

**THE CASE FOR CANADA'S RECOGNITION OF
THE REPUBLIC OF ARTSAKH (NAGORNO-KARABAKH)
AS A MEASURE OF THE RESPONSIBILITY TO PROTECT**

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I. Introduction

1. At the end of June 2020, 170 of the 193 member states of the United Nations (“UN”) endorsed the UN Secretary-General’s appeal for a global ceasefire due to the threat of the novel coronavirus pandemic (“COVID-19”). Armenia was among the signatories; Azerbaijan, notably, was not.¹
2. On 27 September 2020, Azerbaijan, backed by Turkey, initiated a large-scale, unprovoked war against the Republic of Nagorno-Karabakh (also known as, and hereinafter interchangeably, “Artsakh”),² an independent breakaway State predominantly inhabited by ethnic Armenians since the 5th century BC, yet still internationally recognized as part of Azerbaijan despite repeated assertions by the Armenians of Artsakh of their legal right to self-determination for more than 30 years.³
3. Over the course of the next 44 days, Azerbaijan unrelentingly and intentionally targeted and attacked civilians and civilian objects in Armenia and Artsakh, including cultural and religious sites, with drones, as well as illegal cluster munitions and other weapons banned by international humanitarian law, including chemical weapons.⁴ Turkey supported

¹ United Nations, “170 signatories endorse UN ceasefire appeal during COVID crisis”, 24 June 2020, retrieved from <https://news.un.org/en/story/2020/06/1066982>.

² Political Geography Now, “All About Nagorno-Karabakh’s 2017 Name Change”, 30 January 2018, retrieved from <https://www.polgeonow.com/2018/01/artsakh-name-change-nagorno-karabakh.html>. A constitutional referendum was held in the Republic of Nagorno-Karabakh on 20 February 2017, pursuant to which the name of the Republic was officially changed to the Republic of Artsakh.

³ For more on the history of the Armenians of Artsakh’s struggle for independence, see *infra* Section IV(A): Artsakh has always been independent of Azerbaijan. See also, *inter alia*, Shahen Avakian, *Nagorno Karabakh: Legal Aspects*, 5th ed. (Moscow: MIA Publishers, 2015), pp. 16-25.

⁴ See, e.g., The Human Rights Ombudsman of the Republic of Artsakh (“HRORA”), “Interim Report on the Azerbaijani Atrocities against Artsakh Population in September 2020”, 1 October 2020, retrieved from https://artsakhombuds.am/sites/default/files/2020-10/Artsakh-Ombudsman-report-on-Azerbaijani-atrocities-01.10.2020_4.pdf; The Human Rights Defender of the Republic of Armenia (“HRDRA”), “Ad Hoc Report on Fact-Finding Activities in Villages of Gegharkunik Province of Armenia Damaged by Azerbaijani Military Attacks”, 30 September – 1 October 2020, retrieved from <https://www.ombuds.am/images/files/dc1b379419a1a9aaeec5191128277502.pdf>; HRDRA, “Ad Hoc Public Report on Azerbaijani Drones’ Targeted Attacks against Peaceful Population of Armenia and Artsakh in Grave Breach of International Law”, October 2020, retrieved from <https://www.ombuds.am/images/files/de3634c257bb698735db318a33f280bf.pdf>; HRORA, “Updated Edition of the Second Interim Report on the Azerbaijani Atrocities against the Artsakh Population in September-October 2020”, 18 October 2020, retrieved from https://artsakhombuds.am/sites/default/files/2020-10/new-Artsakh-Ombudsman-updated-second-interim-report-on-the-Azerbaijani-atrocities-in-September-October-2020-18.10.2020_3.pdf; HRORA, “Ad Hoc Public Report on the Azerbaijani Targeted Attacks against the St. Holy Savior Ghazanchetsots Cathedral of Shushi, Artsakh (Nagorno Karabakh) as a War Crime and Crime against Humanity”, 20 October 2020, retrieved from https://artsakhombuds.am/sites/default/files/2020-10/Report_Ghazanchetsots_Cathedral_-

Azerbaijan's attacks by supplying state-of-the-art weapons and drones (some of which contained Canadian technology, as set out in Section III below) and directly participating in the hostilities,⁵ as well as hiring and sending jihadist mercenaries from Syria to fight against Armenians,⁶ which is also prohibited under international law.⁷ Artsakh, by contrast, had only Armenia to count on

[20.10.2020.pdf](#); HRDRA, "Ad Hoc Report on Azerbaijani Military Attacks against Davit Bek and Agarak Villages of Syunik Province", 30 October – 3 November 2020, retrieved from <https://www.ombuds.am/images/files/86cfd80eb354d0f2a600831371bb32c3.pdf>; HRDRA and HRORA, "Joint Ad Hoc Public Report on the Use of Incendiary Ammunition of Mass Destruction (Incendiary Weapon) Against Civilian Objects of Artsakh (Nagorno-Karabakh) by the Azerbaijani Armed Forces", November 2020, retrieved from <https://artsakhombuds.am/sites/default/files/2020-11/Report-On-White-Phosphorus.pdf>;

HRORA, "Ad Hoc Report on the Children's Rights Affected by the Azerbaijani Attacks against the Republic of Artsakh (Nagorno-Karabakh)", 9 November 2020, retrieved from https://artsakhombuds.am/sites/default/files/2020-11/Artsakh-Ombudsman-report-on-children-rights-09.11.2020_0.pdf. The HRDRA and HRORA jointly issued their "Fo[u]rth Ad Hoc Report on Torture and Inhuman Treatment of Members of Artsakh Defence Army and Captured Armenians by Azerbaijani Armed Forces (from November 4-18, 2020)" confidentially ("Fourth Report on POWs"). This report can be made available on request by contacting the Human Rights Defenders of Armenia or Arstakh directly. For more details on the extent of the war crimes and other atrocities committed against the population of Artsakh, see *infra* Section IV(B)(ii): Azerbaijan commits atrocious crimes against Armenians.

⁵ See, *inter alia*, Dorian Jones, "Turkey Vows Support for Azerbaijan in Escalating Nagorno-Karabakh Conflict", Voice of America, 28 September 2020, retrieved from <https://www.voanews.com/south-central-asia/turkey-vows-support-azerbaijan-escalating-nagorno-karabakh-conflict>; Steven Chase, "Canadian-made targeting gear used in air strikes against Armenians, evidence shows", The Globe and Mail, 30 October 2020, retrieved from <https://www.theglobeandmail.com/politics/article-canadian-made-targeting-gear-used-in-air-strikes-against-armenians/>; Andrew E. Kramer, "Armenia and Azerbaijan: The Conflict Explained", The New York Times, 15 November 2020, retrieved from <https://www.nytimes.com/article/armenian-azerbaijan-conflict.html>.

⁶ In this respect, UN human rights experts have confirmed: "[T]here were widespread reports that the Government of Azerbaijan, with Turkey's assistance, relied on Syrian fighters to shore-up and sustain its military operations in the Nagorno-Karabakh conflict zone, including on the frontline. The fighters appeared to be motivated primarily by private gain, given the dire economic situation in the Syrian Arab Republic [...]. In case of death, their relatives were reportedly promised financial compensation and Turkish nationality. [...] Turkey engaged in large-scale recruitment and transfer of Syrian men to Azerbaijan through armed factions, some of which are affiliated with the Syrian National Army." See UN Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, "Mercenaries in and around the Nagorno-Karabakh conflict zone must be withdrawn", 11 November 2020, retrieved from https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26494&LangID=E&fbclid=IwAR0_JnkNB7eo-EgeedExyVrl0wruHYff4BwhgLJDEQPSFAFDS9Ax3DBQxvo.

See also, *inter alia*, Syrian Observatory for Human Rights, "Nagorno-Karabakh battles | Over 2,000 mercenaries sent to Azerbaijan, nearly 135 killed so far", 18 October 2020, retrieved from <https://www.syriaahr.com/en/188669/>.

⁷ See International Convention Against the Recruitment, Use, Financing and Training of Mercenaries, which entered into force on 20 October 2001. Azerbaijan acceded to this Convention on 4 December 1997, and Armenia ratified it on 27 October 2020.

to come to its aid, as its calls to the rest of the international community were consistently ignored.⁸

4. On 7 October 2020, the Global Center for the Responsibility to Protect issued an “Atrocity Alert” noting the indiscriminate shelling of civilians and civilian infrastructure, the use of hired foreign mercenaries and the resulting important displacement of populations in and around Artsakh.⁹ On 22 October 2020, a group of 80 genocide scholars issued a joint statement on the imminent genocidal threat deriving from Azerbaijan and Turkey against the Armenians of Artsakh, declaring that “already a case can be made that there is conspiracy to commit genocide, direct and public incitement to commit genocide, and attempt to commit genocide”.¹⁰ The UN Secretary-General also noted that COVID-19 had doubled in Armenia and increased 80% in Azerbaijan since the beginning of hostilities.¹¹ Meanwhile, the death toll rapidly rose to the thousands,¹² and more than 85% of Artsakh’s indigenous Armenian population of 150,000 was forcibly displaced from their ancestral lands.¹³

5. Needless to say, the combined forces of Armenia and Artsakh alone could prove no match for those of Azerbaijan and Turkey.¹⁴ Azerbaijan’s use

⁸ Artsakh’s Human Rights Ombudsman, Artak Beklaryan, who lost his sight from a landmine explosion when he was a child during the 1988-1994 Nagorno-Karabakh war, created a campaign under the hashtag “#DontBeBlind” calling on the international community to focus attention on, and take action against, war crimes committed by Azerbaijan against the population of Artsakh. See https://twitter.com/Artak_Beglaryan.

⁹ Global Center for the Responsibility to Protect, “Atrocity Alert No. 223: Nagorno-Karabakh, Central African Republic and Sudan”, 7 October 2020, retrieved from <https://www.globalr2p.org/publications/atrocity-alert-no-223-nagorno-karabakh-central-african-republic-and-sudan/>.

¹⁰ See Open letter by members of the International Association of Genocide Scholars (IAGS), 22 October 2020, retrieved from <https://www.voltairenet.org/article211404.html>. See also Ewelina U. Ochab, “Shortly Before Ceasefire, Experts Issue A Genocide Warning For The Situation In Nagorno-Karabakh”, Forbes, 11 November 2020, retrieved from <https://www.forbes.com/sites/ewelinaochab/2020/11/11/shortly-before-ceasefire-experts-issue-a-genocide-warning-for-the-situation-in-nagorno-karabakh/?sh=440086e4d005>.

¹¹ The Independent, “‘The only winner is the pandemic’: United Nations chief calls for ceasefires in major global conflicts to focus on pandemic”, 22 October 2020, retrieved from <https://www.independent.co.uk/news/un-ceasefire-coronavirus-yemen-afghanistan-armenia-azerbaijan-pandemic-covid-19-b1235074.html>.

¹² See, e.g., BBC News, “Nagorno-Karabakh: Nearly 5,000 dead in conflict, Putin says”, 22 October 2020, retrieved from <https://www.bbc.com/news/world-europe-54652704>.

¹³ See, e.g., United Nations Children’s Fund, “UNICEF statement on one month of fighting in and beyond Nagorno-Karabakh”, 28 October 2020, retrieved from <https://www.unicef.org/press-releases/unicef-statement-one-month-fighting-and-beyond-nagorno-karabakh>.

¹⁴ For a side-by-side comparison of the defence budgets and military capabilities of Armenia and Azerbaijan, see Al Jazeera, “Infographic: Military arsenals of Armenia and Azerbaijan”, 1 October 2020, retrieved from <https://www.aljazeera.com/news/2020/10/1/infographic-military-arsenals-of-armenia-and-azerbaijan>. Between 2009 and 2018, Azerbaijan’s military spending totaled almost USD\$24 billion, according to updated data from the Stockholm

of force against Artsakh was therefore not only illegal on the basis of its unprovoked aggression, but also grossly disproportionate and unjust in its means and conduct. Facing impossible odds and total extermination, on 9 November 2020, Armenia (on behalf of Artsakh) was left no other choice but to sign a highly prejudicial ceasefire statement brokered by Russia (“Ceasefire Statement”) 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 (see map in Annex).¹⁵ With nine bullet points, the Ceasefire Statement constitutes more than a mere ceasefire, but much less than an actual peace agreement, and does not resolve issues at the core of the conflict. Crucially, there is no mention of the status of Artsakh itself as a subject of ongoing dialogue, an omission given extra weight by President Aliyev of Azerbaijan saying there will be no such discussion as long as he is president.¹⁶

6. The third and fifth bullet points of the Ceasefire Statement provide for the deployment of Russian peacekeepers for a minimum of five years and that of “[a] peacekeeping center [...] to monitor the ceasefire”. Despite Canada having urged Turkey to “remain outside the conflict” after the Ceasefire Statement was signed,¹⁷ Russia agreed to allow Turkey to

International and Peace Research Institute (“SIPRI”). Armenia spent slightly more than USD\$4 billion in the same period. See SIPRI Military Expenditure Database, retrieved from <https://www.sipri.org/databases/milex>. Turkey’s military expenditure was USD\$20.4 billion just in 2019 alone, ranking it the 16th highest military spender in the world. See Nan Tian *et al.*, “Trends in World Military Expenditure, 2019”, SIPRI Fact Sheet, April 2020, retrieved from https://www.sipri.org/sites/default/files/2020-04/fs_2020_04_milex_0_0.pdf. It is also worth noting that, with a GDP of USD\$40.7 billion in 2017, Azerbaijan’s economy is almost four times as large as Armenia’s economy at USD\$11.5 billion, and Azerbaijan’s population of ca. 9.8 million is more than three times the size of Armenia’s population of ca. 3 million. No recent verified statistical information exists on Nagorno-Karabakh, but the *de facto* authorities state a reported population of ca. 146,000 and a reported GDP of ca. USD\$480 million for 2016, although experts consider these figures to likely be inflated. See David Saha *et al.*, “The economic effect of a resolution of the Nagorno-Karabakh conflict on Armenia and Azerbaijan”, Berlin Economics, 15 June 2018, pp. 10-11, retrieved from https://berlin-economics.com/wp-content/uploads/The_Economic_Effect_Of_A_Resolution_Of_The_Nagorno-Karabakh_Conflict.pdf.

¹⁵ See The Prime Minister of the Republic of Armenia, “Statement by the Prime Minister of the Republic of Armenia, the President of the Republic of Azerbaijan and the President of the Russian Federation”, 10 November 2020, retrieved from <https://www.primeminister.am/en/press-release/item/2020/11/10/Announcement/>. See also President of Russia, “Statement by the President of the Republic of Azerbaijan, Prime Minister of the Republic of Armenia and President of the Russian Federation”, 10 November 2020, retrieved from <http://en.kremlin.ru/events/president/news/64384>.

¹⁶ Laurence Broers, “Russia’s Peace Imposed on Armenia-Azerbaijan Bloodshed”, Chatham House, 11 November 2020, retrieved from <https://www.chathamhouse.org/2020/11/russias-peace-imposed-armenia-azerbaijan-bloodshed>. See also *infra*, fn. 23.

¹⁷ Statement by François-Philippe Champagne, Minister of Foreign Affairs of Canada, Twitter, 11 November 2020, retrieved from https://twitter.com/FP_Champagne/status/1326690424237543425.

participate in the establishment of the “peacekeeping center” and monitoring process.¹⁸ Turkey’s involvement is in no way envisaged by the terms of Ceasefire Statement, and, considering the direct role it played in the conflict, can in no way be perceived as neutral or reasonable in the eyes of the international community, let alone acceptable to Armenia or Artsakh.

7. As such, the Ceasefire Statement does not change the dangerously fragile situation of the Armenians of Artsakh, who remain extremely vulnerable in light of the current humanitarian crisis and the lack of final status for Artsakh.¹⁹ Moreover, the conditions under which Armenia had to accept the terms of the Ceasefire Statement bring into question their very validity.²⁰ Politicians and analysts have criticized the terms of the Ceasefire Statement as being “unfair”, “tragic”, even “disastrous” for Armenia and Artsakh, recognizing the need for Western intervention to achieve a balanced and lasting settlement that preserves Artsakh’s right to self-determination.²¹

¹⁸ See Reuters, “Erdogan says Turkey, Russia to monitor Karabakh ceasefire”, 11 November 2020, retrieved from <https://ca.reuters.com/article/idUSKBN27R1CP>; Siranush Ghazanchyan, “Russia, Turkey to jointly monitor the Nagorno Karabakh ceasefire”, Public Radio of Armenia, 12 November 2020, retrieved from <https://en.armradio.am/2020/11/12/russia-turkey-to-jointly-monitor-the-ceasefire-in-nagorno-karabakh/>; Al Jazeera, “Turkey seeks approval to deploy peacekeepers in Azerbaijan”, 16 November 2020, retrieved from <https://www.aljazeera.com/news/2020/11/16/turkey-seeks-approval-to-deploy-peacekeepers-in-azerbaijan>.

¹⁹ International Crisis Group has warned that “the safety of thousands of ethnic Armenians remaining in the region is a serious concern”. See International Crisis Group, “Getting from Ceasefire to Peace in Nagorno-Karabakh”, 10 November 2020, retrieved from <https://www.crisisgroup.org/europe-central-asia/caucasus/nagorno-karabakh-conflict/getting-ceasefire-peace-nagorno-karabakh>.

²⁰ Special agreements such as ceasefires and peace agreements are usually concluded in the context of armed conflict, where, almost inevitably, force is used. Article 52 of the 1969 Vienna Convention on the Law of Treaties stipulates that a treaty is void “if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations”. How does this rule relate to special agreements? According to one view, “[a] treaty is only procured by coercion if the use or threat of force is directly intended to bring about the treaty or if the treaty is aimed at maintaining a situation which was created by an illegal use of force”. Another view is that “a treaty is only invalid if the victim of the coercion did not have any other choice but to conclude the treaty”, thus very narrowly construing the rule. It can be anticipated that ambiguity in the validity of an agreement in the light of this rule will most likely arise in relation to ceasefire agreements. See International Committee of the Red Cross, “Commentary on the Second Geneva Convention” (Cambridge: Cambridge University Press, 2017), Article 6: Special Agreements, paras. 988, 1014-1015, retrieved from <https://ihl-databases.icrc.org/ihl/full/GCII-commentary>.

