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人权理事会
第十五届会议
议程项目 6
普遍定期审议

2010 年 9 月 13 日阿塞拜疆常驻联合国日内瓦办事处代表团致人权理事会主席的信

谨此转交阿塞拜疆共和国对亚美尼亚共和国向 2010 年 5 月 3 日至 14 日举行的普遍定期审议工作组第八届会议提交的国家报告(A/HRC/WG.6/8/ARM/1)的意见。

谨请将本信件及其附件* 作为人权理事会第十五届会议的正式文件在议程项目 6 之下分发，不胜感激。

顺致崇高敬意。

大使，常驻代表

穆拉德 • 纳贾夫拜利博士(签名)

* 附件不译，原文照发。

Annex

1. The Government of the Republic of Azerbaijan would like to respond to the erroneous and legally distorted account of the Armenia-Azerbaijan Nagorno-Karabakh conflict provided by the Republic of Armenia under the United Nations Human Rights Council Universal Periodic Review (UPR) mechanism.

2. In this regard, it is pertinent to point out that the national report submitted by the Republic of Armenia under the UPR was not in conformity with the review exercise, since it was purely political in nature, factually incorrect and did not comply with the basis of the review as reflected in the Human Rights Council resolution 5/1, which stipulates the review to be conducted in an objective, transparent, non-selective, constructive, non-confrontational and non-politicized manner.

3. Meantime, in accordance with the General Assembly Resolution's 60/251 the Human Rights Council shall undertake a universal periodic review, based on objective and reliable information, of the fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States.

4. In accordance with above-mentioned principles and essence of the UPR mechanism, Armenia should not have touched upon the issues of Nagorno-Karabakh conflict and situation on human rights in Azerbaijan in its national report. It should have focused on situation concerning human rights in Armenia and measures undertaken by the Government to improve the situation in the very field in accordance with its obligations and commitments. The Republic of Armenia has demonstrated once again its disrespect to all of the human rights mechanisms in the framework of the United Nations and disregard of the relevant provisions of the international legal instruments adopted within the UN.

5. Bearing in mind the well known stance of the Government of Armenia on the Armenia-Azerbaijan Nagorno-Karabakh conflict, it is more than obvious that Armenia decided to cover broadly the said conflict to include its own political position and biased interpretation of the conflict in its report. At the same, the attempt of bringing up the issues of conflict and situation with regard to the human rights in Azerbaijan in the report is to overshadow disregards to human rights obligations and commitments taken by Armenia in accordance with international human rights instruments.

6. In this regard, the Government of the Republic of Azerbaijan would like to express its position on "plausible arguments" enshrined by Armenia in its national report submitted under the UPR.

7. It is necessary to point out that the purely "political and legal arguments" presented by Armenia in its report are totally biased as they do not reflect historical realities and violate existing principles and norms of the international law. In this regard, Armenia has always attempted to lop-sided interpretation of the international legal principle of the right of peoples to self-determination enshrined in the numerous of the international legal instruments, *inter alia,* the Charter of the United Nations and the Helsinki Final Act of 1975.

8. In the paragraphs 21, 22 and 24 Armenia asserts that "there is no hierarchy in international law between the principles of territorial integrity of the state and the right of peoples to self-determination". This assertion is not in conformity with international law and is contrary to the essence of the international legal system. No doubt, such assertion can lead eventually to the creation of the new model of the international order.

9. It is essential to emphasize that States are at the core of the international legal system and are the primary subjects of international law, while the principle of the

protection of the territorial integrity of States is bound to assume major importance. Territorial integrity of States is a fundamental principle and international law prohibits aggression against the territorial integrity of States and it is imperative.

10. The United Nations has always strenuously opposed any attempts at partial or total dissolution of the territorial integrity of the States. The principle of respect for territorial integrity of States constitutes a foundational norm in international law buttressed by a vast array of international, regional and bilateral practice. This norm is enshrined in international instruments.

