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ARMENIA-AZERBAIJAN NAGORNO-KARABAKH CONFLICT
TARGETING OF CIVILIANS IN AZERBAIJAN
SEPTEMBER – NOVEMBER 2020
AN INTERIM REPORT

Steven Kay QC - Dréa Becker - Joshua Kern
9 Bedford Row, London

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Abbreviations

ANAMA	Azerbaijan National Agency for Mine Action
BBC	British Broadcasting Corporation
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
FFM	Fact Finding Mission
GC	Geneva Convention
HRW	Human Rights Watch
ICC	International Criminal Court
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the former Yugoslavia
IDP	Internally Displaced Person
ILC	International Law Commission
IMT	International Military Tribunal
MOD	Ministry of Defence of the Republic of Azerbaijan
MFA	Ministry of Foreign Affairs of the Republic of Azerbaijan
NKAO	Nagorno-Karabakh Autonomous Oblast
OSCE	Organization for Security and Cooperation in Europe
OJSCo	Open Joint-Stock Company
USSR	Union of Soviet Socialist Republics
SSR	Soviet Socialist Republic
9BR	9 Bedford Row, Chambers of Steven Kay QC



Preface by Dr Farhad Mirzayev

Azerbaijan established itself as the first republic in the Muslim Orient between 1918 and 1920, when it was incorporated into the Soviet Union and became one of the USSR's constituent republics. On 30 August 1991, Azerbaijan declared its independence within the borders of the Azerbaijan SSR, including the Nagorno-Karabakh Autonomous Oblast (NKAO). The 1977 USSR Constitution, preceded by its 1924 and 1936 Constitutions, explicitly stated which republics held a right of secession and limited their number to the fifteen Soviet republics forming the constitutional parts of the USSR.¹

The right to secession contained in the Soviet Constitution granted to the Union republics is essential to our understanding of the application of the general principle of *uti possidetis juris* to this matter. These references to the constitutional right of secession are important when determining the status of administrative units, and the scope of their rights and autonomy. This was expressly recognised in the Badinter Arbitration Commission Opinions for Yugoslavia. The provisions of the USSR Constitution which stipulated the 'sovereign Union republics' right of secession, as well provisions which prescribed their territorial integrity, provided the basis for the consensual application of the *uti possidetis juris* principle once the former administrative borders of Soviet republics crystallised into the international borders of newly independent States.²

In the late 1980s, the Soviet Socialist Republic of Armenia laid claim to the NKAO of the Soviet Socialist Republic of Azerbaijan. On 15 June 1988, the Supreme Soviet of the Armenian SSR adopted a resolution approving a decision made by the Congress of Armenian Delegates of Nagorno-Karabakh regarding unification of the NKAO with the Armenian SSR.³ The USSR authorities declared the Armenian legislature's decision to be null and void *ab initio* and giving rise to a serious breach of the USSR Constitution. Thus, the Armenian territorial claims and actions were contrary to Soviet constitutional law. Meanwhile, nationalist forces in power in the Republic of Armenia commenced an aggressive campaign to occupy Nagorno-Karabakh and carried out attacks and assaults on Azerbaijanis who were forcibly expelled from both Nagorno-Karabakh and their historic lands in Armenia.

The dissolution of the USSR saw an increase in armed attacks against populated areas within Azerbaijan both by Armenia itself, and by Armenian forces in Nagorno-Karabakh. Hostilities soon escalated into a full-scale armed conflict between the nascent states. In the course of this conflict, Armenia occupied a significant portion of Azerbaijan's territory, including Nagorno-Karabakh, seven adjacent districts,⁴ and Azerbaijani exclaves surrounded by the territory of Armenia. The war resulted in the deaths and wounding of thousands, and the forced displacement of hundreds of thousands of Azerbaijanis. The exodus was the biggest instance of forced displacement in Europe since the end of the Second World War.⁵

¹ Aryeh L. Unger, *Constitutional Development in USSR* (London, Methuen 1981), p.60

² EC Yugoslav Arbitration Commission. Opinion No.2 (1992) 3 *EJIL* 183-185. Farhad Mirzayev, "Abkhazia" in C. Walter, A. Sternberg and K. Abushov (eds.) *Self-Determination and Secession in International Law* (London, OUP 2014) pp.191-213

³ *Izvestiya* Newspaper (17 June 1988)

⁴ Kalbajar, Lachyn, Zangilan, Gubadly, Jabrayil, and parts of Fizuli and Aghdam.

⁵ *UNHCR Statistical Yearbook 2002*, United Nations High Commissioner for Refugees (2002); *Appeal 2003-2004: Azerbaijan Appeal No 01.78/2003* International Red Cross and Red Crescent Societies (Geneva, 2003)



Armenia's use of force against Azerbaijan and its occupation of Azerbaijani territories have been consistently condemned by the international community.⁶ In 1993, the United Nations Security Council adopted resolutions 822, 853, 874, and 884 which reaffirmed Azerbaijan's territorial integrity, and demanded the immediate, complete and unconditional withdrawal of Armenian occupying forces. In 2015, the Grand Chamber of the European Court of Human Rights (in the case of *Chiragov and others v Armenia*) held that the Republic of Armenia is exercising effective control over the 'NKR'. The *Chiragov* Decision was reaffirmed by the Court in *Sargsyan v Azerbaijan* (2015), *Zalyan, Sargsyan and Serobyanyan v. Armenia* (2016), and *Muradyan v Armenia* (2016). The ECtHR attributed State responsibility to the Republic of Armenia as an occupying power. Under international humanitarian law, and as an occupier, Armenia is specifically prohibited from engaging in any activities aimed at altering the legal system and changing the physical, cultural and demographic character of the territory it occupies. This includes prohibitions against the deportation or transfer of civilians, infringements on public and private property, pillage, and the exploitation of the resources of occupied territory for its benefit.

Since 1992 the Organization for Security and Cooperation in Europe (OSCE) has engaged in efforts to achieve a peaceful settlement of the conflict under the aegis of its Minsk Group. Despite this ongoing process, the policy and practice of Armenia clearly demonstrated its intention to secure the annexation of Azerbaijani territories it captured through military force.

Between 31 January and 6 February 2005, the OSCE Minsk Group Fact Finding Mission visited the seven occupied regions of Azerbaijan around Nagorno-Karabakh to examine the question of Armenian settlements in these territories. In a subsequent letter to the OSCE Permanent Council, the Minsk Group Co-Chairs noted that the "prolonged continuation of [settlers in occupied territory] could lead to a *fait accompli* that would seriously complicate the peace process" and discouraged "any further settlement of the occupied territories of Azerbaijan."⁷ Following a further field mission in October 2010, they urged that "any activities in the territories [...] that would prejudice a final settlement or change the character of these areas" should be avoided.⁸

In July 2020, Armenia proclaimed the so-called 'Tonoyan Doctrine', a strategy to capture further territory of Azerbaijan in a bid to force the latter to accede to the occupation of Nagorno-Karabakh and its surrounding regions. This strategy was juxtaposed with continued attacks on Azerbaijan's civilian population. President Ilham Aliyev addressed these issues and Azerbaijan's concerns at the 75th Session of the United Nations General Assembly,⁹ where he noted that legal action would be taken against those responsible. Armenian attacks – including those carried out by their proxies – continued after President Ilham Aliyev's address. The military action initiated by Azerbaijan on 27 September 2020 was an adequate and proportionate response to these continued acts of aggression. Azerbaijan,

⁶ United Nations Security Council Resolutions 822, 853, 874 and 884, United Nations General Assembly Resolutions 48/11, 60/285 and 62/243; PACE Resolutions 1059, 1119, 1416, 1553 and 2085, EU Parliament Resolutions 2216 and 2315; Organisation of Islamic Cooperation Resolutions 21/9, 25/9, 10/11, 10/37, 9/39, 10/42, 10/43, 4/43 and 12/46.

⁷ *Letter of the OSCE Minsk Group Co-Chairs to the OSCE Permanent Council on the OSCE Minsk Group Fact Finding Mission to the occupied territories of Azerbaijan Surrounding Nagorno-Karabakh* United Nations (21 March 2005) A/59/747-S/2005/187

⁸ *Letter dated 29 March 2011 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General* United Nations (30 March 2011) A/65/801-S/2011/208

⁹ Address by Ilham Aliyev, President of the Republic of Azerbaijan, to the General Debate of the 75th Session of the General Assembly of the United Nations, 24 September 2020.



for its part, invoked its inherent right to self-defence under Article 51 of the Charter of the United Nations.¹⁰

In October 2020, whilst the war was still raging, I instructed Steven Kay QC of 9 Bedford Row Chambers (9BR) and his team to report on and assess acts committed by Armenian forces. We visited locations in several districts where Azerbaijani civilians had been targeted, and also visited areas of the district (*rayon*) of Fizuli recently liberated from Armenian occupation. I requested the world's leading experts in international criminal law to see with their own eyes the crimes that have been committed against the Azerbaijani people, and to carry out an initial assessment of their illegality and criminality under international law. This Interim Report is the result of great efforts of Steven Kay QC, Dréa Becker and Joshua Kern, actively supported by the team from my firm, BM Morrison Partners, and the Azerbaijani Bar Association led by its Chairman Anar Baghirov. A special thanks to all commentators including Dr Farid Ahmadov of ADA University for their feedback and comments.

¹⁰ See *Nicaragua v United States of America (Military and Paramilitary Activities in and against Nicaragua*, Judgment of 26 November 1984, where the ICJ expressly determined that military action of regular armed forces of one state in relation to the international borders of another state is an armed attack and aggression.



Executive Summary

This Interim Report divides into three parts. The first part addresses rocket and missile attacks on Azerbaijan's civilian populations and infrastructure during the armed conflict between Armenia and Azerbaijan in September – November 2020, and the devastation witnessed by the 9BR team on the ground. The second part addresses the utter destruction caused during the Armenian occupation of the district of Fizuli, one of the seven occupied districts surrounding the Nagorno-Karabakh region, which was also witnessed by the 9BR team on the ground. The third part considers accountability mechanisms under applicable international conventions.

Part I: Attacks on civilians during 2020

- Between 27 September 2020 and 10 November 2020, Armenian attacks on Azerbaijan's cities, villages and settlements resulted in the death and wounding of civilians, as well as extensive damage to civilian property and infrastructure. These attacks may be characterised as war crimes incurring individual criminal responsibility under international law.
- Attacks by Armenian forces killed 100 Azerbaijani civilians and injured 416 others.
- Civilian casualties occurred on a near daily basis from the outbreak of hostilities on 27 September 2020 until the parties signed a Russian-brokered agreement on 10 November 2020.
- Almost half of the civilian fatalities occurred in 'single-fatality' incidents.
- There were dozens of attacks on villages, settlements and cities which did not result in civilian fatalities, but left civilians wounded, and civilian property and infrastructure destroyed or damaged.

Key Incidents: 27 September 2020 – 10 November 2020

- This report considers in detail five attacks ('key incidents') by Armenian forces which all resulted in multiple civilian casualties:
 - **Attack on Gashalti – 27 September 2020:** In the first hours of the conflict, on 27 September 2020, Armenian forces launched an artillery attack which killed five members of the Gurbanov family in Gashalti village, Goranboy district.
 - **Attack on Ganja – 11 October 2020:** On 11 October 2020, 10 civilians were killed and 39 civilians were injured in a Scud-b missile strike attack on a residential area of the city of Ganja.
 - **Attack on Ganja – 17 October 2020:** On 17 October 2020, 15 civilians, including six children, were killed and 60 civilians were injured in a Scud-b missile strike on a residential area of Ganja.
 - **Attack on Barda – 27 October 2020:** On 27 October 2020, five civilians, including a seven-year-old girl, were killed and 12 civilians injured in a cluster munitions attack on Garayusifli, a farming village in the district of Barda.
 - **Attack on Barda – 28 October 2020:** On 28 October 2020, 21 civilians were killed and over 90 were injured in a cluster munitions attack on a busy commercial and residential area of the city of Barda.



- In total, 56 civilians were killed and over 200 civilians were injured in these five attacks. These attacks also resulted in extensive damage to civilian property and infrastructure.

9BR visits

- In November 2020, the 9BR team visited incident locations in the Azerbaijani districts of **Barda, Terter, Ganja** and **Goranboy**. We witnessed the aftermath of missile strikes in civilian areas and saw the scale and nature of destruction to civilian property. We spoke to survivors and family members of those killed in the attacks.
- The 9BR team visited **Gashalti** and saw the destruction to the Gurbanov home. We spoke to Nadir Gurbanov, the surviving widower, and villagers who tried to assist in the aftermath of the attack. Witnesses told us that at the time of the attack, the Gurbanov family were gathered at the entrance of their home, watching the hostilities taking place far in the distance.
- In **Ganja**, we observed a large crater left by the missile warhead in the attack on 11 October 2020, and the vast area of destruction from the attack on 17 October 2020. These were densely populated residential areas, now in ruins. Clothes, shoes and other personal possessions were strewn within the rubble. Vehicles were crushed, warped and destroyed. Whilst the foundations or partially collapsed walls of some homes were still visible, others were completely reduced to twisted metal, stones and shards of wood.
- In **Barda**, we visited the site of the 28 October 2020 attack. It was clear that the area was civilian in nature, with a mix of commercial and residential properties. The impact damage from the weapons deployed was still visible on the street intersection, as was the widespread damage to homes and small businesses. We observed destruction consistent with cluster bomblets and fragments, dispersed over a large area.

Attacking civilians

- Indiscriminate attacks are prohibited. Indiscriminate attacks are those which cannot be directed at a specific military objective; attacks which employ a method or means of combat which cannot be directed at a specific military objective; or attacks which employ a method or means of combat the effects of which cannot be limited.
- Armenian forces fired highly destructive and inaccurate weapons into villages and towns in Azerbaijan. We have concerns that the Grad missile fired into the Gurbanov home in **Gashalti** on the first day of hostilities was not accurately directed at a specific military objective.
- Scud-B ballistic missiles fired into densely populated residential areas of **Ganja** city are inaccurate and can land hundreds of metres from any intended military target. Missiles armed with cluster munitions, such as those fired on **Garayusifli** village and **Barda** city are not only inaccurate as to the missile's specific target, but also spread bomblets and fragments over a wide area. Unexploded bomblets can result in long-term effects on a civilian population.
- Armenian forces carried out attacks which resulted in the death or serious injury to civilians in the villages of **Gashalti** and **Garayusifli** village, and the cities of **Ganja** and **Barda**. Indiscriminate weapons were used in civilian areas.



- Making civilians the object of attack is a grave breach of Additional Protocol I when committed wilfully. Indiscriminate attacks may qualify as direct attacks against civilians: intent may be inferred from the specific nature of the attack, including the nature of the weapons used. In some circumstances, that an attack is directed against civilians may be obvious because of the type of weapon used.
- Armenian forces attacked on **Ganja** city on 11 October and 17 October 2020, and **Barda** city on 28 October 2020. These attacks deployed inaccurate weapons, such as Scud-b missiles and cluster munitions, directed towards densely populated cities indiscriminately. There are grounds to infer that these attacks must have been carried out in the knowledge that civilians were being targeted.
- As such, there are reasonable grounds to allege that Armenian forces committed grave breaches of Additional Protocol I by targeting civilians during the armed conflict of 2020, and that those responsible are liable to criminal prosecution pursuant to States Parties' obligation to repress grave breaches.

Disproportionate attacks

- Indiscriminate attacks are those which strike military objectives and civilians (and civilian objects) without distinction. Based on the available evidence, there are grounds to conclude that Armenian forces carried out indiscriminate and disproportionate attacks during the armed conflict of 2020, treating as a single, military, objective cities where military objectives may have been located, or (in the case of **Gashalti** village and **Shikharkh** settlement in Terter), civilian areas which may have been adjacent to where Azerbaijani forces were stationed.
- Accordingly, there are reasonable grounds to allege that **Armenian forces committed grave breaches of Additional Protocol I by carrying out indiscriminate and disproportionate attacks** during the armed conflict of 2020, and that those responsible are liable to criminal prosecution pursuant to States Parties' obligation to repress grave breaches.

Crime against humanity – murder / grave breach of wilful killing

- There are grounds to support an allegation that Armenian attacks on **Ganja** city on 11 October and 17 October 2020 were directed against the civilian population. Indiscriminate Scud-B ballistic missiles were fired on a densely populated city where there was no clear military objective in the vicinity. The circumstances of these two attacks may further demonstrate that the intent of those launching the attacks was to kill civilians.
- To be characterised as a crime against humanity, a murder must have been committed as part of widespread or systematic attack directed against a civilian population. To be characterised as a war crime, the victim must be a protected person. Further investigation is required to ascertain whether these key incidents may have been part of a widespread or systematic attack directed against the civilian population of Azerbaijan. However, it is clear that victims were protected persons.
- The number and nature of these attacks may indicate that **Armenian forces pursued a policy of targeting Azerbaijan civilians**. We note admissions by Armenian authorities (and *de facto* authorities in Nagorno-Karabakh). Vagram Pogosian, a spokesperson, posted the following on Facebook on 5 October 2020: "a few more days and I'm afraid that even archaeologists will not be able to find the place of Ganja. Get sober, before it is too late." The following day,



Vagharshak Harutyunyan, chief advisor to the Prime Minister of Armenia, said on Russian television that Armenian forces were deliberately targeting the civilian population of Azerbaijan.

Part II: Occupation of Fizuli

Background

- The *rayon* of Fizuli (*Füzuli rayonu*) is an administrative region of the Republic of Azerbaijan in the south-eastern part of the country. It neighbours the Islamic Republic of Iran and has an area of 1,386 km². The district has a rich historical past and diverse cultural legacy and was home to ancient residential areas, tombs, caravanserais, and mosques.
- Prior to the Armenian occupation, the district contained one town, one settlement, and 75 villages. It is reported there were 86 secondary schools, two vocational schools, 54 kindergartens, 10 music schools, 27 clubs, two museums, 90 libraries, 13 hospitals, 17 medical treatment points, and 48 maternity services centres there.
- Approximately one third of the district, including the town of Fizuli, was occupied by Armenian forces on or around 23 August 1993. Azerbaijani forces recaptured Fizuli on 17 October 2020.

9BR visit to Fizuli

- The 9BR team visited the Fizuli district on 21 November 2020. Approaching from the south, the team was joined by Deputy Chief of Police Ralph Abdul Karimov.
- Extensive destruction was immediately visible upon crossing the former line of contact. The ruins of destroyed buildings and physical infrastructure lay all around. Not a single building visibly appeared to have been left standing.
- The 9BR team saw large quantities of piping collected and deposited on the side of the road. Abandoned bulldozers appeared among the ruins. Physical infrastructure appeared to have been appropriated.
- In the ruins of the village of Dadali, isolated standing gravestones indicated a destroyed cemetery.
- Fizuli's mosques, museums, hospitals, schools, monuments, theatres, libraries and cultural centres are all destroyed. The town and formerly occupied villages of the district are all utterly destroyed.
- In the town of Fizuli, there was only shrubland and ruins. In the cemetery, gravestones have been overturned and smashed.

Extensive destruction

- The scale of the destruction caused to the Fizuli district comfortably falls within the definition of "extensive" destruction for the purposes of qualifying the conduct as a grave breach of the Geneva Conventions.
- The scale of devastation appears difficult to justify on grounds of military necessity.
- We have grounds to allege that the **grave breach of extensive destruction of property** was committed in the Fizuli district during the period of Armenian occupation. There are also grounds to believe that the conduct of Armenian forces may also be punished as **prohibited destruction**.



Extensive appropriation

- International Crisis Group reported in 2012 that “whole towns” had been “systematically dismantled by Armenian forces” and carried away for scrap.
- This finding appeared to be corroborated by the sight on the ground where piping deposited on the side of the road in Ishygly village suggested that the destruction of infrastructure was caused with the intent to appropriate it.
- We have grounds to allege that the **grave breach of extensive appropriation of property** and the war crime of **pillage** were committed in the Fizuli district during the period of Armenian occupation.

Destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science

- The wholesale destruction of Fizuli’s mosques and religious buildings, its educational institutions, and its hospitals may be punished as the war crime of **destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science**.

Crimes against humanity: persecution

- There are grounds to allege that the destruction of Fizuli, carried out in connection with an armed conflict which entailed the looting and burning of Azerbaijan's towns and villages, and massed forced displacement, can be characterised as being connected to a **widespread and systematic attack directed against the civilian population** in the occupied territories of Azerbaijan.
- We also have grounds to allege that the destruction in Fizuli was carried out with a specific intent to discriminate on ethnic and national grounds, and may arguably be characterised as the **crime against humanity of persecution**.

Part III: Accountability

- The **Geneva Conventions of 1949** and (in Armenia’s case) **Additional Protocol I of 1977** create **obligations on States to extradite or prosecute** individuals responsible for violations which also constitute grave breaches.
- It is these instruments which currently engender the most fruitful potential for criminal law enforcement over the crimes analysed in this Interim Report.



Introduction

The republics of Armenia and Azerbaijan have been locked in a bitter dispute over the territory known as Nagorno-Karabakh since before the collapse of the Soviet Union. As noted in Dr Mirzayev's preface, the territory is internationally recognised as part of Azerbaijan. The ethnic Armenian community of Nagorno-Karabakh's efforts to secede from Azerbaijan 1988 and Armenia's claims to this territory was the catalyst for a bloody war, which ended with the Russia brokered ceasefire in May 1994, and was punctuated by the ethnic cleansing of Azerbaijanis from Azerbaijani sovereign territory occupied by Armenian forces. As a result of the war, over 300,000 Azerbaijani refugees left Armenia and about seven hundred thousand Azerbaijani civilians were displaced. Approximately 30,000 people were killed. Since then, up until 10 November 2020, Armenian forces were in effective control as occupier of both Nagorno-Karabakh and seven adjacent districts of Azerbaijani territory.¹¹

Azerbaijan asserts that the 2020 conflict arose from the implementation of unlawful Armenian policies and notes that the hostilities took place exclusively on Azerbaijan's sovereign soil.¹² The deployment of a large number of Armenian troops and armaments in Azerbaijan's sovereign territory, Azerbaijan argues, establishes that Armenia was the aggressor and was pursuing annexationist objectives.¹³ Azerbaijan alleges that Armenia had been unlawfully seeking to consolidate its occupation of the Nagorno-Karabakh region and the surrounding seven districts, to change their demographic composition, to prevent the return to their homes and properties of hundreds of thousands of Azerbaijani internally displaced persons, and to exploit and pillage their natural resources and other wealth.¹⁴ Together with ongoing destruction and appropriation of property, and the targeting of civilians and civilian objects, Azerbaijan alleges that Armenia was responsible for the committing of war crimes both prior to and during the 2020 armed conflict.

Armenia, for its part, asserts a claim of self-determination on behalf of the people of Nagorno-Karabakh and argues that by "virtue of this right, the people of Nagorno-Karabakh should be able to determine their status without limitation."¹⁵ Although Armenia asserts no express sovereign claim of its own to the territory of Nagorno-Karabakh, it acts as the agent / delegate of the territory's *de facto* authorities before the organs of the United Nations, a practice which has been rebuked by Azerbaijan, but which also demonstrates the absence of foreign relations capacity of the *de facto* Nagorno-Karabakh authorities, an constitutive element of objective statehood under the Montevideo Convention criteria.¹⁶

Hopes for fresh Armenian approach emerged with the election and ascent to power of Prime Minister Nikol Pashinyan in May 2018. As a (so-called) former 'human rights defender', Mr Pashinyan was elected on a tide of fresh expectations. However, by 24 September 2020, Azerbaijan was asserting that, since assuming power, the new Armenian government had replicated the annexationist policy of

¹¹ "What's in Blue: Nagorno-Karabakh Consultations" *Security Council Report* (19 October 2020). See also *Chiragov and Others v Armenia*, Judgment, 16 June 2015, European Court of Human Rights.

¹² Azerbaijan's political and military authorities issued statements that the Republic of Azerbaijan had no military targets in the territory of Armenia. See *Second Interim Report of the Human Rights Commissioner* (October 2020), p.5

¹³ *Letter dated 1 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General* United Nations (16 October 2020) A/75/379-S/2020/965

¹⁴ *Letter dated 10 July 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General* United Nations (13 July 2020) A/74/946-S/2020/704

¹⁵ *Letter dated 27 September 2020 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General* United Nations (28 September 2020) A/75/356-S/2020/947

¹⁶ Montevideo Convention on the Rights and Duties of States (1933)



its predecessors and had adopted a military doctrine and national security strategy which envisaged a “new war for new territories.”¹⁷

Azerbaijan argues that the conflict of 2020 was initiated when Armenia attacked the Tovuz area of Azerbaijan between 12 and 16 July. The attack was not spontaneous, argues Azerbaijan, but “a clear manifestation of Armenia’s illegal use of force against the Republic of Azerbaijan” in pursuit of a goal to seize “a new part of Azerbaijan.”¹⁸ After the July attack, Armenia is said to have concentrated its forces along the line of contact between the parties’ forces. Armenia’s threats to strike Azerbaijan’s civilian infrastructure and residential areas were accompanied by intensified military reconnaissance deep inside Azerbaijani territory.¹⁹ In parallel, “Armenia announced the establishment of a civilian militia consisting of tens of thousands of civilians who would be forced to undertake military actions against Azerbaijan.”²⁰

The conflict intensified on 27 September 2020 with the start of large-scale operations and, notwithstanding ceasefires announced on 10 October and 17 October, continued with increasing ferocity until the announcement of a Russian negotiated armistice agreement on 10 November 2020. In that time, Azerbaijani cities had come under rocket and artillery fire causing a high number of civilian casualties.

Prior to November 2020, diplomatic efforts to resolve the conflict were spearheaded by the OSCE’s Minsk Group. During the conflict, the Minsk Group’s co-chairs issued several statements calling for an immediate cessation of hostilities and resumption of dialogue.²¹ However, the eventual peace agreement between the parties was brokered by Russia.

Methodology and Conclusions

This Interim Report is funded by Dr Farhad Mirzayev of BM Morrison Partners, and is independent of the government of the Republic of Azerbaijan. It follows a visit to the Republic of Azerbaijan made by a 9 Bedford Row team comprised of Steven Kay QC, Dréa Becker, and Joshua Kern in November 2020. The team’s visit was made in the immediate aftermath of six weeks of active and intense hostilities between Armenia and Azerbaijan between 27 September and 10 November 2020. The visit was organised and actively supported by the team of BM Morrison Partners law firm and the Azerbaijani Bar Association.

The 9BR team carried out on site visits to incident locations in the districts of Barda, Terter, Ganja and Goranboy. We witnessed first-hand the aftermath of missile attacks in civilian areas. We visited the formerly occupied territory of Fizuli district and witnessed the utter devastation wrought during the period of Armenian occupation. Our observations *in situ* were supplemented by meetings with survivors and representatives of official bodies, non-governmental organisations, and specialist agencies. We reviewed reports on the incidents which included the types of weaponry recovered and the nature of the destruction, deaths, and injuries.

Based on these observations and reports, and the analysis of the applicable international criminal law, this report concludes that during the recent conflict, there are grounds to allege that the armed forces of Armenia forces carried out indiscriminate attacks on cities and villages in Azerbaijan, that these

¹⁷ Press release: 24 September 2020 Ministry of Foreign Affairs of the Republic of Azerbaijan (24 September 2020)

¹⁸ Press release: 24 September 2020 Ministry of Foreign Affairs of the Republic of Azerbaijan (24 September 2020)

¹⁹ Press release: 24 September 2020 Ministry of Foreign Affairs of the Republic of Azerbaijan (24 September 2020)

²⁰ Press release: 24 September 2020 Ministry of Foreign Affairs of the Republic of Azerbaijan (24 September 2020)

²¹ “What’s in Blue: Nagorno-Karabakh Consultations” *Security Council Report* (19 October 2020)



unlawful attacks resulted in civilian fatalities and injuries, and that they caused widespread destruction and damage to civilian property and infrastructure. Specifically, we conclude that:

- there are reasonable grounds to allege that the grave breach of attacking civilians was committed by the armed forces of Armenia during the relevant period (27 September 2020 – 10 November 2020).
- there are reasonable grounds to allege that the grave breach of causing excessive incidental death, injury or damage was committed by the armed forces of Armenia during the relevant period (27 September 2020 – 10 November 2020).
- there are reasonable grounds to allege that the grave breach of wilful killing was committed by the armed forces of Armenia during the relevant period (27 September 2020 – 10 November 2020); and
- there are reasonable grounds to allege that murder as a crime against humanity was committed by the armed forces of Armenia during the relevant period (27 September 2020 – 10 November 2020).

Moreover, we conclude that during the period of the Armenian occupation of Fizuli (and reportedly in other occupied regions), Armenian forces carried out extensive and widespread destruction and appropriation of civilian property, including hospitals, schools, and cultural property. Specifically, we conclude that:

- there are reasonable grounds to allege that the grave breach of extensive destruction and appropriation of property was committed in the Fizuli district during the period of Armenian occupation between 1993 and 2020;
- there are reasonable grounds to allege that the war crime of prohibited destruction was committed in the Fizuli district during the period of Armenian occupation between 1993 and 2020;
- there are reasonable grounds to allege that the war crime of seizure, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science was committed in the Fizuli district during the period of Armenian occupation between 1993 and 2020;
- there are reasonable grounds to allege that the war crime of pillage was committed in the Fizuli district during the period of Armenian occupation between 1993 and 2020;
- there are reasonable grounds to allege that persecution as a crime against humanity was committed in the Fizuli district during the period of Armenian occupation between 1993 and 2020.

It is important to note that these offences are international crimes incurring individual criminal responsibility under international law. As this Interim Report shows, the Republic of Azerbaijan has grounds to undertake legal steps against those responsible including through reliance on the accountability mechanisms which operate under applicable international Conventions. The Interim Report details the grounds that States possess to prosecute or extradite relevant persons when exercising jurisdiction pursuant to applicable international Conventions, including the Geneva Conventions of 1949 and its First Additional Protocol of 1977.

We are aware of reports that the destruction wrought in Fizuli during the Armenian occupation has also occurred in other formerly occupied districts of Azerbaijan. By destroying Azerbaijani cultural and religious establishments, cultural heritage and property in Fizuli and in other occupied territories, Armenia is arguably also in breach of its obligations to prohibit and eliminate discrimination, and to



protect the enjoyment of rights by Azerbaijanis pursuant to Articles 2 and 5 of the 1969 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Both Armenia (1993) and Azerbaijan (1996) have ratified the ICERD and accepted the jurisdiction of the International Court of Justice (ICJ) with respect to any dispute arising from the Convention which is not settled by negotiation or by the procedures provided for in it. Further investigation is required to ascertain whether any grounds for a claim made by Azerbaijan against Armenia pursuant to the ICERD can be sustained.



Applicable international criminal law

In this Interim Report, we review and assess incidents in the September to November 2020 armed conflict between the Republic of Armenia and Republic of Azerbaijan and consider whether offences may have been committed under customary international law and applicable Conventions. This review is with exception to the crime of aggression, and the assessment of the *jus ad bellum* is outside the scope of this Interim Report.

We have also addressed offences which it has been suggested have been committed in the part of the district of Fizuli that was occupied by the Republic of Armenia between 23 August 1993 and 17 October 2020.

Not all violations of international humanitarian law necessarily constitute war crimes. It is only violations of international humanitarian law which have been ‘criminalised’ (i.e. with respect to which customary or treaty law establishes individual criminal responsibility) that qualify as war crimes.²² In an international criminal law analysis, principles of international humanitarian law nevertheless remain essential to assessments of the legality of attacks as well as a belligerent’s conduct in situations of occupation.²³

International humanitarian law prohibits the targeting of any non-combatant with armed force or any object that does not qualify as a military objective, namely an object which by its nature, location, purpose or use, makes an effective contribution to the military action and whose total or partial destruction, capture, or neutralisation, in the circumstances ruling at the time, offers a definite military advantage.²⁴ Core principles include the principle of distinction (between legitimate and prohibited targets), and the obligation of all parties to conflict to take all feasible precautions to spare civilians and civilian objects.²⁵ The principle of proportionality requires that “parties to the conflict must refrain from attacks against military objectives that may be anticipated to cause civilian casualties, or damages that are disproportionate in relation to the intended military goal.” This includes a prohibition of causing excessive incidental damage or casualties by targeting military objectives.²⁶

Existence of an armed conflict

The connection between an offence and an armed conflict is what distinguishes a war crime from an offence under ordinary criminal law. The *Tadić* Appeals Chamber defined an armed conflict as existing “whenever there is a resort to force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.”²⁷ Common Article 2 of the Geneva Conventions of 1949 provides that all four Geneva Conventions apply to all cases of declared war or of any other armed conflict which may arise between two or more of

²² Michael Cottier in *The Rome Statute of the International Criminal Court*, Otto Triffterer and Kai Ambos (eds.) 2016 (hereinafter ‘Cottier’), mn 8-2

²³ See for e.g. *Saint Petersburg Declaration of 1868: The Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight*: “the only legitimate object which states should endeavour to accomplish during war is to weaken the military forces of the enemy.”

²⁴ Cottier, mn 8-9, citing Articles 48 *et seq* of Additional Protocol I of 1977

²⁵ Cottier, mn 8-10, citing Article 57 Additional Protocol I of 1977

²⁶ Cottier, mn 8-10

²⁷ *Prosecutor v. Tadić*, IT-94-72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, ICTY Appeals Chamber, 2 October 1995 (hereinafter ‘*Tadić* Jurisdiction Decision’), para.70



the High Contracting Parties. The Conventions also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the occupation meets with no armed resistance.²⁸

In Part I of this Interim Report, we assume that there was an armed conflict between Azerbaijani and Armenian forces between 27 September 2020 and 10 November 2020. This is not to say that an armed conflict did not subsist outside of these dates too. However, this assumption grounds the analysis which follows as it establishes the nexus between the acts which are analysed and an armed conflict for the purpose of their classification as war crimes.

In Part II of this Interim Report, for the reasons which are provided,²⁹ we assume that approximately one third of the district (*rayon*) of Fizuli was under the occupation of Armenian forces between 23 August 1993 and 17 October 2020.

International armed conflict

An international armed conflict has been said to exist where a “state uses armed force against another state or its territory, be it through its armed forces or other, including private actors.”³⁰ The unauthorised presence of foreign troops on another state's territory may be an indication of an international armed conflict.³¹ As noted, international humanitarian law also applies to situations of partial or total occupation of the territory of a High Contracting Party to the Geneva Conventions, even if the occupation meets with no resistance.³²

An internal armed conflict may become international if some of the participants in an internal armed conflict act on behalf of another State. The *Tadić* Appeals Chamber held that three distinct criteria could be applied, depending on the nature of the entity in question, to establish that participants in an internal conflict had acted on behalf of another State and thereby lending an international character to the conflict. These are the criteria of:

- (a) overall control (for armed groups acting on behalf of another State);
- (b) specific instructions or public approval (for individuals acting alone or militarily unorganised groups);
- (c) assimilation of individuals to State organs on account of their actual behaviour within the structure of the State.³³

²⁸ Common Article 2 of the Four Geneva Conventions of 1949 states that “the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance. Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.”

²⁹ See *Chiragov and Others v Armenia*, Judgment, 16 June 2015, European Court of Human Rights. See also Part II: Occupation of Fizuli – Analysis in this Interim Report.

³⁰ Cottier, mn 8-30

³¹ Cottier, mn 8-29, citing *Prosecutor v Thomas Lubanga Dyilo*, ICC-01/04-01/06, para.220. In the *Lubanga* case, the ICC considered “that there [was] sufficient evidence to establish substantial grounds to believe that, as a result of the presence of the Republic of Uganda as an occupying Power, the armed conflict which occurred in Ituri can be considered as an armed conflict of an international character from July 2002 to 2 June 2003, the date of the effective withdrawal of the Ugandan army.”

³² Common Article 2 to the Geneva Conventions.

³³ *Prosecutor v Tadić*, IT-94-1-A, Judgment, Appeals Chamber, 15 July 1999, paras.137 – 141, 145. See in particular para.140 (“where the controlling State in question is an adjacent State with territorial ambitions on the State where the conflict is taking place, and the controlling State is attempting to achieve its territorial enlargement through the armed forces which it controls, it may be easier to establish the threshold.” Overall control goes “beyond the mere financing and equipping... of forces” and involves “also participation in the planning and supervision of military operations, whether or not such actions



In 2015, the Grand Chamber of the European Court of Human Rights considered, in the case of *Chiragov and others v Armenia*,³⁴ whether the Republic of Armenia exercised and continued to exercise effective control over the territory of the NKAO and the surrounding territories (including Fizuli) [H9]. The assessment depended primarily on military involvement but other indicators, such as economic and political support, could also be relevant. The Grand Chamber found that the Republic of Armenia, through its military presence and provision of military equipment and expertise, had been significantly involved in the conflict from an early date and that Armenian and the *de facto* authorities' armed forces were highly integrated. The *de facto* authorities were also politically and financially dependent on Armenia [169]-[186].

Given the strength of the authority of the Grand Chamber's Decision, deriving from the meticulous manner in which the specific question before the Chamber was addressed, for the purpose of this Interim Report we have assumed as correct the conclusion that the Republic of Armenia exercised effective control over Nagorno-Karabakh and the seven surrounding districts of Azerbaijan between the conclusion of the ceasefire between Armenia and Azerbaijan in 1994, and its associated hostilities, and the recapture of territory by Azerbaijan during the armed conflict of 2020.

Grave breaches of the Geneva Conventions of 1949

The Geneva Conventions of 1949 provide for individual criminal responsibility of persons committing grave breaches. The list of grave breaches is contained in each of the four Conventions.³⁵ The scope of the Conventions' application is indicated in Common Article 2 as limited to situations of an international armed conflict; accordingly, the concept of grave breaches is limited to international armed conflicts.³⁶ We have seen, however, that Conventions also apply to circumstances of occupation as defined by Common Article 2.³⁷

In general, the Geneva Conventions are concerned with the protection of civilians and non-combatants who are under the control of the party to the conflict. The Conventions, by and large, do not regulate methods and means of warfare.³⁸ They do however include the grave breach of extensive destruction and appropriation of property, which we assess below in light of Armenian conduct in occupied Fizuli between 1993 and 2020.³⁹ They also include the grave breach of wilful killing, which we assess below.

were contrary to international humanitarian law". *Id.*, para.145). See also *Prosecutor v Prlić et al*, IT-04-74-T, Judgement, Volume I, Trial Chamber, 29 May 2013, para.86. The ICC has also accepted the "overall control" test in *Prosecutor v Lubanga Dyilo*, ICC-01/04-01/06, Judgment pursuant to Article 74 of the Statute, Trial Chamber I, 14 March 2012, para.541. See also ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)*, Judgment, 26 February 2007, para.404. While the ICJ applies an effective control test for the purposes of state responsibility, it also noted: "insofar as the overall control test is employed to determine whether or not an armed conflict is international... it may well be that the test is applicable and suitable."

³⁴ *Chiragov v Armenia*, App. No. 13216/05, Judgment, 16 June 2015

³⁵ Article 50 of the First Geneva Convention, Article 51 of the Second Geneva Convention, Article 130 of the Third Geneva Convention and Article 147 of the Fourth Geneva Convention.