²¹ See, e.g., Statement by Jean-Yves Le Drian, Minister for Europe and Foreign Affairs, 10 November 2020, retrieved from <https://www.diplomatie.gouv.fr/en/country-files/azerbaijan/news/article/nagorno-karabakh-statement-by-jean-yves-le-drian-minister-for-europe-and>; Statement by Brad Sherman, United States Congressman, Twitter, 11 November 2020, retrieved from <https://twitter.com/BradSherman/status/1326748284191465472>; Philippe Raffi Kalfayan, “A Closer Look at the Trilateral Agreement to End War”, The Armenian Mirror-Spectator, 16

Armenia considers the matter of Artsakh's status and independence to remain a live issue of fundamental importance,²² whereas Azerbaijan has clearly demonstrated that it is not ready to accept or even discuss the status or independence of Artsakh in the long run,²³ and this is what makes the conflict so dangerous. Therefore, help from the international community is crucial to maintain peace in the region and to resolve the conflict.

8. Several parts of Artsakh have fallen under the control of Azerbaijan, including the city of Shushi (of great religious and cultural importance to Armenians), thus forcing Armenians to flee their homes and creating a real risk of cultural genocide for the hundreds of Armenian churches and heritage sites left behind.²⁴ Notable scholars, including Noam Chomsky and Cornel West, have warned that the wholesale human and cultural destruction in

November 2020, retrieved from <https://mirrorspectator.com/2020/11/16/a-closer-look-at-the-trilateral-agreement-to-end-war/>. See also Statement by François-Philippe Champagne, Minister of Foreign Affairs of Canada, Twitter, 11 November 2020, retrieved from https://twitter.com/FP_Champagne/status/1326690424237543425 (expressing “support [for] the Armenian people during this most difficult time”).

²² See Statement by Nikol Pashinyan, Prime Minister of the Republic of Armenia, 12 November 2020, retrieved from <https://www.primeminister.am/en/statements-and-messages/item/2020/11/12/Nikol-Pashinyan-Speech/> (“The final settlement of the Karabakh issue and the status of Artsakh is of fundamental importance. In this regard, our task has not changed: the international recognition of the Artsakh Republic is becoming an absolute priority, and in fact, there are now more weighty arguments for the international recognition of Artsakh.”). See also Ministry of Foreign Affairs of the Republic of Armenia, “Foreign Minister Zohrab Mnatsakanyan held phone conversations with the representatives of the OSCE Minsk Group Co-Chair countries”, 12 November 2020, retrieved from https://www.mfa.am/en/press-releases/2020/11/12/fm_phone_calls/10642.

²³ See Statement by Ilham Aliyev, President of the Republic of Azerbaijan, 10 November 2020, retrieved from <https://www.news.az/news/president-ilham-aliyev-this-statement-contains-not-single-word-about-status-of-nagorno-karabakh> (“You probably noticed that this statement contains not a single word about the status of Nagorno-Karabakh! Where are the demands of the Armenian side that Nagorno-Karabakh should be granted independence? [...] Not a word, Pashinyan! What happened? What is it, Pashinyan? This will probably remain the talk of the town for many years. What happened, Pashinyan? You were going to pave a road to Jabrayil. You danced. But where is the status? The status went to hell, it failed, it was scattered to smithereens, it is not and will not be there. As long as I am President, there will be no status”). See also Katerina Medvedeva, “Aliyev: the possibility of a special status for Nagorno-Karabakh is excluded”, *Gazeta.Ru*, 17 November 2020, retrieved from https://www.gazeta.ru/politics/news/2020/11/17/n_15239629.shtml (in Russian).

²⁴ The Azerbaijani government has, over the past 30 years, been engaging in a systematic erasure of the country's historic Armenian heritage, as exemplified by its destruction in recent years of 89 medieval churches, 5,840 intricate cross-stones, and 22,000 tombstones. See, e.g., Simon Maghakyan and Sarah Pickman, “A Regime Conceals Its Erasure of Indigenous Armenian Culture”, *Hyperallergic*, 18 February 2019, retrieved from <https://hyperallergic.com/482353/a-regime-conceals-its-erasure-of-indigenous-armenian-culture/>; Dale Berning Sawa, “Monumental loss: Azerbaijan and 'the worst cultural genocide of the 21st century’”, *The Guardian*, 1 March 2019, retrieved from <https://www.theguardian.com/artanddesign/2019/mar/01/monumental-loss-azerbaijan-cultural-genocide-khachkars>.

Artsakh is “part of the expansive and violent territorial policy of President Recep Tayyip Erdoğan of Turkey to re-establish a version of Ottoman power in the region”.²⁵ Since the Ceasefire Statement took effect on 10 November 2020, incoming Russian peacekeepers have begun to document the aftermath of the conflict,²⁶ and reports are increasing of gruesome atrocities including murder, torture, mutilation, and other cruel treatment being committed by Azerbaijani forces against Armenian prisoners of war who remain in their captivity, as well of against Armenians civilians who choose to remain in, or return to, their homes in Artsakh.²⁷

9. It is the position of this Paper that 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

²⁵ Gayatri Chakravorty Spivak *et al.*, “A Call for Lasting Peace in Nagorno-Karabakh”, Los Angeles Review of Books, 16 October 2020, retrieved from <https://lareviewofbooks.org/short-takes/lasting-peace-nagorno-karabakh/>.

²⁶ Radio Free Europe Radio Liberty, “Vision Of Hell: The Aftermath Of Fighting Around Key Nagorno-Karabakh City”, 13 November 2020, retrieved from <https://www.rferl.org/a/mass-casualties-of-nagorno-karabakh-conflict-around-shushi/30947028.html>.

²⁷ *See, e.g.*, Footage of four Armenian civilians kidnapped by Azerbaijani forces on 11 November 2020 and being forced to chant pro-Azerbaijani slogans, retrieved from <https://www.instagram.com/p/CHoiSiTHQid/?igshid=1cc360u2lx03e>; Footage of Azerbaijani soldiers cutting the ears off of an Armenian who refuses to leave his home, retrieved from <https://twitter.com/ASBMilitary/status/1327827599121375233>; Footage of elderly ethnic Armenian man without shoes being beaten and publicly humiliated while in custody of Azerbaijani forces, retrieved from https://www.ombuds.am/en_us/site/ViewNews/1385; Statement of Artak Beglaryan, Human Rights Defender of Artsakh, on 21 November 2020, retrieved from https://twitter.com/Artak_Beglaryan/status/1330243372372594697 (“#Urgent! As a result of body exchange in #Shushi, 3 #Artsakh/#Karabakh killed civilians were found with signs of brutal mutilations by #Azerbaijan: cut off ears, taken off eye, partially beheaded body. Systematic #WarCrimes continue against #Armenian civilians & combatants”). *See also* Statement by Baroness Caroline Cox, Member of the U.K. House of Lords, 10 November 2020, retrieved from <https://www.politicshome.com/thehouse/article/the-uk-government-must-change-tack-and-urgently-bring-to-justice-those-responsible-for-war-crimes-against-the-armenian-people> (“After 45 days of intense conflict, a ceasefire brokered by Russia has finally been agreed[...]. Serious concerns nevertheless remain, with reports emerging of brutality inflicted on military and civilian prisoners, including torture and beheadings, with claims that equivalent brutalities have been perpetrated by jihadists who receive payment for every Armenian beheaded. There is an urgent need for the British Government and all relevant international authorities to bring to justice those responsible for such war crimes, and to take effective measures to prevent Azerbaijan from abusing and killing these prisoners, whom they have already captured or may capture during the ceasefire evacuation.”). In a televised interview on 13 November 2020, General Hüseynov Camal of the Azerbaijani forces menacingly declared (speaking Armenian) that, after Karabakh, they would be coming after every last Armenian (repeatedly calling them “dogs”) in Armenia until Yerevan, referring to it as “West Azerbaijan”. *See Bilsəydilər erməni dilini bilirəm dərimi soyardılar - Hüseynov Camal*, YouTube, 13 November 2020, retrieved from <https://www.youtube.com/watch?v=YworvLLKGyQ>.

commit atrocity crimes against Armenians. It is submitted that, as an immediate remedial measure, Canada must recognize the independence of Artsakh and call on all other States to do the same. Failing to act means letting Azerbaijan and Turkey end the Armenian presence in Artsakh, sentencing the Armenians to ethnic cleansing, and, through them, condemning democracy.²⁸

10. Although it is certainly not the only measure that could or should be implemented, for the reasons developed below, remedial recognition is imperative in light of the fundamental right of the people of Artsakh to self-determination and secession, particularly after having been subjected to systemic discrimination, repression and atrocity crimes. It is also an appropriate remedy to the harm caused by Canada permitting the sale of weapons technology to Turkey despite a ban in place since October 2019, as well as the most effective diplomatic measure to ensure a definitive and sustainable resolution to the conflict and prevention of further atrocities including ethnic cleansing and the risk of genocide.

II. Responsibility to Protect (R2P) and Obligation to Prevent

11. Informed by the foundational 2001 report of the Canadian-sponsored International Commission on Intervention and State Sovereignty,²⁹ R2P is a global commitment to prevent and halt genocide, ethnic cleansing, other crimes against humanity and major war crimes. In the 15 years since its unanimous adoption by all UN member states at the 2005 World Summit,³⁰

²⁸ See Open letter from Belgian deputies, academics and civil society representatives, “*La région du Caucase en proie à la violence: les Arméniens du Nagorno-Karabagh ont droit à la vie, leur autodétermination est légitime*”, *Le Soir*, 28 October 2020, retrieved from <https://plus.lesoir.be/334453/article/2020-10-28/la-region-du-caucase-en-proie-la-violence-les-armeniens-du-nagorno-karabagh-ont>.

²⁹ Gareth J. Evans and Mohamed Sahnoun, *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (Ottawa: International Development Research Centre, 2001).

³⁰ See UN General Assembly Resolution 60/1, “2005 World Summit Outcome Document” A/RES/60/1, 16 September 2005, paras. 138 (“Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability”), 139 (“The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to

near-universal agreement has been forged around the principle that all governments have a responsibility to protect populations from mass atrocity crimes, both within and beyond their borders.

12. R2P contains three pillars: (1) state responsibility to protect its own population; (2) the international community's duty to assist states in fulfilling their duty to prevent and protect; and (3) the international community's responsibility to take timely and decisive action through peaceful means, failing which it may use more forceful means, in a manner consistent with international law.³¹ As such, R2P stipulates that if a country is unable or unwilling to protect its civilians from mass atrocities, then the international community must act swiftly to fill the protection void.

13. As the UN Secretary-General underscored, R2P is "firmly anchored in well-established principles of international law. Under conventional and customary international law, States have obligations to prevent and punish genocide, war crimes, and crimes against humanity."³² By way of example, Articles 40 and 41(1) of the International Law Commission's Articles of State Responsibility provide that certain breaches of international law may be so grave as to trigger not only a right but also an obligation (i.e. a positive duty) of cooperation among states to foster compliance with the law.

14. UN member states also have obligations to take steps to ensure that they do not contribute to mass atrocities outside of their borders and, at minimum, refrain from exacerbating atrocity crimes of other states.³³ Common Article 1 of the Geneva Conventions of 12 August 1949 stipulates that it is the duty of States to respect and ensure respect for the Convention in all circumstances and, consequently, to prevent war crimes. The duty to

protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.")

³¹ UN General Assembly, "Implementing the Responsibility to Protect – Report of the Secretary-General", A/63/677, 12 January 2009.

³² *Ibid.*, para. 3. See also UN General Assembly, "Prevention of Genocide – Report of the Secretary-General", A/HRC/41/24, 8 October 2019, para. 4 ("The duty to prevent genocide, crimes against humanity and war crimes is well established both under several treaties and under rules of customary international law binding on all States"), fn. 2 ("Even though there is no international treaty specifically addressing State responsibility for crimes against humanity, the duty to prevent crimes against humanity derives from the obligation to prevent those human rights violations, such as torture, that, when committed as part of a widespread or systematic attack directed against any civilian population, would constitute crimes against humanity.")

³³ See Sheri P. Rosenberg, "Responsibility to Protect: A Framework for Prevention", *Global Responsibility to Protect 1* (2009), pp. 449-450.

prevent genocide is also codified in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (“Genocide Convention”).³⁴

15. As the International Court of Justice explained in the case of *Bosnia v. Serbia*,³⁵ a State may be held responsible if it had the means and influence to actually prevent genocide in another State but manifestly refrained from using them.³⁶ A State must employ *all* means reasonably available to it to prevent genocide so far as possible.³⁷ The obligation to prevent and the corresponding duty to act arises “the instant that the State learns of, or should normally have learned of the existence of a *serious risk* that genocide will be committed.”³⁸ The obligation to prevent does not require the State to

³⁴ Convention on the Prevention and Punishment of the Crime of Genocide, 78 UNTS 277, 9 December 1948. Article I of the Genocide Convention provides that genocide is a crime under international law that all contracting states undertake to prevent and punish, and Article IX provides the jurisdictional basis for bringing contracting states before the International Court of Justice.

³⁵ International Court of Justice, *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 27 February 2007 (“*Bosnia v. Serbia* Judgment”). The Court begins by explicitly affirming that the obligation to prevent and the obligation to punish are related, yet, autonomous legal obligations. See *Bosnia v. Serbia* Judgment, para. 427.

³⁶ *Bosnia v. Serbia* Judgment, paras. 430 (“Various parameters operate when assessing whether a State has duly discharged the obligation concerned. The first, which varies greatly from one State to another, is clearly the capacity to influence effectively the action of persons likely to commit, or already committing, genocide. [...] [I]t is irrelevant whether the State whose responsibility is in issue claims, or even proves, that even if it had employed all means reasonably at its disposal, they would not have sufficed to prevent the commission of genocide. As well as being generally difficult to prove, this is irrelevant to the breach of the obligation of conduct in question, the more so since the possibility remains that the combined efforts of several States, each complying with its obligation to prevent, might have achieved the result — averting the commission of genocide — which the efforts of only one State were insufficient to produce.”), 438 (“As indicated above, for a State to be held responsible for breaching its obligation of prevention, it does not need to be proven that the State concerned definitely had the power to prevent the genocide; it is sufficient that it had the means to do so and that it manifestly refrained from using them.”)

³⁷ *Bosnia v. Serbia* Judgment, para. 430 (“[I]t is clear that the obligation in question is one of conduct and not one of result, in the sense that a State cannot be under an obligation to succeed, whatever the circumstances, in preventing the commission of genocide: the obligation of States parties is rather to employ all means reasonably available to them, so as to prevent genocide so far as possible. A State does not incur responsibility simply because the desired result is not achieved; responsibility is however incurred if the State manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide.”)

³⁸ *Bosnia v. Serbia* Judgment, paras. 431 (“From that moment onwards, if the State has available to it means likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of harbouring special intent [...], it is under a duty to make such use of those means as the circumstances permit.”), 432 (“[A] State may be found to have violated its obligation to prevent even though it had no certainty, at the time when it should have acted, but failed to do so, that genocide was about to be committed or was under way; for it to incur responsibility on this basis it is enough that the State was aware, or should normally have been aware, of the serious danger that acts of genocide would be committed”).

know that genocide is occurring or is about to be perpetrated; it is sufficient for the relevant State to be aware at a “high level of certainty” of the grave risk of genocide.³⁹

16. As the prevention of the crime of genocide is intrinsically connected to the prevention of crimes against humanity and war crimes, the same legal standards directly bear on extraterritorial state responsibility with respect to other atrocity crimes.⁴⁰ Irrespective of content-specific issues, it is clear that one thing is never sufficient to comply with the duty to prevent atrocity crimes whenever there exists a serious risk thereof: doing nothing. States must always overcome the threshold of passiveness, as inaction would contravene the object and purpose of the R2P doctrine and the general principles of international law on which it is based. This means that, as a minimum obligation, States must do at least *something* to prevent atrocity crimes.⁴¹

III. Canada’s Implication and Duty to Act

17. Mere months before Turkey and Azerbaijan’s military campaign against the Armenians of Artsakh, Canada allowed for exemptions to a ban which was in place since October 2019 (as part of an arms embargo alongside Germany, France, and the United Kingdom in response to Turkey’s unilateral invasion of Syria) and, through a special exemption, issued permits in the spring of 2020 for the export of the Canadian-made WESCAM weapons technology to Turkey.⁴² These Canadian components would later be identified in Artsakh in October 2020, fully embedded in the Turkish-made Bayraktar drones.⁴³ Canada is thus, however unwittingly, implicated in the present

³⁹ *Bosnia v. Serbia* Judgment, para. 210.

⁴⁰ See Sheri P. Rosenberg, “Responsibility to Protect: A Framework for Prevention”, *Global Responsibility to Protect* 1 (2009), p. 461. See also UN General Assembly, “Prevention of Genocide – Report of the Secretary-General”, A/HRC/41/24, 8 October 2019, para. 3 (“The prevention of the crime of genocide is intrinsically connected to the prevention of crimes against humanity and war crimes. I have been referring to these crimes as ‘atrocity crimes’ as they reveal extreme forms of human rights violations of a deeply violent and cruel nature that typically – but not always – occur on a massive scale. These crimes also tend to occur concurrently in the same situation rather than as isolated events, as has been demonstrated by their prosecution in both international and national jurisdictions.”)

⁴¹ See Björn Schiffbauer, “The Duty to Prevent Genocide under International Law: Naming and Shaming as a Measure of Prevention”, *Genocide Studies and Prevention: An International Journal*, Vol. 12 Iss. 3 (2018), p. 86.

