
*The Expert Group of the Chamber of Advocates of the Republic of
Armenia on Examining
the International Legal Aspects of the Issue of
the Republic of Artsakh*



**PROFESSIONAL
OPINION**

**ON ARTSAKH CONFLICT AND VIOLATIONS OF
THE INTERNATIONAL LAW BY THE REPUBLIC OF AZERBAIJAN**

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PREAMBLE

The expert group of the Chamber of Advocates of the Republic of Armenia on examining the international legal aspects of the issue of the Republic of Artsakh was created to present to the society an analysis on the issue of the Republic of Artsakh (**hereinafter also referred to as Artsakh, NKR, NKAO**), as well as to assist the authorized state body of the Republic of Armenia with professional consultation. The creation of the group was derived from the necessity of giving international legal assessment to the inhuman actions of Azerbaijani armed forces towards the peaceful civilians and the soldiers of the defense army of Artsakh during April 2-5 of 2016.

This professional opinion presents the Armenophobic policy of the Republic of Azerbaijan (**hereinafter also referred to as Azerbaijan**), the unbiased assessments of the international organizations testifying that Azerbaijan incites hatred and violence towards ethnic Armenians, as well as the hate speech in mass media and social networks. It discloses the international crimes committed by Azerbaijan and in particular by its armed forces during April 2-5 of 2016, and the serious violations of the norms of the International Humanitarian Law. The cases of coordinated and preliminary planned attacks on civilian population and civilian objects, as well as inhuman attitude towards the latter and the soldiers of the defense army of Artsakh during April 2-5 of 2016 have been analyzed from the mentioned prospective.

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I. BRIEF HISTORICAL OVERVIEW

The Armenian-Azerbaijani relations are characterized as highly antagonistic due to historical and political reasons. Currently, there are no official diplomatic relations between the two states. There were official relations established between the neighboring countries in 1918-1921 - when as a result of short-term independence from the Russian Empire, Democratic Republic of Armenia and the Democratic Republic of Azerbaijan were formed. Those relations dated back to the 1917 Russian Revolution and lasted until the occupation of Transcaucasia by the Bolsheviks.

According to archeological, historical and linguistic evidence Artsakh (Karabagh) has historically and geographically been the integral part of the Armenian Highland and has been interconnected with ethnic, political and cultural spheres of the latter since the ancient times. From the beginning of the 1st millennium B.C. till the 13th century A.D. it was part of the Pan-Armenian historical state formations. Later on, after the collapse of the Armenian statehood and until the beginning of the 19th century, the conquest of the Transcaucasia by the Russian Empire it was self-ruled by the local Armenian authorities.

Although the Armenian Artsakh is commonly known in the international arena as “Karabagh”, the term itself was used for the first time in the 13-14th centuries, during the Mongolian conquests. Artsakh was almost fully Armenian-populated until the invasion of some Turkish-speaking tribes from the East in the mid-18th century. Yet, these tribes did not overall change the demographic picture of the region.

Before the 1917 October Revolution Artsakh was part of the Russian Empire. Thereafter, Artsakh was under the rule of the Transcaucasian federal authorities. In May, 1918 after the formation of the first Republic of Armenia, it proclaimed itself as the only and supreme holder of the Armenian provinces of the former Russian Empire. Meanwhile, in 1918-1920 the newly formed Azerbaijani Republic, militarily and politically supported by the Ottoman Empire, was trying by any means to overtake Artsakh and other territories of Eastern Armenia, despite the historical realities and the will of the Armenians, making over 95% of the population thereof.

From the very beginning Azerbaijan addressed the representatives of the Armenians of Artsakh a demand to recognize its authority. However, the **First Assembly of the Armenians of Artsakh** convened in July 22, 1918 in Shushi, rejected the claim. Moreover, **being guided by the right to self-determination of peoples**, the Assembly declared the region as an independent administrative and political entity. Moreover, a national council and a democratic government were elected based on democratic principles and procedures.

The Declaration of the democratic government of Karabagh was adopted on July 24, 1918. It reflected the objectives of the newly formed state authorities. Following the adoption of the Declaration, **the Turkish Command in Azerbaijan** presented an ultimatum to the National Council demanding to recognize the authority of Azerbaijan. In response thereto, the Second Assembly of the Armenians of Karabagh, convened in September, 1918, strictly rejected such demand. During the following 3rd, 4th, 5th and 6th Assemblies of the Armenians of Artsakh analogical decisions were made in response to Azerbaijan’s illegal claims.

Due to the concentration of Azerbaijani troops around Artsakh and the obvious military threats, the 7th Assembly in August, 1919 decided to **temporarily** accept the authority of Azerbaijan, until the decision of the Paris Peace Conference. Yet, the next 8th Assembly again rejected to recognize Azerbaijan's full sovereignty over Karabagh. The invasion of Azerbaijani troops to Artsakh (March of 1920), setting on fire the city of Shushi and massacre of over 20 thousand Armenians followed thereafter. The self-defense forces of Artsakh turned to the support of the Republic of Armenia, whereas **the 9th Assembly in April, 1920 declared Artsakh as an inalienable part of the Republic of Armenia**. A few days later, troops of Russian SSR established Soviet power over Azerbaijan. Aspiring to spread the Soviet power all over the Transcaucasus including Artsakh, through Azerbaijan, the Soviet authorities presented a demand with military threat to the Republic of Armenia, which was trying to establish its legitimate authority over Artsakh.

The 10th Assembly of the Armenians of Artsakh convened in May 1920. Most of the delegates thereto were communists, thus a decision was made to proclaim Artsakh as Soviet. Nevertheless, the authority of Azerbaijani SSR was not recognized again. In Autumn of 1920 the troops of Soviet Russia suppressed the uprising of the Armenians of Artsakh. Followed by the Sovietization of Armenia on 30th of November, 1920, the Soviet Azerbaijan adopted a Declaration on recognition of Nagorno Karabagh, Zanghezur and Nakhichevan **as inseparable parts of Soviet Armenia** on 1st of December, 1920. Yet, soon Azerbaijan stepped back from this decision.

The Armenian SSR declared Nagorno Karabagh as its inseparable part on June 12, 1921.

Thus, the competent authorities of the two states declared and formed an international agreement based on voluntary Declarations of both sides. After, a few-days protest of the Azerbaijani authorities, a decision was made at the session of Caucasian Communist Body (Plenary Session of Communistic Body of Caucasian Bureau of the Central Committee of the Russian Communist Party) on the recognition of Artsakh as part of Armenia. On 5th of June, the next day after the decision was made, after receiving new complaints from Azerbaijani authorities, with direct involvement of Iosif Stalin and without conducting any voting, an unlawful decision was made on leaving Artsakh within Azerbaijan. In 1923 the Nagorno Karabagh Autonomous Oblast/Region (NKAO) was established within the Azerbaijani SSR- in a smaller scale than the whole territory of Nagorno Karabagh, artificially isolated from the Armenian SSR and deprived of a common border with the latter. Thus, Nagorno Karabagh with Armenian population of **94,4%** was illegally transferred to Soviet Azerbaijan. From the very beginning the decision of the Caucasian Bureau of Central Committee of the Russian Communist Party had neither legal bases, nor legal force, since the communist party of a third state did not have any authorities over interstate territorial disputes.

