

NAGORNO-KARABAKH WAR AND HUMANITARIAN CRISIS: LEGAL AND POLITICAL IMPLICATIONS FOR THE INTERNATIONAL COMMUNITY

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Abstract:

Acordul de încetare a focului între părți, încheiat după 44 de zile de război în regiunea Nagorno-Karabakh, nu a creat un teren favorabil pentru o pace durabilă. Lipsa unei anchete internaționale privind războiul purtat împotriva populației din Artsakh și crimele de război din timpul și de după război nu permit șansa unei coexistențe încrezătoare a comunităților armenie și azere până la soluționarea finală a disputei din Nagorno-Karabakh. Partea armeană continuă să spere într-o judecată corectă și obiectivă din partea comunității internaționale în ceea ce privește investigarea crimelor împotriva umanității și depune eforturi pentru a restabili formatul discuțiilor de pace, în special în cadrul Grupului de la Minsk al OSCE privind conflictul din Nagorno-Karabakh, până la soluționarea definitivă a statutului Republicii Artsakh.

Prezenta lucrare își propune să reunească dovezile privind încălcările dreptului internațional umanitar comise de Azerbaidjan în timpul și după războiul din Karabakh. Lucrarea acordă o atenție deosebită importanței unei anchete internaționale privind crimele împotriva umanității comise în timpul ultimului război din Karabakh. Acest studiu analitic va ajuta la înțelegerea importanței consolidării eforturilor comunității internaționale în misiunea de reconciliere după război, a unei justiții internaționale echitabile și a continuării negocierilor privind o soluție de pace, în special în formatul Grupului de la Minsk al OSCE, pornind de la interesele Armeniei, ale poporului din Artsakh și ale comunității internaționale. În caz contrar, rezultatele războiului vor fi capitalizate și geopolitizate de Rusia și Turcia în numele intereselor lor economice și al ambițiilor de integrare extinsă între Rusia și Azerbaidjan, în detrimentul intereselor armenie. Reluarea discuțiilor de pace din cadrul OSCE va oferi o oportunitate pentru țările care dețin președinția – Franța, Rusia și Statele Unite – de a contribui în comun la echilibrarea actorilor regionali, de a-și reafirma importanța în afacerile globale și de a ajunge la o soluționare finală a conflictului.

Cuvinte cheie: conflictul Nagorno-Karabakh, război, crime, OSCE, comunitatea internațională

Résumé:

L'accord de cessez-le-feu entre les parties après la guerre de 44 jours dans le Haut-Karabakh n'a pas créé un terrain fertile pour la fondation d'une paix durable. L'absence

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d'enquête internationale sur la guerre menée contre le peuple d'Artsakh et les crimes militaires pendant et après la guerre ne laisse aucune chance à la coexistence confiante des communautés arménienne et azerbaïdjanaise jusqu'à la résolution finale du différend du Haut-Karabakh. La partie arménienne continue d'espérer un jugement juste et objectif de la communauté internationale concernant les enquêtes sur les crimes contre l'humanité et s'efforce de rétablir le format des pourparlers de paix, notamment dans le cadre du Groupe de Minsk de l'OSCE sur le conflit du Haut-Karabakh, jusqu'au règlement définitif du statut de la République d'Artsakh.

Le document vise à rassembler les archives sur les violations du droit international humanitaire commises par l'Azerbaïdjan pendant et après la guerre au Karabakh. Le document portera une attention particulière à l'importance des enquêtes internationales sur les crimes contre l'humanité pendant la dernière guerre du Karabakh. Cette étude analytique aidera à comprendre l'importance de renforcer les efforts de la communauté internationale dans la mission de réconciliation d'après-guerre, pour la justice internationale équitable et la poursuite des négociations sur un règlement de paix, en particulier sous la forme du Groupe de Minsk de l'OSCE, qui procède des intérêts de l'Arménie, le peuple d'Artsakh et la communauté internationale. Sinon, les résultats de la guerre seront capitalisés et géo-politisés par la Russie et la Turquie au nom de leurs intérêts économiques et de leurs grandes ambitions d'intégration entre la Russie et l'Azerbaïdjan au détriment des intérêts arméniens. La réhabilitation des pourparlers de paix de l'OSCE sera l'occasion pour les pays coprésidents – la France, la Russie et les États-Unis – de contribuer conjointement à l'équilibre des acteurs régionaux, de réaffirmer leur importance dans les affaires mondiales et de parvenir à un règlement définitif du conflit.

Mots-clés: conflit du Haut-Karabakh, guerre, crime, OSCE, communauté internationale

Introduction

The lack of proper response from the international community to aggression and the disregard of the humanitarian crisis create a sense of impunity that justifies acts of violence committed in the name of narrow nationalist ends. The Second Karabakh war in autumn of 2020, initiated and waged by united Azerbaijani and Turkish forces against the people of the Republic of Artsakh, became a vivid example of military aggression with disastrous humanitarian consequences, which did not find its proper and fair condemnation from international community. The particular weakness and security vulnerability of Nagorno-Karabakh have been neglected by Azerbaijan while it started its offensive on people of Artsakh with the chain of violations of international humanitarian law in the time of war and post-war period. Before the war, Armenia was the only national security guarantee of Artsakh people in the face of expected Azerbaijan aggression. Based on this reality, Armenia sought to continue its adherence to constructive cooperation with the actors of the international community through their initiatives to resolve the territorial dispute on the basis of the principle of international law

on the people's right to self-determination, contrary to Azerbaijan's aspirations to impose the principle of territorial integrity.

The Nagorno-Karabakh Republic, as an internationally unrecognized microstate and disputed region, owned very limited security capabilities and relied on the benevolence of the international community and the constructive format of diplomatic negotiations proposed by the co-chairs of the Minsk Group triangle of the OSCE (France, Russia and USA) founded in 1992. With high reliance on a possible diplomatic and peaceful settlement of the dispute, the Armenians in Nagorno-Karabakh were left alone in the face of Azerbaijan's aggression. Russia's reluctance to deter Azerbaijan in advance or the insufficient use of its levers to prevent the unleashed aggression of Azerbaijan and Turkey against the people of Artsakh made the civilian population defenseless against the inhuman atrocities in Karabakh. At the same time, the enemy deliberately began to strike not only civilian buildings, but also cultural monuments in order to destroy the Armenian cultural and historical trace from this territory, having committed unprecedented vandalism. Thousands of civilians were forced to abandon their homes and flee to Armenia in search of a safe humanitarian shelter, but several hundred people became victims of hostile military operations of Azerbaijan, caused by regular artillery shelling and unmanned drones.

