

## Executive Summary

On September 27, 2020 Azerbaijan, backed by Turkey, waged a large-scale, unprovoked and illegal war, during a global pandemic against the people of the Republic of Nagorno-Karabakh (known as "Artsakh"), an independent breakaway State inhabited predominantly by ethnic Armenians since the 5<sup>th</sup> century BC. For 44 days, Azerbaijan unrelentingly and intentionally targeted and attacked cities and residential areas destroying hospitals, schools, homes, churches and critical civilian infrastructure. Thousands of Armenians were killed or seriously injured, and more than 130,000 (85% of the population) were displaced from their homes. Azerbaijan conducted attacks using drones, illegal cluster munitions and chemical weapons banned by international humanitarian law. Turkey supported and sponsored the attacks by supplying state-of-the-art weapons and drones (containing Canadian technology), directly participating in the hostilities, and hiring and sending thousands of jihadist mercenaries from Syria to fight against Armenians.

Facing impossible odds and total extermination, on November 9, 2020 Armenia (on behalf of Artsakh) was left no other choice but to sign a highly prejudicial ceasefire statement, brokered by Russia, that, *inter alia*, allows Azerbaijan to hold on to areas of Artsakh that it took during the conflict and requires Armenia to withdraw from several other adjacent areas. Although Canada urged Turkey to "remain outside of the conflict", Russia agreed to give Turkey a "monitoring" role of the ceasefire in the region, despite its direct role as an aggressor and supporter of the war. The ceasefire statement is not a final peace agreement as it does not even mention the issue at the heart of the conflict: the status of Artsakh. An omission given extra weight by President Aliyev of Azerbaijan saying there will be no such discussion as long as he is president.

Without a final status, the Artsakh Armenians face the gravest threat to their existence than at any other time in the last hundred years. As declared by a group of 80 eminent genocide scholars, "history, from the Armenian genocide to the last three decades of conflict, as well as current political statements, economic policies, sentiments of the societies and military actions by the Azerbaijani and Turkish leadership should warn us that genocide of the Armenians in Nagorno-Karabakh, and perhaps even Armenia, is a very real possibility. All of this proves that Armenians can face slaughter if any Armenian territory is occupied, consequently recognizing the independence of the Republic of Artsakh is the way to save Armenians of Artsakh from extermination now or in the near future."<sup>1</sup> If the status of Artsakh is not resolved it further emboldens Azerbaijan's admitted quest to take over the remaining region and eliminate Armenians from the area.

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<sup>1</sup> See Open letter by members of the International Association of Genocide Scholars (IAGS), 22 October 2020, retrieved from <https://www.voltairenet.org/article211404.html>

Canada's moral and legal obligations to prevent further atrocities against the Armenians of Artsakh have been triggered, both generally as a result of the doctrine of the Responsibility to Protect ("R2P"), and also specifically by virtue of its authorization of the sale of drone technology to Turkey which was used to commit atrocity crimes against Armenians. Canada was at the heart of the creation of the R2P initiative, a global commitment that all nations have taken to protect and prevent mass criminal atrocities against populations. According to the third pillar of R2P, the international community must act swiftly when a country is unwilling to protect civilians. In the present case, Azerbaijan is not only unwilling to protect the civilians of Artsakh (95% ethnic Armenians) but deliberately attacked them with the intent of ethnic cleansing and continue to expose them to crimes against humanity. According to R2P, States must employ *all* means available to prevent genocide and atrocity crimes. Although Canada has openly condemned the violence in Artsakh and temporarily suspended the sale of weapons technology to Turkey, these actions were insufficient to prevent the beheadings, use of mercenaries, executions, mutilations, destruction of cultural and religious property, ecocide, and attacks against civilians in Artsakh, as well as the risks of ethnic cleansing and continued atrocities against the Armenians of Artsakh (such as the current torture, mutilation and execution of prisoners of war). Inaction by Canada violates its obligations under R2P and contravenes general principles of international law.

