Sarcouncil Journal of Arts Humanities and Social Sciences

ISSN(Online): 2945-3488

Volume- 02| Issue- 06| 2023

Review Article **Received:** 12-04-2023 | **Accepted:** 11-05-2023 | **Published:** 15-06-2023

Karabakh War: Armenia's Violations against International Law

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Abstract: Nation-states have undertaken particular international obligations through treaties, and to some extent, a few of those obligations might be derogated due to an emerging situation. The article analyzes the violations of peremptory norms, International Humanitarian Law principles and rules, and International Human Rights Law norms applicable to Armenia during an armed dispute. The article distinguishes the scope and rationale of the ban on the use of force in the example of the armed conflict between Armenia and Azerbaijan.

Keywords: International law, international humanitarian law, UN resolutions, POWs and eco-terrorism (ecocide), ICJ advisory opinion, self-determination, and seccession.

INTRODUCTION

The Path to Armenian and Azerbaijani Escalation over Karabakh

Throughout the years, Armenians have made unlawful territorial claims against Azerbaijan. However, no ethnic confrontations occurred between the two nations, Christian Armenians and Muslim Azerbaijanis. The Turkmenchay agreement, concluded in the first part of the XIX century, more precisely in 1828, between Russia and Iran, profoundly altered the course of events in the entire region. Hundreds of thousands of Armenians were settled in the Karabakh region as a result of the arrangement.

Furthermore, according to the 1829 Adrianople Treaty between the Ottomans and the Russians, around 84,000 Armenians were forced to migrate to the Karabakh region. According to Russian historians, by the mid-1800s, the number of Armenians who had resettled in modern-day Armenia and the Karabakh region was estimated to be approximately a million.[1]

The next step was to establish an Armenian state in the Caucasus, which was already largely populated by Armenians. It should be emphasized that the 1990s were marked by two violent activities, including invasion and ethnic cleansing. Armenia seized around 5% of Azerbaijan's territory due to the lack of a standing army and a well-established administration of Azerbaijan at that time. Within these processes, Russian-backed Armenian forces slaughtered peaceful civilians in Azerbaijan's Khojaly city on February 25-26 1992, eliciting a significant response from international organizations and states. However, no decisive action was taken against the perpetrators of this heinous crime.

Armenia continued to occupy Azerbaijani territory until 1993, despite UN Security Council Resolutions calling for these invasions to end.

The armed conflict was attempted to be resolved through the OSCE Minsk Group for a long time, and various bilateral agreements were made by the parties to the conflict, including the humanitarian ceasefire agreement signed in May 1994. Despite occasional infractions, the ceasefire regime was maintained.

Unfortunately, international organizations were unable to resolve this issue in conformity with international law. Only the Organization of Islamic Cooperation (OIC) sees Armenia as an aggressor and supports Azerbaijan's territorial integrity. Aside from that, it must be mentioned that the requirements stated in the well-known UNSC Resolutions 822, 853, 874, and 884 remained on paper. Despite the lack of demanding language in those documents requesting Armenia to leave these territories, the UNSC unanimously declared Azerbaijan's territorial integrity and remained silent rather than using its sufficient sanction power to demand that Armenia implement the Resolutions.[2]

I. Uti-Possidetis Doctrine and Its Legal Concept

One of the core international law principles is state responsibility. According to *Malcolm N. Shaw*, every time a state commits an internationally illegal act against another state, this establishes

[1] Ferhat Küçük, '*Armenia is wrong this is what law and history say'*, (University of Duke, 2020), <https://www.dailysabah.com/opinion/op-ed/armenia-is-simply-wrong-this-is-what-law-and-hist ory-say > accessed 14 February 2021

[2] (n 4) Ferhat Küçük

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DOI- DOI- https://doi.org/10.5281/zenodo.8043857

international responsibility for the violated state, which should make reparation. [3]

Armenia, as a full member of the United Nations, has blatantly violated its international obligations arising out of international treaties to which it has acceded, including those related to general security and the peace-related principles of the organization by using force against the internationally and *de jure* recognized territories of its neighboring state – Azerbaijan, with the aim to seize new areas and to foster the annexation of Karabakh to Armenia, with a possible maneuver to prove that Armenia is not a party in this conflict but rather the people of Karabakh are. Thus, while emphasizing the direct violation of territorial integrity arising from the use of force against another state, Armenia should therefore pay reparations to Azerbaijan under international law for the casualties it caused and the atrocities of the conflict.

The use of force is widely prohibited by both customary international law and treaty law, as stipulated in Article 2 (4) of the UN Charter, according to which the Member States should abstain from using any force against another sovereign state in any way conflicting with the purposes of the United Nations. [4]

Indeed, some may argue that customs are not legally-binding upon states, but taking into account their applicability by international tribunals, today's customary laws are sources of international law, and, as such are binding. For example, the tribunals established after World War II relied on custom to determine criminal responsibility.[5]

The International Law Commission's Draft Articles on State Responsibility also prohibit the violation of the principle of respect for territorial integrity.[6] As earlier stated, Armenia has consistently denied its involvement in the armed conflict, claiming that it's only interest is in the protection of the rights of ethnic Armenians living in Karabakh, Azerbaijan's *de jure* territory, and that it has taken only defensive measures.[7]

However, Article 50 of the ARSIWA explicitly states that the threat or use of force has no legal effect as defensive measures.

A violation of the principle of *uti-possidetis*, broadly defined by the 1974 Resolution on the Definition of Aggression, according to which any kind of military attack, including occupation, annexation, bombardment, or blockade of the territory of another state primarily amounts to a crime of aggression.[8]

Furthermore, the principle of *uti possidetis juris* cannot be applied to the territories of any sovereign state without its prior consent. In the case of Former Yugoslavia, the Yugoslav Arbitration Commission, in its Opinion No. 2, held that the right to self-determination is relevant when two states concerned agree.[9]

Another gross violation of Armenia was its open disrespect for the UNSC Resolutions of 1993 (822[10], 853[11], 874[12] and 884[13]) on Karabakh that have been in effect during the past 28 years, which have resolutely condemned and demanded (822) the Occupying Forces to leave the occupied areas of Azerbaijan.

So, by using the wording of the Occupying Forces, the abovementioned resolutions overtly confirmed the fact of the occupation. The document does not refer to any "third party", in the capacity of the so-called "Artsakh Republic", since the political and military regime, established by ethnic Armenians with the support of the Government of Armenia in the formerly occupied *de-jure* areas of Azerbaijan,

[3] Malcolm N. Shaw, *International Law*, (first published 1977, 3rd edn, Cambridge: Grotius Publications 1991) 481

[4] UN Charter 1945, art. 2 (4)

[5] Dapo AKANDE, "Sources of International Criminal Law" in Antonio CASSESE, ed., The Oxford Companion to International Criminal Justice (Oxford: Oxford University Press, 2009), 41 at 49;

[6] ILC, Report of the International Law Commission on Responsibility of States for Internationally Wrongful Acts (2001) YBLC, A/56/49(Vol. I)/Corr.4., 26

[7] Vladimir Socor, 'How Yerevan Walked Away From The 'Basic Principles' Of Karabakh Conflict Settlement' (Eurasia Daily Monitor, 25 November 2020 < https://jamestown.org/program/how-yerevan-walked-away-from-the-basic-principles-of-karabakh-conflict-settlement/ > accessed 11 December 2021

[8] UNGA Res 3314 (XXIX) 14 December 1974

[9] Alain Pellet, 'Note sur la Commission d'Arbitrage de la Conférence Européenne pour la Paix en Yugoslavie', [1991] Volume XXXVI AFDI < https://www.persee.fr/doc/afdi_0066-3085_1991_num_37_1_3021 > accessed 12 December 2021. See also Alain Pellet, 'Activité de la Commission d'Arbitrage de la Conférence Européenne pour la Paix en Yugoslavie' [1992] AFDI, p. 220

[10] UNSC Res (30 April 1993) UN Doc S/RES/822

[11] UNSC Res (29 July 1993) UN Doc S/RES/853

[12] UNSC Res (14 October 1993) UN Doc S/RES/874

[13] UNSC Res (12 November 1993) UN Doc S/RES/884

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is considered a separatist regime and was not recognized at the international level. Article 42 of the Hague Regulations provides that: "Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised" and as a rule of customary international law, this provision is binding upon all States.[14]

a) Right to Self-Rule

Until recent days, international law, and the United Nations remained very unclear regarding the concept of cessation of hostilities and left this matter open to discussions.[15]

However, the absolutism of this right or principle, whatever it is called in modern international law as noted above, is a highly disputable matter, as this must not be a pretext for other so-called High-Contracting Parties or "Big States" to intervene the internal affairs of another States. Furthermore, as specified by the Montevideo Convention on the Rights and Duties of States (1933), as was considered mostly international customary law, empower a state to enter into relations with other states. So here, international law defines several criteria for statehood.[16] Let's look through these in our case. First, the Karabakh conflict emerged between two sovereign states, Armenia and Azerbaijan, but Armenia denied being the only party to the conflict and tried to involve the so-called Artsakh separatist regime in discussions as a third party. Both exercise full jurisdiction over their own populations; nevertheless, the question of the permanence of Armenians, based on evidence from foreign archives and political maps of those times is highly disputable. There are documents evidencing that Armenians were settled in the Caucasus so as to create barriers between Georgians and Turks, as well as defeat the Turanian movement. E.g., in the October 1918 Memorandum, Britain's Foreign Office's Political Intelligence Division clearly stated that Armenians in the Caucasus are not aboriginal people, and they came to the Caucasus in past decades as refugees from Turkey during the Russian reign to promote clashes between the Georgians and Tatars.[17]

Regarding the independence or annexation of Karabakh, the so-called Artsakh Republic, it should be noted that the armed conflict started by one sovereign state against another and any ethnic people living in one's territory does not mean that they always have the right to self-determination. Because the ethnic people living in Karabakh (until the conflict, together with Azerbaijanis and other peoples, like Kurds, Russians, and others) are Armenians, they were living under the jurisdiction of the State of Azerbaijan on an equal basis with other ethnic minorities. However, the inculcation of hatred among Armenians in Karabakh led to escalations in the region. So that, per certain requirements for statehood under international law, which include a) a permanent population, b) defined territory, c) government, and d) capacity to enter international relations with other states. Consequently, ethnic Armenians have no right to self-determination or annexation to Armenia, because first, Armenians have already their own sovereign state, which is Armenia, therefore, there is no need for the second state for them; Second, both Armenians and Azerbaijanis have defined territories internationally and state borders *de jure* recognized while being a member of the United Nations in 1992, and Azerbaijan's recognized territories also included two autonomous republics- the Nakhichevan Autonomous Republic and Nagorno-Karabakh Autonomous Republic of Azerbaijan; Third, both have political governments based on elections; and, Fourth, both have international relations with many other foreign states.