Six months have passed since the end of the war, but international organizations monitoring the surveillance of human rights protection and the entire international community continue to remain silent about the humanitarian crimes committed by Azerbaijan. The proven evidence of several state intelligence agencies about presence and participation of Turkish-led large groups of Islamist radical units of mercenaries from Syria¹ did not receive relevant assessment from the international community and had no political consequences for Azerbaijan and Turkey. Consequently, without appropriate official statements and assessments about war crimes and atrocities committed against civilians with political consequences for Azerbaijan and its allies, the international community automatically makes possible similar international behavior. In fact, Baku approved its attitude to the resolution of international conflicts with the help of weapons and inhuman atrocities which did not encounter any obstacles. The neglect of the legal, political and humanitarian costs of such an attitude exacerbates mistrust of the principles of international law, strengthens the belief in impunity and undermines the viability of the modern world order.

¹ Pugliese, M. (2020). The Role of Foreign Fighters in the Nagorno-Karabakh Conflict. *ISPI*. Retrieved from <https://www.ispionline.it/en/publicazione/role-foreign-fighters-nagorno-karabakh-conflict-27764>

The post-conflict situation has determined the growth of other human rights issues associated with actual changes on the demographic and political map between Armenia and Azerbaijan. While Baku has released some of the POWs back to Armenia, it refuses to return the people who were captured following the November 10 ceasefire agreement². There are still prisoners of war in Azerbaijan who are allegedly tortured in prisons. Meanwhile, Russia's attempts to reconcile the conflicting parties through regional economic integration projects on the basis of a lack of trust and mutual confidence boost additional problems that can lead to a re-escalation of the conflict via continuation further violation of basic human rights.

Second Karabakh war and humanitarian crisis record

On September 27, 2020, the Azerbaijani armed forces launched a military air and artillery shelling against the Republic of Artsakh (Nagorno-Karabakh). Military attacks were launched amid the COVID-19 outbreak despite the statements of the UN Secretary General Security Council about the cessation of hostilities during the pandemic. The war accelerated the rapid spread of the deadly virus, instigated the collapse of the health care system, thus causing increased sufferings.

The attacks caused damages to the peaceful population and civilian infrastructure through the continuous use of prohibited weapons³. This resulted in an unprecedented humanitarian disaster, violations of International Human Rights Law and Humanitarian Law as well as crimes against humanity.

The Office of Human Rights Defender in Armenia and its representatives carried out fact-finding and monitoring activities in regard to the violations of IHL requirements, and for the purpose of recording human rights violations such as rights to life, health, property. The results of the fact-finding activities have been recorded and reported, and they presented several grave breaches of human rights and absolute violations of Geneva Conventions and customary IHL to international organizations⁴.

The Human Rights Defender's ad hoc reports and official letters are sent to the international human rights organizations for their attention and consideration. The reports are also sent to the relevant state authorities for

² Kucera, J. (2021). Twisting the screws: Post-War Report. Retrieved from <https://eurasianet.org/twisting-the-screws-post-war-report>

³ Armenia/Azerbaijan: Civilians must be protected from use of banned cluster bombs (2021). Retrieved from <https://www.amnesty.org/en/latest/news/2020/10/armenia-azerbaijan-civilians-must-be-protected-from-use-of-banned-cluster-bombs/>

⁴ Tatoyan, A. (2021). Forum for Security Cooperation Security Dialogue on Compliance with International Humanitarian Law. Retrieved from <https://www.osce.org/files/f/documents/f/a/486304.pdf>

their further reference and addressing the impact of IHL violations on the human rights situation⁵. In the perspective of protecting and assisting the victims of armed conflicts, the Defender also cooperates with the ICRC⁶, in particular on issues concerning the return and exchange of captives in line with IHL requirements. The Defender has highlighted the need to ensure the actual possibility of ICRC to conduct its humanitarian mission.

According to the Geneva Conventions and the UN Convention on Cluster munitions limits the right to choose the methods and means of warfare, prohibiting the use of such dangerous weapons⁷. International legal instruments and customary international law prohibits the use of cluster munitions, considering them lethal and inhumane. These types of munitions had indiscriminate effects, endangered the lives and health of the civilian population, and cause additional damage and suffering. The banned weapons, including forbidden cluster munitions, have been continuously used against the civilian population during the war 2020⁸. In particular, Azerbaijan deployed LAR-160 and Smerch cluster-warhead missiles⁹ against the city of Hadrut, the capital city of Stepanakert and against the village of Shosh near Stepanakert.

It is no secret that under international humanitarian law, parties to an armed conflict must distinguish at all times between civilians and combatants and between civilian settlements and military facilities. Lethal drone strikes against a military objective shall be unlawful if the incidental harm caused to civilians is excessive in relation to the concrete and direct military advantage anticipated. The recent war in Karabakh has demonstrated that Azerbaijani armed forces made no distinction between civilian objectives and military facilities.

⁵ Joint Ad Hoc Public Report (2020). On the Use of Incendiary Ammunition of Mass Destruction (Incendiary Weapon) Against Civilian Objects Of Artsakh (Nagorno-Karabakh) By The Azerbaijani Armed Forces. Retrieved from <https://www.ombuds.am/images/files/ea04773e0fcf3a7e4dad87e9b73d360.pdf>

⁶ ICRC (2020). Nagorno-Karabakh conflict: Civilians bearing brunt of surge in violence. Retrieved from <https://www.icrc.org/en/document/nagorno-karabakh-conflict-civilians-bearing-brunt-surge-violence>

⁷ Convention on Cluster Munitions (2010). United Nations Office for Disarmament Affairs. Retrieved from <https://www.un.org/disarmament/convention-on-cluster-munitions>

⁸ Azerbaijan: Cluster Munitions Used in Nagorno-Karabakh (2020). Human Rights Watch. Retrieved from <https://www.hrw.org/news/2020/10/23/azerbaijan-cluster-munitions-used-nagorno-karabakh>

⁹ Roblin, S. (2020). Rockets, Cluster Munitions And Missiles Rain Down On Armenian And Azerbaijani Civilians. Retrieved from <https://www.forbes.com/sites/sebastienroblin/2020/10/07/rockets-cluster-munitions-and-missiles-rain-down-on-armenian-and-azerbaijani-civilians/>

During the war, Azerbaijan systematically employed different types of military unmanned aerial vehicles¹⁰:

- Intelligence drones, Orbiter -2, Orbiter – 3, Aerostat;
- striking drones, including Harop, Zaoba-1K, Sky Striker;
- intelligence-striking drones, Bayraktar TB-2, AN-2, etc.