From 1923 till 1988 the authorities of Soviet Azerbaijan subjected the Armenian population of Karabagh to political, economic, ethnic persecution, pursuing a continuous policy of deportation of the Armenian population from the region. However, the Armenians of Artsakh always struggled to withdraw the region from Azerbaijan and reunite with Armenia (for this purpose a Petition was presented to Moscow in 1965, with signatures of over 45 thousand people). However, the Azerbaijani authorities did their best on preventing the consideration of this issue.

At the end of 1987 the population of NKAO, with a special petition signed by 80 thousand people, once again demanded reunification with Armenia. On February 20, 1988 the local autonomous body of Karabagh adopted a unanimous decision on reunification with the Armenian SSR. This decision was also approved by the legislative body of Soviet Armenia. The decision of Artsakh was followed by massacres of Armenians in Sumgait, Kirovabad and other cities. However, the Kremlin did not give an equivalent political assessment to these massacres organized by Azerbaijan, and therefore, supported Azerbaijan's position on Karabagh issue. Central Soviet authorities refused to approve the applications on reunification of Artsakh with Armenia in July. Afterwards the situation got even more critical: Azerbaijan's armed attacks on the Armenians of Artsakh became more frequent.

In January of 1989 NKAO was put under the direct control of the central authorities by the Union of Soviet Socialist Republics (meanwhile maintaining "the status of Nagorno Karabakh as an autonomous region within the ASSR"). Nevertheless, no satisfying solution was given to the physical security issues, economic, cultural and other issues of the Armenian population. The authorities of USSR and the leader of the Union M. Gorbachev personally were trying to suppress the national struggle in Artsakh and Armenia by decisive measures, which in the end evolved into the "Karabagh movement". On 1st of December, 1989 the authorities of Armenia adopted a Resolution on Reunification of the Armenian SSR with Nagorno Karabagh. However, the USSR central authorities annulated this decision on 10th of January, 1990. On the same day, alongside with armed attacks on the Armenians of Artsakh Azerbaijan initiated massacres and forced deportations of the local Armenians of Baku, which lasted during the following three days. Despite Azerbaijan's and Moscow's tough pressure on the Armenians of Artsakh, the National Movement of Artsakh expanded furthermore.

During the second half of 1990 the situation in NKAO got even more complicated. On one hand Azerbaijan kept the region in blockade, and on the other hand the region fell under the direct influence of Soviet armed forces. In the beginning of 1991, with a support of the central authorities of the USSR, Azerbaijan was trying to resolve the issue to its own benefit by military means and by way of attacks and forced deportations on a number of Armenian settlements and entire regions. Azerbaijani attacks were addressed directly to Armenian borders, as well. The Armenian-Azerbaijani dispute over Artsakh led to a chain of heavy armed clashes during the Soviet rule and to a full scale war after the collapse of the Union.

On 2nd of September, 1991 the people of Nagorno Karabagh expressed their right to self-determination and declared the establishment of **the Republic of Nagorno Karabagh (Artsakh)**, in order to protect the population and to ensure the peaceful development. Azerbaijan responded thereto with continuous bombardment, armed attacks on the Armenian peaceful settlements and a complete blockade. In the beginning of 1992 Azerbaijani forces kept the capital of Artsakh- the city of Stepanakert under constant bombardment, causing huge human and material losses. The self-defense forces of Artsakh resisted to these attacks, neutralized the enemy's firing points and liberated Shushi on May 9, and thereafter liberated Lachin, causing an opening of a humanitarian corridor to Armenia. Furthermore, in a severe war self-defense forces of Artsakh succeeded in defeating Azerbaijani forces, which had occupied other parts of the territory of Artsakh. Most of those territories were liberated. However, in 1993-1994 due to Azerbaijan's militarism and obsessive policy aimed at occupying Artsakh, the military operations continued in a number of regions of the former NKAO and

historical Artsakh. Eventually, continuous military failures urged Azerbaijani authorities to accept the ceasefire agreement mediated by Russia in 1994. A so called “neither war, nor peace” status was established, which lasts for over 20 years.

On 5th of May, 1994 in Bishkek the leaders of parliaments of Azerbaijan, Artsakh and Armenia signed a protocol on ceasefire, mediated by Russia, Kyrgyzstan and CIS Inter-Parliamentary Assembly. Pursuant to this protocol an agreement was reached on ceasing the fire. Azerbaijan joint the Bishkek Protocol later- on May 8. Defense Ministries of Armenia, Artsakh and Azerbaijan signed an agreement on ceasefire, mediated by Russia, on May 11. The agreement came into effect on May 12, 1994. After Azerbaijan failed to observe the Bishkek agreement, the Defense Minister of Russia P. Grachev intervened, having in mind the cessation of the armed conflict and leaving the resolution of the remaining issues to the politicians. By meeting the Defense Minister of the RA S. Sargsyan, State Secretary of the RA V. Sargsyan, Commander of the Defense Army of Artsakh S. Babayan and the Defense Minister of Azerbaijan M. Mamedov in Moscow on May 16, 1994, he proposed to cease the fire **at 00:00 am on May 17, 1994**. Azerbaijan accepted this with great difficulty and eventually gave its consent thereto a month later. The imposed ceasefire maintained with occasional violations until April of 2016, when Azerbaijan initiated large-scale military operations.

The relations between independent Armenia and Azerbaijan has been established in 1918-1920 and during the 1988-1994 war between Artsakh and Azerbaijan and still maintain so, due to these historical events.

II. LEGAL DEMAND OF ARTSAKH PEOPLE

1. The Right to Self-Determination of Artsakh People

The right to self-determination of the peoples is a fundamental principle of international law¹. It is commonly recognized as an imperative norm of international law², which results in erga omnes obligations³.

This right belongs to the people directly, which may also be exercised by them in a way of separation from a specific state, i.e. in a way of so called “external self-determination.”

According to the Resolution of Principles of International Law (which is commonly recognized as codification of principles of international law)⁴, the external right to self-determination of people is limited by the territorial integrity of sovereign states to the extent that the latter respect the right to self-determination of the people in question⁵. The Supreme Court of Canada has accordingly stipulated in the case *Re Secession of Quebec*: “*where a people is oppressed, ... or where a definable group is denied meaningful access to government to pursue their political, economic, social and cultural development... the people in question are entitled to a right to external self-determination because they have been denied the ability to exert internally their right to self-determination*”⁶.

The state practice of the independence of Kosovo additionally proves that the international society does recognize that the declaration of independence is allowed within the scopes of the principle of self-determination, in case if the people in question cannot feasibly exercise their right to self-determination within the territory of the existing states.

This rule is most applicable in the cases when the fact of being within the territories of a state threatens to the existence of the given people, like in the case of Armenians in Azerbaijan, when one considers Azerbaijan’s policy on persecution of Armenians.

Artsakh people have exercised their right to self-determination in 1991- after the massacres and deportations of Armenian population in Sumgait, Gandzak, Baku, after the violence and deportations and other activities against Armenians in North Artsakh in 1987-1990. At this time the further peaceful and secure existence of Armenians within Azerbaijan and their internal self-determination was obviously not possible.

In this event the exert of the right to self-determination of Artsakh people was absolutely lawful in the scopes of the international law.

As an objection hereto Azerbaijan cannot refer to the principle of territorial integrity, since:

1. Artsakh has exercised its right to self-determination in parallel to the declaration of independence of Azerbaijan, and Artsakh did not initially make part of Azerbaijan, therefore the declaration of independence cannot initially be considered as a breach of territorial integrity of Azerbaijan.