11. It is to be noted that Article 2(1) of the Charter of the United Nations provides that Organization itself is based on "the principle of the sovereign equality of all its Members", while Article 2 (4) declares that "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". The latter principle is, of course, one of the core principles of the UN.

12. The preamble to the Declaration on Principles of International Law of 1970 includes the following paragraphs:

> "Recalling the duty of States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State;
>
> Considering it essential that all States 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 purposes of the United Nations;
>
> Convinced it consequence that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or country or its political independence is incompatible with purpose and principles of the Charter".

13. Moreover, it envisaged that the territory of a State shall not be the object of military occupation resulting from the use force in contravention of the provision of the Charter, the territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force and no territorial acquisition resulting the threat or use of force shall be recognized as legal.

14. Meantime, the 1970 on Principles of International Law also contains in its section on self-determination the following provision:

> "Nothing in the foregoing paragraph shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity of political unity of sovereign and independent 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 color."

15. Moreover, the reference by Armenia to the Helsinki Final Act of 1975 is inappropriate. It is to be noted that Armenia passed over in silence the fact that this document is unambiguous in addressing self-determination within its internal dimension and in stating that any boundary change must necessarily take place in accordance with international law, by peaceful means and by agreement. The Helsinki Final Act's reaffirmation of the status and importance of the principle of territorial integrity cannot be ignored, particularly when subsequent instruments refer explicitly to it.

16. Charter of Paris for a New Europe of 1990 reaffirmed "the equal rights of peoples and their right to self-determination in conformity with the Charter of the United Nations

and with the relevant norms of international law, including those relating to territorial integrity of States".

17. The 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities enshrines in Article 8, paragraph 4, that «nothing in the … Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States». The Commentary to the said Declaration, prepared by Asbjorn Eide, former Chairperson of the Working Group on Minorities of the Sub-Commission on the Promotion and Protection of Human Rights, pointes out that the rights of persons belonging to minorities, which differs from the rights of peoples to self-determination mainly because these rights are the individual rights, but not collective ones, cannot serve as a basis for claims of secession or dismemberment of a State. This approach is confirmed also in the general comment of the Human Rights Committee 23 (50) of 1994.

18. At the same time, The Vienna Declaration and Programme of Action of 1993 reaffirmed that "In accordance with the Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations, this shall not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a Government representing the whole people belonging to the territory without distinction of any kind".

19. The opinion that secession is not an obligatory element of the right to self-determination gains more acceptance in the legal theory. Thus, the right to self-determination in the context of human rights reflected in the general recommendation XXI (48) of the Committee on the Elimination of Racial Discrimination, in which it had pointed out that the international law did not recognize a right unilaterally declare secession from a State.

20. The trust of this clause is to reinforce the primacy of the principle of territorial integrity and political unity of sovereign and independent states, while reaffirming the importance of States conducting themselves in accordance with principle of self-determination. The primary starting-point is clearly the principle of territorial integrity, for its significance is of the essence in the clause in prohibiting action to affect in any way detrimentally the territorial integrity of States.

21. Meantime, it must be clarified that analysis of the existing provisions on self-determination and practical realization of it, as enshrined in the relevant international documents, represents a legitimate process carried out in accordance with international and domestic law within precisely identified limits and it was mentioned above the principle of self-determination exists in reality as a rule of international law and as such provides for the independence of colonial territories and for the participation of peoples in the governance of their States within the territorial framework of such States.

22. In this regard, flagrant misinterpretation of Armenia contradicts to the very essence of the international legal norms and principles which clearly highlight that the right to self-determination has been incorporated in international instruments not with in terms of encouraging secessionist movements or foreign interference and aggression against State.

23. In the paragraph 23 Armenia noted that "the people of Nagorno-Karabakh, acting in full compliance with the provisions of the USSR laws and the principles of international law, gained independence from Azerbaijan SSR on December 1991 through referendum, and established a separate state unit called "The Nagorno-Karabakh Republic" (NKR)".