⁴² Kelsey Gallagher, “Killer Optics: Exports of WESCAM Sensors to Turkey – A Litmus Test of Canada’s Compliance with the Arms Trade Treaty”, *Ploughshares Special Report*, September 2020, p. 11, retrieved from <https://ploughshares.ca/wp-content/uploads/2020/09/TurkeyWESCAMReportSept.2020.pdf>.

⁴³ Steven Chase, “Canadian-made targeting gear used in air strikes against Armenians, evidence shows”, *The Globe and Mail*, 30 October 2020, retrieved from <https://www.theglobeandmail.com/politics/article-canadian-made-targeting-gear-used-in-air-strikes-against-armenians/>.

crisis in Armenia and Artsakh through its decision to allow the export of arms to Turkey.

18. The circumstances surrounding Canada’s alarming issuance of these permits in the spring of 2020 remain unexplained. Such a decision by the Minister of Foreign Affairs is contrary to the *Export and Import Permits Act* (“EIPA”),⁴⁴ as well as Canada’s obligations under the Arms Trade Treaty,⁴⁵ as the Minister could not issue a permit upon determining that there is a substantial risk that the export of the goods or technology could be used to commit or facilitate, *inter alia*, a serious violation of international humanitarian law or international human rights law, or an act constituting an offence under international conventions or protocols relating to terrorism to which Canada is a party.

19. As Turkey’s use of the WESCAM technology to foster instability and commit acts contrary to international humanitarian law in Syria and Libya were already well known and documented prior to the start of the Turkish-Azerbaijani offensive on 27 September 2020,⁴⁶ it is unlikely that the Minister could not have determined that a “substantial risk” existed for Turkey to use, or facilitate the use of, the technology for illicit purposes. Considering the very nature of the technology in question and the use that was demonstrably made of it, it is also rather evident that the Minister could not – and did not – stipulate any effective mitigating measures to counter the risk. The Minister thus seems, *prima facie*, to have acted *ultra vires*, bypassing one of the rare provisions in the EIPA that limit his admittedly broad discretionary powers on substantive, rather than procedural, grounds.⁴⁷

20. From 27 September 2020 until at least 10 November 2020, Azerbaijan used WESCAM technology in its offensive, which included carrying out planned, targeted and deliberate attacks on civilians in densely populated residential areas, resulting in over 2,500 casualties including the killing of at least one Canadian citizen,⁴⁸ hundreds of civilian deaths and injuries

⁴⁴ See Subsections 7.3 and 7.4 of the Export and Import Permits Act (R.S.C., 1985, c. E-19).

⁴⁵ See Article 7 of the United Nations Arms Trade Treaty, which entered into force on 24 December 2014, and to which Canada became a State Party on 17 September 2019.

⁴⁶ See, generally, Kelsey Gallagher, “Killer Optics: Exports of WESCAM Sensors to Turkey – A Litmus Test of Canada’s Compliance with the Arms Trade Treaty”, Ploughshares Special Report, September 2020, retrieved from <https://ploughshares.ca/wp-content/uploads/2020/09/TurkeyWESCAMReportSept.2020.pdf>.

⁴⁷ In *Turp v. Minister of Foreign Affairs*, 2018 FCA 133, the Federal Court of Appeal explained the breadth of these discretionary powers. This decision, however, predates the adoption of s. 7.4 of the EIPA, and the Court confirmed its authority to review a decision by the Minister that “was made arbitrarily or in bad faith, cannot be supported on the evidence, or the Minister failed to consider the appropriate factors” (*see* para. 61). In amending the EIPA following its adherence to the Arms Trade Treaty, Canada incorporated an obligation to refuse the issuance of a permit when there is a substantial risk of grave violations.

⁴⁸ See Associated Press, “Armenia raises Nagorno-Karabakh conflict troop toll to 2,425”, 18 November 2020, retrieved from <https://apnews.com/article/nikol-pashinian-azerbaijan>.

including to children, as well as the destruction of thousands of civilian objects and infrastructure with no military objectives whatsoever and located nowhere near any military targets in Artsakh and Armenia.⁴⁹ On 5 October 2020, the Minister announced that he had become aware of “Canadian technology being used in the military conflict in Nagorno-Karabakh [...] resulting in shelling of communities and civilian casualties”, and accordingly “suspended the relevant export permits to Turkey”.⁵⁰ However, by then the measure had obviously come too little, too late.

21. Since then, Canada has done little more than issue statements calling on both sides to negotiate peacefully and for Turkey to stay out of the conflict, all of which have obviously fallen on deaf ears with three consecutive ceasefire violations by Azerbaijan during active hostilities and Turkey’s now-apparent participation in the implementation of the Ceasefire Statement, which will involve the continued use of drones in Artsakh.⁵¹ It is inappropriate for Canada to limit itself to issuing more such evidently futile statements, which effectively amounts to doing nothing, particularly in the context of a crisis to which Canada has contributed, and in which its duty to protect the population of Artsakh from further atrocities under the third pillar of R2P is unquestionably triggered. It is therefore imperative that Canada take more robust action and implement meaningful remedial measures to ensure accountability for Turkey and Azerbaijan’s gross transgressions, 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.

[armenia-yerevan-e05ea4d7d43e0111cd142861dec105ec](https://www.cbc.ca/news/politics/nagorno-karabakh-armenia-azerbaijan-1.5755538); CBC Radio-Canada, “Armenian community mourns Canadian killed in fighting in Nagorno-Karabakh”, 8 October 2020, retrieved from <https://www.cbc.ca/news/politics/nagorno-karabakh-armenia-azerbaijan-1.5755538>.

⁴⁹ See *supra*, fn. 4, for references to all ad hoc and interim reports issued by the Human Rights Defenders of Artsakh and Armenia, especially HRDRA, “Ad Hoc Public Report on Azerbaijani Drones’ Targeted Attacks against Peaceful Population of Armenia and Artsakh in Grave Breach of International Law”, October 2020, retrieved from <https://www.ombuds.am/images/files/de3634c257bb698735db318a33f280bf.pdf>. See also *infra*, Section IV(B)(ii): Azerbaijan commits atrocious crimes against Armenians, for more details on the extent of the war crimes and other atrocities committed against the population of Artsakh.

⁵⁰ Global Affairs Canada, “Statement from Minister Champagne on suspension of export permits to Turkey”, 5 October 2020, retrieved from <https://www.canada.ca/en/global-affairs/news/2020/10/statement-from-minister-champagne-on-suspension-of-export-permits-to-turkey.html>.

⁵¹ President of Russia, “Replies to media questions on developments in Nagorno-Karabakh“, 17 November 2020, retrieved from <http://en.kremlin.ru/events/president/news/64431> (“we have agreed [with Turkey] to set up a joint centre, which will make use of unmanned aerial vehicles, drones, to jointly monitor the situation along the contact line”).

IV. Remedial Secession/Recognition of Artsakh

22. Although Canada has openly condemned the violence in Artsakh and temporarily suspended the sale of weapons technology to Turkey, these actions were entirely insufficient to prevent the beheadings, use of mercenaries, executions, mutilations, destruction of cultural and religious property, and attacks against civilians in Artsakh, as well as the risks of ethnic cleansing and continued atrocities against the Armenians of Artsakh.

23. The third pillar of R2P elaborates the full range of options for timely and decisive response. Non-military tools designed to prevent the escalation of atrocity crimes include mediation, monitoring and observer missions, fact-finding missions and commissions of inquiry and public advocacy by international officials. Acting under Chapter VII of the UN Charter, the international community has also employed more robust tools, including sanctions designed to discourage the targeting of civilians, the establishment of peacekeeping missions and the authorization of military action with the express purpose of protecting civilians.⁵²

24. However, every situation is different and calls for case-specific action. In the case of Artsakh, the tool of remedial secession/recognition is imperative in light of the fundamental right of the people of Artsakh to self-determination after a long history of being subjected to systemic discrimination and oppression, and in light of the current significant risk of ethnic cleansing.

25. In this respect, the above-mentioned group of 80 eminent genocide scholars have declared that “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.”⁵³ Russian President Vladimir Putin also recently stated

⁵² See especially UN General Assembly, “Responsibility to protect: timely and decisive response – Report of the Secretary-General”, A/66/874, 25 July 2012. See also United Nations Office on Genocide Prevention and the Responsibility to Protect, “Compendium of Practice: Implementation of the Responsibility to Protect, 2005-2016”, retrieved from [www.un.org/en/genocideprevention/documents/RtoP%20Compendium%20of%20Practice%20\(Provisional%20Pre-Publication%20Version\)%20FINAL%2020%20March%202017.pdf](http://www.un.org/en/genocideprevention/documents/RtoP%20Compendium%20of%20Practice%20(Provisional%20Pre-Publication%20Version)%20FINAL%2020%20March%202017.pdf).

⁵³ See Open letter by members of the International Association of Genocide Scholars (IAGS), 22 October 2020, retrieved from <https://www.voltairenet.org/article211404.html>

that the failure to recognize Artsakh has been a significant factor in the current crisis.⁵⁴

26. The term “remedial recognition” is used throughout this Paper as it is the position herein, for reasons that are demonstrated below, that Artsakh has always been independent of Azerbaijan (Section A), and that, in any event, Artsakh’s remedial secession/recognition of independence from Azerbaijan is fully warranted (Section B). Delegations from France, Belgium and Germany⁵⁵ have already visited Artsakh to investigate and report back on the situation and are calling for their countries to recognize Artsakh’s statehood.⁵⁶ In fact, a number of cities⁵⁷ and provinces⁵⁸ have already recognized the independence of Artsakh. It is only a matter of time before UN member states begin to follow suit. Canada, as a pioneer in the development

⁵⁴ President of Russia, “Replies to media questions on developments in Nagorno-Karabakh”, 17 November 2020, retrieved from <http://en.kremlin.ru/events/president/news/64431>.

⁵⁵ The Belgian Parliamentary delegation included Els Van Hoof, Georges Dallemagne, David Clarinval, Paul Delva, Zoé Genot and Serge de Patoul. Fifteen Members of Parliament from France visited Artsakh to gain knowledge of Azerbaijan’s aggression. *See* Asbarez, “Artsakh’s Foreign Minister Meets with French Lawmakers”, 26 October 2020, retrieved from <https://asbarez.com/197985/artsakhs-foreign-minister-meets-with-french-lawmakers/>.

Germany’s Bundestag members from the “Alternative Germany Party” held a press conference in Stepanakert on 18 October 2020. *See* Asbarez, “In Artsakh, German Lawmakers Call for Sanctions Against Ankara and Baku”, 19 October 2020, retrieved from <https://asbarez.com/197729/in-artsakh-german-lawmakers-call-for-sanctions-against-ankara-and-baku/>.

⁵⁶ *See, e.g.*, Resolution No. 3436 “on the recognition of the Republic of Artsakh” submitted to the French National Assembly, 16 October 2020, retrieved from http://www.assemblee-nationale.fr/dyn/15/textes/l15b3436_proposition-resolution#tocUniqueId0; Resolution No. 145 “on the necessity of recognizing the Republic of Nagorno-Karabakh” submitted to the French Senate on 18 November 2020, retrieved from <https://www.senat.fr/leg/ppr20-145.html>, and adopted by the French Senate on 25 November 2020, retrieved from https://www.senat.fr/espace_presse/actualites/201011/necessite_de_reconnaitre_la_republique_e_du_haut_karabagh.html. *See also* Resolution adopted by Dutch Parliament calling on the European Union to impose sanctions on President Aliyev for war crimes committed in Artsakh, 17 November 2020, retrieved from https://www.europa-nu.nl/id/vlduoaz1zjrzu/nieuws/kamer_wil_sancties_tegen_president.

⁵⁷ Laval (Canada); Fowler, Fort Lee, Fresno, Glendale, Highland, Los Angeles, Clark County, Englewood Cliffs, Denver (United States); Geneva (Switzerland); Alfortville, Vienne (calling on French government to recognize Artsakh), Limonest (France); Milan, Palermo, Asolo, Cerchiara di Calabria, Aprilia (Italy); Amposta, Berga (Spain); Montevideo (Uruguay); Willoughby (Australia); Derby (United Kingdom); Sayaxché (Guatemala). On 17 November 2020, the mayors of 15 French municipalities issued a declaration recognizing the independence of Artsakh and urging France and the international community to follow suit. *See* France Bleu, “Valence : le maire lance un appel pour la reconnaissance internationale de la République du Haut-Karabagh”, 14 November 2020, retrieved from <https://www.francebleu.fr/infos/politique/valence-le-maire-lance-un-appel-pour-la-reconnaissance-internationale-de-la-republique-du-haut-1605374366>.

⁵⁸ New South Wales (Australia); Massachusetts, Rhode Island, Maine, Louisiana, California, Georgia, Minnesota, Colorado, Hawaii, Michigan (United States); Catalonia (Spain); Lombardy (Italy).

of the law on unilateral secession and right to self-determination, and as an instrumental actor in the championing of R2P, has the opportunity to take a leadership role in this respect by officially recognizing Artsakh, and thereby upholding fundamental principles of international law.

A. Artsakh has always been independent of Azerbaijan

i. The League of Nations never recognized Azerbaijan

27. The international borders between Armenia, Artsakh and Azerbaijan were not established under international law at the beginning of the 20th Century.⁵⁹ On 22 August 1919, Artsakh and Azerbaijan signed an agreement stipulating that their boundaries would be settled at the 1919 Paris Peace Conference.⁶⁰ At the Paris Peace Conference, the Commission “on the boundaries of a new independent State of Armenia” considered it advisable to await the results of an agreement between Armenia, Georgia and Azerbaijan, failing which the League of Nations would appoint an inter-allied Commission to arbitrate the dispute and determine borders based on “the principle of ethnographic data”.⁶¹

28. At the time, Artsakh’s population comprised over 90% Armenians and was self-governed.⁶² The Congress of Artsakh Armenians had elected their own government (the National Council and Peoples government) and

⁵⁹ In February 1918, the Georgian, Armenian, and Azerbaijani authorities founded the “Transcaucasian Democratic Federative Republic”, which was quickly dissolved in May 1918 when Georgia, Azerbaijan and Armenia each declared their respective independences. See Arman Sarvarian, “The Artsakh Question: An Analysis of Territorial Dispute Resolution in International Law” (2008) *Melb J Int Law* 9(1) (“Savarian”), p. 193; Armen Tamzarian, “Nagorno-Karabakh’s Right to Political Independence under International Law: An Application of the Principle of Self-Determination” (1994) 50 *SUL Rev* 183 (“Tamzarian”), p. 187; Arsène Saparov, “Why Autonomy? The Making of Nagorno-Karabakh Autonomous Region 1918-1925” (2012) 64:2 *Eur Asia Studies* 281 (“Saparov”), p. 286-287.

⁶⁰ Richard G. Hovanissian, *Provisional Accord between the VII Armenian Council of Karabakh with the Government of Azerbaijan*, Vol. 1., 1918-1919, (Berkeley, University of California Press, The Republic of Armenia, 1971), p. 186.

⁶¹ Ara Papian, *Hayrenatirutyun. Reclaiming the Homeland, Legal Bases for the Armenian Claims and Related Issues*, (Yerevan, 2014) pp. 260-261 quoting Documents on British Foreign Policy, Document #34, expressing the joint view of Britain, France, Italy and Japan: “As regards the boundary between the State of Armenia and Georgia and Azerbaijan, the Commission considers that, it is advisable for the present to await the results of the agreement, provided for in the treaties existing between the three Republics, in regard to the delimitation of their respective frontiers by the States themselves. In the event of these Republics not arriving at an agreement respecting their frontiers, resort must be had to arbitration by the League of Nations, which would appoint an interallied Commission to settle on the spot the frontiers referred to above, taking into account, in principle, ethnographical data.” See also Article 92 of the 1920 Treaty of Sèvres.

⁶² Thomas De Waal, *Black Garden: Armenia and Azerbaijan Through Peace and War*, (New York, New York University Press, 2013) (“De Waal”), p. 140.

proclaimed their independence in a series of Congress meetings between July 1918 and April 1920.⁶³

29. On 1 December 1920, the League of Nations rejected Azerbaijan's request for statehood, finding that, given the border disputes, it was impossible to determine the exact limits of the territory in which Azerbaijan exercised authority.⁶⁴ The border issue was still unresolved when the Soviet Union established its reign over the region.

ii. The USSR illegally annexed Artsakh to the Azerbaijan SSR

30. On 30 November 1920, the Azerbaijan Soviet Socialist Republic ("SSR") recognized Nagorno-Karabakh, Zanghezur and Nakhichevan as integral parts of the Armenian SSR.⁶⁵ Artsakh was nevertheless forcibly annexed to the Azerbaijan SSR in July 1921 under Stalin's direct pressure.⁶⁶ Such annexation was illegal even under Soviet law.⁶⁷ Two years later, the Union of Soviet Socialist Republics ("USSR") re-administered Artsakh as the Nagorno-Karabakh Autonomous Oblast ("NKAO"), giving it wide autonomy.⁶⁸ The population of Nagorno-Karabakh (94% Armenian) was denied "even the most minimal possibility of participation" in this decision-making process.⁶⁹ Artsakh's repeated requests for the USSR to reconsider its internal

⁶³ See Saparov, p. 293 and G. A. Hovhannisian, *Sovetakan ishkhanutian hastatume Lernayin Gharabaghum* (Erevan, Izdatel'stvo Erevansgogo Universiteta, 1971), p. 167.

⁶⁴ League of Nations: Journal N17 of the First Assembly, Geneva 1920, p. 139.

⁶⁵ See, e.g., Shahen Avakian, *Nagorno Karabakh: Legal Aspects*, 5th ed. (Moscow: MIA Publishers, 2015), p. 13, referring to The Declaration of the Revolutionary Committee of the Azerbaijan SSR on Recognition of Nagorno Karabagh, Zanghezur and Nakhichevan as an Integral Part of the Armenian SSR, 30 November 1920, published in Newspaper "Communist", 7 December 1920, Yerevan.

⁶⁶ Otto Luchterhandt, *Nagorny Karabakh's Right to State Independence According to International Law*, (Boston, Baika Association Inc., 1993) ("Luchterhandt"), p. 32.

