

**Генеральная Ассамблея**

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Совет по правам человека**Сорок третья сессия**

24 февраля – 20 марта 2020 года

Пункт 4 повестки дня

Ситуации в области прав человека,

требующие внимания со стороны Совета

**Вербальная нота Постоянного представительства Армении
при Отделении Организации Объединенных Наций в Женеве
от 1 апреля 2020 года в адрес Управления Верховного комиссара
Организации Объединенных Наций по правам человека**

Постоянное представительство Республики Армения при Отделении Организации Объединенных Наций и других международных организациях в Женеве свидетельствует свое уважение Управлению Верховного комиссара Организации Объединенных Наций по правам человека и имеет честь настоящим препроводить меморандум Министерства иностранных дел Нагорно-Карабахской Республики (Арцаха) о событиях в Ходжалы в феврале 1992 года (см. приложение).

Постоянное представительство Армении просит Управление Верховного комиссара распространить настоящую вербальную ноту и приложение к ней* в качестве документа сорок третьей сессии Совета по правам человека по пункту 4 повестки дня.

* Воспроизводится в том виде, в котором оно было получено, только на том языке, на котором оно было представлено.

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Annex to the note verbale dated 1 April 2020 from the Permanent Mission of Armenia to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights

Memorandum of the Ministry of Foreign Affairs of the Republic of Artsakh

In response to the repeated distortion of facts by Azerbaijan about the Khojalu events in February 1992, the Ministry of Foreign Affairs of the Republic of Artsakh would like to communicate the following:

The actions of the defense forces of the Nagorno Karabakh Republic (Republic of Artsakh) aimed at neutralizing the shelling and firing positions of the Azerbaijani armed forces located in Khojalu, as well as at liberating the Stepanakert airport, were in line with the norms and principles of international humanitarian law.

Khojalu is a settlement situated in 10 kilometers from Stepanakert, the capital of the Nagorno Karabakh Republic. The location of the settlement was of strategic significance: it controlled the road from Stepanakert to Askeran, which in turn was the connecting line for the nearby villages. Most importantly, the airport was located in the immediate vicinity of Khojalu and, given the full land blockade imposed since 1989, it was the Republic's only means to communicate with the outside world and to receive food and medicine.

In an effort to suppress the national-liberation movement of Artsakh by force, the Azerbaijani authorities turned Khojalu into a threatening stronghold from which they exacted a full air blockade of Nagorno Karabakh, a crippling siege of Stepanakert and indiscriminate attacks on Armenian settlements.

In implementing its total blockade of Nagorno Karabakh and deliberately impeding the delivery of humanitarian assistance to the Republic, Azerbaijani forces were employing prohibited means and methods of warfare. Specifically, Azerbaijan's actions violated Article 23 of Geneva Convention IV, which imposes an obligation on the party to the conflict "to allow the free passage of all consignments of medical and hospital stores, as well as essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases," as well as Article 70 (2) of the Additional Protocol I, which broadens this obligation to cover "rapid and unimpeded passage of all relief consignments, equipment and personnel".

In the autumn of 1991, the Azerbaijani forces began to use Khojalu as a firing point for the artillery shelling of the Armenian settlements and, in particular, of Stepanakert. Civilian places—hospitals, schools, houses and administrative buildings—were the primary targets of Azerbaijan's shelling.

On February 13, 1992, and in breach of the prohibition against indiscriminate attacks enshrined in article 51 (4) of the Additional Protocol I, Azerbaijan began using BM-21 "Grad" multi rocket launchers¹ for shelling the residential areas of Stepanakert, where up to 70,000 people had concentrated by that time. As a result of this intensive shelling, essential objects vital to the residential population were destroyed in Stepanakert. The constant shelling from Khojalu and other Azerbaijani firing points led to numerous casualties among the Armenian civilian population. By the end of February 1992, 243 people were killed (including 14 children and 37 women) and 491 people were injured (including 53 children and 70 women). The civilian population lived in a constant state of anxiety, leaving their homes or shelters only when absolutely necessary. The public systems for distribution of electrical power and water were no longer functioning. Supplies of electricity, water and gas to Nagorno Karabakh and Stepanakert had all but stopped. In the harsh winter of 1991-92,

¹ The BM-21 "Grad" multi rocket launcher is a weapon which cannot be directed at a specific military object. Accordingly, its use by Azerbaijan constituted random attacks against the civilian population of Nagorno Karabakh.

the residents of Stepanakert were forced to hide in basements without electricity, without water, without heating and were compelled to endure unbearable living conditions.