¹ UN GA Res. 2625, U.N., GAOR, 25th Sess., Supp. No. 28, p. 124; 1970 U.N.Y.B. 787, U.N. Sales No. E.72.I.1; Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights*, (1990), p. 45.

² Ian Brownlie, *Principles of Public International Law* (4th ed. 1990), pp. 595-98; Antonio Cassese, *Self-Determination of Peoples. A Legal Reappraisal*, Cambridge, N.Y., 1995, p. 320; Hector Gros Espiell, *The Right of Self-Determination: Implementation of United Nations Resolutions*, U.N. Doc. E/CN.4/Sub2/405/Rev. 1 (1980), p. 8

³ *Case Concerning East Timor* (Portugal vs. Australia), ICJ Reports, 1995, p. 102

⁴ UN GA Resolution 2625, 1970 U.N.Y.B. 787, U.N. Sales No. E.72.I.1

⁵ G.A. Res. 2625, U.N., GAOR, 25th Sess., Supp. No. 28, p. 124

⁶ *Reference Re Secession of Quebec* [1998] 2 S.C.R. 280-81

2. As an alternative, pursuant to abovementioned Resolution 2625, even in relation to third states the territorial integrity cannot be referred to, when limiting the right to self-determination of peoples, if the corresponding state does not respect the equality and the principle of self-determination of peoples, and without any discrimination or differentiation does not represent the interests of the people being self-determined.

In addition to the abovementioned, as evidenced by the facts mentioned, after Artsakh war Azerbaijan did not respect the right of Artsakh people to self-determination. Moreover, it immediately conducted large scale persecutions and ethnic cleansings, which deprived Azerbaijan from its right to refer to its territorial integrity against the self-determination right of Artsakh people.

Furthermore, since the exert of the right to self-determination of Artsakh people, Republic of Azerbaijan has continued its policy of persecutions of Armenians. In particular, during the recent years Azerbaijan has followed its policy of Armenophobic propaganda, which, among others, has been expressed in declaring the persons who killed Armenians as heroes, destroying Armenian cultural values, and in general, rejecting the right of Armenians to exist within the territories of their own historical settlements.

While addressing the events of the recent months, it should be underlined that all the civilians and soldiers who had ceased their participation in military actions and fell under the control of the Azerbaijani armed forces during the armed attacks initiated by the Republic of Azerbaijan towards the Republic of Artsakh at the beginning of April 2016, were murdered without any military necessity, and their corps were subjected to desecration, in some cases even to public humiliation, while those responsible for such acts (which are considered as war crimes under the international law) were praised and awarded by the authorities of the Republic of Azerbaijan. This once again proves that the survival of the ethnic Armenians in the Republic of Azerbaijan is impossible.

This also excludes the possibility of bringing Armenians of Artsakh under Azerbaijan's authority in any way, and once again reaffirms that the self-determination of the Republic of Artsakh has no alternative.

2. Azerbaijan cannot refer to the principle of *uti possidetis juris* for the purposes of establishing a title over the Republic of Artsakh or denying the self-determination right of Artsakh people

Lately Azerbaijan regularly refers to the principle of *uti possidetis juris* for the purposes of establishing its alleged title over the Republic of Artsakh and denying the right to self-determination of Artsakh people. According to this principle during the decolonization the administrative borders of the former colonies automatically become the international interstate borders between them. However, this principle has a limited recognition and application in the international law: it is not applicable towards the Republic of Artsakh.

Thus, the International Court of Justice (ICJ) approved in the *case of Burkina Faso vs the Republic of Mali* that the principle of *uti possidetis juris* is applicable in the context of decolonization.⁷

⁷ *Frontier Dispute (Burkina Faso/Mali)*, 1986 I.C.J. Reports 554, p. 565, 19-20.

There are no bases in the modern international law for the application of this principle outside the context of decolonization (particularly, in the cases of disintegration of federal states or termination of foreign occupation).

In this case Azerbaijan became independent in 1991 not in the scopes of the process of decolonization, but simply as a result of collapse of USSR, or, as an alternative- termination of occupation by USSR. As a matter of fact, Artsakh people have exercised their right to self-determination since February of 1998 and officially proclaimed their independence on 2 September, 1991, i.e., parallel to the period when Azerbaijan gained independence from USSR, moreover Artsakh had gained independence even earlier that Azerbaijan (which took place during the period starting from 30 August till 18 October of the same year). Therefore, independence of Artsakh preceded the approval of international borders of Azerbaijan.

Therefore, there are no bases for applying the principle of *uti possidetis juris* towards the process of self-determination and independence of Artsakh. Moreover, even if theoretically applicable, the given principle cannot affect the process of self-determination and independence of Artsakh, since such process preceded the approval of international borders of Azerbaijan, which do not include the territory of Artsakh.

III. THE ANTI-ARMENIAN POLICY OF AZERBAIJAN*

The Anti-Armenian speeches of Azerbaijani authorities are vivid examples of Azerbaijan's propaganda for aggressive war. Below herein we present some of the Anti-Armenian statements of Azerbaijani officials, as well as references of international institutions to the Anti-Armenian propaganda of Azerbaijan.

1. Hate Speech and Racist Propaganda by the State Authorities of Azerbaijan

The statements by the high political authorities of Azerbaijan against Armenians and the Republic of Armenia inciting hatred violate all the positive obligations set forth in Article 2 of the Convention on the Elimination of All Forms of Racial Discrimination (hereinafter referred to as the "Convention").

The modern international law prohibits the hate speech by a number of international documents. Thus, according to Article 7 of the Universal Declaration of Human Rights: "*All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.*" According to Part 2 of Article 20 of the International Covenant on Civil and Political Rights: "*Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.*" And, of course, the Convention on the Elimination of All Forms of Racial Discrimination addresses the issue of discrimination (the Preamble and Article 4).

Despite this fact, statements by Azerbaijani authorities, starting from the highest level of state hierarchy, have always been full of Anti-Armenian propaganda and hatred.

In his speeches and statements Azerbaijan's President has continuously incited hatred and enmity towards Armenia and the Armenians.

A statement by Ilham Aliyev, the President of Azerbaijan: "*We will not let Armenia to engage in imitation of negotiations. We will keep conducting talks for as much as there remains a hope for restoration of our territorial integrity through negotiations. If we notice that it is not possible, then, the Azerbaijani state will restore its territorial integrity using its military*⁸."

As the negotiations on the peaceful resolution of the Nagorno Karabakh conflict are still ongoing, and as no solution to the conflict is found in favor of Azerbaijan, the president of the country often refers to the threat of aggression. An example from Ilham Aliyev's well-known statements is that the main enemy of Azerbaijan are "*Armenians of the world and the hypocritical and corrupt politicians under their control*⁹."

* The preparation of this section has been based on the information, facts and descriptions published in the book titled "Армянофобия в Азербайджане" (А. Адібекян, А. Элибегова Ереван, 2013) and the Article titled "Насаждение армянофобии в Азербайджане как нарушение международных норм на примере официальных высказываний президента Ильхама Алиева" (Анжела Элибегова) [electronic source]

<http://www.stopshatespeech.net/index.html> . <https://www.academia.edu/12861161>

⁸ Речь Ильхама Алиева на церемонии прощания с Национальным Героем Мубаризом Ибрагимовым и старшим лейтенантом Фаридом Ахмедовым. 07.11.2010. [electronic source] <http://ru.president.az/articles/1013>

⁹ Заключительная речь Ильхама Алиева на конференции, посвященной итогам третьего года реализации «Государственной программы социально-экономического развития регионов Азербайджанской Республики в 2009-2013 годах». 28.02.2012. [electronic source] <http://ru.president.az/articles/4423>

The statements of Azerbaijani officials contradict to both the international law as well as the national law of the state, according to which such statements can be qualified as "**solicitation to commitment of genocide**" (Article 104 of the Criminal Code of Azerbaijan) and "**public appeals to implementation of aggressive war**" (Article 101 of the Criminal Code of Azerbaijan)¹⁰.