⁶⁷ See Haig E. Asenbauer, *On the Right of Self-Determination of the Armenian People of Nagorno-Karabakh*, (Wilhelm Braumuller, Unversitats-Verlagsbuchhandlung, 1993, English translation: New York. Armenian Prelacy, 1996) ("Asenbauer"), pp. 120 and 123 ("the USSR was a member of the United Nations and had ratified the two U.N. Human Rights Conventions (ratifications which applied to all Union republics- article 14 (a) of the 1936 Constitution). This forced annexation also went against the USSR's own norms "Decree on Peace" from October 26, 1917 in which it had declared: "If any nation whatsoever is forcibly retained within the borders of a given state, if, in spite of its expressed desire — no matter whether expressed in the press, at public meetings, in the decisions of parties, or in protests and uprisings against national oppression — is not accorded the right to decide the forms of its state existence by a free vote, taken after the complete evacuation of the [aggressive] troops of the incorporating or, generally, of the stronger nation and without the least pressure being brought to bear, such incorporation is annexation, i.e., seizure and violence.")

⁶⁸ Saparov, p. 321; Tamzarian, p. 188-189. The NKAO was divided into five administrative divisions – Mardakert District, Martuni District, Shusha District, Askeran District and Hadrut District – and shared no borders with the Armenian SSR.

⁶⁹ Luchterhandt, p. 35.

jurisdictional divisions for unification with the Armenian SSR fell on deaf ears.⁷⁰

31. USSR authorities would eventually admit, in 1977, that Artsakh had been artificially annexed to the Azerbaijan SSR, without taking into consideration, notably, the “will of its people”.⁷¹ On 20 February 1988, the NKAO once again passed a resolution requesting a transfer to the Armenian SSR’s jurisdiction.⁷² One week later, mobs of ethnic Azerbaijanis formed into groups and attacked and killed Armenians for three days in the Azerbaijan SSR town of Sumgait, in the streets and in their apartments (“Sumgait Pogrom”).⁷³ Intellectuals and political leaders who called for the unification of Artsakh to the Armenian SSR were imprisoned or assassinated.⁷⁴ On 15 June 1988, the Supreme Soviet of the Armenian SSR voted unanimously for unification with the NKAO; two days later the Supreme Soviet of the Azerbaijan SSR, equally unanimously, rejected the decision.⁷⁵

32. On 7 July 1988, the European Parliament condemned the Sumgait Pogrom as well as anti-Armenian violence in Baku, recognized the arbitrary inclusion of the NKAO within the Azerbaijan SSR, and supported the demand of the Armenians of Nagorno-Karabakh for reunification with the Armenian SSR.⁷⁶ On 12 July 1988, the NKAO passed a resolution to

⁷⁰ V.A. Ponomarev “On the genocide of the Armenian people in Turkey and Transcaucasia in XIX-XX centuries”, General scientific periodical “Tomsk State University Reporter” No 320 March 2009, p. 120.

⁷¹ See Avakian, p. 67, referring to Session of the Presidium of the USSR Council of Ministers (“As a result of a number of historic circumstances, Nagorno Karabakh was artificially annexed to Azerbaijan several decades ago. In this process, the historic past of the oblast [region], its ethnic composition, the will of its people and economic interests were not taken into consideration [...] Nagorno Karabakh (Armenian name Artsakh) should be made part of the Armenian Soviet Socialist Republic. In this case everything will take its legal place.”)

⁷² On 20 February 1988, the extraordinary session of the Council of People's Deputies 20th convocation of NKAO passed a decision to appeal to the Supreme Councils of the Azerbaijan SSR and the Armenian SSR to “demonstrate a sense of deep understanding of the aspirations of the Armenian population of Nagorno Karabakh and resolve the question of transferring NKAO from the Azerbaijan SSR to the Armenian SSR, at the same time to intercede with the Supreme Council of the USSR to reach a positive resolution on the issue of transferring the region from the Azerbaijan SSR to the Armenian SSR.” See <http://www.nkr.am/en/karabakh-national-liberation-movement>.

⁷³ See *infra* Section IV(B)(ii)(a): History of persecution and pogroms.

⁷⁴ “Eyewitness account of events in Mountainous Karabagh 1924-1936” in Gerard J. Libaridian (ed.), *The Karabagh File: Documents and Facts on the Region of Mountainous Karabagh, 1918-1988*, (Cambridge, MA: The Zoryan Institute, 1988) (“The Karabagh File”), p. 41.

⁷⁵ Cornell, Svante E. “Turkey and the Conflict in Nagorno Karabakh: A Delicate Balance.” *Middle Eastern Studies*, vol. 34, no. 1, 1998, pp. 51–72.

⁷⁶ See Resolution 4(d) of 7 July 1988 on the situation in Soviet Armenia, European Parliament, published in the Official Journal of the European Communities, C235, Volume 31, 12 September 1988, p. 106 (“The European Parliament, [...] having regard to the historic status of the autonomous region of Nagorno-Karabakh (80% of whose present population is

withdraw from the Azerbaijan SSR and to become an independent republic named “the Artsakh Armenian Autonomous Region”.⁷⁷

33. In an attempt to right a historic wrong, in January 1989 the USSR placed the NKAO under a special administration committee directly accountable to the supreme state organs of the USSR; this committee however, was dissolved later that year, leaving Artsakh with no political representation.⁷⁸ On 11 August 1989, Artsakh formed the “Congress of the Authorized Representatives of the Population of the Autonomous Territory of Nagorno-Karabakh” and elected a national council with authority over Nagorno-Karabakh.⁷⁹

iii. Artsakh legally seceded from the USSR

34. At the collapse of the Soviet Union, Artsakh legally seceded from the USSR in conformity with the USSR’s law and procedure promulgated in 1990 governing the secession of one of its constituent parts (“USSR Law on Secession”), according to which an autonomous region, such as the NKAO, could secede from the USSR or from a Union Republic by referendum.⁸⁰ Although the USSR Constitution already provided a right of secession to Union Republics,⁸¹ the USSR Law on Secession extended the right to autonomous republics and autonomous regions. The USSR constitution also enshrined the right of a nation to self-determination.⁸²

35. However, considering that the USSR Law on Secession was only promulgated in 1990, it was virtually impossible to apply the mechanisms provided for into strict practice given the USSR’s rapid dissolution as a whole. Union Republics accordingly proclaimed their unilateral independence one after another in the days and weeks following the failed August 1991 *coup d’état* in Moscow.⁸³ Artsakh followed the same approach used by other

Armenian) as part of Armenia, to the arbitrary inclusion of this area within Azerbaijan in 1923 and to the massacre of Armenians in the Azerbaijani town of Sumgait in February 1988, [...] [s]upports the demand of the Armenian minority for reunification with the Socialist Republic of Armenia.”), retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOC_1988_235_R_0080_01&from=EN.

⁷⁷ De Waal, p. 61.

⁷⁸ Luchterhandt, p. 26.

⁷⁹ Luchterhandt, p. 27.

⁸⁰ See Articles 3 and 6-9 of the Law on Procedure for Resolving Questions Connected with a Union Republic’s Secession from the USSR. 3 April 1990, retrieved from <http://soviethistory.msu.edu/1991-2/shevarnadze-resigns/shevarnadze-resigns-texts/law-on-secession-from-the-ussr/>.

⁸¹ See Articles 72 and 78 of the Constitution of the USSR of 1977 (“USSR Constitution”), retrieved from <http://www.departments.bucknell.edu/russian/const/77cons03.html>.

⁸² See Articles 29 and 70 of the USSR Constitution. See also Asenbauer, p. 125, according to whom the right to self-determination even had “priority over the claim of a state to territorial integrity”.

⁸³ The USSR officially dissolved on 26 December 1991.

seceding Union Republics: declaring independence and then conducting a referendum to determine the population's will to secede.⁸⁴

36. On 2 September 1991, the NKAO proclaimed its independence from the USSR and on 10 December 1991, 82.2% of the total number of the registered voters took part in a referendum, 99.89% of whom voted “yes” to the question: “Do you agree that the proclaimed Nagorno Karabakh republic be an independent state acting on its own authority to decide forms of co-operation with other states and communities?”⁸⁵ The referendum was monitored by over 20 external observers including deputies from the USSR, the Russian Soviet Federative Socialist Republic, the city council of Moscow as well as human rights advocates, all of whom reported that the vote was conducted without any procedural violations and represented the free will of the voters.⁸⁶

37. Azerbaijan similarly declared its independence on 30 August 1991, and then held its referendum on 29 December 1991, nineteen days after Artsakh.⁸⁷ The European Parliament has since recognized that Artsakh “declared its independence following similar declarations by former Soviet Socialist Republics after the collapse of the USSR in September 1991”.⁸⁸ Accordingly, the secession of Artsakh from the USSR and the Azerbaijan SSR was implemented before Azerbaijan obtained its own independence. As such, when the independent Republic of Azerbaijan was pronounced, Artsakh was no longer a part of it.

⁸⁴ All Soviet republics seceded without following the specific procedure set out in the USSR Law on Secession. See Alexander Salenko, “Legal Aspects of the Dissolution of the Soviet Union in 1991 and Its Implications for the Reunification of Crimea with Russia in 2014”, *ZaöRV* 75 (2015), p. 156.

⁸⁵ See Act on Referendum Conducted in the Nagorno-Karabakh Republic on December 10, 1991, retrieved from http://www.nkrusa.org/nk_conflict/declaration_independence.shtml; Ministry of Foreign Affairs, Republic of Artsakh, “The Referendum on Independence of the Nagorno Karabakh Republic”, retrieved from <http://www.nkr.am/en/independence-referendum-in-karabakh>. The referendum question was consistent with a question that would be considered “clear” under section 1 of *An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference*, S.C. 2000 c.26. See also Luchterhandt, p. 28 (“in this manner the Armenians of Nagorno-Karabakh have expressed their will for self-determination in a form and a procedure, namely that of a referendum, which international law usually requires today for the effective exercise of the right of self-determination”).

⁸⁶ See Yuri Barsegov (ed.), *Nagorny Karabakh in International Law and World Politics, Documents and Commentary*, Vol. 1, (Moscow, Krug Publishers, 2008, Doc. n° 749, p. 713.

⁸⁷ Savarian, p. 197; Tamzarian, p. 5; RadioFreeEurope/RadioLiberty, “Azerbaijan Marks 20th Anniversary Of Independence”, 18 October 2011, retrieved from https://www.rferl.org/a/azerbaijan_marks_20th_anniversary_of_independence/24363665.html

⁸⁸ European Parliament “Resolution on support for the peace process in the Caucasus”, Official Journal, C.175, 21 June 1999, p. 0251, retrieved from <https://op.europa.eu/en/publication-detail/-/publication/1c8edb49-c670-426d-bc4f-267f0d5509a4>.

38. Azerbaijan's own declaration of independence and constitution, as well as its application for membership to the United Nations,⁸⁹ stated that it had been illegally annexed into the USSR, and that it revoked the existence of the Azerbaijan SSR, viewing itself as a continuation of the pre-Soviet Azerbaijan state.⁹⁰ Yet, as noted above, during the pre-Soviet period, Artsakh never formed part of Azerbaijan, and the latter's application for membership to the League of Nations was rejected primarily on the ground that the borders of Azerbaijan were not precisely determinable.⁹¹ Therefore, by declaring the newly-established Azerbaijan Republic as the successor of the 1918-1920 Azerbaijan Republic, any claim toward Nagorno-Karabakh was consequently relinquished.

iv. Artsakh is an independent State under international law

39. The objective criteria that must be fulfilled in order for an entity to be recognized as a State are formulated in the 1933 Montevideo Convention on the Rights and Duties of States ("Montevideo Convention"), Article 1 of which sets out that the State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states. These four criteria are the ones most commonly referred to when addressing the question of what constitutes a State. The Montevideo Convention is today considered part of customary international law, and is the major foundation for the declaratory theory concerning the effect of State recognition.

40. Artsakh fulfills all four criteria as follows:

(a) First, Artsakh has a permanent population of 150,000 people, 95% of whom are Armenian.⁹² The indigenous Armenian group's presence in Nagorno-Karabakh dates back over two millennia.⁹³ The population shares a common language (Armenian), religion (Orthodox Christian) and culture. The region is host to ancient Armenian ruins, and hundreds of Armenian

⁸⁹ Application of the Republic of Azerbaijan for admission to membership in the United Nations (February 7, 1992), Annex II: "Proclaiming in accordance with the will of the Azerbaijan people the restoration of the independence, which had been liquidated in April 1920".

⁹⁰ On 18 October 1991, Azerbaijan adopted the Constitutional Act "On recovery of the state independence of the Azerbaijan Republic." This Constitutional Act, which today forms a part of the constitutional framework of Azerbaijan, considered the establishment of Soviet power in Azerbaijan as "annexation by Soviet Russia", which "overthrew Azerbaijan's legal government." In so doing, the Republic of Azerbaijan declared the establishment of Soviet power in Baku illegal, and rejected the whole Soviet political and legal heritage. As a result, the Azerbaijan effectively nullified the above-mentioned July 1921 decision to forcibly and illegally annex Artsakh to the Azerbaijan SSR, thus revoking its sole claim, however thin, to Nagorno Karabakh. This Constitutional Act also provided that Azerbaijan is the successor of the Azerbaijan Republic which existed from 28 May 1918 until 28 April 1920.

⁹¹ See *supra* Section IV(A)(i): The League of Nations never recognized Azerbaijan.

churches and cemeteries, carrying countless famous Armenian cross-stones (“Khachkars” in Armenian), classified by UNESCO as a part of the Intangible Cultural Heritage of Humanity.⁹⁴

(b) Second, the territory of Artsakh is defined in its proclamation of independence on 2 September 1991, namely that the Republic of Nagorno-Karabakh is within the boundaries of the NKAO region and the adjacent Shahumian district.⁹⁵

(c) Third, Artsakh has its own government, which holds elections under a democratic constitutional framework. The government is composed of a National Assembly made up of 33 members,⁹⁶ and a judiciary (its Supreme Court is composed of a chairperson and six female judges).⁹⁷ The government is currently led by the head of state, President Arayik Harutyunyan.⁹⁸

(d) Fourth, Artsakh has full capacity to enter into relations with other States, through its Council of Ministers, particularly the Minister of Foreign Affairs, whose responsibilities include diplomatic relations.⁹⁹ However, until other States recognize the independence of Artsakh, it is prevented from entering into formal diplomatic relations with them, despite being otherwise willing and capable of doing so. Artsakh has nevertheless established representative offices in Armenia, France, Germany, Russia, Australia, Lebanon (accredited to all Middle Eastern countries) and the United States

⁹² De Waal, p. 140.

⁹³ Tamzarian, p. 185.

⁹⁴ See United Nations Educational, Scientific and Cultural Organization, “Armenian cross-stones art – Symbolism and craftsmanship of Khachkars, Inscribed in 2010 (5.COM) on the Representative List of the Intangible Cultural Heritage of Humanity”, retrieved from <https://ich.unesco.org/en/RL/armenian-cross-stones-art-symbolism-and-craftsmanship-of-khachkars-00434>.

⁹⁵ See the Proclamation of the Nagorno Karabakh Republic at http://www.nkrusa.org/nk_conflict/declaration_independence.shtml. See also map in Annex.

⁹⁶ See National Assembly of the Republic of Artsakh (Nagorno-Karabakh) at <http://www.nankr.am/en>.

⁹⁷ See Government of the Republic of Artsakh Republic at <http://gov.nkr.am/en/>.

⁹⁸ Artsakh previously operated under a semi-presidential system, with the establishment in 1992 of the position of Prime Minister, appointed by the head of state—the President. In a constitutional referendum held in 2017, citizens voted in favour of transforming Artsakh into a presidential system and the office of Prime Minister was abolished. The President accordingly became both the head of state and the head of government.

⁹⁹ See Ministry of Foreign Affairs of the Republic of Artsakh at <http://www.nkr.am/>.

(also accredited to Canada),¹⁰⁰ as well as a number of friendship groups and circles around the world, including with Canada.¹⁰¹

41. It is important to note that the Montevideo Convention does not list recognition by other States as one of the criteria for statehood. In fact, Article 3 of the Montevideo Convention confirms that “[t]he political existence of the state is independent of recognition by the other states. Even before recognition the state has the right to defend its integrity and independence, to provide for its conservation and prosperity, and consequently to organize itself as it sees fit, to legislate upon its interests, administer its services, and to define the jurisdiction and competence of its courts.” The exercise of these rights has no other limitation than the exercise of the rights of other states according to international law. Thus, the Montevideo Convention rests on the supposition that statehood is an objective concept and above all a question of fact, independent of the consent by other States.¹⁰²

42. As such, the fact that other States have not yet officially recognized the independence of Artsakh does not in any way detract from the legality and objectivity of its existence and independent status. Nevertheless, the recognition of Artsakh by other States would allow it to consolidate its

¹⁰⁰ See Ministry of Foreign Affairs of the Republic of Artsakh, “Permanent Representations”, at <http://www.nkr.am/karabakh-permanent-representations> and Office of the Nagorno Karabakh Republic, “Representations of the Nagorno Karabakh Republic”, at http://www.nkrusa.org/foreign_policy/representations.shtml.

¹⁰¹ The following friendship groups and circles have been formed: “Artsakh Republic - European Parliament” friendship group; “Artsakh Republic - Flemish Parliament of the Kingdom of Belgium” friendship group; “Artsakh - Canada” friendship group; “Artsakh Republic - Lithuania Republic” friendship group; “Artsakh - France” friendship circle; “Artsakh Republic - French-speaking legislators, representatives of scientific and public spheres of Belgium” friendship circle; “Artsakh - Australia” friendship circle; “Artsakh - Cyprus” friendship circle; Interparliamentary Commission on Cooperation between the Republic of Artsakh National Assembly and the National Assembly of the Republic of Armenia. See National Assembly of the Republic of Artsakh (Nagorno-Karabakh), “About Parliament”, at <http://www.nankr.am/en/32>. See also National Assembly of the Republic of Artsakh (Nagorno-Karabakh), “Statement On the Creation of the Friendship Group ‘Artsakh-Canada’”, 27 March 2019, at <http://www.nankr.am/en/3198>.