In international law, there are two types of secessions, which include unilateral and concessional secessions, and it should be noted that the former is preferred more frequently rather than the other. In 1920, the Council of the League of Nations in the *Aaland case*[18] (disputed territory between Finland and Sweden) held that the

[14] *Construction of a Wall*, ICJ Reports, 2004, pp. 136, 172

[15] With the exception of the Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States (UNGA Res. 36/103, UNGAOR 36th Sess., UN Doc A/RES/36/103 (Vol. X), at 80 (9 December 1981)),

[16] Montevideo Convention on Rights and Duties of States (adopted 26 December 1933, entered into force 26 December 1934) OAS Law and Treaty Series No. 37 (Montevideo Convention) art.1

[17] N.A. Maxwell, ed, *Azerbaijan Democratic Republic. Great Britain's Archrivals Documents* (Baku: Chashiogly, 2008), 110 <http://anl.az/el_en/37028.pdf> accessed 11 December 2021

[18] *Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo* (ICJ Advisory Opinion) 2009 <https://www.icj-cij.org/public/files/case-related/141/17888.pdf>

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principle of self-determination can be applied to the inhabitants of the Island as a minority group as a last resort when the State of Finland does not want to take other effective safeguards.[19] Furthermore, the Council of Jurists also held the view that even though the principle of self-determination of peoples is an important element in realizing their will to have autonomy, the Covenant of the League of Nations does not provide any provision in this regard and positive international law does not recognize the right of ethnic groups to secede by the simple expression of a wish.[20]

In the *Frontier Dispute* case, according to the Court secessionist self-determination should apply in colonial situations.[21]

So, from the perspective of the right to self-determination of all peoples,
can Armenians living in request to be unified with Armenia? or vice-versa, can Armenia assert a claim for Karabakh to be united with it?

Considering all the points above, the answer would be "no", because in order to apply the right to self-determination to the people of Karabakh, the wishes of all other nationalities living there must be taken into account, not just those of the Armenians. Furthermore, to do so, then the Armenians should first prove allegations of systematic and massive violations of human rights and the fact of discrimination against them by other residents of Karabakh. Because, one of the two types of cessations - unilateral right to secede (which is based on more precisely, the Remedial Right Only Theory), includes large-scale and persistent violations of basic human rights. This theory recognizes only systematic and mass violations of basic human rights as a ground, including genocide or other mass killings as reasonable justification for unilateral secession. [22] By virtue of that, Armenians have not been suppressed, persecuted, or subjected to any mass killings, including genocide. The history shows quite the opposite of this; these are Azerbaijanis who were massively murdered at different times based on the hate crimes based on ethnicity committed by Armenians, e.g., the 31 March 1918 massacres across all territories of Azerbaijan, as well as massacres in Bashlibel, Aghdaban villages of Kalbajar district, and the 26 February 1992 Genocide of Khojaly, which was a part of the Karabakh region, Garadaghly village of Khojavend city plus the Kushchular and Malibeyli villages of Shusha city, which resulted in the massacre of nearly 743 Azerbaijani civilians committed by Armenians.[23]

Furthermore, as reported earlier, there are reports earlier in this article concerning mass killings of Muslim populations by ethnic Armenians at various times in history. Consequently, this argument has been exhausted in the present case. Second, most of the time, Kosovo is shown to be a possible precedent for Karabakh, which is also arguable in this case due to the lack of similarities. The point is that Kosovo wished to have a sovereign state, while the so-called Artsakh Republic wants to be independent in order to later be able to unite with Armenia, which is called not self-determination, but annexation. On the other hand, Kosovans (Albans) are two million people and were subjected to ethnic cleansing by Milošević. In Karabakh, on the contrary, as stated earlier, Azerbaijanis were massively killed, not Armenians. The fact of brutal crimes committed by Armenian soldiers had been admitted in the book of the brother of the Armenian military leader Monte Melkonian, "*My Brother's Road: An American's Fateful Journal to Armenia*", by Markar Melkonian, who confessed that the massacre committed in Khojaly had been

[19] Aaland Islands Case (1920) League of Nations OJ Spec Supp 3. See also The Aaland Islands Question: Report Submitted to the Council of the League of Nations by the Commission of Rapporteurs (1921) League of Nations Doc. B7/21/68/106, p 28

[20] Report of the International Committee of Jurists entrusted by the Council of the League of Nations with the task of giving an advisory opinion upon the legal aspects of the Aaland Islands question [1920] League of Nations OJ
Special Supp 3 < https://www.ilsa.org/Jessup/Jessup10/basicmats/aaland1.pdf > accessed 11 December 2021

[21] *Frontier Dispute Case* [1986] ICJ Reports 554

[22] Buchanan Allen, 'Secession' in Edward N. Zalta (ed) *The Stanford Encyclopedia of Philosophy* (Fall edn, Metaphysics Research Lab, Stanford University, 2017)
< https://plato.stanford.edu/archives/fall2017/entries/secession/ > accessed 15 October 2021

[23] Elkhan Mehtiyev, 'Security Policy in Azerbaijan' (2001) NATO -EAPC Academic Forum Manfred Wörner Research Fellowship 1999-2001 Project, p. 11; < https://www.nato.int/acad/fellow/99-01/mekhtiev.pdf > accessed 12 October 2021

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revenge".[24] In addition, as regards Khojaly bloody events, the former President of Armenia, Serzh Sargsyan, clarified during his interviews with British Journalist Thomas de Waal that the Armenian leadership then broke all stereotypes that Armenian armed forces would not kill the peaceful population of Khojaly.[25]

So, considering this, Armenians were not oppressed in Karabakh, but instead they themselves committed genocidal acts against the Azerbaijanis living there. In this context, the ICJ left open the question of Kosovo's independence and adopted not a court decision but rather an advisory opinion, which may be interpreted as that Kosovo case cannot set precedent. Otherwise, such a declaration of independence of Karabakh Oblast would violate general international law, and the binding UNSC Resolutions of 1993 on Nagorno-Karabakh, which admitted the territorial integrity of Azerbaijan. It should be noted that none of the UNSC Resolutions contained any provision about the right to self-determination or any hint that Azerbaijan violates any norms or principles of international law; on the contrary, they recognized the occupation of the territories belonging to Azerbaijan and demanded the withdrawal of all Occupying forces from the occupied areas. In addition, in an ICJ Advisory Opinion, Judge Koroma stated that positive international law does not recognize the right of ethnic groups to secession from a state without the consent of a state.[26]

b) Legal Effects of the UN Resolutions: Binding or Declaratory

Surely, one may argue that the United Nations Resolutions are not of an imperative nature, but rather declaratory, so they cannot be treated as a source of binding law as the so-called legislature of international law in the capacity of the UN General Assembly (UNGA), its resolutions are not legally binding.[27] Several issues have to be clarified with regard to the legal effect of documents adopted by the UNGA. It should be noted that the UNGA adopts not only resolutions but also declarations. First, let's look through the declarations that are clear from the titles; such documents are of a declaratory nature and only restate the law. However, in accordance with the International Law Commission Guiding Principles on unilaterally adopted declarations capable of creating legal obligations for the States, it explicitly states that declarations may create legal obligations, and in order to determine the legal effects of declarations, it is necessary to consider the language of such documents. Moreover, only a unilateral declaration adopted by a competent authority, vested with the power to do so, establishes an international obligation for the State.[28] As well as, a resolution is 'binding' when it can impose obligations on its addressee(s),[29] So, what is central to the issue of the binding force of UNSC resolutions, although such documents have no binding effect, is that, to some extent, the UNSC resolutions might have such effects on the Member States as it depends on *rationae materiae (covers subject matters)* and *rationae personae, all Member States*, as well. Furthermore, UNSC resolutions related to international security and peace matters,[30] including the fulfillment of its responsibilities under Chapter 7 of the UN Charter are binding.[31]

Although, some scholars[32] argue that the binding force of UN resolutions mainly stems from their

[24] Melkonian Markar, '*My Brother's Road: An American's Fateful Journal to Armenia'* (London: I.B.Taurus, (2005) p.213

[25] Thomas de Waal, '*Black Garden: Armenia and Azerbaijan through the peace and war'* (first published 2003, Newyork UP 2004), pp.172-173

[26] *Accordance with international law of the unilateral declaration of independence in respect of Kosovo* (ICJ Summary of the Advisory Opinion) 2010, p. 3, < https://www.icj-cij.org/public/files/case-related/141/16010.pdf > accessed 13 October 2021

[27] Shaw (n 6) 3; Johnson, 'The Effect of Resolutions of the General Assembly of the United Nations' [1955-56] in 32 Brit. YBIL, 97

[28] ILC, 'Report of the International Law Commission at UNGA 58th Session' (1 May -9 June and 3 July-11 August 2006) UN Doc A/61/10. See also ILC Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations' 2006 paras. 1, 2 and 3 https://legal.un.org/ilc/texts/instruments/english/commentaries/9_9_2006.pdf accessed 11 December 2021

[29] Marko Divac Öberg, 'The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ' (EJIL 16 (2005)), 879-906, at 880; http://www.ejil.org/pdfs/16/5/329.pdf