³⁶ Knut Dörmann, in *The Rome Statute of the International Criminal Court*, Otto Triffterer and Kai Ambos (eds.) 2016 (hereinafter 'Dörmann'), mn 8-58, citing *Prosecutor v Tadić*, No. IT-94-1-A, Judgement, Appeals Chamber, 15 July 1999, para. 80; *Prosecutor v Tadić*, IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal, Appeals Chamber, 2 October 1995, para.84 (for the reasons see para.79 *et seq.*); see also *Prosecutor v Blaškić*, IT-95-14-T, Judgement, Trial Chamber, 3 March 2000, para.74

³⁷ *Prosecutor v Prlić et al.*, IT-04-74-T, Judgement, Volume I, Trial Chamber, 29 May 2013 ("*Prlić* Trial Judgement"), n.139

³⁸ Dörmann, mn 8-64

³⁹ See *infra* p.55-56



Grave breaches of Additional Protocol I

The list of grave breaches of Additional Protocol I is contained in Article 85.⁴⁰ Additional Protocol I applies to international armed conflicts.⁴¹ Criminal offences include the grave breach of intentionally directing attacks against civilians not taking direct part in hostilities, and the grave breach of causing excessive incidental death, injury, or damage. We assess these crimes below in light of Armenian conduct during the armed conflict of 2020.⁴²

Serious violations of the Laws and Customs of War

Serious violations of laws and the customs of war are war crimes under customary international law that are not proscribed as grave breaches. There are two immediate prerequisites under customary international law: there must be an armed conflict, whether international or internal in character,⁴³ and there must be a nexus between the crimes alleged and the armed conflict.⁴⁴ The Accused must know or have reason to know the factual circumstances demonstrating that there was an armed conflict.⁴⁵ Crimes include the destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science, the war crime of prohibited destruction, and the war crime of pillage. We assess these crimes below in light of Armenian conduct in occupied Fizuli between 1993 and 2020.⁴⁶

The ICTY Appeals Chamber in *Tadić* set out the conditions that must be fulfilled for a violation of international humanitarian law to be made subject to ICTY jurisdiction as a serious violation of the laws and customs of war:⁴⁷

- (i) the violation must constitute an infringement of a rule of international humanitarian law;
- (ii) the rule must be customary in nature or, if it belongs to treaty law, the required conditions must be met;⁴⁸
- (iii) the violation must be "serious", that is to say, it must constitute a breach of a rule protecting important values, and the breach must involve grave consequences for the victim. Thus, for instance, the fact of a combatant simply appropriating a loaf of bread in an occupied village would not amount to a "serious violation of international humanitarian law" although it may be regarded as falling foul of the basic principle

⁴⁰ Article 85(3) of Additional Protocol I of 1977

⁴¹ Article 1(3) of Additional Protocol I of 1977 states: "This Protocol, which supplements the Geneva Conventions of 12 August 1949 for the protection of war victims, shall apply in the situations referred to in Article 2 common to those Conventions."

⁴² See *infra* p.36-44.

⁴³ *Prosecutor v Galić*, IT-98-29-A, Judgement, Appeals Chamber, 30 November 2006 ("*Galić* Appeals Judgement"), para.120; *Tadić* Jurisdiction Decision, para. 94; *Prlić* Trial Judgement, para.141

⁴⁴ *Prosecutor v Kunarac*, IT-96-23 and IT-96-23/1-A, Judgement, Appeals Chamber, 12 June 2002 ("*Kunarac* Appeals Judgement"), para. 55; *Prlić* Trial Judgement, para.141

⁴⁵ *Prosecutor v Boškoski and Tarčulovski*, IT-04-82-T, Judgement, 10 July 2008, para.295, not overturned on appeal; *Prlić* Trial Judgement, para.141

⁴⁶ See *infra* p.56-58

⁴⁷ Article 3 of the ICTY Statute proscribes violations of the laws or customs of war. It prescribes "the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to: (a) employment of poisonous weapons or other weapons calculated to cause unnecessary suffering; (b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity; (c) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings; (d) seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science; (e) plunder of public or private property."

⁴⁸ See *Prosecutor v Tadić*, IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal, Appeals Chamber, 2 October 1995, para.143: The conditions are that the treaty "(i) was unquestionably binding on the parties at the time of the alleged offence; and (ii) was not in conflict with or derogating from peremptory norms of international law."



- laid down in Article 46(1) of the Hague Regulations (and the corresponding rule of customary international law) whereby "private property must be respected" by any army occupying an enemy territory;
- (iv) the violation of the rule must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule.⁴⁹

Crimes against humanity

Crimes against humanity has existed as a category of crimes under international criminal law, arguably since before Nuremberg.⁵⁰ Each of the international and (so-called) 'hybrid' tribunals have had jurisdiction over crimes against humanity. However, the scope and definition of both the *chapeau* elements of crimes against humanity, as well as of the underlying offences themselves, has not been consistent in practice. Discerning the precise scope and definition of the offence under customary international law remains subject to debate. It is with these qualifications in mind that the elements and definition of crimes against humanity are assessed in this Interim Report.

In this report, we assess the crime against humanity of persecution in the context of Armenian conduct in occupied Fizuli between 1993 and 2020.⁵¹ We further assess the crime against humanity of murder in the context of the conduct of Armenian forces during the armed conflict in 2020.⁵²

Serious violations of the Second Protocol to the 1954 Hague Convention

Article 15 of the Second Protocol to the 1954 Hague Convention establishes, as serious violations of the Protocol, certain criminal offences which might be committed against cultural property. Article 15 recognises that a person may be held criminally liable for serious violations of the Convention if they, intentionally and in violation of the Convention or Second Protocol, commit offences including "extensive destruction or appropriation of cultural property protected under the Convention and this Protocol" and "theft, pillage or misappropriation of, or acts of vandalism directed against cultural property protected under the Convention." We assess these crimes in the context of Armenian conduct in occupied Fizuli between 1993 and 2020.

⁴⁹ *Prosecutor v Tadić*, IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal, Appeals Chamber, 2 October 1995, para.94

⁵⁰ Christopher K. Hall and Kai Ambos, in *The Rome Statute of the International Criminal Court*, Otto Triffterer and Kai Ambos (eds.) 2016 (hereinafter 'Hall and Ambos'), mn-1

⁵¹ See *infra* p.59-60

⁵² See *infra* p.43-44



PART ONE

ATTACKS BY ARMENIAN FORCES SEPTEMBER – NOVEMBER 2020



ATTACK ON GASHALTI VILLAGE

In the first hours of hostilities on 27 September 2020, Armenian forces launched an attack on Gashalti village. Five members of the Gurbanov family, including two children, were killed when a Grad missile struck their home.

Just over one thousand people live in Gashalti village, which is located on the outskirts of the city of Naftalan in the district of Goranboy.

Nadir Gurbanov, a military serviceman, was stationed approximately three kilometres away when he saw shells landing in the area of his village. He rushed home and discovered that the attack had killed his parents Elbrus and Shafayat, his wife Afag, his 13-year-old son Shahriyar, and his 14-year-old niece Fidan.⁵³ Nadir's cousin Mohammad said that in the aftermath of the attack, he found his cousin Nadir at the house, hugging pieces of children's bodies. They were charred beyond recognition.⁵⁴



Following the attack, Azerbaijan National Agency for Mine Action (ANAMA) determined a Grad 9M22u, which is large calibre artillery, had been fired at the Gurbanov home.⁵⁵

The 9BR team visited Gashalti and saw the destruction to the Gurbanov home. The structure was badly damaged. Blood stains covered both the exterior and interior walls of the home.

We spoke to Nadir Gurbanov and villagers who tried to assist in the aftermath of the attack. Witnesses told us that at the time of the attack, the Gurbanov family were gathered at the entrance of their home, watching the hostilities taking place far in the distance. The village overlooks a large area of fields and hills. Villagers pointed the area in the distance where they said military activity was taking place.

Witnesses confirmed that there was no military activity in the village, and that the nearest military position was that of Nadir Gurbanov's regiment, kilometres away. Satellite imagery obtained by Human Rights Watch indicates that Azerbaijani forces may have been deployed in a large area extending from the southern boundary of the village to the eastern side of the road leading to the village of Tapqaraqoyunlu.⁵⁶



⁵³ Report: 27 September 2020 – 01 October 2020, Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan; p.9. See also Office of the Prosecutor General, *Criminal Cases Report: Goranboy*

⁵⁴ "Unlawful Rocket, Missile Strikes on Azerbaijan" *Human Rights Watch* (11 December 2020)

⁵⁵ Office of the Prosecutor General, *Criminal Cases Report: Goranboy*

⁵⁶ "Unlawful Rocket, Missile Strikes on Azerbaijan" *Human Rights Watch* (11 December 2020); p.3



ATTACKS ON GANJA

In the early hours of 11 October 2020, 16-year-old Sevil Aliyeva was at home with her parents and younger brother Huseyin. After almost two weeks since fighting had resumed over Nagorno-Karabakh, a humanitarian ceasefire had just been agreed between Armenia and Azerbaijan. Sevil was watching a movie as her parents slept. At approximately 2am she heard a “huge crash”. Sevil later described how large pieces of stone fell on her, as the walls of their home collapsed. Her parents, Anar Aliyev and Nurchin Aliyeva, both in their 30s, were killed. Sevil and her brother Huseyin, 8, are now orphans.⁵⁷

The Armenian attack which killed Sevil’s parents was one of the deadliest, but it was not the first nor was it to be the last to claim the lives of civilians in Azerbaijan’s second city of Ganja.⁵⁸ Ganja is located approximately 241km from the Armenian border, and 97km from what was the ‘line of contact’.⁵⁹

Between 27 September to 10 November 2020, attacks on Ganja resulted in the deaths of 26 civilians and the wounding of 142



GANJA: FACTS IN BRIEF

- Deaths (civilians): 26
- Injuries (civilians): 142
- Dates of attacks
 - 4 October 2020
 - 5 October 2020
 - 8 October 2020
 - 11 October 2020
 - 17 October 2020
- Weapons used
 - 9K58 Smerch missiles
 - 9K72 Scud missiles

civilians, as well as extensive damage to civilian property.⁶⁰ Azerbaijan asserts that in its attacks on the district Armenian forces were deliberately targeting civilians and civilian objects, in violation of international humanitarian law.⁶¹

ATTACKS: 27 SEPTEMBER – 10 NOVEMBER 2020

In the early hours of 4 October 2020, Armenian forces launched “massive missile attacks” against Azerbaijan, with residential areas of Ganja city sustaining strikes from multiple rocket launch systems.⁶² According to Azerbaijan’s Ministry of Defence, the city was hit with tactical missiles using Smerch, Uragan and Grad rocket launch systems. Missiles hit various residential areas within the city,

⁵⁷ “Hours after truce agreed, children became orphans in Azerbaijan” *Al Jazeera* (15 October 2020). The Office of the Prosecutor General confirmed the deaths of Nurchin Emin Alizada (33 years old) and Anar Asif Alizada (38 years old).

⁵⁸ Ganja has a population of approximately 335,000. Population by sex, town and regions, urban settlements at the beginning of 2020, State Statistical Committee, Republic of Azerbaijan.

⁵⁹ “Hours after truce agreed, children became orphans in Azerbaijan” *Al Jazeera* (15 October 2020). See also *Letter dated 5 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General United Nations* (07 October 2020) A/75/497-S/2020/982; Second Interim Report, Commissioner for Human Rights (Ombudsman) of Azerbaijan, p.3

⁶⁰ Official statistics of civilian deaths and injuries from the Office of the Prosecutor General, *Criminal Cases Report: Ganja*

⁶¹ *Letter dated 2 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary General United Nations* (02 October 2020) A/75/486-S/2020/969

⁶² *Letter dated 4 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General United Nations* (16 October 2020) A/75/487-S/2020/973; *Database on Aggression by Armenia Against Azerbaijan (September – October 2020)*, Ministry of Foreign Affairs, Republic of Azerbaijan, 2020



including the densely-populated neighbourhood of Gulustan.⁶³ One civilian – 21-year-old Tunar Qoshqar Aliyev – was killed and 32 others, including six children, were injured.⁶⁴

Civilian casualties were in addition to serious damage to the city's civilian infrastructure, property, and historical buildings.⁶⁵ 29 residential apartments were destroyed and 118 were damaged.⁶⁶ Residents told journalists of their fear and shock upon hearing a large explosion and the chaos that ensued. A nurse told the BBC that several civilians were seeking treatment in the hospitals, and that “*there are casualties all over the city.*”⁶⁷ Azerbaijan

accused Armenia of targeting its cities and in so doing critical civilian infrastructure of regional importance, all of which is situated far away from the conflict zone.⁶⁸

The day after this first fatal rocket attack on the city, Vagram Pogosian, spokesperson for the self-proclaimed authorities in Nagorno-Karabakh, posted a warning on social media: “A few more days and I'm afraid that even archaeologists will not be able to find the place of Ganja. Get sober, before it is too late.”⁶⁹

The attacks on Ganja continued. Armenian forces launched further missile attacks the following day on 5 October 2020. Three civilians were injured when Smerch missiles hit Nizami Avenue and damage was reported in several areas of the city. Three apartments, a market and a secondary school were damaged in the attack. Additional shells landed in residential and commercial areas but failed to explode.⁷⁰ Smerch missiles hit the Janpolad café on Hasan Aliyev Street on 8 October 2020, damaging the adjacent prison facility and resulting in injuries to three detainees. A school and a cinema were also damaged in the attack.⁷¹



⁶³ Rockets hit 16 Ali Nazmi Street, the intersection of Aziz Aliyev Avenue and Pushkin Street; shells hit 127 Ahmad Jamil Street, 49 Nasib Bey Yusifbeyli Street, the intersection of Ordubadi Street and Nizami Avenue. Shells landed near Ganja's Prison No.2 on Hasan Aliyev Street but did not explode. Others fired in the direction of the Puppet Theatre (Ahmad Jamil Street, a 19th century Lutheran Church) were neutralised in the air. Office of the Prosecutor General, *Criminal Cases Report: Ganja*

⁶⁴ The Office of the Prosecutor General confirmed the death of Tunar Qoshqar Aliyev (21 years old).

⁶⁵ *Letter dated 4 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General United Nations* (16 October 2020) A/75/487-S/2020/973; *Database on Aggression by Armenia Against Azerbaijan (September – October 2020)* Ministry of Foreign Affairs, Republic of Azerbaijan, 2020

⁶⁶ Office of the Prosecutor General of Azerbaijan, *Criminal Cases Report: Ganja*

⁶⁷ Konul Khalilova, “Casualties all over Ganja” *BBC News* (04 October 2020)

⁶⁸ *Letter dated 5 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General United Nations* (07 October 2020) A/75/497-S/2020/982

⁶⁹ Third Interim Report, p.15; *Letter dated 17 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General United Nations* (21 October 2020) A/75/529-S/2020/1027; for image and text of the Facebook post see “A few more days and even archaeologists will not be able to find the place of Ganja” *1News* (05 October 2020)

⁷⁰ Office of the Prosecutor General of Azerbaijan, *Criminal Cases Report: Ganja*

⁷¹ Office of the Prosecutor General of Azerbaijan, *Criminal Cases Report: Ganja*



The destruction wrought in the early hours of 11 October 2020 was widespread. The residential area of the city adjacent to Victory Park was hit by a 9K72 Elbrus ‘Scud’ tactical ballistic missile⁷² resulting in the collapse of several multi-storey apartment buildings.⁷³ Azerbaijan asserts that this attack – just hours after the establishment of a humanitarian ceasefire – was launched from the Armenian city of Vardenis.⁷⁴

When the 9BR team visited the site of the strike, we observed a large crater left by the missile warhead. Clothes, shoes, and other personal possessions were strewn within the rubble. Vehicles were crushed, warped and destroyed. Whilst the foundations or partially collapsed walls of some homes were still visible, others were completely reduced to twisted metal, stones, and shards of wood.



We were told that in the aftermath of the attack, people were searching by hand through the rubble to find survivors.

The area was not only clearly a civilian one, but a densely populated residential area near the centre of the city. The Scud missile landed on homes on Alakbar Rafibeyli Street, located behind a row of small shops and businesses. The damage extended far beyond the immediate

vicinity of where the missile landed. The foundations of buildings even some distance away had collapsed, and there was damage to dozens of other homes and businesses. A Russian Orthodox church, built in 1887, was described as “heavily damaged” by the shelling.⁷⁵ Nine multi-storey apartment buildings and 82 private houses were destroyed or damaged in the attack.⁷⁶ In addition to damage to commercial businesses, a music school and kindergarten were damaged.⁷⁷ An area of approximately 80,000 m² within the city was affected by the missile attack.⁷⁸

The strike killed ten civilians – including the parents of Sevil and Huseyin – as well as three members of the Alasgarov family: Ulvi, 30, Tarana, 55, and Durra, 53, who were killed with the missile hit their home. Gunay Aliyeva, who was pregnant, initially survived the blast but later died in hospital. She was

⁷² Azerbaijan’s Ministry of Foreign Affairs initially reported that a Scud missile had been used in the attack. The use of this weapon was subsequently confirmed following investigations and weapons analysis by the Office of the Prosecutor General.

⁷³ Report of the Fact-Finding Mission: Ganja, Commissioner for Human Rights (Ombudsman) of Azerbaijan, October 2020; p.2. See also *Letter dated 11 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General* United Nations (13 October 2020) A/75/508–S/2020/1001

⁷⁴ *Letter dated 11 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General* United Nations (13 October 2020) A/75/508–S/2020/1001. According to The Office of the Prosecutor General, analysis of the impact site and weapon trajectory indicates that the missile was fired from the Vardenis region.

⁷⁵ Ayya Lhamad, “Old Orthodox church in Ganja damaged in Armenian missile attack” *Azernews* (13 October 2020). “Russian Church in Azerbaijan’s Ganja heavily damaged from Armenian missile attack - Head of Russian Orthodox Church in Ganja city” *MENAFN - Trend News Agency* (15 October 2020)

⁷⁶ Second Interim Report (27 September – 11 October 2020) Commissioner for Human Rights (Ombudsman) of Azerbaijan; p.26. See also *Letter dated 11 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General* United Nations (13 October 2020) A/75/508–S/2020/1001. Note: initial damage estimates have been updated by official figures provided by the Office of the Prosecutor General in December 2020.

⁷⁷ Child Casualties Report (November 2020) Commissioner for Human Rights (Ombudsman) of Azerbaijan; p.6. See also *Letter dated 13 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General* United Nations (14 October 2020) A/75/512–S/2020/1010; The Office of the Prosecutor General does not list damage to a kindergarten, as reported by the Ombudsman in an earlier report.

⁷⁸ Office of the Prosecutor General of Azerbaijan, *Criminal Cases Report: Ganja*



28 years old. Her husband Adil, also 28, and his mother Afag, 63, were also killed. Gunay and Adil were survived by their two-year-old daughter Nilay.⁷⁹



39 civilians were injured in the missile strike, including young Nilay.⁸⁰ Injuries were sustained from the force of the blast, shrapnel, and falling building debris. Several of the injured were children, including two-year-old Yagmur and four-year-old Bakhtiyar.⁸¹

The deadliest attack on Ganja took place less than a week later, in the early hours of 17 October 2020. At approximately 1am, there were reports of three loud explosions, as 9K72 Scud B Elbrus ballistic missiles hit Imamgulyeva Street and Khasiyev Street, both residential areas. Homes were reduced to rubble. In the aftermath of the attack rescue teams worked for hours searching through the debris, with sniffer

dogs, periodically calling for silence to detect the sounds of any survivors.⁸² Two children who were initially reported as missing were subsequently found dead in the rubble.⁸³ Three-year-old Khadija Shahnazarli was injured but survived. In hospital following the attack, she was initially unaware that her parents and baby sister had been killed.⁸⁴

The attack claimed the lives of 16 civilians, including six children. 60 other civilians were injured.⁸⁵ The destruction of civilian and public property was widespread.⁸⁶ 275 homes were damaged or destroyed.

**Ganja City Attack
17 October 2020
Child fatalities**

- Madina Shanazarli (1)
- Nazrin Asgarova (6)
- Nigar Asgarova (14)
- Orkhan Khalili (11)
- Maryam Khalili (6)
- Artur Mayakov (13)

⁷⁹ “Hours after truce agreed, children became orphans in Azerbaijan” *Al Jazeera* (15 October 2020). Note: age listed for Durra has been updated from the Prosecutor General’s *Criminal Cases Report: Ganja* (which lists her date of birth as 17 April 1967). All other names are confirmed as having been killed in the attack, see OPG *Criminal Cases Report: Ganja*. See also *Report of the Fact-Finding Mission: Ganja 11-12 October 2020*, Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan (2020); p.2

⁸⁰ Office of the Prosecutor General, *Criminal Cases Report: Ganja*

⁸¹ Child Casualties Report (November 2020) Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan; p.6. See also “Education Ministry: 10 schoolchildren wounded after attack on Ganja” *Report News Agency* (12 October 2020). Names (and ages) of these children are confirmed as having been injured in the attack, see OPG *Criminal Cases Report: Ganja*

⁸² “Azerbaijan says 12 civilians killed by shelling in Ganja” *The Guardian* (17 October 2020)

⁸³ See *Letter dated 17 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General United Nations* (21 October 2020) A/75/529-S/2020/1027; *Fourth Interim Report (27 September – 26 October 2020)* Commissioner for Human Rights (Ombudsman) of Azerbaijan; pp.3-4

⁸⁴ *Fact Finding: Ganja 17-18 October 2020*, Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan; p.9

⁸⁵ *Child Casualties Report*, Commissioner for Human Rights (Ombudsman) of Azerbaijan (November 2020) (hereinafter ‘Child Casualties Report’; p.7; names (and ages) of these children are confirmed as having been injured in the attack, see Office of the Prosecutor General of Azerbaijan *Criminal Cases Report: Ganja*. See *Letter dated 17 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General United Nations* (21 October 2020) A/75/529-S/2020/1027. Initial injury/death figures have been updated by those provided by the Office of the Prosecutor General in December 2020.

⁸⁶ *Letter dated 17 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General United Nations* (21 October 2020) A/75/529-S/2020/1027



There was damage to a medical clinic, a school, a kindergarten, and to businesses.⁸⁷

The 9BR team visited the area in November 2020 and witnessed the scale of the destruction. We spoke to survivors, including Ragibe Guliyeva, the grandmother of a 13-year-old Russian citizen named Artur Mayakov, who was killed in the attack.

Whilst the foundations of some homes were still visible, a large area was nothing but debris and rubble. It was not possible to ascertain where many of the homes had stood. Pieces of clothing, shoes, broken plates, twisted cutlery, children's toys, and books were dispersed across the entire area. Houses that were still standing had sustained significant damage; many structures appeared dangerously unstable. Local residents, the adults and children who survived the attack, walked on the rubble of their former homes, some still searching for personal possessions.

⁸⁷ Damage is reported between both sites of the attack on 17 October 2020 (Imamguliyeva Street and Khasiyev Street). An area of approximately 750,000m² sustained damage in the attack. See Office of the Prosecutor General, *Criminal Cases Report: Ganja*. See also *Second Interim Report*, Commissioner for Human Rights (Ombudsman) of Azerbaijan (2020); p.3



ATTACKS ON BARDA

Barda city is located approximately 100km from the Armenian border and 30km from what was the 'line of contact'.⁸⁸ Between 27 September and 10 November 2020, attacks on Barda city and district resulted in the deaths of 29 civilians and the wounding of 104 civilians, as well as extensive damage to civilian property.⁸⁹ Azerbaijan asserts that in its attacks on the district Armenian forces were deliberately targeting civilians and civilian objects, in violation of international humanitarian law.⁹⁰

ATTACKS: 27 SEPTEMBER – 10 NOVEMBER 2020

On 2 October 2020, Armenian forces subjected civilians in Azerbaijan to rocket and artillery fire. From their positions in the occupied areas of Azerbaijan, Armenian forces shelled the settlement of Amirli in the district of Barda.⁹¹ Barda was one of several Azerbaijani districts under fire and in the following days, more civilians were killed in missile strikes.⁹²

BARDA: FACTS IN BRIEF

- Deaths (civilians): 29
- Injuries (civilians): 104
- Dates of attacks
 - 2 October 2020
 - 5 October 2020
 - 8 October 2020
 - 17 October 2020
 - 27 October 2020
 - 28 October 2020
 - 7 November 2020
- Weapons used
 - Grad missiles
 - Cluster munitions

On 5 October 2020, four Grad rockets were fired into the district, striking Hajibeyov Street and the intersection of Mammadguluzadeh Street and Aliyev Avenue.⁹³ Shahriyar Mehdiyeva, a 59 year old woman, was killed in the strike, which also injured three others.⁹⁴ The road connecting the cities of Barda and Tartar was hit by a Smerch missile on 8 October 2020.⁹⁵ Further attacks were reported on 17 October 2020, when Barda was subjected to "intensive missile and artillery fire" along with several other districts in Azerbaijan, causing civilian casualties and the destruction of civilian and public property.⁹⁶

On 27 October 2020, Barda was subjected to "intensive missile and heavy artillery fire" by Armenian forces. The village of Qarayusifli came under attack. Located 10km south of Barda city, Qarayusifli is a farming village and home to just over a thousand inhabitants. Five civilians, including a seven-year-old girl, were killed in an attack on the village.⁹⁷

⁸⁸ Letter dated 28 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary General (30 October 2020) A/75/558-S/2020/1051; Office of the Prosecutor General, Criminal Cases Reports: Barda

⁸⁹ Official statistics of civilian deaths and injuries were obtained from the Office of the Prosecutor General, *Criminal Cases Report: Barda*

⁹⁰ Letter dated 2 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary General United Nations (02 October 2020) A/75/486-S/2020/969

⁹¹ Letter dated 2 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary General United Nations (02 October 2020) A/75/486-S/2020/969

⁹² Attacks were reported on 5 October 2020, 8 October 2020 and 17 October 2020. Information from Prosecutor of Barda District, meeting 17 November 2020. Letter dated 17 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary General United Nations (21 October 2020) A/75/529-S/2020/1027

⁹³ Information from Prosecutor of Barda District, meeting 17 November 2020. The Office of the Prosecutor General reports that four Serbian-made G-2000 Grad rockets were fired on the city on 5 October 2020.

⁹⁴ Official statistics of civilian deaths and injuries were obtained from the Office of the Prosecutor General, *Criminal Cases Reports: Barda*

⁹⁵ Smerch 9M528. Office of the Prosecutor General of Azerbaijan, *Criminal Cases Report: Barda*. Information also provided by the Prosecutor of Barda District in a meeting on 17 November 2020.

⁹⁶ Letter dated 17 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary General United Nations (21 October 2020) A/75/529-S/2020/1027; Office of the Prosecutor General, *Criminal Cases Report: Barda*

⁹⁷ "At least 17 persons fell victim to missile attack on Azerbaijani village" *Caucasian Knot* (28 October 2020); Civilian deaths and injuries were confirmed by the Office of the Prosecutor General. See also "On 27 October, 2020 Armenian military forces targeted villages of Barda region which are densely populated by civilians" Press Release, ANAMA (28 October 2020)



Local resident Rafiq Isgandarov reported hearing “multiple, consecutive, explosions” as cluster bomblets rained down on a large area of village land. His seven-year-old granddaughter Aysu was killed by a fragment that landed in their neighbour’s livestock pen. The attack also killed Ekhtiram Khalil Ismayilov, 40, Ophelia Majid Jafarova, 50, and Almaz Salah Aliyeva, 56. Aybaniz Ashraf Akhmadova, 61, was killed while working in a field, her body “pierced with so many fragments that they had to wrap her [...] in plastic to stop the bleeding.”⁹⁸ Over a dozen civilians were injured.⁹⁹

The Azerbaijan National Agency for Mine Action (ANAMA) carried out site visits in the aftermath of the attacks on 27 October 2020. ANAMA’s teams found remnants of one 300mm 9M525 rocket and 72 pieces of 9N235 bomblets.¹⁰⁰ The attack on Qarayusifli was the subject of a formal complaint by Azerbaijan to the United Nations, where it was noted that this residential area was situated “far beyond the conflict zone.”¹⁰¹



Child collects shrapnel ©Ayun Rashidova

The single most deadly strike on Azerbaijani civilians during the 44-day conflict took place the following day on 28 October 2020, when missiles loaded with cluster munitions hit busy commercial and residential areas in Barda city.

21 civilians were killed and over 90 others, including several children, were injured.¹⁰²

The attack took place at approximately 1pm in a crowded area of the city. Three Smerch missiles – loaded with cluster bomblets – were fired on a busy intersection.¹⁰³ One resident described how a bomb landed on Uzeyir Hajibeyov Street, a large avenue busy with commercial activity.¹⁰⁴ In addition to multiple fatalities and injuries, there was serious damage and destruction to civilian property and infrastructure.¹⁰⁵

The 9BR team visited the site of the 28 October 2020 attack in November 2020.¹⁰⁶ It was clear that the area was civilian in nature, with a mix of commercial and residential properties. We went into local

⁹⁸ As reported to Human Rights Watch. See “Cluster Munitions Used in Multiple Attacks on Azerbaijan” *Human Rights Watch* (15 December 2020).

⁹⁹ Office of the Prosecutor General, *Criminal Cases Report: Barda*

¹⁰⁰ “On 27 October, 2020 Armenian military forces targeted villages of Barda region which are densely populated by civilians” Press Release, ANAMA (28 October 2020)

¹⁰¹ *Letter dated 27 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary General United Nations* (29 October 2020) A/75/555-S/2020/1047

¹⁰² Report: Barda, Commissioner for Human Rights (Ombudsman) of Azerbaijan, November 2020; p.7. The Office of the Prosecutor General reports that 21 civilians were killed in the attack on 28 October 2020. This includes one individual who died almost a week later on 5 November 2020. *Erməni silahlı qüvvələrinin Bərdəni raket atəşinə tutması faktına görə cinayət işi başlanmışdır* <https://genprosecutor.gov.az/az/post/3116> Office of the Prosecutor General, *Criminal Cases Report*

¹⁰³ Smerch missiles with 2 9M525 cassettes and 1 9M528 fugue were fired on the intersection of Baku Street and Babek Street, 4 Baku Street, the intersection of Narimanov Street and U. Hajibeyov Street and Koroglu Street. Office of the Prosecutor General, *Criminal Cases Report: Barda*. See also “First confirmed use of cluster munitions by Armenia ‘cruel and reckless’” *Amnesty International* (29 October 2020)

¹⁰⁴ “Cluster Munitions Kill Civilians in Azerbaijan” *Human Rights Watch* (30 October 2020)

¹⁰⁵ *Letter dated 28 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary General* (30 October 2020) A/75/558-S/2020/1051

¹⁰⁶ The 9BR team visited Barda city and district on 17 November 2020.



businesses, including a butcher shop where civilians had been killed. The impact damage from the weapons deployed was still visible on the street intersection, as was the widespread damage to homes and small businesses. We observed destruction which was consistent with cluster bomblets and fragments, dispersed over a large area. It should be noted that the attack took place in close proximity to Barda Central Hospital.¹⁰⁷

On 7 November 2020, Shahmali Rahimov was killed when Armenian forces shelled the village of Yeni Ayrica. He was 16 years old.¹⁰⁸



CIVILIAN INFRASTRUCTURE

The attacks on Barda city resulted in widespread damage and destruction of civilian property and infrastructure. This included but was not limited to destruction and damage to private homes and apartment buildings, office buildings, commercial businesses, schools, hospitals, clinics, vehicles and roads. The 9BR team observed damage to commercial properties in Barda city, where the most significant destruction took place during the attack on 28 October 2020.¹⁰⁹

The Office of the Prosecutor General of Azerbaijan reported that between 27 September – 10 November 2020, 156 civilian properties sustained severe damage. This figure includes 46 homes, 62 vehicles, and 48 businesses (including shops, beauty salons, a bakery, a pharmacy, a car wash, and a garage). It was reported that there was damage to the Barda Medical and Diagnostic Centre, a building of the Fire Protection Department, and a passport registration office.¹¹⁰ As a result of the bombardment on 28 October 2020, both buildings of the Olympic Sport Complex (with 3.8 hectares) were reportedly damaged beyond use.¹¹¹

¹⁰⁷ The hospital was approximately 100 metres from the (wide) area that was attacked. This proximity was also noted by Human Rights Watch. See “Cluster Munitions Kill Civilians in Azerbaijan” (30 October 2020) *Human Rights Watch*

¹⁰⁸ Child Casualties Report; p.8. This fatality was also confirmed by the Barda Prosecutor, at meeting on 17 November 2020.

¹⁰⁹ *Report on Barda*, Commissioner for Human Rights (Ombudsman) of Azerbaijan (2020); p.15

¹¹⁰ Office of the Prosecutor General, *Criminal Cases Report: Barda*

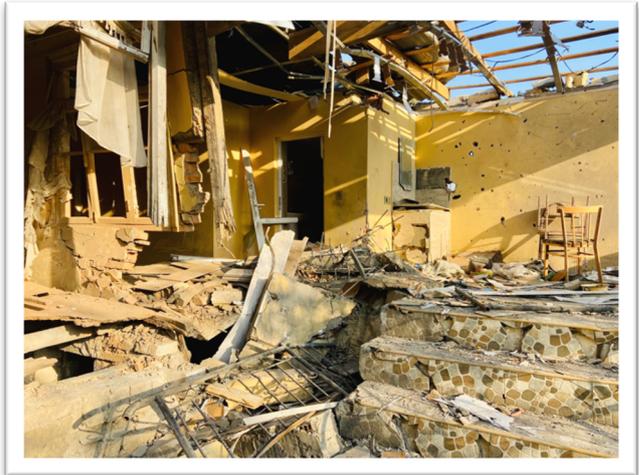
¹¹¹ *Report on Barda*, Commissioner for Human Rights (Ombudsman) of Azerbaijan; p.15



Attacks on Terter

During the recent conflict, the Azerbaijani district of Terter was subjected to near daily shelling and attack. In contrast to the incidents in Barda and Ganja considered in this Interim Report, no single strike resulted in a large number of civilian casualties. However, civilian fatalities and/or injuries occurred on a daily basis from the outset of renewed hostilities on 27 September 2020. Villages and settlements across this largely rural district sustained extensive damage. During the six-week conflict, 17 civilians in the district were killed and 58 others were wounded.¹¹²

Terter district was partitioned and partly occupied by Armenian forces after the first Nagorno-Karabakh war. Accordingly, the part of the district remaining under Azerbaijani overall control was located on the 'line of contact'. The district is made up of many rural villages and settlements, its capital city Terter and the town of Aghdara. The latest census records a population for the district of just over 104,000.¹¹³



ATTACKS: 27 SEPTEMBER – 10 NOVEMBER 2020

Villages in the district bore the brunt of daily attacks. Armenian forces attacked Terter district in the first hours of the renewed conflict on 27 September 2020, when the village of Qapanli was shelled using "large-calibre weapons, mortar launchers and artillery."¹¹⁴ Two schools – one in the Shikharkh settlement and one in Terter city – were damaged by artillery and mortar fire.¹¹⁵

Five civilians were killed and several injured in attacks on 28 and 29 September 2020.¹¹⁶ Civilians injured in the initial days of the conflict include 80-year-old Asif Mustafayev, whose home in Gazyan village was completely destroyed in an attack on 29 September 2020.¹¹⁷

38-year-old Zabil Hasanov was killed by shrapnel at the bus station in Terter city on the morning of 1 October 2020; the bus station was also badly damaged.¹¹⁸ It was reported that on 2 October 2020 alone, over 2,000 shells hit the district, resulting in widespread damage to communities, including settlements for the internally displaced.¹¹⁹

¹¹² Office of the Prosecutor General of Azerbaijan, *Criminal Cases Report: Terter*

¹¹³ Population by sex, town and regions, urban settlements at the beginning of 2020, The State Statistical Committee of the Republic of Azerbaijan, 2020

¹¹⁴ Letter dated 27 September 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General United Nations (28 September 2020) A/75/357-S/2020/948

¹¹⁵ School No1 in Shikharkh and Lyseum No.2 in Terter city were damaged. See Letter dated 1 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General United Nations (16 October 2020) A/75/379-S/2020/965

¹¹⁶ Office of the Prosecutor General of Azerbaijan, *Criminal Cases Report: Terter*

¹¹⁷ *Second Interim Report*, Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan (2020); p.11. See also "Azerbaijani civilians injured as result of Armenian military aggression" *Azvision* (01 October 2020). Ages and names of those killed/injured have been confirmed or amended by the OPG's *Criminal Cases Report: Terter*

¹¹⁸ Letter dated 1 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General United Nations (16 October 2020) A/75/379-S/2020/965

¹¹⁹ Letter dated 3 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General United Nations (16 October 2020) A/75/492-S/2020/977



The shelling of villages and settlements in the district continued throughout October 2020, resulting in further destruction to civilian property and infrastructure, injury, and death.