¹⁰² “The emergence of a new State is fundamentally a question of fact because it is above all a matter of establishing the existence of a human community grouped on a specific territory, endowed with a stable political organization, capable of ensuring order within its borders and preserving its political independence vis-à-vis other foreign governments. This is therefore an objective and observable fact that no legal principle can deny and that no discourse can prevent: the State first arises in fact before offering that others recognize its existence and, as such, its birth relates to history and political sociology. In this area, facts take precedence over law since the phenomenon of the accession of peoples to independence and state sovereignty sometimes finds its basis and legitimacy even outside established law”. [Translated] J.-Maurice Arbour and Geneviève Parent, *Droit international public*, 7th ed., Cowansville, Yvon Blais, 2017 (“Arbour and Parent”), pp. 307-308.

political existence.¹⁰³ For instance, Canada’s recognition of the Republic of Artsakh would give the Republic of Armenia, and other states, the backing they need to be able to follow suit.¹⁰⁴ Such recognition has also now become necessary as a result of, and only viable remedial solution to, renewed and persistent Azerbaijani and Turkish atrocities, including the imminent threat of genocide, against Artsakh’s indigenous Armenian population.

B. Artsakh’s remedial secession/recognition is warranted

i. Azerbaijan’s claims to Artsakh are not valid

a. Azerbaijan can no longer invoke territorial integrity

43. Azerbaijan regularly invokes the principle of *uti possidetis juris* and, by extension, territorial integrity, as grounds for claiming the illegality of the independence of Artsakh. However, the principle of territorial integrity of States does not contain an implicit prohibition on secession, and there is no prohibition on secession in international law.¹⁰⁵ The territorial integrity of a State is not absolute, and is limited by self-determination of its peoples if the State does not conduct itself in compliance with the latter.

44. A people’s right to self-determination is a general principle of international law enshrined in a number of fundamental international instruments, including, *inter alia*, the UN Charter, the International

¹⁰³ Arbour and Parent, pp. 296-304. For example, the legitimacy of Palestine is recognized by most states but it does not have *de facto* control over all its territory. We also note that, according to the Constitutive theorists, recognition is an additional criterion to the formation of the state which allows it to have an international legal personality. According to the declarative theory, recognition is not necessary for a state to have legal existence. According to Arbour and Parent the latter theory better accounts for the phenomenon of the appearance of new states and previously unrecognized states, such as East Germany for example. See Arbour and Parent, p. 313.

¹⁰⁴ The Republic of Armenia has not yet recognized the independence of Artsakh in hopes of resolving this problem through negotiations and peace talks, which have unfortunately not led to any sustainable solutions. The recognition of an independent Artsakh from the Republic of Armenia would have meant a refusal to negotiate around the issue, which was not in line with the government’s policy. See Tass Russian News Agency, “Armenia will recognize Karabakh if it is clear that Azerbaijan dodges dialogue – president”, 18 October 2020, retrieved from <https://tass.com/world/1213533>.

¹⁰⁵ The International Court of Justice has confirmed that State practice during the eighteenth, nineteenth and early twentieth centuries “points clearly to the conclusion that international law contained no prohibition of declarations of independence”. In particular, the Court concluded that “the scope of the principle of territorial integrity is confined to the sphere of relations between States”. It also determined that no general prohibition of declarations of independence could be deduced from Security Council resolutions condemning other declarations of independence, because those declarations of independence had been made in the context of an unlawful use of force or a violation of a *jus cogens* norm. See *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion of 22 July 2010 (“*Kosovo* Advisory Opinion”), paras. 79-81.

Covenant on Civil and Political Rights, and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States.¹⁰⁶ The International Court of Justice has recognized the *erga omnes* character of the right to self-determination, which it qualified as “one of the essential principles of contemporary international law”.¹⁰⁷ The Supreme Court of Canada has also recognized that “the existence of the right of a people to self-determination is now so widely recognized in international conventions that the principle has acquired a status beyond ‘convention’ and is considered a general principle of international law”.¹⁰⁸

45. The possession of a State, or sovereignty, is not a human right, but rather – as articulated by the R2P doctrine – is dependent on respect for human rights. As the UN Human Rights Committee has indicated, self-government of a people is an “essential condition” for the exercise and observance of other rights.¹⁰⁹ The breakdown of State legitimacy occurs at the point where it fails to protect and promote the rights of its inhabitants. As such, territorial integrity is not assured where States do not comply with the principles of equal rights and self-determination. When a country violates a peoples’ right to self-determination or freedom from systemic abuses and discrimination, the latter may have recourse to secession from that State.

46. The jurisprudence of the International Court of Justice indicates that the international community has taken the steps to endorse secession when a State commits atrocity crimes against a territorially concentrated minority.¹¹⁰ In particular, Judges in the Kosovo case affirmed the principle

¹⁰⁶ Charter of the United Nations (Can T.S. 1945 No 7), Article 1, par. 2 and article 55; International Covenant on Civil and Political Rights (999 U.N.T.S., 171), article 1; International Covenant on Economic, Social and Cultural Rights, article 1 (993 U.N.T.S., 3); Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, A/RES/2625(XXV), 24 October 1970, (“Declaration on Friendly Relations”); Vienna Declaration and Program of Action, A/CONF.157/24, 25 June 1993 (“Vienna Declaration”); Declaration on the Occasion of the Fiftieth Anniversary of the United Nations, A/RES/50/6, 9 November 1995, (“Declaration on the Fiftieth”); Final Act of the Conference on Security and Co-operation in Europe, part 8 and art. IV (14 I.L.M. 1292) (1975); European Community Declaration on the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union (31 I.L.M. 1486) (1992) (Brussels, December 16, 1991).

¹⁰⁷ See *Case Concerning East Timor (Portugal v. Australia)*, Judgment of 30 June 1995 (“*East Timor Judgment*”), para. 29. See also *Kosovo Advisory Opinion*, para. 80 (recognizing that the principle of self-determination, as expressed in the Declaration on Friendly Relations, reflects customary international law).

¹⁰⁸ *Reference re Secession of Quebec*, [1998] 2 SCR 217, para. 114.

¹⁰⁹ UN Human Rights Committee General Comment No. 12: Article 1 (Right to Self-determination) The Right to Self-determination of Peoples, para. 1.

¹¹⁰ See *Legal Consequences for States of the Continued Presence of South Africa in Namibia*, Advisory Opinion of 21 June 1971 (treating self-determination as an enforceable, tangible right, setting the stage for understanding self-determination as a way of giving self-governance to people violently denied it); *Western Sahara*, Advisory Opinion of 16 October 1975 (indicating that there is a strong legal claim for the principle of self-determination as

that remedial secession is justified in cases where a group is subjected to systemic discrimination, repression and crimes against humanity.¹¹¹ Moreover, written and oral statements of States participating in the Kosovo case proceedings reflect *opinio juris* towards the external right to self-determination in cases where the parent state has engaged in severe, long-lasting refusal of internal self-determination and/or systemic, severe, and massive human rights violations.¹¹²

functionalized in the free and genuine expression of the will of the peoples of a territory); *Case Concerning the Frontier Dispute (Burkina Faso v. Republic of Mali)*, Judgment of 22 December 1986 (defining peoples entitled to self-determination as those who possess a reasonably defined area of land and implying that a self-determining people have an intrinsic right to govern their heritage land); *East Timor* Judgment (reaffirming that the right to territorially based self-determination is a right *erga omnes*); *Kosovo* Advisory Opinion (confirming that declarations of independence are not, *per se*, contrary to international law).

¹¹¹ See especially *Kosovo* Advisory Opinion, **Separate Opinion of Judge Yusuf, para. 11** (“[I]nternational law [does not turn] a blind eye to the plight of such groups, particularly in those cases where the State not only denies them the exercise of their internal right of self-determination (as described earlier) but also subjects them to discrimination, persecution, and egregious violations of human rights or humanitarian law. Under such exceptional circumstances, the right of peoples to self-determination may support a claim to separate statehood provided it meets the conditions prescribed by international law”) and **Separate Opinion of Judge Trindade, paras. 175** (“The principle of self-determination has survived decolonization, only to face nowadays new and violent manifestations of systematic oppression of peoples. [...] The fact remains that people cannot be targeted for atrocities, cannot live under systematic oppression. The principle of self-determination applies in new situations of systematic oppression, subjugation and tyranny”), **176** (“No State can invoke territorial integrity in order to commit atrocities (such as the practices of torture, and ethnic cleansing, and massive forced displacement of the population), nor perpetrate them on the assumption of State sovereignty, nor commit atrocities and then rely on a claim of territorial integrity notwithstanding the sentiments and ineluctable resentments of the “people” or “population” victimized. [...] The basic lesson is clear: no State can use territory to destroy the population. Such atrocities amount to an absurd reversal of the ends of the State, which was created and exists for human beings, and not vice-versa”), **184** (“In the current evolution of international law, international practice (of States and of international organizations) provides support for the exercise of self-determination by peoples under permanent adversity or systematic repression, beyond the traditional confines of the historical process of decolonization. Contemporary international law is no longer insensitive to patterns of systematic oppression and subjugation”), **206** (“Under contemporary *jus gentium*, no State can revoke the constitutionally guaranteed autonomy of a “people” or a “population” to start then discriminating, torturing and killing innocent persons, or expelling them from their homes and practicing ethnic cleansing — without bearing the consequences of its criminal actions or omissions. No State can, after perpetrating such heinous crimes, then invoke or pretend to avail itself of territorial integrity; the fact is that any State that acts this way ceases to behave like a State vis-à-vis the victimized population.”)

¹¹² See Written Statement of Germany, p. 35; Written Statement of Estonia, § 2.1.1., p. 6–9; Written Statement of Denmark, § 2.7, p. 12; Written Statement of Finland, § 10, 12, p. 5, 7; Written Statement of Albania, § 75, 79, 86–92, p. 40, 42, 44–48; Written Statement of Ireland § 32, p. 10, § 33 iii, p. 11; Written Statement of the Netherlands, § 3.9–3.13, p. 9–11; Written Statement of Switzerland, § 81–86, p. 21–23; Written Statement of Poland, § 6.5, 6.10– 6.12

47. In its landmark judgment regarding the legality of unilateral secession under domestic and international law, the Supreme Court of Canada similarly affirmed that a State is entitled to the protection of its territorial integrity as long as its government represents the whole of the people within its territory in its own internal arrangements on a basis of equality and without discrimination.¹¹³ The right of secession (or external self-determination) accordingly arises when it is not possible for a people to exercise their right of self-determination within the framework of an existing state (internal self-determination), in the following exceptional circumstances: (1) former colonies; (2) where a people is oppressed (for example, under foreign military occupation); or (3) where a definable group is denied meaningful access to government to pursue their political, economic, social and cultural development.¹¹⁴ The Supreme Court of Canada asserted that “[i]n all three situations, the people in question are *entitled* to a right to external self-determination because they have been denied the ability to exert internally their right to self-determination.”¹¹⁵

48. Internationally recognized secession, therefore, operates akin to the R2P doctrine, where sovereignty and territorial integrity are dependent upon upholding the rights of citizens. Canada has promoted the right to remedial secession through its support for an independent State of Palestine,¹¹⁶ as well as its vote in favor of recognizing the independence of the State of Kosovo

p. 25–27; Written Statement of Maldives, p. 1; Written Statement of Slovenia p. 2/3; Croatia, see CR 2009/29 of 7 December 2009, § 13, p. 53, §43, p. 58, § 56–61, p. 61–62; the Hashemite Kingdom of Jordan, see CR 2009/31 of 9 December 2009, § 10, p. 29, § 24, p. 33, 38, p. 37; Written Statement of Romania, § 134, p. 39; Belarus, see CR 2009/27 of 3 December 2009; Written Statement of the Russian Federation, § 88, p. 31– 32.

¹¹³ *Reference re Secession of Quebec*, [1998] 2 SCR 217, paras. 126-130. In this respect, the Declaration on Friendly Relations, the Vienna Declaration, and the Declaration on the Fiftieth have equally affirmed that “the right of peoples to take any legitimate action, in accordance with the Charter of the United Nations, to realize their inalienable right of self-determination [...] shall not be construed as authorizing or encouraging any action that would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States *conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a Government representing the whole people belonging to the territory without distinction*” (emphasis added). Accordingly, a State which does not conduct itself “in compliance with the principles of equal rights and self-determination of peoples” and instead maintains a government based on discriminatory practices may not avail itself of the protection of the principle of territorial integrity to limit the exercise of the external right to self-determination.

¹¹⁴ *Reference re Secession of Quebec*, [1998] 2 SCR 217, paras. 131-138, 150, 154.

¹¹⁵ *Reference re Secession of Quebec*, [1998] 2 SCR 217, para. 138 (emphasis added).

¹¹⁶ See UN General Assembly Third Committee, “Concluding Session, Third Committee Approves Draft Resolution “The Right of the Palestinian People to Self-determination”, GA/SHC/4285, 19 November 2019, during which the representative of Canada voted in favor of GA draft resolution A/C.3/74/L.58 reaffirming “the right of the Palestinian people to self-determination, including the right to their independent State of Palestine”.

after the latter's unilateral declaration of independence.¹¹⁷ As seen in situations such as that of East Timor, Kosovo and South Sudan, secession became the option of last resort for the international community once it became clear that Indonesia, Serbia and Sudan had committed serious crimes. As detailed below, the Armenians of Azerbaijan and Artsakh have suffered such systematic persecution, atrocities and gross human rights violations as to make any option for their internal self-determination or participation in Azerbaijan impossible.¹¹⁸ Artsakh's circumstances thus fall squarely in line with such situations justifying its remedial secession or recognition of independence from Azerbaijan.

b. Azerbaijan's reliance on the 1993 UN Resolutions is inapposite

49. Azerbaijan often cites four UN Security Council resolutions adopted in 1993 ("Resolutions") to support its territorial claim to Artsakh.¹¹⁹ According to Azerbaijan, the Resolutions establish that: the occupied regions including Nagorno-Karabakh are part of Azerbaijan; Armenia is the aggressor; and Armenia was in continual violation of the Resolutions by not withdrawing its forces from occupied Azerbaijani territory. Azerbaijan also relies on the Resolutions, stating that it is merely implementing them, to justify its use of force against the Armenians of Artsakh.¹²⁰

50. The UN Security Council has no authority whatsoever to make any decisions as to statehood or territorial limits through its resolutions or otherwise. The only principal UN organ vested with such powers is the

¹¹⁷ Canada recognized the sovereignty of Kosovo in 2008, two years prior to the International Court of Justice's *Kosovo* Advisory Opinion. Arguably, Canada even recognized a right of remedial secession in its 14 February 1972 full diplomatic recognition of Bangla Desh (as it was then known) contrary to the express wishes of (West) Pakistan and prior to United Nations recognition. Such recognition was premised on the understanding that only by recognizing Bangla Desh could Canada provide the aid necessary to prevent a major humanitarian catastrophe. As Secretary of State for External Affairs Mitchell Sharp stated, diplomatic representation allowed Canada to carry out its plan to deliver aid to Bangla Desh.

¹¹⁸ For more details on the extent of the atrocities committed against the Armenians of Azerbaijan and Artsakh, see *infra* Section IV(B)(ii): Azerbaijan commits atrocious crimes against Armenians.

¹¹⁹ UN Security Council Resolution 822, S/RES/822, 30 April 1993, retrieved from <http://unscr.com/en/resolutions/doc/822>; UN Security Council Resolution 853, S/RES/853, 29 July 1993, retrieved from <http://unscr.com/en/resolutions/doc/853>; UN Security Council Resolution 874, S/RES/874, 14 October 1993, retrieved from <http://unscr.com/en/resolutions/doc/874>; UN Security Council Resolution 884, S/RES/884, 12 November 1993, retrieved from <http://unscr.com/en/resolutions/doc/884>.

¹²⁰ See, e.g., MENAFN-AzerNews, "Azerbaijan itself implementing UN Security Council resolutions", 21 October 2020, retrieved from <https://menafn.com/1100994787/Azerbaijan-itself-implementing-UN-Security-Council-resolutions> ("President Ilham Aliyev has [...] always stressed that in case the conflict is not resolved by peaceful negotiations, Azerbaijan reserves the right to free its territory from military occupation. Today, Azerbaijan uses this right, it itself has begun to implement the resolutions of the UN Security Council and therefore no one has the right or arguments to reproach it for anything.")

International Court of Justice. The Resolutions may therefore not be used to claim ownership of territory. Furthermore, none of the Resolutions ever direct any other UN member states to refuse the recognition of Artsakh, in contrast to directions the Security Council has given regarding certain illegitimate regimes or declarations of independence in the past.¹²¹

51. The primary responsibility of the UN Security Council is to maintain international peace and security, and the Resolutions therefore must be read through the lens of this objective. The Resolutions were adopted in the context of the active hostilities in 1993 – two years after Artsakh’s declaration of independence, and only when territories adjacent to Artsakh’s 1991 borders fell under its control in 1993 – with the specific aim to end those hostilities. The Resolutions also reaffirm the respect for sovereignty and territorial integrity “of all States in the region”. All references to territories made in these Resolutions must thus be interpreted in the context of an ongoing war over a secession that had already taken place.¹²²

52. The Resolutions also reiterate the UN Security Council’s support for the OSCE Minsk Group as the appropriate framework to negotiate a final settlement. The Resolutions are directly addressed to Nagorno-Karabakh and Azerbaijan, and address Armenia only indirectly, calling upon it to use its influence to achieve compliance by Nagorno-Karabakh of the Resolutions – which Armenia has repeatedly done through active participation in the peace process under the auspices of the OSCE Minsk Group. Beyond this and an expressed concern at the deterioration of relations between Armenia and Azerbaijan, the Resolutions make no further reference to Armenia, and in no way do they ever assert or imply that Armenia is an aggressor.