24. In this regard, it is necessary to emphasize that on 18 July 1988, the Presidium of the Supreme Soviet of the USSR (faced with the request of the convocation of delegates of the Nagorno-Karabakh Autonomous Region of 20 February that year to join Armenia, the refusal of this by Azerbaijan on 13 and 17 June and the support of the request by Armenia on 15 June) decided to leave the territory within the Azerbaijan SSR. The decisions on unilateral secession of Nagorno-Karabakh of 12 July 1988 and 16 August 1989 were rejected by Azerbaijan on 12 July 1988 and 26 August 1989 respectively. On 20 January 1989, the Supreme Soviet of the USSR established a special authority for the territory under the direct supervision of the central government, but replaced this on 28 November 1989 with a "Republican Organizational Committee" of the Azerbaijan SSR.

25. On 1 December 1989, the Supreme Soviet of Armenia adopted a resolution calling for the reunification of the Armenian SSR with Nagorno-Karabakh. However, on 10 January 1990, the Presidium of the Supreme Soviet of the USSR adopted a resolution on the "Non-conformity of the Acts on Nagorno-Karabakh adopted by the Armenian SSR Supreme Soviet on 1 December 1989 and 9 January 1990, with the USSR Constitution", declaring the illegality of the proposed unification of Armenia with Nagorno-Karabakh without the consent of the Azerbaijan SSR. On 30 August 1991, the Azerbaijan SSR adopted a Declaration on the restoration of state independence of Azerbaijan and on 18 October 1991 and 29 December 1991, this was officially confirmed.

26. Unlike all previous decisions taken by the Armenian side on Nagorno-Karabakh, the proclamation on 2 September 1991 of the "Republic of Nagorno-Karabakh" was argued by the Law of the USSR "On the Procedures for Resolving Questions Related to the Secession of Union Republics from the USSR" of 3 April 1990.

27. The purpose of this Law was to regulate mutual relations within the framework of the USSR by establishing a specific procedure to be followed by Union Republics in the event of their secession from the USSR. A decision by a Union Republic to secede had to be based on the will of the people of the Republic freely expressed through a referendum, subject to authorization by the Supreme Soviet of the Union Republic.

28. The secession of a Union Republic from the USSR could be regarded valid only after the fulfillment of complicated and multi-staged procedures and, finally, the adoption of the relevant decision by the Congress of the USSR People's Deputies. The claims made by Armenia insofar as they relate to the period prior to the independence of Azerbaijan are contrary to international law. However, claims have been made in relation to the post-independence period and these are similarly unlawful as amounting to a violation of the principle of the respect for the territorial integrity of sovereign states.

29. On 10 December 1991, Nagorno-Karabakh held a "referendum on independence" (without the support or consent of independent Azerbaijan of which it legally constituted a part) which was confirmed two days later by an "Act on the Results of the Referendum on the Independence of the Republic of Nagorno-Karabakh".

30. On 28 December 1991, "parliamentary elections" were held in the territory and on 6 January 1992 the newly convened "parliament" adopted a "Declaration of Independence". On the same day, the "Supreme Council of Nagorno-Karabakh" adopted a "Declaration on State Independence of the Republic of Nagorno-Karabakh".

31. Stemming from the said it is clear that Armenia in its attempts to legalize the results of the use of force and ethnic cleansing, frequently speculates on the international legal principle of the right of peoples to self- determination. Armenia`s revisionist claims to the application of the principle of self-determination are contrary to and unsustainable in international law. The critical factor in this regard is that all actions aimed at tearing away a part of the territory of Azerbaijan were unconstitutional and accompanied by violation of

basic rules of international law, particularly those prohibiting the use of force and the acquisition of territory.

32. Moreover, vociferate assertions that "the authorities of Nagorno-Karabakh Republic have unilaterally acceded to the fundamental instruments of international law and transposed these instruments into their own legislation" (as reflected in paragraph 23.) are inappropriate and override fundamental instruments of international law. It should be noted that "The Nagorno-Karabakh Republic" has not been recognized as subject of international law, even by the Republic of Armenia.