Meanwhile, the Azerbaijani armed forces carried out drone strikes at the borderline settlements and densely populated areas of Syunik and Geharkunik regions (Vardenis town, Sotk, Kut, Norabak communities)¹¹. Respectively, on October 30 and 31, 2020, the Azerbaijani military conducted air attacks against the civilian communities and villages of Davit Bek and Agarak in the region of Syunik. Almost all Nagorno-Karabakh civilian settlements, including densely populated cities (Artsakh capital – Stepanakert, Hadrut, etc.) have been under targeted attacks of drones.

In Artsakh, from September 27, 2020 to January 28, 2021, there were 72 civilian fatalities. These civilians were killed, among other means, by ill-treatment and torture. Of the 163 civilians who were injured, includes some with life-long disabilities. Over 130.000 civilians were displaced¹². With regard to the casualties in Armenia, due to the use of drones on October 1 in Shatvan, Mets Masrik villages of the Gegharkunik region of Armenia, one civilian was killed and two injured, civilian houses burned out. As a result of the launched drone strikes, a habitant of Vardenis city, who is a 14-year-old child was injured and is now be treated at a hospital intensive care unit. Material damage was inflicted on 160 settlements, in particular, on 13,100 private real estates, 2,000 private movable property, and 2,700 objects of infrastructure.

In accordance to IHL, there is a prohibition of the use of incendiary ammunitions, namely the 1980 Protocol on Incendiary Weapons that restricts use of incendiary weapons as a means or method of warfare during armed conflict, prohibiting its use against civilians and civilian communities¹³.

¹⁰ Eckel, M. (2020). Drone Wars: In Nagorno-Karabakh, The Future Of Warfare Is Now. Retrieved from <https://www.rferl.org/a/drone-wars-in-nagorno-karabakh-the-future-of-warfare-is-now/30885007.html>

¹¹ Ad Hoc Public Report. On Azerbaijani Drones' Targeted Attacks Against Peaceful Population of Armenia and Artsakh in Grave Breach of International Law (2020). *The Human Rights Defender of the Republic of Armenia*. Retrieved from <https://ombuds.am/images/files/de3634c257bb698735db318a33f280bf.pdf>

¹² Armenia Ombudsman: 72 civilians killed, 163 injured between 27 September 2020 and 28 January 2021(2021). Retrieved from <https://artsakhpress.am/eng/news/138962/armenia-ombudsman-72-civilians-killed-163-injured-between-27-september-2020-and-28-january-2021.html>

¹³ Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III) (1980). Retrieved from <https://ihl-databases.icrc.org/ihl/full/CCW-Protocol-III>

Customary IHL prohibits the use of incendiary weapons against civilian objects as well. Under the rule of distinction during the conduct of hostilities, parties must target only lawful military objectives and never civilians or civilian objects.

The incendiary ammunition of mass destruction containing chemical elements (possibly white phosphorus) used by the Azerbaijani Armed Forces against Artsakh is an “Incendiary weapon” in the meaning of the Protocol¹⁴. Besides, in the several cases of the use of incendiary mass destruction ammunition, the forests were close to civilian communities (e.g. Nngi, Sghnakh, Aknaghbyur, Taghavard, Togh, Qarin Tak): in some cases, even on 100-meter distance. Hence, the issue might lead to the long-term inevitable damage to the life and health of the civilian population.

According to the general rules of protection of the civilian population, individual civilians shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited. Indiscriminate attacks or targeted attacks against civilian settlements violate the right to life and health of civilians, including members of the media, and are in absolute violation of the principles of international law and the principles of humanity that protect civilians.

Under IHL, there is a prohibition on the use of incendiary ammunition, namely the 1980 Incendiary Weapons Protocol, which restricts the use of incendiary weapons as a means or method of warfare during armed conflict by prohibiting their use against civilians and civilian communities.

Since the first day of military attacks, civilian communities have been largely targeted by indiscriminate and direct shelling. In Artsakh, the houses, residential buildings and numerous objects were targeted, which were indispensable for the survival of the civilian population (gas pipelines). As a result, the attacks damaged or destroyed 12 kindergartens and 71 schools¹⁵. Religious and cultural sites, hospitals (including the Stepanakert maternity hospital) were targeted and damaged¹⁶. Religious and cultural sites, hospitals (including Stepanakert maternity hospital) were subjected to targeted shellings and damaged.

¹⁴ Ad Hoc Public Report on The Use of Incendiary Ammunition Of Mass Destruction (Incendiary Weapon) Against Civilian Objects Of Artsakh (Nagorno-Karabakh) By The Azerbaijani Armed Forces (2020). Retrieved from <https://artsakhombuds.am/en/document/761>

¹⁵ UNICEF statement on one month of fighting in and beyond Nagorno-Karabakh (2020). Retrieved from <https://www.unicef.org/press-releases/unicef-statement-one-month-fighting-and-beyond-nagorno-karabakh>

¹⁶ Preserve Artsakh: An Open Letter to the World Community (2020). Retrieved from <https://www.globenewswire.com/news-release/2020/11/12/2125920/0/en/Preserve-Artsakh-An-Open-Letter-to-the-World-Community.html>

Under international humanitarian law (Additional Protocol 1), journalists engaged in dangerous professional missions in areas of armed conflict shall be considered civilians and thereby benefit from all the protection conferred upon them by international humanitarian law on civilians. Their activities in conflict zones and war/military attacks have legitimate purpose and are under international protection. During military attacks, journalistic activities are under protection due to their special role in constituting a safeguard for not only providing the world with information on the real situation, but also in the area of protecting civilians. The Azerbaijani military also targeted international journalists¹⁷ (from France, Russia, etc.), as well as Armenian ones, who were carrying out their professional activities.