53. The Resolutions, which primarily demanded the “immediate cessation of hostilities and hostile acts with a view to establishing a durable cease-fire”, led to the 1994 and 1995 ceasefire agreements. With the execution of these ceasefire agreements, the Resolutions achieved the rightful purpose for which they were adopted, and accordingly have questionable continued relevance.¹²³ Despite this, Azerbaijan has repeatedly violated the Security Council’s demand by breaching the ceasefire regime and recommencing hostilities, most notably in April 2016 and September 2020.

54. The UN Security Council did not adopt any of the Resolutions under Chapter VII of the UN Charter, which is the only avenue to mandate the use of force, and the sole prerogative of which lies with the UN Security Council.

¹²¹ See Arbour and Parent, p. 309, *referring to* Rhodesia, Namibia, the former Bantustans of South Africa and the Turkish Republic of Northern Cyprus.

¹²² See Vladimir Kazimirov, “Azerbaijan and the UN Security Council’s Resolutions” in *Peace to Karabakh: Russia’s Mediation in the Settlement of the Nagorno-Karabakh Conflict*, (Moscow: VES MIR Publishers, 2014), pp. 347-363, retrieved from http://www.vn.kazimirov.ru/mir2014.files/Peace_to_Karabakh_book.pdf.

¹²³ *Ibid.*

Accordingly, any use of force by Azerbaijan against Artsakh and its people is wholly inconsistent with the UN Charter and a violation of international law as an act of aggression.¹²⁴ It is also inconsistent with the Resolutions, every one of which reaffirms the “inadmissibility of the use of force for the acquisition of territory”. Azerbaijan’s pretense of implementing the Resolutions to justify its use of force against Artsakh is therefore not only invalid and perverse, but also completely illegal.¹²⁵

ii. *Azerbaijan commits atrocious crimes against Armenians*

a. History of persecution and pogroms

55. The advent of Sovietization did not quell anti-Armenian sentiments in Azerbaijan, which has always had a consistent, clear policy to “de-Armenianize” Artsakh and force Armenians to leave, whether it was through campaigns of violence and intimidation, orchestrated by local Azerbaijani authorities, or through economic underdevelopment and cultural repression.¹²⁶ For instance, the Azerbaijan SSR authorities neglected Artsakh Armenian schools and cultural institutions,¹²⁷ and willfully neglected and destroyed Armenian cultural landmarks, notably in the region of Nakhichevan.¹²⁸ Armenian authors could not publish their works in Artsakh,¹²⁹ and the import of Armenian literature or learning materials from the Armenian SSR was forbidden.¹³⁰ As part of its bid to impoverish the area, the Azerbaijan SSR transferred Artsakh’s industrial sector to other regions of Azerbaijan.¹³¹ Industrial production and investments per capita were thus three times lower in Artsakh than in the Azerbaijan SSR.¹³² This pattern of oppression, which finally erupted in outbreaks of ethnic violence against Armenians of Azerbaijan, provided ample reason for Artsakh’s consistent pleas, throughout the entire Soviet period, for independence from any Azerbaijani administrative authority or, alternatively, for unification with the Armenian SSR.¹³³

56. In 1988, days after Artsakh requested to unite with the Armenian SSR, the violence against Armenians in the Azerbaijan SSR escalated leading to several anti-Armenian massacres, including the Sumgait Pogrom in February 1988, the Kirovabad pogrom in November 1988, and the Baku

¹²⁴ See UN General Assembly Resolution 3314 (1974), defining aggression and including within it the non-mandated use of force against unrecognized and non-UN member states as well. The Eritrea-Ethiopia Claims Commission has also confirmed that self-defense cannot be invoked to settle territorial disputes, even in situations when the party resorting to the use of force has a valid claim over the territory in question, including when the land in question is unlawfully occupied. See Eritrea-Ethiopia Claims Commission, Partial Award, Jus ad Bellum: Ethiopia’s Claims 1-8 (19 Dec. 2005), 45 I.L.M. p. 430 (2006), para. 10.

¹²⁵ See, e.g., Statement of President Ilham Aliyev, Twitter, 26 October 2020, retrieved from <https://twitter.com/presidentaz/status/1320763657329004544> (“We are implementing the UN Security Council resolutions single-handedly. Although it is the duty of the UN Security Council. We have created a new reality. Now everyone must reckon with the new reality.”)

pogrom in January 1990.¹³⁴ Azerbaijani authorities took no measures whatsoever to stop the atrocities, and local police, comprised almost entirely of ethnic Azerbaijanis,¹³⁵ took no action.¹³⁶ Almost all 14,000 Armenians in Sumgait fled the city after the pogrom.¹³⁷ In the spring of 1991, Armenians of the villages of Getashen, Martunashen and other villages in Artsakh were violently assaulted, raped, killed and deported out of their homes as part of what was called “Operation Ring”.¹³⁸ As a result, full-blown war erupted in early 1992, during which inter-ethnic strife reached its peak, resulting in over 30,000 deaths and the displacement of over one million people.¹³⁹

b. Armenophobia and hate speech

57. Violence against Armenians is further fueled by Azerbaijan’s Armenophobic state policy that has disturbingly continued – and even gained in fervor – since the 1994 ceasefire.¹⁴⁰ In fact, hate speech against Armenians

¹²⁶ “Eyewitness account of 1920s in Karabagh”, in *The Karabagh File*, p. 40.

¹²⁷ “Zori Balayan on patriotism and Karabagh”, in *The Karabagh File*, p. 71.

¹²⁸ “Memorandum by Suren Ayvazian to General Secretary Gorbachev on Karabagh and Nakhichevan”, in *The Karabagh File*, p. 81.

¹²⁹ Luchterhandt, pp. 62-63.

¹³⁰ Luchterhandt, p. 63.

¹³¹ “Petition of Karabagh Armenians to Nikita Khrushchev on re-incorporation of Mountainous Karabagh in the Armenian S.S.R.”, in *The Karabagh File*, pp. 42-46.

¹³² Luchterhandt, p. 60.

¹³³ See *The Karabagh File*, pp. 40, 42-46, 47, 50, 51.

¹³⁴ De Waal, p. 91. In June 1990, over 100 leading intellectuals including Jacques Derrida, Isaiah Berlin and Alain Finkelkraut penned “An Open Letter on Anti-Armenian Pogroms in the Soviet Union” in which they were “compelled to recognize that crimes against the Armenian minority have become consistent practice—if not official policy—in Soviet Azerbaijan.” According to the late Andrei Sakharov (*New York Times*, November 26, 1988), these pogroms constitute “a real threat of extermination” to the indigenous Armenian community in Azerbaijan and in the autonomous region of Mountainous Karabakh, whose inhabitants are 80 percent Armenian. See Jacques Derrida *et al.*, “An Open Letter on Anti-Armenian Pogroms in the Soviet Union” *The New York Review*, 27 September 1990, retrieved from <https://www.nybooks.com/articles/1990/09/27/an-open-letter-on-anti-armenian-pogroms-in-the-sov/>.

¹³⁵ *Ibid.*, p. 33.

¹³⁶ Svante E. Cornell, “The Armenian-Azerbaijani Conflict and European Security”, in *The International Politics of the Armenian-Azerbaijani Conflict*, Ed. Svante E. Cornell, New York, Palgrave MacMillan, 2017, p. 7.

¹³⁷ De Waal, p. 40.

¹³⁸ Caroline Cox and John Eibner, “Ethnic Cleansing in Progress. War in Nagorno Karabakh”, Institute for Religious Minorities in the Islamic World, Zurich, 1993, p. 45.

¹³⁹ See, e.g., United Nations High Commissioner for Refugees, “UNHCR publication for CIS Conference (Displacement in the CIS) – Conflicts in the Caucasus”, 1 May 1996, retrieved from <https://www.unhcr.org/publications/refugeemag/3b5583fd4/unhcr-publication-cis-conference-displacement-cis-conflicts-caucasus.html>

¹⁴⁰ In a letter dated 11 November 2020, the Republic of Armenia condemned the Republic of Azerbaijan’s actions and policies adopted during the last decades as being in gross violation of the 1965 International Convention on the Elimination of All Forms of Racial

is omnipresent in political discourse, educational institutions and in the media in Azerbaijan.¹⁴¹ The European Commission against Racism and Intolerance (“ECRI”) has consistently decried that an entire generation of Azerbaijanis has thus now grown up listening to this hateful rhetoric. The ECRI found that this widespread instrumentalization of hate speech towards Armenians results in Armenians experiencing discrimination daily.¹⁴² It also denounced the fact that Armenians remaining in Azerbaijan are denied formal citizenship and thus access to social rights,¹⁴³ and have to hide their ethnic origin when applying for employment,¹⁴⁴ or simply to avoid persecution. Political opponents are, in fact, regularly accused of having Armenian roots or of receiving funds from Armenian sources.¹⁴⁵

58. The ECRI further noted with deep concern that even the “fault” of describing someone as an Armenian is perceived as an insult that justifies initiating judicial proceedings against the persons making such statements.¹⁴⁶ Human rights activists and intellectuals perceived as pro-Armenian or critical of the Azerbaijani government have also been targeted, even sentenced to heavy prison terms on controversial accusations.¹⁴⁷ For example, long-imprisoned Azerbaijani investigative journalist, Khadija Ismayilova, was targeted for her work exposing President Aliyev’s corruption

Discrimination. See Ministry of Foreign Affairs of the Republic of Armenia “The Republic of Armenia formally calls on the Republic of Azerbaijan to comply with its international obligations under the International Convention on the Elimination of All Forms of Racial Discrimination”, 13 November, 2020, retrieved from: https://www.mfa.am/en/interviews-articles-and-comments/2020/11/13/cerd_/10647.

¹⁴¹ See generally The Office of Ombudsman of the Republic of Artsakh, “Armenophobia in Azerbaijan: Organized Hate Speech and Animosity Towards Armenians”, December 2019, retrieved from <https://artsakhombuds.am/sites/default/files/2019-12/Armenophobia-in-Azerbaijan-1.00-Interactive-25.09.2018.pdf> (“Armenophobia in Azerbaijan”).

¹⁴² See European Commission Against Racism and Intolerance, “ECRI Report on Azerbaijan (Fourth Monitoring Cycle)”, 31 May 2011 (“Fourth ECRI Report”), p. 18, retrieved from <https://rm.coe.int/third-report-on-azerbaijan/16808b557e>.

¹⁴³ Fourth ECRI Report, p. 29 (“attempts to have the courts overturn administrative decisions refusing to issue these persons with identity documents have proved unsuccessful”).

¹⁴⁴ Fourth ECRI Report, p. 34.

¹⁴⁵ “ECRI Report on Azerbaijan (Fifth Monitoring Cycle)”, 7 June 2016 (“Fifth ECRI Report”), pp. 9, 10, 15, retrieved from <https://rm.coe.int/fourth-report-on-azerbaijan/16808b5581>. See also a post from Nurlan Ibrahimov, head of PR and media manager of the Qarabag football club of Azerbaijan, dated October 31, 2020 which read: “We [Azerbaijanis] must kill all Armenians - children, women, the elderly. [We] need to kill [them] without [making a] distinction. No regrets, no compassion.” On November 4, 2020, the Union of European Football Association (“UEFA”) provisionally banned Ibrahimov from exercising any football-related activity, effective immediately, until the UEFA’s Control, Ethics and Disciplinary Body decides the merits of the case, retrieved from <http://www.insideworldfootball.com/2020/11/04/uefa-bans-qarabags-ibrahimov-call-kill-armenians>.

¹⁴⁶ Fourth ECRI Report, p. 29.

¹⁴⁷ Fifth ECRI Report, p. 9.

when local pro-government press published an article entitled “Khadija’s Armenian Mother Should Die”, containing details of the Baku district where her mother lived.¹⁴⁸ In addition, when famed 81-year old author Akram Aylisli, published a book perceived as sympathetic to Armenians, he was censored, stripped of his pension and honorary title, has been subject to an officially-sanctioned harassment campaign, and is currently under house arrest awaiting trial.¹⁴⁹

59. Anti-Armenian hateful rhetoric is also included in Azerbaijani school curricula,¹⁵⁰ with stories and sayings portraying Armenians as treacherous, dishonest, untrustworthy, hypocrites, dangerous, and evil.¹⁵¹ The singling out of the Armenian ethnic group as less than human echoes the stigmatization and dehumanization that Armenians suffered at the hands of the Ottoman Empire culminating in the Armenian Genocide of 1915-1923.

60. Top-ranking Azerbaijani officials have particularly disturbing anti-Armenian rhetoric that consistently dehumanize Armenians in their public addresses and openly admit their intent to completely cleanse the region of Armenians.¹⁵² In 2005, at a meeting with a German delegation, the Mayor of Baku, Hajibala Abutalybov, declared: “Our goal is the complete elimination of Armenians. You, Nazis, already eliminated the Jews in the 1930s and 40s, right? You should be able to understand us.”¹⁵³ Allahşükür Paşazadə, religious leader of the Caucasus Muslims has also stated that “[f]alsehood and betrayal are in the Armenian blood.”¹⁵⁴

61. In November 2012, President Aliyev described Armenia as a country of “no value”, a “colony, an outpost run from abroad, a territory artificially created on ancient Azerbaijani lands.”¹⁵⁵ In January 2015, he stated that

¹⁴⁸ See Amnesty International, “Azerbaijan: The Repression Games. The voices you won’t hear at the first European games”, June 2015, p. 6 (“The allegation that Khadija Ismayilova’s relatives were Armenian tapped into widespread hostility towards Armenians following the conflict in Nagorno-Karabakh in the early 1990s”), retrieved from <https://www.amnesty.org/download/Documents/EUR5517322015ENGLISH.PDF>.

¹⁴⁹ See PEN America, “Akram Aylisli: Azerbaijan – Status: On Trial”, retrieved from <https://pen.org/advocacy-case/akram-aylisli/>; Trend, “Azerbaijani President signs orders to deprive Akram Aylisli of presidential pension and honorary title”, 2013, <https://web.archive.org/web/20140327182556/http://en.trend.az/news/politics/2116873.html>.

¹⁵⁰ See *Armenophobia in Azerbaijan*, p. 30.

¹⁵¹ See, e.g., Proverbs and sayings on Armenia and the Armenians, retrieved from <http://azerichild.info/en/proverbs-azerbaijan-childhood-6.html>.

¹⁵² The examples are too numerous to cover exhaustively in this paper. For more examples, see *Armenophobia in Azerbaijan*, pp. 7 *et seq.*

¹⁵³ Stated in 2005 at a meeting with a municipal delegation from Bavaria, Germany. See “The Caucasus: Frozen Conflicts and Closed Borders”, United States Government Printing Office, 18 June 18, 2008, at p. 50, retrieved from <https://www.govinfo.gov/content/pkg/CHRG-110hhrg43066/pdf/CHRG-110hhrg43066.pdf>.

¹⁵⁴ See *Armenophobia in Azerbaijan*, p. 15.

¹⁵⁵ Statement by President Ilham Aliyev, Twitter, 20 November 2012, retrieved from <https://twitter.com/presidentaz/status/270827003521929216?s=19> and

Armenia is “not even a colony, it is not even worthy of being a servant.”¹⁵⁶ A few months later, Azerbaijani MP Elman Mammadov stated that “Turkey and Azerbaijan could together wipe Armenia off the face of the Earth at a blow, and the Armenians should beware of that thought.”¹⁵⁷ More recently, on 17 October 2020, President Aliyev declared that if Armenians “do not leave our lands of their own free will, we will chase them away like dogs and we are doing that.”¹⁵⁸ In a televised interview on 13 November 2020, General Hüseynov Camal of the Azerbaijani armed forces menacingly declared that, after Karabakh, they would be coming after every last Armenian (repeatedly calling them “dogs”) in Armenia until Yerevan, referring to it as “West Azerbaijan”.¹⁵⁹

62. The Azerbaijani government has gone so far as hailing a convicted murderer as a national hero for killing an Armenian in his sleep with an ax. Ramil Safarov, a member of the Azerbaijani Army, was convicted in Hungary of murdering Armenian Army Lieutenant Gurgen Margaryan with an ax in his sleep, during a NATO-sponsored training seminar in Budapest. Following his extradition to Azerbaijan, Safarov was immediately pardoned by President Aliyev, promoted to the rank of major by the Minister of Defence, and gifted an apartment with over eight years of back pay. The Azerbaijani Ombudsman praised Safarov as “an exemplary model of patriotism for the Azerbaijani youth.” Agshin Mehdiyev, the Permanent Representative of Azerbaijan to the Council of Europe published the following message: “Armenians should better not sleep peacefully as long as the Karabakh conflict is unsettled, the possibility of incidents similar to the one in Budapest cannot be ruled out.” In May 2020, the European Court of Human Rights found that the actions taken by the Azerbaijani authorities, who pardoned and then glorified convicted murderer Ramil Safarov, contravened Article 14 of the European Convention on Human Rights (prohibition of discrimination) and constituted racial discrimination against Armenians.¹⁶⁰

c. Present war crimes and atrocities

63. Starting on 27 September 2020, Azerbaijan’s armed forces, backed by Turkish forces and hired jihadist mercenaries, launched a large-scale attack

<http://www.twitlonger.com/show/k2p4ba>

¹⁵⁶ Statement by President Ilham Aliyev, Twitter, 29 January 2015, retrieved from <https://twitter.com/presidentaz/status/560718307515318272>

¹⁵⁷ See *Armenophobia in Azerbaijan*, p. 12.

¹⁵⁸ President of the Republic of Azerbaijan, “Ilham Aliyev addressed the nation”, 17 October 2020, retrieved from <https://en.president.az/articles/43334>.