The district was attacked on 11 October 2020 in the hours following the establishment of a humanitarian ceasefire on 10 October 2020, and again in the following two days.¹²⁰ On 14 October 2020, a shell landed in the yard of a secondary school; several villagers were hospitalised as a result.¹²¹

One of the deadliest incidents took place on 15 October 2020 at approximately 1pm, when an attack struck a funeral procession at Terter City Cemetery, killing four civilians: Parviz Orujov, Vasif Rustamov, Shakir Zamanov and Isgandar Amirov.¹²² Four others – Fuzuli Mammadov, Elsever Allahverdiyev, Nofel Amirov and Rafael Gazanfarli – were hospitalised with serious injuries.¹²³ Fuzuli Mammadov, one of the injured, told Human Rights Watch that the funeral ceremony was held to bury his aunt. He recounted that the group was carrying his aunt’s body when they heard “whistling” overhead, and a munition exploded just 50 metres away, followed shortly by another which hit a grave.¹²⁴ Several tombs and a civilian vehicle were destroyed in the attack.¹²⁵

On 19 October 2020, the district was again under “intensive rocket artillery fire”. Salimov Niyaz, a 58-year-old resident of Alasgarli village, was injured and hospitalised when a shell hit the yard outside his home.¹²⁶ Two residents of the Jamilly village – Anar Rasul (26 years) and Guliyev Anar (36 years) – were killed the following day on 20 October 2020; Shabanov Rasul (48 years) was wounded and his home seriously damaged.¹²⁷ 16-year-old Orxan Ismayilzade was killed in



¹²⁰ Letter dated 11 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General United Nations (13 October 2020) A/75/508–S/2020/1001; Letter dated 13 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General United Nations (14 October 2020) A/75/512–S/2020/1010

¹²¹ The Ombudsman reports that Zeynalov Ramiz (1971), representative of Tartar District Authority for Duyarli village, Ahmadov Kamran (1966), representative of Asgarli village and the following villagers: Aliyev Matlab (1965), Ahmadov Khayyam (1987), Ibrahimov Ilgar (1965), Aghazade Firdovsi (1996) and Suleymanov Agha (1960) were injured. See *Third Interim Report*, Ombudsman (October 2020); p.8

¹²² *Third Interim Report*, Ombudsman (October 2020); p.4, p.8. Submitted to the UN, see Letter dated 27 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General United Nations (28 October 2020) A/75/554–S/2020/1050

¹²³ Names of those killed: Parviz Orujov (1989), Vasif Rustamov (1962), Shakir Zamanov (32, b.1988), Isgandar Amirov (1967). See also HRW report 11 December 2020, which gives ages/names as Parviz Orujov, 31, Shakir Zamanov, 32, Vasif Rustamov, 60, and Iskandar Amirov, 53. “General Prosecutor’s Office of Azerbaijan reveals names of 4 civilians killed in Terter city” *AzVision* (15 October 2020)

¹²⁴ “Unlawful Rocket, Missile Strikes on Azerbaijan” *Human Rights Watch* (11 December 2020)

¹²⁵ “Armenia Shelling Kills Three in Azerbaijan Funeral Ceremony” *Anadolu Agency* (15 October 2020); “Nagorno-Karabakh: ‘Three dead’ in attack at Azerbaijan cemetery” *Al Jazeera* (15 October 2020)

¹²⁶ *Fourth Interim Report*, Commissioner for Human Rights (Ombudsman) of Azerbaijan (October 2020); p.8

¹²⁷ *Fourth interim report*, Commissioner for Human Rights (Ombudsman) of Azerbaijan (October 2020); p.17



further bombardment of Terter city on 24 October 2020.¹²⁸

In late October 2020, Azerbaijan submitted a formal letter to the UN Secretary General, reporting that Terter district and city had been under “heavy artillery shelling” since 27 September 2020.¹²⁹ On 27 October 2020, during shelling of Terter city and villages, journalists from Euronews and their vehicle were reportedly hit by a Kornet anti-tank missile whilst in the Talish and Sugovushan villages.¹³⁰ Further attacks continued in early November,¹³¹ with Terter district officials reporting that 52 missiles struck the villages of Shikharkh, Gazyan, Saklabad and Gapanly.¹³²

There was extensive damage and destruction to civilian property and infrastructure.¹³³ It was reported that by 13 October 2020, 12 schools in the district had been destroyed or sustained damage.¹³⁴ Between 27 September and 02 November 2020, 135 houses had been destroyed and 915 had been damaged.¹³⁵

SHIKHARKH: SETTLEMENT FOR THE INTERNALLY DISPLACED

Shikharkh is a civilian settlement located on the western edge of Terter city, and is almost fully surrounded by agricultural fields. The settlement was established in 2017 to accommodate some of the thousands of internally displaced from the first Nagorno-Karabakh war.¹³⁶

Azerbaijan has one of the highest rates of displaced persons per capita in the world.¹³⁷ Between 1988-1994, 600,000 Azerbaijanis were displaced from Nagorno-Karabakh and its surrounding areas, with a further 150,000 refugees from Armenia.¹³⁸



Shikharkh settlement is seen in the centre, to the left of Terter city

Shikharkh is a modern development made up of 34 apartment buildings and houses approximately 1,170 families – with approximately 4,800 residents.¹³⁹ Within the development there are a number of schools (including a music school) and facilities such as a playground and a sportsground. The

¹²⁸ *Child Casualties Report*, Commissioner for Human Rights (Ombudsman) of Azerbaijan (October 2020); p.8. Office of the Prosecutor General of Azerbaijan, *Criminal Cases Report: Terter*

¹²⁹ *Third Interim Report*, Commissioner for Human Rights (Ombudsman) of Azerbaijan (October 2020); p.4. See *Letter dated 27 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General United Nations* (28 October 2020) A/75/554-S/2020/1050

¹³⁰ *Letter dated 27 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General United Nations* (29 October 2020) A/75/777-S/2020/1047

¹³¹ “Armenian forces shell city of Terter, Azerbaijan says” *TASS: Russian News Agency* (05 November 2020)

¹³² “In Azerbaijan, frontline villagers make dugouts to hide from shelling attacks” *Caucasian Knot* (03 November 2020)

¹³³ *Letter dated 17 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General United Nations* (21 October 2020) A/75/529-S/2020/1027

¹³⁴ *Letter dated 13 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General United Nations* (14 October 2020) A/75/512-S/2020/1010

¹³⁵ “In Azerbaijan, frontline villagers make dugouts to hide from shelling attacks” *Caucasian Knot* (03 November 2020)

¹³⁶ “İlham Əliyev Tərtərdə 1170 məcburi köçkün ailəsi üçün salınan yeni yaşayış kompleksi ilə tanış olub” *President of the Republic of Azerbaijan* (28 November 2017)

¹³⁷ “Azerbaijan: Analysis of Gaps in the Protection of Internally Displaced Persons (IDPs)” *United Nations High Commissioner for Refugees* (October 2009)

¹³⁸ The situation for IDPs in Azerbaijan is said to have improved in recent years. The government ended the notorious ‘tent camps’ by 2007 and there has been considerable investment in housing and community development projects since the early 2000s. However, some IDPs still struggle with housing conditions which are described as dilapidated and overcrowded.

¹³⁹ AZƏRBAYCAN RESPUBLİKASI TƏRTƏR RAYON İCRA HAKİMİYYƏTİ (website of the Terter Executive). Website of the Terter Executive.



residents now settled in Shikharkh were displaced from various regions during the first Nagorno-Karabakh war, but are predominantly from the Kelbajar area.

During the 44-day conflict, families in Shikharkh were subjected to near daily shelling from Armenian positions. Many of the residents, already the victims of displacement during war, fled Shikharkh in the hopes of finding safety. Those who remained sheltered in basements.¹⁴⁰

Most of the 34 apartment buildings sustained damage from the shelling attacks, with some flats being damaged beyond use.¹⁴¹ In addition to damage to

homes, there was extensive damage to the schools and educational centres in the settlement.¹⁴²

During the 9BR team's visit to Shikharkh settlement in November 2020, we witnessed the extensive damage caused to civilian homes, schools, and other facilities, such as the music school.

The Village Folklore House is a large community centre within Shikharkh which hosted cultural activities and events. In 2019, the centre held an event for the IDPs of Shikharkh, organised by the United Nations and the State Committee for Affairs of Refugees and Internally Displaced Persons.¹⁴³ The Village Folklore House is now in ruins, having sustained a direct missile hit. The missile came through the roof, destroying the structure and leaving a large crater in what was the main floor.

The surface of almost every apartment building in Shikharkh was pockmarked from shelling, and most windows were shattered, leaving dangerous shards on damaged frames. Glass and shrapnel were strewn in the grass and streets, and across playgrounds. Many residents are living in badly damaged flats, now precarious structures following repeated shelling. Those living in damaged apartments – with shattered windows and partially destroyed walls – faced a winter being exposed to the elements.



¹⁴⁰ Nabih Bulos "War uprooted them. Now it gives these Azerbaijanis hope" *Los Angeles Times* (09 November 2020)

¹⁴¹ "Azerbaijani residents report damages after shelling attacks" *Caucasian Knot* (02 November 2020)

¹⁴² Letter dated 1 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General United Nations (16 October 2020) A/75/379-S/2020/965

¹⁴³ "UN Country Team in Azerbaijan visits IDP settlement in Tartar district" *United Nations: Azerbaijan* (09 July 2019)



Attacks by Armenian Forces (Sept-Nov 2020): Analysis

Between 27 September 2020 and 10 November 2020, attacks by Armenian forces on cities, villages and settlements in Azerbaijan resulted in the death and wounding of civilians, as well as extensive damage to civilian property and infrastructure.¹⁴⁴

Attacks by Armenian forces killed 100 Azerbaijani civilians and injured 416 others.¹⁴⁵ As detailed in official crime reports, civilian casualties occurred on a near daily basis from the outbreak of hostilities on 27 September 2020 until the signing of the ceasefire agreement on 10 November 2020. Almost half of the civilian fatalities occurred in 'single-fatality' incidents. Further, we note that during this period there were also dozens of attacks on villages, settlements and cities which did not result in civilian fatalities, but left civilians wounded, and civilian property and infrastructure destroyed or damaged.¹⁴⁶

In mid-November 2020, the 9BR team carried out visits to incident locations in the Azerbaijani districts of Barda, Terter, Ganja and Goranboy. We witnessed the aftermath of missile strikes in civilian areas and saw the scale and nature of destruction to civilian property. We spoke to survivors and family members of those killed in the attacks. Our observations *in situ* were supplemented by meetings with representatives of official bodies, non-governmental organisations and specialist agencies. We reviewed criminal case files and reports which included the types of weaponry recovered and the nature of the destruction, deaths and injuries.

This section considers in detail five attacks ('key incidents') by Armenian forces which all resulted in multiple civilian casualties.¹⁴⁷ For the purposes of this report, it was not possible to verify the factual circumstances or consider the lawfulness of all attacks leading to the deaths and injuries to civilians, or destruction of civilian property and infrastructure. Further, this report does not consider the conduct of hostilities between Azerbaijani and Armenian armed forces.

Based on these observations and reports, there are grounds to the allegation that crimes under international law were committed by Armenian forces during the recent conflict (27 September 2020 – 10 November 2020). Armenian forces carried out seemingly indiscriminate and disproportionate attacks on cities and villages in Azerbaijan, where there were no military targets apparently present. These attacks resulted in civilian fatalities and injuries, and widespread destruction and damage to civilian property and infrastructure.

Further investigation would contribute to ascertaining whether some of these key incidents may have been part of a widespread or systematic attack directed against the civilian population of Azerbaijan. The number and nature of these indiscriminate attacks may indicate that Armenian forces pursued a deliberate policy of targeting Azerbaijan civilians.

¹⁴⁴ Official statistics of civilian deaths and injuries were obtained from the Office of the Prosecutor General of Azerbaijan, Criminal Cases Report

¹⁴⁵ Office of the Prosecutor General of the Republic of Azerbaijan, Criminal Cases Report. Note that one of the civilian dead (13 year old Artur Mayakov) was a Russian national; for simplicity this individual has been included in the general figure of Azerbaijani civilians.

¹⁴⁶ Office of the Prosecutor General of the Republic of Azerbaijan, Criminal Cases Report

¹⁴⁷ Whilst this report has focused on incidents resulting in multiple civilian fatalities, it is noted that a lower number of civilian casualties is not determinative of the lawfulness of an attack. An attack which is indiscriminate is unlawful, whether or not this results in large scale fatalities and/or damage to civilian objects.



Key incidents

This section considers five key incidents. These are:

- 27 September 2020: Gashalti village, Goranboy district. Five members of the Gurbanov family, including two children, were killed in an artillery attack on their home.
- 11 October 2020: Ganja city. 10 civilians were killed and 39 civilians were injured in a Scud-b missile strike attack on a residential area of the city.
- 17 October 2020: Ganja city. 15 civilians, including six children, were killed and 60 civilians were injured in a Scud-b missile strike on a residential area of the city.
- 27 October 2020: Garayusifli village, Barda district. Five civilians were killed and 12 civilians injured in a cluster munitions attack on this farming village.
- 28 October 2020: Barda city. 21 civilians were killed and over 90 were injured in a cluster munitions attack on a busy commercial and residential area of the city.

In total, 56 civilians were killed and over 200 civilians were injured in these five attacks. These attacks also resulted in extensive damage to civilian property and infrastructure.¹⁴⁸

Grave breach of intentionally directing attacks against civilians not taking direct part in hostilities

We recall that the civilian population and individual civilians are protected against direct attacks. Making the civilian population or individual civilians the object of attack is a grave breach of Additional Protocol I to the Geneva Conventions.¹⁴⁹

Indiscriminate attacks are prohibited as they are of a nature to strike military objectives or civilians (and civilian objects) without distinction.

Indiscriminate attacks may qualify as an attack directed against civilians or give rise to the inference that an attack was directed against civilians.¹⁵⁰ A direct attack on civilians can be inferred from the indiscriminate character of the weapon used.¹⁵¹

Civilians and the Civilian Population

The key incidents considered in this report occurred in districts of Azerbaijan which are adjacent to Nagorno-Karabakh, and other Azerbaijani territory then under occupation by Armenia. However, these strikes occurred in villages and cities a considerable distance from the area of active hostilities between Azerbaijani and Armenian armed forces. For instance, Ganja city and Barda city are respectively 97km and 30km from what was the 'line of contact'.

There should be no dispute that the five attacks took place in civilian locations, be they urban or village settings. Armenian forces launched a Grad artillery salvo on a village home in Gashalti on 27

¹⁴⁸ Injury figures have been widely reported and confirmed in Office of the Prosecutor General of Azerbaijan, *Criminal Cases Reports*

¹⁴⁹ See Article 85(3)(a) and Article 51(2) of Additional Protocol I

¹⁵⁰ *Prosecutor v Strugar*, IT-01-42-A, Judgement, Appeals Chamber, 17 July 2008 ("*Strugar Appeals Judgement*"), para.275. The Appeals Chamber in *Strugar* referenced the *Galić Appeals Judgement* in, para.132 and fn.706

¹⁵¹ *Galić Appeals Judgement*, para.132



September 2020. Scud-b missiles struck residential areas of Ganja city on 11 October and 17 October 2020. Cluster munitions bomblets hit the village of Garayusifli on 27 October and a busy commercial and residential area of Barda city the following day on 28 October 2020. Civilian ‘objects’ – mostly homes, but also businesses, schools, and clinics – were destroyed or damaged in the attacks.

There is no suggestion that any civilians were participating – directly or indirectly – in hostilities or otherwise engaged with Azerbaijan’s military activities in these locations.

Grad missile in Gashalti Village

On the first day of renewed hostilities on 27 September 2020, Armenian forces fired artillery at a home in the village of Gashalti in Goranboy district, killing five members of the Gurbanov family, including two children.

ANAMA reports that the weapon was a Grad 9M22u, which is large calibre artillery.¹⁵² The *Martić* Trial Chamber relied on expert evidence to find that the choice of Orkan rockets would “not have been appropriate had the purpose been to damage military targets,”¹⁵³ and concluded that “in respect of its accuracy and striking force, the use of the Orkan rocket in this case was not designed to hit military target but to terrorise the civilians of Zagreb.”¹⁵⁴

Although not covered by a specific ban, whether conventional or customary, it may be suggested that a Grad 9M22u should not be fired into civilian areas as it cannot distinguish between military targets, civilians, and civilian objects.¹⁵⁵

Elbrus/Scud-B ballistic missiles in Ganja

Armenian forces attacked residential areas of Ganja city on 11 October and 17 October 2020 with Elbrus/Scud-B ballistic missiles.¹⁵⁶ The missile strike on 11 October 2020 killed 10 civilians. The strike on 17 October 2020 killed 15 civilians, including six children. A further 99 other civilians were injured in these two attacks.¹⁵⁷ The attacks resulted in widespread destruction and damage to civilian property far outside the impact location. Following the first attack, rescue workers reportedly found body parts more than 100 metres from where the missile struck.¹⁵⁸

The Azerbaijan National Agency for Mine Action (ANAMA) reports that Armenian forces fired a total of 13 Elbrus/Scud-B ballistic missiles on Azerbaijan during the recent conflict.¹⁵⁹

Scud-B are long range missiles and can be fired from a distance of 300km away.¹⁶⁰ They are highly destructive weapons and carry a payload of 985kg. They are indiscriminate weapons when used in this

¹⁵² Office of the Prosecutor General, *Criminal Cases Report*

¹⁵³ *Prosecutor v. Martić*, IT-95-11-R61, Decision, 8 March 1996 (hereinafter “*Martić* Rule 61 Decision”), para.30

¹⁵⁴ *Martić* Rule 61 Decision, para.31. Also quoted in *Galić* Appeal Judgement, fn 101

¹⁵⁵ See, e.g. Maya Brehm, “Use of Grad Rockets in Populated Areas: What Lessons from Gotovina?” *EJIL Talk!* (30 July 2014); Report of the Independent International Fact Finding Mission in Georgia, Vol. II, 2009, pp.338-343; Robert Perkins and Sarah Leo, “Syria’s Dirty Dozen: The Grad” *Action on Armed Violence*, 23 September 2013.

¹⁵⁶ The use of the Elbrus Scud missile was confirmed Azerbaijan’s Ministry of Foreign Affairs, and the Office of the Prosecutor General of Azerbaijan. See *Letter dated 17 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General* United Nations (21 October 2020) A/75/529-S/2020/1027

¹⁵⁷ Death tolls have been widely reported and have been confirmed by the Office of the Prosecutor General of Azerbaijan.

¹⁵⁸ As told to Amnesty International. See “In the Line of Fire” *Amnesty International* (January 2021), p.9

¹⁵⁹ Azerbaijan National Agency for Mine Action (ANAMA) Briefing Report

¹⁶⁰ “Worldwide Ballistic Missile Inventories” *Arms Control Association* (December 2017)



context as they cannot by their design be directed at a specific military objective, and so cannot distinguish between military targets and civilians and civilian property.¹⁶¹

Cluster munitions in Barda

Armenian forces attacked the farming village of Garayusifli in Barda district on 27 October 2020 and Barda city on 28 October 2020. Cluster munitions were used in both attacks.¹⁶² One 9M525 Smerch rocket was fired into the farming village of Garayusifli, killing five civilians. Three Smerch missiles (two 9M525, one 9M528) were fired into Barda city the following day, killing 21 civilians. A total of 94 other civilians were injured in these two attacks.

The Russian ‘Smerch’ (‘Tornado’) Multiple Launch Rocket System carries twelve rockets, with each carrying a standard warhead of seventy-two submunitions. A salvo of twelve rockets covers 672,000 square meters.¹⁶³

Rockets containing cluster munitions can be dropped by aircraft or, as in the case of the Smerch system, be fired from the ground by rocket launchers. The rockets typically open in the air and disperse cluster bomblets over a wide area; the tail of the rocket will continue along its trajectory and then hit the ground.¹⁶⁴

When fired into civilian population centres, it may be suggested that cluster munitions are indiscriminate weapons. Their wide zone of submunition dispersal places anyone, be they civilians or combatants, and anything, be it civilian or military property, in the attack zone and at risk of death, injury, or damage. Further, cluster bomblets which do not explode on impact can remain armed, placing civilians at risk over the longer term.¹⁶⁵

Precautions

International humanitarian law requires those launching attacks to take precautions to spare the civilian population, civilians and civilian objects.¹⁶⁶ Precautions include effective advance warning of

¹⁶¹ The US Naval Handbook (2007) states that indiscriminate attacks include “attacks that are not directed at a specific military objective and provides Iraqi SCUD missile attacks on Israeli and Saudi cities during the Persian Gulf War as an example. In 1992, in its final report to Congress on the conduct of the Gulf War, the US Department of Defense accused Iraq of “indiscriminate Scud missile attacks”. In 1993, in its report to Congress on the protection of natural and cultural resources during times of war, the US Department of Defense stated: “Finally, with the poor track record of compliance with the law of war by some nations, the United States has a responsibility to protect against threats that may inflict serious collateral damage to our own interests and allies. These threats can arise from any nation that does not have the capability or desire to respect the law of war. One example is Iraq’s indiscriminate use of SCUDs during the Iran–Iraq War and the Gulf War. These highly inaccurate theater ballistic missiles can cause extensive collateral damage well out of proportion to military results.” See United States of America Practice Relating to Rule 12 (Definition of Indiscriminate Attacks) and Practice Relating to Rule 71 (Weapons That Are by Nature Indiscriminate) on ICRC’s IHL Database: Customary IHL.

¹⁶² The use of cluster munitions in these attacks was confirmed by the Office of the Prosecutor General of Azerbaijan; Azerbaijan National Agency for Mine Action (ANAMA); Human Rights Watch (re 27 October 2020), see “Armenia: Cluster Munitions Used in Multiple Attacks on Azerbaijan” Human Rights Watch (15 December 2020); Amnesty International (re 28 October 2020), see “Armenia/Azerbaijan: First confirmed use of cluster munitions by Armenia ‘cruel and reckless’” Amnesty International (29 October 2020)

¹⁶³ Virgil Wiebe, “Footprints of Death: Cluster Bombs as Indiscriminate Weapons Under International Humanitarian Law” 22 *Michigan Journal of International Law* Volume 85 (2000), p.110

¹⁶⁴ Amos Chappel, “The Smerch Rocket: A Fearsome Symbol of The Nagorno-Karabakh War” Radio Free Europe Radio Liberty (09 November 2020)

¹⁶⁵ Between 5% - 20% of submunitions fail to explode during initial impact. See “First confirmed use of cluster munitions by Armenia ‘cruel and reckless’” *Amnesty International* (29 October 2020)

¹⁶⁶ Article 57(1) of Additional Protocol I



attacks which may affect the civilian population, unless circumstances do not permit.¹⁶⁷ We have not seen evidence of any effective warnings being communicated by Armenian forces to the Azerbaijani civilian population in advance of any attack during the recent conflict.¹⁶⁸

On 4 October 2020, Arayik Harutyunyan, the ‘president’ of the *de facto* authorities in Nagorno-Karabakh, posted tweets (in English) calling on the Azerbaijani population to “leave area in advance” of a bombardment of Ganja.¹⁶⁹ Similarly, Vahram Poghosyan, spokesperson for the self-proclaimed authorities in Nagorno-Karabakh, told an Armenian news agency in early October 2020 that their forces were “not targeting the civilian population but military facilities permanently deployed in large cities” saying that civilians should leave their homes to escape harm.¹⁷⁰

These are not effective warnings; both were unspecified in terms of date and time and refer to leaving an unspecified area within a city (Ganja) or generally to leave “large cities”. The fact of the warnings is evidence that the forces were aware of the risk to the civilian population caused by the attacks. Further, these purported warnings were communicated in English and Armenian – not Azerbaijani – on a social media platform or Armenian television channel.

Conclusions: targeting civilians

We recall that five members of the Gurbanov family were killed when artillery salvo was launched at their home in the village of Gashalti, 27 civilians were killed in two separate Scud-B ballistic missile attacks on residential areas of Ganja city, and 26 civilians were killed in cluster munitions attacks in Barda district. A total of 58 civilians were killed in these five attacks, and in excess of 200 civilians were injured.¹⁷¹

Indiscriminate attacks are prohibited. Indiscriminate attacks are those which cannot be directed at a specific military objective; attacks which employ a method or means of combat which cannot be directed at a specific military objective; or attacks which employ a method or means of combat the effects of which cannot be limited.¹⁷²

Armenian forces fired highly destructive and inaccurate weapons into Azerbaijan’s villages and towns during the armed conflict in 2020. We have concerns that the Grad missile fired into the Gurbanov home on the first day of hostilities could not have been accurately directed at a specific military objective. Scud-B ballistic missiles fired into densely populated residential areas of Ganja city are even less accurate. Missiles armed with cluster munitions, such as those fired on Garayusifli village and Barda city, spread bomblets and fragments over a wide area. Further, unexploded bomblets means that there can be further long-term effects on a civilian population.

¹⁶⁷ Article 57(2)(c) of Additional Protocol I: “effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit”

¹⁶⁸ See also “Unlawful Rocket, Missile Strikes on Azerbaijan” *Human Rights Watch* (11 December 2020)

¹⁶⁹ Tweet by Arayik Harutyunyan @Pres_Artsakh on 04 October 2020 (4pm): “As act of self-protection, in response to days long deliberate shelling w/prohibited cluster munitions #Armenia'n civilian population of #Artsakh by #Azerbaijan'i child killers I ordered to bombard #Ganja military facilities calling on Az population to leave area in advance”. This tweet was part of a thread where Harutyunyan also wrote: “reaffirming, we were not joking. Today I commanded to neutralize #Ganja military objects. See tweet by @Pres_Artsakh on 04 October 2020 (10:03am).

¹⁷⁰ Andrew Kramer “‘Then I Heard a Boom’: Heavy Weapons Take Toll on Civilians in Armenia-Azerbaijan Clash” *New York Times* (05 October 2020)

¹⁷¹ Injury figures have been widely reported and confirmed by the Office of the Prosecutor General, Criminal Cases Report. See Appendix II.

¹⁷² Article 51(4) of Additional Protocol I.



Armenian forces carried out attacks which resulted in the death or serious injury to civilians in the villages of Gashalti and Garayusifli village, and the cities of Ganja and Barda. The use of weapons in civilian areas appears to have been indiscriminate.

Making civilians the object of attack is a grave breach when “committed wilfully”.¹⁷³ Indiscriminate attacks may qualify as direct attacks against civilians, and intent may be inferred from the specific nature of the attack, including the nature of the weapons used. In some circumstances, the type of weapon used may make it obvious that an attack is directed against civilians. The fact that precautionary measures (required by Article 57 of Additional Protocol I) have not been taken can serve as an indicator.¹⁷⁴

Armenian forces attacked Ganja city on 11 October and 17 October 2020, and Barda city on 28 October 2020 using weapons indiscriminately. We are not aware of military targets proximate to the locations of the areas attacked in Barda and Ganja.

The Armenian attacks, which deployed Scud-b missiles (in Ganja) and cluster munitions (in Barda), and which were directed towards densely populated civilian population centres (i.e. a city and a town), must have been carried out in the knowledge that civilians would be targeted.¹⁷⁵ It follows that there are reasonable grounds to allege that the conduct of Armenian forces can be characterised as commission of the grave breach of attacking civilians.

Grave breach of causing excessive incidental death, injury, or damage

Launching an “indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such an attack will cause excessive loss of life, injury to civilians or damage to civilian objects” is a grave breach of Additional Protocol I to the Geneva Conventions.¹⁷⁶ An indiscriminate attack is one “which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.”¹⁷⁷

We note that the fact that civilian casualties are caused during an attack directed against a military objective does not, of itself, render the attack unlawful; incidental civilian casualties or damage, which are not expected to be excessive in relation to the concrete and direct military advantage anticipated, can be legally acceptable.

Military objectives

Under international humanitarian law, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage.¹⁷⁸

Whilst noting the reported presence of Azerbaijani military sites and activities in various districts, there is no evidence of proximity – physical or temporal – between these and the locations of the key incident attacks considered in this section. We note that military objectives can be fixed installations,

¹⁷³ See Article 85(3)(a) of Additional Protocol I.

¹⁷⁴ *Prosecutor v D. Milošević*, IT-98-29/1-T, Judgement, Trial Chamber, 12 December 2007 (“*D. Milošević* Trial Judgement”), para.948. See Knut Dörmann in Triffterer, Otto and Ambos, Kai (eds.) mn 8-203

¹⁷⁵ See *Prosecutor v Blaškić*, IT-95-14-T, Judgement, Trial Chamber, 3 March 2000 (“*Blaškić* Trial Judgement”), para.180

¹⁷⁶ See Article 85(3)(b) of Additional Protocol I.

¹⁷⁷ Article 51(5)(b) of Additional Protocol I.

¹⁷⁸ Article 52(2) of Additional Protocol I.



such as a military base, or moveable, such as combatants or a truck-mounted rocket launcher. Proportionality requires weighting the incidental harm (to civilians and civilian objects) expected from a specific attack against the anticipated military advantage.

Whilst Armenia has denied responsibility or remained silent as to its involvement in these key incidents, this is juxtaposed with general assertions that there were ‘military targets’ in the cities of Barda and Ganja. To the best of our knowledge – with the exception of Ganja airport being used by both Azerbaijani and Turkish forces – no other purported military targets have been specifically identified by Armenian forces.

Gashalti village

In the first hours of the recent conflict, Armenian forces launched an artillery attack which killed five members of the Gurbanov family. Just over one thousand people live in Gashalti village. Nadir Gurbanov, a military serviceman, was stationed approximately three kilometres away when the strike hit his home and killed his parents, his wife, his 13-year-old son, and his 14-year-old niece.¹⁷⁹

The 9BR team visited Gashalti and saw the destruction to the Gurbanov home. Witnesses told us that at the time of the attack, the Gurbanov family were gathered at the entrance of their home, watching the hostilities taking place far in the distance. The village overlooks a large area of fields and hills. Villagers pointed out to us the area where they said military activity was taking place. Witnesses confirmed that there was no military activity in the village, and that the nearest military position was that of Nadir Gurbanov’s regiment. Satellite imagery obtained by Human Rights Watch indicates that Azerbaijan forces may have been deployed in a large area extending from the southern boundary of the village to the eastern side of the road leading to the village of Tapqaraqoyunlu.¹⁸⁰

Ganja

Armenian forces launched Scud-B ballistic missiles at Ganja city on 11 October and 17 October 2020. On both occasions these weapons struck densely populated residential areas of the city, killing 25 and wounding almost 100 others.

The attacks caused widespread destruction to civilian infrastructure and property. The Office of the Prosecutor General reports that a total area of approximately 80,000 m² within the city was affected by the missile attack on 11 October 2020, and 750,000m² in the attacks on 17 October 2020.¹⁸¹ Both attacks resulted in the destruction or damage to dozens of homes and businesses. In addition to damage to commercial businesses, a music school and kindergarten were damaged on 11 October 2020, and the attack of 17 October 2020 resulted in damage to a medical clinic, a school, and kindergarten.¹⁸²

The 9BR team visited the sites of both October attacks. Both areas were densely populated residential districts; there was no sign of permanent military sites or installations in the surrounding area.

Armenia claims that there were military targets in Ganja city. As above, the only specific assertion was that the airport in Ganja was being used by Azerbaijan for military purposes. In a letter to the UN

¹⁷⁹ Office of the Prosecutor General, *Criminal Cases Report*

¹⁸⁰ “Armenia: Unlawful Rocket, Missile Strikes on Azerbaijan” Human Rights Watch (11 December 2020); p.3

¹⁸¹ On 17 October 2020, 400,000m² of destruction in Imamguliyeva Street and 350,000m² of destruction in Khasiyeva Street. Office of the Prosecutor General of Azerbaijan, *Criminal Cases Report: Ganja*

¹⁸² See Office of the Prosecutor General, *Criminal Cases Report: Ganja*. See also *Second Interim Report (27 September – 11 October 2020)* Commissioner for Human Rights (Ombudsman) of Azerbaijan; p.3.



Secretary General on 4 October 2020, Armenia stated that “the Defence Army of Artsakh resorted to suppressive measures in relation to the military airport in Ganja to contain Azerbaijan’s ongoing aggression.”¹⁸³ Azerbaijan has acknowledged that Ganja airport was used by both Azerbaijani and Turkish forces during the recent conflict. However, we note that Ganja airport is located outside Ganja city and several kilometres away from the location of the attacks on 11 October and 17 October 2020.

Analysis of satellite imagery (between 9 October – 16 October 2020) by Human Rights Watch identified military equipment and weapons at sites 700 metres and one kilometre away from the impact crater of the 11 October 2020 attack, and transport vehicles (whose military purpose could not be confirmed) some 200 metres from the incident site.¹⁸⁴

Barda

Armenian forces attacked Barda city with Smerch missiles containing cluster munitions.¹⁸⁵ 21 civilians were killed and over 90 others, including several children, were injured when the missiles and their cluster bomblets struck in the early afternoon of 28 October 2020.¹⁸⁶

In addition to multiple fatalities and injuries, there was serious damage and destruction to civilian property and infrastructure.¹⁸⁷ There was widespread damage to homes and small businesses in what had been a busy commercial and residential area of the city.

The 9BR team visited the site of the attack, which hitherto had been a busy area with many small businesses and clinics. We noted that the attack took place in close proximity to Barda Central Hospital.¹⁸⁸ There was no sign of permanent military sites or installations in the surrounding area. To the best of our knowledge, Armenia has not substantiated any claims that there were military targets in Barda city.

Shikharkh

Armenian forces shelled the settlement of Shikharkh on a near daily basis during the 44 day conflict. Shikharkh is a modern development made up of 34 apartment buildings and houses, located in the district of Terter, built to house approximately five thousand internally displaced persons.¹⁸⁹ Within the development there are a number of schools, a playground and a sportsground.

During the conflict, many of the residents fled Shikharkh in the hopes of finding safety.¹⁹⁰ Most of the 34 apartment buildings sustained damage from the shelling attacks, with some flats being damaged

¹⁸³ Letter dated 5 October 2020 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General (7 October 2020) A/75/496-S/2020/984

¹⁸⁴ “Unlawful Rocket, Missile Strikes on Azerbaijan” *Human Rights Watch* (11 December 2020); p.7

¹⁸⁵ The use of cluster munitions in these attacks was confirmed by the Office of the Prosecutor General of Azerbaijan; Azerbaijan National Agency for Mine Action (ANAMA); Human Rights Watch (re 27 October 2020), see “Armenia: Cluster Munitions Used in Multiple Attacks on Azerbaijan” *Human Rights Watch* (15 December 2020); Amnesty International (re 28 October 2020), see “Armenia/Azerbaijan: First confirmed use of cluster munitions by Armenia ‘cruel and reckless’” *Amnesty International* (29 October 2020)

¹⁸⁶ Office of the Prosecutor General of Azerbaijan, *Criminal Cases Report: Barda*

¹⁸⁷ Letter dated 28 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary General (30 October 2020) A/75/558-S/2020/1051

¹⁸⁸ The hospital was approximately 100metres from the (wide) area that was attacked. This proximity was also noted by Human Rights Watch. See “Armenia: Cluster Munitions Kill Civilians in Azerbaijan” (30 October 2020) Human Rights Watch

¹⁸⁹ Azərbaycan Respublikası Tərtər Rayon İcra Hakimiyyəti (website of the Terter Executive).

¹⁹⁰ Nabih Bulos “War uprooted them. Now it gives these Azerbaijanis hope” *Los Angeles Times* (09 November 2020)



beyond use.¹⁹¹ In addition to damage to homes, there was extensive damage to the schools and educational centres in the settlement.¹⁹²

During the 9BR team's visit to Shikharkh, we witnessed the extensive damage caused to civilian homes, schools and other facilities, such as a music school. The surface of almost every building was pockmarked from shelling, and most windows were shattered. The Village Folklore House, a cultural centre, was in ruins, having sustained a direct missile hit.

Shikharkh is located on the western edge of the city of Terter and is almost fully surrounded by agricultural fields. We are aware of reports that during the conflict, Azerbaijani forces fired from positions in the adjacent fields.

Conclusions: disproportionate attacks

We are not in a position to confirm the existence or location of any legitimate military targets near Gashalti village on 27 September 2020, in Ganja city on 11 October and 17 October 2020, in Barda city on 28 October 2020, or adjacent to the settlement of Shikharkh during the course of the recent conflict.

However, we note that the presence of Azerbaijan military sites or activity within an area does not make general attacks on these areas permissible under the law and customs of war. Further, the presence of military targets does not justify attacks on densely populated areas using weapons which cannot discriminate between civilians (and civilian objects) and military targets. Attacks cannot be lawfully directed at a city generally simply because there are military sites somewhere within the general area. Similarly, Azerbaijani military activity *near* a village one week does not render an attack on that village, nor an attack on the area the following week when troops are no longer present, lawful. All parties must abide by the principles of distinction, military necessity, and proportionality.

Indiscriminate attacks are those which strike military objectives and civilians (and civilian objects) without distinction. Based on the available evidence, Armenian forces carried out indiscriminate and disproportionate attacks, treating as a single military objective civilian cities where military objectives may have been located (although we have seen no evidence of this) or in the case of Gashalti village and Shikharkh settlement, civilian areas which may have been adjacent to where Azerbaijani forces were stationed. These attacks resulted in excessive injury, death to civilians and excessive damage to civilian objects.

Crime against humanity: murder / wilful killing

Between 27 September 2020 and 10 November 2020, there were multiple attacks by Armenian forces on cities, villages and settlements in Azerbaijan that resulted in the death of 100 civilians. Of these, 56 civilians were killed in the key incidents considered in this section.¹⁹³

There are grounds to suggest that in relation to the strikes on Ganja city on 11 October and 17 October 2020, that an attack was directed against the civilian population. Indiscriminate Scud-B ballistic missiles were used on a densely populated city where there was no apparent military objective. These

¹⁹¹ "Azerbaijani residents report damages after shelling attacks" *Caucasian Knot* (02 November 2020)

¹⁹² *Letter dated 1 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General* United Nations (16 October 2020) A/75/379-S/2020/965

¹⁹³ Official statistics of civilian deaths and injuries were obtained from the Office of the Prosecutor General of Azerbaijan, *Criminal Cases Report*.



two attacks killed 25 civilians. The circumstances of these two attacks may demonstrate that the intent of those launching the attack was to kill civilians.

We recall that to be characterised as a crime against humanity, a murder must have been committed as part of widespread or systematic attack against a civilian population, and the specific elements of the crime of wilful killing (or murder) are identical.¹⁹⁴ There must be a nexus between the accused's acts and a widespread or systematic attack against a civilian population. Further investigation would be required to ascertain whether these key incidents may have been part of a widespread or systematic attack directed against the civilian population of Azerbaijan.

However, the number and nature of these attacks may indicate that Armenia pursued a deliberate policy of targeting Azerbaijan civilians. We note statements by Armenian authorities (and self-proclaimed authorities in Nagorno-Karabakh). Vagram Pogosian, their spokesperson, posted the following statement on Facebook on 5 October 2020: "a few more days and I'm afraid that even archaeologists will not be able to find the place of Ganja. Get sober, before it is too late."¹⁹⁵ The following day, Vagharshak Harutyunyan, the chief advisor of the Prime Minister of Armenia, openly stated on Russian TV's *Vesti* news programme that Armenian forces were deliberately targeting the civilian population of Azerbaijan to create panic.¹⁹⁶ It may be suggested that these statements by Armenian *de jure* and *de facto* authorities are reflective of a policy to target the civilian population of Azerbaijan.

¹⁹⁴ *Kordić and Čerkez* Trial Judgement, para.236. See *Kayishema and Ruzindana* Trial Judgement: "The crimes must be committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds. The crimes themselves need not contain the three elements of the attack (i.e. widespread or systematic, against any civilian population, on discriminatory grounds), but must form *part of* such an attack." *Kayishema* Trial Judgement, para.135. With respect to wilful killing, see Annex I, para.1.

¹⁹⁵ *Letter dated 17 October 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General* United Nations (21 October 2020) A/75/529-S/2020/1027. See also "A few more days and even archaeologists will not be able to find the place of Ganja" *1News* (5 October 2020)

¹⁹⁶ Vusala Abbasova, "Pashinyan's Advisor Confirms Armenia's Deliberate Attacks on Azerbaijani Civilian Settlements" *Caspian News* (9 October 2020); Janusz Bugajski and Margarita Assenova, "Washington can initiate peace in the South Caucasus" *The Hill* (10 September 2020); "Armenia has confessed to terrorist attacks against the civilian population of Azerbaijan" *The Report: Information Agency* (7 October 2020)



View of Karabakh hills from the site of what was the town of Fizuli. The ruins of the town are visible in the foreground

PART TWO

OCCUPIED FIZULI



FIZULI RAYON: DESTROYED DURING THE ARMENIAN OCCUPATION

The *rayon* (district) of Fizuli (*Füzuli rayonu*) is an administrative region of the Republic of Azerbaijan in the south-eastern part of the country. It neighbours the Islamic Republic of Iran and has an area of 1,386 km². Geographically, the district lies in the area where the central Azerbaijani plain begins to rise into the mountains of Karabakh. It is a gateway to the mountains of Karabakh.