There is an absolute ban on torture and other cruel, inhuman or degrading treatment and outrages upon personal dignity under international humanitarian law (IHL) and international human rights law (IHRL). Military attacks against Armenia and Artsakh have been accompanied by torture and inhuman treatment and the artificial delay of exchanging prisoners of war and civilian captives were recorded. During the whole duration of the military activities, as well as after their cessation, the mass media, particularly the Azerbaijani social media sources ceaselessly published videos and photos, which depict the degrading treatment by Azerbaijani military forces of the Armenian soldiers' bodies, torture and degrading treatment of the captives, both civilians and military¹⁸.

The videos of brutal killings, full cases of arbitrary executions and beheadings of prisoners have been widely disseminated through media. In particular, the video of the atrocities captures how the servicemen of the Armed Forces of Azerbaijan cut off the head of G. Petrosyan (the whole process is shown in the video), and put his severed head to the body of a dead animal, most likely a pig¹⁹. Moreover, one of the soldiers tells the others "to go and to bring petrol and burn"; in the same video one of the members of the Azerbaijani Armed Forces puts his foot on the chest of the beheaded body of the ethnic Armenian and brutally pushes it squeezing out blood from the severed neck.

Both the 1949 Geneva Convention I with respect to wounded and sick and Customary IHL prohibit the murdering or extermination of persons.

¹⁷ Statement regarding the Azerbaijani targeting of journalists (2020). Retrieved from <https://mdi.am/en/2020/10/04/statement-regarding-the-azerbaijani-targeting-of-journalists/>

¹⁸ Azerbaijan: Armenian Prisoners of War Badly Mistreated (2020). *Human Rights Watch*. Retrieved from <https://www.hrw.org/news/2020/12/02/azerbaijan-armenian-prisoners-war-badly-mistreated>

¹⁹ Tatoyan, A. (2021). Forum for Security Cooperation Security Dialogue on Compliance with International Humanitarian Law. Retrieved from <https://www.osce.org/files/f/documents/f/a/486304.pdf>

Geneva Convention III and IV specify this rule and prohibit the murder of POWs and the protected persons in the hands of Parties. With regard to Prisoners of War, the IHL sets forth that they must be released and repatriated without delay after the cessation of active hostilities (Article 118 of Geneva Convention III)²⁰. Civilian internees must be released as soon as the reasons which necessitated internment no longer exist, and at the latest as soon as possible after the close of active hostilities. International humanitarian law prohibits unjustified delays in the release of POWs, and it considers any such delay as constituting a “war crime”. It is well known that a large number of Armenia POWs remain in captivity, while the process of their return is artificially delayed. The official Baku has launched the criminal proceedings against the Armenian servicemen in captivity in Azerbaijan, particularly they treated as “terrorists”²¹, since according to the Azerbaijani side they were captured after the November 9 agreement.

In regard to crimes against humanity, it should be emphasized that in times of war, people are vulnerable not only physically, but also in terms of their cultural identity. This is especially true in the case of armed conflicts of an ethnic, cultural or religious nature. It should be emphasized that at all stages of an armed conflict, regardless of its nature, cultural heritage as a whole continues to enjoy legal protection. The destruction of cultural heritage plays a decisive role in the attempts of the aggressor to destroy the cultural monuments of people who have historically been associated with this region with all their originality. The military deliberately actions of Azerbaijan with the target of cultural sights, historical monuments and holy buildings became evident in the first days of the war.

The law of armed conflict, the *lex specialis* in time of war, directly regulates the protection of cultural property. In other words, cultural property and historical monuments enjoy both general and special protection. If cultural property is civilian, it cannot be target as an object of attack. Respect for cultural property is of paramount importance as this rule and the 1954 Hague Convention are widely regarded as reflecting customary international law²².

²⁰ Geneva Conventions of 1949 and Additional Protocols, and their Commentaries. Convention (III) relative to the Treatment of Prisoners of War. Geneva (1949). Release and Repatriation. Retrieved from <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=1F24D0C949FE1B83C12563CD0051B48C>

²¹ Mamo, C. (2021). Fears grow for fate of Armenian POWs held by Azerbaijan. Emerging Europe. Retrieved from <https://emerging-europe.com/news/fears-grow-for-fate-of-armenian-pows-held-by-azerbaijan/>

²² Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention 1954 (1954). Retrieved from http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html

Research findings on attacks on Armenian cultural heritage in Artsakh include cases of vandalism against churches, khachkars and graves, as well as the deliberate erasure of Armenian texts from them. Attacks on cultural monuments have been carried out since the first days of the war, but continue after the conflict. Officially Baku does not pursue such an anti-Armenian policy. Throughout the entire period of the existence of the Soviet Union and after, Armenian monuments and cultural heritage in Nakhichevan were subjected to vandalism, erosion or desecration. Intellectuals, like Akram Aylisli who dared to talk about it were ostracized by the propaganda machine and the repressive regime²³.

On October 8, one of the historical symbols of Armenian architecture the St. All Savior Ghazancetsots Church of Artsakh was shelled twice. The Church is located in the center of the city of Shushi and surrounded by civilian objects, residential buildings, and there is no military object nearby. The Armenian Church in the Mekhakavan community was completely destroyed after it came under Azerbaijani control. It was also confirmed that church of St. John the Baptist, popularly known as “Green Hour” in the Azerbaijani-controlled town of Shushi, had been destroyed²⁴. The church was destroyed after the cessation of hostilities and not during them. These examples are numerous. The above-mentioned cases and their subsequent studies demonstrated that there is still a lack of effective mechanisms for ensuring the enforceability of IHL, for the preventing of the violations of its rules, as well as the ensuring of prompt and comprehensive reactions to these violations.

The obligation to “ensure respect” for IHL is not limited to the behaviour of the parties to a conflict, but includes the requirement that States do all in their power to ensure that international humanitarian law is respected universally.

States parties to the IHL conventions should be encouraged to establish universal jurisdiction at the national level over serious violations and to investigate war crimes within their jurisdiction. In the meantime, the importance of introducing a mechanism to ensure compliance with IHL at the international level should be discussed.

