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Letter dated 24 February 2014 from the Permanent Representative of the Republic of Azerbaijan to the United Nations Office at Geneva addressed to the President of the Human Rights Council

I have the honour to transmit herewith a press release of the Permanent Mission of the Republic of Azerbaijan on the commemoration of the twenty-second anniversary of the Khojaly genocide in Azerbaijan.

I would be highly appreciative if you could kindly circulate my letter and the annex thereto* as a document of the twenty-fifth session of the Human Rights Council under agenda item 4.

(*Signed*) Murad N. Najafbayli

Ambassador, Permanent Representative

* Circulated as received, in the language of submission only.

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Annex

[English only]

Commemoration of the twenty-second anniversary of the Khojaly Genocide

The most serious crimes of concern to the international community, such as war crimes, crimes against humanity and genocide, have been committed in the course of the ongoing aggression of the Republic of Armenia against the Republic of Azerbaijan. In the upcoming days, Azerbaijan commemorates the twenty-second anniversary of the atrocious crimes committed against the civilians and defenders of the town of Khojaly, situated in the Nagorno Karabakh region of the Republic of Azerbaijan.

Late into the night of February 25, 1992 the town of Khojaly has become under the intensive fire from the town of Khankendi and Askeran that already occupied by Armenian forces. At night from February 25 to 26 the Armenian armed forces supported by the ex-Soviet 366th regiment completed the surrounding of the town already isolated due to ethnic cleansing of Azerbaijani population of its neighboring regions. The joint forces have occupied the town which has been brought in rubbishes by heavy artillery shelling. After all 150 people defending the town were killed by overwhelmed fire and by superior forces of advancing army regiments the remaining handful of the town's defendants provided a humanitarian corridor for several hundreds of the town's residents to escape from their homes. Under the heavy conditions the towns' population moved into the darkness of night to be met at the middle of the route by ambush of Armenian forces and militia. Several thousands of fleeing civilians were ambushed at several points and being shelled by bullet rain tried to find refuge in the near-by forests and mountains terrain. However, Armenian armed forces reached out unprotected civilians to slaughter some, finish off others, having some bodies mutilated and scalped as the notorious Karabakh war trophies.

In a few hours of night from 25 to 26 February 613 civilians were killed including 106 women, 83 children. Another 1,000 people were wounded and 1,275 taken hostage. To this day, 150 people from Khojaly remain missing. 56 people were killed with outrageous brutality, 8 families were totally exterminated, 25 children lost both parents while 130 children lost at least one parent in a genocide which has become the most brutal punishment of civilians during the whole years of the conflict's military phase.

The facts confirm that the intentional offences committed against the civilians in Khojaly constitute a crime of genocide. Thus, in accordance with II Article of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide 1948, Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group. From this concept it is clear that "one of the abovementioned unlawful acts" and "specific intention" are the main elements of the crime of genocide. In the case of Khojaly the first element was killing and causing serious bodily or mental harm, as well as other above-mentioned acts. The specific genocidal intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such was also present in the case of Khojaly, because the facts confirm that the intentional massacre of the civilians in Khojaly was directed at their mass extermination only because they were Azerbaijanis. So, these facts confirm that intentional slaughter of

the civilians in Khojaly town constitutes a crime of genocide that was committed by Armenians against Azerbaijanis.

The genocide in Khojaly, along with other grave crimes committed during the conflict between Armenia and Azerbaijan, entail the State responsibility of Armenia and the individual criminal responsibility of those who participated in said acts and their accomplices and accessories. This responsibility emanates from public international law and, more particularly, from the provisions of the abovementioned Convention and those of Convention for the Protection of Human Rights and Fundamental Freedoms, to which both Armenia and Azerbaijan are parties.

In its judgement of 22 April 2010, the European Court of Human Rights arrived at an important conclusion with respect to the crime committed in Khojaly, qualifying the behaviour of those carrying out the incursion as "acts of particular gravity which may amount to war crimes or crimes against humanity". The European Court made in this regard the following observation, which leaves no doubt as to the question of qualification of the crime and ensuing responsibility for it:

"It appears that the reports available from independent sources indicate that at the time of the capture of Khojaly on the night of 25 to 26 February 1992 hundreds of civilians of Azerbaijani ethnic origin were reportedly killed, wounded or taken hostage, during their attempt to flee the captured town, by Armenian fighters attacking the town …" (Judgement of the European Court of Human Rights of 22 April 2010, para. 87).

