as de jure a "full self governing State", as it had not been recognised de jure by any member of the League of Nations**… The name Azerbaijan which has been chosen for the new Republic is also that of neighbouring Persian province." Furthermore, it questioned the ability of the government of Azerbaijan to undertake international obligations and give guarantees involved by the membership:(2)

(ii) "…it is difficult to ascertain the exact limits of the territory within which the Government of Azerbaijan exercises its authority. Owing to the disputes with

[1] Memorandum of the Secretary General, the League of Nations, November 1920, reference numb. 20/48/108.

neighbouring States concerning its frontiers, it is not possible to determine precisely the present frontiers of Azerbaijan. The provisions of the Covenant did not allow of the admission of Azerbaijan to the League of Nations under present circumstances." (3)

17. Thus, in 1918-1920 Nagorno Karabakh was not part of the Azerbaijani Republic, regardless of its efforts to annex Karabakh by force. Moreover, before the establishment of the Soviet rule on the present territory of Azerbaijan it was not a **de jure**[2] recognized state with internationally recognized borders and did not have a **de facto**[3] control of the territories it claimed.

18. The multi-ethnic Azerbaijani SSR was created **as an administrative unit only in 1921 under the Soviet rule**, with arbitrarily drawn borders and indigenous populations given to Azerbaijan. So, before the collapse of the USSR in 1992 the Azerbaijani SSR's borders were in fact administrative in nature. Therefore, the principle of the territorial integrity defined by the UN Charter and the Helsinki Final Act has no bearing on the said borders.

19. Furthermore, at its inception as independent state in 1992, Azerbaijan claimed succession to the first Azerbaijani Republic of 1918. At neither time, either in 1918 or in 1992 has Nagorno Karabakh been part of Azerbaijan, which it attempts to claim jurisdiction of.

20. In spite of Azerbaijan's unwillingness to accept it, at the time of the dissolution of the Soviet Union, Nagorno Karabakh had already undergone the legitimate process of declaring its independence on the basis of the nation-wide referendum held in Nagorno Karabakh on December 10, 1991, **in full conformity with both international law and the laws of the Soviet Union still in force at that time.** The legitimacy of the declaration of independence was also recognized by the European Parliament which stated in its resolution of 21 June 1999 that "…the autonomous region of Nagorno Karabakh declared its independence following similar declarations by former Soviet Socialist Republics after the collapse of the USSR in September 1991."[4] On September 2, 1991, according to the Law of the USSR on "The Procedure of Resolving Matters on the Secession of a Union Republic from the USSR", which gave the right to autonomous formations and compactly living nationalities to determine in such cases (i.e. secession of the SSR from the Union) their state status, the joint session of the People's Deputies of all levels of Nagorno Karabakh Autonomous Republic (i.e. NKAR Parliament) together with neighboring Shahoumian region declared the creation of the Nagorno Karabakh Republic (NKR). Secession of NKR from Azerbaijani SSR and the referendum of independence on December 10, 1991, occurred before the disintegration of the Soviet Union on December 15, 1991, and the subsequent recognition of Azerbaijan as a sovereign state by the international community. At the time of the latter's recognition, **Nagorno Karabakh was not legally in its composition**.

21. It is disconcerting to see another attempt by Azerbaijan to politicize the Universal Periodic Review by propagating groundless and even fabricated accusations against Armenia that can be found in several passages in the letter of the Permanent Representative of Azerbaijan. The alleged aggression against Azerbaijan is a mere display of continued refusal by the Azerbaijani government of the right of the Nagorno Karabakh people to self-determination, and acknowledgement of the consequences of a large-scale war unleashed

[2] See Memorandum of the Secretary General, the League of Nations.

[3] Letter from the President of the Peace Delegation of the Republic of Azerbaijan M. Allsoptcasbacheff to H.E. Paul Hymans, President of the First Assembly of the League of Nations, December 7, 1920, reference numb. 20/48/206.

[4] Official Journal of the European Communities, C 175/251, 21 June 1999.

by its authorities against those peaceful claims. Yet in 1994, the Human Rights Committee, commenting on the Azerbaijani report, expressed its "regret" on the "position adopted in the report regarding the principle of self-determination. In that connection, it recalled that, under article 1 of the Covenant, that principle applies to all peoples..."