[30] Competence of the General Assembly for the Admission of a State to the United Nations (ICJ Advisory Opinion) [1950] ICJ Rep 4, 8-9

[31] Chapter VII (n7)

[32] Rosalyn Higgins, 'The Advisory Opinion on Namibia: Which UN Resolutions are Binding Under

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language or the terminology used in the resolutions like "call on", "welcome", "condemn", "demand", "recommend" etc. In the 1971 *Namibia* Advisory Opinion, the ICJ stated that whether the UNSC resolutions have binding or non-binding effects, it is necessary to look at their language or terminology.[33]

Thus, it should be noted that, first, UNSC and UNGA resolutions on Karabakh were unilaterally adopted by the so-called UN legislative organs that are vested with the power to do so. Second, those Resolutions were related to international security and peace in the entire South Caucasus region and its population. Third, UNGA Resolution 62/243 of 2008 particularly, demanded "the immediate, complete, and unconditional withdrawal of all Armenian forces from the occupied territories of Azerbaijan"[34] and the resolution has invoked the provisions of the UN Charter, particularly, the Chapter 7, indicating the necessity of the enforcement of the previous resolutions on Karabakh. Furthermore, the document reaffirms support for the territorial integrity and sovereignty of Azerbaijan within its internationally recognized borders which include Karabakh. Consequently, in view of the fact that UNSC Resolutions to some extent may have legal effect,[35] in particular if they are related to peace, Armenia as an Occupying Power should be held liable for its violations of international obligations contrary to the principles and purposes of the United Nations.

c) Jurisdiction and International Human Rights Obligations of Armenia

International law imposes international human rights obligations (IHRL) on states as its primary subjects. This has been confirmed by the ICJ in its Wall Advisory Opinion[36] that rules and principles of international human rights are applicable at all times during hostilities, be it of a local or international character.

The states must ensure an equal environment for all people without any discrimination based on nationality, race, religion and other protected grounds in compliance with treaty and customary law.

From the very beginning of the escalation in the First Karabakh War, Armenia has been claiming that it has not been a party to the conflict but that it is just protecting Armenians living in Karabakh. Here, it would be right to reiterate that Karabakh is a legally recognized territory of another state, neighboring Azerbaijan, and the state that is responsible for protecting its Armenian people is an issue for Azerbaijan, rather than Armenia, because the population of Karabakh, including ethnic Azerbaijanis and ethnic Armenians, are nationals of the Republic of Azerbaijan. For Armenia to occupy the territory of another state with such arguments is without legal ground, given that, under international law, a state's jurisdiction is primarily territorial and should be exercised on its own territories.[37]

All Member States of the United Nations abide by the enforcement of provisions of the UN Charter[38] as well as obligations under the Vienna Convention on the Law of Treaties (VCLT),[39] of binding character, stipulating that states shall refrain from the use of force against the territory of another state. Armenia has directly violated this norm by occupying territories of another Member State, namely, Azerbaijan. Furthermore, according to the International Law Commission, the prohibition of the use of force, genocide and other crimes is *jus cogens*, which means absolute rights and no circumstance is permissible to derogate from. In general, states have accepted the notion of *jus cogens* under Article 53 of the VCLT.[40] States, that consent being bound by the UN Charter in

Article 25 of the Charter?' [1976] in 21 Int'l & Comp. L.Q. 270, 282.

[33] Dan Joyner, 'Legal Bindingness of Security Council Resolutions Generally and Resolution 2334 on Israeli Settlements in Particular' (EJIL Blog, 9 January 2017) <https://www.ejiltalk.org/legal-bindingness-of-security-council-resolutions-generally-and-resolution-2334-on-the-israeli-settlements-in-particular/ >accessed 10 December 2021

[34] UNGA Res 62/243

[35] Michael C. Wood, 'The Interpretation of Security Council Resolutions' (1998) in 2 Max Plank YB UNL 79 et seq.

[36] *Legality of the Threat or Use of Nuclear Weapons* (ICJ Advisory Opinion) 1996, para.25; *Legal Consequences of Construction of a Wall in Occupied Palestinian Territory* (ICJ Advisory Opinion) 2004, para.106; *Case Concerning Armed Activities on the Territory of the Congo (DRC v Uganda)* (Judgment) [2005] ICJ

[37] *Ilascu and Others* App no 48787/99 (ECtHR, 8 July 2004)

[38] art. 2 (4) (n 7)

[39] Vienna Convention on Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980), 18232 UNTS 1155 (VCLT) art 52

[40] James A. Green, 'Questioning the Peremptory Status of the Prohibition of Use of Force' [2011] 32 Michigan JIL 215

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case of any derogation from customary prohibition of the use of force must be in conformity with both the Charter and customary prohibition.[41]

So, international law respects the territorial integrity of all states and prohibits military aggression by one state vis-à-vis another state under Chapter VII of the United Nations Charter and Article 1. To prevent any unlawful use of force and collective measures threatening international peace was the main purpose of the United Nations after World War II. The UN General Assembly clarifies the definition of aggression and on what extent, states may lawfully use force with the aim of self-defense and interprets the notions of "aggression", "threat to peace" and "breach of peace" in its Resolution 3314 (XXIX) in 1974.

International law prohibits not only the unlawful use of force but also genocidal acts committed by one state against another. A jurisdiction over such a prohibition has been set forth in the ICC Statute, providing that the court has power to interpret elements of the crime of genocide, explicitly underlining aspects like a commission of an act against one group on the ground of their nationality, ethnicity, religion and race, including intentional killing of them to completely or partially destroy (a); severe bodily and mentally harm (b) creating life conditions having destructive effects on physical integrity (c); intentionally preventing births within the group (d) and forcibly transferring children of the group to another group (e).

Armenians claim that they were systematically and massively murdered by Turks in 1915 under the rule of the Ottoman Empire; this view has been morally and legally supported by most states in Europe. [42] However, this is another subject; Let's focus on the Khojaly massacre during the First Karabakh War committed by Armenia in 1992, where over 613 civilians were killed, including 106 women, 63 children, and 70 elderly. This violent act also included other atrocities such as rape, enslavement, and degradation of human dignity. The massacre has been recognized as a legal act by some legislative bodies in other states.[43]

Some articles of the VCLT specify that a state may accede to the treaty in various ways, including through signature.[44] Although in modern international law, states often practice being bound by multilateral and many bilateral treaties [45] by their ratification, simply followed by their simple signatures,[46] Article 18 (a) of the VCLT laid down the concept that if a state signs a treaty, it is obliged to act in compliance with the object and purpose of the treaty and to avoid any unlawful acts against it.

So, in that case, Armenia is obliged to act in conformity with all multilateral treaties, including

[41] Sondre Torp Helmersen, 'The Prohibition of the Use of Force as Jus Cogens: explaining apparent derogations' [2014] 61 NILR 2, 167

[42] There are still huge controversies between historians and legal experts to qualify the events during Ottoman Empire as genocide. The scholars of high repute, including Bernard Lewis, Stanford Shaw, David Fromkin, Justin McCarthy, Guenther Lewy, Norman Stone, Kamuran Gürün, Michael Gunter, Gilles Veinstein, Andrew Mango, Roderic Davidson, J.C. Hurwitz, William Batkay, Edward J. Erickson and Steven Katz, have offered a opposing viewpoints concerning the crime of genocide. Only the fact of deportation of Armenians to stop their cooperation with foreign forces invading Anatolia has been recognized. The Turkish Government has opened all its archives, including military records to all researchers. On the other hand, Armenian state archives in Yerevan and archives in some third countries including the Dashnak Party archive in Boston, are still being kept behind the closed doors. In 2005, Turkey proposed to Armenia the establishment of a Joint History Commission, which was to be composed of historians and experts from both sides and third parties in order to study the events of 1915 in their historical context and share the findings with the international public. The fact that this proposal has yet to receive a positive answer from the Armenian authorities, when considered together with their rejection to open all the relevant archives to the historians, gives a clear idea about their confidence in what they claim. See for more in "There was no Armenian genocide" by Orhan Tung, retrieved from <https://www.newstatesman.com/world-affairs/2007/10/turkey-armenia-genocide> accessed 22 November 2021

[43] Khojaly Genocide (1992), <https://justiceforkhojaly.org/content/brussels-news-int%E2%80%99l-community-should-assess-armenian-aggression-fairly > accessed 22 November 2021

[44] VCLT (n 40) Chapter VII

[45] Martin A. Rogoff, 'The International Legal Obligations of Signatories to an Unratified Treaty' [1983] 32 Maine L Rev 263, 266

[46] Curtis A. Bradley, 'Treaty Signature' in Duncan B. Hollis (ed) *The Oxford Guide to Treaties 208-219* (Chapter 8) (OUP, 2012) <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3088&context=faculty_scholarship > accessed 27 November 2021

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the Rome Statute, to which it has expressed its consent to be bound by a simple signature on 1 October 1999. However, can Armenia be held criminally liable under the ICC jurisdiction for the genocide of Azerbaijanis committed in 1992 by virtue of the principle of retroactivity? The answer is supposedly not, but only for that period of time and for those committed before. Will Armenia also enjoy impunity for its war crimes that were committed during the second Karabakh War is another matter for discussion, which will be discussed later in the article.

Plus, Armenia can be held accountable for the genocide against Azerbaijanis that was committed between 30 March-2 April 1918 in different regions of Azerbaijan, which has also been documented based on archive documents amassed by the Caucasian Archeological Commission based in Tbilisi (Georgia), as well as by many politicians and diplomats of that period.[47]

Does international law provide any accountability mechanisms for genocidal acts? Should Armenia be brought to justice for the war crimes it committed against Turks (not Azerbaijanis) in 1918? The answer is unknown. The facts of the bloody events of March 1918 (systematic genocide by Armenians against Azerbaijanis as at other times throughout the XIX and XX centuries) could have easily fallen within the definition of genocide, had this type of crime existed under international law at the time. Despite the fact that the 1907 Hague Convention on the Law and Customs of War defines genocide and crimes against humanity as prosecutable offences and this treaty also reflects customary international law, this could be responsible for Armenia.