Canada also has a further duty to act, and remedy its actions, following its decision to illegally issue permits to export weapons technology to Turkey, used to commit atrocity crimes against Artsakh Armenians. In spring 2020, Canada inexplicably authorized a special exemption and allowed the export of WESCAM weapons technology to Turkey. A few months later, Canadian-made WESCAM technology was found in the Turkish-made Bayraktar drones which illegally targeted civilians, churches, hospitals and schools in Artsakh.

As an immediate remedial measure, Canada must recognize the independence of Artsakh and call on all other States to do the same. It is imperative that Canada take robust action to implement meaningful remedial measures to ensure accountability for Turkey and Azerbaijan's gross transgressions of international law, and a fair, balanced and definitive resolution to the conflict that preserves Artsakh's right to self-determination, which can only be achieved through remedial recognition of its independence.

Not only is remedial recognition of Artsakh's independence an effective diplomatic tool the international community can employ to protect this population from further atrocities, it is also fully justified. First, Artsakh has always been independent of Azerbaijan. At the beginning of the 20<sup>th</sup> century, the League of Nations refused to recognize Azerbaijan's statehood since the international borders between Armenia, Artsakh and Azerbaijan were not established under international law. In 1921, the USSR illegally and artificially annexed Artsakh (with a 95% Armenian population)

to the Azerbaijan Soviet Socialist Republic. In 1991, Artsakh legally seceded from the USSR prior to its dissolution. Since then, Artsakh is an independent State under international law and fulfills all Montevideo Convention criteria: it has (1) a permanent population, (2) its own government, (3) a defined territory and (4) the capacity to enter into relations with other States.

In addition, Azerbaijan's reliance on the 1993 UN Resolutions to support its territorial claim to Artsakh are unfounded. The resolutions were adopted in the context of active hostilities in 1993 and do not create a legal claim to the territory of Artsakh. The resolutions achieved the rightful purpose for which they were adopted (to end hostilities) following the 1994 ceasefire agreement, and therefore have questionable continued relevance. Furthermore, the UN Security Council does not have the authority to make decisions on statehood.

Canada's recognition of Artsakh's independence is also warranted through the principle of remedial secession. Under international law, a State's territorial integrity is not absolute. When a country violates a peoples' right to self-determination or freedom from systemic abuses, they may have recourse to secession from that State. The Supreme Court of Canada has recognized the legality of the right to self-determination and unilateral secession in extreme situations equivalent to that of the Artsakh Armenians. Armenians of Azerbaijan and Artsakh have suffered decades of systemic persecution, atrocities and gross human rights violations. In fact, Azerbaijan has a longstanding history of persecution and pogroms against Armenians including the massacres of Baku, Sumgait and Kirovabad. Azerbaijan's wide spread and Armenophobic state policy and hate speech have fueled continuous violence and discrimination against Armenians. In its recent war of aggression, Azerbaijan has committed numerous war crimes and atrocities against the Armenians of Artsakh. A "peaceful coexistence" under Azerbaijani rule, where Armenians rights would be protected, is naive and completely unrealistic, particularly given the Azerbaijani government's denial of the value of the existence of Armenians as a people.

Under the R2P doctrine, Canada's moral and legal obligations to prevent atrocities against the Armenians of Artsakh have been triggered. Further, by virtue of Canada's provision of permits for the export of drone technology to Turkey, which was used by Azerbaijan to commit atrocity crimes against Armenians, Canada has an added obligation to act. As an immediate remedial measure Canada, as a pioneer in the development of the law on unilateral secession and the right to self-determination, and as an instrumental actor in the championing of R2P, must recognize the sovereignty of the Republic of Artsakh, and thereby uphold fundamental principles of international law. Remedial recognition is the most effective diplomatic measure to ensure a definitive and sustainable resolution to the conflict and prevent further atrocities including the risk of genocide. Canada must also condemn the joint Azerbaijani-Turkish aggression and atrocity crimes against the people of Artsakh, request the UN Security Council to refer Azerbaijan and Turkey to the International

Criminal Court, permanently uphold the suspension of arms exports to Turkey, impose further sanctions on persons responsible in Azerbaijan and Turkey and provide immediate and robust humanitarian aid to the civilian population of Artsakh.