Armenian officials deny their responsibility for the crimes committed during the conflict, including against the population of Khojaly, airily falsifying facts and sharing their own interpretations of them, which deviate not only from reality but also from elementary logic. Nevertheless, even the subtlest propaganda will never manage to disprove the facts that speak of a situation diametrically opposite to that represented by the Armenian side.

Apart from the considerable information in possession of the law enforcement agencies of the Republic of Azerbaijan, the responsibility of Armenia is documented also by numerous independent sources and eyewitnesses of this genocide tragedy.

Western media reported with horror the killing of the innocent residents of Khojaly by indiscriminate Armenian gunfire and other brutal acts by invading troops (more information is available in document E/CN.4/2002/151).

In his cynical admission of culpability, Armenia's then-Defense Minister and current President, Serzh Sargsyan, was quoted by the British journalist Thomas de Waal, as saying, "before Khojaly, the Azerbaijanis thought that ... the Armenians were people who could not raise their hand against the civilian population. We were able to break that stereotype" (Thomas de Waal, Black Garden: Armenia and Azerbaijan through Peace and War (New York and London, New York University Press, 2003), p. 172)).

Author Markar Melkonian would later describe in his book how some residents of Khojaly had nearly reached safety after fleeing almost six miles but "Armenian soldiers chased them down". The soldiers, he continues, "then unsheathed the knives they had carried on their hips for so long, and began stabbing" (My Brother's Road: An American's Fateful Journey to Armenia (London and New York, I. B. Tauris, 2005), pp. 213-214).

In response to the Armenian side's gross misinterpretation of the 1992 Human Rights Watch (HRW)/Helsinki report's reference to the Khojaly events, the Executive Director of that non-governmental human rights organization, in a letter of 24 March 1997 addressed to the Minister for Foreign Affairs of the Republic of Armenia, pointed out the following: "We place direct responsibility for the civilian deaths with Karabakh Armenian forces. Indeed, neither our report nor that of Memorial includes any evidence to support the argument that Azerbaijani forces obstructed the flight of, or fired on Azeri civilians" (the

letter of the HRW Executive Director is available at the HRW website: (http://www.hrw.org/news/1997/03/23/response-armenian-government-letter-town-khojaly-nagorno-karabakh).

The overall assessment of the causes and consequences of the war unleashed by Armenia against Azerbaijan makes it absolutely clear that the intentional slaughter of the civilians and defenders of Khojaly was not an isolated or sporadic act, but was part of Armenia's widespread and systematic policy and practice of atrocities, at the core of which are odious ideas of racial superiority, ethnic differentiation and hatred. It should be also noted that the Khojaly massacre and other crimes committed against Azerbaijanis during the conflict have finally exploded the myth depicting Armenia as an eternal victim.

For nearly 20 years the state of Azerbaijan has been carrying out specific and systematic work to inform the world community of the Khojaly tragedy perpetrated by Armenian forces and to have it recognized on the international scene as genocide. In recent years, as part of the international campaign "Justice for Khojaly", numerous civil society institutions, youth and Diaspora organizations representing our compatriots together with government agencies have been carrying out productive activities in this area. The true face of the Armenian propaganda machine, built on lies and falsifications, is already being exposed, the global public opinion is beginning to perceive the truth about Khojaly. The Parliamentary Union of the Organization of Islamic Cooperation has recognized this fact as "a massive crime against humanity" and urged its member-states to give an appropriate political and legal assessment to this tragedy. At the same time, the parliaments of some countries have passed resolutions recognizing this massacre as an act of genocide.

The Republic of Azerbaijan considers any racial discrimination and hostility on ethnic and religious grounds, regardless of where they occur, as a crime against humanity. The Government of the Republic of Azerbaijan is striving to pursue activities for an objective assessment to be given to the Khojaly genocide and to the Armenian occupation of Azerbaijani territories, and to restore historical and legal justice.

There can be no long-term and sustainable peace without justice. This requires consistent commitment by States towards their obligations to prosecute those responsible for breaches of international humanitarian law or international human rights law.

The Government of Azerbaijan is confident that consistent measures being taken at the national level, as well as the existing legal framework of prosecution of and punishment for the most serious crimes of concern to the international community, will serve to end impunity for the crimes in Khojaly and other grave offences committed in the course of the aggression of Armenia against Azerbaijan. It is important to ensure that the pursuit of offenders is undertaken through either the domestic legal systems of involved and third-party States or relevant international criminal institutions, as appropriate, and that State responsibility is enforced through existing inter-State mechanisms. Ending impunity is essential not only for the purposes of individual criminal responsibility for serious crimes, but also for peace, truth, reconciliation and the rights of the victims.