Nevertheless, the Fourth Geneva Convention, protecting the rights of civilians and non-combatants during warfare, is considered international customary law. Customary laws, especially international crimes, genocide, crimes against peace, security, and humanity, and aggressive war or occupation are applied to all states irrespective of their declaration of their consent to be bound. Consequently, Armenia can be held accountable for the international crimes committed against Azerbaijan. Some norms of international customary law are accepted as jus cogens norms. However, such jus cogens norms are not considered when they contradict the national laws of a state.

Given that Armenia's violations of international legal norms against Azerbaijan have unconditional force in international law, and the national criminal legislation of Azerbaijan considers the grounds for criminal liability, the bringing of Armenia into justice can be enforced based on both international and national legal orders. In accordance with the domestic law of Azerbaijan, persons who committed offenses, like war crimes, crimes against humanity and peace, torture and etc., are wanted internationally and prosecuted before the domestic courts. If this is not possible, this issue is transferred to international tribunals under the principle of universal jurisdiction, like in the cases of "Pinochet" and "Democratic Republic of the Congo vs. Belgium".[48]

Article 10 of the Criminal Law of Azerbaijan prohibits the retroactivity of legal norms. It must be noted that crimes perpetrated by nationals of Armenia are considered international crimes and subject to universal jurisdiction. In the legal practice of recent years, the International Criminal Tribunal for the Former Yugoslavia (ICTY) pursuant to Rule 11*bis* of its Rules of Procedure and Evidence transferred several cases, e.g., to Denmark,[49] Germany [50] and other states like, Bosnia and Herzegovina and Croatia that had prosecuted individuals for war crimes and crimes against humanity, genocide, and sexual offenses in the Former Yugoslavia and Rwanda based on their national laws.

[47] Михаил Гололобов, 'Осада и Штурм Крепости Гянджа (1 декабря 1803-3 января 1804 гг)', Military-historical online project "Adjutant.ru' Альманах «Император» (Vol. 10, 2006), < http://history.scps.ru/erivan/1804-ganza.htm > accessed 29 November 2021; Minahan, James B. Miniature Empires: A Historical Dictionary of the Newly Independent States. p. 22. ("The tensions and fighting between the Azeris and the Armenians in the federation culminated in the massacre of some 12,000 Azeris in Baku by radical Armenians and Bolshevik troops in March 1918");

[48] ICJ, Democratic Republic of Congo v. Belgium, https://casebook.icrc.org/case-study/icj-democratic-republic-congo-v-belgium

[49] *(n 2) The Prosecution Service vs T. Supreme Court of Denmark*

[50] *Case of FDLR leaders* (n 3)

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Armenia's current military and political leadership can be brought before the *ad hoc* international tribunal through the United Nations legislative bodies for its war crimes and crimes against humanity.

II. The Principle of Distinction and Military Objectives under IHL

Under customary humanitarian law (IHL), applicable in both international and internal armed conflicts, the parties to the conflicts should respect specific binding norms and customs of war related to the protection of civilians and civilian objects during attacks. From the perspective of the necessity to differentiate between civilians and combatants, the International Court of Justice (ICJ) in its Advisory Opinion of 1996 related to the use of nuclear weapons, defines the principle of distinction as one of the fundamental customary principle.[51]

During the Second Karabakh War, as an occupant state, Armenia targeted mainly heavily populated civilian structures, located far from the areas of the active hostilities of Azerbaijan, in violation of the key principles of the UN Charter regarding respect for territorial integrity and the inadmissibility of acquisition of another state's areas by use of force. All these facts have been verified by the reports of Human Rights Watch and Amnesty International, and many other international and impartial agencies.[52]

A) Challenges to Define the Term of Military Objectives

Although neither Armenia nor Azerbaijan have acceded to the international treaty prohibiting cluster and other dangerous and poisonous munitions, both have positive international obligations stemming from other binding agreements as member states of the United Nations and its universally recognized principles and purposes.

As a consequence of indiscriminate attacks by Armenia, there have been extensive human losses and severe damage to civilian objects in Ganja, Barda, Naftalan, and Tartar cities in Azerbaijan.[53] [54] By deliberately targeting attacks on civilians and civilian structures with no military advantage, as strictly prohibited by the IHL, they were in violation of one of the core principles of the law of war. It is enshrined in Article 48 of Additional Protocol I of 1977 to the 1949 Geneva Conventions, to which the occupying power, the State of Armenia, became a party in June of 1993. Civilians also cannot be targeted, and as such, the parties should take precautionary measures to prevent harm to civilians and their objects.[55] In addition, the customary rule defining civilian objects stipulates that all objects that are not of military advantage are considered civilian objects.[56]

Under IHL and the Rome Statute, the death of civilians in hostilities does not always constitute a war crime, but all parties to the conflict should respect specific IHL fundamental principles, like the principles of distinction, proportionality, and precaution in attack. So, all attacks by armed forces or those who are taking active part in

[51] *Advisory Opinion on Legality of the Threat or Use of Nuclear Weapons* [1996] ICJ Reports 226, 257

[52] Human Rights Watch, 'Armenia: Cluster Munitions Kill Civilians in Azerbaijan', (HRW 30 October 2020) < https://www.hrw.org/news/2020/10/30/armenia-cluster-munitions-kill-civilians-azerbaijan > accessed 20 November 2021; HRW, 'Armenia: Unlawful Rocket, Missile Strikes on Azerbaijan: investigate Indiscriminate Attacks, Use of Explosive Weapons in Populated Areas', (HRW 11 December 2020) <https://www.hrw.org/news/2020/12/11/armenia-unlawful-rocket-missile-strikes-azerbaijan > and < https://www.bbc.com/news/world-europe-54722120 > accessed 20 November 2020

[53] Aljazeera, 'Azerbaijan says Armenia used cluster bombs in deadly Barda Attack', (Aljazeera 28 October 2020) <https://www.aljazeera.com/news/2020/10/28/azerbaijan-says-21-dead-in-armenia-attack-near-nagorno-karabakh and< https://www.nytimes.com/2020/10/28/world/europe/azerbaijan-barda-armenia-rockets-karabakh.html > accessed 21 November 2021

[54] Office of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, Fact-Finding Mission Report 27-28 October 2020 concerning the factual evidences of extensive civilian casualties and damage to civilian objects in Barda City caused by the ballistic missiles launched by Armenian armed forces, (Ombudsman Office, 2020) p.3 et seq.; <https://ombudsman.az/upload/editor/files/Report%20of%20the%20Ombudsman%20on%20Barda%20_27-28%20October_2020.pdf > accessed 28 November 2021

[55] The Geneva Conventions Additional Protocol I 1977, arts. 57 and 58

[56] International Committee of Red Cross, Customary IHL Database 'Rule 9 Definition of Civilian Objects' <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule9 > accessed 12 December 2021

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hostilities should be directed only at those objects that are of military advantage, not civilians and civilian objects.

The term "military objectives" as a binding norm has been asserted in Article 52 (2) of Additional Protocol I to the Geneva Conventions, which states that only military targets should be attacked and defines military objects as those that are used for, contributed to, or by nature and purpose are of military purposes.[57]

It is not surprising that both sides of the conflict - Armenia and Azerbaijan - blamed each other for the shelling of civilians, unlawful killings or superfluous casualties inflicted by the hostilities. Nevertheless, it is possible to distinguish the cases on both sides. First of all, Azerbaijan, as reported by political and military leaders, had launched absolutely defensive military operations in order to free its universally and legally recognized territories, which also include Karabakh and all other adjacent regions that were under the *de facto* control of Armenia for many years. So, the Azerbaijani military was carrying out active hostilities on its own territory and within its international state borders. However, despite thirty years of occupation, Armenia as an Occupying Power remained indifferent to the calls of its oppressed neighboring state, Azerbaijan, to liberate Azeri territories on its own, peacefully. Of course, no one would argue that military camouflage techniques are absolutely permissible during armed conflicts in terms of protecting military personnel, equipment, and etc. However, when one of the parties to the conflict intentionally hides its military bases and equipment inside or nearby objects with no military advantage, including schools, churches, kindergartens, and etc., to provoke an adversary, it, of course, constitutes a war crime because such tactics lead to excessive damage to non-military facilities.

Armenia blamed Azerbaijan in indiscriminate attacks and targeting civilian objects.[58] However, Azerbaijani military forces carried out proportionate attacks against the civilian objectives used for military purposes, which does not constitute a war crime because Armenia used civilian objects for military purposes and military bases, contrary to customary IHL according to which civilian objects are protected against attack, unless and for such time as they are military objectives. Therefore, as it has been set forth in Article 52 of the Additional Protocol I to the Geneva Conventions, even when it is known that some civilian objects are proportionally attacked, civilian deaths are unavoidable and will occur. Also, given that, it states that those places targeted by the Azerbaijani forces become legitimate targets of attack. Let's look at the notion of "military" objects from another angle. While analyzing Article 52 (2) of Protocol I, it seems that there is not much interpretation with regard to "direct", "indirect" or "possible"[59] military advantage of civilian objects. However, there are related provisions in several national military rules with regard to changing civilian objects to military ones. For example, according to the Canadian Law of Armed Conflict at the Operational and Tactical Level (LOAC) of 1999, a civilian object, used for military purposes may become a legitimate target as it loses its protection as a civilian object."[60] Further, in the 2001 version, the LOAC also stipulates that all means of transport that are not military objectives, including civilian aircraft, vessels, vehicles, and buildings, become military objectives if they carry combatants, military equipment, or supplies.[61]

Furthermore, the IHL customary law specifies when civilian objects lose their protection.[62] Consequently, the use of kindergartens by Armenians as military bunkers for separatist forces or placing military equipment deliberately near

[57] Protocol I (n 55), art. 52 (2)

[58] Armenpress.am (online news portal), (17 October 2020), "Azerbaijani armed forces target civilian objects in the Republic of Armenia – MFA", https://armenpress.am/eng/news/1031851.html, [accessed on 23 February 2023]