For the purposes of an investigation, the ICRC Guidelines on investigating violations of IHL fairly define that reporting, setting forth a uniform investigative process for all States has a fundamental importance for ensuring compliance. The purpose of reporting is to draw attention to an

²³ Schmid, U. (2013). Ostracism of a Writer Nationalist Mobilisation in Azerbaijan. Retrieved from https://www.researchgate.net/publication/298098478_Ostracism_of_a_Writer_Nationalist_Mobilisation_in_Azerbaijan

²⁴ Nazaretyan, H. (2021). Artsakh's Cultural Heritage under Threat. Retrieved from <https://www.evnreport.com/spotlight-karabakh/artsakh-s-cultural-heritage-under-threat>

incident which, in turn, may trigger the first steps of an investigation. Military commanders have a legal obligation to report violations of international humanitarian law to the competent authority. It should be recalled that a failure to carry out appropriate action in respect of possible war crimes may give rise to the individual criminal responsibility of a commander. The duty to report may be seen as a particularly important step in this regard.

In terms of ensuring respect for IHL, the international community, as well as NHRIs, NGOs and relevant governmental bodies have a significant role to play. For example, the respect for IHL is strengthened when trainings are implemented for the armed forces, civilian police, and members of the judicial and legal professions, civil society and personnel of international and regional organizations. In this regard, we should welcome the increasing number of national commissions and other bodies involved in the advising of the authorities at the national level on the implementation, dissemination and development of international humanitarian law.

International reaction on war

The international community reacted to the outbreak of war in different ways. Most of the official texts sent by members of the international community have highlighted deep concern and called for an unconditional ceasefire. However, these official statements were not enough to stop the violence in the course of the war and the total violations of international humanitarian law.

The most important statements for Armenia since the beginning of the war in the Karabakh conflict were expected from Russia, France and the United States as the main global players and co-chairing countries within the Organization for Security and Cooperation in Europe (OSCE). But the format and framework of the negotiation process theoretically ceased to exist immediately after Azerbaijan unleashed the war. The escalation of the conflict and the unfolding war on entire borderline led to a revision of the entire logic of the conflict process, with the transition from a mediating format of peace-building and conflict resolution to a set of specific tools that could be used to end destructive and belligerent behaviour of Baku.

Emmanuel Macron, Vladimir Putin and Donald Trump issued a joint statement on hostilities in Nagorno-Karabakh, calling on the leaders of Armenia and Azerbaijan to immediately stop hostilities and, without any additional conditions, sit down at the negotiating table in order to resume negotiations on the essence of the settlement with the assistance of the OSCE

Minsk Group co-chairs. But it was naive to believe that the Azerbaijani side would follow the presidents' call.

The constructive efforts of the international community, especially in the Minsk Group framework to keep the parties away from demonstrating aggression and offensive policies, were shattered as the regional balance changed with the emergence of an active geopolitical player involved in the Karabakh conflict – Turkey and inability of Russia to push back of its geopolitical counterpart in the region.

Turkey has begun to position itself as a defender of Azerbaijan's interests in their desire to resolve the issue by military means. The changing geopolitical reality with the arrival of Turkey forced others to admit that they did not have sufficient levers to stop the war because Azerbaijan successfully received unprecedented military, logistical and advisory assistance from Turkey. The emergence of new players in the region, such as Turkey, made others look forward to new developments in the war.

In one of his speeches, French President Emmanuel Macron emphasized his position and condemned “the bellicose statements” of Turkey²⁵, which he found frivolous and dangerous. He clearly noted that France will fulfill its role by being vigilant about respect for the family, people and sovereignty of Armenians in Karabakh. The French leader indicated that they will never accept any statements that could lead to an escalation of the conflict, indicating the extreme concern of France. Similar concern has been expressed by the spokesman for the president of the Russian Federation Dmitri Peskov, who noted that any statements about some kind of military support or military activity definitely add fuel to the fire²⁶.

Turkey's active participation in the war and demonstration of its biased adherence to Azerbaijan caused concern not only among the co-chairing countries of the Minsk Group (France, Russia and the United States)²⁷, but also in the Islamic Republic of Iran, which had a 138 kilometres common border with the Republic of Artsakh.

The objective fears of Tehran derive from its historical and geopolitical objectives resulted in the politics of regional competition with Turkey and

²⁵ Macron condemns Turkey's 'bellicose' statements on Nagorno-Karabakh fighting (2020). Retrieved from <https://www.france24.com/en/20200930-macron-condemns-turkey-s-bellicose-statements-on-nagorno-karabakh-fighting>

²⁶ Russia doesn't support Turkey's statement on political assistance to Azerbaijan – Kremlin. (2020). Retrieved from <https://armenpress.am/eng/news/1029614.html>

²⁷ Statement by the foreign ministers of the Russian Federation, the Republic of Azerbaijan and the Republic of Armenia, (2020). Retrieved from https://www.mid.ru/en/foreign_policy/news//asset_publisher/cKNonkJE02Bw/content/id/4377004

risks to its regional influence. The erupted war stipulated Tehran to offer its mediation in peaceful resolution of the war, which did not find its proper resonance by Turkish-Azeri tandem. Fairly, there were several reasons for Iran to be concerned about the war unleashed. First, the dichotomy of concepts between the Persian civilization spaces of Iran against the revisionist ideology of pan-Turanism, led by the nationalist policy of modern Turkey, still plays an actual role in architecture of regional policy. Therefore, it is not strange that the authorities of modern Iran view Turkey's advance in the South Caucasus as a political, security and cultural challenge to their geopolitical interests²⁸. Threats emanating from Turkey forced official Iran to mitigate its behaviour towards another regional counterpart – Saudi Arabia. The authorities of the latter will never tolerate the Turkish president's claims to the role of being the political leader in the Sunni Muslim world. This factor determined the Saudi leadership to reconcile religious, political and regional dissents with Iran, seeking to find a new way of *modus operandi* in further bilateral relations. The second reason is the densely populated ethnic Azeri minority living on the territory of the northern Iran, which has always been noticeable in their separatist aspirations from Iran and the desire to unite with their ethnic compatriots in Azerbaijan. The third cause of Iran's concern was the threat of the use of unmanned Israeli reconnaissance drones, which Iran saw as a tool that could target its position and receive intelligence information about Iran's positions²⁹. A fourth major cause for concern was related to the movement of Islamist mercenaries from the Turkish-controlled region of Syria, which officials in Tehran stated as an unacceptable act to carry the axis of terrorism on its border³⁰.

