



大会
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议程项目 35、72、73 和 134

预防武装冲突

消除种族主义、种族歧视、仇外心理和
相关不容忍行为

人民自决权利

保护责任与防止灭绝种族、战争罪、
族裔清洗和危害人类罪

安全理事会

第七十六年

2021 年 12 月 3 日亚美尼亚常驻联合国代表给秘书长的信

谨随函附上纳戈尔诺-卡拉巴赫(阿尔扎赫共和国)人权监察员的中期报告，其中记录了阿塞拜疆违反国际人道主义法和国际人权法于 2020 年 9 月 27 日发动大规模军事侵略抓捕亚美尼亚战俘和平民人质对其进行非法起诉和审判情况(见附件)。

请将本函及其附件作为大会议程项目 35、72、73 和 134 下的文件和安全理事会的文件分发为荷。

常驻代表

大使

米海尔·马尔加良(签名)



2021 年 12 月 3 日亚美尼亚常驻联合国代表给秘书长的信的附件

Malicious prosecution by Azerbaijan of captured Armenian servicemen and civilians

Introduction

On 27 September 2020, Azerbaijan, supported by Turkey and foreign fighters and mercenaries from various extremist and terrorist groups in the Middle East and beyond, unleashed another armed aggression against the Republic of Artsakh. Azerbaijan's use of force being itself illegal under international law was accompanied with numerous serious violations of international humanitarian law, including indiscriminate attacks, deliberate attacks on civilians and civilian objects, murder and torture of civilians and servicemen fallen under the control of the Azerbaijani forces.

More than a year after the ceasefire of November 9, 2020, Azerbaijan continues violating international humanitarian law by initiating criminal proceedings against Armenian civilians and servicemen who were captured during the active hostilities and after the ceasefire. Dozens of video and photo materials have been circulating in social media illustrating the violent and inhuman treatment of those captured – beheadings or mutilations, killings and other violence towards servicemen and civilians, including the execution by Azerbaijani forces in Hadrut region of the Republic of Artsakh of two captured Armenians.¹ War crimes committed by the Azerbaijani armed forces was addressed by UN High Commissioner for Human Rights Michelle Bachelet, who expressed serious concern about videos that have emerged which appear to show war crimes being committed.²

In addition, 38 civilians, citizens of the Republic of Artsakh mainly elderly remained in villages that came under the control of Azerbaijan were killed through physical violence, stabbing, beheading, close-range shot, and other direct means. In fact, all the civilians who did not leave their homes in territories which fell under Azerbaijan's control were killed.³

So far none of the Azerbaijani perpetrators of war crimes against Armenians during and after hostilities were punished by Azerbaijan. Instead, those Armenian servicemen and civilians who survived inhuman treatment and were acknowledged by Azerbaijan, were convicted to, or are facing imprisonment in Azerbaijan under unfounded accusations. In total **45** Armenians were convicted and sentenced to various jail terms – **two** Armenian servicemen were convicted to 20 years of imprisonment, **36** servicemen were convicted to 6 years of imprisonment, **two** servicemen were convicted to 4 years of imprisonment, **two** more servicemen are waiting for judgement. In addition, **one** civilian was convicted to 20 years of imprisonment, and **two** others – to 15 years of imprisonment. **Five** Armenian servicemen were subsequently released after the conviction, while 40 more Armenians remain under Azerbaijani custody.

¹ Nick Waters, "An Execution in Hadrut", available at https://www.bellingcat.com/news/rest-of-world/2020/10/15/an-execution-in-hadrut-karabakh/?fbclid=IwAR09a6skc_rAzFZa2an6k3aC0nKZrKltExobSXM4A0paNe8YiVr8Uf7lgAE.

² OHCHR, "Nagorno-Karabakh conflict: Bachelet warns of possible war crimes as attacks continue in populated areas", available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26464&LangID=E>.

³ Artsakh's Ombudsman's Interim Report on the Cases of the Killing of Civilians in Artsakh by the Armed Forces of Azerbaijan, available at <https://artsakhombuds.am/en/document/785>.

It should be noted that initiation of criminal proceedings against the Armenian servicemen and civilians is a material breach to the Geneva Convention (III) Relative to the Treatment of Prisoners of War and Geneva Convention (IV) Relative to the Protection of Civilian persons in time of War, to which Azerbaijan is a state party.