Fizuli had a rich historical past and diverse cultural legacy.¹⁹⁷ The ancient residential areas of Garakopaktapa,¹⁹⁸ Khantapa,¹⁹⁹ Gunashtapa,²⁰⁰ Uzuntapa,²⁰¹ and Meynatapa from the Neolithic and Bronze Ages,²⁰² the Mirali tomb,²⁰³ and Fizuli's caravanserai represented symbols of the cultural heritage of a land which is a cradle of civilization.²⁰⁴ Azerbaijan has characterised these monuments to be of 'national, as opposed to 'world', importance.²⁰⁵

The Haji Alakbar mosque was reportedly built in 1682 and reconstructed in the 19th century by Karbalayi Safikhan Garabaghi, it was restored in 1988. The mosque's prayer hall was divided into three naves by four octagonal columns and there was a sun-parlour for women on the opposite side of the *mihrab*. The hall was covered by nine pointed cupolas, which were in harmony with arrow-like vaults.



Images of Haji Alakbar Mosque before its destruction [Source: Soviet Azerbaijani Encyclopaedia and archives]

Pilasters on the internal walls were located in the same direction with the arrows of the columns in the centre. Karbalayi Safikhan Garabaghi did not use any decorative element in the internal architecture. Simple stone construction and its slightly decorated *mihrab* gave a sense of independence to the internal space. The mosque was embellished with Karabakh carpets, and its

¹⁹⁷ *War against Azerbaijan: Targeting Cultural Heritage* (Baku 2007) (hereinafter '*War against Azerbaijan*'), pp.7, 191

¹⁹⁸ *War against Azerbaijan*, p.191. See also p.192 (images of pottery fragments found at Garakopaktapa).

¹⁹⁹ *War against Azerbaijan*, pp.191-192

²⁰⁰ *War against Azerbaijan*, p.192

²⁰¹ *War against Azerbaijan*, p.192

²⁰² *War against Azerbaijan*, p.192

²⁰³ *War against Azerbaijan*, p.193. The Mirali tomb dates (13th/14th century) was located in Ashaghy Veysali village.

²⁰⁴ *War against Azerbaijan*, pp.8, 192-193

²⁰⁵ See Decision of the Cabinet of Ministers of the Republic of Azerbaijan, 2 August 2001. "On the Approval of the Division for Degree of Importance of Immovable Historical and Cultural Monuments Taken under State Protection in the Territory of the Republic of Azerbaijan," according to which the monuments were classified as being of world, national and local importance. See also *War against Azerbaijan*, p.9, where it is stated that the 11 and 15 arch Khudafarin bridges of the Middle Ages and Niftaly mounds of the Bronze Age in Jabrayil, Albanian Ganjasar and Khudavang cloisters of the Middle Ages in Kalbajar, the 14th century Gutlu Musa oghlu tomb and Uzarliktapa residential area of the Bronze Age in Aghdam, the Azykh and Taghlar caves of the Paleolithic Age in Khojavand, and the mounds of the Bronze and Iron Ages in Khojaly have been listed as monuments of world importance.



portal was asymmetrical. The reason was to make the sun-parlour and an additional room on the ground floor bigger. There was a semi-dark arrow-like vaulted-arch portal against a background of white wall. Pilasters of three other façades of the mosque, together with the façade at its back, could be considered the continuation of its internal construction. The architect added geometrical figures on the pilasters on the main façade.²⁰⁶

Prior to the Armenian occupation, Fizuli contained one town, one settlement, and 75 villages which were home to 86 secondary schools, two vocational schools, 54 kindergartens, 10 music schools, 27 clubs, two museums, 90 libraries, 13 hospitals, 17 medical treatment points, and 48 maternity services centres.²⁰⁷



Local administrative building, prior to the occupation of Fizuli

The official capital of the district was the town of Fizuli. There are conflicting estimates of the town and district's population before 1993. Soviet census data suggested that Fizuli had a population of 17,090 in 1989,²⁰⁸ a number which had grown from 13,091 in 1979.²⁰⁹

THE OCCUPATION OF FIZULI IN AUGUST 1993

In the spring and summer of 1993, Azerbaijan faced a domestic political crisis.²¹⁰ In June, Abulfaz Elchebey's presidency collapsed and set into train events that led to President Heydar Aliyev's election.²¹¹ Armenian forces capitalised and captured six districts of Azerbaijan adjacent to Nagorno-Karabakh between April and October, adding to the capture of Shusha and Lachin in 1992. Kalbajar fell in April 1993, Aghdam in July, Jabrayil, Gubatli, Fizuli in August, and Zangilan in October 1993.²¹²

By late April, Karabakh Armenian forces had advanced within two kilometres of Fizuli.²¹³ However, international attention to the fighting in and around Karabakh brought a short lull on the battlefield that lasted until the end of June.²¹⁴ Azerbaijan's political crisis, meanwhile, had left the Karabakh front almost undefended. The vacuum was exploited by the Armenians. On 27 June, Armenian forces recaptured Martakert and most of the northern part of Karabakh. On 23 July, facing almost no

²⁰⁶ *War Against Azerbaijan*, pp.193-194

²⁰⁷ "Armenian Vandalism: Azerbaijani Monuments in Captivity – Fizuli region" (hereinafter 'Armenian Vandalism'), Presidential Library, Administrative Department of the President of the Republic of Azerbaijan.

²⁰⁸ According to the 1979 census, 13,091 people lived in the city, of which 87% were Azerbaijanis and 7.4% were Russians and Ukrainians. 1979 USSR census data. The population rose to 17,090 in 1989. 1989 USSR census data.

²⁰⁹ The same census data records that 87% of the city's population were ethnic Azerbaijanis and 7.4% were Russians or Ukrainians.

²¹⁰ Thomas de Waal, *Black Garden: Armenia and Azerbaijan Through Peace and War* (New York, 2003) (hereinafter, 'Black Garden'), p.226

²¹¹ Black Garden, p.226-227. See also "Azerbaijan: Seven Years of Conflict in Nagorno-Karabakh" *Human Rights Watch* (Helsinki, December 1994) (hereinafter 'HRW 1994'), p.33

²¹² These provinces are located south of Nagorno-Karabakh, wedged between it and the Iranian border (the Araks River), in a strip of land between fifteen to thirty-five kilometers wide. With the exception of Zangilan, they all share a border with Nagorno-Karabakh. They run from east to west in the following order: Fizuli, Jabrayil, Gubatli, and Zangilan. Gubatli is south of Lachin province; Zangilan is south of Gubatli. The main provincial city gives each province its name. HRW 1994, p. 52

²¹³ HRW 1994, p.27, citing "Armenians Capture Strategic Sites in Battle over Caucasus Enclaves" *The New York Times*, 12 April 1993, p.12; Valerii Yakov, "Na Yugo-Zapadnom Fronte Bez Peremen" *Izvestiya* (Moscow, 13 April 1993), p.1

²¹⁴ HRW 1994, p.29



resistance, they took Aghdam.²¹⁵ Aghdam was reportedly looted and burned after it fell.²¹⁶ A month later, Armenian forces advanced south towards Fizuli and Jebrail,²¹⁷ justifying their action by the stated need to stop hostile artillery fire originating from these provinces.²¹⁸

In August, Armenian soldiers stormed Fizuli in what has been described as a “lightning offensive”.²¹⁹ By 9 August, heavy fighting had erupted all along the southern front.²²⁰ Fizuli fell on 23 August.²²¹ A western diplomat who toured the region in August described the Azerbaijani defences as “nil”.²²² Thomas De Waal writes that the Azerbaijani army had abandoned the village of Yukhari [Upper] Abdurrahmanli, but many villagers did not have time to flee. Gabil Akhmedov, a resident, reported that the invading Armenians had killed twelve villagers and then burned the village. “A month later one of our villagers came back in a prisoner exchange.” The whole village had been burned and “only three buildings were left.”²²³

In December 1993, Armenian forces attempted to push east of Fizuli but met with “unprecedented resistance” and fell back. Azerbaijani forces then counterattacked. An offensive in the northeast of Nagorno-Karabakh made gains in Martakert. In Fizuli, Azerbaijani forces recaptured Horadiz rail junction on the Araxes River, and on 6 January 1994 pushed north towards Fizuli city before their advance was halted.²²⁴ The Armenians had occupied - and held - approximately one third (judging by maps) of the 1386km² of the Fizuli district.²²⁵

FIZULI IN THE 2020 CONFLICT

In the morning of 29 September 2020, Azerbaijan’s Ministry of Defence stated that its troops were undertaking an operation to liberate Fizuli.²²⁶ Azerbaijani forces recaptured Fizuli town on 17 October.²²⁷ On 20 October, the Azerbaijani government announced the recapture of the villages of Dordchinar, Kurdlar, Yukhari Abdurrahmanli, Garghabazar, Asha Dordchinar, Ashaghi Veysalli, and Yukhari.²²⁸ Six more villages were recaptured on 21-22 October.²²⁹ On 16 November, Azerbaijan’s President Aliyev visited Fizuli for the first time.²³⁰ Two days later, Azerbaijan’s Ministry of Defence released video from Fizuli showing Azerbaijani soldiers raising the flag in the city.²³¹

²¹⁵ HRW 1994, p.35

²¹⁶ HRW 1994, p.35

²¹⁷ Black Garden, p.227. During the August 1993 Karabakh Armenian offensive, there were several reports of involvement by troops from the Republic of Armenia. See HRW 1994, p.53

²¹⁸ HRW 1994, p.52

²¹⁹ Black Garden, p.234

²²⁰ HRW 1994, p.53 *citing* “Fighting Around Nagorno-Karabakh” Statement, 9 August 1993, US State Department, Washington, DC.

²²¹ Human Rights Watch asserts that the city fell on 20 August. HRW 1994, p.53

²²² HRW 1994, p.53 *citing* “Caucasus City Falls to Armenian Forces” *The New York Times* (24 August 1993), p.A7

²²³ Black Garden, p.234. This account is corroborated by Human Rights Watch, who reported that “Karabakh Armenian forces killed several Azeri civilians who were trying to flee, shooting into towns and villages even after Azeri soldiers had fled and no resistance to their advance was offered. HRW 1994, p.53. See also pp.54-55

²²⁴ Black Garden, p.248

²²⁵ Black Garden, p.328

²²⁶ “The Azerbaijani Army’s offensive operation to liberate Fizuli city continues” *Press Release* (29 September 2020) Ministry of Defence, Republic of Azerbaijan.

²²⁷ See e.g. Statement of President Ilham Aliyev of Azerbaijan, announcing the liberation of Fizuli on 17 October 2020 available at <https://twitter.com/azpresident/status/1317354288243462147>

²²⁸ “President Ilham Aliyev: Zangilan city and 6 villages of the district, 18 villages of Fizuli, Jabrayil, and Khojavand districts were liberated” *Azertag* (20 October 2020)

²²⁹ “President Ilham Aliyev: Azerbaijani Army liberated 3 villages of Fuzuli district, 4 villages of Jabrayil district” *Press Release Ministry of Defence* (22 October 2020)

²³⁰ “Azerbaijani President Aliyev visits liberated territories after 27 years” *Daily Sabah* (23 November 2021)

²³¹ “The Azerbaijani flag was raised up in the center of liberated from the occupation Fizuli city”, Ministry of Defence, Republic of Azerbaijan (18 October 2020)



We conclude that that the town, and 693 km² (approximately one third of the district), were under Armenian overall control between 23 August 1993 and 17 October 2020.²³²

REPORTS OF DESTRUCTION OF FIZULI DURING THE PERIOD OF ARMENIAN OCCUPATION

In 2005, the OSCE's Fact Finding Mission (FFM) visited the occupied territories of Azerbaijan in order to determine whether settlements exist in the area.²³³ The OSCE FFM reported:

*The Fizuli District is essentially deserted. There is no significant settlement of any kind in the area from north of the town of Fizuli down to the Iranian border. Economic activity in the region is seen in the form of extraction of construction materials, firewood, scrap metal of all kinds, and in seasonal agricultural activity over large fields or animal grazing. The FFM estimates that no more than ten people live in the Fizuli District.*²³⁴

The OSCE FFM reported that "Fizuli town is now in total ruins and almost completely empty." The FFM went on to report:²³⁵

In Fizuli town there were, however, traces of scavenging for building materials, parts of the technical infrastructure (pipes, street lamps) and firewood. Approximately 150 to 200 steel water pipes extracted from the ground were stacked along the road. All settlements before and beyond Fizuli town appeared to be totally destroyed, and there were no signs of life apart from a small number of very temporary structures seen from afar. For example, the village of Govshatly revealed no sign of settlement. Approximately thirteen kilometers past Fizuli on the main road, the FFM noted a back-hoe actively digging up irrigation pipes from the vineyards. Rows of freshly dug trenches were seen along the fields. Also, the FFM noted many dozens of irrigation pipes piled alongside the road for pickup. Outside Fizuli, large piles of other types of scrap metal lay at the road-side pending pickup....

[In Fizuli,] the FFM has seen the evidence of the extraction of materials from ruins and infrastructure, including water pipes, metal scraps, bricks and stones. In some cases, these materials were neatly stacked alongside the road for pick-up.

In 2007, Azerbaijan's Ministry of Foreign Affairs reported an "ongoing policy of deliberate destruction of [Azerbaijan's cultural] legacy following the occupation" which "has been and continues to be an irreparable blow to Azerbaijani culture."²³⁶ It stated that analysis "of the 13 years [in 2007] since the declaration of a cease fire in 1994 shows that the military phase of the war between Armenia and Azerbaijan, which lasted for almost 3 years, didn't destroy Azerbaijani monuments to the extent to which this was subsequently done by the Armenian authorities."²³⁷ In Fizuli district alone, "mosques in Fuzuli town and the Gochahmadli, Merdinli and Garghabazar villages... were destroyed, burnt down and plundered."²³⁸

²³² See, e.g. Report of the OSCE Fact-Finding Mission (FFM) to the Occupied Territories of Azerbaijan Surrounding Nagorno-Karabakh (NK), 28 February 2005, p.3

²³³ Report of the OSCE Fact-Finding Mission (FFM) to the Occupied Territories of Azerbaijan Surrounding Nagorno-Karabakh (NK), 28 February 2005, p.7

²³⁴ Report of the OSCE Fact-Finding Mission (FFM) to the Occupied Territories of Azerbaijan Surrounding Nagorno-Karabakh (NK), 28 February 2005, p.7

²³⁵ Report of the OSCE Fact-Finding Mission (FFM) to the Occupied Territories of Azerbaijan Surrounding Nagorno-Karabakh (NK), 28 February 2005, pp.7-8, 29

²³⁶ *War against Azerbaijan*, p.9

²³⁷ *War against Azerbaijan*, p.9

²³⁸ *War against Azerbaijan*, p.10



By 2007, the Mirali tomb in Ashagly Veysalli,²³⁹ the Hajy Alakbar mosque in Fizuli town,²⁴⁰ the Hajy Giyasaddin mosque in Garghabazar, the Garghabazar caravanserai (1684, restored in 1989), the Palace of Shukur bay (19th century) in Gochahmadli, and a 19th century mosque in Gochahmadli were all reported to be destroyed.²⁴¹ In 2007, Azerbaijan estimated that 24 historical and architectural monuments in Fizuli had been destroyed (including tombs, mosques, an administrative building, and bridges).²⁴² The fate of ten archaeological monuments was unknown.²⁴³ A further 112 “cultural establishments” (including libraries, theatres, music and art schools, cultural houses and social clubs), monuments, museums, and memorial complexes were reportedly destroyed in the Fizuli district.²⁴⁴ Fizuli’s museums, monuments, theatres, schools, libraries and cultural centres were all reported as destroyed,²⁴⁵ as were its cemeteries.²⁴⁶

In October 2010, the OSCE Minsk Group Co-Chairs conducted a further Field Assessment Mission to the occupied districts of Azerbaijan (excluding Nagorno-Karabakh), to assess the overall situation there, including humanitarian and other aspects.²⁴⁷ This was the first mission by the international community to the territories since 2005, and the first by UN personnel in 18 years.²⁴⁸ The mission noted that in “traveling more than 1,000 kilometres throughout the territories, the Co-Chairs saw stark evidence of the disastrous consequences of the Nagorno-Karabakh conflict and the failure to reach a peaceful settlement. Towns and villages that existed before the conflict are abandoned and almost entirely in ruins.”²⁴⁹ The Co-Chairs recommended *inter alia* that “measures be taken to preserve cemeteries and places of worship in the territories.”²⁵⁰

Lawrence Scott Sheets of International Crisis Group reported in 2012 that in the occupied Azerbaijani territories whole “towns, some of them as large as 60,000 people, were systematically dismantled by Armenian forces and were carted away for scrap. Building materials, telephone poles, electricity cables, any sort of metal which could be exploited, telephone wires, any sort of household item were looted systematically, and methodically these towns were turned into nothing.”²⁵¹

In 2016, Azerbaijan’s Ministry of Foreign Affairs disclosed that the Prosecutor’s Office had launched a number of criminal investigations of illegal activity carried out by Armenian armed forces on

²³⁹ *War against Azerbaijan*, p.200

²⁴⁰ *See supra* p.46

²⁴¹ *War Against Azerbaijan*, pp.193, 200

²⁴² *War Against Azerbaijan*, p.200

²⁴³ *War Against Azerbaijan*, pp.200-201

²⁴⁴ *War Against Azerbaijan*, pp.202-207

²⁴⁵ *War Against Azerbaijan*, pp.202-206

²⁴⁶ *War Against Azerbaijan*, pp.196-199

²⁴⁷ Executive Summary, “Report of the OSCE Minsk Group Co-Chairs’ Field Assessment Mission to the Occupied Territories of Azerbaijan Surrounding Nagorno-Karabakh” *Organization for Security and Co-operation in Europe* (24 March 2011) (hereinafter, ‘2011 Minsk Group Report’).

²⁴⁸ Executive Summary, 2011 Minsk Group Report

²⁴⁹ Executive Summary, 2011 Minsk Group Report

²⁵⁰ Executive Summary, 2011 Minsk Group Report

²⁵¹ “Azerbaijan’s IDP Burden”, *International Crisis Group* (27 February 2012). See also Office of the Prosecutor General, *Criminal Cases Report: Fizuli*, the “looting of underground and surface resources belonging to the Azerbaijani state in the occupied territories has deliberately caused extensive, long-lasting and serious damage to the environment.”



Azerbaijani territory,²⁵² and reported that there had been widespread appropriation of private property,²⁵³ destruction of water pipelines,²⁵⁴ and destruction of cultural heritage in Fizuli district.²⁵⁵

In 2020, the Prosecution Service of Azerbaijan stated that “deliberate large-scale destruction, misappropriation of cultural property, acts of vandalism, [and] illegal removal of cultural property from the occupied territories” had taken place and the ‘Garakopek mounds’ of Fizuli were among more than 100,000 “valuable and rare exhibits of world importance” which had been destroyed and looted.²⁵⁶

In 2017, Azercosmos OJSCo, a satellite corporation, and the Ministry of Foreign Affairs of the Republic of Azerbaijan published a report of satellite imagery taken of the formerly occupied territories of Azerbaijan.²⁵⁷ The report contains high-resolution satellite imagery of the occupied territories, which it submits provides “convincing evidence testifying to ongoing illegal activities in the occupied territories.” The report asserted that the satellite data corroborates information examined in the OSCE FFM reports. The report addressed six main issues, namely (i) implantation of settlers and construction of permanent social infrastructure in support of settlement activities;²⁵⁸ (ii) exploitation and pillage of natural resources; (iii) permanent infrastructure changes; (iv) exploitation of agricultural and water resources; (v) destruction of public and private property, including historical and cultural heritage; and (v) environmental damage.²⁵⁹ The report published satellite photographs



Destroyed town of Fizuli and the occupied Fizuli district 39° 35' 56" N, 47° 08' 49" [Azercosmos, 3 July 2017]

²⁵² Illegal Economic and other Activities in the Occupied Territories of Azerbaijan, Report by the Ministry of Foreign Affairs of the Republic of Azerbaijan (2016) (hereinafter ‘Illegal Economic and other Activities in the Occupied Territories of Azerbaijan’).

²⁵³ Illegal Economic and other Activities in the Occupied Territories of Azerbaijan, p.12: “Many facilities and residential houses are built on the ruins of demolished buildings/houses, confirming the earlier reports that public and private property has been appropriated, that empty houses of Azerbaijani internally displaced persons were often dismantled for use as construction materials or that new houses are being built on their lands and properties.” See also p.55: “The evidence shows that farmlands in the occupied territories, specifically in Zangilan, Gubadly, Jabrayil, the occupied parts of the Fuzuli and Aghdam districts, abandoned by fleeing Azerbaijani population, have been illegally appropriated and extensively exploited by Armenia, its companies and the subordinate separatist regime, which grant free concessions to the settlers to exploit those territories. See also *Id.*, pp.56-57

²⁵⁴ Illegal Economic and other Activities in the Occupied Territories of Azerbaijan, p.55: “Out of 4,1 million hectares of agricultural lands of Azerbaijan, some 1,226,674 hectares, including 139,336 ha of irrigated land, 34,600 ha of vineyards and orchards, remained under the Armenian occupation. Some 1,200 sq km of the irrigation system, 2,300 km of water pipelines was totally destroyed.”

²⁵⁵ Illegal Economic and other Activities in the Occupied Territories of Azerbaijan, p.85-87: “The occupation of the territories of Azerbaijan has also had catastrophic consequences for the country’s cultural heritage in the occupied territories. Armenia continues to interfere in the cultural environment of the occupied territories by taking consistent measures aimed at altering their historical and cultural features. Architectural monuments of national importance in those territories include... the thirteenth-fourteenth centuries Mirali tomb and the seventeenth century caravanserai in Fuzuli..... mosques in Fuzuli town and the Gochahmadli, Merdmli and Garghabazar villages in the Fuzuli district...”

²⁵⁶ Office of the Prosecutor General of Azerbaijan, *Criminal Cases Report: Fizuli*, p.20

²⁵⁷ Azercosmos, *Illegal Activities in the Territories of Azerbaijan under Armenia’s Occupation: Evidence from Satellite Imagery* (2017) (hereinafter ‘Illegal Activities in the Territories of Azerbaijan under Armenia’s Occupation’). The satellite imagery used in the report is provided by Azercosmos OJSCo, the satellite operator of the Republic of Azerbaijan. See *Illegal Activities in the Territories of Azerbaijan under Armenia’s Occupation*, p.4

²⁵⁸ The transfer of Armenian settlers into the occupied territory of Azerbaijan is not addressed in this Interim Report as this conduct did not occur in the occupied territory of Fizuli district.

²⁵⁹ See e.g. *Illegal Activities in the Territories of Azerbaijan under Armenia’s Occupation*, p.6. See also Report of the OSCE Fact-Finding Mission (FFM) to the Occupied Territories of Azerbaijan Surrounding Nagorno-Karabakh (NK) (2005), p.7:



showing the destruction caused to the town of Fizuli.²⁶⁰ We have also seen a satellite image described as a destroyed cemetery in Fizuli town, published by Azerbaijan’s Ministry of Foreign Affairs 2007.²⁶¹

We understand that the Prosecution Service of Azerbaijan is investigating excavations of graves in six cemeteries in the Fizuli district (in Garband, Kurdlar, Dadali, Gejagozlu and Shekerjik villages).²⁶²

9BR VISIT TO FIZULI

The 9BR team visited the Fizuli district on 21 November 2020.²⁶³ Approaching from the south, passing what was formerly the ‘line of contact’ at Horadiz, the 9BR team was joined by Deputy Chief of Police Ralph Abdul Karimov, a former resident of the town of Fizuli. At no time did the 9BR team hold a conversation with any representatives of the military when visiting Fizuli district.



Village of Kundlar

The 9BR team headed north towards Fizuli town. Extensive destruction, and a landscape emptied of human civilization, were immediately visible upon crossing what had been, until the month before, the line of contact. As the mountains of Nagorno-Karabakh appeared on the horizon, the ruins of destroyed buildings and physical infrastructure lay around. Not a single building visibly appeared to have been left standing. However, due to the presence of landmines, it was not possible to leave the road and walk among the ruins for closer inspection.



Piping at Yukhary Abdurrahmanly

The destruction wrought in fighting punctuated the view with destroyed military vehicles and abandoned debris littering the road. We first stopped at the village of Kurdlar and, again, saw the remnants of a village whose buildings had been utterly destroyed. Although the 9BR team cannot date precisely when this destruction occurred, it appears to be clear, from the overgrowth and shrubland that had grown around the ruins, that the destruction had not been caused recently, still less during the armed conflict of 2020.

The 9BR team next stopped at the ruins of the villages of Yukhary Abdurrahmanly and Ishygly. There, the 9BR team saw large quantities of piping collected and deposited on the side of the road. We have been told that the piping was being

“Between Martuni/Khojavend and Fizuli town, as well as south of Fizuli town, the FFM saw signs of extensive cultivation, but found no evidence of people or settlements in the surrounding areas.”

²⁶⁰ *Illegal Activities in the Territories of Azerbaijan under Armenia’s Occupation*, p.74

²⁶¹ *War against Azerbaijan*, p.198

²⁶² Office of the Prosecutor General of Azerbaijan, *Criminal Cases Report: Fizuli*

²⁶³ The 9BR team for the Fizuli visit comprised Dréa Becker and Joshua Kern, accompanied by Dr Mirzayev.



Destroyed cemetery at Dadali



Bulldozer seen from roadside, Fizuli town



Bulldozer, roadside towards Fizuli town



Site of the Fizuli local executive building



smuggled out of Fizuli and sold in Iran. Red tags indicating the presence of land mines were visible on both sides of the road. The village itself, like Kurdlar before it, was entirely in ruins without a single building left visibly intact. An abandoned bulldozer was among the ruins, suggesting deliberate destruction.

Approaching the town of Fizuli, the team stopped at the village of Dadali. Isolated standing grave-stones indicated the location of what appeared to be a destroyed cemetery. The empty shell of the destroyed town of Fizuli appeared. Again, an abandoned bulldozer could be seen among the ruins. The bulldozer appeared to be of some age and abandoned some time ago. Bullet casings were scattered on the ground and signs of battle were visible. The tail end of a Smerch missile had planted itself vertically in the soil. A crater, seemingly caused on a missile's impact, lay adjacent.

Moving into the ruins of Fizuli town, significant quantities of abandoned *materiel* and weaponry were jettisoned on the side of the road. Another abandoned bulldozer was visible.

As the 9BR team stood in the centre of what had once been Fizuli town, we were told by Officer Karimov that the municipal authorities' administrative building, a newspaper office, residential buildings, commercial property, and a cultural house had all stood where now we saw only shrubland and an occasional ruin.

Turning to the left, we walked further and saw abandoned munitions, seemingly left behind, recently, by retreating, captured, or killed Armenian soldiers. Underneath a ruined building, we saw an abandoned hideout / defensive position with discarded packets of Armenian cigarettes, *materiel*, and tinned food.

The 9BR team saw the ruin of where, we were told by Mr Karimov, a music school and a mosque had once stood.²⁶⁴ What was once reportedly a residential area was now shrubland, ruin, and rubble.

The 9BR team walked on to what was left of the cemetery in the town of Fizuli. Gravestones had been overturned and smashed.

The 9BR team moved to the destroyed city's outskirts. The ruins of a destroyed bridge were visible. The 9BR team were

²⁶⁴ Response of Farhad Mirzayev to Request for Further Information received from dated 23 November 2020.



informed by Mr Karimov that - on the empty land that stood before us – Fizuli’s largest hospital had once stood. All that remained were trees, shrubland, and some isolated foundation stones. From this point, the Garakepektepe Hill, a site of major important historical and archaeological significance, was visible.²⁶⁵ However, due to the presence and risk of landmines, we were not able to inspect the hill at close quarters.



Site of Fizuli hospital



Ruin of AZ newspaper building

²⁶⁵ “Excavations at Garakepektepe continued until the late 1980s and were interrupted by the outbreak of the Karabakh war imposed by Armenia. Even during the early hostilities, Garakepektepe, occupying an advantageous location above the surrounding terrain, was turned into a training ground, thereby being deliberately destroyed.” See *Garakepektepe Hill: From the Mesolithic Hunters to the Karabakh War* (available at www.azerhistory.com). See also Gülnaz Abdullayeva - Azərbaycanın orta tunc dövrü Qaraköpəktəpə abidəsi kontekstində, *Azerbaijan Archaeology*, Vol 17(1) (2014), p.44



Fizuli: Analysis

Scope of analysis

The scope of our analysis of crimes in the Fizuli district is limited to those crimes which there are grounds to allege were committed during the period of Armenian occupation between 1993 and 2020. We have not analysed conduct which occurred in Fizuli in the course of attacks which occurred during the fighting in the region before 1993, during 1993 and 1994, in 2016, and 2020. The reason for this is, whereas, based on the information before us, we are able to conclude that there are grounds to believe that crimes under international law were committed during the period of Armenian occupation, we do not have sufficient information to permit such a conclusion with respect to crimes committed during attacks in Fizuli in the conflicts of 1993/94, 2016, and 2020.

Grave breach of extensive destruction of property carried out unlawfully and wantonly

We recall that the extensive destruction of protected property carried out unlawfully and wantonly and not justified by military necessity in a situation of occupation constitutes a grave breach of the Geneva Conventions. After 23 August 1993, Azerbaijani forces had withdrawn from occupied territory of the Fizuli district. Applying the indicators of authority approved in the *Naletilić* case,²⁶⁶ we have reasonable grounds to conclude that the Fizuli district was occupied by Armenian forces between 23 August 1993 and 17 October 2020, a status also acknowledged by UN Security Council resolutions.²⁶⁷

Any destruction by the occupant of real or personal property belonging individually or collectively to private persons, the State, to public authorities, or to social or cooperative organisations, during that period was prohibited, except where such destruction was rendered absolutely necessary by military necessity.²⁶⁸ Civilian hospitals were separately protected, and military necessity cannot be invoked to justify their destruction.²⁶⁹

Fizuli was reportedly captured in August 1993 in a lightning offensive, with Azerbaijani defences reported as nil.²⁷⁰ In Yukhari Abdurrahmanli,²⁷¹ when a villager returned a month after the village's capture, he reportedly found only three buildings remaining standing.²⁷² This information provides grounds to support the suggestion that the destruction caused to the Fizuli district was not caused in its entirety during the battle for Fizuli during the 1993 conflict, nor (as suggested by the shrubland and overgrowth surrounding the ruins) in the recent conflict of 2020, but instead was caused after the hostilities had come to an end in 1993 and prior to the conflict of 2020, in other words during the period of Armenian occupation.

There are strong grounds to assert that the destruction caused during the period of Armenian occupation was extensive. The destruction of Fizuli's city's hospital alone might arguably be characterised as extensive destruction. In any event, the scale of the destruction caused to the Fizuli district, where not a single civilian building appeared to the 9BR team have been left standing (save for a military base), would appear comfortably to fall within the definition of "extensive" for these purposes. We note in particular reports that Fizuli's religious houses (mosques), cemeteries, cultural

²⁶⁶ Annex I, para.44.

²⁶⁷ United Nations Security Council Resolutions 822, 853, 874 and 884.

²⁶⁸ Article 53 of the Fourth Geneva Convention.

²⁶⁹ Articles 18, 19 of the Fourth Geneva Convention.

²⁷⁰ *See supra* p.48

²⁷¹ *Id.*

²⁷² *Id.*



houses, museums, monuments, theatres, libraries and schools have all been destroyed. The 9BR team saw a city and region that had been utterly destroyed, without a house or homestead, still less institutions dedicated to culture, education, public health, or religion, left standing.

The scale of the destruction wrought in the Fizuli district appears to the 9BR team to be difficult to justify on grounds of military necessity. Although it may be argued by the Armenian side that the occupation of one third of Fizuli district was necessary in order to provide security to the territory of Nagorno-Karabakh, it remains that without a single building left visibly standing in the formerly occupied territory, save for an Armenian military base – the scale of devastation, taken together with its apparent timing – which we have grounds to believe occurred after the conclusion of active hostilities in 1993 – appears difficult to justify on grounds of military necessity. The destruction of Fizuli’s hospital cannot be justified on grounds of military necessity in any event.

Turning to the *mens rea* of the grave breach of extensive destruction of property, considering the scale of the destruction in the Fizuli district, there are reasonable grounds to infer that those responsible must have acted with the intent to destroy protected property.

There are therefore grounds to allege that the grave breach of extensive destruction of property was committed in the Fizuli district during the period of Armenian occupation.

Grave breach of extensive appropriation of property carried out unlawfully and wantonly

International Crisis Group reported in 2012 that “whole towns” have been “systematically dismantled by Armenian forces,” and carried away for scrap.²⁷³ This finding appears to be corroborated by the sight on the ground, where piping deposited on the side of the road in Ishygly village suggested that the destruction of piping infrastructure was caused with the intent to appropriate it.²⁷⁴

We recall that with respect to allegations of extensive appropriation, the Fourth Geneva Convention authorises an occupying power, in certain cases, to requisition private property, such as food or medical supplies, to meet the needs of the occupying forces and administration.²⁷⁵ The systematic appropriation of “whole towns”, as reported by International Crisis Group, would appear difficult to justify on this basis.

Turning to the *mens rea* of the grave breach of extensive appropriation of property, there are reasonable grounds to infer that those responsible must have acted with the intent to appropriate property in occupied territory without justification.

There are therefore grounds to allege that the grave breach of extensive appropriation of property was committed in the Fizuli district during the period of Armenian occupation.

Prohibited destruction and seizure

In the context of the Armenian occupation of Fizuli, the elements of these offences are subsumed by the grave breach offences of extensive destruction and appropriation. Given there are grounds to allege that the grave breach offences were committed in the Fizuli district during the period of the Armenian occupation, *a fortiori* there are grounds to allege that the war crimes of prohibited destruction and seizure were committed too.

²⁷³ See *supra* p.50

²⁷⁴ See *supra* p.52-53

²⁷⁵ See Annex 1, para.51



There is nothing to suggest that, after the August 1993 hostilities had concluded, protected objects (namely schools, kindergartens, museums, libraries and hospitals) or cultural property (namely mosques, tombs and caravanserai) of the Fizuli district were utilised for military use. To the contrary, corroborative reports suggest that Azerbaijani forces had abandoned Fizuli before its civilians had left the city, and its villages were left undefended in the chaotic final days of the Elchibey presidency. Moreover, the scale of the destruction wrought in the Fizuli district appears to be difficult to justify on grounds of military necessity, either on account of the nature of the property concerned, or when taking into account the apparent timing of the destruction.

Turning to the *actus reus* of the crime of prohibited destruction, the destruction in the Fizuli district appears to be both 'serious' (in relation to the property destroyed) and it also appears to cover the entirety of the occupied territory in Fizuli. The destruction witnessed by the 9BR team was total. It seems reasonable to argue that total destruction extends beyond permissible confiscation or seizure. The occupant's duty to administer property in accordance with the rules of usufruct appears also to have been violated flagrantly.

We recall that the mere fact that the destruction in Fizuli district may have served Armenian security needs or may have contributed to the security of the area is not sufficient to justify serious destruction unless it can be proven that there was an imperative need for it. The battle for Fizuli district may have been fierce at the end of 1993 and 1994. However, it seems to us that the destruction of the town and district of Fizuli cannot be simply be accounted for as resulting from military attacks during the war of the 1990s. On the contrary, it appeared that the destruction and appropriation resulted from policies which were ongoing. Accordingly, the scale of the devastation wrought in Fizuli appears to the 9BR team to be difficult to justify on grounds of military necessity.

Pillage

The elements of the war crime of pillage overlap with, and are subsumed by, the grave breach of extensive appropriation of property. Accordingly, there are grounds to allege that the crime of pillage was committed in the Fizuli district during the period of Armenian occupation. We note, again, International Crisis Group's report from 2012 that "whole towns" had been "systematically dismantled by Armenian forces" and carried away for scrap. This appeared to be corroborated by what the 9BR team saw on the ground, where large quantities of piping had been collected and deposited on the side of the road, abandoned bulldozers appeared among the ruins, and physical infrastructure appeared to have been appropriated.²⁷⁶

Although the scope of the prohibition of pillage is limited by a belligerent's right of requisition and seizure, the systematic appropriation of civilian infrastructure in Fizuli district cannot arguably be said to constitute legitimate requisition or seizure on grounds of military necessity.

Applicability of Second Protocol to the 1954 Hague Convention

We have considered whether there are reasonable grounds to assert that serious violations of Article 15 of the Second Protocol were committed against cultural property protected by the 1954 Hague Convention during the period of the Armenian occupation in Fizuli.

We have considered whether property located in the Fizuli district should properly be considered as cultural property protected by the 1954 Hague Convention. We are not aware of any property located in the Fizuli district that was, prior to the Armenian occupation, identified as such by Azerbaijan pursuant to Article 3 of the 1954 Hague Convention. Accordingly, there is (to the best of our

²⁷⁶ See *supra* p.52-53



knowledge) no conclusive indication of the applicability of the Convention to property situated in Fizuli. In this situation, the occupying power's authorities were required to assess the cultural importance of the property in the region to Azerbaijan.²⁷⁷ There are reasonable grounds to believe that Fizuli's tombs, mosques and caravanserai, museums, monuments, cemeteries, and cultural centres, would foreseeably have constituted the sorts of cultural property outlined in Article 1 of the 1954 Hague Convention to the *de facto* Armenian authorities during the period of the occupation.

We note that the Second Protocol came into force on 9 March 2004. Accordingly, only those serious violations of the Second Protocol which occurred after that date will be liable to prosecution as serious violations of the protocol under Article 15.

Seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science

There are grounds to allege that the crime of destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science was committed in the Fizuli district during the period of Armenian occupation, and that the destruction or desecration of Fizuli's mosques and cemeteries, and the wholesale destruction of its schools, libraries, and cultural centres, satisfies the elements of this war crime under customary international law.

We note that the crime of destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science can be committed irrespective of whether the destroyed property is cultural property of "great importance" as understood by the 1954 Hague Convention.²⁷⁸

The wholesale destruction of Fizuli's mosques and religious buildings, its educational institutions, and its hospitals may, both separately and collectively, properly be characterised as acts through which this offence was committed. The desecration of Fizuli's cemeteries might also be characterised as the commission of this offence.

Given the scale of the destruction, there are reasonable grounds to allege that the perpetrator must have acted with the intent to destroy the protected property.

Crimes against humanity – chapeau elements

The conflict between Armenian forces and Azerbaijan in 1993 resulted in the occupation of Fizuli on 23 August 1993. The wholesale destruction which the 9BR team saw that had taken place in the region,²⁷⁹ taken together with corroborated reports of the conflict at that time,²⁸⁰ give rise to grounds that the Fizuli district was the location of a widespread and systematic attack directed against the Azerbaijani civilian population in the aftermath of the conflict of the 1990s, during which time, we have grounds to believe, extensive destruction of civilian and cultural property occurred.

There are grounds to allege that the attack was both widespread and systematic. The 9BR team saw a high number of villages had been utterly destroyed in the Fizuli district, in addition to the town of Fizuli (namely Kurdlar, Yukhary Abdurrahmanly, Ishygly, and Dadali). This vast destruction of property, which supports the suggestion that a large number of people were forced to leave their homes during

²⁷⁷ See Annex I, para.75

²⁷⁸ See Annex I, paras.81-82.