The first rumours about terrorists in the Karabakh war had been proven by several Intelligence agencies simultaneously. Officially, Paris stated that it has information that indicates with certainty that Syrian fighters from jihadist groups have transited through Gaziantep to reach the theatre of operations in Nagorno-Karabakh³¹. This is a very serious new fact, which changes the

²⁸ Mjtahed-Zadeh, P. (2009). Iran: The Empire of Mind: Facts about emergence and evolution of concepts of state, territory, and boundary in Ancient Iran. *Geopolitics Quarterly*, Volume 5, No 3. Retrieved from http://journal.iag.ir/article_56966.html?lang=en

²⁹ Hashem, A. (2020). Between a rock and hard place: Iran's dilemma in Nagorno-Karabakh conflict. Retrieved from <https://www.al-monitor.com/originals/2020/10/iran-dilemma-nagorno-karabakh-azerbaijan-armenia-mediate.html#ixzz6v4fdC7ng>

³⁰ Esfandiari, G. (2020). Trying To Be Neutral: Iran Worried Nagorno-Karabakh Conflict Could Turn Into Wider War. Retrieved from <https://www.rferl.org/a/iran-worried-nagorno-karabakh-conflict-could-spread-azerbaijan-armenia/30883022.html>

³¹ Van der, J. (2020). France's Macron says Syrian jihadists active in Armenia-Azerbaijan conflict. Retrieved from <https://www.rfi.fr/en/international/20201001-macron-claims-syrian-jihadists-active-in-conflict-between-armenia-and-azerbaijan-nagorno-karabakh>

situation. Then, Russia's foreign intelligence chief Sergey Naryshkin stated that mercenaries from international terrorist organizations fighting in the Middle East, in particular, Jabhat al-Nusra, Firkat Hamza, Sultan Murad, as well as extremist Kurdish groups, are actively pulling into the conflict zone³². In both cases, Turkey is indirectly mentioned as the initiator and organizer of the transfer of mercenaries to Karabakh. Despite the fact that Turkish President Regeyp Tayyip Erdoğan refused to acknowledge the Turkish evident trace in this matter, none of the charges could be disputed by official Ankara.

Any diplomatic attempts by international actors to end the war calling on both sides for an immediate and unconditional ceasefire have been unsuccessful. The lack of efficiency of negotiations within the framework of the OSCE Minsk Group led to a smooth shift to bilateral communication with regular efforts of Russia, France and United States to stop the war. However, most of the statements and official statements were made on behalf of the continuation of the OSCE Minsk Group framework, taking into account the political value and diplomatic expediency of this international negotiation format as the only official framework of mediation and conflict settlement since the first Karabakh war. Despite the official readiness of Baku to meet the proposals of the mediators to end any military operation on the territory of Nagorno-Karabakh, in practice Azerbaijan continued to ignore the appeal of the international community, feeling absolute confidence in their outrageous aggressive behavior, supported by Ankara.

The first attempt at humanitarian reconciliation was initiated by Russia, when it was announced that due to trilateral efforts initiated by Russia a truce has been agreed as a result of trilateral talks with the foreign ministers of Azerbaijan and Armenia in Nagorno-Karabakh from noon of October 10³³. The humanitarian component of this statement was in point to exchange the prisoners of war and other detainees, as well as the remains of the dead. The statement emphasizes that both sides continue to adhere to the negotiation process based on the core principles of the settlement, with the mediation of the OSCE Minsk Group co-chairs, aiming to achieve a peaceful resolution of the conflict. And what is very important, the parties confirmed the invariability of the format of the negotiation process. This meant that Turkish aspirations to play the role of additional side in negotiation group of the

³² Osborn, A. (2020). Russia says Islamist fighters in Nagorno-Karabakh conflict pose threat to Moscow. Retrieved from <https://www.reuters.com/article/armenia-azerbaijan-russia-int-idUSKBN26R1VE>

³³ Statement by the foreign ministers of the Russian Federation, the Republic of Azerbaijan and the Republic of Armenia, (2020). Retrieved from https://www.mid.ru/en/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/4377004

OSCE Minsk Group did not meet any concessions from co-chairs countries, in particular, from Russia and France.

The next agreement about humanitarian ceasefire was on October 17, when both Armenian and Azerbaijani sides with the mediation of OSCE Minsk Group came to agreement of truce starting with October 18th³⁴. However, the ceasefire was broken down and the hostilities continued to inflict devastating blows, leaving hundreds of corpses on the battlefield. The humanitarian truce was unacceptable for both Turkey and Azerbaijan, since they did not achieve their ultimate goal – the withdrawal or extermination of all Armenians from their homeland in Nagorno-Karabakh, ignoring the statements and urgings of the international community to pursue the principles of humanitarian law.

The next attempt to stop the continuation of war with the perspective to find peaceful and diplomatic settlement of the conflict has been started in the United States, where US Secretary of State Mike Pompeo met with the Foreign Ministers of Armenia and Azerbaijan in Washington. During the meeting with the State Secretary the parties reaffirmed the importance to follow the previously reached agreements on achievement of ceasefire and continuing negotiation process within the framework of the OSCE Minsk Group co-chairmanship³⁵. However, the Ministry of Foreign Affairs of Azerbaijan condemned the position on the previous statement of Mike Pompeo about the destructive role of Turkey in the war and the inadmissibility of involving third parties in the war³⁶. A joint statement by the US Department of State, released on October 25, presented the third attempt by the parties to the conflict to move to a ceasefire³⁷. As was expected, the American attempt failed even with the announcement of the US President Donald Trump that “really good progress is being made”³⁸ in term of achievement of de-escalation of the conflict. The incapacity of the US to stop its Turkish ally and force

³⁴ Azerbaijan confirms agreement with Armenia on humanitarian truce in Karabakh (2020). Retrieved from <https://tass.com/world/1213381>