The special report by the OSCE Office of Democratic Institutions and Human Rights, titled "Anti-Armenian Propaganda and Hate Dissemination Carried Out by Azerbaijan as a Serious Obstacle to the Negotiation Process", indicates: "*The statements of hatred by the high-ranking Azerbaijani officials towards Armenians and the Republic of Armenia violate all the positive obligations set forth in Article 2 of the Convention, in particular, "condemn racial discrimination" and "promoting understanding among all races by all necessary means"*¹¹."

At the meeting of UN Committee on the Elimination of Racial Discrimination (held on 03/15/2005), concerns were expressed about the fate of Armenians who had been persecuted in Azerbaijan and concealed their national identity, since in the territories controlled by Azerbaijan only 650 people admitted of their Armenian identity during the census of 1999¹². The Committee has recommended Azerbaijan to conduct studies on racial discrimination, in particular towards Armenians¹³, to analyze and give an effective assessment, which has not been done.

The European Commission against Racism and Intolerance (ECRI), in his report of 2011, whilst examining the problems of Armenians living in Azerbaijan, states that there are ethnic Armenians in the country who are unable to exercise their rights as Azerbaijani citizens, in particular, they are deprived of social protection¹⁴.

During the opening of the First World Forum of Leaders of the Azerbaijani and Turkish Diasporas on March 10, 2007 I. Aliyev said in his speech: "*For the purposes of excluding the Azerbaijanis from their historical lands and forming the mythical "Big Armenia" in these territories, for decades Armenians have constantly subjected Azerbaijani and Turkish people to ideological, military and cultural aggression.... In 1918 The Armenian Republic was established on the Azerbaijani lands and one of the most important cultural centers of Azerbaijan, the city of Irevan was ceded to them as capital*¹⁵."

This idea is not a mistake, but rather a component of well-thought Anti-Armenian propaganda, which is testified by frequent repetition of this thesis in Ilham Aliyev's official speeches.

During his official speech on July 7, 2014 Aliyev mentioned: "*Nakhchivan is an ancient Azerbaijani land. Historical monuments, religious monuments, architectural monuments, all names of places in Nakhchivan belong to the Azerbaijani people. The Azerbaijani people have for centuries lived and worked on this beautiful land... injustice was done to our people, since Zangezur- an old Azerbaijani land was partitioned from Azerbaijan and given to Armenia.*

¹⁰ Уголовный кодекс Азербайджанской Республики. 31.01.2005. [electronic source] <http://www.legislationline.org/ru/documents/id/14841>

¹¹ Anti-Armenian propaganda and hate dissemination carried out by Azerbaijan as a serious obstacle to the negotiation process. HDIM.DEL/382/08.

¹² Summary Record of the 1691st Meeting: Azerbaijan; Summary Record of the 1691 Meeting, CERD/C/SR.1691, 15 Mar. 2005. [electronic source] [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/f15c8321b94c4040c1256fc7005423be?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/f15c8321b94c4040c1256fc7005423be?Opendocument)

¹³ Concluding Observation of the CERD: Azerbaijan, 14 April 2005 (CERD/C/AZE/CO/4). [electronic source] [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/a5613020715aaf0cc125700e004b878a?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/a5613020715aaf0cc125700e004b878a?Opendocument)

¹⁴ ECRI обеспокоена судьбой этнических армян, живущих в Азербайджане. 01.06.2011. Xenophobia prevention initiative. [electronic source] <http://stopxenophobia.org/?p=2366>

¹⁵ Речь президента Азербайджана И.Алиева на открытии I Всемирного форума руководителей азербайджанской и турецкой диаспорских организаций. 10 марта 2007 г.

This was great injustice, as Zangezur is a historical Azerbaijani land...during the years of independence, in 1918, Irevan- our historical land was handed over to Armenia on the basis of a resolution adopted by the Democratic Republic of Azerbaijan. And likewise, it was a few years later that Bolshevik Soviet power handed Zangezur over to the Armenians¹⁶.”

Another remarkable quote from Aliyev’s speech of June 24, 2014: *“Nagorno-Karabakh is a historical part of Azerbaijan; Azerbaijanis have lived in Nagorno-Karabakh for centuries, whereas Armenians settled in the area less than 200 years ago... one of the first decrees of the Democratic Republic of Azerbaijan regarded to the transferring of Irevan to the Armenian state, as a capital.¹⁷ ”*

Aliyev mentioned about the capital of Armenia once again on 7th of July, 2014: *“The broader part of the international audience was not aware of the fact of transfer of Irvan to Armenia in 1918. When I first raised this issue, it seemed somewhat new to some people. However, it is a reality. At this time everyone in Azerbaijan is aware of this, and we must, as far as possible, point that out at international conferences, forums and events¹⁸.”*

The Azerbaijani “Pia.az” website has published an article titled "A Shameful Fact in the Educational System" regarding Elsa Tagiyev, the director of the school number 246 in Binagadi district of Baku, who is an Armenian on mother’s side. The article states that Misir Mardanov, the Minister of Education and Science of Azerbaijan *“trusted the upbringing of Azerbaijan’s younger generation to the enemies of Turks”*. The author of the article raises a question: *“How can we trust the education and the process of upbringing of our future generation in the spirit of patriotism to a half-Armenian?¹⁹”*

The Ambassador of Azerbaijan to the Council of Europe advises Armenians not to sleep calmly unless the Nagorno Karabagh conflict has been resolved. *“Until the resolution of Nagorno Karabaagh conflict it is impossible to exclude the probability of repetition of the Budapest incident (referring to the murder of a sleeping Armenian officer in Budapest).²⁰”*

Azerbaijan’s former President Heydar Aliyev stated during one of his speeches: *“And in the future we should create works, gradually and constantly proving that the lands where Armenia stands now belong to Azerbaijan. We must do it. We should pave a way for the future generations²¹.”*

The American “Global post” online newspaper states that the President of Azerbaijan Ilham Aliyev not only dislikes Armenians, but also is not scared to talk, as well as to tweet about it. The followers of President Ilham Aliyev on Twitter have received over 30 tweets regarding the neighboring country, which were definitely not diplomatic and eventually, they may be considered as offensive in essence ²².

¹⁶ Речь Ильхама Алиева на торжественной церемонии, посвященной 90-летию юбилею Нахичеванской Автономной Республики. 08.04.2014. [electronic source] <http://ru.president.az/articles/11477>

¹⁷ Выступление Ильхама Алиева на сессии Парламентской ассамблеи Совета Европы (ПАСЕ). 24.06.2014. [electronic source] <http://ru.president.az/articles/12149>

¹⁸ Речь Ильхама Алиева на пятом совещании руководителей органов дипломатической службы Азербайджанской Республики в Министерстве иностранных дел. 07.07.2014. [electronic source] <http://ru.president.az/articles/12392>

¹⁹ Tshsil sahssinds biabirgi fakt. Pia.az. 24.04.11. [electronic source] <http://pia.az/index.php?l=az&m=news&id=9108> (az)// Сохраненная копия: <http://www.peeer.us/82af0323>

²⁰ Посол Азербайджана в СЕ не советует армянам спать спокойно, пока карабахский конфликт не решен. ИА REGNUM. 20.02.2004. [electronic source] <http://regnum.ru/news/221381.html>

²¹ «Бакинский рабочий» 11 февраля 1999 года.