²⁷⁹ See *supra* p.52-54

²⁸⁰ See *supra* p.47-48



the attack, further evidences the widespread nature of the attack.²⁸¹ In assessing the systematic nature of the attack, we are mindful that removing a particular national or ethnic group from an area will almost always involve widespread or systematic attacks against the civilian population and the denial of fundamental human rights.²⁸²

There are grounds to allege that the attack was directed against the Azerbaijani civilian population. Reports indicate that military operations were carried out against Azerbaijani villages in Fizuli, after which villagers fled the area.²⁸³ Villagers who remained in the area were killed.²⁸⁴ Property was looted and destroyed.²⁸⁵ Reports indicate that the district was undefended, or weakly defended, when these villages were captured by Armenian forces, which suggests that the presence of (remaining) Azerbaijani forces in the villages did not affect the civilian nature of the attacked population.²⁸⁶ The conflict was also coterminous with and resulted in the exodus of Azerbaijanis from the Fizuli district.²⁸⁷

Crimes against humanity – persecution

The ICTY prosecuted the destruction of mosques and Catholic churches by Serbs, as well as other cultural monuments and sacred sites - carried out with discriminatory intent against Bosnian Muslims and Bosnian Croats - as the crime against humanity of persecution.²⁸⁸ Similarly, there are grounds to allege that the extensive destruction of Azerbaijani mosques and cemeteries in Fizuli during the period of the Armenian occupation may also be characterised as persecution. There are grounds to allege, in particular, that Fizuli's cemeteries were desecrated by Armenian forces.

The circumstances of the destruction in Fizuli, carried out in connection with an armed conflict which entailed the looting and burning of Azerbaijan's occupied towns and villages, and massed forced displacement, can properly be characterised as being connected to a widespread and systematic attack directed against the civilian population in the occupied territories of Azerbaijan.

A point of distinction which may be drawn between acts characterised as persecution committed in Bosnia-Herzegovina and the destruction of mosques and cemeteries in Fizuli is that in Bosnia the requisite discriminatory intent for persecution was established when buildings belonging to the Muslim population were specifically targeted, and those belonging to the perpetrator group were not.²⁸⁹ For instance, the *Brđanin* Trial Chamber found this element to be established when "Bosnian Serb property was systematically left intact and only sporadically damaged," whereas non-Serb property was not.²⁹⁰ To commit persecution, an Accused must commit an act or omission that is discriminatory in fact.²⁹¹

In the Fizuli district, by contrast, *all* civilian property appeared to the 9BR team to be destroyed. However, although this provides a point of factual distinction between the situations, in our view it does not displace our grounds to believe that the destruction in Fizuli was carried out with a specific intent to discriminate on ethnic and national grounds. All Azerbaijani property, as a matter of fact,

²⁸¹ Cf. *Prosecutor v Đorđević*, IT-05-87/1-T, Judgement, 23 February 2011 (hereinafter "*Đorđević* Trial Judgement"), para.1598

²⁸² See Annex I, para.98.

²⁸³ Cf. *Prosecutor v Martić*, IT-95-11-T, Trial Judgement, 12 June 2007 (hereinafter "*Martić* Trial Judgement"), para.349

²⁸⁴ Cf. *Martić* Trial Judgement, para.349

²⁸⁵ Cf. *Martić* Trial Judgement, para.349. *Đorđević* Trial Judgement, para.1597

²⁸⁶ Cf. *Martić* Trial Judgement, para.350

²⁸⁷ See *Martić* Trial Judgement, para.351

²⁸⁸ See Annex I, paras.113-118

²⁸⁹ See Annex I, para.116

²⁹⁰ *Brđanin* Trial Judgement, para.1022

²⁹¹ *Krnjelac* Appeals Judgement, para.185; *Blaškić* Appeals Judgement, para.131; *Kordić and Čerkez* Appeals Judgement, paras. 101-102; *Prosecutor v. Kvočka*, IT-98-30/1-A, Judgement, 28 February 2005 ("*Kvočka* Appeals Judgement"), para.320



appeared to have been destroyed. The desecration of Fizuli's mosques, cemeteries and cultural property might further be argued to evidence a discriminatory intent.

We are aware of reports that the destruction wrought in Fizuli during the Armenian occupation has also occurred in other formerly occupied districts of Azerbaijan.



PART THREE

ACCOUNTABILITY UNDER INTERNATIONAL CRIMINAL LAW



International Accountability

Treaties ratified by Armenia and Azerbaijan

Treaties ratified by Armenia and Azerbaijan criminalise grave breaches of the Geneva Conventions of 1949, grave breaches of Additional Protocol I of 1977, and serious violations of the laws and customs of war. An international Court or tribunal would take into account the effect of these ratifications when considering criminal liability.²⁹² The existence of such agreements renders the prosecution of those who violate their provisions foreseeable,²⁹³ even if the offence concerned has not developed into a criminal offence under customary international law.²⁹⁴

Neither Azerbaijan nor Armenia are States Parties to the Rome Statute of the International Criminal Court. However, the Republic of Armenia signed the Rome Statute on 2 August 1999 and has not withdrawn its signature.

The Republic of Armenia ratified the Geneva Conventions of 1949 and Additional Protocols I and II of 1977 on 7 June 1993. Armenia ratified Additional Protocol III on 12 August 2011, the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (“1954 Hague Convention”) on 5 September 1993, its First Additional Protocol on the same day, and its Second Additional Protocol on 18 May 2006. Armenia ratified the International Convention against the Recruitment, Use, Financing and Training of Mercenaries of 4 December 1989 on 23 November 2020 and entered a reservation / declaration the same date against politically motivated prosecutions and extradition of its own nationals.

The Republic of Azerbaijan ratified the Geneva Conventions of 1949 on 1 June 1993, the 1954 Hague Convention on 20 September 1993, and its Second Protocol on 17 April 2001. Azerbaijan has not, however, ratified Additional Protocol I of 1977. Azerbaijan signed and ratified the International Convention against the Recruitment, Use, Financing and Training of Mercenaries of 4 December 1989 on 30 September 1997.

The Second Protocol to the 1954 Hague Convention entered into force on 9 March 2004.²⁹⁵ As of 17 January 2021, the Second Protocol has 84 States Parties, including both Armenia and Azerbaijan.²⁹⁶

The obligation to extradite or prosecute under the Geneva Conventions and Additional Protocol I

The Geneva Conventions require States Parties to provide for domestic criminal jurisdiction over these grave breaches regardless of where and by whom they were committed.²⁹⁷

²⁹² *Prosecutor v Tadić*, IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal, Appeals Chamber, 2 October 1995, para. 143. The ICTY held that its jurisdiction with respect to such agreements extended to jurisdiction conferred by the ratification of any treaty which: (i) was unquestionably binding on the parties at the time of the alleged offence; and (ii) was not in conflict with or derogating from peremptory norms of international law, as are most customary rules of international humanitarian law.

²⁹³ See, e.g. Article 7 of the European Court of Human Rights.

²⁹⁴ We are mindful that the status under customary international law of the war crimes prescribed under Article 8 of the Rome Statute cannot be presumed. But see, e.g., section 1 of the Geneva Conventions Act 1957 (UK) which states: (1) Any person, whatever his nationality, who, whether in or outside the United Kingdom, commits, or aids, abets or procures the commission by any other person of [grave breach of any of the scheduled conventions, the first protocol or the third protocol] shall be guilty of an offence.”

²⁹⁵ Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict 1999, The Hague, 26 March 1999 (hereinafter ‘Second Protocol to the Hague Convention of 1954’). See also *The Protection of Cultural Property in Armed Conflict* (Kindle edition), Loc.3567

²⁹⁶ See the ICRC’s list of State Parties to the Second Protocol to the Hague Convention of 1954 (last accessed 26 April 2021).

²⁹⁷ Cottier mn 8-14 citing Articles 49-50/50-51/129-130/146-147 GC I-IV.



Article 85(1) of Additional Protocol I of 1977 incorporates the obligations contained in the four Geneva Conventions of 1949 regarding repression of grave breaches and applies them to grave breaches of Additional Protocol I.²⁹⁸ Accordingly, as with grave breaches of the Geneva Conventions of 1949, States Parties are required to provide for domestic criminal jurisdiction over grave breaches of Additional Protocol I, regardless of where and by whom they were committed.

It does not matter whether a ‘serious violation’ has occurred within the context of an armed conflict,²⁹⁹ and the duty to suppress serious violation of the laws and customs of war is separate and distinct from the duty to repress grave breaches,³⁰⁰ and accordingly the accountability obligations which bind States with respect to the latter are – in the absence of ICC jurisdiction, or an *ad hoc* international tribunal with jurisdiction – currently more limited than those which oblige States to repress grave breaches of the Geneva Conventions and of Additional Protocol I (pursuant to which High Contracting Parties are obliged to extradite or prosecute).

Crimes against humanity

Crimes against humanity can serve as the basis for individual criminal liability in international fora, as well as in domestic courts outside of Azerbaijan exercising universal jurisdiction. However, because of the current absence of an international Convention on the prevention and punishment of crimes against humanity, which is in force, ratified, and binding on States Parties, States which are not Party to the Rome Statute (such as Armenia and Azerbaijan) are under no international law obligation either to suppress or repress crimes against humanity through extradition or prosecution. This means that in the Azerbaijan situation, at the present time, it is the Geneva Conventions of 1949 and (in Armenia’s case) the First Additional Protocol of 1977 which create obligations on States to extradite or prosecute individuals responsible for violations which also constitute grave breaches, and accordingly it is these instruments which engender the most fruitful potential for criminal law enforcement.

Second Hague Protocol for the Protection of Cultural Property of 1999

The Second Hague Protocol for the Protection of Cultural Property of 1999 entered into force on 9 March 2004.³⁰¹ Accordingly, with respect to serious violations of the Second Protocol committed before 9 March 2004, it will need to be assessed whether the offence existed under customary international law (as a grave breach or a serious violations of the laws and customs of war) before that date.

Interim Report’s conclusion on accountability

The Republic of Azerbaijan has grounds to undertake legal steps against those responsible including through reliance on the accountability mechanisms which operate under applicable international Conventions.

²⁹⁸ Article 85(1) of Additional Protocol I states that the “provisions of the Conventions relating to the repression of breaches and grave breaches... shall apply to the repression of breaches and grave breaches of this Protocol.”

²⁹⁹ *Prosecutor v Tadić*, IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal, Appeals Chamber, 2 October 1995, para.94

³⁰⁰ See M.D. Oberg, “The absorption of grave breaches into war crimes law” *International Review of the Red Cross* Volume 91 (873), 2009, p.181: “[from] the perspective of domestic criminal jurisdiction, grave breaches carry mandatory universal jurisdiction, while other war crimes carry permissive universal jurisdiction.”

³⁰¹ See Roger O’Keefe, *The Protection of Cultural Property in Armed Conflict* (Cambridge 2006) (Kindle edition) (hereinafter ‘O’Keefe’), Loc.3567



States Parties to the Geneva Conventions are under an obligation to extradite or prosecute those who are responsible for:

- the grave breach of attacking civilians;
- the grave breach of causing excessive incidental death, injury or damage;
- the grave breach of wilful killing;
- the grave breach of extensive destruction; and
- the grave breach of extensive appropriation of property.



Appendix I: Elements of Crimes

Grave breach of wilful killing

1. The wilful killing of a protected person is a grave breach of all four Geneva Conventions.³⁰² At the ICTY, the specific elements of the crime of wilful killing (or murder) were found to be identical whether the conduct amounted to a grave breach, a war crime, or a crime against humanity.³⁰³ Nevertheless, the war crime of wilful killing requires an additional constituent element, because it must be committed against a person who is protected under the Geneva Conventions.³⁰⁴
2. The constituent elements of wilful killing and murder, as identified in the ICTY's case-law are: (1) the death of the victim; (2) the death of the victim was caused by acts or omissions for whose acts or omissions the accused bears criminal responsibility; and (3) the act was done, or the omission was made, by the accused, or a person or persons for whose acts or omissions he bears criminal responsibility, with an intention to kill or to inflict grievous bodily harm, in the reasonable knowledge that such act or omission was likely to cause death.³⁰⁵
3. For murder as a crime against humanity, see *infra* paragraphs 101 to 111.

Grave breach of intentionally directing attacks against civilians not taking direct part in hostilities

4. Article 85(3)(a) of Additional Protocol I criminalises as a grave breach “making the civilian population or individual civilians the object of attack”.³⁰⁶ The legal basis for this crime is found within Article 51(2) of Additional Protocol I (“the civilian population as such, as well as individual civilians, shall not be the object of attack”).³⁰⁷ State practice establishes the prohibition as a norm of customary international humanitarian law in both international and non-international armed conflicts.³⁰⁸ The crime of intentionally targeting civilians is distinct from the grave breach of causing excessive death or injury to civilians which is *incidental* to an attack against combatants or other military objectives.³⁰⁹
5. The civilian population and individual civilians are protected against direct attacks.
6. Under the Geneva Conventions and Additional Protocol I, a civilian is a person who is not – *inter alia* – a member of the armed forces, militias or volunteer corps forming part of such

³⁰² Article 50 of the First Geneva Convention, Article 51 of the Second Geneva Convention, Article 130 of the Third Geneva Convention, and Article 147 of the Fourth Geneva Convention.

³⁰³ *Prlić* Trial Judgement, para.110

³⁰⁴ *Prlić* Trial Judgement, para.110; *Kordić and Čerkez* Appeal Judgement, para.38

³⁰⁵ *Prlić* Trial Judgement, para.111. See also *Prosecutor v Brđanin*, IT-99-36-T, Judgement, Trial Chamber, 1 September 2004 (“*Brđanin* Trial Judgement”), para. 381. See also *Prosecutor v Delalić and Landžo*, IT-96-21-A, Judgement, 20 February 2001 (hereinafter ‘*Čelebići* Appeals Judgement’), para.422

³⁰⁶ Article 85(3)(a) of Additional Protocol I

³⁰⁷ Article 51(2) of Additional Protocol I: “The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.”

³⁰⁸ “Rule 1: The parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians.” See Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law, Volume I: Rules* Cambridge University Press, 3rd edition (2009); p.3

³⁰⁹ Article 85(3)(b) of Additional Protocol I criminalises as a grave breach “launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects.”



armed forces of a Party to the conflict, or those part of a *levée en masse*.³¹⁰ Civilians include journalists, relief personnel, civilian medical and religious personnel, personnel of the ICRC (and national societies of the Red Cross and Red Crescent). In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.³¹¹

7. The civilian population comprises all persons who are civilians,³¹² but the presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.³¹³
8. The prohibition against directly targeting civilians is absolute, but civilians can lose the protection afforded to them if they take a direct part in hostilities. Article 51(3) of Additional Protocol I states that “civilians shall enjoy the protection.....unless and for such a time as they take a direct part in hostilities.”³¹⁴ First, any loss of civilian protection is first limited to participation which is direct. A direct causal relationship is required between “the activity engaged in and the harm done to the enemy at the time and the place where the activity takes place.”³¹⁵ Second, loss of protection has a temporal limitation, “it is only during such participation that a civilian loses his immunity and becomes a legitimate target.”³¹⁶
9. The term ‘attack’ is defined in the law of armed conflict as “acts of violence against the adversary, whether in offence or in defence.”³¹⁷ The issue of who first made use of force – whether the acts were carried out by an aggressor or by a party said to be acting in self-defence – is irrelevant.³¹⁸ The term ‘acts of violence’ denotes physical force and covers the use of weapons but is not limited to kinetic means and methods of combat.³¹⁹

³¹⁰ Art. 4A(1)-(3) and (6) of GCIII and Art.43 (‘armed forces’) of Additional Protocol I.

³¹¹ Article 50(1) of Additional Protocol I. See also *Galić* Trial Judgement, para.50: “the presence of individual combatants within the population does not change its civilian character.” See also *Perišić* Trial Judgement, para.101: “It must also be proven that the perpetrator was aware or should have been aware of the civilian status of the persons attacked.”

³¹² Article 50(2) of Additional Protocol I. See also Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Volume I: Rules Cambridge University Press, 3rd edition (2009); In *Kordić and Čerkez* the ICTY Appeals Chamber noted – referencing the *Blaškić* Appeal Judgement (para. 111) – that the “imperative ‘in case of doubt’ is limited to the expected conduct of a member of the military. However, when the latter’s criminal responsibility is at issue, the burden of proof as to whether a person is a civilian rests on the Prosecution.” *Kordić and Čerkez* Appeal Judgement, para.48; *Prlić* Trial Judgement, para.185

³¹³ Article 50(3) of Additional Protocol I. See *Kordić and Čerkez* Appeal Judgement, para.50; in *Strugar*, the Trial Chamber noted – referencing the *Tadić* Trial Judgement (para. 638) – that the population must be of a “predominantly civilian nature”. *Strugar* Trial Judgement, para.282

³¹⁴ Article 51(3) of Additional Protocol I states: “Civilians shall enjoy the protection afforded by this Section, unless and for such time as they take a direct part in hostilities.” Article 51(2) states: “the civilian population as such, as well as individual civilians, shall not be the object of attack.” Neither the Geneva Conventions nor their Additional Protocols include a definition of what constitutes ‘direct participation in hostilities.’ However, there is some guidance in the *Travaux Préparatoires* as well as the Commentaries.

³¹⁵ Commentary on Additional Protocols of 8 June 1977; para.1679. See also Michael N. Schmitt (2004) “Direct Participation in Hostilities and 21st Century Armed Conflict”, in Horst Fischer *et al* (eds.) *Crisis Management and Humanitarian Protection: Festschrift für Dieter Fleck* (Berlin: Berliner Wissenschafts-Verlag, 2004), p.508

³¹⁶ Commentary on Additional Protocols of 8 June 1977; para.1944

³¹⁷ Article 49(1) of Additional Protocol I. Note that this definition of attack within *jus in bello* is unrelated to those within *jus ad bellum*.

³¹⁸ See Knut Dörmann in Triffterer, Otto and Ambos, Kai (eds.) mn 8-184. See also Knut Dörmann, Elements of War Crimes under the Rome Statute, p.134. See also *Kordić and Čerkez* Appeal Judgement, para.47; *Strugar* Trial Judgement, para 282; *Prlić* Trial Judgement, para.184

³¹⁹ See Knut Dörmann in Triffterer, Otto and Ambos, Kai (eds.) mn 8-185. Note that in *Strugar*, the Trial Chamber used the definition within the ICRC Commentary, where an attack is understood as a ‘combat action’ referring to the use of armed force. *Strugar* Trial Judgement, para.282. What defines an attack is not the violence of the means but the violence of the effects or consequences, even if indirect. For instance, cyber operations resulting in physical damage to persons/objects that go beyond the computer programme or data attacked are to be qualified as an ‘attack’ under IHL. See Knut Dörmann in Triffterer, Otto and Ambos, Kai (eds.) mn 8-185



Indiscriminate attacks may qualify as direct attacks against civilians

10. Indiscriminate attacks are prohibited. As stated in Article 51(4) of Additional Protocol I, indiscriminate attacks are those which (a) cannot be directed at a specific military objective; (b) employ a method or means of combat which cannot be directed at a specific military objective; or (c) employ a method or means of combat the effects of which cannot be limited. In each case, the attack is of a nature to strike military objectives or civilians (and civilian objects) without distinction.³²⁰
11. The *Gotovina* Appeals Chamber held that the assessment of the legality of an attack relates to a highly technical subject and may require, for example, the assessment of the margin of error of artillery weapons in particular conditions.³²¹ Any margin of error attributed to a weapon must be explicable by reference to evidence.³²² The *Strugar* Appeals Chamber held that an indiscriminate attack may qualify as an attack directed against civilians or give rise to the inference that an attack was directed against civilians and recalled that, depending on the circumstances of the case, the indiscriminate character of an attack can be indicative of the fact that an attack was directed against the civilian population.³²³
12. In *Galić*, the Trial Chamber held that “indiscriminate attacks, that is to say, attacks which strike civilians or civilian objects and military objectives without distinction, may qualify as direct attacks against civilians.”³²⁴ Further, “certain apparently disproportionate attacks may give rise to the inference that civilians were actually the object of attack”.³²⁵ The defence submissions on appeal contended that the Trial Chamber erred in law in that neither disproportionate nor indiscriminate attacks may qualify as direct attacks on civilians.³²⁶ The Appeals Chamber noted that the Trial Chamber did not hold that such attacks always amounted to direct attacks but rather that they “may qualify” as such.³²⁷ The Appeals Chamber held that a direct attack can be inferred from the indiscriminate character of the weapon used.³²⁸
13. In *Blaškić*, the Trial Chamber inferred from the weapons used in an attack on 18 July 1993 on Stari Vitez that the perpetrators had “wanted to affect” the civilian population. It was noted that the homemade mortars (‘baby-bombs’) are “difficult to guide accurately” and that since their trajectory is “irregular and non-linear they are likely to hit non-military targets.”³²⁹
14. In the *Martić* Rule 61 Decision, the Trial Chamber regarded the use of a cluster bomb warhead as evidence of the accused’s intent to deliberately attack the civilian population. It was noted that the Orkan rockets in question were:

equipped with 288 bomblets each of which, on explosion, propels jagged bits of metal and more than 400 small steel sphere in every direction. The rockets have a

³²⁰ Article 51(4) of Additional Protocol I

³²¹ See *Prosecutor v Gotovina and Markač*, IT-06-90-A, Judgment, 16 November 2012 (hereinafter ‘*Gotovina* Appeals Judgment’), para.61

³²² *Gotovina* Appeals Judgment, para.61

³²³ *Strugar* Appeals Judgment, para.275. The Appeals Chamber in *Strugar* referenced the *Galić* Appeals Judgment in, para.132 and fn.706

³²⁴ *Galić* Trial Judgment, para.57. This point was challenged on appeal, see Defence Appeal Brief, para.50

³²⁵ *Galić* Trial Judgment, para.60. This point was challenged on appeal, see Defence Appeal Brief, para.50

³²⁶ *Galić* Appeal Judgment, para.131

³²⁷ *Galić* Appeal Judgment, para.132, quoting *Galić* Trial Judgment, para.57

³²⁸ *Galić* Appeal Judgment, para.132

³²⁹ *Blaškić* Trial Judgment, para.512. This finding is referenced in *Galić* Appeal Judgment, fn 101



range of about 50 kilometres with a lethal radius of about 10 metres. Unlike missiles which can be guided towards the desired target, these rockets are relatively inaccurate because the lateral error factor can be as much as 600 metres on either side.³³⁰

15. The *Martić* Trial Chamber relied on expert evidence that the choice of Orkan rockets would “not have been appropriate had the purpose been to damage military targets”³³¹ and concluded that “in respect of its accuracy and striking force, the use of the Orkan rocket in this case was not designed to hit military target but to terrorise the civilians of Zagreb.”³³²
16. Further, in its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*, the International Court of Justice confirmed the obligation of States not to make civilians the object of attack, and equated the use of indiscriminate weapons with a deliberate attack on civilians:³³³

*The first is aimed at the protection of the civilian population and civilian objects and establishes the distinction between combatants and non-combatants; States must never make civilians the object of attack and must consequently never use weapons that are incapable of distinguishing between civilian and military targets.*³³⁴ [emphasis added]

Actus Reus

17. The *actus reus* for this grave breach under Additional Protocol I requires a ‘result’ requirement, where the act of making civilians the object of attack “causes death or serious injury.”³³⁵ The ICTY has held that this result – death or serious injury – as described in the grave breaches provision is required under customary international law.³³⁶

Mens Rea

18. Under Article 85(3) of Additional Protocol I, making the civilians the object of attack is a grave breach when “committed wilfully”.³³⁷
19. In *Blaškić*, the Trial Chamber held: “such an attack must have been conducted intentionally in the knowledge, or when it was impossible not to know, that civilians [...] were being targeted.”³³⁸ In other words, the ICTY accepted that reckless intent is sufficient. In *Galić*, the

³³⁰ *Martić* Rule 61 Decision, para. 30

³³¹ *Martić* Rule 61 Decision, para. 30

³³² *Martić* Rule 61 Decision, para. 31. Also quoted in *Galić* Appeal Judgement, fn 101

³³³ Knut Dörmann, *Elements of War Crimes under the Rome Statute*, p.137

³³⁴ *ICJ Advisory Opinion on the threat or use of nuclear weapons*, 8 July 1996, para.78. This passage is also referenced in *Galić* Appeal Judgement, fn 101

³³⁵ Article 85(3)(a), Additional Protocol I

³³⁶ *Kordić and Čerkez* Appeal Judgement, para 67; See Knut Dörmann in Triffterer, Otto and Ambos, Kai (eds.) mn 8-194. This result requirement is not found within the Rome Statute; the lower threshold means that a crime would be committed if an attack was directed against individual civilians or the civilian population, but the intended target was not hit. See Knut Dörmann in Triffterer, Otto and Ambos, Kai (eds.) mn 8-193

³³⁷ Article 85(3)(a), Additional Protocol I. Note the slightly different wording in Rome Statute: “the perpetrator *intended* the civilian population as such or individual civilians not taking direct part in hostilities to be the object of the attack.” *Elements of Crimes*, The International Criminal Court (2011)

³³⁸ *Blaškić* Trial Judgement, para.180



Appeal Chamber confirmed that the notion of ‘wilfully’ incorporates the concept of recklessness, whilst excluding ‘mere negligence’.³³⁹

20. Given the conclusion within ICTY jurisprudence that indiscriminate attacks *may* qualify as direct attacks against civilians, it must be assessed whether the requisite *mens rea* exists in each specific case. In some circumstances, that an attack is directed against civilians may be obvious because of the type of weapon used. In others, this may be more difficult to determine where a weapon used may have a significant, but legally acceptable, degree of error in targeting, or because military objectives are located close to civilians.³⁴⁰ The fact that precautionary measures as required by Article 57 of Additional Protocol I have not been taken can serve as an indicator.³⁴¹

Grave breach of causing excessive incidental death, injury, or damage

21. Article 85(3)(b) of Additional Protocol I criminalises as a grave breach “launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects”. Protections against excessive collateral damage on civilians are also contained in Article 57(2)(a)(iii) of Additional Protocol I.³⁴²
22. State practice establishes the prohibition under IHL of launching disproportionate attacks as a norm of customary international law in both international and non-international armed conflicts.³⁴³
23. The general aim is to prohibit the intentional launching of attacks which may cause excessive collateral damage to civilians. The fact that civilian casualties are caused during an attack directed against a military objective does not, of itself, render the attack unlawful as incidental civilian casualties or damage, which are not expected to be excessive in relation to the concrete and direct military advantage anticipated, can be legally acceptable.³⁴⁴ This is not an exception to the rule prohibiting attacks on civilians, since civilians are not made the object of the attack; here, civilian casualties are incidental to the attack. This rule of proportionality is set out in Article 51(5)(b) of Additional Protocol I, defining as indiscriminate

³³⁹ *Galić* Appeal Judgement, para.140, quoting *Galić* Trial Judgement, para.54. The Trial Chamber relied on the ICRC Commentary to Article 85 of API which defines intent for the purposes of Article 51(2) and clearly distinguishes recklessness (“the attitude of an agent who, without being certain of a particular result, accepts the possibility of it happening”) from negligence (“acts without having his mind on the act or its consequences”). See ICRC Commentary (Additional Protocols) para.3474

³⁴⁰ See Knut Dörmann in Triffterer, Otto and Ambos, Kai (eds.) mn 8-204 – 8-205

³⁴¹ *D. Milošević* Trial Judgement, para.948. See Knut Dörmann in Triffterer, Otto and Ambos, Kai (eds.) mn 8-203

³⁴² Article 57(2)(a)(iii) of Additional Protocol I requires, as a precaution when launching attacks, Parties to *inter alia* “refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.” Article 8 para 2(b)(iv) of the Rome Statute states that loss, injury or damage must be “clearly” excessive. Professor Newton argues that “The standard for imposing criminal sanctions for violations of jus in bello proportionality is “clearly excessive” when assessed against the broader “concrete and direct overall military advantage anticipated.” Michael A. Newton, *Reframing the Proportionality Principle*, 51 Vand. J. Transnat’l L. 867 (2018) (hereinafter ‘*Reframing the Proportionality Principle*’), pp.878, 884

³⁴³ “Rule 14: Launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited.” This rule applies to both international and non-international armed conflicts. See Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Volume I, Cambridge 2009; p.46

³⁴⁴ See also *Reframing the Proportionality Principle*, p.872: “From the perspective of normally applicable human rights norms, the very idea that proportionality affirmatively countenances the deaths of civilians or others not participating in conflict at the precise moment of their demise seems heretical. Nevertheless, when applied appropriately, the principle of proportionality operates in precisely that manner.”



“an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.”

24. Proportionality is one of the pillar principles of international humanitarian law but must not be considered in isolation; it is part of a framework of rules and obligations giving effect to the general obligation under international humanitarian law to take constant care to spare civilians and civilian objects in the conduct of military operations.³⁴⁵
25. The wording of the proportionality principle under the Rome Statute differs slightly from that within Additional Protocol I and the ICRC’s Customary International Humanitarian Law study. First, Article 8 para 2(b)(iv) states that loss, injury or damage must be *clearly* excessive.³⁴⁶ Second, the clearly excessive incidental damage is to be measured “in relation to the concrete and direct *overall* military advantage anticipated.”³⁴⁷ However, the addition of the words ‘clearly’ and ‘overall’ to the conventional definition within Additional Protocol I is not reflected in any existing legal source and must be understood as not changing the existing law on proportionality.³⁴⁸
26. Proportionality requires assessing the incidental harm expected from a specific attack against the military advantage anticipated from the same attack.³⁴⁹ However, States have emphasised that ‘military advantage’ refers to the advantage anticipated from the military attack considered *as a whole* and not only from isolated or particular parts of the attack.³⁵⁰ This is reflected in State practice and the wording of Rome Statute, as above, which refers to ‘overall’ military advantage within the balancing exercise. Determining what is an ‘attack as a whole’ requires consideration of the context in which the act is conducted.³⁵¹
27. According to the ICRC Commentary, the military advantage concerned “should be substantial and relatively close”.³⁵² Further, “advantages which are hardly perceptible and those which would only appear in the long term should be disregarded.”³⁵³
28. Any incidental harm is that which would not have been caused *but for* the attack.
29. Assessing compliance with the rule of proportionality can be challenging; it has been argued that the notion of ‘excessive’ incidental death, injury and damage may provide belligerents with a wide margin.³⁵⁴ On the other hand, as Professor Newton puts it, the “mere invocation

³⁴⁵ See inter alia Article 51 of Additional Protocol I

³⁴⁶ Roberta Arnold and Stefan Wehrenberg in Triffterer, Otto and Ambos, Kai (eds.) *Commentary on the Rome Statute of the International Criminal Court* (2008) mn 8-247

³⁴⁷ *Rome Statute*, Article 8 para 2(b)(iv)

³⁴⁸ This point was emphasised by the ICRC at the Rome Conference. See Knut Dörmann, *Elements of War Crimes under the Rome Statute*, p.169

³⁴⁹ Emanuela-Chiara Gillard, Proportionality in the Conduct of Hostilities: The Incidental Harm Side of the Assessment, December 2018, Chatham House Research Paper, paras. 21, 24 (hereinafter ‘Gillard’)

³⁵⁰ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Volume I, Cambridge 2009; p.49. See also Reframing the Proportionality Principle, p.881

³⁵¹ “If the military advantage anticipated from a single attack is not dependent on or affected by other acts, then the act should be considered an ‘attack as a whole’ for the purpose of proportionality assessments. If, on the other hand, a single attack is an element in a larger operation where other acts contribute to the military advantage, then the operation in its entirety should be considered the ‘attack as a whole.’” See Gillard, para.27

³⁵² Yves Sandoz et al (eds.) *Commentary on the 1977 Additional Protocols*, ICRC, Geneva, 1987, para.2209

³⁵³ Yves Sandoz et al (eds.) *Commentary on the 1977 Additional Protocols*, ICRC, Geneva, 1987, para.2209

³⁵⁴ See e.g. Gillard, para. 81; Adil A. Haque, *Law and Morality at War* (Oxford 2017), pp.175-206; Geoffrey Corn has noted that “even the best efforts cannot eliminate the substantial margin of appreciation inherent in a rule so contextually dependent and reliant on human judgments.” Geoffrey Corn, “Calibrating the Compass of Proportionality”, *Just Security* (31



of proportionality cannot become an effective extension of asymmetric combat power by artificially crippling combatant capabilities.³⁵⁵ Nevertheless, the margin cannot be unlimited, and there is no indication that the imbalance between the anticipated incidental harm and military necessity need be significant for the rule to be violated.³⁵⁶ An assessment of the excessiveness of collateral damage is to be made by a court or tribunal on an objective basis from the perspective of a ‘reasonable military commander’.³⁵⁷ Thus, “[a]lthough there will be room for argument in some cases, there will be many cases where reasonable military commanders will agree that the injury to noncombatants or the damage to civilian objects was clearly disproportionate to the military advantage gained.”³⁵⁸ rather “than serving as a necessary basis for a positive articulation of lawful force as an exception to the norm, *jus in bello* proportionality delineates the outer boundaries of the commander's appropriate discretion.”³⁵⁹

30. As to the *mens rea*, Additional Protocol I refers to ‘wilfully’ launching an attack.³⁶⁰ It follows that there may be intent (*dolus directus*) or constructive intent (*dolus eventualis*) for the grave breach to be committed.³⁶¹ The excessive harm must have been ‘reasonably foreseeable’ at the time that the attack was planned or launched.³⁶²

War crime of intentionally directing attacks against civilian objects

31. Intentionally directing attacks against civilian objects is a serious violation of the laws and customs of war. The legal basis is found within Article 52 of Additional Protocol I (“Civilian objects shall not be made the object of attack”). State practice establishes this rule as a norm of customary international humanitarian law applicable in both international and non-international armed conflicts.³⁶³ The prohibition against intentionally targeting civilian objects is distinct from causing damage which is *incidental* to an attack against combatants or other military objectives.³⁶⁴

January 2019); p.2. See also the ICRC Commentary: “the provision allows for a fairly broad margin of judgment, as stated above; several delegations regrettably stressed this fact. In contrast, other delegations commended the fact that in future military commanders would have a universally recognized guideline as regards their responsibilities to the civilian population during attacks against military objectives.” Yves Sandoz et al (eds.) *Commentary on the 1977 Additional Protocols*, ICRC, (Geneva, 1987), para.2210

³⁵⁵ Reframing the Proportionality Principle, p.868

³⁵⁶ Gillard, para.77

³⁵⁷ ICTY Prosecutor’s Office, Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia, The Hague, 13 June 2000, para.50. Quoted in Knut Dörmann, *Elements of War Crimes under the Rome Statute*, p.176. See also Newton, 868-869.

³⁵⁸ ICTY Prosecutor’s Office, Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia, The Hague, 13 June 2000, para.50

³⁵⁹ Reframing the Proportionality Principle, p.868.

³⁶⁰ Note that the Rome Statute uses the wording “intentionally launching an attack.”

³⁶¹ Roberta Arnold and Stefan Wehrenberg in Triffterer, Otto and Ambos, Kai (eds.) *Commentary on the Rome Statute of the International Criminal Court* (2008) mn 8-254

³⁶² Gillard, para. 58. Gillard elaborates that what can be reasonably foreseen depends on a variety of circumstances in which the planned attack was launched/planned and includes “attacker’s capabilities and available resources; whether the attack was part of a pre-planned operation or occurred during dynamic targeting; and the context in which the attack was planned and conducted, including factors such as the time available, terrain, weather, capabilities, available troops and enemy activity.” See also Emanuela-Chiara Gillard, “Joint Symposium: Chatham House Report on Proportionality in the Conduct of Hostilities – Some Key Elements” *EJIL:Talk!* (28 January 2019). See also Reframing the Proportionality Principle.

³⁶³ “Rule 7. The parties to the conflict must at all times distinguish between civilian objects and military objectives. Attacks may only be directed against military objectives. Attacks must not be directed against civilian objects.” See Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Volume I, Cambridge 2009; p.25-29

³⁶⁴ Attacks resulting in excessive incidental (disproportionate) damage to civilian objects is covered – *inter alia* – by Article 8(2)(b)(iv) of the Rome Statute and Article 85(3)(b) of Additional Protocol I, which criminalises as a grave breach “launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or *damage to civilian objects*”.



32. Civilian objects are all objects which are not military objectives.³⁶⁵
33. Further, as set out in Article 52(3) of Additional Protocol I, “in case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.”
34. Only a material, tangible thing can be a target.³⁶⁶ Critical notions within the definition of military objective are that object must make an “effective contribution to *military action*” and whose destruction, capture or neutralisation offers a “definite *military advantage*”.
35. ‘Military advantage’ has been interpreted as referring to the advantage gained from the attack as a whole and not from isolated or distinct parts of the attack.³⁶⁷ However, an ‘attack as a whole’ is a finite event and should not be confused with winning the entire war as a military advantage.³⁶⁸ An advantage cannot be simply political; the notion excludes attacks merely on civilian morale.³⁶⁹
36. It is clear by the formulation “in the circumstances ruling at the time” that in drafting Art.52 States were not prepared to set out a list of objects that should always be considered military objectives. In the evolving circumstances of armed conflict an object which may have been military objective on one day may no longer be one the next.
37. Contribution ‘by nature’ generally includes all objects, directly used by the armed forces, such as weapons, military equipment, military airports or army headquarters. Contribution ‘by location’ includes objects which “have no military function but which, by virtue of their location, make an effective contribution to military action”, including bridges or other constructions and sites of special military importance that must be seized, or that the enemy must be prevented from seizing, or from which the enemy must be forced to retreat. Areas of land may also become a military objective by location, namely if it has tactical importance. Contribution ‘by purpose’ is concerned with the intended future use of an object, while contribution ‘by use’ with its present function.³⁷⁰
38. A civilian object is liable to attack if it is used in such a way that it loses its civilian character. Civilian objects may only be attacked when and for such time they become – due to their location, purpose or use – military objectives.³⁷¹

³⁶⁵ Article 52(1) of Additional Protocol I

³⁶⁶ Yoram Dinstein, *The Conduct of Hostilities*, Cambridge (2016); p. 105. See Commentary of 1987, in relation to Article 47 (General Protection of Civilian Objects). Note that the word ‘object’ in the English text means “something placed before the eyes, or presented to the sight or other sense, an individual thing seen, or perceived, or that may be seen or perceived; a material thing”. The French text uses the word ‘biens’, which means “choses tangibles, susceptibles d’appropriation.”

³⁶⁷ Knut Dörmann in Triffterer, Otto and Ambos, Kai (eds.) mn 8-211. See further discussion above on the concept of ‘whole attack’ in relation to the war crime of causing excessive incidental death, injury, or damage.