[59] Marco Sassoli, 'Legitimate Targets of Attacks Under International Humanitarian Law' (2004) 6 Harvard Humanitarian Initiative, Harvard Program on Humanitarian Policy and Conflict Research, 1-10, p 3 < https://hhi.harvard.edu/files/humanitarianinitiative/files/session1_legitimate_targets_ihl.pdf?m=1615827575> accessed 12 December 2021

[60] Office of the Judge Advocate General of the National Defence of Canada, 'Law of Armed Conflict at the Operational and Tactical Level of Canada' (LOAC), B-GJ-005-104/FP-021, (JAG, 1999) 4-5, para.37, <https://www.fichl.org/fileadmin/_migrated/content_uploads/Canadian_LOAC_Manual_2001_English.pdf > accessed 13 December 2021

[61] Ibid, (1999) para 10 and (2001) para 427; ICRC (n 56) Rule 10 on Civilian Objects' Loss of Protection from Attack, <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule10 >accessed 12 December 2021

[62] IHL customary rule 9 on definition of civilian objects

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residential areas makes them an object for direct and legitimate attacks.

b) Eco-terrorism (ecocide) and Banned Munitions

It is well known that unlawful, excessive, and superfluous damage to civilians and civilian objects is strictly prohibited by the principles of IHL and the customs of war. Such protection is at the core of all common Geneva and Hague Conventions, as well as the Additional Protocols to the 1949 Geneva Conventions. For example, Article 33 of Geneva Convention IV regarding pillage specifies that "reprisals against protected persons and their property are prohibited". First, it should be noted that under the concept of protected person, IHL refers to all civilians, and non-combatants, and prisoners of war, those who are laid down their guns and are already not subjects of active hostilities.

During the first Karabakh War, among the grave atrocities of this armed conflict, the Armenians forced over one million civilians of Azeri origin to flee from their homes as refuge to either the occupied Karabakh region or seven adjacent regions of Azerbaijan. Consequently, there were one million Azerbaijanis who were turned into refugees or internally displaced persons (IDPs).[63] Refugees of Azerbaijan refer to those who fled from Armenia in 1988s, whereas IDPs are mainly those who have laid down deprived of their lands and property in the occupied territories.

The Fourth Geneva Convention prohibits mass deportations of inhabitants of occupied territory in international armed conflicts, unless there is a military reason or security matters.[64]

Ethnic Armenians, while killing civilians, also pillaged or burned private houses. During the second Karabakh War, as a result of unnecessary and superfluous damage, the Armenian armed forces not only targeted civilian objects beyond the zone of conflict, but Armenian population of Karabakh, burned forests in the cities of Shusha, Kelbajar and Lachin, and Zengilan, which had various species of rare plants. Furthermore, throughout the almost thirty years of occupation the biodiversity of the flora and fauna of Azerbaijan had not only been severely destroyed, but also been exposed to physical and chemical pollution. Chemical pollution of fresh water sources compromises the self-regulating processes of rivers and lakes. As a result, water ponds became hazardous dead zones. In 2016, through its Resolution 2085, the Council of Europe Parliamentary Assembly (PACE) condemned the deliberate lack of water for people living in the frontier regions of Azerbaijan, demanding the immediate withdrawal of Armenian armed forces from the region.[65] The CoE PACE called similar artificial environmental crises "environmental aggression".[66] Not surprising, in 2006, the UN General Assembly Resolution A/RES/60/285 on "The Situation in the Occupied Territories of Azerbaijan" also called states to assess the situation there and take preventive measures for the environmental degradation of the region.

In addition, according to the Peace Declaration of 10 November 2020, Armenia should return the rest of the occupied areas of Azerbaijan, without hostilities, except for those that had already been liberated as a result of military operations. Those cities were Kelbajar, Agdam, and Lachin, as well as Khojaly, Khojavend, and Khankendi. However, before leaving those territories, not only Armenian armed forces but also separate individuals, looted and burned their houses, killed pets and livestock, removed (exhumed) their dead relatives to be taken with them, and cut down and burned the trees and entire forests.[67] Pillage is prohibited under IHL, and public and private properties, civilians, the dead, sick, and wounded are under the protection.[68]

During the first and second Karabakh Wars, Armenia widely used prohibited munitions,

[63] Council of Europe Parliamentary Assembly, *Report of the Humanitarian situation of the refugees and displaced persons in Armenia and Azerbaijan* ((PACE) Rapporteur: Mr. Atkinson, United Kingdom, European Democratic Group, Doc. 7250, CoE, 1995), <https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=6823&lang=en > 29 November 2021

[64] The Geneva Convention IV (adopted 12 August 1949), art. 49

[65] PACE Res. 2085 (2016) PACE 3rd Sitting Doc 13931, para.7.1

[66] Ibid

[67] Ombudsman Office of Azerbaijan, 'Appeal by the Human Rights Commissioner (Ombudsman) of Azerbaijan to International Organizations concerning the eco-terrorism of Armenia in the occupied territories of Azerbaijan and its intentional fires aimed at destruction of forests of Shusha region' (Ombudsman Office, 2020),

[68] Human Rights Watch/Helsinki, *Azerbaijan: Seven Years of Conflict in Nagorno-Karabakh* (ISBN: 1-56432-142-8, HRW 1994). p.167

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including mines, to target civilians and objects, which caused explosions. Customary international law, especially the IHL customary rule on the restrictions on the use of anti-vehicle and anti-personnel mines, laid down a restriction that, parties to the conflict where landmines are used, must take care to minimize their indiscriminate effects.[69] Both parties to the conflict, Armenia and Azerbaijan, are parties to the UN Convention on Chemical Weapons, so both sides must abide by the treaty to not use the banned arms. Nevertheless, Armenia has extensively used widely prohibited munitions, including white phosphorus, in the Shusha forests. The use of phosphorus weapons contradicts major environmental conventions such as the Bern Convention, the Nagoya Protocol, and the Helsinki and Rotterdam Conventions, signed by both Armenia and Azerbaijan.

According to American media, the "Drive" press verified that Armenia has used "Iskender" against Azerbaijan "a few hours before".[70] The ex-official of Armenia, Colonel-General Movses Hakobyan, has also confirmed this fact by stating that it "was used during the war, though I will not say where".[71] I suppose, Armenia here grossly broke the treaty law by using this kind of banned munition, which causes excessive and superfluous damage and casualties. Besides, some international NGOs, such as Amnesty International and Human Rights Watch, have also verified that Armenia has used Smerch cluster munitions against Azerbaijan.[72] AI further underlined that cluster munitions were used in civilian and busy areas in the city of Barda in Azerbaijan, calling it "cruel and reckless".[73] By the way, it must be noted that, using their right to autonomy, neither Armenia, nor Azerbaijan, acceded to the Convention on Cluster Munitions.

International humanitarian rules and the Rome Statute prohibit the use of weapons that cause superfluous and unnecessary, or excessive damage and destruction. Article 8 (2) b (xx) of the Statute prohibits the use of any weapons that cause superfluous injury or unnecessary suffering and are indiscriminate by nature, which are inconsistent with the rules and norms of IHL.[74] Armenia signed the Rome Statute on 1 October 1999 but has not yet ratified it. Azerbaijan has neither signed nor ratified the Statute. Given that and, as indicated earlier in this article, the VCLT, in the case of their simple signature, obliges states to refrain from any wrongful conduct that contradicts the treaty. So, if Armenia cannot be punished for the war crimes committed before the signature of the Statute, considering the principle of retroactivity as stated above perhaps now Armenia should be held responsible for the war crimes committed during the Second Karabakh War in 2020.

c) Recruitment of Mercenaries

States in internal and international armed conflicts use the services of foreign armed groups, mercenaries, or private contractors, whose use has expanded in modern times. If we look into history, mercenaries were mainly recruited to defeat internal and partisan belligerents on the African continent, nowadays, this activity has also been incorporated into international armed conflicts. What does international law say about the recruitment of mercenaries during hostilities? Who is responsible for the crimes or misconduct committed by such foreign groups or individuals in

[69] ICRC (n 56) IHL Rule 81 on Restrictions on the Use of Landmines

[70] Joseph Trevithik, 'The Video Indicates Armenia has fired its Russian-Made Iskander Ballistic Missiles at Azerbaijan' (2020)," <https://www.thedrive.com/the-war-zone/37518/video-indicates-armenia-has-fired-its-russian-made-iskander-ballistic-missiles-at-azerbaijan> accessed 11 December 2021; Eurasia Diary, *American Media: Armenia has used "Iskender" against Azerbaijan* (16 November 2020), <https://ednews.net/en/news/conflicts/443507-american-media-armenia-has-used-iskender-against-azerbaijan > accessed 30 November 2021

[71] Sara Khojoyan, 'Armenia Fired Iskander Missiles in Azeri War, Ex-Army Chief Says' (2020), <https://www.bloomberg.com/news/articles/2020-11-19/armenia-fired-iskander-missiles-in-azeri-war-ex-army-chief-says > accessed 01 December 2021

[72] Marie Struthers, 'Armenia/Azerbaijan: First confirmed use of cluster munitions by Armenia 'cruel and reckless' (Amnesty International, 2020) <https://www.amnesty.org/en/latest/news/2020/10/armenia-azerbaijan-first-confirmed-use-of-cluster-munitions-by-armenia-cruel-and-reckless/ accessed 11 December 2021; HRW (n 52)

[73] Ibid 72

[74] (n 8) art. 8 (2) b (xx) Rome Statute

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IHL? What is the protection for mercenaries in war?

It should be noted that Armenia[75] and Azerbaijan[76] are consented to be bound by the International Convention against the Recruitment, Use, Financing, and Training of Mercenaries (1989)[77], which prohibits the recruitment, use, financing, and training of mercenaries. Furthermore, the ban on using mercenaries has also been addressed in Additional Protocol I to the Geneva Conventions, where using, recruiting, financing of mercenaries, etc., are considered grave offences and Armenia, as a state party to this agreement, should abide by its international obligations under this binding legal document.