²² Azerbaijan's president launches Twitter rant against Armenia. Global News Blog. 20.11.2012. [electronic source] [http://globalpost.com/dispatches/globalpost-blogs/weird-wide-web/azerbaijan-president-ilham-aliyev-twitter-rant- armenia \(en\)](http://globalpost.com/dispatches/globalpost-blogs/weird-wide-web/azerbaijan-president-ilham-aliyev-twitter-rant- armenia (en))

The references of "Armenian Barbarians", "Armenian Vandals" and "Armenian Fascists" are the constant peculiarities of almost every speech of the Azerbaijani President, regardless of the nature of the event. Examples of several such statements are presented below.

At the opening of a new building for families of 1440 locally displaced people in Mushfigabad on December 27, 2012, Ilham Aliyev said:

*"As you know, everything on the occupied lands has been destroyed. All our historical monuments have been destroyed by **Armenian thieves and vandals**. The exhibits, displayed at the school gym are our historical heritage. However, most of our material heritage, which was kept in museums, **were robbed, destroyed and burnt by the Armenians**. Our mosques and graves have become ruins. These was done by **the Armenians and the Armenian fascists**."*

During his speech at the opening of the Fizuli Hydroelectric Power Plant on December 15, 2012, Aliyev said:

"In the coming years, additional measures will be taken for the development of the Fizuli region. There is also the issue of restoration of the houses destroyed by the Armenian barbarians. This issue has been raised today and will get its solution. Additional measures will be taken to accelerate the social-economic development of the region. We will restore our historical and religious territories, eliminate the consequences of crimes committed by the Armenian fascists and vandals."

During his closing speech at the Cabinet of Ministers on October 10, 2012, Aliyev said: *"Each of our victories is a misfortune for Armenia."*

At the fourth meeting of the heads of diplomatic service on September 21, 2012, Aliyev declared:

"We met huge pressure while wishing to implement the Baku-Tbilisi-Kars railroad project. A lot of pressure was put by countries in the region. You cannot do that, if you do it, then Armenia will be destroyed. The issue of blockade and isolation of Armenia will be fully ensured. But regardless of anything, we did it."

On February 28, 2012 in his closing speech during the conference summarizing the results of the third year of the "State Program on Social-Economic Development of Regions for 2009-2013" Aliyev clearly stated:

"Our enemies are the Armenians of the world and the hypocritical and corrupt politicians under their control."

We can state a lot of cases of covered Armenophobic statements when, the Azerbaijani high-ranking officials, whilst presenting fake information, try to deny the existence of Armenians in the historical territories of Artsakh and Armenia, as well as the fact of having their own culture and history. Such statements obviously contradict to Azerbaijan's obligations of refraining from any actions promoting the racial partition.

It is most disturbing that the denial of the historical existence of the Armenians and the Armenian culture is repeatedly found in the school and preschool literature in Azerbaijan.²³

²³ Методическое пособие по воспитанию детей в патриотическом духе. Министерство культуры и туризма Азербайджана. Баку. 2009. [electronic source PDF] <http://clb.az/files/mv/vetenperv1.pdf> (az); <http://azerichild.info/books-education-azerbaijan-hatred-from-childhood-2.html>. Алисахиб Эрогул «Хале» сборник рассказов. Учебное пособие для внеклассного чтения учащихся средних школ. Баку. «Текнур», 2011 г. 608 с. [electronic source] <http://azerichild.info/HALE.pdf> (az); <http://azerichild.info/HALE.pdf>. Азербайджанские учебники продолжают парадное шествие. Azerichild. info.

From time to time, it appeared as a friend and through gaining our trust was showing fierce animosity. With a smile on the face, it was digging a hole for us, choosing the path of treason and betrayal.

While always taking advantage of our kindness, friendship, loyalty to our neighbors and generosity, in another words, of our humanity, it would use that weapon against us, would respond to our good with evil and would show its insidious nature. With the first possible opportunity, they would uncover the dagger and stab in the back of those who sheltered, fed, patronized and helped them.

The Armenians have made us the innocent victims of ethnic cleansing policy. We have become victims of genocide.

This immoderate nation, through veins of which flows the blood of the devil, have committed numerous terroristic actions against us.

While wagging their tail in front of the Russian Empire, they relied on the power and patronage of the Russian Empire, that always kept us under occupation. And, as a rule, they were able to isolate us and leave us alone. The Russian Empire kept our hands tied for 200 years and told the Armenians to strike us.

The Armenians took full advantage of it, adopted betrayal as a national characteristic and crossed through all of the limits of obscenity.

At every step, subjecting us to aggression, they were occupying our sacred lands piece by piece. Moreover, they chose our former Motherland- Irevan, as their capital.”

Episodes of direct or indirect Armenophobia can also be found in Azerbaijani textbooks, where the history is distorted.

It is regularly mentioned in the 7th grade textbook of Azerbaijan’s history that ancient Aghvank (which, accordingly, is referred to as old Azerbaijan), had also been subjected to Armenian aggression, despite the fact that "Albanian population and leaders helped Armenians at difficult times". At the same time, Armenians spread Christianity in Aghvank, where "it had no roots", and allegedly under the veil of Christianity occupied the "Azeri lands" with the help of Byzantine. However, Aghvank did not become a Christian country", it accepted Islam in the 7th century, whereas the struggle against the Armenians and their Christian patrons was carried out by the Turkish nation itself.²⁶

More remarkable and disturbing are the cases of praising individuals who killed Armenians, regardless of whether it was done in the battlefield or in peaceful conditions.

Thus, on June 18, 2010 the ceasefire between the Republic of Nagorno-Karabakh and Azerbaijan was once again violated by the sabotage of Azeri soldiers and resulted in the death of a number of Armenian and Azeri soldiers. It was viewed as heroism in Azerbaijan. In his speech at the funeral of Azerbaijani soldier Mubariz Ibrahimov, who had killed several Armenian soldiers, Ilham Aliyev declared:

“Killing 5 soldiers of the enemy and wounding another three of them in an uneven battle Mubariz Ibrahimov martyred... There are thousands and tens of thousands of soldiers in our army just like Mubariz, who are waiting for the order of the Supreme Commander-in Chief.”

²⁶ Ягуб Махмудов, Юсиф Юсифов, Рагим Алиев. История Азербайджана. Учебник для 7 класса. - Баку: «Маариф», 1997, с.19, прим.1 и с.24.

Even more striking is the fact that the Azerbaijani authorities praise the murderer Ramil Safarov, who killed an Armenian official Gurgen Margaryan in Budapest on February 19, 2004 while the latter was sleeping. Both of them were participating in English Language Seminar of NATO.

For instance, the former Human Rights Defender Elmira Suleymanova said: "*Safarov should become an example of patriotism for Azerbaijani youth*", whereas Agshin Mehdiyev, the former Permanent Representative of Azerbaijan in the Council of Europe and the current Permanent Representative to the United Nations said that he does not advise the Armenians to sleep quietly until the Karabakh conflict is resolved, and that the incidents similar to the one in Budapest should not be excluded.²⁷

The target of these statements are both the Armenians and the Republic of Armenia. For instance, in 2006 the Deputy Speaker of Milly Mejlis (the Parliament) of Azerbaijan Khava Mamedova stated in her report: "*it is time to obliterate Armenia the face of the earth*".