1. Illegal Prosecutions and Trials Against the Armenian Prisoners of War

On December 11, 12 and 15, 2020, after the ceasefire, the Azerbaijani armed forces launched an attack on the villages of Khtsaber 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, 62 Armenian servicemen were captured by the Azerbaijani forces, the villages of Khtsaber and Hin Tagher in the Hadrut Region of the Republic of Artsakh which were still under the control of the Republic of Artsakh were occupied by Azerbaijan. Subsequently, due to international pressure Azerbaijan released 24 servicemen. Though later it initiated criminal proceedings against the 38.

36 Armenian servicemen were convicted to 6 years of imprisonment: Sasun Yeghiazaryan, Arsen Vardanyan, Hovsep Manukyan, Eduard Kirakosyan, Arman Dilanyan, Vagharshak Avetisyan, Karen Aramyan, Mels Ambardaryan, Meruzhan Maloyan, Feliks Grigoryan, Gurgun Galoyan, Andranik Mikayelyan, Gevorg Martirosyan, Rafik Karapetyan, Tigran Avagyan, Vahagn Bahrikyan, Andranik Sukiasyan, Robert Gevorgyan, Sedrak Soghomonyan, Manuk Martoyan, Volodya Hakobyan, Grigor Saghatelyan, Hrayr Tadevosyan, Artur Baghdasaryan, Varazdat Manukyan, Levon Tosunyan, Haykaz Hovhannisyan, Hrayr Herabyan, Narek Kostanyan, Serob Avagyan, Davit Stepanyan, Zhora Manukyan, Grigor Kyureghyan, Martin Aghramanyan, Ashot Gevorgyan, Varazdat Harutyunyan.

Servicemen Gegham Serobyan and Hrach Avagyan were convicted to 4 years of imprisonment.

On October 19, 2021, five Armenian POWs from the abovementioned list, convicted in Azerbaijan were repatriated. The rest remain in Azerbaijani captivity.

Moreover, two more servicemen Lyudvig Mkrtchyan and Alyosha Khosrovyan who were captured in October 2020, during active hostilities and before the ceasefire were convicted to 20 years of imprisonment. Lyudvig Mkrtchyan, born in 1969, is from Yeghegis village of Vayots Dzor marz, Alyosha Khosrovyan, born in 1967, is from city of Kapan, Republic of Armenia. The Republic of Armenia appealed to the European Court of Human Rights regarding the issue of Armenian prisoners of war, and the Court immediately took measures against Azerbaijan, demanding information about Lyudvig Mkrtchyan and Alyosha Khosrovyan. But no notification on initiating a criminal case and the charges has been submitted to the Court by Azerbaijan. They have been convicted to twenty-years imprisonment. Lyudvig Mkrtchyan was filmed along with Armenian captives lying on the ground, blindfolded with a white cloth and their hands bound to the back. Azerbaijani soldiers repeatedly kick and poke them with the metal rod on head, back, stomach, and legs. PoWs plead with them not to hurt. Begging voices "I will tell everything," "I will tell more" in Russian are also heard.⁴

Azerbaijan's refusal to repatriate Lyudvig Mkrtchyan and Alyosha Khosrovyan is not only a violation of international humanitarian law, but also is a material breach

⁴ <https://drive.google.com/file/d/1tzKO6ML8aZqxI97-mISpUp0fXYv7tvbz/view>, see also Armenia's Human Rights Defender's "Ad Hoc Public Report on the Treatment of Armenian Prisoners of War and Civilian Captives in Azerbaijan" (with focus on their questionings), Yerevan, 2021 available at <https://ombuds.am/images/files/1138b156720bec6ae0fd88dc709eb62c.pdf>.

of paragraph 8 of the Trilateral Statement. The Trilateral Statement provides, in no uncertain terms, that “The Parties shall exchange prisoners of war, hostages and other detained persons, and dead bodies”. Paragraph 8 of the Trilateral Statement demands that the Armenian servicemen be released immediately. Azerbaijan’s outrageous conduct does not only run counter to the obligations enshrined in Trilateral Statement, but directly contradicts the intentions of the parties who are the signatories to it and significantly delays prompt solution of acute humanitarian issues which only result in protracted human suffering.