An Armenian state official verified that the Armenian military and political leadership has continued its ethnic cleansing and unlawful settlement policy, as well as its widespread and purposeful criminal acts, by recruiting terrorist groups and mercenaries in military operations against Azerbaijan. These include the "VoMa Battalion", with members from ASALA, the PKK and citizens of Armenian origin from foreign countries.[78]

There have been some questions that have arisen such as:

- What measures should be taken against a person with dual citizenship?
- What is the status of a foreigner unlawfully entering the state and changing his citizenship to conceal the fact that he was hired as a mercenary and fought for another interested third party?
- What is the scope of *jus sanguinis* in an armed conflict when it is invoked by persons who are paid and sent to fight for revenge on their forebears?

There is a need for some clarifications here. First, according to the IHL, a mercenary is a person who is not a member of any armed group that is a party to the conflict, and the IHL does not clearly identify them in the matter of strict payment, rather relying on the possibility of other promotions to a high rank. Second, even if these three persons were Armenians and had dual citizenship, this does not make them immune from being treated as mercenaries, as they had entered the *de jure* borders of another state -Azerbaijan – illegally, to fight for the separatist regime in occupied territories and an unrecognized state. Third, as those who have dual citizenship, they have duties as citizens of another State, other than Armenia, which also bears responsibility for the conduct of its citizens. Fourth, there is no material evidence of their dual citizenship, which must be proven.

In addition, the UN Special Rapporteur on mercenary activity stressed that mercenary activity that had, for instance, taken place in various parts of Africa to strengthen and maintain apartheid or discrimination of one race over another were crimes, as well as that it is always difficult to prevent and punish the aggravated circumstances of war crimes committed by mercenaries, including those with dual citizenships.[79] The UN Special Rapporteur on the question of the use of mercenaries, Mr. Enrique Bernales Ballesteros, in his report E/CN.4/1994/23, confirmed the facts of use of mercenaries during the First Karabakh War on both sides, including more factual evidence (names of mercenaries killed) in relation to the side of Armenia, bringing examples of the names of reportedly declared mercenaries and places where they were killed between 1992 and 1993 in various areas of Karabakh.[80]

[75] Armenia has acceded to the Convention on Mercenaries, on 23 November 2020

[76] Azerbaijan became a party to the Convention, on 04 December 1997

[77] UNGA Res 44/34 (adopted 4 December 1989) UN Doc A/RES/44/34

[78] Official website of the Office of the Prosecutor-General of the Republic of Azerbaijan, (03 November 2020), "A Criminal Case has been launched against the VoMA armed group established for terrorist purposes in the occupied territories of the Republic of Azerbaijan"; <https://genprosecutor.gov.az/az/post/3146> accessed 30 November 2021

[79] UNGA Note by the Secretary General on the Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (1995) GA Fifth Session UN Doc A/50/390

[80] Report of the Special Rapporteur on the question of the use of mercenaries "Report on the use of mercenaries as a means of violating human rights and

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Furthermore, it was also stated in the report that, according to eyewitnesses and Russian publications, the Russian soldiers were paid for their recruitment as mercenaries and that some were captured for their violation of Azerbaijan's sovereignty.[81]

In its 405 and 419 Resolutions (1977), the United Nations Security Council requested all states take preventive measures for the recruiting, training, and transition of mercenaries on their territory and other territories under their jurisdiction under their respective domestic laws.[82]

In accordance with UNGA Resolution 3314 and Article 8*bis* (g) of the Rome Statute, if a state sends armed bands, groups, irregulars, or mercenaries to fight against another state, this would be considered as an act of aggression.[83] By the way, Armenian criminal legislation provides special provisions criminalizing mercenary activity, which consequently was fragrantly violated.[84]

d) "*Appropriation-Armenization" in the Occupied Territories*

As reported in statements given by the Armenian officials and official news, after the explosion in Beirut, Lebanon, using this tragedy for their own purposes, the Armenian political leaders started to put into effect their plan to settle ethnic Armenians from Lebanon in *de jure* areas of Azerbaijan - Karabakh and its surrounding regions. It should be noted that the unlawful settlement of a part of its own population in the occupied territory is clearly prohibited by the Fourth Geneva Convention, which has been signed by Armenia as well.[85]

In addition, although, the Convention also forbids the establishment of settlements, Armenia unlawfully established new settlements in the occupied areas of Azerbaijan to try to artificially increase the number of Armenians in these areas. This was done in order to change the demographic situation in the areas of Azerbaijan under the umbrella of their ethnic cleansing and illegal settlement policies and to strengthen the political status of a puppet government.[86] Unlawful actions in the occupied territories, including the establishment of new settlements in Lachin, Jabrayil, Gubadly, and Zengilan districts with close participation of the Armenian Diaspora abroad, as well as the settlement of Syrian Armenians from Qamishli and Aleppo cities of Syria, have been documented by the satellite images made by "Azerkosmos".[87] This contradicted international customary law, according to which states should refrain from deporting or transferring parts of their own civilian population into the territory they occupy,[88] as it constitutes a war crime in international armed conflict.[89]

It should be noted that Armenians forcibly settled in those territories from abroad and were used in the Second Karabakh War as mercenaries, which was also stated in the international public appeal issued by the Human Rights Commissioner of Azerbaijan, Sabina Aliyeva, addressed to international organizations.[90] It is also common knowledge that under Additional Protocol I to the 1949 Geneva Conventions, mercenaries are not entitled to the status of combatants or prisoners of war, therefore, they should not be treated as such.[91]

impeding the exercise of the right of people to self-determination (1994) UN Doc E/CN.4/1994/23

[81] Ibid para.70

[82] UNSC Res 405 (14 April 1977) UN Doc S/RES/405; and UNSC Res 419 (24 November 1977) UN Doc S/RES/419

[83] (n 8)

[84] Criminal Code of the Republic of Armenia 2003, art. 395

[85] (n 64) art.49

[86] Ibid. arts. 27, 49

[87] "Azercosmos" OJSCo & Ministry of Foreign Affairs of the Republic of Azerbaijan, 'Illegal Activities in the Territories of Azerbaijan under Armenia's Occupation: Evidence from Satellite Imagery' (Azercosmos OJSCo 2019), pp. 8-9,

[88] (n 56) Rule 130 Transfer of Own Civilian Population into Occupied Territory

[89](n 8), art. 8(2) (b) (viii)

[90] Ombudsman Office of Azerbaijan, 'The Ombudsman of Azerbaijan has sent letters to international organizations concerning the recruitment of terrorist groups and mercenaries by Armenia' (2020), https://ombudsman.az/en/view/news/2266/the-ombudsman-of-azerbaijan-has-sent-letters-to-international-organizations-concerning-the-recruitment-of-terrorist-groups-and-mercenaries-by-armenia accessed 12 December 2021

[91] (n 55) GC Additional Protocol I, art. 47

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For the recruitment and the use of mercenaries, during the military trial at Nuremberg during the WWII, mainly two of the accused, Borman and Saukel, were found guilty for the "Germanization" of the occupied territories and were sentenced to death by hanging in 1946.[92]

Armenia pursues the "Armenization" policy in Karabakh by, as stated earlier, establishing new settlements, transferring Armenian populations from Armenia, Syria, and Iraq to justify their crimes and present them to the international community as a norm. This plan of ethnic cleansing has been carried periodically by the systematic killing of Azerbaijanis, the ethnic population of current Armenia, (İrevan (Yerevan) and Zangezur (Syunik) Khanates that were integral parts of Azerbaijan until the 1828 Turkmenchay Treaty signed between Russia and Iran)[93] and the deportation of ethnic Azerbaijanis from those areas in the late 1980s.

e) *Pillage and Ethnocide[94] of Cultural Heritage in the Occupied Territories*

During warfare, it is a well-known fact that, as a result of unnecessary and excessive damage to non-military objectives by the parties to the conflict, very often surface and underwater cultural heritage may be destructed, looted or subjected to modifications for various reasons. However, the IHL and customs of war have considered such misconduct committed in national or international armed conflicts to be criminal.

It should be noted that the first formal document, with more precise guidelines protecting cultural heritage during warfare, was established by the Hague Conventions of 1899 and 1954.

During the I and II Karabakh Wars, Armenia ransacked, rerouted (modified), and destroyed movable and immovable sites of cultural heritage that in the occupied territories. Prior to providing some information about the cultural heritage existed in the occupied territories, it must be noted that along with Azerbaijanis (historically on the territory of Azerbaijan (before it was called, along with other Manna, Midia, Atropatena, and Aderbaygan Caucasian Albania), many people and nations, including Lezgins, Tats, Russians, Malakans, Armenians, Meshetian Turks, Kurdish, Beorussians, Ukrainians, Avars, Talishs, Udis, Budugs, Ingiloys, and many other minorities, have been co-existing in brotherhood and peaceful environment.

However, Armenia, as an Occupying Power, did everything in order to spoil this peaceful co-existence in the territory as a result of unrooted territorial claims and modifications of every single historical and cultural monument, mainly Alban Churches by altering them with various modification techniques. The "Khudaveng or Dedeveng" Monastery Complex, which is located in Veng village of the Kelbajar district of Azerbaijan, is the cradle of the cultural and historical heritage of Christianity in Azerbaijan. After the occupation of this region by Armenia, this complex was presented to the world as an Armenian monument, and therefore, the monument had been subjected to various modifications. This list can be developed, but our goal is here not to list the monuments but rather to show the criminal actions committed by Armenia and its population in the occupied territories in gross violation of international law norms and principles.