The ultimate statements of high-ranking public authorities, that encompass discrimination against Armenians and Armenia, have become the inseparable part of Azerbaijan's daily public life. Such statements are made regardless of the character of the event, environment, be it an opening of a factory, or a new building, or erection of a monument, or a victory in sports tournaments and other. The Anti-Armenian hate speech has become the inseparable and fundamental part of the speeches of Azerbaijani authorities.

Such statements at the highest political level have a great impact on the creation and establishment of enmity and atmosphere of hatred. Especially in a country where the media and the Internet are widely controlled by the government. The Anti-Armenian statements and the hate speech of the President and other high-ranking officials have a significant impact and inevitably form a negative atmosphere in the country.

All these contradict to the obligations of the state set forth by the Convention. In particular, the above mentioned statements and actions of Azerbaijani authorities violate Article 4 of the Convention, pursuant to which: "*States Parties condemn all propaganda ... which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination*". Those statements also violate the special rule set forth in the Article 4 (c), which stipulates that State Parties "*shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination*".

The statement made by Azerbaijani high political authorities, inciting ethnic hatred towards Armenians and the Republic of Armenia violate the positive obligations set forth in the Article 2 of the Convention: in particular, the general obligation of "condemning racial discrimination", the general obligation of "pursuing by all appropriate means and without delay a policy of promoting understanding among all races", as well as the special obligation set forth in the Article 2 (a), ensuring that "all public authorities and public institutions, national and local, shall act in conformity with this obligation".

2. Hate and Enmity Propaganda in the Media and the Internet

²⁷ Посол Азербайджана в СЕ не советует армянам спать спокойно, пока карабахский конфликт не решен. ИА REGNUM. 20.02.2004. [electronic source] <http://regnum.ru/news/221381.html>

In addition to the Anti-Armenian propaganda carried out by the state bodies, the Azerbaijani media is completely Anti-Armenian. Clearly, it is directed by the state authorities, hence it is the result of Anti-Armenian consistent state propaganda. The expression of hate speech by Azerbaijani political forces is accompanied by anti-Armenian propaganda in the media and in the Internet. The propaganda of hatred and hostility towards a specific group of people is prohibited by the Convention. Below are clear-cut clauses applicable to this case.

According to the Article 4 of the Convention:

“States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one color or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination...”

The Article 4 reserves the significant obligation of condemning the propaganda and all the organizations which are based on idea of superiority of one race or group. The significant part of this article obliges the states to also condemn the propaganda and organizations which attempt to justify or promote racial hatred.

The Article 4 stipulates three types of obligations:

- (a) declare punishable all dissemination of ideas based on racism, incitement to racial discrimination, acts of racial violence and other acts,
- (b) declare illegal organizations and all other propaganda activities
- (c) prevent the engagement of public institutions in incitement of racial discrimination.

According to the Article 7:

“States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.”

Thus, Azerbaijan has the following obligations set forth by the Convention: to forbid and punish all the acts of racial discrimination by any means of mass media or mass media organizations, and efficiently establish an atmosphere which is compatible with the principles and purposes of the Convention, that is, to promote tolerance, mutual understanding and peaceful co-existence between different groups. Among other things, the obligation to create an atmosphere of tolerance includes actions in spheres of education and training, that is to say, educating the younger generation in the spirit of tolerance and humanism, as well as prevent various individuals and groups from using propaganda against others, etc. Yet, as various examples testify, Azerbaijan has not taken any practical steps towards the fulfillment of its obligations under Articles 4 and 7.

The mass media and the Internet in Azerbaijan are mainly controlled by the state authorities. The fact that the mass media and the Internet are being controlled by the authorities and are subjected to censorship, allows us to conclude that the competent authorities are at least aware and give their consent to the expressions of the hatred, enmity, racism and xenophobia in the mass media, which is more than enough for referring the acts

of mass media to the state. The suppression of the press, the prohibition of political pluralism are totally non-democratic values which do not allow people to have opinions contradicting to those of the Government's.

The negative atmosphere, racism and racial discrimination against Armenians are testified by a number of statements and speeches in the media. In particular, the Internet is full of articles, statements, stories, news and other materials, the only purpose of which is to spread hatred and enmity towards Armenia and Armenians in general. It maintains and increases the negative attitude in the society towards the Armenians, always provoking hatred against them. The cases and examples of anti-racist propaganda on the Internet are summarized below.

The propaganda inciting hatred towards Armenians, is particularly the result of state and independent television. It has its further development at schools. Calling Armenians "non-believers in black clothes", the fifth grade textbook presents them as a source of all the historical disasters that has happened to Azerbaijanis.

There are various other examples of educating Azerbaijani children in the spirit of racism towards Armenians. For instance, there is a special website which is dedicated exceptionally to the establishment of enmity and hatred towards Armenians.

The above mentioned source encompasses stories, fairy tales, songs, textbooks and other educational materials presenting Armenians as negative, evil, dirty, cunning and dangerous people, which inevitably leads to the formation of essential hatred and enmity of Azerbaijani children towards the whole nation.

The hatred towards Armenians is presented also in "aphorisms" and "sayings" which are created for establishing and deepening the enmity towards Armenians. As an example of such aphorisms is "*Armenia does not have power, instead it has violence*", "*Apostasy is the national craft of Armenia*", "*Many Armenians are even ready to commit a suicide so the world would believe in genocide*", "*Once proclaiming the violence as its method Armenia should have inevitably chosen the lie as a principle*", "*The most dangerous Armenians are those who pray to God*", etc.

On December 18, 2012 Azerbaijani media portal "Kultura.az" published an excerpt from the book titled "Caucasian Days", which is based on the biography of the author- Banin, a writer of French-Azerbaijani origin. The Article is titled "*The beloved game of our childhood was 'the massacre of Armenians' and the torture of our friend Tamar*". The published excerpt tells about the racial, insulting and humiliating treatment by Azerbaijani children towards Armenian girl Tamar. The author himself characterizes this treatment as "racial". Obviously the purpose of the article is to spread hatred and enmity towards Armenians, on the other hand, it reflects the deeply rooted hatred towards Armenians in general.

Another evidence of hatred towards Armenians is the article titled "*Unlike Azerbaijan, Georgia should take necessary steps towards establishing quarantine against the Armenian infection*". Armenians are presented as an infection in the article, and the reader is warned of the necessity of fighting the infection, i.e. the Armenians.

In his interview to the Azerbaijani media portal www.vesti.az Georgian professor of historical sciences Guram Merhulia characterized Armenians as "*cancer tumor*" that should be removed from South Caucasus.

In another article on the website the author compares Armenians with jackals and labels them as “servile”, “coward”, “inferior”, “villain”.

In numerous articles the positive attitude towards Armenians is a subject of mockery. Those articles emphasize that all misfortunes and problems of Azerbaijan arise from Armenians. The purpose of these publications is the resettlement, establishment and enlargement of the enmity against Armenians.

In the article published in day.az the deputy executive secretary of «Yeni Azerbaijan» party Siravush Navruzov gave a negative assessment to the labor rights protection activists linking his assessment to the fact that many activists are partly Armenians.