22. None of the accusations against Armenia or Nagorno Karabakh that is under full control of its elected authorities, have been registered by any of international organizations /UN, ICRC, OSCE, Council of Europe/ dealing with hostages, prisoners of war or missing persons. There are no reports produced by any international organization dealing with the people under discussion that could claim ill-treatment or punishment towards them. Armenia has granted full and unimpeded access to all relevant international organizations and has cooperated closely and transparently with them from the very first day of their establishment in the country. The regular reports provided by these organizations, as well as special procedures and special rapporteurs clearly demonstrate the entirely fabricated nature of the Azerbaijani allegations that serve the purpose of fueling anti-Armenian hysteria. However, the same level of openness and compliance with international obligations cannot be registered with Azerbaijan which is notorious for torture of Armenians taken hostage and even killings, proved by the very recent case of killing of Manvel Saribekyan, an Armenian hostage in Azerbaijan, in gross violation of all the principles of international humanitarian law.

23. Anti-Armenian policies of Azerbaijan have been well recorded in all monitoring bodies. Committee on the Elimination of Racial Discrimination (CERD) expressed concern "that, according to reports, incidents of racial discrimination against Armenians occur, and that a majority of the Armenians residing in Azerbaijan prefer to conceal their ethnic identity in order to avoid being discriminated against." It encouraged Azerbaijan to monitor and combat tendencies giving rise to racist and xenophobic behavior, particularly against ethnic Armenians (CERD/C/AZE/CO/4). The Advisory Committee of the Council of Europe Framework Convention for the Protection of National Minorities in its Second opinion adopted in November 2007, raised similar concern stating: "collected information from various sources indicating that persons belonging to the Armenian minority are facing widespread discriminations in various spheres. These include obstacles in access to public employment, housing, public services, payment of pensions and other social benefits and difficulties in restitution of properties. The Advisory Committee is deeply concerned by statements made during its visit by representatives of the authorities. They have either denied that ethnic Armenians face discrimination problems in Azerbaijan, or attempted to justify discrimination against them by the absence of a solution to the conflict of Nagorno Karabakh."

24. Discrimination against Armenians in Azerbaijan is also manifested by absence of education in Armenian in contradiction to CRC and CESCR commitments. Deprivation of cultural rights of the Armenian minority by misappropriation, destroying and erasing unique pieces of its cultural heritage found on the Azerbaijani territory (ICOMOS resolution 5, 16th General Assembly) continues unhindered.

25. In its concluding observations of 2004, the Committee on Economic, Social and Cultural Rights (CESCR) expressed concern "about illegal occupation by refugees and internally displaced persons of properties belonging to Armenians and other ethnic groups" (E/C.12/1/Add.104).

26. In European Commission against Racism and Intolerance (ECRI) second report on Azerbaijan published in May 2007, among various forms of discrimination against Armenians, indicated in para 110: "Another problem is the oral and written inflammatory speech on the conflict over Nagorno Karabakh. These statements do not only target Armenia and Armenian citizens. It also portraits Armenians living in Azerbaijan, as enemies and traitors. ECRI is concerned to learn that some media, and particularly certain

TV channels, some members of the general public, some politicians and even some authorities at local and national levels apparently fuel negative feelings among society towards Armenians in general, and ethnic Armenians living on Azerbaijani territories, in particular. At present, ECRI notes that no steps have been taken to use the relevant Criminal Law provisions to prohibit material inciting to racial hatred against Armenians. As already described in ECRI's first report, the mere attribution of Armenian ethnic origin to an ethnic Azerbaijani may be perceived as an insult. Thus, there have continued to be trials for slander and insult opened by public figures against persons who had publicly and falsely alleged their Armenian ancestry."

27. The Council of Europe Commissioner for Human Rights in the report on his visit to Azerbaijan in September 2007 stated: "Armenians should not have to live in an atmosphere of fear. The authorities should raise awareness campaigns to avoid social prejudice against Armenians. They should provide proper training for law-enforcement agents to avoid any tendency towards discriminatory conduct."

28. Despite those recommendations, hate-speech and anti-Armenian propaganda continue in Azerbaijan on the highest levels deepening the discriminatory attitudes against Armenians. This does not contribute to creating a favorable environment that would enable reaching a lasting solution for the Nagorno Karabakh conflict based on the full respect and exercise of the Nagorno Karabakh people's right to self-determination.

29. The Armenian Government calls on Azerbaijan to refrain from any actions, including threats of use of force and instigations on the line of contact that would endanger the sustainability of the ceasefire regime in place since 1994, and embark on true and honest negotiations within the OSCE Minsk Group format to find a durable resolution to the conflict and resume peace and stability on the South Caucasus to the benefit of all the peoples living in the region.