Six more Armenian servicemen were captured by Azerbaijan on 27 May 2021 from the Gegharkunik region of Armenia where they were engaged in engineering work.⁵ Subsequently, four of them were repatriated, two servicemen – Ishkhan Sargsyan and Vladimir Rafaelyan – remain in captivity. On November 17, 2021, the Azerbaijani media reported that the preliminary investigation of the criminal case of two Armenian citizens, Ishkhan Sargsyan and Vladimir Rafaelyan, is over. The materials of the criminal case were sent to the Ganja Court. Both Armenian citizens have been charged under Article 214.2.3 of the Criminal Code of Azerbaijan with “terrorism committed with the use of firearms.”

By launching criminal proceedings against Armenian servicemen Azerbaijan in fact denies the PoW status of the Armenian servicemen and therefore the protection provided by the Third Geneva Convention. While Azerbaijan has no liberty to do so, rather than obligation to respect commitments under international humanitarian law. The prisoner of war status of the members of the armed forces of the Republic of Artsakh is guaranteed by the Article 4 (1) of the Third Geneva Convention, which states 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. They, 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 immunity from prosecution for the use of force against persons or objects in a manner consistent with international humanitarian law.

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 their criminal prosecution is in fact a breach to the Third Geneva Convention.

2. Illegal Prosecutions and Trials Against the Captured Armenian Civilians

Criminal proceedings were initiated also against three Armenian civilians captured after the ceasefire. Vicken Euljekjian was convicted to 20 years of imprisonment. He was born in Beirut, Lebanon and obtained Armenian citizenship in 2015, after which he permanently moved to Yerevan, Armenia in November 2019. Later he relocated to Shushi, Artsakh. After the war was launched against Artsakh, Vicken Euljekjian and his wife Maral Najarian and her sister returned to Yerevan at the beginning of October. Vicken Euljekjian was not involved in any military action and not deployed to any military destination. The day following the November 9 ceasefire, on November 10, Vicken Euljekjian and Maral Najarian drove to town of Shushi to pick up their belongings from in the Shushi hotel. Unaware that Shushi was

⁵ United Nations, General Assembly & Security Council, Letter dated 27 May 2021 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary General, UN doc. [A/75/897-S/2021/508](#) (28 May 2021).

under Azerbaijani control they took the road leading to Shushi but were captured by Azerbaijani armed forces. Maral Najarian was released after 4 months of captivity, on March 10, 2021.

Azerbaijani side initiated a criminal case against Vicken Euljekjian under Articles 114.3 (mercenary activity), 214.2.1 and 214.2.3 (terrorism), 228.2.1 (illegal purchase, storage, transportation and carrying of fire-arms and supplies), 279.1 (creation of armed groups not provided by the legislation) and 318.2 (illegal crossing of border of the Republic of Azerbaijan) of Azerbaijani Criminal Code. By accusing Vicken Euljekjian particularly in mercenary activities, Azerbaijan is in fact engaged in a game of false equivocation. It should be noted that the use of mercenaries by Azerbaijan was raised by international community, including the President of France Emmanuel Macron, US and Russian high rank officials.⁶ The UN Working Group on the use of mercenaries mentioned in their press-statement that “there were widespread reports that the Government of Azerbaijan, with Turkey’s assistance, relied on Syrian fighters to shore-up and sustain its military operations in the Nagorno-Karabakh conflict zone, including on the frontline. The fighters appeared to be motivated primarily by personal financial interests, given the dire economic situation in the Syrian Arab Republic, according to the UN experts. In case of death, their relatives were reportedly promised financial compensation and Turkish nationality”.⁷ We believe that Vicken Euljekjian was convicted in Azerbaijan only because of his nationality. Azerbaijan hopes that by claiming parity, as it did and sold to the international community in relation to the conflict situation, it will be able to minimize the harm to the reputation of Azerbaijan. In this game of false parity, Azerbaijan panders the myth that all the involved actors used the same tactics. This is simply not true. Azerbaijan has employed this parity policy in almost every aspect of the conflict by accusing Artsakh or Armenia in wrongdoings that it itself has committed.