Another series of publications shame those Azerbaijanis who are somehow connected to Armenians. For instance, an article states that the grandmother of one of the members of Azerbaijani parliament is Armenian. In another case a military figure is put to shame because his wife is an Armenian, or, for instance, an Azerbaijani artist is publicly subjected to moral preach for performing Maugham (national Azeri song) accompanied by an Armenian singer.

The majority of the above mentioned publications have the purpose of slandering the reputation of the given individual. In some cases, the victims of those publications make statements denying their Armenian origin or the connection with Armenians. For instance, in her published interview the member of Azerbaijani parliament Gyular Ahmedova tells about her grandmother, while emphasizing the Azeri origin of the grandmother. Moreover, she tells a story from her childhood in which her mother warned her to be careful while playing with Armenian children and called them “*snakes*”. The member of parliament finishes her interview stating that as growing up she came to the same conclusion as her mother: “*When I was grown up, I realized that they were little snakes and a snake always remains a snake*”.

And on the contrary, publications in the Internet and the media praise those Azerbaijanis who have demonstrated anti-Armenian attitude so typical of Azerbaijani society. For instance, an article praises an Azerbaijani singer who refused to meet a Turkish singer because the husband of the latter is Armenian.

The Azerbaijani mass media demanded to ban the sale of Turkish jackets as their colors were reminiscent with the Armenian flag. The sellers removed those jackets from the counters.

Thus, respective to the above description, the Azerbaijani media is full of hatred towards Armenians, racism and xenophobia. The cited articles compose only a part of the materials and publications available on the Internet.

The articles, interviews, statements, opinions represent the general negative atmosphere in the society. Respective to the above description, the hate speech of the President of Azerbaijan instigate the society.

Although the majority of the observed acts were committed by individuals and different organizations, they, in fact, can be referred to the Republic of Azerbaijan. Thus, in accordance with the provisions of the International Law Commission on the responsibility of the State, the act “*in accordance with international law should be regarded as committed by the State and, to the extent that the state has recognized and accepted the act as its own*”. This rule was applied in 1980 by the International Court of Justice to the decision on case of the United States diplomatic and consular staff in Tehran, which refers to the responsibility of Iran on blocking the US diplomatic area from militants and not preventing the hostage taking of the staff.

In this case Iran was found responsible not only for failing to protect the diplomatic area, but, as stated by the International Court of Justice, also for approving the actions of militants “*by the state institutions of Iran, and the decision to preserve them turned the continuous occupation of the Embassy and the staff hostage into an act committed by the state*”. The approval was expressed by a number of institutions of Iran and statements by the religious leader Ayatollah Khomeini particularly stating: “*The people of Iran will not allow the release [of hostages]*”.

In this particular case the hate speech of the Azerbaijani high political leaders testifies that the racial and xenophobic acts of individuals and organizations are acts attributable to the Republic of Azerbaijan. Therefore, it is obvious that Azerbaijan has violated its obligations under Articles 4 and 7 of the Convention.

IV. EVENTS OF APRIL 2-5, 2016²⁸

The information contained in the reports of the Human Rights Defender of the Republic of Artsakh has been analyzed and used as a source herein, given the fact that the Defender himself has conducted a complete and comprehensive fact-finding mission resulting in a document encompassing even more complete and comprehensive information. The publications in mass media have also been used as a source.

On April 2-5, 2016 Azerbaijan executed an armed attack on the territory of the Republic of Artsakh, violating the norms prohibiting the use of force in the international relations and the principles of the International Humanitarian Law. The civilian population of the borderline and the deep rear became the main target of those attacks. The Azerbaijani armed forces rocket-propelled a number of settlements in Artsakh, deploying various weapons under their disposal (“BM-21” /Grad/ rocket-installation, “Smerch” Multiple Rocket Launcher, artillery of various caliber /including 152 mm cannons/, TOS-1 Heavy Flamethrower System “Solnsepyok”, MI-24 attack helicopters, tanks and other types of combat vehicles, unmanned combat aerial vehicles), whilst causing death and injury to civilians, including women, children and elderly. For the security purposes the population of Talish, Matakhis, Martakert were evacuated. There is much evidence of the mentioned atrocities and inhuman violence of Azerbaijani armed forces towards the peaceful population of Artsakh.

The aggression launched by Azerbaijan against the Republic of Artsakh is an international crime against peace and humanity.

On the same days the Defense Army of the Republic of Artsakh took over the protection of the peaceful population of Artsakh from the Azerbaijani aggression and carried out necessary measures for the suspension of the large-scale military offensive.

The events in chronological order:

- **In the early morning hours of April 2**, the Azerbaijani side initiated a large-scale offensive attacks on Artsakh, used almost every type of military equipment in its arsenal.

At around 10:00 AM the official sources of Artsakh informed that the bombardment of peaceful settlements by the Azerbaijani side caused the death of a 12-year-old Vaghinak Tatul Grigoryan in the village of Zoravan, Martuni region, Artsakh, two more children were wounded and hospitalized²⁹.

- **On April 3**, starting from 06:00 AM Azerbaijani armed forces continued the aggressive armed attacks in the southern direction of the frontline, using missile and combat vehicles.

On April 3, the Azerbaijani side issued a statement on alleged unilateral ceasefire, but continued the military actions and the shelling of the civilians in Martakert.³⁰

- **In the early morning hours of April 4**, alongside the contact line the Azerbaijani side continued shelling the positions of Defense Army and the Armenian

²⁸ For the purpose of this opinion, the legal assessment of the cases of murder of three civilians in Talish village and the desecration of their corps, as well as the torture of the soldiers of Defense army of Artsakh and the desecration of their bodies during the armed attacks on Artsakh from April 2 till April 5 of this year, will be subjected to discussion from the point of view of international law.

²⁹ <https://russian.rt.com/article/156800>, <http://razm.info/81666>

³⁰ <http://razm.info/81645>, <http://www.civilnet.am/news/2016/04/03/martakert-karabakh-frontline-escalation/289868>

settlements with mortars and cannons. At around 07:00 AM more intensive shelling to the south-eastern and north-eastern directions of contact line began.³¹

Total of 36 persons or their corps fell under the control of the Azerbaijani armed forces, towards 26 of which war crimes were committed by Azerbaijani armed forces: they tortured, murdered and desecrated the bodies of the people (*which is considered as a type of war crimes- encroachment on human dignity*). As a matter of fact, these crimes were of coordinated and organized character, since they were implemented on April 2 by all divisions of the Azerbaijani armed forces who kept those persons under control in all three geographic directions.³²

Namely, in Talish 3 unarmed persons were murdered and their bodies were desecrated. The old woman was tortured, which was verified by the expert's conclusion.

Moreover, there were cases of beheading of two soldiers: in the first case the soldier was already dead. The act of beheading was committed in the presence of the survived soldier.

The other soldier was still alive while being beheaded.

³¹ <http://razm.info/81727>

³² The crimes committed by the Azerbaijani armed forces towards persons or corps of those, under their control are thoroughly, case-by-case reflected in the second interim report by the Human Rights Defender of the Republic of Artsakh. Link http://ombudsokr.am/en/docs/Report_PUBLIC.pdf%20, p. 9-24

V. VIOLATIONS OF THE INTERNATIONAL LAW DURING THE APRIL WAR

The murder of civilian population (civilians), the prisoners of war, the conspirators, who have surrendered the weapons or stopped the military actions due to illness, injury, detention or any other reason, is recognized as an international crime (war crime) in accordance with the international customary law.