So, during the Second Karabakh War, Armenian armed forces and Armenians settled in the occupied areas, plundered cemeteries and mosques, by burning or using them as stables, placing there cows, pigs (according to Muslim religion, this barn is considered "haram" (sin)) and etc., which was verified via her Twitter account by the representative of the International Committee of the Red Cross, Donatella Rovera, who visited those places after their liberation, was also verified

[92] *Case of the Major War Criminals* (Judgement) Nuremberg International Military Tribunal [1946] para. 421

[93] Ministry of Defense of the Republic of Azerbaijan, 'History of Garabakh' (Official Webpage) <https://mod.gov.az/en/history-of-karabakh-075/ > accessed 03 December 2021

[94] Shamiran Mako, 'Cultural Genocide and Key International Instruments: Framing the Indigenous Experience' (2012) <https://doi.org/10.1163/157181112X639078 >

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by other international representatives, including members of the Italian Senate.[95] In addition, it must be underlined that these acts of hatred are in violation of the principles of the International Covenant on Economic, Social and Cultural Rights, mainly expressed in the preamble as well as in Article 13 on the right to education and Article 15 on cultural rights of the Covenant. *Inter alia*, Armenia is breaching international treaties defining the duty and responsibility of a state to ensure the protection and conservation of its cultural and natural heritage, both in times of peace and war. Consequently, Armenia violated the UNESCO instruments, all to which it consent to be bound by its single signature, including the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954), Second Hague Protocol for the Protection of Cultural Property (1999), the World Heritage Convention for the Protection of Global Cultural and Natural Heritage (1972), the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005), the Roerich Pact (1935) (Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments), the European Cultural Convention (1954), the European Convention on the Protection of the Archaeological Heritage (Valetta Treaty or Malta Convention (1992) (Revised), and the European Convention on Offences relating to Cultural Property (1985), which safeguard and respect cultural heritage.

Furthermore, it must be noted that Articles 15 and 19 of the 2015 Armenian Constitution (Amended) specify that the cultural property belonging to Armenians shall be protected by the state, and Armenia shall assist in protecting Armenian historical and cultural values located abroad.[96] However, these norms noted above do not provide any single word referring to the protection of the cultural, spiritual, and historical heritage of other nations located on the territory of Armenia. However, the Constitution of Azerbaijan makes it the duty of every citizen to protect cultural heritage without discrimination.[97]

The religious leaders in Azerbaijan stated in their joint statement that Armenians destroyed and looted, as well as changed the style of the religious sites, cemeteries, historical monuments, museums, and libraries in the occupied territories of Azerbaijan, moreover, they gregorianized the Caucasian Albanian Christian temples and Russian Orthodox churches. In addition, they insulted Islamic places of worship -mosques- by turning them into barns and keeping animals in them. 64 mosques out of 67 mosques in Karabakh have been razed to the ground and severely damaged.[98]

According to Article 13 of the ICSECR, state parties shall create effective conditions for all persons to participate in a free society, promote mutual respect and friendliness among all nations on an equal footing. So, Armenians' humiliating acts such as the destruction of the Agdam Mosque, modifications in Khudaveng Albanian Monastery in Kelbajar, complete destruction of Khojaly monuments, and using mosques as stables can be seen as major examples of violations of this Article, committed by a state. Furthermore, in comparison to individuals, hate crimes, and cultural genocide should establish more serious criminal liability for the state.

The Organization of the Islamic Conference (OIC) strongly condemns the barbaric acts committed by Armenia in its 1999 Resolution no. 39/26-c. on the destruction and sabotage of Islamic historical and cultural relics and shrines in the occupied Azeri

[95] Said Garib, 'Mosques destroyed by Armenians in Karabakh', Report (Baku, 9 October, 2020) <https://report.az/en/karabakh/if-armenia-had-respected-religious-monuments-and-mosques-it-would-not-have-destroyed-the-monuments-in-azerbaijan-s-occupied-territories/; > accessed 04 December 2021

[96] Constitution of the Republic of Armenia (2005), arts 15, 19

[97] Constitution of the Republic of Azerbaijan (2005), arts 40, 77

[98] Joint Statement of Leaders of Religious Confessions in Azerbaijan on the destruction of the Religious Monuments in Karabakh, (24 November 2020),< http://www.dqdk.gov.az/en/view/news/9620/leaders-of-religious-confessions-in-azerbaijan-issued-a-joint-statement-on-the-destruction-of- > accessed 05 December 2021

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territories as part of the Republic of Armenia's aggression against the Republic of Azerbaijan.[99]

III. *Reparation for Violations of IHL during the First and Second Karabakh Wars*

The protection of civilians and civilian objects, making distinctions between civilians and combatants, civilian objects and military objectives, restraints on torture, mistreatment of prisoners of war and hostages, destruction of cultural and historical heritage, inflicting excessive damage to nature, and choosing the appropriate and proportionate methods of war are enshrined (as it has already been stressed in this article) in the 1949 Geneva Conventions and their Additional Protocols of 1977 and various instruments of refugee law.

While talking about the scope of the criminality and considering the principle of reciprocity, it would probably not be possible to establish a specific *ad hoc* tribunal as it was done for Former Yugoslavia and Rwanda; however, because of the gross violations of specific and core principles of international law, Armenia as an Occupying Power should be held accountable within the reparation law. Armenia violated international law by using force to seize territories from Azerbaijan and is responsible for any other crimes committed by the state. This violates the principle of respect for territorial integrity and independence under international law. These areas have nothing to do with Karabakh but were held under Armenian control under a separatist regime. The puppet government was not recognized in the international arena, but it was seriously condemned by international organizations, including the UN and the CoE, in connection with the occupation of territories of Azerbaijan.

In order to confirm the fact of occupation by Armenia, the UN General Assembly, by its Resolution 53/85 dated 26 January 1999, entitled "Cooperation between the United Nations and the Organization for Security and Cooperation in Europe," and the UNSC President in his statement demonstrated similar approaches using the phrase "in and around the Karabakh region of Azerbaijan".[100]

Any wrongful act or violation of an obligation by a state gives rise to the need to deter similar criminal acts through reparations, and these can play an extremely significant role in giving victims who have lost their family or family members, property or belongings, or who received individual injuries and are no longer able to work a chance to receive some compensation.

Another reason to make Armenia pay reparations is that the UN General Assembly, in one of its resolutions (GA/10693) dated 14 March 2008, along with reaffirming the territorial integrity of Azerbaijan, also manifestly recognized the right of people to their homes in the occupied territories as well as called on Armenia to take measures for rehabilitation in the conflict-affected areas.[101] That means that Azerbaijani refugees from Armenia and all internally displaced persons from Karabakh and all other occupied surrounding regions are entitled to return to those places. Article 49 of the IV Geneva Convention obliges parties to the conflict to take necessary measures for the immediate repatriation of refugees directly after the cessation of hostilities.[102] Under international law, other binding instruments, like Protocol No. 4 to the European Convention on Human Rights (ETS 46), to which both Armenia and Azerbaijan became parties in April 2002, explicitly state that no one shall be deprived of the right to enter the state of his/her citizenship.[103] As a custom, it can be exemplified by the Bosnia and Herzegovina conflict resolution, where, in accordance with the Agreement on Refugees and Displaced Persons annexed to the Dayton Accords, the rights of refugees and displaced persons to be repatriated back to their homes as soon as possible and to choose their destination are openly specified, underscoring this process as an important element in the settlement of the conflict concerned." [104]

[99] Organization of Islamic Cooperation Res 39/26-c. on the destruction and sabotage of Islamic historical and cultural relics and shrines in the occupied Azeri territories as part of the Republic of Armenia's aggression against the Republic of Azerbaijan, (1999) (26 Session of Islamic Conference of Foreign Ministers), https://www.oic-oci.org/docdown/?docID=4298&refID=1206 accessed 12 December 2021

[100] UNGA Res 53/85 (1999) UN Doc A/RES/53/85; Statement by the President of the UNSC (1995), UN Doc S/PRST/1995/21

[101] UNGA Res (2008), UN Doc GA/10693

[102] (n 64), art. 49, para. 2

[103] Protocol 4 to the European Convention on Human Rights (ECHR) (1963), art 3(2)

[104] OSCE General Framework Agreement for Peace in Bosnia and Herzegovina (Bosnia and Herzegovina), Annex 7 and Agreement on Refugees and Displaced Persons (Dayton Peace Agreement) (Bosnia and

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Furthermore, the United Nations, the Council of Europe went a bit further by recognizing not only the fact of occupation, but the fact of unlawful annexation,[105] and in addition, the CoE in its Resolution considered the occupation of foreign territory a grave violation of obligations by the member state. The Council Resolution is extremely important because it reiterates the facts of ethnic-cleansing and the creation of a mono-ethnic area.[106] By virtue of the fact that in around thirty years there has not been any single Azerbaijani in the occupied territories as a result of their forcibly removal from those areas by Armenia, the notion of ethnic-cleansing refers to the massacre of Azerbaijani civilians committed in the city of Khojaly in February 1992, which was annexed to the Karabakh region and the forced relocation of Azerbaijanis from the occupied areas of Azerbaijan overtly shows the gravity of the violation of international law there.

Undoubtedly, Armenia has an obligation to fulfill its obligations under the international treaties that it is bound by. Hence, Armenia, as a violator of the norms and principles of international law (including peremptory norms and norms of *erga omnes*) has to make full reparation for the material and moral damage it inflicted on Azerbaijan during the armed conflict and throughout the years of occupation. Under the general principle of international law, in the event of the violation of an obligation, a state must make reparations for the damage.[107] Such reparation can take five various forms, including (1) restitution, (2) compensation, or (3) satisfaction, (4) rehabilitation, and (5) non-repetition.[108] Depending on the violation, these remedies can be applied either separately or in combination.[109]

In accordance with the 2006 UN GA Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law (hereafter *Basic Principles and Guidelines*), a state should grant reparations to victims of violations based on the international treaty obligations, customs of IHL, and relevant national legislation that which a state must fulfill as provided in the document.