The total blockade led to acute food shortages in Nagorno Karabakh and Stepanakert. Rations of flour were limited to 400 grams per month. Throughout the unrelenting blockade, numerous cases of frostbite and death from hypothermia and hunger in infants and the elderly were recorded. Azerbaijan's use of starvation as a method of warfare not only was in breach of Article 54(1) of the 1977 Additional Protocol I, but it also constituted a war crime pursuant to Article 8(2)(b)(xxv) of the 1998 ICC Statute, which prohibits "intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies[.]"

One of Azerbaijan's primary purposes in undertaking these and other acts of violence was to spread terror among the civilian population, conduct directly in breach of the prohibition enshrined in Article 33 of the 1949 Geneva Convention IV and Article 51(2) of Additional Protocol I.

The ongoing total blockade of Nagorno Karabakh, the intentional imposition of inhumane living conditions *inter alia* the deprivation of access to food and medicine and the massive use of heavy artillery for shelling the settlements—committed as part of a widespread or systematic attack directed against civilian population—was strategically calculated by Azerbaijan to bring about the destruction of a specific portion of the population of Nagorno Karabakh.

In those conditions, the actual survival of the population of Nagorno Karabakh urgently necessitated the suppression of the firing positions in Khojalu, whence Azerbaijan had been executing its indiscriminate artillery shelling of the civilian population of Stepanakert. Moreover, to open a humanitarian corridor, it was crucially important also to free the only airport in the Republic.

The Nagorno Karabakh defense forces launched the Khojalu operation on February 25, 1992, at 11:00 p.m. It was completed within a few hours. In the course of the operation, the defense forces took control of the Stepanakert airport and the settlement of Khojalu—and thereby prevented a definite humanitarian calamity in Nagorno Karabakh.

The military operation, stemming from absolute necessity, was carried out in accordance with the fundamental principles of international humanitarian law. In particular, the defense forces adhered to the principles of distinction and proportionality, as well as to the obligation to take appropriate precautions to minimize the damage to civilians. Specifically:

- A few days prior to the beginning of the military operation, the Karabakh side repeatedly informed the authorities of Khojalu, via radio communication lines, of the forthcoming attack and called on them to immediately lead the population out of the town through specific corridors left open especially for that purpose. In interviews, the then President of Azerbaijan, Ayaz Mutallibov, and the Chairman of the Khojalu Executive Committee, Elman Mammadov, each confirmed that the communicated warning of the attack, in fact, had been received by the Azerbaijani side and even conveyed to Baku. In an interview with Czech journalist Dana Mazalova, published on April 2, 1992 in "Nezavisimaya Gazeta" ("Independent Newspaper"), former President Mutallibov said: "The Azerbaijani side was notified of the operation on the takeover of Khojaly, and during the operation the Armenian side provided a corridor to evacuate the civilian population from Khojaly to a safer place in the Aghdam region". Chairman Mammadov likewise confessed: "We were informed that the corridor was intended for the civilian population to leave [.]"²
- All the units participating in the operation were given strict orders by the military leadership of Nagorno Karabakh not to target the civilian population and to protect those who would fall under the control of the Nagorno Karabakh defense forces. During the operation to neutralize the heavily-artillerized firing positions in Khojalu, civilian casualties were minimized. The incidental civilian casualties, civilian injuries

² *Russkaya Mysl* (Russian Thought); newspaper, cited from Azerbaijani newspaper *Bakinskiy rabochiy* ("Baku Worker"). April 3, 1992.

and damage to civilian objects were in no way excessive in relation to the concrete and direct military advantage anticipated. Therefore, the actions of the defense forces of Nagorno Karabakh were carried out consistent with Article 51 of Additional Protocol I.