³⁶⁸ Knut Dörmann in Triffterer, Otto and Ambos, Kai (eds.) mn 8-211

³⁶⁹ Yoram Dinstein, *The Conduct of Hostilities*, Cambridge (2016), p.107. Knut Dörmann in Triffterer, Otto and Ambos, Kai (eds.) mn 8-211

³⁷⁰ Knut Dörmann in Triffterer, Otto and Ambos, Kai (eds.) mn 8-211

³⁷¹ See Rule 10: Civilian objects are protected against attack, unless and for such time as they are military objectives. This is a rule of customary IHL in both international and non-international armed conflicts. Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Volume I, Cambridge 2009; pp.34-35. See also Knut Dörmann in Triffterer, Otto and Ambos, Kai (eds.) mn 8-213



39. The *actus reus* of this war crime under the Rome Statute is set out as follows: (1) the perpetrator directed an attack; (2) the object of the attack was civilian objects, that is, objects which are not military objectives.³⁷² The *mens rea* under the Rome Statute is that the “perpetrator intended such civilian objects to be the object of the attack.”³⁷³

Grave breach of extensive destruction and appropriation of property carried out unlawfully and wantonly

40. The extensive destruction and appropriation of property carried out unlawfully and wantonly and not justified by military necessity constitutes a grave breach of the First, Second and Fourth Geneva Conventions.³⁷⁴ The acts or omissions must be committed against persons or property regarded as protected under the Geneva Conventions, or against property in occupied territory.³⁷⁵ The crime essentially covers conduct against property in the power of the enemy.³⁷⁶ Destruction of property in the course of the conduct of hostilities (e.g. in particular air raids or rocket attacks in enemy territory) falls under unlawful “attack” charges.³⁷⁷
41. Article 33 of the Fourth Geneva Convention prohibits unlawful, wanton appropriation of property or plunder. The prohibition is broad in scope and is directed toward private as well as government property.³⁷⁸ It covers both organised and systematic confiscations and acts of appropriation committed by soldiers acting in self-interest:³⁷⁹ it applies specifically to “the organized seizure of property undertaken within the framework of a systematic economic exploitation of occupied territory”, as well as the territory of the Parties.³⁸⁰
42. ‘Protected property’ is not defined in the Conventions, which instead contain a description of property that cannot be attacked, destroyed or appropriated.³⁸¹ For example, civilian hospitals are protected from attack.³⁸² The Conventions lay down distinct standards for

³⁷² Elements of Crimes, The International Criminal Court (2011)

³⁷³ Elements of Crimes, The International Criminal Court (2011)

³⁷⁴ Articles 50 GC I, 51 GC II and 147 GC IV.

³⁷⁵ *Prlić* Trial Judgement, para.122

³⁷⁶ Jean Pictet (ed.), Commentary to GC IV of 1958, Article 147, 601.

³⁷⁷ Dörmann, mn 8-126. *But see* ICC-01/04-02/06-2585, *Prosecutor v Bosco Ntaganda*, Observations by Professor Roger O’Keefe, on the merits of the legal questions presented in ‘Order inviting expressions of interest as amici curiae in judicial proceedings (pursuant to rule 103 of the Rules of Procedure and Evidence)’ of 24 July 2020 (ICC-01/04-02/06-2554), 17 September 2020 (hereinafter ‘O’Keefe Observations’), para. 5: “The term ‘conduct of hostilities’ is not found as such in any rule of international humanitarian law. Where found in the literature, it refers to any conduct of military operations against the adversary, encompassing both ‘attacks’ and ‘acts of hostility’. Nor is the term ‘combat action’ found as such in any rule of international humanitarian law. Where found in the literature, it is used as a synonym for ‘attack’.”

³⁷⁸ See *Prlić* Trial Judgement, para. 128

³⁷⁹ *Prosecutor v Simić et al.*, IT-95-9-T, Judgement, 17 October 2003 para. 99; *Prosecutor v Delalić and Landžo*, IT-96-21-T, Judgement, 16 November 1998 (hereinafter ‘*Čelebići* Trial Judgement’), paras. 590 and 591; *Prlić* Trial Judgement, para.129

³⁸⁰ *Čelebići* Trial Judgement, paras.588, 590

³⁸¹ The reference in Common Article 2 to the notion of “protected persons or property” covers the persons mentioned in Articles 13, 24, 25 and 26 (protected persons) and 19 and 33 to 35 (protected objects) of Geneva Convention I; in Articles 13, 36, 37 (protected persons) and 22, 24, 25 and 27 (protected objects) of Convention II; in Article 4 of Convention III on prisoners of war; and in Articles 4 and 20 (protected persons) and Articles 18, 19, 21, 22, 33, 53, 57 etc. (protected property) of Convention IV on civilians. The grave breaches provisions apply to persons or objects protected only to the extent that they are caught up in an international armed conflict. See *Prosecutor v Tadić*, IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal, Appeals Chamber, 2 October 1995, para. 81. See also Jean Pictet (ed.), Commentary to GC IV of 1958, Article 147, 597

³⁸² Geneva Convention IV of 1949, Article 18. Article 18 of GC IV defines the protection of civilian hospitals against attacks, i.e. against destruction, in the following terms: “Civilian hospitals organized to give care to the wounded and sick, the infirm and maternity cases, may in no circumstances be the object of an attack, but shall at all times be respected and protected by the Parties to the conflict [...]” Article 19 of GC IV lays down the stringent conditions under which such civilian hospitals are entitled shall not cease unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy.



specific protected property.³⁸³ This may be illustrated with respect to the protection of civilian hospitals, on the one hand, and property in occupied territories on the other.³⁸⁴

43. Article 53 of the Fourth Geneva Convention defines the protection of property in occupied territory in a different manner: “any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations”. In this case, protection of the rule is limited to occupied territory and the destruction is only unlawful if it is not rendered absolutely necessary by military operations.³⁸⁵
44. The *Prlić* Appeals Chamber noted the definition of occupation in Article 42 of the Hague Regulations of 1907, which constitutes customary international law,³⁸⁶ and it approved the indicators of authority (‘overall control’) stated in the *Naletilić and Martinović* Trial Judgement as non-exhaustive guidelines when undertaking a factual determination of whether the authority of an occupying power has been proven, namely:
- a. the occupying power must be in a position to substitute its own authority for that of the occupied power, rendered incapable of functioning publicly from that time forward;
 - b. the enemy's forces have surrendered, been defeated or have withdrawn. In this respect, battlezones may not be considered as occupied territory. Despite this, the status of occupied territory remains unchallenged by sporadic local resistance, however successful;
 - c. the occupying power has a sufficient force present, or the capacity to send troops within a reasonable time to make the authority of the occupying power felt;
 - d. a temporary administration has been established over the territory;
 - e. the occupying power has issued and enforced directions to the civilian population.³⁸⁷
45. The Appeals Chamber held that an occupant’s authority may be exercised by proxy, i.e. through de facto organised and hierarchically structured groups. The rationale behind this is that States should not be allowed to evade their obligations under the law of occupation through the use of proxies.³⁸⁸

Protection may, however, cease only after due warning has been given, naming, in all appropriate cases, a reasonable time limit, and after such warning has remained unheeded. The Geneva Conventions define protected property and establish different levels of protection - for example Articles 19, 33, and 34 GC I (fixed medical establishments and mobile medical units), 35 and 36 of GC I (medical transports, including medical aircraft), Articles 18 (civilian hospitals), 21, 22 (means for land, sea and air transport), 33 (prohibition of pillage and reprisals), 53 (real or personal property in occupied territory), 57 (hospitals in occupied territory) of GC IV as well as Article 154 of GC IV in conjunction with relevant provisions of the 1907 Hague Regulations. Dörmann, mn-8-62

³⁸³ See for example, *Prosecutor v Kordić and Čerkez*, IT-95-14/2-T, Judgement, Trial Chamber, 26 February 2001 (hereinafter ‘*Kordić and Čerkez* Trial Judgment’), para.336

³⁸⁴ Dörmann, mn 8-112 – 113

³⁸⁵ Dörmann, mn 8-116

³⁸⁶ *Prosecutor v Prlić et al*, IT-04-74-A, Judgement, Volume I, Trial Chamber, 29 November 2017 (hereinafter “*Prlić* Appeals Judgement”), para. 317. Article 42 of the Hague Regulations provides that “[t]erritory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.”

³⁸⁷ *Prlić* Appeals Judgement, para.320

³⁸⁸ *Prlić* Appeals Judgement, para.322



46. Both destruction and appropriation can take various forms. For destruction, one may consider setting objects on fire, or other serious damage; for appropriation, one may consider taking, obtaining or withholding property, theft, requisition, plunder spoliation, or pillage.³⁸⁹
47. The destruction or appropriation must be extensive in scope.³⁹⁰ Although an isolated act or incident would generally not be sufficient to constitute this crime,³⁹¹ there may be exceptions; for example, the destruction of a civilian hospital.³⁹² The criterion of extensive scale must be evaluated according to the facts of the case.³⁹³ The *Prlić* Trial Chamber held that the destruction of approximately 75 Muslim houses in the district of Prozor constituted extensive destruction when there were no combat activities ongoing in the area.³⁹⁴ It further held that the destruction of nine out of 26 houses in the village of Parcani was extensive for the purposes of this offence,³⁹⁵ and that the destruction was extensive in the municipality of Gornji Vakuf, where 16 houses were burned down in Duša, in Hrasnica no Muslim houses were left standing, in Uzričje at least 22 houses were burned down, and the Muslim sector of Tdrimci was virtually wiped out.³⁹⁶ Since the houses were burned down once the HVO had taken control of the villages, the Chamber was also satisfied that they did not constitute a military target.³⁹⁷ The Trial Chamber held that the destruction of the Sultan Selim Mosque in Stolac was extensive in view of its “cultural and religious significance” and “the impact its destruction had on the Muslim population of the town.”³⁹⁸ The destruction of several houses” in Bivolje Brdo, a village made up of small hamlets, was also extensive.³⁹⁹
48. With respect to extensive appropriation, the *Prlić* Trial Chamber held that the theft of “about thirty vehicles” did not constitute extensive appropriation in the context of a town the size of Prozor.⁴⁰⁰ Thefts of jewellery, money and other property belonging to civilians in Podgrade did, however, constitute extensive appropriation,⁴⁰¹ as did appropriation by HVO soldiers of “all the cars and tractors belonging to the Muslims in the village of Hrasnica” in the context of thefts from other villages in Gornji Vakuf (which the Trial Chamber was satisfied did not constitute a lawful requisition).⁴⁰²
49. A rule of the law of armed conflict cannot be derogated from by invoking military necessity unless this possibility is explicitly provided for by the rule in question, and to the extent provided for. In the case of civilian hospitals, for example, military necessity cannot be invoked to justify its destruction (in violation of Articles 18 and 19 of the Fourth Geneva

³⁸⁹ Dörmann, mn 8-118

³⁹⁰ See, e.g. *Prlić* Trial Judgement, para.126

³⁹¹ Jean Pictet (ed.), *Commentary on Geneva Convention IV (1958)*, Article 147, 601.

³⁹² *Brđanin* Trial Judgement, para 587; *Prosecutor v Naletilić and Martinović*, IT-98-34-T, Judgement, Trial Chamber, 31 March 2003 (hereinafter ‘*Naletilić* Trial Judgement’), para. 576; *Prosecutor v Blaškić*, IT-95-14-T, Judgement, Trial Chamber, 3 March 2000 (hereinafter ‘*Blaškić* Trial Judgement’), para. 157. See also Jean Pictet (ed.), *Commentary IV*, Article 147, 601, referring to a situation where the destruction of a civilian hospital would qualify under a strict interpretation if it is intentional. The ordinary meaning of the term ‘extensive’ does not necessarily imply several incidents or acts, it seems much more related to the size of the destruction or the area covered.

³⁹³ *Prlić* Trial Judgement, para.130. See also *Blaškić* Trial Judgement, para.157

³⁹⁴ *Prlić* Trial Judgement, para.1523-1524

³⁹⁵ *Prlić* Trial Judgement, para.1526-1528

³⁹⁶ *Prlić* Trial Judgement, para.1536

³⁹⁷ *Prlić* Trial Judgement, para.1537

³⁹⁸ *Prlić* Trial Judgement, para.1548

³⁹⁹ *Prlić* Trial Judgement, paras.1551-1552

⁴⁰⁰ *Prlić* Trial Judgement, paras.1619. The population of Prozor was 3,566 in the 1991 census, and 3,367 in the 2011 census. See PROZOR at https://www.citypopulation.de/en/bosnia/hercegovackoneretvanski/prozor_rama/138207_prozor/

⁴⁰¹ *Prlić* Trial Judgement, para.1620

⁴⁰² *Prlić* Trial Judgement, paras.1623, 1626



Convention).⁴⁰³ In the case of a civilian hospital, the protection may expire if it is used to commit “acts harmful to the enemy”, once due warning setting a reasonable time limit has gone unheeded.⁴⁰⁴

50. With respect to allegations of extensive destruction, an assessment of military necessity can be defined by reference to Article 52(2) of Additional Protocol I,⁴⁰⁵ which provides that “military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage”. Where there is uncertainty, Article 52(3) of Additional Protocol I provides that “an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used”. Objects of property which, by their very nature, afford a definite military advantage include property used directly by the armed forces, such as equipment, structures that provide shelter for the armed forces, depots or communications centres.⁴⁰⁶
51. With respect to allegations of extensive appropriation, the Fourth Geneva Convention authorises the occupying powers, in certain cases, to requisition private property, such as food and medical supplies or articles, in occupied territory to meet the needs of their occupying forces and administration.⁴⁰⁷ The requisition of excess food and supplies for the benefit of occupied regions is authorised provided that it is proportionate to the resources of the country.⁴⁰⁸
52. When assessing whether the destruction or appropriation was not justified by military necessity, a Tribunal will have to judge the situation as it appeared to a defendant at the time of the conduct. If the facts were such as would justify the action by the exercise of judgement, after giving consideration to all the factors and existing possibilities, even though the conclusion reached may have been faulty, it cannot be said to be criminal.⁴⁰⁹
53. With regard to *mens rea*, the ICTY distinguished the *mens rea* required for destruction with that for appropriation in the following way: “With regards to the *mens rea* requirement for destruction of property the perpetrator must have acted with the intent to destroy the protected property or in reckless disregard of the likelihood of its destruction.” With regard to the *mens rea* requisite of appropriation of property, the perpetrator must have acted intentionally, with knowledge and will of the proscribed result.⁴¹⁰

⁴⁰³ Dörmann, mn 8-119

⁴⁰⁴ Article 21 of the First Geneva Convention. See also Article 19 of the Fourth Geneva Convention. The commentary on Article 21 of the First Geneva Convention and Article 19 of the Fourth Geneva Convention cites several examples of acts considered “harmful to the enemy” such as: using a hospital as a shelter for combatants or “able-bodied combatants or fugitives” as an arms or ammunition dump, setting up a military observation post there. Moreover, it should be noted that these acts are defined by exclusion in light of Article 22 of the First Geneva Convention and Article 19(2) of the Fourth Geneva Convention, which enumerate actions which should not be considered harmful acts. See Commentary to Article 21 of the First Geneva Convention, p. 200-201, and to Article 19 of the Fourth Geneva Convention, p.154 *et seq.* See *Prlić* Trial Judgement, para.125

⁴⁰⁵ *Prlić* Trial Judgement, para.123

⁴⁰⁶ *Prlić* Trial Judgement, para.123 *citing* Commentary to Additional Protocol I, para.2020

⁴⁰⁷ Article 55 of the Fourth Geneva Convention.

⁴⁰⁸ Commentary to the Fourth Geneva Convention, pp.334-335.

⁴⁰⁹ See e.g. *Trial of Wilhelm List and ors.*, United States Military Tribunal, Nuremberg, 8 July 1947 to 19 February 1948 (The Hostages Trial), United Nations War Crimes Commission, LRTWC VIII 68 *et seq.* Dörmann, mn 8-124, 126

⁴¹⁰ *Prosecutor v Brđanin*, IT-99-36-T, Judgement, Trial Chamber, 1 September 2004, paras. 589-590. *Prosecutor v Naletilić and Martinović*, IT-98-34-T, Judgement, Trial Chamber, 31 March 2003, para.577 (iv); *Prosecutor v Kordić and Čerkez*, IT-95-14/2-T, Judgement, Trial Chamber, 26 February 2001, para. 341(iii). Dörmann, mn 8-123



War crime of prohibited destruction or seizure

54. Prohibited destruction or seizure is a serious violation of the laws and customs of war and accordingly a war crime under customary international law. The wording of the prohibition of destroying or seizing the enemy's property is based on Article 23(g) of the 1907 Hague Regulations annexed to the Convention (IV) Respecting the Laws and Customs of War on Land,⁴¹¹ which, in turn, is based on Article 23(g) of the regulations annexed to Hague Convention (II) with Respect to the Laws and Customs of War on Land of 1899. Like the grave breach of extensive destruction and appropriation of property carried out unlawfully and wantonly, this offence arguably addresses the fate of enemy property located in territories which have come under the *de facto* control of a belligerent, including in a situation of occupation.⁴¹² However, the ICTY, with respect to Article 3(b) of its Statute, referred more broadly to include “*all property* in the territory involved in the conflict, including that located in enemy territory and in territory not under effective occupation” (emphasis added).⁴¹³ There is therefore substantial overlap between this serious violation and the grave breach of extensive destruction and appropriation of property carried out unlawfully and wantonly in a situation of occupation.
55. According to the ICTY Appeals Chamber, the constituent elements of the crime of prohibited destruction are met when: (i) destruction of property occurs on a large scale; (ii) the destruction is not justified by military necessity; and (iii) the perpetrator acted with the intent to destroy the property in question or in reckless disregard of the likelihood of its destruction.⁴¹⁴
56. The words “imperatively demanded by the necessities of war” in Article 23(g) of the Hague Regulations refer to the concept of military necessity.⁴¹⁵ Not every situation of military necessity, but only *imperative* reasons of military necessity, i.e. most serious military reasons which are of an imperative nature, may justify acts otherwise prohibited.⁴¹⁶ Accordingly, the mere fact that the destruction or seizure serves security needs, or otherwise contributes to the security of the area, is not enough to justify it unless it can be established that there is indeed an imperative military need for the destruction or seizure.

⁴¹¹ Article 23(g) of the 1907 Hague Regulations states: “In addition to the prohibitions provided by special Conventions, it is especially forbidden: ... (g) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war.” A. Zimmermann and Robin Geiß, Article 8 in Commentary on the Rome Statute (Otto Triffterer and Kai Ambos ed., 2016 (hereinafter ‘Zimmermann and Geiß’), mn 8-484. Similar prohibitions are also contained in Articles 46, 47, 52, and 53 of the 1907 Hague Convention Respecting the Laws and Customs of War on Land, Article 18 of the Third Geneva Convention, Article 53 of the Fourth Geneva Convention of 1949 and finally Article 54 of Additional Protocol I. Article 3(b) of the ICTY Statute contains a somewhat similar prohibition, while Section 6(1)(b)(xiii), as well as Article 134(b) No. 14 of the Statute of the Iraqi Special Tribunal (which however refers to “property of an adverse party”) are, *mutatis mutandis*, identical with Article 8(2)(b)(xiii) of the Rome Statute. Zimmermann and Geiß, mn 8-486. Article 23(6) of the 1907 Hague Regulations, in turn, reflects Article 23(g)] of the 1899 Hague II Convention by restating that parties may not lawfully “destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war.”

⁴¹² See Zimmermann and Geiß, mn 8-489 – mn 8-495

⁴¹³ *Prosecutor v Orić*, IT-3-68-T, Judgement, Trial Chamber, 30 June 2006, para. 582. See also *Prosecutor v Kordić and Čerkez*, IT-95-14/2-A, Judgment, Appeals Chamber, 17 December 2004, para. 74; *Prosecutor v Naletilić and Martinović*, IT-98-34-T, Judgement, Trial Chamber, 31 March 2003, para. 580; *Prosecutor v Brđanin*, IT-99-36-T, Judgement, Trial Chamber, 1 September 2004, para. 592. Zimmermann and Geiß, mn 8-498.

⁴¹⁴ *Kordić* Appeals Judgement, para. 74 (citing the *Kordić* Judgement, para. 346-347). *Prlić* Trial Judgement, para. 166.

⁴¹⁵ Article 23(g) of the 1907 Hague Regulations.

⁴¹⁶ Zimmermann and Geiß, mn 8-509



57. With respect to seizure, movable government property which may be used for military purposes can legally be confiscated.⁴¹⁷ Even as far as private property is concerned, an occupying power can, within certain limits, request requisitions in kind from the local population. All private property that may be used for hostile purposes and immovable government property might be seized, though not confiscated.⁴¹⁸
58. Articles 53(2) and 55 of the 1907 Hague Convention Respecting the Laws and Customs of War on Land provide for the possibility of seizure of certain property but do not contain a right to confiscate. Article 55 specifically states that, as far as immovable Government property is concerned, the occupant may only administer such property in accordance with the rules of usufruct unless, again, military necessity requires other measures such as, for example, the destruction of specific buildings.⁴¹⁹
59. National security needs in a broad sense may not justify seizures of private property.⁴²⁰ At Nuremberg, in the case of *Jodl*, the IMT held that a scorched earth policy was not justified by military necessity.⁴²¹ In *Orić*, an ICTY Trial Chamber held that except for the rare occasions in which “preventative destruction” could arguably fall within the scope of military necessity,⁴²² the principle must be upheld that the destruction of civil settlements, as a rule, is punishable as a war crime.⁴²³

War crime of pillage

60. Pillage is a serious violation of the laws and customs of war. It was prohibited in the Lieber Code of 1863 according to which all “pillage or sacking, even after taking place by main force [...] are prohibited under penalty of death.”⁴²⁴ The wording of the prohibition of pillage is drawn from Article 28 of the annex to the 1907 Hague Convention Respecting the Laws and Customs of War on land. It is also prohibited under Article 47 of the regulations contained in the annex.⁴²⁵
61. The list of war crimes in the Nuremberg Charter similarly included “plunder of public or private property.”⁴²⁶ The IMT held the accused Rosenberg “responsible for a system of organised plunder of both public and private property throughout the invaded countries of Europe.”⁴²⁷ It was under this count that the *Krupp* case was prosecuted by the US Military

⁴¹⁷ See Article 53 of the 1907 Hague Convention Respecting the Laws and Customs of War on Land.

⁴¹⁸ Articles 53(1) and (2) and Article 55 of the 1907 Hague Convention Respecting the Laws and Customs of War on Land.

⁴¹⁹ See Zimmermann and Geiß, mn 8-507.

⁴²⁰ See for such a limitation the decision of the Israeli Supreme Court in *Dweikat v. Government of Israel* (Judgment of October 22, 1979). Zimmermann and Geiß, mn 8-510

⁴²¹ See the case against *Alfred Jodl* in *Nuremberg judgment, France and ors v Göring (Hermann) and ors*, Judgment and Sentence, [1946] 22 IMT 203, (1946) 41 AJIL 172, (1946) 13 ILR 203, ICL 243 (IMTN 1946), 1st October 1946, International Military Tribunal (hereinafter ‘IMT Judgment’).

⁴²² i.e., the destruction of houses from which previously a serious danger had emanated in order to prevent the inhabitants, including combatants, to return and resume the attacks. *Prosecutor v Orić*, IT-3-68-T, Judgement, Trial Chamber, 30 June 2006, para.588

⁴²³ *Prosecutor v Orić*, IT-3-68-T, Judgement, Trial Chamber, 30 June 2006, para. 588. M. Cottier and Julia Grignon, Article 8 in Commentary on the Rome Statute (Otto Triffterer and Kai Ambos ed., 2016) (hereinafter ‘Cottier and Grignon’), mn 8-513

⁴²⁴ Instructions for the Government of the Armies of the United States in the Field (Lieber Code) 24 April 1863, Article 44.

⁴²⁵ Zimmermann and Geiß, mn 8-549.

⁴²⁶ Charter of the International Military Tribunal (1945), Article 6(b).

⁴²⁷ See O’Keefe, Loc.5099 citing IMT Judgment, p. 95



Tribunal at Nuremberg under Control Council Law No. 10.⁴²⁸ The definition embraces acts of plundering, looting, and sacking⁴²⁹ and includes the plunder of cultural property.⁴³⁰

62. Article 3(e) of the ICTY Statute vested the Tribunal with jurisdiction over the same war crime, and the Tribunal has held that the offence, which it recognised as customary, “should be understood to embrace all forms of unlawful appropriation of property in armed conflict for which international criminal responsibility attaches under international criminal law, including those acts traditionally described as ‘pillage’”.⁴³¹
63. A requirement that the appropriation be carried out for “private or personal use”, has been criticised as “overly restrictive and without foundation in historical as well as recent jurisprudence.”⁴³² The prohibition covers both pillage through individual acts without the consent of the military authorities resulting from isolated acts of indiscipline, as well as organised pillage. It therefore also covers officially authorised forms of plundering, when the appropriation of the respective property was not imperatively demanded by military necessity.⁴³³ As a matter of principle, the prohibition extends to all types of property, whether they belong to private persons or to communities or to the State.⁴³⁴ The scope of the prohibition is limited by a belligerent’s right of requisition and seizure.⁴³⁵

‘Attacks’ and cultural property

64. Articles 27 and 56 of the Regulations annexed to Convention (IV) respecting the Laws and Customs of War on Land of 1907,⁴³⁶ and numerous provisions of the Geneva Conventions of 1949, contemplate the protection of cultural property, hospitals, and places where the sick and wounded are collected both during the conduct of hostilities and in situations of occupation.⁴³⁷ Similarly, the prohibitions contained in the 1954 Hague Convention for the

⁴²⁸ UNWCC, LRTWC, Vol. X, 144 et seq. *Trials Of War Criminals Before the Nuremberg Military Tribunals*, “The Krupp Case,” in particular, 23 et seq. and 1338 et seq. Zimmermann and Geiß, mn 8-550. The prohibition of pillage is reiterated in Article 33 of the Fourth Geneva Convention of 1949. See also Article 15(1) of the First Geneva Convention and Article 18(1) of the Second Geneva Convention. Finally, a similar prohibition is also contained in Article 4(2)(g) of the Additional Protocol I of 1977 as well as in Article 4(3) of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. See also Article 3(e) of the ICTY Statute (referring to “plunder of public and private property”), Article 4(f) of the ICTR Statute (“plunder”) as well as section 6(1)(b)(xvi) UNTAET Regulation No. 2000/15 on the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offences, Article 13(b) No.17 of the Statute of the Iraqi Special Tribunal (the wording of both of which is identical to the Rome Statute), and Article 3(f) of the Statute of the Special Court for Sierra Leone (“pillage”). Zimmermann and Geiß, mn 8-551

⁴²⁹ *Prosecutor v Brima et al*, SCSL-04-16-T, Judgement, 20 June 2007, para. 751. See also *Prosecutor v Fofana et al.*, SCSL-04-14-T, Judgement, 2 August 2007, paras. 157-166. Zimmermann and Geiß, mn 8-553.

⁴³⁰ See O’Keefe, Loc. 5099.

⁴³¹ See O’Keefe, Loc 5098 citing *Prosecutor v Hadžihasanović and Kubura*, IT-01-47-AR73.3, Decision on Joint Defence Interlocutory Appeal of Trial Chamber Decision on Rule 98, 11 March 2005, para.37

⁴³² Zimmermann and Geiß, mn 8-554

⁴³³ Zimmermann and Geiß, mn 8-555.

⁴³⁴ Zimmermann and Geiß, mn 8-557

⁴³⁵ The ICC elements of crimes confirm this approach in their footnote 47. Zimmermann and Geiß, mn 8-558.

⁴³⁶ Article 27 of the Hague Regulations of 1907 states: “(1) In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes. (2) It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.” Article 56 states: “The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property. All seizure of, destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.”

⁴³⁷ In particular Articles 19-23 of Geneva Convention I, Articles 22 – 23 of Geneva Convention II, Articles 18 – 19 of Geneva Convention IV, Articles 12 and 53 of Additional Protocol I of 1977. R. Arnold and S. Wehrenberg, Article 8 in *Commentary on the Rome Statute* (Otto Triffterer and Kai Ambos ed., 2016 (hereinafter ‘Arnold and Wehrenberg’), mn 8-424.



protection of cultural property during armed conflict and its Second Additional Protocol of 1999 also protect cultural property.

65. These principles are complemented by the 1977 Additional Protocols to the Geneva Conventions of 1949.⁴³⁸ Article 85(3)(d) of Additional Protocol I states that it is a grave breach of the Protocol to make “clearly-recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement” the “object of attack, causing as a result extensive destruction thereof, where there is no evidence of the use of such objects in support of the military effort of the adverse Party, and for as long as “such historic monuments, works of art and places of worship are not located in the immediate proximity of military objectives.”
66. The scope of the definition of ‘attacks’ on cultural property, as an element of the war crime of attacking protected objects in a non-international armed conflict (prescribed by Article 8(2)(e)(iv) of the Rome Statute), was recently considered by the ICC’s Appeals Chamber in *Ntaganda*.⁴³⁹ Two judges of the Appeals Chamber (Judge Morrison and Judge Hofmański) held that an ‘attack’ on cultural property for these purposes means “combat action”.⁴⁴⁰ Two Judges (Judge Eboe-Osuji and Judge Balungi Bossa) declined to enter convictions on the basis that the charges ought to have been “brought under any special provision that caters better to the conduct charged.” Given that the property of an adversary was “destroyed or seized in a manner that was not compelled by the necessities of the conflict,” in these Judges’ view, it would be “more appropriate to bring the charge under Article 8(2)(e)(xii) of the Rome Statute (which deals with “destroying or seizing”) rather than Article 8(2)(e)(iv) (which deals with “intentionally directing attacks against buildings”).⁴⁴¹ Judge Ibáñez Carranza held that the term “attack” in this context includes the preparation, the carrying out of combat action and the immediate aftermath thereof.⁴⁴²
67. In the *Al-Mahdi* case, by contrast, the accused had pleaded guilty to one count of attacking protected objects in Timbuktu when the territory was under the overall control of a non-State armed group in a situation of non-international armed conflict.⁴⁴³ The Trial Chamber specifically noted that it had not been requested by the parties to characterise the conduct as prohibited destruction but nevertheless proceeded to enter a conviction for attacks on cultural property. The implications of the decision were immediately clear;⁴⁴⁴ indeed, the

⁴³⁸ Article 53(1) of Additional Protocol I, according to which “Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, and of other relevant international instruments, it is prohibited: (a) to commit any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples; (b) to use such objects in support of the military effort; (c) to make such objects the objects of reprisals.” Arnold and Wehrenberg, mn 8-409.

⁴³⁹ ICC-01/04-02/06, *Prosecutor v Bosco Ntaganda*, Prosecutor’s Appeal Brief, 7 October 2019 (hereinafter ‘Prosecutor’s Appeal Brief’), para. 6 [emphasis in original omitted].

⁴⁴⁰ *Prosecutor v Bosco Ntaganda*, ICC-01/04-02/06 A A2, Judgment, Appeals Chamber, 30 March 2021, para. 1164. See also Separate opinion of Judge Howard Morrison and Judge Piotr Hofmański on the Prosecutor’s appeal.

⁴⁴¹ *Prosecutor v Bosco Ntaganda*, ICC-01/04-02/06 A A2, Judgment, Appeals Chamber, 30 March 2021, para. 1164. See also Separate opinion of Judge Solomy Balungi Bossa on the Prosecutor’s appeal; Partly concurring opinion of Judge Chile Eboe-Osuji, paras. 103-137.

⁴⁴² *Prosecutor v Bosco Ntaganda*, ICC-01/04-02/06 A A2, Judgment, Appeals Chamber, 30 March 2021, para. 1164. See also paras. 1165-1168.

⁴⁴³ ICC-01/12-01/15, *Prosecutor v Ahmad Al Faqi Al Mahdi*, Judgment and Sentence, 27 September 2016 (hereinafter ‘*Al Mahdi Judgment*’).

⁴⁴⁴ See W. Schabas, *Al Mahdi Has Been Convicted of a Crime He Did Not Commit*, Case Western Reserve Journal of International Law, Vol. 49(1) (2017).



‘value’ of the *Al Mahdi* precedent is proposed to be relied upon to support the OTP’s broader characterisation of conduct as ‘attacks’ on cultural property in other cases.⁴⁴⁵

68. Before the Appeals Chamber, Mr Ntaganda had argued the term ‘attacks’ should be interpreted in accordance with Article 49(1) of Additional Protocol I, i.e. in line with the “established framework” of international law. Accordingly, he argued, attacks on cultural property are limited to acts committed during the actual conduct of hostilities.⁴⁴⁶ Mr Ntaganda submitted that the *travaux préparatoires* of the Rome Statute evidence that the origin of the offence of attacking protected objects lies in Article 27 of the Hague Regulations, which is a ‘battle-field’ provision directed to the conduct of hostilities.
69. In an *amicus* brief submitted in the course of the litigation, Professor O’Keefe agreed that it was evident from Article 49(1) of Additional Protocol I, and even more evident in the light of Articles 49(2) and (3), 51, 52, 54, 57, and 58 of Additional Protocol I, that an ‘attack’ is an “act of armed violence directed against military forces of an opposing party, provided those forces have not fallen into the power of the party directing the violence, or against persons or objects under the control of an opposing party.”⁴⁴⁷ It does not relate to destruction of such buildings, monuments, hospitals, and places while they are under the control of the destroying party.⁴⁴⁸ Even less does it relate to pillage, seizure or other misappropriation.⁴⁴⁹
70. In his *amicus* Brief, Professor Newton concluded that “acceding to the Prosecutor’s view of Article 8 would represent a fundamental realignment within international humanitarian law that would foreseeably result in deleterious consequences for the conduct of ground operations. Subsuming all aspects of hostilities under the prism of targeting law would not reflect the position of the drafters or the operational experiences of practitioners. Reimagining Article 8(2)(e)(iv) as suggested by the Prosecutor would necessitate a parallel amendment of Article 8(2)(b)(ix) applicable to armed conflicts of an international character. Such revision is inadvisable because military operations are complex circumstances that encompass many other phases than attacks directed against an enemy. It is also unnecessary because other provisions of Article 8 of the Rome Statute provide ample protections to cultural property and all other protected property.”⁴⁵⁰ *De facto* control over an area, or over persons taking no active part in hostilities, displaces the law of targeting as a practical matter

⁴⁴⁵ See e.g. OTP Draft Policy on Cultural Heritage, 23 March 2021, para 45. ICC-01/04-02/06-2588, *Prosecutor v Bosco Ntaganda*, Amicus Curiae Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence on Behalf of the Antiquities Coalition, Blue Shield International and Genocide Watch, 18 September 2020 (hereinafter ‘Antiquities Coalition, Blue Shield International and Genocide Watch Observations’), para. 6: “To find ... that an attack under Article 8(2)(e)(iv) is confined to acts committed during the ‘conduct of hostilities’ would undermine the interpretation of the crime for which Al Mahdi was convicted, and for which Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, Alfred Yekatom and Patrice-Edouard Ngaïssona are to be tried.” In the *Al Mahdi* Trial Judgment, the Trial Chamber had found that the element of “direct[ing] an attack” encompasses any acts of violence against protected objects but it did not make a distinction as to whether the attacks was carried out in the conduct of hostilities or after the object had fallen under the control of an armed group. The Trial Chamber held that the Statute makes no such distinction, which, it stated, reflects the special status of religious, cultural, historical and similar objects. The Chamber considered that it should not change this status by making distinctions not found in the language of the Statute. The Chamber concluded that “international humanitarian law protects cultural objects as such from crimes committed both in battle and out of it.” *Al Mahdi* Judgment, para. 15.

⁴⁴⁶ ICC-01/04-02/06-2449, *Prosecutor v Bosco Ntaganda*, Defence Response to Prosecution Appeal Brief, 9 December 2019.

⁴⁴⁷ O’Keefe Observations, para. 2

⁴⁴⁸ See also O’Keefe Observations, paras. 8, 10

⁴⁴⁹ O’Keefe Observations, paras. 2, 6

⁴⁵⁰ ICC-01/04-02/06-2584, *Prosecutor v Bosco Ntaganda*, Observations of Professor Michael A. Newton on the merits of the legal questions presented by the Appeals Chamber in the Case of The Prosecutor v. Bosco Ntaganda, 17 September 2020 (hereinafter “Newton Observations”), para. 2



because protections derive from other more pertinent provisions of international humanitarian law.⁴⁵¹

71. Like the Prosecutor, other *amici* relied on the ‘value’ of the *Al Mahdi* precedent to support the OTP’s broader interpretation of ‘attacks’.⁴⁵² This type of reasoning is circular. Simply because the *Al Mahdi* case may have established an erroneous precedent does not mean that it should be followed by the Appeals Chamber in another case. We accordingly proceed on the basis that the term “attacks” on cultural property (for the purposes of international criminal law offences under both treaty and customary international law) relate to property located in territory not under the control of the party directing the violence against the property in question.⁴⁵³
72. We have accordingly proceeded on the basis that the term “attacks” in the Rome Statute refers to acts of violence directed against relevant buildings, monuments, hospitals, and places while the latter are under the control of an opposing party, and not under the control of the party directing the violence.⁴⁵⁴

Definition of Cultural Property

73. Article 1 of the 1954 Hague Convention provides a specific legal definition of cultural property for the purposes of the Convention and the Second Protocol.⁴⁵⁵ The definition of cultural property under these instruments covers, *inter alia*, “movable or immovable property of great importance to the cultural heritage of every people,” such as “monuments of architecture, art or history, whether religious or secular,” and “archaeological sites”.⁴⁵⁶
74. As under Articles 27 and 56 of the Hague Regulations of 1907, the term “monuments” in Article 1(a) of the 1954 Hague Convention was taken by the drafters to encompass “constructions of a certain age and design, whatever their purpose, as well as monuments, in the more limited sense, erected to commemorate some event or person.”⁴⁵⁷ Under the 1954 Hague Convention and Second Protocol, the term ‘cultural property’ refers to “movable or immovable property of great importance to the cultural heritage of *every people*” (emphasis added). In other words, in order to constitute cultural property under the Convention, the property must be “of great importance to the national cultural heritage of each respective party.”⁴⁵⁸ Cultural objects “which make up [one state’s] national heritage [are], consequently, the world’s heritage.”⁴⁵⁹
75. Unless a Party to an armed conflict has identified the cultural property located in its territory, and has notified other Parties (under Article 3 of the 1954 Hague Convention) of the identity and location of all such property by means of inventories and/or maps, or has marked all such property with the Convention’s distinctive emblem (as permitted by Article 6), there will be

⁴⁵¹ Newton Observations, para.8

⁴⁵² Antiquities Coalition, Blue Shield International and Genocide Watch Observations, para. 6: “To find ... that an attack under Article 8(2)(e)(iv) is confined to acts committed during the ‘conduct of hostilities’ would undermine the interpretation of the crime for which Al Mahdi was convicted, and for which Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, Alfred Yekatom and Patrice-Edouard Ngaïssona are to be tried.”

⁴⁵³ O’Keefe Observations, paras. 2, 6, 8, 10; Newton Observations, paras.2, 8

⁴⁵⁴ O’Keefe Observations, paras. 2, 6, 8, 10; Newton Observations, paras.2, 8

⁴⁵⁵ See O’Keefe, Loc. 1563, 1572

⁴⁵⁶ 1954 Hague Convention, Article 1(a).

