



# General Assembly Security Council

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**Security Council**  
**Seventy-sixth year**

**Prevention of armed conflict**

**Right of peoples to self-determination**

**Promotion and protection of human rights**

**The responsibility to protect and the prevention of genocide,  
war crimes, ethnic cleansing and crimes against humanity**

## **Letter dated 2 February 2021 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General**

I have the honour to transmit herewith a letter from the Minister of Foreign Affairs of the Republic of Artsakh (Nagorno-Karabakh Republic), David Babayan, regarding the situation of the Armenian prisoners of war and civilians captured by Azerbaijan during and after the military aggression against Artsakh, in gross violation of international humanitarian law (see annex).

I would appreciate it if you could render your good offices to help to resolve this urgent humanitarian issue.

I kindly request that the present letter and its annex be circulated as a document of the General Assembly, under agenda items 34, 71, 72 and 135, and of the Security Council.

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



**Annex to the letter dated 2 February 2021 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General**

**Letter dated 19 January 2021 from the Minister of Foreign Affairs of the Republic of Artsakh addressed to the Secretary-General**

I am writing to you concerning the situation of the Armenian prisoners of war and civilians captured by Azerbaijan during and after the military aggression that it unleashed against the Republic of Artsakh on 27 September 2020 with the direct involvement of Turkey and foreign terrorist fighters from Syria and Libya. As the issue is also of a humanitarian nature, it must be addressed without delay, and, in this regard, we respectfully request your immediate attention and intervention.

On 11, 12 and 15 December 2020, the Azerbaijani armed forces, in violation of the trilateral statement on the complete ceasefire and cessation of all hostilities signed by the leaders of Armenia, Russia and Azerbaijan on 9 November 2020,<sup>1</sup> launched an attack on the villages of Khtsaberd and Hin Tagher in the Hadrut Region of the Republic of Artsakh, taking advantage of the absence of Russian peacekeeping forces there. As a result of these offensive actions, 64 Armenian servicemen from the volunteer corps were captured by the Azerbaijani forces. The Armenian servicemen, deployed in the villages of Khtsaberd and Hin Tagher, were on active duty, incorporated with the Armed Forces of the Republic of Artsakh.

Despite the intervention of Russian peacekeepers and the establishment of additional peacekeeping observation posts to monitor the situation and control the observance of the ceasefire, Azerbaijan did not curb its offensive operations in the region. As evidenced by the map of the Ministry of Defence of the Russian Federation, the targeted villages were under the control of the Republic of Artsakh at the time of these attacks.

Azerbaijani authorities later announced their refusal to repatriate the captured Armenian servicemen and, in fact, their intention to prosecute them. This position of Azerbaijan has been described in detail in a letter dated 26 December 2020 from the Minister for Foreign Affairs of Azerbaijan addressed to the Secretary-General (A/75/689-S/2020/1298, annex).

First, this position of Azerbaijan is a material breach of paragraph 8 of the trilateral statement, which provides, in no uncertain terms, that “The Parties shall exchange prisoners of war, hostages and other detained persons, and dead bodies”. Azerbaijan’s outrageous conduct not only runs counter to the obligations enshrined in the trilateral statement, but directly contradicts the intentions of the parties who are the signatories to it and significantly delays a prompt solution to acute humanitarian issues, which only results in protracted human suffering.

Moreover, this position of Azerbaijan contradicts its own commitments to fully implementing the trilateral statement, both in letter and in spirit, which would help to heal the wounds of the bloody conflict. The obligation to exchange prisoners of war, hostages and other detained persons, and dead bodies is a crucial, humanitarian component of the trilateral statement.

Second, Azerbaijan’s position is in fact an attempt to avoid responsibility by denying the application of international humanitarian law to the matter. The trilateral

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<sup>1</sup> Statement by the President of the Republic of Azerbaijan, the Prime Minister of the Republic of Armenia and the President of the Russian Federation. Available at <http://en.kremlin.ru/events/president/news/64384>.

statement does not suspend the applicability of the Geneva Conventions. In fact, even minor skirmishes between the armed forces warrant the applicability of humanitarian law, regardless of existing ceasefire agreements. The application of the Geneva Conventions does not necessarily presuppose large-scale hostilities<sup>2</sup> and is not contingent on a certain level of intensity of armed conflict.<sup>3</sup>

It is sufficient for a member of the armed forces to be captured by another State to trigger the application of the Geneva Convention relative to the Treatment of Prisoners of War (the Third Geneva Convention). Accordingly, if members of the armed forces of a State in dispute with another fall into enemy hands, they are eligible for prisoner of war status regardless of whether there is full-fledged fighting between the two States.