According to the *Basic Principles and Guidelines*, victims are persons who suffered from physical or mental harm, emotional suffering, economic loss or substantial impairment of their fundamental rights as a result of gross violations of international human rights or humanitarian law. This category of people has the right to reparation.[110]Further, the term "victim" also includes the family members of the victim and those who injured while preventing victimization.[111] The document also states that the reparation should be adequate for the degree of severity of the crime and damage.[112]

Calculating the material and moral damage caused by Armenia, they should pay reparations to the State of Azerbaijan as a state, which is automatically liable for the consequences of any unlawful act under international law.[113] European regional binding instruments, such as the European Convention on Human Rights, recognize the right of every person who has been unlawfully detained or arrested to receive compensation.[114] Armenia held civilians hostage for around 30 years, subjecting them to torture, killing, and forced labor. Therefore, the Armenian side is responsible for the release of all persons held in captivity, including prisoners of war, and compensating all those affected civilians, as a party to the conflict and detaining Power. According to the UN Basic Principles and Guidelines, the restitution may include the restoration of liberty and all violated human rights, including family life, citizenship, repatriation, employment, and the return of property.[115]

Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska), (22 November 1995), art 1

[105] PACE Res 1416 (2005)

[106] Ibid. para. 2

[107] *Case Concerning the Factory at Chorzow (Germany v. Poland)* (Merits) PCIJ Rep Series A No. 17

[108] (n 9) arts 31-34; See also UNESC Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law (2000) UN Doc. E/CN.4/2000/62; Emanuela-Chiara Gillard, 'Reparation for violations of international humanitarian law' [2003] 851 International Review of the Red Cross

[109] Ibid. Gillard, p 531

[110] Ibid section VII, (b) and (c)

[111] UNESC Basic Principles and Guidelines, (n 110), para. 8

[112] (n 110) UNESC Basic Principles and Guidelines, para. 15

[113] (n 110), Gillard, p. 532

[114] European Convention on Human Rights (ECHR), art 5 (5)

[115] (n 112), para. 19

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a) Restitution

Armenia has destroyed museums and their exhibits, artifacts in the occupied territories and despite the fact that Azerbaijan has the right to restitution for cultural property, under international law, it is almost impossible to claim due to the time element. Historically, there have been many similar claims for restitution, such as the demand for the return of the Parthenon Marbles from Britain,[116] and the Turkish legal action against the New York Metropolitan Museum of Art for the return of the Lydian treasure collection.[117] The museum's Director confirmed that their staff knew that objects were stolen and settled the lawsuit by admitting they had no right to keep them. The attorney for the Turkish government stated that the return of the collection represented a significant step in protecting the cultural and artistic property of all nations.[118] In addition, just recently on 12 December 2020, the 3rd century-statue of Mother Goddess Kybele (*Magna Mater*), which was smuggled by treasure hunters from Turkey to Israel in 1964, was returned to Turkey from the US as a result of long-lasting legal action started by the Turkish Government.[119] Another successful example of restitution of cultural property was related to the Icelandic Manuscripts, which were returned as a result of restitution in 1971. [120]

The cultural artifacts in the formerly occupied areas were severely damaged, and 22 museums, 4 art galleries, 464 historical monuments, 31 mosques, and 9 historical palaces were destroyed and looted. [121] The current Armenian government must pay restitution or compensation for the return or pay a definite amount for restorable cultural and historical property.

b) Reparation

Reparation is necessary for the illegal exploitation of natural resources by an Occupying Power in areas unlawfully kept under its control. In its resolution SC/7057 of 2001, the UN Security Council manifestly condemned the illegal exploitation of the natural resources of the Republic of the Democratic Republic of the Congo by Uganda and Rwanda, acknowledging that the Congolese people are the only victims, and therefore, its Government is seeking compensation and reparation for damages.[122] The puppet government established in the occupied areas of Azerbaijan with the support of Armenia concluded contracts with some international companies, such as Canadian First Dynasty Mines, and Swiss watchmaking company Frank Muller. [123] [124] So, any actions intended for destruction of the properties and exploitation of natural resources taken by Armenia in the occupied territories during nearly 30 years are illegal and violate the IV Geneva Convention, which prohibits unlawful actions like destruction of any object of non-military advantage, except such destruction is rendered only for military purposes.[125] Considering the essence of reparation, Armenia must restore all

[116] Jeanette Greenfield, 'The Return of Cultural Treasures' (2nd edn, CUP 1996) pp. 71-73

[117] 'Turkey Sues the Met to Regain Antiquities' *The New York Times* (NY, 29 May 1987) < https://www.nytimes.com/1987/06/02/arts/turkey-sues-the-met-to-regain-antiquities.html >accessed 12 December 2021

[118] Jo Ann Lewis, 'Met Returns Treasures to Turkey' *Washington Post* (Washington, 23 September 1993) <https://www.washingtonpost.com/archive/lifestyle/1993/09/23/met-returns-treasures-to-turkey/d37bdc6f-913f-4dea-a7f4-c3e4b2079575/ > accessed 04 December 2021

[119] Hurriyyet Daily News, 'Goddess Kybele returns to homeland' *Hurriyyet Daily News* (Istanbul, 11 December 2020) <https://www.hurriyetdailynews.com/goddess-kybele-returns-to-homeland-160748#:~:text=According%20to%20a%20written%20statement,Turkish%20Airlines%2C%20after%2050%20years > accessed 04 December 2021

[120] (n 118), Greenfield, p. 12

[121] Aytan Mustafayeva and Rauf Garayev (eds), 'Legal Aspects of Reparation for Damage Caused to Azerbaijan as a Result of Armenian Aggression', Irs-Karabakh, p.55 <https://irs-az.com/new/pdf/201309/138009395462673 2529.pdf > accessed 12 December 2021

[122] UNSC Final Report of the Panel of Experts on the illegal exploitation of natural resources and other forms of wealth of DR Congo (2003), UN Doc S/2003/1027

[123] Phil Champain, Diana Klein and Natalia Mirimanova, 'From War Economies to Peace Economies in the South Caucasus' International Alert (Pensord, 2004), p. 106 <https://www.international-alert.org/wp-content/uploads/2021/09/Caucasus-War-Economies-To-Peace-Economies-EN-2004.pdf > accessed 12 December 2021

[124] Horizon Weekly, 'Vartan Simarkes: The Investor behind the Caviar Production Company in Karabagh', (*Horizon Weekly* 12 July 2015) <https://horizonweekly.ca/en/69934-2/> and <https://www.narcokarabakh.net/en/profiles/sirmakes> accessed 4 December 2021

[125] (n 64) art 53

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properties damaged at its own expense or refrain from any illegal exploitation of natural resources in the Karabakh region by their so-called puppet unrecognized government the "Artsakh Republic", located in the sovereign territories of Azerbaijan.

c) Compensation

The other form of reparation is compensation. In my personal view, this is the most appropriate form of reparation, as it covers not only material losses but also moral injury.[126] The return of the seized or pecuniary payment for the destroyed property that belonged to Azerbaijan, must be replaced by compensation. Under international law, a state is responsible for compensation for its damages to the extent that it is not reimbursed by restitution.[127] Thus, the UN ICJ, in its ruling on the *Gabcikovo - Nagymaros Project case*, held that international law guarantees the victim state the right to be compensated for the damages caused by another state.[128]

d) Satisfaction

Whereas, the other form, satisfaction, covers non-material injury only, including an acknowledgement of the breach, an official apology, or assurances of the recurrence of the violation as such.[129] In the Karabakh conflict, satisfaction may come in the form of recognition of the aggression against Azerbaijan and the occupation of its lands, of the genocide in Khojaly, and of an official apology to the Azerbaijani people.[130]

It is also important to point out that under international law, the proper measure of damages for such cases can be difficult to determine, as it was stated by the General Claims Commission in the *Janes Case*,[131] that there are no material damages, moral damages, satisfaction for humiliation, grief, or other similar offenses that may be allowed.

e) Non-repetition

With regard to non-repetition as a form of a reparation in the Armenian-Azerbaijani case, the Armenian Government, as an Occupying Power that is also indicated in the relevant UN relevant resolutions, should promise not-repetition of its aggression, IHL violations, territorial claims, and military provocations, as it is provided in the *Basic Principles and Guidelines* that non-repetition should include improving the domestic laws in terms of avoiding any norm allowing violations of IHRL and IHL.[132]

Thus, I can conclude that in an armed conflict, whether national or international, all parties to the conflict should bear the responsibility for the wrongful acts committed by their Government, or state officials, or military personnel or individuals and be ready to make reparations and allow access to justice for the victims.

CONCLUSION

The Article highlights Armenia's serious violations of IHRL and IHL during the First and Second Karabakh Wars, including unlawful territorial claims, war crimes, and cultural destruction. International borders are crucial for security, and Azerbaijan is a full UN member with universally recognized state borders. IHL applies to the international conflict between Armenia and Azerbaijan, and both parties must abide by international customary law. Armenia used banned weapons in Karabakh's forests, committing environmental crimes in violation of several related conventions.

Calculating the material and moral damage caused by Armenia, reparation is essential to finally settle the conflict by peaceful means and conclude the peace agreement, but international investigation and monitoring commissions or ad hoc tribunals should be established for this purpose in order to achieve a fair and durable peace in the entire region.

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[126] (n 9) art 36
[127] (n 9), Ibid
[128] *Case* Concerning *Gabcikovo - Nagymaros Project* (*Hungary v Slovakia*) [1997] (ICJ Judgement), p. 7
[129] (n 110) UNESC Basic Principles and Guidelines, art 37
[130] (n 123) p.61
[131] *Janes et al. (USA) v United Mexican States* (1926) (Mixed Commission (USA, Mexico) Decision) < https://jusmundi.com/en/document/decision/pdf/en-janes-et-al-u-s-a-v-united-mexican-states-award-tuesday-16th-november-1926 >accessed 12 December 2021; and < https://legal.un.org/riaa/cases/vol_IV/82-98.pdf > accessed 12 December 2021
[132] (n 110) UNESC Basic Principles and Guidelines, para (h)

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Source of support: Nil; **Conflict of interest:** Nil.

Cite this article as:
Shener, S.M. "Karabakh War: Armenia's Violations against International Law." *Sarcouncil journal of Arts humanities and social sciences* 2.6 (2023): pp 45-65.

Publisher: SARC Publisher