33. With regard to accusations cited in paragraph 149, it should be noted that the statements by the representatives of Azerbaijan cannot be considered as militaristic and belligerent. Such statements must be first and foremost considered in the context of public statements by the Republic of Armenia. It should be pointed out that the President, Minister of Foreign Affairs and other senior officials of Armenia on a regular basis that "Nagorno-Karabakh is an independent state", "Nagorno-Karabakh has never been a part of Azerbaijan", "Nagorno-Karabakh cannot exist within Azerbaijan", etc. The Azerbaijani side cannot stay indifferent to these clearly provocative statements compromising territorial integrity of the Republic of Azerbaijan and is obliged to react to them. Therefore, Azerbaijani statements regarding the right to restore the territorial integrity and sovereignty on the basis of the norms and principles of international law must not be taken out of the general context and cannot be presented or interpreted as calls to war and use of force. On the contrary, the principle of non use of force is bluntly violated by Armenia, which has occupied Azerbaijani territories by use of force and continues occupying them.

34. It is necessary to point out that while accusing Azerbaijan of "manifestations of intolerance and dissemination of xenophobia towards Armenians", Armenia disregards the fact that, Armenia itself has purged its territory of all non-Armenians and become a uniquely mono-ethnic state.

35. Throughout all of its history Azerbaijan is well-known for its high-level tolerance and respect for various ethnic groups and religions. Principal provisions of national policy are laid in the Constitution, which ensures the equality of all citizens regardless of their ethnic, religious or racial origin. During many centuries, no facts of intolerance and discrimination in relation to members of other nationalities were observed in Azerbaijan, due to its historical, economical and cultural characteristics.

36. Furthermore, according to some estimates, about 30.000 ethnic Armenians reside in the territory of the Republic of Azerbaijan and pursuing their normal way of life without being subjected to any kind of discrimination.

37. It should be noted UN Special Rapporteur on freedom of religion and belief, Mrs. Asma Jahangir emphasized the high level of tolerance in Azerbaijan in her report submitted to the Council after her visit to Azerbaijan in 2006.

38. The UN Committee on the Elimination of Racial Discrimination in its concluding observations (CERD/C/AZE/CO/6) has pointed out the efforts of Azerbaijan aimed at the strengthening the dialogue between cultures and cooperation among religions, protection and further development of the cultural heritage of national minorities, development of legal awareness and the legal culture of the population and the prohibition of discrimination in the country.

39. The visit of the Pope John Pavel II to Azerbaijan in 2002 was an important event in the social life of the country and served as one of the numerous acknowledgements of the tolerance in the Republic of Azerbaijan. The above-mentioned acknowledgement was once again confirmed by Vatican Secretary of State Cardinal Tarcisio Bertone, during the

inauguration ceremony of a new Catholic Church in the capital of Azerbaijan, in March of 2008.

40. It is necessary to point out that the promotion of cross-cultural and interreligious dialogue is one of the priority areas of the foreign policy of Azerbaijan. The different International Conferences and Forums initiated by the Government of Azerbaijan again demonstrated the high activity and contribution of Azerbaijan to the development of dialogue among various civilizations, cultures and religions.

41. The Baku Conference of world religious leaders, that has taken place on April 27-29, 2010, with participation of all traditional religions of the world, confirms once again the tolerance and interreligious dialogue existing in Azerbaijan. It should be noted that the head of the Armenian Apostolic Church Catholicos Garegin II participated at the Conference and visited the Armenian Church in Baku during his visit to Azerbaijan.

42. Therefore, allegations of the Republic of Armenia in the said paragraphs are intended at defaming Azerbaijan and hiding ethnic cleansing policy towards Azerbaijanis living in the territory of Armenia and the Azerbaijani population of the occupied lands of Azerbaijan.

43. The review of the national report of the Republic of Armenia under UPR has demonstrated that there are still numerous problems with the implementation of obligations undertaken by the State in accordance with the international legal instruments in this field.