³⁵ Foreign Minister of the Republic of Armenia Mr. Zohrab Mnatsakanyan met with US Secretary of State Mr. Mike Pompeo (2020). Retrieved from https://www.mfa.am/en/press-releases/2020/10/23/fm_pompeo/10579

³⁶ Press-release of the Press Service Department of the Ministry of Foreign Affairs of the Republic of Azerbaijan No: 347/20 (2020). Retrieved from <https://mfa.gov.az/en/news/6960/view>

³⁷ U.S.-Armenia-Azerbaijan Joint Statement (2020). Retrieved from <https://2017-2021.state.gov/u-s-armenia-azerbaijan-joint-statement/index.html>

³⁸ Trump Says ‘good Progress’ Being Made On Armenia-Azerbaijan Deal Over Nagorno-Karabakh (2020). Retrieved from <https://www.republicworld.com/world-news/us-news/trump-says-good-progress-being-made-on-armenia-azerbaijan-deal-over-nagorno-karabakh.html>

Azerbaijan to stop the war was a clear signal to the international community that the United States was unable to use leverage of pressure on Turkey and Azerbaijan. Meanwhile, it was obvious to Armenia that the South Caucasus region continues to remain mainly a region of Russia's geopolitical influence, and all commitments to peace should be achieved with the assistance and direct supervision of Russia.

Turkish assistance and military support to Azerbaijan were immense. In his address to the international community, Azerbaijani leader Ilham Aliyev called the OSCE Minsk Group and the co-chairing countries as obstacles on Azerbaijan's path to the implementation of its militant and belligerent plans for a military solution to the Karabakh conflict³⁹. In fact, the Azeri plan was possible only through a hybrid operation of Turkish harsh pan-Turanism concept in the foreign policy of the state which matched Baku's desire to resolve the dispute by military means – making possible to regain advantage over Armenians in Artsakh.

The severity reaction of Azerbaijan towards the OSCE Minsk Group was a manifestation of its discontent, which it felt throughout the entire peace negotiation process. At one of the meetings with government in 2016, Ilham Aliyev stated that there is a pressure behind closed doors on Azerbaijan in order to conclude an agreement on the recognition of the independence of Nagorno-Karabakh⁴⁰. Undoubtedly, both the United States and France, as the co-chairing countries of the OSCE Minsk Group, tried to use the maximum set of diplomatic tools to force Azerbaijan to recognize the Republic of Artsakh, which could mean a settlement of the conflict on the basis of mutual compromise. But from the perspective of Russia, this could not fully fit to the circle to its interests, because Russia sought to maintain its role as a regional heavyweight, trying to control and manage the regional and interregional loops of communications and infrastructures. On the whole, the propensity of the co-chairs not to allow a military solution of the conflict and to make systematic and constructive proposals to the parties throughout the entire process of their activities has been assessed as a high priority.

The efforts of France to express its support of Artsakh people during the Azerbaijani-waged war have been accused by official Baku as a biased foreign policy approach. The visit of French senators to Armenia and their desire to visit Artsakh caused a sharp reaction from Baku, calling the position of the

³⁹ The operational meeting was held under President, Commander-in-Chief Ilham Aliyev at Central Command Post of Ministry of Defense (2020). Retrieved from <https://en.president.az/articles/44370>

⁴⁰ Ilham Aliyev: "We are forced to recognize Karabakh" (2016). [Nas prinuzdaut priznat Karabakh]. Retrieved from <https://haqqin.az/news/81825>

French delegates as one of the co-chairs of the Minsk Group unacceptable. Further initiatives of France to speed up the process of recognition of the independence of the Republic of Artsakh in the international discourse failed due to the unwillingness and miscalculation of the Armenian side to start the recognition process on its part.

The Foreign Policy Advisor to the President of Azerbaijan, Hikmet Hajiyev, made a blatant accusation against France, where the Senate adopted a resolution, calling on French government of recognize the Republic of Artsakh. The Azerbaijani side condemned the initiative of the French Senate in the allegedly pro-Armenian position of France. Then he added that, from their point of view, France was one of the main obstacles to a peaceful settlement of the conflict, calling them supporters of Armenian aggression in maintaining the status quo⁴¹.

At a meeting with representatives in Baku on December 12, Aliyev assessed that the Minsk Group did not play any role in resolving the conflict and the efforts of co-chairs did not give any remarkable result, stated the Azerbaijani dictator⁴². But the most outrageous statement by Aliyev was his dissatisfaction, calling the visit of the OSCE Minsk Group representatives to Baku an initiative of the co-chairs, since he noted that he had not invited them⁴³, which absolutely matched to the harsh and cynic rhetoric of official Baku stating that Karabakh conflict is resolved. According to Azerbaijan, the OSCE Minsk Group has not fulfilled its mission, and it must be dismantled as a multilateral ground for negotiations on the conflict. Baku believes that the OSCE's efforts should be aimed at establishing peace in the region⁴⁴, because Baku is confident that the conflict is resolved, but only the problems of delimitation and demarcation remain on the agenda between Armenia and Azerbaijan. It is not a secret that Baku has clear vision to resolve the issue based on the principle of territorial integrity neglecting the rights of Artsakh Armenians on self-determination. Meanwhile, the official anti-Armenian

⁴¹ Hikmat Hajiyev: Resolution of French Senate is nothing more than a piece of paper for Azerbaijan (2020). Retrieved from https://azertag.az/en/xeber/Hikmat_Hajiyev_Resolution_of_French_Senate_is_nothing_more_than_a_piece_of_paper_for_Azerbaijan-1651591

⁴² Ilham Aliyev received OSCE Minsk Group co-chairs from France and U.S (2020). Retrieved from <https://en.president.az/articles/48908>

⁴³ Aliyev says visiting Minsk Group Co-Chairs were not invited to Baku (2020). Retrieved from <https://asbarez.com/199161/aliyev-says-visiting-minsk-group-co-chairs-were-not-invited-to-baku/>

⁴⁴ Ilham Aliyev called on the Minsk Group to submit proposals for peace in the region (2021). Retrieved from <https://factor.am/en/2021/04/13/ilham-aliyev-called-on-the-minsk-group-to-submit-proposals-for-peace-in-the-region/>

politics of Azerbaijan in recent decades with ideology of fascism towards Armenians left no chance for Armenians to link their future with Azerbaijan.