¹⁵⁹ See *Bilsəydidər erməni dilini bilirəm dərimi soyardılar - Hüseynov Camal*, YouTube, 13 November 2020, retrieved from <https://www.youtube.com/watch?v=YworvLLKGyQ>. “West Azerbaijan” is an irredentist political concept that is used in the Republic of Azerbaijan mostly to refer to the territory of the Republic of Armenia.

¹⁶⁰ See European Court of Human Rights, *Case of Makuchyan and Minasyan v. Azerbaijan and Hungary (Application No. 17247/13)*, Judgment, 26 May 2020, paras. 25, 215-221, 237.

with aerial, artillery, rocket and tank fire strikes on over 120 civilian towns and villages in Artsakh,¹⁶¹ many 90-100 km away from the line of contact and containing no military objects.¹⁶² Azerbaijan's war was clearly "the next phase in a campaign to expel and ethnically cleanse Armenians from their indigenous lands."¹⁶³ Azerbaijan deliberately attacked civilians, civilian infrastructures and committed countless war crimes.

64. Amidst the regular shelling of Artsakh's population centers, 85% of the civilian population of Artsakh (approximately 130,000 people)¹⁶⁴ were forced to flee, including 40,000 children who took refuge in neighbouring Armenia,¹⁶⁵ many showing signs of anxiety, depression and sleeplessness.¹⁶⁶ The attacks killed at least 49 Armenian civilians and over 158 were seriously wounded,¹⁶⁷ a number which would have been incomparably higher had 85% of the population not fled. Amongst those attacked was 9-year-old Victoria Gevorgyan who was killed from shelling on 27 September 2020 in her backyard, in the Martuni region of Artsakh.¹⁶⁸ Her mother and her two-year old brother also received shrapnel wounds when trying to flee.¹⁶⁹ The same day, pregnant Anna Galstyan was wounded from shelling in the Mataghis

¹⁶¹ These included densely populated communities such as Artsakh's capital Stepanakert and the towns of Shushi, Hadrut, Martuni, Martakert, Askeran, Karvajar, Berdzor, villages of Taghaser, Vardashat, Spitakshen, Maghavus, Nerkin Horatagh, Alashan and Mataghis. See: HRORA, *Second Interim Report on the Azerbaijani Atrocities against the Artsakh population in September-October 2020*, Updated Edition, 13 October 2020, p. 4, retrieved from https://www.mfa.am/filemanager/NKR_war_2020/nk_hr/3.pdf

¹⁶² HRORA, *Ad Hoc Report on the Children Rights Affected By the Azerbaijani Attacks Against the Republic of Artsakh (Nagorno-Karabakh)*, 9 November 2020, p. 3, retrieved from <https://artsakhombuds.am/sites/default/files/2020-11/Artsakh-Ombudsman-report-on-children-rights-09.11.2020.pdf>, [Ad Hoc Report on Children's Rights]

¹⁶³ David L. Phillips and Salpi S. Kevorkian, "The Failure to Protect Civilians in Artsakh", Columbia University Institute for the Study of Human Rights, 17 November 2020, retrieved from <http://www.humanrightscolumbia.org/news/failure-protect-civilians-artsakh>

¹⁶⁴ Unicef, "Unicef Statement on one month of fighting in and beyond Nagorno Karabakh", 28 October 2020, retrieved from <https://www.unicef.org/armenia/en/press-releases/unicef-statement-one-month-fighting-and-beyond-nagorno-karabakh>

¹⁶⁵ *Ad Hoc Report on Children's Rights*, p. 19, retrieved from <https://artsakhombuds.am/sites/default/files/2020-11/Artsakh-Ombudsman-report-on-children-rights-09.11.2020.pdf>

¹⁶⁶ The United Nations Office for the Coordination of Humanitarian Affairs, "Nagorno-Karabakh fighting leaves children who fled the conflict in distress", 22 October 2020, retrieved from <https://reliefweb.int/report/azerbaijan/nagorno-karabakh-fighting-leaves-children-who-fled-conflict-distress>

¹⁶⁷ *Ad Hoc Report on Children's Rights*, p. 3, retrieved from <https://artsakhombuds.am/sites/default/files/2020-11/Artsakh-Ombudsman-report-on-children-rights-09.11.2020.pdf>

¹⁶⁸ *Ad Hoc Report on Children's Rights*, p. 4, retrieved from <https://artsakhombuds.am/sites/default/files/2020-11/Artsakh-Ombudsman-report-on-children-rights-09.11.2020.pdf>

¹⁶⁹ *Ibid.*

village and delivered her baby prematurely.¹⁷⁰ Also heavily wounded were 13- and 15-year-old cousins, Robert and Narek Gevorgyan, hit by Azerbaijani shelling while fleeing their home.¹⁷¹ On or around 10 October 2020, at least four civilians were executed by Azerbaijani soldiers in the town of Hadrut.¹⁷² Azerbaijani attacks also reached Armenia, killing and injuring civilians, damaging houses, schools and property in the villages of Shatvan, Mets Markis and Sotk.¹⁷³ On 15 October 2020, a 14-year-old Armenian boy was severely wounded on his way to a field for harvest in Sotk village, Armenia.¹⁷⁴

65. The damage caused by Azerbaijani forces to civilian infrastructures in Artsakh is devastating. Azerbaijan intentionally destroyed more than 19,000 buildings and property,¹⁷⁵ over 25 crucial energy and electricity stations,¹⁷⁶ and several key communication stations and networks.¹⁷⁷ More than one third of all schools in Artsakh were shelled (71 schools and 14 kindergartens).¹⁷⁸ On 28 October 2020, Artsakh's Maternity and Child Health Center in Stepanakert was bombed,¹⁷⁹ in clear violation of international

¹⁷⁰ *Ibid.*, p. 5.

¹⁷¹ *Ibid.*, p. 6.

¹⁷² *Second Interim Report on the Azerbaijani Atrocities*, p. 9, retrieved from https://www.mfa.am/filemanager/NKR_war_2020/nk_hr/3.pdf; See also BBC News, "Nagorno-Karabakh conflict: 'Execution' video prompts war crime probe", 24 October 2020, retrieved from <https://www.bbc.com/news/world-europe-54645254>

¹⁷³ HRDRA, *Ad Hoc Public Report On Azerbaijani Drones' Targeted Attacks Against Peaceful Population of Armenia and Artsakh in Grave Breach of International Law*, Yerevan, 2020, p. 1, retrieved from https://www.mfa.am/filemanager/NKR_war_2020/ra_hr/1.pdf ; See also: HRDRA, *Ad Hoc Report On Fact Finding Activities in Villages of Gegharkunik Province of Armenia damaged by Azerbaijani Military Attacks 30 September-1 October*, Yerevan, 2020, p.1-2, retrieved from https://www.mfa.am/filemanager/NKR_war_2020/ra_hr/2_s.pdf

¹⁷⁴ "UNICEF Statement on the Nagorno Karabakh conflict", 15 October 2020, retrieved from <https://www.unicef.org/armenia/en/press-releases/unicef-statement-nagorno-karabakh-conflict-1>

¹⁷⁵ HRDRA and HRORA, *Ad Hoc Public Report on the Use of Incendiary Ammunition of Mass Destruction (Incendiary Weapon) Against Civilian Objects of Artsakh (Nagorno-Karabakh) by the Azerbaijani Armed Forces*, November 2020, p. 4, retrieved from <https://artsakhombuds.am/sites/default/files/2020-11/Report-On-White-Phosphorus.pdf> [*Ad Hoc Report on the Use of Incendiary Ammunition*]

¹⁷⁶ *Second Interim Report on the Azerbaijani Atrocities*, p. 19, retrieved from https://www.mfa.am/filemanager/NKR_war_2020/nk_hr/3.pdf

¹⁷⁷ *Ibid.*, p. 21.

¹⁷⁸ *Ad Hoc Report on Children's Rights*, p. 10, retrieved from <https://artsakhombuds.am/sites/default/files/2020-11/Artsakh-Ombudsman-report-on-children-rights-09.11.2020.pdf>; See also: Unicef, "Unicef Statement on one month of fighting in and beyond Nagorno Karabakh", 28 October 2020, retrieved from <https://www.unicef.org/armenia/en/press-releases/unicef-statement-one-month-fighting-and-beyond-nagorno-karabakh>

¹⁷⁹ *Ad Hoc Report on Children Rights*, p. 15, retrieved from <https://artsakhombuds.am/sites/default/files/2020-11/Artsakh-Ombudsman-report-on-children-rights-09.11.2020.pdf>. See also video footages published 28 October 2020 by the Artsakh Ombudsperson, the Armenian Ministry of Defense and the Armenian Unified Info

law.¹⁸⁰ Patients (including children) had already sought refuge in the hospital's basement at the time. The Azerbaijani forces also intentionally attacked the 19th Century Holy Savior Ghazanchetsots Cathedral at the center of the city of Shushi¹⁸¹ with the use of drones.¹⁸² Civilians had taken refuge in the church basement at the time. The attack injured three journalists¹⁸³ and killed 28-year-old resident Grisha Narinyan who was accompanying the journalists that day.¹⁸⁴ After the Azerbaijani forces captured the town of Shushi, they caused additional damages and vandalism to the Cathedral.¹⁸⁵

66. Azerbaijan even released incendiary ammunition of mass destruction containing chemical elements, including white phosphorus, in the primary forests of Artsakh, committing wide scale ecocide.¹⁸⁶ White phosphorus

Center retrieved from <https://www.facebook.com/artak.beglaryan/videos/3668331173205093> ;
<https://twitter.com/ShStepanyan/status/1321730287710121984> ;
<https://www.facebook.com/ArmenianUnifiedInfoCenter/videos/636827646985319/>

¹⁸⁰ See article 18 of the *Geneva Convention IV, "Geneva Convention Relative to the Protection of Civilian Persons in Times of War"*, 12 August 1949, 75 U.N.T.S. 287: "Civilian hospitals organized to give care to the wounded and sick, the infirm and maternity cases, may in no circumstances be the object of attack, but shall at all times be respected and protected by the Parties to the conflict."

¹⁸¹ A violation of the UN Educational, Scientific and Cultural Organization (UNESCO) Convention for Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954, retrieved from <https://www.refworld.org/docid/40422c914.html>.

¹⁸² HRORA, *Ad Hoc Public Report on the Azerbaijani Targeted Attacks Against the Saint Holy Savior Ghazanchetsots Cathedral of Shusho, Artsakh (Nagorno-Karabakh) as A War Crime and Crime Against Humanity*, 20 October 2020, retrieved from https://artsakhombuds.am/sites/default/files/2020-10/Report_Ghazanchetsots_Cathedral_-_20.10.2020.pdf

¹⁸³ Le Monde reporter Allan Kaval, who was severely wounded, described the attacks as a "bombing of the town" "in a rain of fire and metal." See Allan Kaval, "Ça a frappé fort. Mais je suis là.", 8 October 2020, retrieved from <https://www.facebook.com/allan.kaval/posts/10158545812272226>.

¹⁸⁴ *Ibid.* A number of other journalists were also targeted and injured during the war. On October 1 2020, 4 journalists (two French and two Armenian) were targeted by shelling in the town of Martuni. A local resident accompanying them was killed. On the same day the Azerbaijani armed forces targeted a car transporting journalists of the Agence France-Presse international news agency. On October 2, Azerbaijan again targeted a minibus with Armenian and foreign journalists in the town of Martakert. See: *Second Interim Report on Azerbaijani Atrocities*, p. 16, retrieved from https://www.mfa.am/filemanager/NKR_war_2020/nk_hr/3.pdf

¹⁸⁵ Ministry of Education, Science, Culture and Sports of the Republic of Armenia, "The RA ESCS Ministry appeals to the relevant international bodies to immediately prevent cultural vandalism", retrieved from <https://escs.am/en/news/7428>; See also: Public Radio of Armenia, "Armenian Ghazanchetsots Church in Shushi vandalized", 14 November 2020, retrieved from <https://en.armradio.am/2020/11/14/armenian-ghazanchetsots-church-in-shushi-vandalized/>

¹⁸⁶ *Ad Hoc Report on the Use of Incendiary Ammunition*, p. 6 and following, retrieved from <https://artsakhombuds.am/sites/default/files/2020-11/Report-On-White-Phosphorus.pdf>. See also: Sara Daniel "Au Karabakh, des crimes de guerre au phosphore?" 13 November 2020,

causes long-term dangerous consequences for the life and health of humans, natural ecosystems, biodiversity and critical species habitats.¹⁸⁷ Azerbaijani forces destroyed and damaged ancient forests, ecosystems and protected areas of Artsakh near the communities of Shushi, Martakert and Askeran.¹⁸⁸ It is estimated that a total of 1,815 hectares of Artsakh's forests have burned as a result of Azerbaijan's use of white phosphorus,¹⁸⁹ causing widespread environmental damage¹⁹⁰ including the contamination of rivers and groundwater, and indiscriminate harm to civilians burned by these chemicals and fires, many of whom lived close to these forests or had taken refuge in them during the war.¹⁹¹ The use of white phosphorus weapons violates numerous international law conventions.¹⁹²

retrieved from: <https://www.nouvelobs.com/monde/20201113.OBS36046/au-karabakh-des-crimes-de-guerre-au-phosphore.html>.

¹⁸⁷ See Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, "White Phosphorus", retrieved from https://www.cdc.gov/niosh/ershdb/emergencyresponsecard_29750025.html. See also: Agency for Toxic Substances and Disease Registry, "Toxicological Profile for White Phosphorus" U.S. Department of Health and Human Services, Public Health Service, September 1997; Marianne E. Walsh, Michael R. Walsh, Charles M. Collins, Charles H. Racine "White Phosphorus Contamination of an Active Army Training Range" Water Air and Soil Pollution, June 2014.

¹⁸⁸ Armenia Tree Project, "Joint Statement on Azerbaijan's Use of Prohibited Weapons to Destroy Ancient Forests of Artsakh", 3 November 2020, retrieved from <https://www.armeniatree.org/en/news/85>.

¹⁸⁹ Zartonk Media, "To Date, Azeris Have Burned Over 1,815 Hectares Of Artsakh's Forests Using White Phosphorus Munitions", 2 November 2020, retrieved from <https://zartonkmedia.com/2020/11/02/to-date-azeris-have-burned-over-1815-hectares-of-artsakhs-forests-using-white-phosphorus-munitions/>

¹⁹⁰ The Armenian Weekly, "Armenian Environmental Organizations Raise Alarm about Use of White Phosphorus in Artsakh's Forested Regions", 4 November 2020, retrieved from <https://armenianweekly.com/2020/11/04/armenian-environmental-organizations-raise-alarm-about-use-of-white-phosphorus-in-artsakhs-forested-regions/>; Artsakh is recognized as one of the world's biodiversity hotspots. The region is known for its high rate of endemism and for being home to 6,000 plant species, 153 species of mammals, 400 species of birds and other living organisms. Hundreds of plant and animal species are found in Artsakh which are listed in the local Red Book and the IUCN Red List of Threatened Species, and have a protection status at a global level. Notable is the critically endangered and rare Caucasian Leopards, of which only 1,000 exist in the wild. Other protected species in Artsakh include the brown bear, Bezoar Goat, Armenian Mouflons, Eurasian Lynx, vultures, and eagles.

¹⁹¹ Notably, the Azerbaijani government has also granted Anglo Asian Mining, an Azerbaijani mining company, the right to exploit parts of Artsakh for gold mining. The company's mining activities will take a further toll on the environment and health of species. On 28 October 2020, Anglo Asian Mining PLC announced an update on the company's Venjaly contract in the Zangilan district. The 115 square miles deposit contains 6.5 tonnes of C1 and C2 gold and 2.3 tonnes of P1 gold. See: Seeking Alpha, "The Nagorno-Karabakh Conflict Unlocks Value For Anglo Asian Mining", retrieved from <https://seekingalpha.com/article/4385896-nagorno-karabakh-conflict-unlocks-value-for-anglo-asian-mining> ; See also: Mining Technology, "Anglo Asian Mining accused of "exploiting" border dispute for financial gain", 9 November 2020, retrieved from <https://www.mining->

67. After six weeks of attacks, more than 2,500 Armenian soldiers (most between the ages of 18-25) were killed. This number is shockingly high compared to the number of casualties in the Nagorno-Karabakh war of 1988-1994, which resulted in 30,000 deaths from all sides. The fate of Armenian prisoners of war currently in Azerbaijani custody is extremely concerning.¹⁹³ At the time of writing (25 November 2020), not a single Armenian prisoner of war has been returned alive. There is also increasing evidence of numerous atrocities committed by the Azerbaijani armed forces against captured Armenians and corpses pursuant to the latest report by the Human Rights Defenders of Armenia and Artsakh.¹⁹⁴ Videos of Azerbaijani soldiers humiliating, torturing, skinning and beheading Armenian prisoners of war have surfaced on social media accompanied by violent hate speech towards Armenians.¹⁹⁵

[technology.com/news/anglo-asian-mining-accused-of-exploiting-border-dispute-for-financial-gain/](https://www.technology.com/news/anglo-asian-mining-accused-of-exploiting-border-dispute-for-financial-gain/)

¹⁹² See 1977 Protocol I to the 1949 Geneva Conventions, Can. T.S. 1991 No 2, articles 35, 55, retrieved from https://www.icrc.org/en/doc/assets/files/other/icrc_002_0321.pdf; *Environmental Modification Convention (ENMOD)*, formerly *Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques*, 10 December 1976, 31 U.S.T. 333, 1108 U.N.T.S. 152, retrieved from https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVI-1&chapter=26&lang=en; *Rio Declaration, principle 24*, A/CONF.151/26 (Vol. I), 12 August 1992, retrieved from https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf; *Rome Statute of the International Criminal Court*, A/CONF.183/9 of 17 July 1998 (amended in 2010), article 8(2)(b)(iv), retrieved from <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>; *Protocol III of the Convention on Certain Conventional Weapons*, 10 October 1980, retrieved from https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVI-2&chapter=26&lang=en; See also “Green War: An Assessment of the Environmental Law of International Armed Conflict” (1997) 22 *Yale Int’l L.J.* 1.; M.C. Power, “La protection de l’environnement en droit international humanitaire: Le cas du Kosovo” (2001-2) 33 *Ottawa L. Rev* 225.