⁴⁵⁷ O’Keefe, Loc. 1572 *citing* UNESCO Docs. 5C/PRG/6, Annex I, para. XV and 7C/PRG/7, Annex 1, p.7

⁴⁵⁸ O’Keefe, Loc. 1596

⁴⁵⁹ O’Keefe, Loc. 1604 *citing* Address by Nagendra Singh at the celebration of the Thirtieth Anniversary of the Hague Convention at Indonesia, 1984 Reports, UNESCO, Doc. CLT/MD/3 p.14 at 15



no conclusive indication of the applicability of the Convention to property situated in the territory of that State. In such a situation, it will ultimately fall by default to the opposing Party to determine, for the purposes of its obligations under the Convention and Second Protocol, which movables and immovables situated in the territory of the first Party satisfy the definition of “cultural property” contained in Article 1(a). In such an event, the opposing Party must “hazard an assessment as to the cultural importance of the property in question to the territorial Party”.⁴⁶⁰ The safest course, according to Professor O’Keefe, is “to err on the side of caution and simply to presume that every example of the sorts of cultural property outlined in [Article 1(a) of the 1954 Hague Convention]... is of great importance to the cultural heritage of the territorial Party and is therefore protected by the Convention.”⁴⁶¹

76. Article 3(d) of the ICTY Statute prescribes that the Tribunal is permitted to exercise jurisdiction over the seizure of, destruction or wilful damage done to “institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science.”⁴⁶² Article 53(a) of Additional Protocol I protects “historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples” from acts of hostility. The ICTY Appeals Chamber accepted that all of “these provisions are largely the same, covering ‘objects whose value transcends geographical boundaries, and which are unique in character and are intimately associated with the history and culture of a people.’”⁴⁶³

Extensive destruction or appropriation of cultural property

77. Article 15(1)(c) of the Second Protocol recognises as an offence extensive destruction or appropriation of cultural property protected under the Convention and the Protocol. The phrase “under the Convention and the Protocol” indicates that the cultural property in question is that protected by general provisions regarding protection embodied in Chapter I of the Convention and Chapter 2 of the Protocol. As a consequence, Article 15(1)(c) relates to the destruction and appropriation of cultural property solely under general protection as well as additionally to cultural property under enhanced protection.⁴⁶⁴ In light of the specific provision in Articles 15(1)(a) and 15(1)(d) for making cultural property under enhanced and general protection respectively the object of “attack”, it is submitted that the reference to “destruction” in Article 15(1)(c) must refer to destruction caused by other means.⁴⁶⁵

Theft, pillage or misappropriation of, or acts of vandalism directed against cultural property

78. Article 15(1)(e) of the Second Protocol recognises the offence of theft, pillage or misappropriation of, or acts of vandalism directed against cultural property protected under the Convention. The cultural property in question is cultural property under general protection alone.⁴⁶⁶ The Second Protocol does not preclude the exercise of jurisdiction under national and international law that may be applicable or affect the exercise of jurisdiction under customary international law.⁴⁶⁷

⁴⁶⁰ O’Keefe, Loc.1712

⁴⁶¹ O’Keefe, Loc.1712

⁴⁶² See *infra* paras.79-84

⁴⁶³ *Prosecutor v Kordić and Čerkez*, IT-95-14/2-A, Judgment, Appeals Chamber, 17 December 2004, para.91 *citing* Commentary on the Additional Protocols, p. 646. In this context, the ICTY Appeals Chamber held that it “cannot see how all educational buildings fulfil these criteria.”

⁴⁶⁴ O’Keefe, Loc.4087

⁴⁶⁵ O’Keefe, Loc.4098

⁴⁶⁶ O’Keefe, Loc.4113

⁴⁶⁷ Article 16(2)(a) of the Second Protocol. See *also* O’Keefe, Loc.4054



Seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science

79. The ICTY Appeals Chamber established that the criminalisation of destruction of objects of property dedicated to education or to religion, charity and education, the arts and sciences, historic monuments and works of art and science forms part of customary international law.⁴⁶⁸ In the war over the former Yugoslavia, the most widespread crime of cultural destruction was the obliteration of houses of worship.⁴⁶⁹ The crimes followed two patterns, the first related to brutal sieges of ethnically and religiously mixed areas, in particular Mostar and Sarajevo. The second was found behind the lines, usually far from the fighting, where minority populations were being expelled, and the cultural property associated with them was deliberately destroyed.⁴⁷⁰
80. The crime comprises the following elements: (1) an intentional act or omission; (2) causing destruction or damage to a cultural or religious object of property; (3) the property did not constitute a military objective within the meaning of Article 52 of Additional Protocol I and (4) the act or omission is perpetrated with intent to destroy the protected property.⁴⁷¹
81. The *Hadžihasanović and Kubura* Trial Chamber recognised the special value of cultural property, even if it is not cultural property of “great importance” (as it is put in Article 1 of the 1954 Hague Convention). The Trial Chamber noted that the severity of the consequences from attacks against religious institutions as cultural property must be assessed differently than attacks more generally against civilian objects. It recognised that religious institutions have “spiritual value” which “go beyond the scope of a single individual and have a communal dimension.”⁴⁷² Moreover, the destruction or damage meets the gravity threshold when it is sufficiently serious to constitute desecration.⁴⁷³
82. Accordingly, the *Hadžihasanović and Kubura* Trial Chamber held that in assessing the severity of the damage done to religious institutions, it would “take much greater account of the spiritual value of the damaged or destroyed property than the material extent of the damage or destruction.”⁴⁷⁴ Vandalizing religious institutions, including writing graffiti and damaging or destroying paintings, statues, steles, frescos, windows and musical instruments, was sufficient to constitute desecration and a crime under Article 3(d) of the ICTY Statute.⁴⁷⁵ *Blaškić* was convicted under Article 3(d) of the ICTY Statute for mining mosques, while *Brđanin* was found guilty under the same provision for destroying mosques and churches with mines and other explosives, for tearing them down with heavy machinery, and for setting them on fire.⁴⁷⁶ The *Prlić* Trial Chamber held that “the destruction of the mosque of Skrobućani... constituted wilful destruction of an institution dedicated to religion.”⁴⁷⁷

⁴⁶⁸ See e.g. *Prosecutor v Kordić and Čerkez*, IT-95-14/2-A, Judgment, Appeals Chamber, 17 December 2004, paras. 91-92.

⁴⁶⁹ Serge Brammertz, Kevin C. Hughes, Alison Kipp, William B. Tomljanovich, “Attacks against Cultural Heritage as a Weapon of War: Prosecutions at the ICTY” *Journal of International Criminal Justice* Volume 14 Issue 5 (December 2016), (hereinafter ‘Brammertz et al’), p.1149

⁴⁷⁰ Brammertz et al, p.1149

⁴⁷¹ See *Prlić* Trial Judgment, para.178

⁴⁷² *Prosecutor v Hadžihasanović and Kubura*, IT-01-47-T, 15 March 2006 (hereinafter ‘*Hadžihasanović and Kubura* Trial Judgment’), para.63

⁴⁷³ *Id.*

⁴⁷⁴ Cf. *Hadžihasanović and Kubura* Trial Judgment, para.63 with Article 15 of the Second Protocol. See also Brammertz et al., p.1155

⁴⁷⁵ *Hadžihasanović and Kubura* Trial Judgment, paras.1998-2005, 2012-2014. See Brammertz et al., p.1155

⁴⁷⁶ O’Keefe, Loc.5071

⁴⁷⁷ *Prlić* Trial Judgment, para. 1601. See also *Prlić* Appeals Judgment, para.68 (dismissing the Petković’s ground of appeal relating to fair notice of the allegations of damage in Skrobućani).



83. The *Strugar* Trial Chamber, endorsing the “established jurisprudence” of the Tribunal in *Blaškić*,⁴⁷⁸ *Kordić*,⁴⁷⁹ *Naletilić*,⁴⁸⁰ and *Brđanin*,⁴⁸¹ stated that the only exception to the prohibition on acts of hostility against cultural property is when it is used for military purposes.⁴⁸² However, this does not accurately state the customary rule, which accepts that “attacks” against cultural property are not unlawful if by their nature, location, purpose or use such property makes an effective contribution to military action and its total or partial destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage.⁴⁸³
84. As to *mens rea*, the perpetrator of the crime must act with intent to destroy the protected property.⁴⁸⁴

Crimes against humanity

85. To constitute a crime against humanity, a person’s criminal acts must have a nexus with a widespread or systematic attack directed against a civilian population. The ICTY Appeals Chamber interpreted these (so-called) “chapeau” requirements of crimes against humanity as comprising five elements:
- a. There must be an attack;
 - b. The Accused’s acts must be part of the attack;
 - c. The attack must be directed against any civilian population;
 - d. The attack must be widespread or systematic; and
 - e. The perpetrator must know that his acts are part of a pattern of widespread or systematic crimes directed against a civilian population and know that his acts fit into such a pattern.⁴⁸⁵
86. The reason that crimes against humanity so shock the conscience of mankind and warrant intervention by the international community is because they are not isolated, random acts of individuals, but rather result from a deliberate attempt to target a civilian population.⁴⁸⁶ It remains unsettled whether the existence of a State or organisational policy is an element of

⁴⁷⁸ *Blaškić* Trial Judgment, para.185

⁴⁷⁹ *Kordić and Čerkez* Trial Judgment, paras.361-2

⁴⁸⁰ *Naletilić* Trial Judgment, paras.603 – 605

⁴⁸¹ *Brđanin* Trial Judgment, para.598

⁴⁸² *Strugar* Trial Judgment, para.310. *See also* O’Keefe, Loc.5026

⁴⁸³ O’Keefe, Loc.5038

⁴⁸⁴ *Prlić* Trial Judgment, para. 178. *Cf.* O’Keefe, Loc.5046

⁴⁸⁵ *Prosecutor v Kunarac*, IT-96-23 and IT-96-23/1-A, Appeals Judgment, 12 June 2002 (“*Kunarac* Appeals Judgment”), para. 85; *Prosecutor v Tadić*, IT-94-1-A, Appeals Judgment, 15 July 1999 (“*Tadić* Appeals Judgment”), para. 248. *See also* *Prosecutor v. Gotovina*, IT-06-90-T, Judgment, 15 April 2011 (“*Gotovina* Trial Judgment”), para. 1701; *Prosecutor v. Popović et al.*, IT-05-88-T, Judgment, 10 June 2010 (“*Popović* Trial Judgment”), para.751

⁴⁸⁶ *Tadić* Trial Judgment, para.653



crimes against humanity under customary international law.⁴⁸⁷ In any event, the existence of a plan or a policy may be a critical element in establishing individual responsibility.⁴⁸⁸

Crimes against humanity: attack

87. An “attack” involves multiple acts.⁴⁸⁹ “Multiple acts” means more than a few isolated incidents or acts.⁴⁹⁰ The *Kenya* ICC Pre-Trial Chamber confirmed an “attack” as “a campaign or operation carried out against the civilian population.”⁴⁹¹ It follows that even a systematic attack has to involve more than a few incidents. The occurrence of multiple acts alone would not be sufficient to correctly define the term, since an “attack” is something more than “a mere aggregate of random acts”.⁴⁹²
88. An attack on a civilian population is not the same as an armed conflict.⁴⁹³ It is not limited to the use of armed force; it includes any mistreatment of a civilian population.⁴⁹⁴ An “attack” is formed of conduct causing physical or mental injury, as well as acts preparatory to such conduct and,⁴⁹⁵ has been defined as the perpetration of a series of acts of violence or of the kinds of mistreatment enumerated as underlying crimes against humanity.⁴⁹⁶ The attack is

⁴⁸⁷ See, on the one hand, IMT Judgement, para. 254, referring to the “policy of terror” and “policy of persecution, repression, and murder of civilians.” See also *Korbely v Hungary*, Judgement: Dissenting Opinion of Judge Loucaides, European Court of Human Rights Grand Chamber (no. 3174/02), 19 September 2008, para. 83. See also Final Report of the Commission of Experts, Established Pursuant to Security Council Resolution 780 (1992), United Nations Security Council, S/1994/674, 27 May 1994, cited in M. Cherif Bassiouni and Peter Manikas, *The Law of the International Criminal Tribunal for the Former Yugoslavia* 543 (Transnational Publishers 1996) (hereinafter ‘Bassiouni and Manikas’). See also *Public Prosecutor v. Menten*, The Netherlands, District Court of Amsterdam, Extraordinary Penal Chamber, reprinted in 75 Int’l. L. Rep. 362-63 (1981): “The concept of ‘crimes against humanity’ also requires ... that the crimes in question form a part of a system based on terror or constitute a link in a consciously pursued policy directed against particular groups of people”; Bassiouni, *Crimes Against Humanity in International Criminal Law* 243-65, 277, 558: “State action or policy is the essential characteristic of ‘crimes against humanity’”; Bassiouni and Manikas 548, “the inclusion of persecution as a separately enumerated crime against humanity in the ICTY Statute “implies the removal of the requirement under 6(c) of the IMT Charter that such persecutions form a policy of persecution”. But see *Kordić and Čerkez* Appeal Judgement, para. 98; *Prosecutor v. Blaškić*, IT-95-14-A, Judgement, 29 July 2004 (“*Blaškić* Appeal Judgement”), para. 120; *Prosecutor v. Blagojević and Jokić*, IT-02-60-T, Judgement, 17 January 2005 (hereinafter ‘*Blagojević and Jokić* Trial Judgement’), para.576; *Brđanin* Trial Judgement, para. 137; *Prosecutor v. Limaj et al.*, IT-03-66-T, Judgement, 30 November 2005, paras.184, 212

⁴⁸⁸ See, e.g., *Brammertz et al.*, p.1162

⁴⁸⁹ See e.g. ICC Statute, Article 7(2)(a). See also, e.g. *Prosecutor v. Blé Goudé*, ICC-02/11-02/11-186, Decision on the Confirmation of Charges, Pre-Trial Chamber I, 11 December 2014, para.125 (“a course of conduct involving the multiple commission of acts”).

⁴⁹⁰ *Prosecutor v. Bemba*, ICC-01/05-01/08-424, Confirmation Decision, Pre-Trial Chamber, 15 June 2009, para.81

⁴⁹¹ See *Situation in the Republic of Kenya*, ICC-01/09-19, Decision on the Authorisation of Investigation, Pre-Trial Chamber, 31 March 2010, para. 80. See also *Prosecutor v. Bemba*, ICC-01/05-01/08-424, Confirmation Decision, Pre-Trial Chamber, 15 June 2009, para. 75; *Situation in the Republic of Côte d’Ivoire*, ICC-02/11-14-Corr, Corrigendum to “Decision Pursuant to article 15 of the Rome Statute on the Authorisation of an Investigation”, 15 November 2011, para. 31; *Prosecutor v. Ruto et al.*, ICC-01/09-01/11-373, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, Pre-Trial Chamber II, 23 January 2012, para. 164.

⁴⁹² See *Prosecutor v. Gbagbo*, ICC-02/11-01/11-656-Red, Decision on the Confirmation of Charges, Pre-Trial Chamber I, 12 June 2014, para.209 (“embodies a systemic aspect as it describes a series or overall flow of events as opposed to a mere aggregate of random acts.”)

⁴⁹³ *Kunarac* Appeals Judgement, para.86; *Tadić* Appeals Judgement, para.251.

⁴⁹⁴ *Kunarac* Appeals Judgement, para.86. See also *Prosecutor v. Sesay et al.*, SCSL-04-15-T, Judgement, 2 March 2009 (hereinafter ‘*RUF* Trial Judgement’), para.77

⁴⁹⁵ *Prosecutor v. Krajišnik*, IT-00-39-T, Judgement, 27 September 2006 (“*Krajišnik* Trial Judgement”), para.706

⁴⁹⁶ See, at the ICTR, *Prosecutor v. Nahimana*, ICTR-99-52-A, Appeals Judgement, 28 November 2007 (“*Nahimana* Appeals Judgement”), para. 918; *Prosecutor v. Semanza*, ICTR-97-20-T, Judgement, 15 May 2003 (“*Semanza* Trial Judgement”), para. 327; *Prosecutor v. Renzaho*, ICTR-98-13-T, Judgement, 14 July 2009 (“*Renzaho* Trial Judgement”), para.782



the event in which the enumerated crimes must occur.⁴⁹⁷ Within a single attack, a combination of the enumerated crimes may occur.⁴⁹⁸

Crimes against humanity: directed against a civilian population

89. The Accused's acts must form part of an attack directed against a civilian population.⁴⁹⁹ To establish that an attack was directed against a "population," it is sufficient to show that "enough individuals were targeted in the attack,"⁵⁰⁰ or that they were targeted in such a way as to establish to the criminal standard that the target was a population, rather than a "limited and randomly selected number of individuals."⁵⁰¹
90. A crime against humanity is characterised by both the status of the victim as a civilian and the scale on which the crime is committed or the level of organisation involved.⁵⁰² There is an absolute prohibition in customary international law against targeting civilians.⁵⁰³ In a criminal trial, the prosecution bears the burden of proving the status of victims as civilians.⁵⁰⁴ Article 23 and 50 of Additional Protocol I to the Geneva Conventions, and Article 4A of the Third Geneva Convention, define "civilians" and "civilian populations."⁵⁰⁵ Together, they establish that members of armed forces, and members of militias or volunteer corps forming part of such armed forces, cannot claim civilian status.⁵⁰⁶ Nevertheless, the civilian population need only be "predominantly civilian" to have civilian status.⁵⁰⁷ The presence within a civilian population of members of resistance groups or former combatants who have laid down their arms does not alter the population's civilian status.⁵⁰⁸ To determine whether the presence of soldiers within a civilian population alters its status as civilian, a Tribunal must examine the number of soldiers present and whether they are on leave.⁵⁰⁹
91. Thus, the requirement that an Accused's acts must be part of an attack directed against a civilian population does not imply that the acts must be committed *only* against civilians.⁵¹⁰ The *chapeau* of crimes against humanity requires only a showing that an attack was primarily directed against a civilian population, rather than "against a limited and randomly selected number of individuals."⁵¹¹ There is no requirement under customary international law that individual victims of crimes against humanity be civilians.⁵¹²

⁴⁹⁷ *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Judgement, 21 May 1999 ("*Kayishema and Ruzindana* Trial Judgement"), para.122

⁴⁹⁸ *Kayishema and Ruzindana* Trial Judgement, para.122

⁴⁹⁹ *Tadić* Appeals Judgement, para. 248; *Prosecutor v. Blaškić*, IT-95-14-A, Appeals Judgement, 29 July 2004 ("*Blaškić* Appeals Judgement"), para. 98; *Kunarac* Appeals Judgement, para.85

⁵⁰⁰ *Kunarac* Appeals Judgement, para.90

⁵⁰¹ *Kunarac* Appeals Judgement, para.90

⁵⁰² *Blaškić* Appeals Judgement, para.107

⁵⁰³ *Blaškić* Appeals Judgement, para.109

⁵⁰⁴ *Blaškić* Appeals Judgement, para.111

⁵⁰⁵ *Blaškić* Appeals Judgement, paras.110, 112

⁵⁰⁶ *Blaškić* Appeals Judgement, para.113

⁵⁰⁷ *Prosecutor v. Mrkšić*, IT-95-13/1-A, Appeals Judgement, 5 May 2009 ("*Mrkšić* Appeals Judgement"), para.25

⁵⁰⁸ *Blaškić* Appeals Judgement, para. 113. See also *Mrkšić* Appeals Judgement, para.32

⁵⁰⁹ *Blaškić* Appeals Judgement, para.115 citing Additional Protocol I, Commentary, Art. 50(1), p.612, para.1922: "[I]n wartime conditions it is inevitable that individuals belonging to the category of combatants become intermingled with the civilian population, for example, soldiers on leave visiting with their families. However, provided that these are not regular units with fairly large numbers, this does not in any way change the civilian character of a population."

⁵¹⁰ *Prosecutor v. Martić*, IT-95-11-A, Appeals Judgement, 8 October 2008 ("*Martić* Appeals Judgement"), para.305

⁵¹¹ *Martić* Appeals Judgement, para. 305 citing *Kunarac* Appeals Judgement, para.90

⁵¹² *Martić* Appeals Judgement, paras. 307, 309



92. Put another way, to determine whether an attack was “directed against” a civilian population, a Chamber must determine whether the civilian population was the “primary object” of the attack.⁵¹³ If the civilian population was an incidental target, the attack would not be considered “directed against” a civilian population.⁵¹⁴ Factors that a Chamber may consider in reaching such a determination include, *inter alia*: the means and methods used in the course of the attack; the status of the victims; the number of victims; the discriminatory nature of the attack; the nature of the crimes committed in the course of the attack; the resistance to the assailants at the time of the attack; and the extent to which the attacking force complied or attempted to comply with the precautions of the laws of war.⁵¹⁵ To the extent that the alleged crimes against humanity were committed in the course of an armed conflict, the laws of war may offer the Chamber a benchmark by which to assess the nature of the attack and the legality of acts committed in the midst of the attack.⁵¹⁶
93. The assessment of whether an attack was directed against a civilian population was to be made on a case-by-case basis.⁵¹⁷ In addition to the factors cited above, the *Perišić* Trial Chamber stated that it would consider the distance between the victims and the source of fire; the ongoing combat activity at the time and location of the incident. The Trial Chamber further held the presence of military activities or facilities in the vicinity of the incident, as well as victims’ appearance, including their age, gender, clothing, and activity may also be relevant.⁵¹⁸
94. It is incorrect to conclude that widespread or systematic attacks against a civilian population cannot be characterised as crimes against humanity simply because the ultimate objective of the fighting force was legitimate and/or aimed at responding to aggressors.⁵¹⁹ Rules of international humanitarian law apply equally to both sides of a conflict, irrespective of who is the “aggressor,” and the absolute prohibition under international customary and conventional law on targeting civilians precludes military necessity or any other purpose as a justification.⁵²⁰ Finally, it need not be shown that civilians were targeted because of some distinguishable characteristic of the civilian population, e.g. their ethnicity.⁵²¹

Crimes against humanity: widespread or systematic

95. The element of “widespread or systematic” is disjunctive. A widespread attack need not be systematic, and *vice versa*, and each term has distinct and different qualities.⁵²² Nor do individual acts need to be widespread or systematic; it is the attack itself which must be either widespread or systematic.⁵²³

⁵¹³ *Kunarac* Appeals Judgement, para. 91.

⁵¹⁴ *Kunarac* Appeals Judgement, para. 92.

⁵¹⁵ *Kunarac* Appeals Judgement, para. 91; *Prosecutor v. Galić*, IT-98-29-A, Appeals Judgement, 30 November 2006 (“*Galić* Appeals Judgement”), para. 132; *Blaškić* Appeals Judgement, para. 106.

⁵¹⁶ *Kunarac* Appeals Judgement, para. 91.

⁵¹⁷ *Strugar* Appeal Judgement, para. 271; *Galić* Appeal Judgement, para. 133; *Prosecutor v. Perišić*, IT-04-81-T, Judgement, 6 September 2011 (“*Perišić* Trial Judgement”), para. 95.

⁵¹⁸ *Perišić* Trial Judgement, para. 95. It should be noted that the *Perišić* Trial Chamber stated these additional factors when assessing whether an attack had occurred against a civilian population when assessing the war crime of attacking civilians in violation of Article 3 of the Statute.

⁵¹⁹ *Prosecutor v. Fofana*, SCSL-04-14-A, Appeals Judgment, 28 May 2008 (hereinafter ‘CDF Appeals Judgement’), para. 247

⁵²⁰ *CDF* Appeals Judgement, para. 247

⁵²¹ *CDF* Appeals Judgement, para. 263

⁵²² *Kunarac* Appeals Judgement, para. 93. See also *Hall and Ambos in Triffterer*, mn-106

⁵²³ *Kunarac* Appeals Judgement, para. 96



96. The word ‘widespread’ refers to the large-scale nature of the attacks and the number of victims.⁵²⁴ The word ‘systematic’ refers to the organised nature of the acts and the improbability of their random occurrence.⁵²⁵ A common indicator of systematic attacks is the existence of a pattern of crimes, i.e. “the non-accidental repetition of similar criminal conduct on a regular basis.”⁵²⁶
97. To assess whether an attack was widespread or systematic, a Chamber must: (1) identify the population that was the object of the attack; and (2) examine the means, methods, resources, and results of the attack upon the population.⁵²⁷ In making this assessment, a Chamber may consider the consequences of the attack upon the targeted population; the number of victims; the nature of the acts; the possible participation of any officials or authorities; or any identifiable patterns of crimes.⁵²⁸ An attack against a civilian population may be classified as systematic even where some members of the civilian population were not targeted.⁵²⁹ For example, the *D. Milošević* Trial Chamber determined that a widespread attack occurred when evidence was presented of “a very large number of attacks by way of mortars, modified air bombs and sniping, spread out over the entire city of Sarajevo over a prolonged period of time”; there is no need to prove a ‘campaign’.⁵³⁰ The same Trial Chamber found evidence of a systematic attack as a result of “the organised manner in which trams were sniped ... and the use of shelling and sniping by the [Sarajevo-Romanija Corps (“SRK”)] as both a means of retaliation and to achieve political objectives.”⁵³¹
98. Removing a particular national or ethnic group from an area will almost always involve widespread or systematic attacks against the civilian population and the denial of fundamental human rights.⁵³²

Crimes against humanity: nexus between underlying acts and attack

99. To constitute a crime against humanity, an Accused’s acts must be part of the attack.⁵³³ There are two elements to the required nexus between the acts and the attack: (1) the commission of an act which, by its nature or consequences, is objectively part of the attack; and (2) the Accused’s knowledge that there is an attack on a civilian population and that his act is part of that attack (*mens rea*).⁵³⁴
100. To satisfy the *mens rea* requirement for crimes against humanity, the Accused must: (i) have had the intent to commit the underlying offence or offences with which he is charged;⁵³⁵ (ii) he must know that there is an attack on a civilian population;⁵³⁶ and (iii) he must know that

⁵²⁴ *Kunarac* Appeals Judgement, para. 94; *Blaškić* Appeals Judgement, para. 101; *Kordić and Čerkez* Appeals Judgement, para. 94.

⁵²⁵ *Kunarac* Appeals Judgement, para. 94; *Blaškić* Appeals Judgement, para. 101; *Kordić and Čerkez* Appeals Judgement, para. 94.

⁵²⁶ *Kunarac* Appeals Judgement, para. 94 citing *Kunarac* Trial Judgement, para. 429; *Blaškić* Appeals Judgement, para. 101.

⁵²⁷ *Kunarac* Appeals Judgement, para. 95.

⁵²⁸ *Kunarac* Appeals Judgement, para. 95.

⁵²⁹ *Prosecutor v. Stakić*, IT-97-24-A, Appeals Judgement, 22 March 2006 (“*Stakić* Appeals Judgement”), para. 247 citing *Kunarac* Appeals Judgement, para. 90.

⁵³⁰ *Prosecutor v. D. Milošević*, IT-98-29/1-T, Judgement, 12 December 2007 (“*D. Milošević* Trial Judgement”), para. 927.

⁵³¹ *D. Milošević* Trial Judgement, para. 927.

⁵³² See Brammertz *et al.*, 1162.

⁵³³ *Kunarac* Appeals Judgement, para. 99.

⁵³⁴ *Kunarac* Appeals Judgement, para. 99; *Mrkšić* Appeals Judgement, para. 41.

⁵³⁵ *Kunarac* Appeals Judgement, para. 102; *Blaškić* Appeals Judgement, para. 124.

⁵³⁶ *Kunarac* Appeals Judgement, para. 102; *Blaškić* Appeals Judgement, para. 126; *Kordić and Čerkez* Appeals Judgement, para. 100.



his acts are related to the attack against a civilian population,⁵³⁷ or at least take the risk that his acts were part of the attack.⁵³⁸ It is not required that the Accused knows the details of the attack.⁵³⁹ Evidence of the Accused's knowledge depends on the facts of a particular case; accordingly, the manner in which *mens rea* may be proved may vary from case to case.⁵⁴⁰

Specific Crime Against Humanity: (a) Murder

101. To be characterised as a crime against humanity, a murder must have been committed as part of widespread or systematic attack against a civilian population.⁵⁴¹ There must be a nexus between the accused's acts and a widespread or systematic attack against a civilian population.

102. In addition to the 'chapeau' requirements of establishing a crime against humanity, the specific elements of the offence of murder as a crime against humanity are: (a) the death of one or more persons; (b) the death of the person(s) was caused by an act or omission of the accused; and (c) the accused intended to either kill or to cause serious bodily harm in the reasonable knowledge that it would likely result in death.⁵⁴²

103. To fulfil the *actus reus* for murder as an underlying offence, the death of an individual must occur.⁵⁴³ A trial chamber may consider forensic evidence and evidence from witnesses who observed the incident or otherwise can provide information about the circumstances of the death.⁵⁴⁴ For example, the Trial Chamber in *Kvočka* found that the offence of murder as a crime against humanity was established through the identification of individual victims by name; witness testimony about the killing of unidentified men; witness testimony about observing piles of dead bodies; and testimony about observing the murder of detainees.⁵⁴⁵ Proof of the death does not necessarily require proof that the victim's body was recovered; the fact of a death can be inferred circumstantially from the evidence presented to a trial chamber.⁵⁴⁶

104. The victim's death or injury must have been caused by an act or omission of the perpetrator.⁵⁴⁷ However, it is not a requirement of murder as a crime against humanity for the accused to have personally committed the killing.⁵⁴⁸ Causation may be sufficiently

⁵³⁷ *Tadić* Appeals Judgement, paras. 255, 271; *Kunarac* Appeals Judgement, para. 102; *Blaškić* Appeals Judgement, para. 124; *Kordić and Čerkez* Appeals Judgement, para. 100.

⁵³⁸ *Kunarac* Appeals Judgement, para. 102 citing *Kunarac* Trial Judgement, para. 434.

⁵³⁹ *Kunarac* Appeals Judgement, para. 102.

⁵⁴⁰ *Blaškić* Appeals Judgement, para. 126.

⁵⁴¹ *Kordić and Čerkez* Trial Judgement, para. 236. See *Kayishema and Ruzindana* Trial Judgement: "The crimes must be committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds. The crimes themselves need not contain the three elements of the attack (i.e. widespread or systematic, against any civilian population, on discriminatory grounds), but must form *part of* such an attack." *Kayishema* Trial Judgement, para. 135

⁵⁴² Specific wording from the *RUF* Trial Judgement, para. 138. See also *CDF* Trial Judgement, para. 143; *Gotovina* Trial Judgement, para. 1725; *Kvočka* Appeals Judgement, para. 261; *Oric* Trial Judgement, para. 346

⁵⁴³ *Kayishema and Ruzindana* Trial Judgement, para. 140

⁵⁴⁴ *Gotovina* Trial Judgement, para. 1728.

⁵⁴⁵ *Prosecutor v. Kvočka*, IT-98-30/1-T, Judgement, 2 November 2001 ("*Kvočka* Trial Judgement"), para. 135.

⁵⁴⁶ *Kvočka* Appeals Judgement, para. 260; *Prosecutor v. Krnojelac*, IT-97-25-T, Judgement, 15 March 2002 ("*Krnojelac* Trial Judgement") para. 326.

⁵⁴⁷ *Gotovina* Trial Judgement, para. 1725; *Kvočka* Appeals Judgement, para. 261.

⁵⁴⁸ In *Ntakirutimana*: "Personal commission is only one of the modes of liability identified under Article 6(1) of the ICTR Statute. All modes of liability under that Article are applicable to the crimes defined in Articles 2 to 4 of the Statute. Similarly, an accused can also be convicted of a crime defined in Articles 2 to 4 of the Statute on the basis of his responsibility as a



established by evidence that the accused's act or omission 'contributed substantially' to the death of the person;⁵⁴⁹ however, whilst causation may be inferred from the circumstances of the case, that conclusion must be the only reasonable inference to be drawn from the evidence adduced at trial.⁵⁵⁰

105. The accused's act or omission, or the act or omission of persons for whom the accused is criminally responsible, must have been committed with the intent to kill the victim or to wilfully cause serious bodily harm which the accused should reasonably have known might lead to death.⁵⁵¹
106. The *mens rea* is not confined to direct intent, but extends to cases where the accused has indirect intent.⁵⁵² Direct intent requires the accused's desire to cause the death of the victim as a result of his act or omission, whereas indirect intent is established by evidence of knowledge that the victim's death was a *probable* consequence of his act or omission.⁵⁵³ In *Martić*, the Trial Chamber did not consider it sufficient to establish that the accused knew that death would be a *possible* consequence of his act or omission.⁵⁵⁴ Negligence and gross negligence cannot be construed as indirect intent.⁵⁵⁵
107. Regarding the identity of victims, there is no requirement for the accused to have intended to target a certain individual; indiscriminate intent to kill whoever is fatally injured as a result of the accused action is sufficient to establish the *mens rea*.⁵⁵⁶ In *Semanza*, the Trial Chamber emphasised that for crimes against humanity it was sufficient that the accused had a premeditated intention to murder civilians as part of the widespread or systemic attack on discriminatory grounds.⁵⁵⁷
108. To assess the *mens rea*, the Trial Chamber may consider forensic evidence about the cause of death and injuries and other evidence concerning the circumstances surrounding the incidents.⁵⁵⁸ For example, the Trial Chamber in *Popović* found that the intent to kill the victims was demonstrated by the facts that the Bosnian Muslim men who had been detained were

superior according to Article 6(3) of the ICTR Statute." *Prosecutor v. Ntakirutimana*, ICTR-96-10-A and ICTR-96-17-A, Appeals Judgement, 13 December 2004 ("*Ntakirutimana* Appeals Judgement"), para.546

⁵⁴⁹ *Prosecutor v. Milutinović*, IT-05-87-T, Judgement, Vol. 1, 26 February 2009 ("*Milutinović* Trial Judgement – Vol. 1"), para. 137. In *Gotovina*, to assess whether a death was caused by the accused's act or omission, the Trial Chamber considered forensic evidence and evidence from witnesses who observed the incident or could provide information about the circumstances of the death. *Gotovina* Trial Judgement, para. 1728; *RUF* Trial Judgement, para. 139; *Oric* Trial Judgement, para. 347; *Brdjanin* Trial Judgement, para.382

⁵⁵⁰ *Milutinović* Trial Judgement – Vol. 1, para.137. See also *Kvočka et al* Appeals Judgement, para. 260; *Oric* Trial Judgement, para.347

⁵⁵¹ Specific wording from *Kvočka* Appeals Judgement, para. 261. In *RUF* Trial Judgement, para. 140: "the *mens rea* of murder can be established by either the intention to kill or the intention to cause serious bodily harm in the reasonable knowledge that it would likely result in death."

⁵⁵² *Perišić* Trial Judgement, para. 104. See also *Strugar* Trial Judgement, para.235

⁵⁵³ *Martić* Trial Judgement, para. 60. See also *Perišić* Trial Judgement, para.104; *Strugar* Trial Judgement, para.235

⁵⁵⁴ *Martić* Trial Judgement, para. 60. It was noted in the *Strugar* Trial Judgement that the precise wording of indirect intent has varied between decisions, but that the Appeals Chamber had confirmed that the awareness of a mere possibility that a crime will occur is not sufficient. See *Strugar* Trial Judgement, para. 235. In *Blaskić*, the Appeals Chamber held that a "person who orders an act or omission with the awareness of the substantial likelihood that a crime will be committed in the execution of that order, has the requisite *mens rea* for establishing liability under Article 7(1) pursuant to ordering. Ordering with such awareness has to be regarded as accepting that crime." *Blaskić* Appeals Judgement, para.42

⁵⁵⁵ *Perišić* Trial Judgement, para.104

⁵⁵⁶ *Martić* Trial Judgement, para.60

⁵⁵⁷ *Semanza* Trial Judgement, para.339

⁵⁵⁸ *Gotovina* Trial Judgement, para.1729



killed at their detention sites or were taken to an execution site where they were lined up and killed.⁵⁵⁹

109. Deaths resulting from shelling have formed the basis for charges of murder before international tribunals. It was noted in *Strugar* that the jurisprudence of the ICTY seemed to have accepted that where “a civilian population is subject to an attack such as an artillery attack, which results in civilian deaths, such deaths may appropriately be characterised as murder, when the perpetrators had knowledge of the probability that the attack would cause death.”⁵⁶⁰

110. In *Strugar*, the Trial Chamber considered charges of murder arising out of an artillery attack on Dubrovnik in December 1991, where the deaths were alleged to have resulted from shelling by forces under the command of the accused.⁵⁶¹ In *Galić*, the Trial Chamber convicted the accused for murder as a crime against humanity for his role in “a coordinated and protracted campaign of artillery and mortar shelling onto civilian areas of Sarajevo and its civilian population.”⁵⁶² Whilst the Trial Chamber found that certain civilians were deliberately targeted⁵⁶³ it also referenced incidents where civilian deaths resulted from an attack “indiscriminate as to its target ... and was carried out recklessly, resulting in civilian casualties”.⁵⁶⁴

111. *Karadžić* was convicted of crimes arising from the shelling of Sarajevo, which was described by the Trial Chamber as ‘disproportionate’ and ‘indiscriminate’. The Trial Chamber inferred that these attacks were “directed against civilians.”⁵⁶⁵ This inference led the Trial Chamber to determine that one of the shelling of Sarajevo between 5 and 8 June 1992, along with other shelling and sniping incidents, constituted murder as a crime against humanity.⁵⁶⁶

Specific Crime Against Humanity: (b) Persecution

112. The crime of persecution under customary international law requires proof of the following elements: (i) an act or omission discriminated in fact on a prohibited ground in the sense that the victim is targeted because of his or her perceived membership in a group; (ii) the act or omission denied or infringed upon a fundamental right laid down in customary international law or treaty law; (iii) the act or omission constituted an underlying acts constituting a crime against humanity, or was of equal gravity to underlying acts of crimes against humanity, whether considered in isolation or in conjunction with other acts; and (iv) the act or omission was carried out with the intention to discriminate on one of the prohibited grounds.⁵⁶⁷

⁵⁵⁹ In *Popović*, the Trial Chamber found that many of the executions occurred at point-blank range and that at many of the execution sites heavy machinery was used to dig holes in the ground to dispose of the bodies before, during, or after the executions. See *Popović* Trial Judgement, para. 795

⁵⁶⁰ Further, “whether or not that is so, given the acceptance of an indirect intent as sufficient to establish the necessary *mens rea* for murder and wilful killing, there appears to be no reason in principle why proof of a deliberate artillery attack on a town occupied by a civilian population would not be capable of demonstrating that the perpetrators had knowledge of the probability that death would result.” *Strugar* Trial Judgement, para. 240

⁵⁶¹ *Strugar* Trial Judgement, para. 237

⁵⁶² See Counts 5-7(‘Shelling’), Indictment, *Prosecutor v Stanislav Galić*, quoted in *Strugar* Trial Judgement, para. 238

⁵⁶³ *Galić* Trial Judgement, paras. 438-496, quoted in *Strugar* Trial Judgement, para. 238

⁵⁶⁴ *Galić* Trial Judgement, paras. 331-345, quoted in *Strugar* Trial Judgement, para. 238

⁵⁶⁵ *Karadžić* Trial Judgement, para. 4623, quoted in *Karadžić* Appeals Judgement, para. 478

⁵⁶⁶ *Prosecutor v Karadžić*, MICT-13-55-A, Judgement, 20 March 2019 (hereinafter “*Karadžić* Appeals Judgement”), para. 478 quoting *Karadžić* Trial Judgement, paras. 4612, 4618, fn 15512. This finding was undisturbed on appeal. See *Karadžić* Appeals Judgement, para. 509

⁵⁶⁷ See e.g. *Prosecutor v Brđanin*, IT-99-36-A, Judgement, Appeals Chamber, 3 April 2007 (hereinafter “*Brđanin* Appeals Judgement”), para. 296; *Brđanin* Trial Judgment, 992-997. See Brammertz *et al.*, 1161



113. The IMT at Nuremberg held that the unlawful destruction and plunder of cultural property in the occupied territories of the East amounted not only to war crimes but also to crimes against humanity.⁵⁶⁸ There is a substantial body of case law from the ICTY holding that under certain circumstances the destruction of property may constitute the crime against humanity of persecution:⁵⁶⁹ “all of humanity is indeed injured by the destruction of a unique religious culture and its concomitant cultural objects.”⁵⁷⁰ Accordingly, the “destruction and wilful damage of institutions dedicated to Muslim religion or education, education, coupled with the requisite discriminatory intent, may amount to an act of persecution.”⁵⁷¹ The *Blaškić* Trial Chamber held that the crime against humanity of persecutions contained in Article 5(h) of the ICTY Statute, “encompasses not only bodily and mental harm and infringements upon personal freedom but also acts which appear less serious, such as those targeting property, so long as the victimised persons were specially selected on grounds linked to their belonging to a particular community.”⁵⁷² The Chamber accepted the prosecution’s contention that persecution could take the form of the confiscation or destruction of symbolic buildings belonging to the Muslim population of Bosnia-Herzegovina.⁵⁷³
114. The *Karadžić* Trial Chamber concluded that Serb forces heavily damaged mosques and Catholic churches as well as other cultural monuments and sacred sites “with discriminatory intent against Bosnian Muslims and Bosnian Croats.” It said that “these incidents of wanton destruction of private and public property, including cultural monuments and sacred sites, constitute acts of persecution as a crime against humanity.”⁵⁷⁴
115. The *Prlić* Trial Chamber concluded that the crime against humanity of persecution had been committed because of a number of acts, including the burning of mosques in Sović and Doljani.⁵⁷⁵ The destruction of the Sultan Selim Mosque in the town of Stolac was also deemed the crime against humanity of persecution,⁵⁷⁶ as was the demolition of a mosque in Čapljina.⁵⁷⁷
116. We are also mindful of ongoing discussion of the elements of crimes against humanity at the International Law Commission (ILC). The ILC’s Draft Convention currently proposes a definition of persecution as a crime against humanity that requires a nexus between the underlying act of persecution with other enumerated crimes against humanity.⁵⁷⁸ We have concluded that the definition of persecution under customary law remains as it was applied by the ICTY, although we will keep the situation under review.