Gevorg Sujyan, born in 1989, is a civilian who was captured by Azerbaijani armed forces on November 11 on the Berdzor-Shushi Road. Sujyan and his friend had left for Artsakh to get acquainted with the situation on the spot. There was no information about him for several days. Then Azerbaijani side released a video, showing a group of Armenian prisoners being transported by car. Gevorg Sujyan’s relatives identified him and informed the ICRC and Artsakh and Armenian authorities. The fact of his captivity was acknowledged by Azerbaijan. Gevorg is the Founding President of the “New Armenia: Homeland-Diaspora” Charitable NGO and was transporting aid to Artsakh with his friends during the war. Gevorg Sujyan is accused of espionage (Article 276) and was sentenced to up to 15 years in prison. The criminal case initiated against him and the trial are fabricated and illegal.

David Davtyan, born in 1993, is a civilian who was captured by Azerbaijani armed forces on November 11 on the Berdzor-Shushi road. David and his friend had left for Artsakh to get acquainted with the situation on the spot. There was no information about him for several days. Then Azerbaijani side released a video, showing a group of Armenian prisoners being transported by car. David Davtyan’s relatives identified him and informed the ICRC and Artsakh and Armenian authorities. The fact of his captivity was acknowledged by Azerbaijan. David Davtyan and his friend Gevorg Sujyan were transporting aid to Artsakh with his friends during the war.

⁶ Reuters, “France accuses Turkey of sending Syrian jihadists to Nagorno-Karabakh”, available at <https://www.reuters.com/article/us-armenia-azerbaijan-putin-macron-idUSKBN26L3SB>.

⁷ OHCHR, “Mercenaries in and around the Nagorno-Karabakh conflict zone must be withdrawn – UN experts”, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26494&LangID=E>.

David Davtyan was accused of espionage (Article 276) and was sentenced to up to 15 years in prison. The criminal case initiated against him and the trial are fabricated and illegal.

Convictions of Armenian civilians and POWs to imprisonment in Azerbaijan are solely based on their confession of uncommitted crimes, extracted under torture, inhumane treatment, and duress. Captives in Azerbaijan repatriated to Armenia state that they were forced to make false confessions in uncommitted crimes, repeat statements under threat of reprisals and intimidation if they did not comply. They were humiliated, harassed, tortured, and beaten, before, during, and after interrogations. They were forced to make recorded false statements or sign unknown papers in a language they did not understand. Some returnees were asked to memorize statements in languages they did not speak and if they couldn't, they would be beaten and tortured. Several prisoners were forced to repeat the statement "Karabakh is Azerbaijan": some threatened with a gun to their head. If they refused, they were beaten or deprived of food and water. Azerbaijani guards threatened POWs to sign unknown documents and admit to crimes under coercion and physical threats. Several prisoners were forced to sign statements written in the Azerbaijani language, which they did not understand, without being provided any translator or lawyer. One of the prisoners was forced to make a video announcing that he was forced to volunteer for the military and then make disparaging statements against the Armenian government. Another was forced to make false statements on video that he had taken part in a previous Nagorno-Karabakh war, during which he had shot at civilians. Many captives were similarly forced to repeat unknown statements recorded on video.⁸ Cruel and degrading treatment and torture of Armenian POWs either when they were captured, during their transfer, or while in custody at various detention facilities was also confirmed by the report of Human Rights Watch.⁹

Besides from abovementioned POWs and civilians, there are explicit evidence of capture by Azerbaijan of dozens of Armenians. Such evidence includes testimonies of former POWs and civilian detainees, as well as videos and photographic images showing them being held captive. However, Azerbaijan refuses to acknowledge their captivity, the International Committee of the Red Cross (ICRC) has no information on their whereabouts or whether they are still alive. In total fate of more than 200 Armenian servicemen and 20 civilians remains unknown. In addition, an elderly couple, citizens of the Republic of Artsakh, Mr. Benik Avtandilyan (born in 1935) and his spouse Mrs. Elza Avtandilyan (Sargsyan) (born in 1945) were also captured by the Azerbaijani forces after the ceasefire. They were heading to their house in Martuni region of Artsakh and were captured along with the taxi driver. Later, the taxi driver was released, but neither the Armenian side nor the ICRC was provided by Azerbaijan with any information about the fate of the Avtandilyan couple.