¹⁹³ In the April 2016 war, 90% of Armenian soldiers who fell under the custody of Azerbaijani forces were tortured, executed or mutilated. See HRORA, “Artsakh Ombudsman’s Second Report on Atrocities Committed By Azerbaijan During the April 2016 War. Public Edition”, Shushi, 2016, p. 4, retrieved from https://artsakhombuds.am/sites/default/files/2019-12/Report_PUBLIC.pdf

¹⁹⁴ Panorama.am, “Fourth report on Azerbaijani atrocities against captured ethnic Armenians complete, Ombudsman says”, 21 November 2020, retrieved from <https://www.panorama.am/en/news/2020/11/21/Ombudsman-says/2406147>. See also Fourth Report on POWs (available upon request).

¹⁹⁵ See *inter alia* *Second Interim Report on Azerbaijani Atrocities*, p. 27, retrieved from https://www.mfa.am/filemanager/NKR_war_2020/nk_hr/3.pdf; See also Public Radio of Armenia, “Azerbaijani military forces beheaded an Armenian soldier -Human Rights Defender”, 19 October 2020, retrieved from <https://en.armradio.am/2020/10/19/azerbaijani-military-forces-beheaded-an-armenian-soldier-human-rights-defender/>; Fourth Report on POWs (available on request).

68. In light of Azerbaijan's widespread and state-sponsored dehumanization and hate speech towards Armenians, thousands of Armenians living in the portions of Artsakh which have fallen under Azerbaijani control have fled their homes and lands in an exodus towards Armenia (some even unearthing the remains of their loved ones to bring along with them).¹⁹⁶ There are already reports of torture and killings of captured civilians who have returned or stayed behind.¹⁹⁷

69. The transfer of parts of Artsakh to Azerbaijan risks the fate of the millennia-old cultural and religious heritage of outstanding value to humanity and creates a real threat of cultural genocide for over 4,000 Armenian heritage sites.¹⁹⁸ The head of the Armenian Apostolic Church recently spoke out about the hundreds of historical churches, monasteries, monuments and cultural museums in Artsakh at risk of becoming the "silent victims of conquest" by Azerbaijan.¹⁹⁹ The concerns of cultural genocide in Artsakh are very real given the distinct historical precedent of Nakhichevan, a historically and demographically Armenian territory that once included thousands of examples of Armenian Christian cultural heritage. Azerbaijan, upon taking control of Nakhichevan, demolished or claimed 89 Armenian churches and cathedrals, 5,840 tombstones, crosstones (or "*khachkars*") and ornate headstones, and 22,000 estimated flat tombstones of Armenian origin.²⁰⁰ Among the erased Armenian heritage sites were the medieval global trade networks launched by Djulfa merchants, the medieval Djulfa

¹⁹⁶ OBS and Agence France Press, "Haut-Karabakh: des Arméniens déterrent leurs morts avant l'exode", 17 November 2020, retrieved from <https://www.nouvelobs.com/monde/20201117.OBS36191/haut-karabakh-des-armeniens-deterrent-leurs-morts-avant-l-exode.html>

¹⁹⁷ See e.g. HRDRA, "The Azerbaijani soldiers forces humiliate an elderly man, an ethnic Armenian: The Human Rights Defender", 18 November 2020, retrieved from https://www.ombuds.am/en_us/site/ViewNews/1385 and *supra*, fn. 27.

¹⁹⁸ Milana Nikolova, "Concerns grow for the fate of Nagorno-Karabakh's cultural heritage" Emerging Europe, 21 November 2020, retrieved from: <https://emerging-europe.com/after-hours/concerns-grow-for-the-fate-of-nagorno-karabakhs-cultural-heritage/>; M. Chiara Biagioni, "Nagorno-Karabakh. Ferrari (Ca' Foscari): 'A genocide of Armenian cultural heritage in the territories transferred to Azerbaijan must not be permitted'", Servizio Informazione Religiosa Agenzia d'informazione, 20 November 2020, retrieved from <https://www.agensir.it/europa/2020/11/20/nagorno-karabakh-ferrari-ca-foscari-a-genocide-of-armenian-cultural-heritage-in-the-territories-transferred-to-azerbaijan-must-not-be-permitted/>; Samvel Karapetyan, *Armenian Cultural Monuments in the Region of Karabakh*, Yerevan, 2001, retrieved from http://www.raa-am.com/BOOK_3/3girqE_poqr.pdf

¹⁹⁹ See Catholicos Karekin II, "A Plea to Save Artsakh's Armenian Heritage", Christianity Today, 17 November 2020, retrieved from <https://www.christianitytoday.com/ct/2020/november-web-only/karekin-save-artsakh-armenian-churches-nagorno-karabakh.html>.

²⁰⁰ Simon Maghakyian and Sarah Pickman, "A Regime Conceals Its Erasure of Indigenous Armenian Culture" Hyperallergic, 18 February 2019, retrieved from <https://hyperallergic.com/482353/a-regime-conceals-its-erasure-of-indigenous-armenian-culture/>

cemetery, Surb Hakob and the three adjacent churches of Shorot (founded in the 12th century), and Surb Karapet (Holy Precursor Church) in Abrakunis. Since Azerbaijan banned international fact-finders from visiting Nakhichevan, the world only knows what has happened to these cultural monuments, historical sites and traces of Armenian origin from satellite imagery.²⁰¹

70. Although the 10 November 2020 Ceasefire Statement has entailed a cessation of hostilities and the deployment of Russian peacekeepers in Artsakh, the population's living conditions and geopolitical situation remain extremely precarious. Artsakh's cities and towns are heavily contaminated by explosive remnants of war, including rockets, missiles, artillery projectiles, and cluster munitions²⁰² and are "pitted with bomb craters, burnt out cars and shelled buildings."²⁰³ Children are particularly vulnerable to injury or death in that "cluster munitions bear a cruel resemblance to toys."²⁰⁴

71. Also, even though Canada has called on Turkey to stay out of the conflict,²⁰⁵ Russia and Turkey have announced their intent to create a joint monitoring centre of the cease-fire in Azerbaijan (a condition which was not in the Ceasefire Statement).²⁰⁶ It is also unclear whether jihadist mercenaries still remain in the area,²⁰⁷ as thousands of them had been sent by Turkey to Azerbaijan to kill Armenians,²⁰⁸ the whole in violation of

²⁰¹ *Ibid.*

²⁰² Joint Bipartisan letter by US Representatives to USAID Acting Administrator John Barsa, 3 November 2020, retrieved from https://www.halotrust.org/media/7295/demining_uxo_letter-11320.pdf

²⁰³ Halo Trust NGO, "From the Frontline: Nagorno Karabakh", 2 November 2020, retrieved from <https://www.halotrust.org/latest/halo-updates/stories/from-the-frontline-nagorno-karabakh/>

²⁰⁴ *Ibid.*

²⁰⁵ Minister François-Philippe Champagne, "Statement on the ongoing situation in Nagorno-Karabakh", 11 November 2020, retrieved from https://twitter.com/FP_Champagne/status/1326690424237543425

²⁰⁶ Euronews, "Russia and Turkey to jointly monitor Nagorno-Karabakh ceasefire", 12 November 2020, retrieved from <https://www.euronews.com/2020/11/12/russia-and-turkey-to-jointly-monitor-nagorno-karabakh-ceasefire>

²⁰⁷ UN Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, "Mercenaries in and around the Nagorno-Karabakh conflict zone must be withdrawn", 11 November 2020, retrieved from https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26494&LangID=E&fbclid=IwAR0_JnkNB7eo-EgeedExyVrI0wruHYff4BwhgLLJDEQPSFAFDS9Ax3DBQxvo.

²⁰⁸ Syrian Observatory for Human Rights, "Azerbaijan-Armenia conflict. As more fighters return to Syria, Turkey sends new batch to Azerbaijan", 3 November 2020, retrieved from <https://www.syriahr.com/en/190938/>; See also Radio France Internationale, "France's Macron says Syrian jihadists active in Armenia-Azerbaijan conflict", 1 October 2020, retrieved from <https://www.rfi.fr/en/international/20201001-macron-claims-syrian-jihadists-active-in-conflict-between-armenia-and-azerbaijan-nagorno-karabakh> ; CTV News, "2,000 Mideast militants fight in Nagorno-Karabakh: Russia FM", 3 November 2020, retrieved from

international humanitarian law.²⁰⁹ These mercenaries have designated the conflict to be a “part of the Jihad; [...] a holy war of Muslims against Christians”²¹⁰, and were promised \$100 per beheaded Armenian.²¹¹

72. Azerbaijan, in deliberately targeting civilian populations, achieved in a six-week war what it sought to do in the past 100 years, since Sovietization: remove Armenians from their indigenous lands in Artsakh and make it too dangerous for them to return. 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.

73. This hypothesis also ignores the very nature of Azerbaijan’s authoritarian regime. The government, run by the Aliyev family since 1993,²¹² is repeatedly criticized by international organizations for its human rights abuses even on its own citizens: unlawfully arresting opposition activists²¹³ and journalists,²¹⁴ censoring the media and internet²¹⁵ (with one of the world’s worst press freedom scores, ranking 168th out of 180

<https://www.ctvnews.ca/world/2-000-mideast-militants-fight-in-nagorno-karabakh-russia-fm-1.5172931>

²⁰⁹ See International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 4 December 1989, United Nations, Treaty Series , vol. 2163, p. 75 .

²¹⁰ Asia News, “Turkey sends 4,000 Syrian ISIS mercenaries to fight against the Armenians”, 28 September 2020, retrieved from

[http://asianews.it/news-en/Turkey-sends-4,000-Syrian-ISIS-mercenaries-to-fight-against-the-Armenians-\(VIDEO\)-51151.html](http://asianews.it/news-en/Turkey-sends-4,000-Syrian-ISIS-mercenaries-to-fight-against-the-Armenians-(VIDEO)-51151.html)

²¹¹ ArmenPress, “\$100 dollars for each beheaded infidel: Shocking testimony of detained Syrian mercenary in Artsakh”, 1 November 2020, retrieved from [https://armenpress.am/eng/news/1033500/\\$100-dollars-for-each-beheaded-infidel-shocking-testimony-of-detained-syrian-mercenary-in-artsakh.html](https://armenpress.am/eng/news/1033500/$100-dollars-for-each-beheaded-infidel-shocking-testimony-of-detained-syrian-mercenary-in-artsakh.html)

²¹² “Azerbaijan is one of only three countries—along with North Korea and Syria—that declares itself a “constitutional republic,” but transfers power by inheritance within a ruling family. Ilham Aliyev has effectively elected himself president four times since 2003 and appointed his wife as First Vice President, just to be extra secure.” See The National Interest, “Recognizing Artsakh’s Independence Will Stop Turkey and Azerbaijan’s War on Armenians”, 2 November 2020, retrieved from

<https://nationalinterest.org/blog/buzz/recognizing-artsakh%E2%80%99s-independence-will-stop-turkey-and-azerbaijan%E2%80%99s-war-armenians-171824>

²¹³ Human Rights Watch, “Azerbaijan: Crackdown on Critics Amid Pandemic”, 16 April 2020, retrieved from <https://www.hrw.org/news/2020/04/16/azerbaijan-crackdown-critics-amid-pandemic>; Human Rights Watch, “Azerbaijan: Relentless Crackdown on Opposition”, 19 April 2020, retrieved from <https://www.hrw.org/news/2020/08/19/azerbaijan-relentless-crackdown-opposition>

²¹⁴ Parliamentary Assembly of the Council of Europe, “Stop jailing journalists: Turkey and Azerbaijan must uphold Council of Europe standards”, 22 May 2020, retrieved from <https://pace.coe.int/en/news/7899/stop-jailing-journalists-turkey-and-azerbaijan-must-uphold-council-of-europe-standards->

²¹⁵ Freedom House, “Freedom on the Net 2020. Azerbaijan”, retrieved from <https://freedomhouse.org/country/azerbaijan/freedom-net/2020>

countries),²¹⁶ known for its endemic corruption²¹⁷ and heavily suppressing its citizens' political rights and civil liberties.²¹⁸

74. Even under the current cease-fire, the status quo cannot ensure future safety or peace in the region. Azerbaijan has made no secret of its intent to seize control of Artsakh, representing a real risk of a repeated ethnic cleansing campaign of Armenians.²¹⁹ This risk is heightened in light of the fact that, pursuant to the Ceasefire Statement, Azerbaijan now retains control over portions of Artsakh, as well as the strategic city of Shushi, which overlooks Artsakh's capital, Stepanakert. In light of the above, it is illusory to state that, absent recognition of its independence, the safety of the Armenian population of Artsakh can be guaranteed.

V. Conclusion

75. The indigenous Armenians of Artsakh remain extremely vulnerable due to the current humanitarian crisis and the lack of final status for Artsakh. Since the full-scale and unprovoked offensive by Azerbaijan against the people of Artsakh began on 27 September 2020, thousands of Armenian men, women, children, and elderly persons have been killed or seriously injured, and more than 130,000 have been displaced from their homes. Cities and their residential areas have been deliberately bombarded, destroying hospitals, schools, homes, and critical civilian infrastructure. Azerbaijan and its Turkish sponsors have deployed jihadist militants from Syria as a mercenary fighting force. Azerbaijan, emboldened by the international community's silence at the height of a global pandemic, continued its belligerence against the people of Artsakh for 44 days.

76. The Ceasefire Statement of 10 November 2020 does not change the dangerously fragile situation of the Armenians of Artsakh. Rather, the Ceasefire Statement omits the final status of Artsakh as a subject of ongoing dialogue and grants Turkey, a central player of Azerbaijan's war of aggression, a large role of "monitoring" the ceasefire. What is more, even in historically Armenian towns and villages that have passed under Azerbaijani control, in compliance with the terms of the Ceasefire Agreement, all

²¹⁶ Reporters Without Borders, "Azerbaijan. Hope quickly dashed", retrieved from <https://rsf.org/en/azerbaijan>

²¹⁷ Transparency International, "Azerbaijan. Corruption Perceptions Index", retrieved from <https://www.transparency.org/en/countries/azerbaijan>

²¹⁸ Azerbaijan scores 10/100 by the organization Freedom House, which qualifies the country as "Not Free" See Freedom House, "Freedom in the World 2020. Azerbaijan", retrieved from <https://freedomhouse.org/country/azerbaijan/freedom-world/2020>

²¹⁹ President Aliyev took to Twitter to proclaim, with regards to the Ceasefire Statement, that "There is no issue of Nagorno-Karabakh's status in this statement" and that "The phrase "Karabakh is Azerbaijan!" is a Symbol of our Victory!", 9 November 2020, retrieved from <https://twitter.com/presidentaz/status/1325961471445127169> and <https://twitter.com/presidentaz/status/1325961739888975872>

remaining ethnic Armenians were simply expected to evacuate, as their gruesome fate under Azerbaijani rule was deemed by all parties as a foregone conclusion. The Azerbaijani government thus flippantly admitted what Armenians had long viewed as an obvious truth: no Armenians are expected to live in any part of Artsakh under Azerbaijani authority.

77. Throughout history, the people of Artsakh have continuously, democratically and unequivocally expressed their will for self-determination and independence. Azerbaijan, in turn, has repeatedly failed to recognize any such right and consistently resorted to murderous violence to quell dissent and fuel Armenophobia. President Aliyev's most recent declarations show that Azerbaijan has no plans of accepting any independent status for Artsakh in the future. Coupled with its history of persecution towards Armenians and other minorities, and state-sponsored Armenophobia, Azerbaijan's dangerous and aggressive state policy put the very existence of the ethnic Armenians of Artsakh at grave risk. Azerbaijan, in short, has set its sights on the territory of Artsakh, devoid of its inhabitants. In these circumstances, Artsakh's right to remedial secession/recognition is not only clearly justified; it is also essential to its survival.

78. There is now a greater need than ever for Western intervention to achieve a balanced and lasting resolution that preserves the people of Artsakh's right to self-determination and prevents further bloodshed in the region. To be clear, the Armenian presence in Artsakh is today more vulnerable, and its fate more endangered, than at any other time in the last hundred years. Considering that all other avenues of negotiation have been exhausted, the OSCE Minsk Process having led to no lasting peaceful outcome, it is now Canada's duty, along with the rest of the international community, to intervene and address this injustice. There cannot be neutrality when international law is being violated and peace and security are being destabilized.

79. Canada, renowned for its historic and deep attachment to human rights, and as a pioneer in the development of the law on unilateral secession and right to self-determination, is in a unique position to take a leadership role and contribute to resolving the issues at the core of the conflict. 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.

80. As an immediate remedial measure, Canada must recognize the independence of Artsakh and call on all other States to do the same. 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.

81. For all foregoing reasons, it is submitted that Canada must:
1. recognize the independence of the Republic of Artsakh and call on all other States to follow suit;
 2. condemn the joint Azerbaijani-Turkish aggression and atrocity crimes against the people of Artsakh;
 3. request the UN Security Council to refer Azerbaijan and Turkey to the International Criminal Court, and/or call on the UN Secretary-General and High Commissioner for Human Rights to establish a commission of inquiry, fact finding mission, or other appropriate investigative mechanism to ascertain the truth of, and promote justice and accountability for, the crimes committed since 27 September 2020;
 4. permanently uphold the suspension of arms exports to Turkey in light of the irrefutable evidence that is now publicly available, and impose further sanctions on persons responsible in Azerbaijan and Turkey for the violence, atrocity crimes, and use of jihadist mercenaries in Artsakh, especially against President Ilham Aliyev, his family members, and other key figures in the Azerbaijani offensive; and
 5. provide immediate and robust humanitarian aid to the civilian population of Artsakh.

ANNEX

Map of Artsakh post-Ceasefire Statement²²⁰



²²⁰ Retrieved from <https://www.rferl.org/a/macron-france-ready-lasting-solution-karabakh-conflict/30946318.html>