- A humanitarian corridor was provided for the evacuation of the civilian population. In fact, those who actually used the corridor, including the local authorities of Khojalu, were able to safely reach territories under the control of the Azerbaijani army.
- About 700 additional people, who went astray and were subsequently gathered by the Karabakh side in the mountains, were transferred to Azerbaijan without any preconditions, in a matter of days.

By contrast, the Azerbaijani side committed gross violations of a range of norms of international humanitarian law during the above-mentioned events. In particular,

- Azerbaijani authorities did not undertake *any* measures to evacuate the civilian population. According to the Azerbaijani sources, on February 22, 1992, a meeting of the Azerbaijani Security Council was convened under the chairmanship of President Mutallibov, with the participation of the Prime Minister, the head of the State Security Committee and other officials. During that meeting, the participants actually took a *decision not to evacuate* the population from Khojalu, believing such a step could be perceived as readiness to surrender the settlement.³
- That very decision—not evacuating a civilian population in order to maintain a militarily strategic position—was itself a gross violation of international humanitarian law under Article 28 of Geneva Convention IV: “the presence of a protected person in any points or areas cannot be used to protect these places from military operations.” Azerbaijan’s violation, in fact, amounts to a war crime: Article 8 (2)(b)(xxiii) of the Rome Statute of the International Criminal Court explicitly characterizes the “use of the presence of a civilian or other protected person to prevent military actions against particular points, areas or armed forces” as a war crime.

Furthermore, during the military operation, a large group of armed military servicemen of the Khojalu garrison mingled into the crowd of civilians using the humanitarian corridor provided by the Karabakh side to withdraw towards the Azerbaijani positions. While passing through the corridor, the Azerbaijani soldiers used the civilians as human shields to shelter themselves while firing repeatedly at the Nagorno Karabakh defense forces. Those actions by the Azerbaijani armed forces patently constitute a violation of international humanitarian law—in particular, of Article 51 of Additional Protocol I, which prohibits using civilians as human shields. It should be noted that those civilian groups which had no combatants among them, and which did not refuse of the provided humanitarian corridor, safely passed through the corridor without incident.⁴

The situation was aggravated further by the ongoing internal power struggle in Azerbaijan between the Popular Front of Azerbaijan and the then President Mutallibov, a struggle which resulted in the lack of a unified military command in the armed forces of Azerbaijan. The government forces of Azerbaijan were loyal to Mutallibov, while a significant number of paramilitaries were affiliated with the Popular Front of Azerbaijan. The impact of this internal political strife was significant; in fact, as a result of this struggle, Mutallibov was ultimately overthrown and fled Azerbaijan.

The unfortunate combination of these factors—the deliberate violation of international humanitarian law by the Azerbaijani side, the struggle for power within Azerbaijan, and the resulting lack in the unity of command among the Azerbaijani armed forces destined that, despite all of the protective measures taken by the defense forces of Nagorno Karabakh—

³ Based on the interview of the Chairman of the Parliamentary Commission of Inquiry into the Khojalu Events, and member of the Milli Majlis, Ramiz Fataliyev. See Fataliyev, Ramiz. Interview to the Azerbaijani Service of Radio Liberty. September 9, 2009.

⁴ This fact was confirmed by former residents of Khojalu in an interview with Azerbaijani journalist, Eynulla Fatullayev. See Fatullayev, Eynulla. *Karabakhskiy dnevnik (The Karabakh Diary)*. Realny Azerbaijan (“Real Azerbaijan”).

including but not limited to advanced warning of the operation and the establishment of human corridors—there would be human casualties.

During the military operation, and as noted above, a large group of armed servicemen of the Khojalu garrison, mingling with a crowd of civilians, began to retreat toward Aghdam (which was controlled by the Azerbaijani armed forces) along the humanitarian corridor provided by the Karabakh side. One of such convoys of Khojalu residents, together with armed persons, left the provided corridor and moved toward the Armenian village of Nakhichevanik, where a fierce battle waged as a result of an attack on the Armenian village by the Azerbaijani forces from Aghdam. According to the recollections of Azerbaijani combatants, they moved towards the village of Nakhichevanik because they received radio instructions and assurances from Aghdam that the village had already been captured by the Azerbaijani army. Just inside the territory controlled by the Azerbaijani armed forces, not far from Aghdam, the convoy was caught in the cross-fire of the ensuing battle.