Any attempts in the period of war to return the parties to the negotiating table met with aggressive response of Baku with cogent intention to gain the set goals by military way. With the exception of Russia, all the other *de jure* allies of Armenia within the framework of the Russian-led CSTO (Kazakhstan, Belarus, Kyrgyzstan and Tajikistan) overwhelmingly took a pro-Azerbaijani position like Belarus, or remained passive from political reasons, mostly because of mutual economic and political interests, like Kyrgyzstan and Tajikistan. The autocratic dictator of Belarus, Alexander Lukashenko, has always been distinguished by sympathy for Azerbaijan. This was due to close business relations with the leadership of Azerbaijan, rich in oil and gas resources, and Baku's reciprocal interests in deepening the arms business with Minsk.

The ethnic component in the foreign policy of the Turkic states plays a significant role in economic and political orientation⁴⁵, stretching from Central Asia to the Bosphorus on the basis of solidarity and cooperation. In this case, the foreign policy of Kazakhstan, which considers itself a leader among the Turkic-populated territories, has always sympathized with Azerbaijan with demonstration of an obvious pro-Azerbaijani position on the Nagorno-Karabakh conflict. Meanwhile, it should be noted that the further expansion of the ideological cooperation of the Turkic peoples and the possibility of creating an army consisting of the Turkic population⁴⁶ can become an alternative to Russian influence and a threat⁴⁷, especially for non-Turkic ethnic groups in vast territories with the growth of nationalism and radical fanaticism.

The member states of the Russian-led CSTO alliance are weak in term of their regional and global influence and vulnerable in regard of ineffective institutions of power. All of them can be characterized mainly as non-democratic authoritarian regimes or hybrid democratic regimes in post-Soviet

⁴⁵ Fida, Z. (2018). Central Asia's Place in Turkey's Foreign Policy. *Policy Perspectives*, 15(1), 113-125. Retrieved from <http://www.jstor.org/stable/10.13169/polipers.15.1.0113>

⁴⁶ Amid Azerbaijan-Armenia Fighting, Turkish Dailies Propose 'Turkic NATO': 'The Turkic States Must Unite' (2020). Retrieved from <https://www.memri.org/reports/amid-azerbaijan-armenia-fighting-turkish-dailies-propose-turkic-nato-turkic-states-must>

⁴⁷ Dorsey, J.M. (2021). Opinion: Turkey signals sweeping regional ambitions. Retrieved from <https://www.wionews.com/opinions-blogs/opinion-turkey-signals-sweeping-regional-ambitions-365427>

Union⁴⁸, according to Linz⁴⁹. Meanwhile, they cannot pursue an independent foreign policy, entangled in various regional problems, challenging the high political dependence on external strong players and adhering to Realpolitik approaches in foreign policy.

Consequently, the OSCE has no alternative to other international organizations that could successfully supply better soft policy tools for conflict resolution. The cooperation of the co-chair countries within the Minsk Group is an exceptional example of multilateral constructive and unambiguous approaches working between the United States, France and Russia. Despite other regional and global issues, such as the war in Ukraine or in Syria, where they may stand on opposite barricades, they could demonstrate common consent on principles of peaceful settlement.

Undoubtedly, the dictatorial leadership of the Caspian state clearly understands that the Armenians will never agree to live under the control of Baku and will get rid of Armenians in its territory. The Russian peacekeepers in Karabakh constrain Baku in the fulfillment of their desired plan – forcing the Armenians to leave the territory of Karabakh, creating inhuman conditions Armenians, systematically violating the rights and human dignity of the Armenian nationality in Karabakh. Consequently, the Minsk Group of the OSCE still remains the only proper and the most applicable format for further peace talk process. Any other format or engagement of the new actors in the triangle of the co-chairs could change the essence of the conflict with intensive geopolitization of the issue with any hope to build sustainable peace and perspective of co-existence of Armenians and Azeri people.

Conclusion

Since the signing of the ceasefire on November 10, 2020, the active post-conflict phase has still remained on the agenda of the parties to the conflict. The vehement efforts of Azerbaijan to impose its own rules of the game in post-war period promise inauspicious future for failed Armenian side. The international community continues to act slowly in assessing the war crimes committed by the Azerbaijani army against humanity and the civilians of Artsakh. The intense political processes around Nagorno-Karabakh and the vague future of the Armenians leave no chance to draft an approximate short-term perspective of the status of the Artsakh Republic. Undoubtedly, Azerbaijan will force to remove from the international agenda the discourse about Nagorno-Karabakh and close its eyes on violations against humanity.

⁴⁸ Diamond, L. (2008). *The Spirit of Democracy: The Struggle to Build Free Societies Throughout the World*. New York.

⁴⁹ Linz, J. J. (2000). *Totalitarian and Authoritarian Regimes*. Lynne Rienner Pub, UK.

But the unfair records of the war for the Armenians and the deprivation of their homeland will force the Armenians not to reconcile to terms with the new reality, but to try to find other options for protecting the rights of Armenians in their homeland.

The war crimes committed by the Azerbaijani army will be the focus of attention of Armenian human rights organizations, which will try to call on all possible international institutions to be heard. Massive military actions in Karabakh, which took the lives of hundreds of civilians, inhuman treatment of prisoners of war and acts of barbaric vandalism, require an objective assessment of the international community in order to prevent their recurrence.

Meanwhile, war initiators need to get a clear and sharp reaction to their venture, otherwise it will become an opportunity for authoritarian regimes in Turkey and Azerbaijan to unleash new wars, disregarding the norms and rules of the international order. Otherwise, Azerbaijan's approach to resolving the issue by military means will be firmly rooted in international practice as an acceptable option in international relations.

The populist and manipulative rhetoric of Turkey and Azerbaijan will continue to intensify and challenge the region's vulnerable democracies. The paradigm, which was peculiar in the pre-II World War order, will be revived in the conditions of a growing multipolar system, where democratic nations will shrink in numbers. Consequently, the countries initiating the war should receive a clear and sharp negative reaction and an objective assessment of their gamble from the international community. Otherwise, Azerbaijan's approach to resolving the issue by military means will be deeply rooted in international practice as an acceptable option in international relations.

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