In particular, those were recognized as war crimes by Nuremberg and Tokyo military tribunals and numerous national courts. Furthermore, those are defined as war crimes in the Charters of the International Criminal Tribunal of Former Yugoslavia and International Criminal Court, as well as in the Criminal Codes of the majority of the countries.³³ Such acts are considered as serious violations of the principles of the International Humanitarian Law, and in particular, the IV Geneva Convention of 1949 (Article 147), the common Article 3 of Geneva Conventions and the First and Second Protocols of 1977 (accordingly Articles 75-2-a and Article 42-a).³⁴

The murders of three civilians in the village of Talish were committed by the Azerbaijani forces far from the dislocation of armed actions, and those murders were obviously targeted actions without any military necessity. Therefore, those are subject to be qualified as murders of civilians, being serious violations of Humanitarian law, hence being war crimes.

Meanwhile, those actions violate Azerbaijan's obligations under the international law on human rights, in terms of the right to live.

Similarly, in accordance to the applicable conventions and customary norms, the torture of such persons and encroachment to human dignity, in particular, the insulting and humiliating attitude are considered to be serious violations of the International Humanitarian Law and hence are considered as war crimes.³⁵ Such actions violate "fundamental humanitarian considerations", the minimum humanitarian requirements that must be met in each and every situation.³⁶

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person based on discrimination of any kind, by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity is recognized by the international law as torture.³⁷

In this particular case it is obvious from the context that relevant people were subjected to torture merely due to their nationality, i.e. a reason based on discrimination. Therefore,

³³ ICC Statute, Article 8(2)(a)(i) & (c)(i); ICTY Statute, Article 2(a); ICTR Statute, Article 4(a); Statute of the Special Court for Sierra Leone, Article 3(a) (*ibid.*, § 677); Jean-Marie Henckaerts, Louise Doswald-Beck, Customary International Humanitarian Law: Volume 1, Rules, Cambridge University Press, 2005, pp. 311-314

³⁴ The fact that Azerbaijan has not ratified the Protocols of Geneva Convention does not affect the corresponding qualification, as the norms in question are the codification of customary law. See *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. USA), merits, ICJ Reports 1986, § 218

³⁵ International Military Tribunal Charter (Nuremberg), Article 6(b), 1949 Geneva Conventions (I, II, III, IV), common Article 3; Geneva Convention (I) on Wounded and Sick in Armed Forces in the Field for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1949, Article 12, Article 50; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 1949, Article 12, Article 51; Geneva Convention (III) relative to the Treatment of Prisoners of War, 1949, Article 17, Article 87, Article 89, Article 130; Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, Article 32, Article 147; ICC Statute, Article 8(2)(a)(ii) and (iii) and (c)(i), Additional Protocol I, Article 75(2); Additional Protocol II, Article 4(2); ICTR Statute, Article 4(a) and (e); Statute of the Special Court for Sierra Leone, Article 3(a) and (e); Jean-Marie Henckaerts, Louise Doswald-Beck, Customary International Humanitarian Law: Volume 1, Rules, Cambridge University Press, 2005, pp. 315-318

³⁶ *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. USA), merits, ICJ Reports 1986, § 218; ICTY, *Kumarac case*, Judgement, 22 February 2001, §§ 466, 883, 886 and 888; ICTY, *Furundzija case*, Judgement, 10 December 1998, §§ 137-139, Part IX.

³⁷ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1

the relevant actions of Azerbaijani armed forces are torture by means of international law, and shall be qualified as a war crime and a serious violation of Humanitarian Law.

The desecration of corps is recognized in the international law as an “encroachment towards human dignity” type of war crime (see Article 8-b-xxi and Article 8-c-ii of the Chapter of the International Criminal Court) and a violation of the International Humanitarian Law (in particular, in accordance to the common Article 3 of Geneva Conventions, as well as *a fortiori* Article 16 of Hague Convention (X), Article 15 of the Geneva I Convention, Article 18 of the Geneva II Convention, Article 16 of the Geneva IV Convention, Article 34 of the I Protocol and Article 8 of the II Protocol).

Even Azerbaijan, in 1993 at the level of the Minister of Internal Affairs, accepted that the corps of the enemy soldiers should not be desecrated.³⁸ Accordingly, the desecration of the corps of the civilians killed in the village of Talish, as well as the corps of the soldiers of the Defense Army of the NK committed by the Azerbaijani armed forces is a war crime and a violation of the International Humanitarian Law. Meanwhile, these actions violate Azerbaijan’s obligations under the International Law on Human Rights in terms of prohibition of cruel and inhuman attitude.³⁹

³⁸ Azerbaijan, Ministry of the Interior, Command of the Troops of the Interior, Order No. 42, Baku, 9 Jan. 1993, § 5.

³⁹ See, for instance *Elberte v. Latvia* (Application no. 61243/08), ECHR Judgment, 13 January 2015 (final: 13/04/2015), §§ 133-143

CONCLUSIONS

❖ The policy of racial discrimination implemented by the Republic of Azerbaijan is proved in the following dimensions:

(1) In general, the existence of a negative environment and enmity towards Armenians in Azerbaijan, by referring to applicable historical preconditions proving the existence of racist attitude,

(2) the cases of hate speech by the President and other state officials of Azerbaijan,

(3) the propaganda of enmity on the Internet and mass media,

(4) the obvious human rights' violations, based on racial discrimination,

(5) the devastation of Armenian cultural heritage in the territory of Azerbaijan.

The above mentioned are widely spread, i.e. these are linked evidences of the existence of an Anti-Armenian environment and policy in all spheres of public life in Azerbaijan.

The mentioned violations of the International Convention on the Elimination of All Forms of Racial Discrimination are sufficient to state that the Republic of Azerbaijan is implementing an agreed, well-organized and sustainable policy of racial discrimination against Armenians.

All these are in contradiction to the obligations of states set forth by the Convention. In particular, the above mentioned statements and actions of Azerbaijani authorities violate the provisions of Article 4 of the Convention, according to which: *“States Parties condemn all propaganda... which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination”*. The above mentioned also violate the special rule set out in the Article 4 (c), stating that State Parties of the Convention *“Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.”*

The statements made by the Azerbaijani high political leadership inciting ethnic hatred towards Armenians and the Republic of Armenia violate the positive obligations set forth in the Article 2 of the Convention, in particular, the general obligation of “condemning racial discrimination”, the general obligation of “pursuing by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races”, as well as the obligation set out in part (a) of the same article of “ensuring that all public authorities and public institutions, national or local, shall act in conformity with this obligation”.

❖ While summarizing the above mentioned in terms of the April war, it should be underlined that the armed forces of Azerbaijan committed serious violations of the International Humanitarian Law towards peaceful civilians and military personal, which shall also be qualified as war crimes. In particular, the matter refers to the murders of civilians and militants who had suspended their participation in military actions, as well as to the cases of torture and desecration of the corps.

❖ In terms of the legal demand of Artsakh people, it is noteworthy to point out once again that Artsakh people exercised their right to self-determination in accordance with the international law, and Azerbaijan cannot object to the exercise of this right based on the principles of territorial integrity or *uti possidentis*. Meanwhile, the policy of Armenaphobia in Azerbaijan excludes the possibility of bringing by any means the Armenians of Artsakh under Azerbaijan's jurisdiction, and re-affirms that there is no alternative to the self-determination of Artsakh.