To be clear, the incident took place inside the territory controlled by the Azerbaijani forces. This is amply evidenced by the fact that, in late February and early March 1992, Azerbaijani and Turkish journalists had the opportunity to visit the place of the incident twice—and to take photos of dozens of corpses in the presence of the Azerbaijani military.

Upon the tragic death of the Khojalu residents near Aghdam, the Azerbaijani authorities immediately resorted to misinformation and falsification, to hiding the actual place of the tragedy and to manipulating the data on the number of deceased. In fact, Azerbaijani journalists who sought to undertake an independent investigation of the events related to the casualties of the Khojalu civilians were either killed or arrested in Azerbaijan. The first journalist to question the Azerbaijani official version of what had transpired was cameraman Chingiz Mustafayev, who, between late February and early March 1992, filmed the area where the Khojalu inhabitants had perished. A few months after he started his investigation, he himself was killed, close to Aghdam and under unknown circumstances, in the summer of 1992.

Fifteen years later, in 2007, another Azerbaijani journalist, Eynulla Fatullayev, presented a viewpoint on the casualties of the Khojalu inhabitants that differed from the official Azerbaijani position. He was arrested and sentenced to eight and a half years of imprisonment. Despite a 2010 decision of the European Court of Human Rights (ECHR) ordering Azerbaijan to release Fatullayev immediately, he was only pardoned and released a year later, in 2011, when he recanted his previous revelations and agreed to cooperate with the Government of Azerbaijan.

A similar reprieve was offered to former President Mutallibov who, after spending 20 years in exile, was granted a pardon by President Aliyev and allowed to return to Baku. The price paid for the pardon was the former President's renouncement of the prior statements that he had made in interviews regarding the incident, as cited above.

Azerbaijan's falsification campaign even includes the clear distortion of international assessments regarding the matter, such as the judgement by the European Court of Human Rights in the case *Fatullayev v. Azerbaijan*. First, it should be noted that, in *Fatullayev*, the ECHR held Azerbaijan responsible for the violation of Articles 10 and 6 of the European Convention on Human Rights.

Second, Azerbaijan's claim that the ECHR held that the Khojalu events were "acts of particular gravity, which may amount to war crimes or crimes against humanity" is patently wrong. In its judgement, the ECHR clearly states that "[t]he Court accordingly considers that it is not its task to settle the differences in opinions about the historical facts relating to the Khojaly events. Therefore, without aiming to draw any definitive conclusions in that respect, the Court will limit itself to making the following observations, for the purposes of its analysis in the present case[.]"

The Azerbaijani side engages in more than the distortion of an ECHR judgement; it shamelessly falsifies even its own historical assessments and information. According to the February 2020 statement by the Ministry of Foreign Affairs of Azerbaijan, the population of Khojalu at the time of the incident was 7,000. However, in April 1993, the same Azerbaijani Ministry reported to the CSCE that the population of Khojalu at the time was 855 people. As

such, the Azerbaijani Foreign Ministry's February 2020 estimation is in direct conflict with its own specific statement in April 1993. In its February 2020 statement, the Azerbaijani Foreign Ministry increased the population figure eight-fold over its own contemporaneous assessment in April 1993. Azerbaijan's patent falsification of the numbers in the case should undoubtedly shade its other assessments and estimations as overtly unreliable.

Azerbaijan continues to pursue a program of falsification and misinformation, using false narratives about the Khojalu incident to spread anti-Armenian hysteria and to cultivate hatred against Armenians within Azerbaijani society.

Azerbaijan bears full responsibility for unleashing a war against the people of Nagorno Karabakh, and for the gross and systematic violation of international humanitarian law, which imposed immense human suffering on a blockaded civilian population. Its ill-fated attempt to accuse the Armenian side of the killing of civilians in Khojalu is unavailing. In its efforts, Azerbaijan only seeks to conceal its direct responsibility for deliberately violating international humanitarian law and its complete disregard for civilian life, which conduct directly precipitated these tragic events.