⁵⁶⁸ O’Keefe, Loc. 5119 *citing* IMT Judgement.

⁵⁶⁹ W. Schabas, Al Mahdi Has Been Convicted of a Crime He Did Not Commit, Case Western Reserve Journal of International Law, Vol. 49(1) (2017), 99 *citing* *Blaškić* Appeals Judgement, para. 149

⁵⁷⁰ *Kordić and Čerkez* Trial Judgment, para. 207. *See also* T. Meron, The Protection of the Cultural Property in the Event of Armed Conflict within the case-law of the International Criminal Tribunal for the former Yugoslavia, UNESCO Symposium on the 50th Anniversary of the 1954 Convention for the Protection of Cultural Property in Armed Conflict, 14 May 2004, p.9.

⁵⁷¹ *Kordić and Čerkez* Trial Judgment, para. 207. *See also* *Krajišnik* Trial Judgement, para. 781; *Brammertz et al.*, 1161

⁵⁷² *Blaškić* Trial Judgement, para. 233. *See also* *Prosecutor v. Tadić*, IT-94-1, Judgement, Trial Chamber, 2 October 1995 (hereinafter “*Tadić* Trial Judgment”), paras. 703-4

⁵⁷³ *Blaškić* Trial Judgement, para. 227. *See also* *Kordić and Čerkez* Trial Judgment, para. 207; *Brđanin* Trial Judgement, paras. 1022-3

⁵⁷⁴ *Prosecutor v. Karadžić*, IT-95-5/18-T, Judgement, 24 March 2016, paras. 2548-2559

⁵⁷⁵ *Prlić* Trial Judgement, paras. 1704-1706

⁵⁷⁶ *Prlić* Trial Judgement, paras. 1725-1726

⁵⁷⁷ W. Schabas, Al Mahdi Has Been Convicted of a Crime He Did Not Commit, Case Western Reserve Journal of International Law, Vol. 49(1) (2017), p.100

⁵⁷⁸ Crimes against humanity: Texts and titles of the draft preamble, the draft articles and the draft annex provisionally adopted by the Drafting Committee on second reading, Article 2(1)(h), A/CN.4/L.93515 May 2019



117. To commit persecution, the Accused must commit an act or omission that is discriminatory in fact.⁵⁷⁹ The *Brđanin* Trial Chamber found this element to be established when, in Bosnia, “Bosnian Serb property was systematically left intact and only sporadically damaged,” whereas non-Serb property was not.⁵⁸⁰ The discrimination must be based on political, racial, or religious grounds.⁵⁸¹ Although persecution often refers to a series of acts, a single act may constitute persecution as long as it discriminates in fact and satisfies the other elements of persecution.⁵⁸² Alleged acts of persecution “should not be considered in isolation but rather should be examined in their context and with consideration of their cumulative effect.”⁵⁸³
118. At a minimum, the acts or omissions underlying persecution, whether considered alone or in conjunction with other acts or omissions, must be of equal gravity to the other crimes enumerated as crimes against humanity.⁵⁸⁴ The gravity requirement will not be achieved simply by showing that an underlying act was committed with discriminatory intent.⁵⁸⁵ Acts or omissions must constitute a “denial of or infringement upon a fundamental right laid down in international customary law.”⁵⁸⁶
119. The Accused must have the specific intent to discriminate on political, racial, or religious grounds.⁵⁸⁷ The aim to “cleanse” a territory of a particular ethnic group amounts to the intent to discriminate against that group.⁵⁸⁸ It is not sufficient that an Accused be aware that he is acting in a discriminatory way; he must “consciously intend to discriminate.”⁵⁸⁹ The discriminatory intent must relate to each act or omission that underlies the charge of persecution.⁵⁹⁰ The *mens rea* for persecutions is the “specific intent to cause injury to a human being because he belongs to a particular community or group.”⁵⁹¹

⁵⁷⁹ *Krnjelac* Appeals Judgement, para. 185; *Blaškić* Appeals Judgement, para. 131; *Kordić and Čerkez* Appeals Judgement, paras. 101-102; *Kvočka* Appeals Judgement, para. 320

⁵⁸⁰ *Brđanin* Trial Judgement, para. 1022. See also *Karadžić* Trial Judgement, para. 2555

⁵⁸¹ *Krnjelac* Appeals Judgement, para. 184

⁵⁸² *Prosecutor v. Vasiljević*, IT-98-32-A, Judgement, Appeals Chamber, 25 February 2004, para. 113; *Blaškić* Appeals Judgement, para. 135.

⁵⁸³ *Prosecutor v. Naletilić and Martinović*, IT-98-34-A, Judgement, 3 May 2006 Appeals Judgement, para. 574; *Brđanin* Trial Judgement para. 995.

⁵⁸⁴ *Krnjelac* Appeals Judgement, para. 199; *Blaškić* Appeals Judgement, para. 135; *Brđanin* Appeals Judgement, para. 296; *Prosecutor v. Kupreškić*, IT-95-16-T, Judgement, 14 January 2000 (hereinafter “*Kupreškić* Trial Judgement”), para. 619.

⁵⁸⁵ *Blaškić* Appeals Judgement, paras. 138-39.

⁵⁸⁶ *Blaškić* Appeals Judgement, para. 139; *Kupreškić* Trial Judgement, para. 620; *Prosecutor v. Naletilić and Martinović*, IT-98-34-T, Judgement, 31 March 2003 (“*Naletilić and Martinović* Trial Judgement”), para. 635; *Brđanin* Trial Judgement, para. 995.

⁵⁸⁷ *Blaškić* Appeals Judgement, para. 164; *Kordić and Čerkez* Appeals Judgement, paras. 101, 110; *Kvočka* Appeals Judgement, para. 320

⁵⁸⁸ *Brammertz et al.*, 1162

⁵⁸⁹ *Brđanin* Trial Judgement, para. 996

⁵⁹⁰ *Popović* Trial Judgement, para. 969; *Blagojević and Jokić* Trial Judgement, para. 584.

⁵⁹¹ *Kordić and Čerkez* Appeals Judgement, para. 111.



Appendix II: Civilians Deaths/Injuries (Sept-November 2020)

Source: Office of the Prosecutor General of Azerbaijan (01 December 2020)

A total of 100 civilians were killed and 416 civilians were injured by Armenian attacks launched between 27 September 2020 and 10 November 2020. Of the 100 civilians who were killed, 60 were men, 28 were women, and 12 were children (including one infant). Of the 416 injured civilians, 263 were men, 102 were women, and 51 children (including 15 infants).

CIVILIANS KILLED (27 SEPTEMBER 2020 – 10 NOVEMBER 2020) NOVEMBER

NAME	BIRTH YEAR	INCIDENT DATE	LOCATION
Huseynov Gunduz Tariyel	1974	10.10.2020	Aghdam, Chemenli
Aliyeva Zarife Qanboy	1945	7.10.2020	Aghdam, Khindiristan village
Sariyev Elmaddin Humbet	1997	29.09.2020	Aghdam, Garadaghli village
Pashayev Joshgun Anvar	1979	28.09.2020	Aghdam, Garadaghli village
Mammadov Murshud Rashid	1966	01.10.2020	Aghdam, Hajimammadli village
Mammadov Samir Murshud	1996	01.10.2020	Aghdam, Hajimammadli village
Rahimov Eyvaz Musa	1954	5.10.2020	Aghdam, Safarli village
Isgenderov Farid Dilafet	2006	4.10.2020	Aghjebedi, Taynaq
Ismayilli Vasif Vaqif	1990	28.10.2020	Barda
Pashayev Niftalı Salim*	1995	28.10.2020	Barda
Jafarova Ofeliya Majid	1970	27.11.2020	Barda
Ahmadova Aybaniz Ashraf	1959	27.11.2020	Barda
Ismayılov Ehtiram Xalil	1980	27.11.2020	Barda
Isgandarova Aysu Rovşan	2013	27.11.2020	Barda
Aliyeva Almaz Salah*	1961	27.11.2020	Barda
Shafiyev Rashad Vaqif	1991	28.10.2020	Barda
Hajiyev Fazil Haci	1969	28.10.2020	Barda
Ahmadov Mirsahir Yusif	1980	28.10.2020	Barda
Kazimov Dayanat Tahir	1990	28.10.2020	Barda
Aliyev Sadiq Sahib	1993	28.10.2020	Barda
Abbasov Ruslan Mahammad	1984	28.10.2020	Barda
Khidirov Intiqam Alamdar	1977	28.10.2020	Barda
Qasimova Solmaz Sadraddin	1963	28.10.2020	Barda
Mirzaliyev Charkaz Khanlar	1972	28.10.2020	Barda
Mirzaliyeva Tukazban Charkaz	1995	28.10.2020	Barda
Huseynova Gulshan Mehrab	1972	28.10.2020	Barda



Allahverdiyev Asgar Mahir	1983	28.10.2020	Barda
Mustafayeva Leyla Elmir	1969	28.10.2020	Barda
Jafarov Amil Fazil	1990	28.10.2020	Barda
Quliyev Agamoglan Baylar	1947	28.10.2020	Barda
Suleymanov Hummat Suleyman	1955	28.10.2020	Barda
Isgandarov Yalchin Rizvan	1984	28.10.2020	Barda
Ismayilov Fuad Isa	1988	28.10.2020	Barda
Mustafayev Maharram Anvar	1971	28.10.2020	Barda
Mehdiyeva Shahriyar Isa	1961	05.10.2020	Barda
Rustamov Javid Ali	1975	07.10.2020	Barda
Rahimov Shahmalı Atraf	2004	07.10.2020	Barda, Yeni Ayrıca village
İsmayilova Zulfiyye İsgender	1976	3.10.2020	Beylagan town
Asadova Arzu İsgandar	1998	3.10.2020	Beylagan town
Safarov İkhtiyar Ajar	1971	29.09.2020	Fizuli, Alikhanli village
Rustamov Murad Tahir	1990	30.09.2020	Fizuli, Horadiz
Quliyev Emil Elshad	2000	03.10.2020	Fizuli, Horadiz
Quliyeva Turyan Tofiq	1957	8.10.2020	Goranboy, Shahmammadli village
Abbasova Raziya Bayramali	1955	5.10.2020	Goranboy, Gizilhajili settlement
Ziyadova Flora Qaraş	1967	29.10.2020	Goranboy, Tap Qaraqoyunlu
Ahmadov Yasin Alasgar	1984	14.11.2020	Khojavand, Alikhanli village
Qurbanov Elbrus İsa	1951	27.09.2020	Naftalan, Gashalty-Garaqoyunlu
Qurbanova Shefayet Novruz	1956	27.09.2020	Naftalan, Gashalty-Garaqoyunlu
Amirova Afag Damir	1981	27.09.2020	Naftalan, Gashalty-Garaqoyunlu
Qurbaniv Shehriyar Nadir	2007	27.09.2020	Naftalan, Gashalty-Garaqoyunlu
Qurbanova Fidan Elshan	2006	27.09.2020	Naftalan, Gashalty-Garaqoyunlu
Aliyev Tunar Qoshqar	1999	04.10.2020	Ganja
Aliyeva Afag Aziz	1957	11.10.2020	Ganja
Jafarova Durra Hilal	1967	11.10.2020	Ganja
Alasqarova Tarana Pasha	1965	11.10.2020	Ganja
Alasqarov Jeyhun Jamal	1958	11.10.2020	Ganja
Alasqarov Ulvi Jeyhun	1990	11.10.2020	Ganja
Bagirov Ramiz Yusif	1958	11.10.2020	Ganja
Aliyev Adil Hamza	1992	11.10.2020	Ganja
Alizada Nurchin Emin	1987	11.10.2020	Ganja
Alizada Anar Asif	1982	11.10.2020	Ganja



Aliyeva Gunay Zahid*	1992	11.10.2020	Ganja
Shahnazarli Madina Royal	2019	17.10.2020	Ganja
Yusibova Maral Yunis	1963	17.10.2020	Ganja
Asgarov Suliddin Ismayil	1948	17.10.2020	Ganja
Asgarova Sevil Suliddin	1982	17.10.2020	Ganja
Asgarova Nazrin Teymur	2014	17.10.2020	Ganja
Asgarov Bakhtiyar Suliddin	1980	17.10.2020	Ganja
Asgarova Nigar Azer	2005	17.10.2020	Ganja
Agayev Nuraddin Polad	1943	17.10.2020	Ganja
Khalilova (Qahramanova) Khatira Ramiz	1986	17.10.2020	Ganja
Qahramanova Laman Ramin	2002	17.10.2020	Ganja
Shahnazarov Royal Yusif	1986	17.10.2020	Ganja
Shahnazarova Zuleykha Nizami	1996	17.10.2020	Ganja
Khalilli Orkhan Qoshqar	2009	17.10.2020	Ganja
Khalilli Maryam Qoshqar	2014	17.10.2020	Ganja
Mayakov Artur Ramiz*	2007	17.10.2020	Ganja
Hasanov Zabil Mahammad	1982	01.10.2020	Tartar town (bus station)
Aliyev Mehman Sovet	1977	28.09.2020	Tartar town (near court building)
Mehdiyeva Ayna Mahammadali	1965	28.09.2020	Tartar town
Aliyev Muzaffar Ali	1971	30.09.2020	Tartar town (mobilization dept)
Ibrahimov Shahin Mahmud	1987	30.09.2020	Tartar (mobilization dept)
Axundov Adavat Zahid	1969	14.10.2020	Tartar, Narliq settlement
Abbasov Xaliq Asif	1981	28.09.2020	Tartar, Shirshakh settlement
Abbasov Elshan Asif	1987	28.09.2020	Tartar, Shirshakh settlement
Asadov Sabit Usub	1981	28.09.2020	Tartar, Shirshakh settlement
Mammadov Hasan Asil	1981	06.10.2020	Tartar, Qaynaq village
Orujov Parviz Novruz	1989	15.10.2020	Tartar
Rustamov Vasif Bahadur	1960	15.10.2020	Tartar
Amirov Isgandar Yelmar	1967	15.10.2020	Tartar
Zamanov Shakir Khasay	1988	15.10.2020	Tartar
Isaqli Anar Rasul	1994	20.10.2020	Tartar, Jamilli vilage
Quliyev Anar Tofiq	1984	20.10.2020	Tartar, Jamilli village
Ismayilzade Orxan Rahbar oğlu	2004	24.10.2020	Tartar, Kabirli village

* denotes individuals who died of their injuries in the days following the attack.



CIVILIANS INJURED (27 SEPTEMBER 2020 – 10 NOVEMBER 2020)

Aghdam region

Shukurov Alamdar Sabir, born in 1979
Dadashov Araz Zafar, born in 1992
Zeynalov Beykishi Musa, born in 1961
Allahyarov Eshgin Elnur, born in 1997
Mammadov Rahbar Akbar, born in 1966
Mammadova Mahrug Alasgar, born in 1978
Jafarli Lankaran Azer, born in 1993
Adigozalov Tagi Alasgar, born in 1980
Bayramov Nijat Urfat, born in 1992
Farajov Rahib Mirzammad, born in 1989
Hasanov Ismayil Mahammad, born in 1947
Gasimov Rahib Allahverdi, born in 1964
Gasimov Fikret Shura, born in 1967
Abishova Gulzara Eldaniz, born in 1985
Shukurov Shukur Shakir, born in 1992
Huseynov Eyvaz Safar, born in 1988
Mansimov Sattar Hazi, born in 1972
Ahmadov Sadig Sahib, born in 1974
Jafarov Yelmar Rasim, born in 1985
Abbasov Hajiaga Tofiq, born in 1978
Aliyev Orkhan Tahir, born in 1994
Abdullayev Jamal Nizami, born in 1987

Aslanov Shamistan Maarif, born in 1993
Safarov Mehman Agalar, born in 1971
Yusifov Ismat Ali, born in 1993
Rustamov Sabir Bahram, born in 1961
Jabrayilli Sadi Babir, born in 1992
Guliyeva Huru Talysh, born in 1977
Mammadov Ilham Safar, born in 1973
Muradov Allahveran Bayram, born in 1955
Abishov Seymur Ali, born in 1979
Huseynov Alizamin Javid, born in 1979
Zeynalov Elchin Ali, born in 1978
Mammadova Lala Mahammad, born in 1984
Rzayev Elchin Hanifa, born in 1992
Soltanov Saleh Eldar, born in 1964
Musayev Roman Yusif, born in 1979
Veliyev Shahsuvar Millet, born in 1969
Hasanov Anar Beybala, born in 1982
Guliyeva Maya Mammad, born in 1976
Guliyeva Shamama Isa, born in 1955
Mahiyaddinli Chichek Ilyas, born in 1997
Hasanov Ramin Kamal, born in 1980
Badalov Mukhtar Ali, born in 1967

Dashkesan region

Zalov Jalal Ali, born in 1982

Beylagan region

Balakishiyev Etibar Tavakkul, born in 1982
Bashirova Sevda Yashar, born in 1969
Mammadova Sevinj Mayis, born in 2003

Mammadova Mayis Charkaz, born in 1970
Zalov Yegana Hasan, born in 1970

Goranboy region

Sardarov Emin Nariman, born in 1988
Asgarov Hasan Abil, born in 1968
Aliyev Shahvalad Musa, born in 1965
Garayeva Gumush Kanish, born 1968
Mammadov Gabil Adil, born in 1988
Alakbarov Rasim Nadir, born in 1969

Hasanova Sevinj Mashdi, born in 1984
Hasanov Mashdi Ibrahim, born in 1958
Hasanov Eljan Elgun, born in 2011
Mehrajov Sanan Yusif, born in 1984
Gahramanov Mahmud Yagub, born in 1961

Fizuli region

Hasanov Khanhuseyn Hasan, born in 1965
Abbaszadeh Khayyam Mutallim, born in 1981
Dargahov Rashad Avaz, born in 1991
Guliyev Vusal Vugar, born in 1995
Mammadov Fuzuli Heydar, born in 1960
Bayramov Samir Filman, born in 1963
Agayev Sahib Jabrayil, born in 1957

Atayev Duman Novruz, born in 1978
Alasgarov Maarif Allahveran, born in 1959
Maharramov Rajad Vakil, born in 1989
Asadov Samir Hidayat, born in 1982
Ibrahimov Nizami Gafar, born in 1958
Abbasov Alman Anvar, born in 1968
Ahmadov Tahir Telman, born in 1974



Aslanov Yashar Savalan, born in 1969
Shirinov Elshan Shahmar, born in 1962
Rafiyev Elchin Mammad, born in 1961

Ahmadov Asif Alasgar, born in 1989
Khudiyev Asif Mursal, born in 1979

Tartar region

Guliyev Vasif Gasim, born in 1984
Guliyev Parviz Jafar, born in 1984
Hasanov Ozal Mubariz, born in 1989
Ibrahimli Fuad Mazahir, born in 1994
Ibrahimov Mahmud Gachay, born in 1962
Ismayilli Ismayil Tavakkul, born in 1994
Sharifov Ilgar Bakhtiyar, born in 1998
Mammadov Seymur Fuzuli, born in 1984
Mahmudov Faig Malik, born in 1989
Asadov Gambar Asgar, born in 1968
Huseynov Fakhraddin Farman, born in 1994
Ibrahimov Tural Firdovsi, born in 1991
Mammadov Safar Ayyub, born in 1966
Guliyev Akif Yunis, born in 1966
Ajdarov Khosrov Tavakkul, born in 1982
Alizade Tural Eldar, born in 1995
Suleymanzade Davud Elkhan, born in 1993
Ismayilli Shahriyar Tahir, born in 1995
Guliyev Azad Musa, born in 1962
Mustafayev Asif Jamil, born in 1940
Pirizadeh Tural Rabil, born in 1993
Hasanov Roya Ilya, born in 1987
Aliyev Mubariz Sadir, born in 1965,
Mehtiyev Ismayil Rustam, born in 1979
Mammadov Shukrat Azay, born in 1969
Ismayilov Arzu Ramiz, born in 1988
Rahimova Aybaniz Nazim, born in 1983
Mammadov Elman Muslim, born in 1958
Alishanov Telman Nariman, born in 2000

Rahimova Gulnara Fabir, born in 1983
Ammedov Elchin Arif, born in 1980
Huseynov Mirali Huseyn, born in 1962
Abbasov Imran Mehti, born in 1981
Orujov Sakit Shekarali, born in 1965
Novruzov Saleh Qaytaran, born in 1981
Maharramov Vidadi Niftali, born in 1965
Aliyev Dayanat Ganimat, born in 1989
Hasanov Seyfulla Yagub, born in 1968
Kazimov Rahim Allahverdi, born in 1964
Farajov Mushvig Tavakkul, born in 1968
Ahmadov Khayyam Mahammad, born in 1987
Ahmadov Kamran Velyaddin, born in 1966
Zeynalov Ramiz Surkhay, born in 1971
Ibrahimov Ilgar Ibrahim, born in 1962
Aliyev Matlab Jamshid, born in 1976
Agazadeh Firdovsi Alim, born in 1996
Suleymanov Aga Suleyman, born in 1960
Gambarov Namig Malik, born in 1983
Baylarov Firudin Kamal, born in 1970
Mammadov Fizuli Ali, born in 1965
Allahverdiyev Elsevar Veli, born in 1979
Amirov Nofal Yelmar, born in 1968
Gazanfarli Rafael Gazanfar, born in 1986
Salimov Niyazi Huseynali, born in 1962
Shabanov Murov Latif, born in 1975
Bakhshaliyev Sabuhi Khanlar, born in 1987
Osmanov Nuster Gurban, born in 1962
Mammadov Sabir Mahar, born in 1965

Jabrayil region

Haziyev Hilal Murad, born in 2000

Zeynalov Telman Babir, born in 1967

Tovuz region

Pashayev Bakir Salman, born in 1963

Lachin region

Suleymanov Vusal Zeyni, born in 1980

Karamov Ramil Karam, born in 1982

Mingachevir city

Bagirova Nabat Charkaz, born in 1957
Bagirov Elchin Yagub, born in 1984

Safarov Atamoglan Sabir, born in 1958

Khojaly region

Ahmadov Ilyas Imran, born in 1973



Aghjabadi region

Bayramova Saliga Avaz, born in 1988
Gulizade Mehman Alivan, born in 2009
Bayramov Shamistan Nazim, born in 1998
Guliyeva Zahra Isa, born in 1942
Musayev Niyameddin Jasarat, born in 1998
Namazova Tahira Gardashkhan, born in 1956
Ismayilov Dayanat Sehriman, born in 1982
Muradov Abbas Muluk, born in 1957
Ibrahimov Elshan Mehti, born in 1994
Ibrahimova Ayna Rovshan, born in 2015

Guliyeva Dilshad Shukur, born in 1963
Mammadov Ismayil Elshan, born in 2001
Gasimov Faig Aslan, born in 1967
Tagiyev Natig Baloglan, born in 1976
Guliyev Edilman Sabir, born in 1981
Hajiyev Rauf Nizami, born in 1991
Guliyev Sarkhan Elkhan, born in 1985
Abuzarov Ruslan Gasham, born in 1981

Barda region

Abbasov Salim Mehdi, born in 1954
Ibrahimov Shohrat Mahammad, born in 1994
Ibrahimov Ibish Mahammad, born in 1990
Meydanova Aygun Sardar, born in 1988
Meydanov Panah Murshud, born in 1988
Farzaliyeva Sabina Ilgar, born in 1994
Mammadov Aykhan Elchin, born in 1992

Humbatov Parviz Matlab, born in 1987
Jahangirli Mohammad Yashar, born in 1999
Musayev Ismail Rafiq, born in 1996
Asadov Agil Adil, born in 1975
Mammadov Kamil Ali, born in 1951
Guliyev Nurlan Ogtay, born in 1987
Hasanov Vasif Elbrus, born in 1991

Barda: attacks on 27 October and 28 October 2020

Karimova Elnura Arif, born in 2003
Ismayilova Aysu Ehtiram, born in 2005
Alizade Elvin Asgar, born in 2013
Hajiyeva Ayisha Vilayat, born in 2009
Iskanderova Tarani Vidad, born in 1986
Iskenderli Tahira Rovshan, born in 2017
Karimli Shukur Arif, born in 2005
Gurbanova Khatira Bayram, born in 1981
Akbarova Ayna Zahid, born in 1964
Khalilova Yegana Huseyn, born in 1964
Aliyeva Zargalam Alyar, born in 2002
Ismayilova Ayten Rasim, born in 1984
Agayev Intigam Yashar, born in 1998
Hasanov Elchin Gulam, born in 1971
Maharramova Nargiz Barat, born in 1993
Ibadov Yolchu Bahlul, born in 1944
Jafarova Tahmina Shamil, born in 1991
Aliyev Rashad Rovshan, born in 1996
Hummatov Museyib Elnur, born in 2009
Aliyev Aydin Firudin, born in 1970
Ahmadov Ilham Karam, born in 1968
Gurbanli Fuad Zohrab, born in 2004
Mammadov Natig Mahiyaddin, born in 1963
Novruzov Sulhaddin Hasan, born in 1962
Hasanova Kamila Bahram, born in 1971
Orujov Afsun Eyvaz

Jafarova Famil Gurban, born in 1983
Mehdiyeva Gunay Arshad, born in 1989
Bakhishov Nijat Arif, born in 1992
Aliyev Rustam Mahammad, born in 1992
Tahmazov Suraj Rashid, born in 1974
Ismayilov Mazahir Masi, born in 1965
Jafarov Teymur Bakhtiyar, born in 1996
Gasimov Samir Muzaffar, born in 1979
Agamirov Ilgar Mirhashim, born in 1966
Rustamov Parviz Bakhtiyar, born in 1989
Guliyeva Gunay Gabil, born in 1988
Abbasova Gulshan Avaz, born in 1975
Safarova Elnura Gardashkhan, born in 1979
Gasimov Bahram Anar, born in 2001
Jafarov Sadig Jalal, born in 1977
Bandaliyev Zamin Nizami, born in 1987
Hasanaliyeva Gulzar Azer, born in 1996
Hajiyev Elgiz Vagif, born in 1983
Seyidov Gabil Parviz, born in 2001
Shamilov Izzet Elchin, born in 2002
Ibrahimova Aynura Mohlat, born in 1986
Orujov Telman Yildirim, born in 1980
Karimov Faig Soltan, born in 1970
Shirinov Elchin Havaskar, born in 1984
Aslanov Arzu Nazim, born in 1967
Jabbarov Ahad Safiyar, born in 1959



Zulfugarov Elnur Tofiq, born in 1992
Guliyev Rashad Aydin, born in 1983
Dilsuzlu Maharram Sardar, born in 1995
Guliyeva Aygun Mukhtar, born in 1986
Mammadov Aykhan Firdovsi, born in 2013
Sadikhov Tural Adalat, born in 1986
Muradli Maharram Mahir, born in 2003
Isgandarov Aydin Isgandar, born in 1970
Mammadov Elyar Mammad, born in 1962
Adigozalov Anar Ismayil, born in 1978
Aliyev Elvin Elgiz, born in 2005
Kazimova Tofiga Jamal, born in 1966
Movsumov Elgun Nasiz, born in 2000
Ismayilov Sanan Fizuli, born in 1999
Nazarov Ismayil Huseyn, born in 1942
Agalarov Shahlar Eldar, born in 1977
Fataliyeva Tarana Huseyn, born in 1973
Agalar Qafqaz Shahlar, born in 2007
Ganbarova Vafa Aydin, born in 1976
Tahmazova Saadat Muslim, born in 1974
Hasanli Emin Vidadi, born in 1998

Mustafayev Fagan Suleyman
Agayev Javanshir Farhad, born in 1990
Suleymanov Nurlan Vagif, born in 1976
Mammadov Ananr Vagif, born in 1986
Guliyeva Ramziya Alasdan, born in 1971
Hasanli Elkhan Hasan, born in 1993
Kazimov Tahir Dayanat, born in 2020
Muradli Tanriverdi Suleyman, born in 2004
Mammadov Ramil Mahammadali, born in 1981
Hasanov Farhad Sahhar, born in 1972
Gasimova Flora Jamal, born in 1960
Guliyev Khalig Vagif, born in 1970
Huseynov Rahib Kamil, born in 1982
Hasanov Mahir Elshan, born in 1994
Safaralizadeh Orkhan Zaur, born in 2002
Isayeva Narmin Gara, born in 1974
Alasgarov Firdovsi Aliyar, born in 1963
Abdullayev Fariz Beylar
Veliyev Rafiq Namaz
Akbarova Parvana Arif, born in 1990
Akbarov Sahil, born in 2018

Ganja: attacks of 4 October, 5 October, 8 October, and 11 October 2020

Asadova Sakina Hasan, born in 1988
Aliyeva Matanat Fakhraddin, born in 1962
Abdullayeva Maleyka Tapdig, born in 2004
Gasimova Irada Jamil, born in 1958
Abdullayev Tapdig Amiraslan, born in 1973
Yolchuyeva Ayten Yolchu, born in 1993
Ibrahimov Farid Faig, born in 2011
Aliyeva Vusala Rza, born in 1984
Zargarova Rahila Meydan, born in 1958
Eyyubova Zahra Khayyam, born in 2019
Aliyeva Rena Gudrat, born in 1955
Ibrahimova Suheylya Sabir, born in 1976
Grigorenko Nina Romanovna, born in 1943
Aliyev Turgay Azer, born in 2010
Aliyev Agil Azer, born in 1998
Mammadova Bayaz Mirza, born in 1936
Ibrahimova Banu Faig, born in 2013
Ibrahimova Afsana Ziyaddin, born in 1995
Ibrahimov Royal Ramiz, born in 1994
Ibrahimov Ramiz Ali, born in 1968
Gambarova Sevil Alakbar, born in 1944
Ibrahimova Tarana Zulfugar, born in 1991
Tagiyeva Kamala Vahid, born in 1976
Alakbarova Kubra Majid, born in 1961
Alasgarova Rubaba Cherkez, born in 1971
Hajiyev Malik Amal, born in 2015

Nagiyev Irza Ahad, born in 1976
Gasimova Parvin Nusrat, born in 1994
Ibrahimli Emil Elmir, born in 2019
Ismayilov Rashad Akif, born in 1981
Hasanova Lala Akif, born in 1981
Hasanli Nigar Abbas, born in 2003
Hasanbeyli Ilyas Abbas, born in 2006
Asgarov Amil Sahib, born in 1983
Pashayev Canpolad Tofiq, born in 1964
Aliyev Zaur Khosrov, born in 1964
Rasulov Ruslan Fazli, born in 1987
Gurbanov Sarkhan Sadikh, born in 1983
Salmanov Tariyel Bakhtiyar, born in 1975
Ahmadli Ali Kamal, born in 1992
Allahverdiyev Nijat Vagif, born in 1989
Mehdiyeva Farida Mehdi, born in 1989
Mehdiyeva Yagmur Nail, born in 2018
Mehdiyev Nail Rashid, born in 1987
Mehdiyev Omar Nail, born in 1983
Aliyev Zahid Adil, born in 1952
Bayramova Akifa Nadir, born in 1957
Rzayev Isa Tofiq, born in 2000
Gurbanov Emin Ramil, born in 2003
Abbasov Yunis Yurik, born in 1974
Novruzov Vusal Firdovsi, born in 1977
Aliyeva Aysu Rahim, born in 2005



Allahverdiyev Rufat Vagif, born in 1988
Mustafayev Emin Yavuz, born in 1968
Mustafazadeh Salim Emin, born in 2004
Movlayeva Shalala Nizami, born in 1975
Abbasov Elnur Aslan, born in 1975
Shirinova Aygul Kamal, born in 1989,
Shirinova Shafa Safalan, born in 2008
Shirinov Shamiddin Safalan, born in 2006
Ahmadova Ofelya Aslan, born in 1959
Jafarov Elsevar Hilal, born in 1978
Aliyeva Amalya Maharram, born in 1962
Aliyeva Aynura Vilayat, born in 1984
Hasanova Aylin Rauf, born in 2014
Kangarli Elsevar Rashid, born in 1965

Ganja: attack of 17 October 2020

Aliyev Vagif Ali, born in 1999
Alakbarli Huseyn Ali, born in 2002
Behchati Farid Parviz, born in 1988
Jafarova Basti Hamid, born in 1958
Mammadov Emin Etibar, born in 1990
Jafarova Aytekin Mammad, born in 1979
Hasanova Rugiya Asif, born in 2014
Hasanov Huseynbala Asif, born in 2007
Jafarov Azad Mammad, born in 1990
Askerova Ayten Vasif, born in 1994
Jafarova Reyhan Azad, born in 2014
Jafarova Ayan Azad, born in 2016
Agayeva Gulchin Ramiz, born in 2001
Ahmadov Samir Tanriverdi, born in 1988
Aliyeva Aysel Natig, born in 1999
Aliyev Gazanfar Mustajab, born in 1956
Agayev Vugar Ramiz, born in 1999
Agayeva Madina Arif, born in 1980
Mammadaliyev Mahammad, born in 1965
Jafarov Arzu Mammad, born in 1980
Agayev Ramiz Nureddin, born in 1975
Bayramov Aladdin Asad, born in 1970
Mayilov Huseyn Kazim, born in 1943
Mayilova Firangiz Allahverdi, born in 1993
Aliyev Elkhan Rustam, born in 1982
Mammadov Eldar Muslim, born in 1970
Mammadova Mahammad, born in 1976
Mammadova Aytaj Eldar, born in 1997
Mammadova Ayten Eldar, born in 2001
Sadigova Dilbazi Ali, born in 1953
Guliyeva Ragiba Novruz, born in 1953
Asgarov Amin Rovshan, born in 2005

Kangarlinskaya Nazila Ismayil, born in 1976
Heydarli Bakhtiyar Elnur, born in 2016
Mirzayev Farid Ilgar, born in 1998
Hasanova Maryam Rauf, born in 2018
Imaniyeva Sona Jamal, born in 1954
Mammadova Rena Arif, born in 1990
Aliyeva Nilay Adil, born in 2018
Jafarov Eldaniz Akbar, born in 1978
Aliyeva Giyafat Hasan, born in 1975
Aliyeva Zeynab Gasim, born in 1950
Orujov Oruj Muslim, born in 2006
Mustafayeva Ftima Zaur, born in 2005
Ahmadov Anar Gazanfar, born in 1979

Guliyeva Gulnara Ali, born in 1979
Sadigov Aftandil Jalil, born in 1954
Askerova Silduz Mashadi-Hasan, born in 1954
Guliyeva Shaira Ali, born in 1973
Rustamova Aygun Ramiz, born in 1987
Hasanova Khuraman Shahid, born in 1984
Hasanov Asif Karim, born in 1974
Mammadov Eshkin Arastun, born in 1989
Imanova Yazgul Ajdar, born in 1967
Imanova Gunel Oktay, born in 1989
Sadigov Museyb Samir, born in 2002
Ismayilov Ismayil Mammad, born in 1954
Asgarov Rovshan Suliddin, born in 1979
Hasanova Tarana Amir, born in 1982
Shahnazarli Khadija Royal, born in 2017
Guliyeva Khayala Nizami, born in 1992
Agayeva Aysu Etibar, born in 2003
Humbatova Fatima Meydan, born in 1953
Hagverdiyeva Nahida Elman, born in 1996
Salimova Aylin Rafail, born in 2016
Ismayilov Ismayil Ali, born in 1985
Gahramanov Ramiz Khanlar, born in 1957
Abilov Ilham Mobil, born in 1978
Sadigova Tarlan Museyib, born in 1941
Rustamov Taleh Ramiz, born in 1991
Huseynov Abbasgulu Kazim, born in 1953
Kazimov Solmaz Agali, born in 1955
Veliyev Murad Iskender, born in 1989
Aliyeva Tamara Ismayil, born in 1974
Allahverdiyeva Firuza Rasim, born in 1985
Allahverdiyeva Khadija Samir, born in 2005
Allahverdiyev Rasim Samir, born in



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Twitter: Tweet by Arayik Harutyunyan @Pres_Artsakh on 04 October 2020 (4pm) : “As act of self-protection, in response to days long deliberate shelling w/prohibited cluster munitions #Armenia'n civilian population of #Artsakh by #Azerbaijan'i child killers I ordered to bombard #Ganja military facilities calling on Az population to leave area in advance”
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