44. Meantime, it is well-known fact that Azerbaijan continues to suffer from aggression of Armenia during last 20 years. As a result of the Armenian aggression and ethnic cleansing carried out against Azerbaijani population of Nagorno-Karabakh and its adjacent territories 20 percent of the territory of Azerbaijan still remains under occupation of Armenia and more than 1 million Azerbaijanis become refugees and internally displaced persons. During armed conflict innocent Azerbaijani peoples ruthlessly were killed.

45. During the aggression against Azerbaijan flagrant violations of human rights and international humanitarian law committed by Armenia, many facts of extrajudicial punishments and mass shooting, torture and other cruel and inhuman forms of treatment and punishment towards peaceful citizens of Azerbaijan, hostages and prisoners of war were recorded.

46. According to information from the State Commission of Azerbaijan on prisoners of war, hostages and missing persons, 4499 citizens of Azerbaijan still remain in the list of missing persons. According to many reports, they are illegally detained by Armenia and systematic tortures and other cruel, inhuman forms of treatment and punishment are used towards them. According to the information 552 citizens of Azerbaijan were killed in hostage by Armenia as a result of torture and torment.

47. Meantime, unfortunately, the Republic of Azerbaijan is not able entirely to implement the international obligations in its territories occupied by Armenia in the field of human rights at the national level, which it has undertaken.

48. As an occupying power, Armenia is fully responsible for protecting human rights and implementing norms and principles reflected in international humanitarian law in the occupied territories. Azerbaijan draws attention to the fact that certain activities by Armenia in the occupied territories of Azerbaijan, in particular, state policy aimed at changing demographic composition in the occupied regions, violating property rights, destructing the cultural heritage and sacred sites in occupied Azerbaijani territories in and around Nagorno-Karabakh gravely violates respective norms and principles of international humanitarian law and international human rights law.

49. It should be noted that the same concern was expressed by the independent monitoring bodies of the United Nations. For example, CERD has emphasized that "While acknowledging the efforts of State Party to find a peaceful solution to the conflict over Nagorno-Karabakh, the Committee is deeply concerned about the persistence of this conflict and its negative influence, at the national and regional levels, on the exercise and full enjoyment of the rights enshrined in the Convention, in particular by internally displaced persons".

50. Today the refugees and internally displaced persons, who constitute the one ninth of the population of Azerbaijan, continue to suffer from the consequences of aggression and ethnic cleansing, which deprived them not only of their homelands, but also natural rights and freedoms. The issue of return of all displaced persons expelled from the conflict-affected territories and their descendants to their original places of residence is of utmost importance for the settlement of the conflict and it is the key element for the establishment of peace and security in the region.

51. The Republic of Azerbaijan supports a peaceful solution of the Armenia-Azerbaijan Nagorno-Karabakh conflict, which should be based on norms and principles of international law, including respect to territorial integrity, sovereignty and inviolability of internationally recognized borders of states. We recall the Resolutions 822 (1993), 853 (1993), 874 (1993) and 884 (1993) of the United Nations Security Council and General Assembly resolution 62/243 adopted on 14 March 2008 and other relevant resolutions adopted by different international organizations and urge their soonest implementation, in particular withdrawing occupying forces from the Azerbaijani territories.

52. Azerbaijan reiterates that the occupation of foreign territory by Armenia constitutes a grave violation of that state's obligations as a member of the UN, OSCE and Council of Europe and expresses deep concern over continued occupation of significant part of the Azerbaijani territories. Continued occupation of the Azerbaijani territories violates the principle of non-use of force.

53. Azerbaijan proceeds from the position that the right of all displaced persons from the area of conflict to return to their homes in safety and dignity and stresses the equality of both communities (Armenian and Azerbaijani) of the region, as it regards their rights and freedoms, security, economic activity and future participation in the process of definition of the status of the region. We stress that, return of the Azerbaijani community to Nagorno-Karabakh region, peaceful coexistence and cooperation of two communities in Nagorno-Karabakh region as well as putting all communications in equal use for all sides is vital for settlement of the conflict.