Thus, the members of the Armed Forces of the Republic of Artsakh currently held by Azerbaijan must be guaranteed prisoner of war status in accordance with article 4 (A) (1) of the Third Geneva Convention, which states in particular that “Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces” who have fallen captive shall be deemed prisoners of war and afforded all of the rights and protections guaranteed such persons.

Crucially, Azerbaijan’s false allegations against the Armenian servicemen do not deprive, in any manner whatsoever, the Armenian servicemen of prisoner of war status. Article 4 (A) (2) of the Third Geneva Convention is explicitly broad in defining the term to include:

Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions:

- (a) That of being commanded by a person responsible for his subordinates;
- (b) That of having a fixed distinctive sign recognizable at a distance;
- (c) That of carrying arms openly;
- (d) That of conducting their operations in accordance with the laws and customs of war.

The Armenian servicemen captured by Azerbaijan, clearly within the ambit of article 4 (A) of the Third Geneva Convention, cannot be prosecuted for the mere fact that they participated in hostilities, since combatants’ privilege provides these servicemen with immunity from prosecution for the use of force against persons or objects in a manner consistent with international humanitarian law.

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<sup>2</sup> See Commentary of 2020, article 4: Prisoners of War. Available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=1796813618ABDA06C12585850057AB95>.

<sup>3</sup> This principle has also been endorsed by international tribunals, such as the International Tribunal for the Former Yugoslavia, which held that “the existence of armed force between States is sufficient of itself to trigger the application of international humanitarian law”. See International Tribunal for the Former Yugoslavia, Delalić Trial Judgment, 1998, para. 184 (see also para. 208); Tadić Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 1995, para. 70; and International Criminal Court, Lubanga Decision on the Confirmation of Charges, 2007, para. 207. The Special Court for Sierra Leone used the definition of international armed conflict proposed by the International Tribunal for the Former Yugoslavia in Tadić; see Special Court for Sierra Leone, Taylor Trial Judgment, 2012, paras. 563–566.

The Third Geneva Convention establishes the principle that prisoners of war must be released and repatriated without delay after the cessation of active hostilities, in accordance with article 118 of the Third Geneva Convention. Azerbaijan's refusal to repatriate the Armenian servicemen and its intention to initiate criminal proceedings against them is in fact a grave breach of the Third Geneva Convention.

It should also be emphasized that, contrary to these established principles of international humanitarian law, Azerbaijan is also delaying the repatriation of already confirmed prisoners of war who fell into Azerbaijan's hands during and after the hostilities. Furthermore, in violation of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (the Fourth Geneva Convention), Azerbaijan continues to keep in detention the civilians, including women, captured during and after the hostilities. In some cases, Azerbaijan has even denied the facts of capture of certain Armenian servicemen and civilians, despite video and photo evidence circulated on Azerbaijani social media channels that confirm their captivity. In other cases, Azerbaijan denies any access to the places of their detention. The authorities of the Republic of Artsakh remain seriously concerned that there is an imminent danger to the lives and health of the prisoners of war and civilians who are kept incommunicado.

From the beginning of the aggression, cases of cruel, inhuman and degrading treatment, as well as of summary execution of civilians and servicemen by the armed forces of Azerbaijan, took place. Many of them have been filmed and distributed on the Internet, including the execution by Azerbaijani forces in the Hadrut region of the Republic of Artsakh of two captured Armenians. War crimes committed by the Azerbaijani armed forces were also addressed by United Nations High Commissioner for Human Rights, Michelle Bachelet. She expressed serious concern about videos that have emerged, which appear to show war crimes being committed.<sup>4</sup>

Given the fact that international humanitarian law requires that the immediate repatriation of prisoners of war and release of civilians be realized independently of any political process and ensured immediately after the cessation of hostilities, Azerbaijan's deliberate politicization of the purely humanitarian issue of the rights of the prisoners of war and captive civilians is utterly unacceptable and should receive an adequate, mindful assessment through your kind offices.

We hereby invite the Secretary-General to undertake urgent measures to ensure Azerbaijan's immediate implementation of the Geneva Convention relative to the Treatment of Prisoners of War (the Third Geneva Convention) and the Geneva Convention relative to the Protection of Civilian Persons in Time of War (the Fourth Geneva Convention) and to require Azerbaijan to fulfil its obligation to take all measures in accordance with mentioned treaties in order to guarantee both prisoners of war and civilians all of the rights and protections afforded to them thereunder.

*(Signed)* David Babayan

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<sup>4</sup> Nagorno-Karabakh conflict: Bachelet warns of possible war crimes as attacks continue in populated areas. Available at [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26464&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26464&LangID=E).