⁸ Armenia's Human Rights Defender's "Ad Hoc Public Report on Responsibility of Azerbaijan for torture and Inhuman Treatment of Armenian Captives: Evidence based analysis", available at <https://www.ombuds.am/images/files/5c7485fdc225adfd8a35d583830dcd17.pdf>, Yerevan, 2021. See also Armenia's Human Rights Defender's "Ad Hoc Public Report on the Treatment of Armenian Prisoners of War and Civilian Captives in Azerbaijan (with focus on their questionings), Yerevan, 2021 available at <https://ombuds.am/images/files/1138b156720bec6ae0fd88dc709eb62c.pdf>.

⁹ Human Rights Watch: Azerbaijan: Armenian POWs Abused in Custody, available at <https://www.hrw.org/news/2021/03/19/azerbaijan-armenian-pows-abused-custody>.

Conclusion

Malicious prosecution and inhumane treatment of captured Armenian servicemen and civilians by Azerbaijan is a clear violation of international humanitarian law. Ensuring respect for international humanitarian law is not limited to the parties in a conflict, but extends to all States and requires them to do all in their power to ensure that international humanitarian law is respected universally.¹⁰ This obligation stems from the Common Article 1 of the Geneva Conventions which provides that States parties undertake to “ensure respect for the present Convention”.¹¹ With respect to any positive obligations imposed by the duty to ensure respect for international humanitarian law, there is agreement that all States have a right to require respect for international humanitarian law by parties to any conflict. The norms of international humanitarian law are norms *erga omnes* and therefore all States have a “legal interest” in their observance and consequently a legal entitlement to demand their respect.¹² State practice shows an overwhelming use of diplomatic protest and collective measures through which States exert their influence, to the degree possible, to try and stop violations of international humanitarian law.¹³ Hence, various actions already taken by states and international organizations¹⁴ recognizing the POW status of the Armenian servicemen and demanding release of POWs and civilians from Azerbaijani custody is manifestation of a clear position that Azerbaijan must respect international humanitarian law. Under international pressure Azerbaijan has released part of Armenian captives, but dozens of Armenians remain in Azerbaijani captivity and undergo torture and inhumane treatment. The Republic of Artsakh expects states to continue taking individual and collective actions to stop the ongoing violations by Azerbaijan of the international humanitarian and human rights law and require Azerbaijan to release all Armenian captives.

¹⁰ Jean S. Pictet (ed.), *Commentary on the Third Geneva Convention*, ICRC, Geneva, 1960, p. 18; Yves Sandoz, Christophe Swinarski, Bruno Zimmermann (eds.), *Commentary on the Additional Protocols*, ICRC, Geneva, 1987, para. 45.

¹¹ Geneva Conventions, common Article 1; Additional Protocol I, Article 1(1): Additional Protocol I further provides that in the event of serious violations of the Protocol, States parties undertake to act, jointly or individually, in cooperation with the United Nations and in conformity with the Charter of the United Nations (Additional Protocol I, Article 89) A similar provision is included in the Second Protocol to the Hague Convention for the Protection of Cultural Property: Second Protocol to the Hague Convention for the Protection of Cultural Property, Article 31.

¹² ICTY, *Furundžija* case, Judgment (para. 47) and *Kupreškić* case, Judgment (para. 48).

¹³ International Review of the Red Cross, No. 298, 1994, p. 9., available at [Measures available to States for fulfilling their obligation to ensure respect for international humanitarian law | International Review of the Red Cross \(icrc.org\)](#).

¹⁴ European Parliament, Resolution of 20 May 2021 on prisoners of war in the aftermath of the most recent conflict between Armenia and Azerbaijan, available at https://www.europarl.europa.eu/doceo/document/TA-9-2021-0251_EN.html; Parliamentary Assembly of the Council of Europe, Resolution 2391 (2021) Humanitarian consequences of the conflict between Armenia and Azerbaijan / Nagorno-Karabakh conflict, available at <https://pace.coe.int/en/files/29483/html>.

Annotation

The Office of Artsakh Republic Human Rights Defender (Ombudsman) was established in 2008, under the Artsakh Republic Law “On the Human Rights Defender” of February 9, 2005.

The incumbent Human Rights Defender is Gegham Stepanyan, who was elected by Artsakh National Assembly on March 25, 2021 by a secret ballot.

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