

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur in the field of cultural rights; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL ARM 1/2021

2 February 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur in the field of cultural rights; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 44/5, 37/12 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **alleged killings, outrages upon personal dignity and inhuman treatment of Azerbaijani soldiers as well as unlawful attacks on cities in Azerbaijan including by use of cluster munitions. We are also concerned about reports of damage and destruction to civilian sites and cultural heritage.**

A communication under reference UA 1/2020, concerning information received on the alleged torture and ill-treatment of prisoners of war and cases of enforced disappearance during the armed conflict in and around Nagorno-Karabakh and the return of captives and bodies of the dead to their respective countries of origin and to their families was sent to your Excellency's Government on 9 December 2020. We welcome information that your Excellency's Government is working on a reply to the communication and look forward to receiving it.

In this regard, we would like to bring to your Excellency's Government's attention additional information we have received.

According to the additional information received:

On 27 September 2020, large-scale military clashes/hostilities broke out in and around Nagorno-Karabakh. During the ensuing 44 days of armed conflict, it has been alleged that both parties to the conflict targeted civilian populated communities and civilian objects and infrastructures, including schools and cultural property, making use of heavy weaponry and unarmed aerial vehicles. Cluster munitions and incendiary weapons were also reportedly used, and as a consequence there was not only extensive destruction, but also contamination of settlements with unexploded ordnance, posing additional risks for the civil population.

Killing, outrages upon personal dignity and inhuman treatment

There are several videos in circulation online, which are captioned or appear to show:

- The killing of a man in an Azerbaijani border patrol uniform by an Armenian speaking individual. The victim is seen lying bound and gagged on the ground, before being stabbed with a knife to his throat. It is believed he later died from the stab wound.
- Armenian soldiers cutting the ear off the body of an Azerbaijani soldier, standing on the corpse of a soldier and dragging the body of a soldier across the ground by a rope tied at the feet.

It is not clear if any investigations have been conducted into these incidents.

Unlawful Attacks

Reportedly, during hostilities, Armenia indiscriminately attacked or targeted civilian populations and civilian objects which has resulted in civilians being killed and injured, as well as the destruction of civilian property. These attacks have occurred on civilian objects and civilians located outside Nagorno-Karabakh.

On 4, 11 and 17 October 2020, attacks were launched on Ganja, the second largest city in Azerbaijan, with a population of over 500,000, using ballistic missiles and rocket artillery which hit residential areas. In the first attack, civilian housing and a shopping center were severely damaged or destroyed. The second, which occurred in the early hours of the morning and involved a ballistic missile, killed several civilians including children and caused damage to infrastructure, including 10 apartment buildings. It appears there were two sites containing military weapons and equipment 700 meters-1 kilometer away from the area which was hit - neither of the military sites were damaged. In the third attack, ballistic missiles were used on residential areas killing civilians, and four kindergartens, one secondary school and one medical clinic were also damaged and at least 21 civilians killed. Ganja contained some military targets. However, residents reported one of the sites alleged to be a military target had been closed before hostilities and another was situated 4.5 kilometers away from the areas attacked.

On 15 October 2020, a shell landed in Tartar city cemetery during a funeral, resulting in civilian casualties and injuries. Reportedly, no military targets were observed in the area.

On 27 October 2020, a village in Barda region of Azerbaijan was attacked using cluster munitions, killing several civilians and injuring others. On 28 October 2020, a residential area close to the hospital in the town of Barda, 20 kilometers from the area of conflict, was attacked. Reportedly the rockets carried cluster munitions. The type of munitions deployed are known to be in the possession of Armenian forces. One of the attack sites was less than 100 meters from the city's main hospital. At least 21 people are reported to have died and 70 others injured in the attack. It is not clear whether there were any military targets in Barda.

On 7 November 2020, a rocket hit a field near Ayrija village killing a child and wounding others. Military objectives were not visible in the area.

Other cities in Azerbaijan have also been attacked, including Mingachevir (100 kilometers from the areas of hostilities) where attacks were reportedly aimed at a hydro electric power plant, Yevlakh (50 kilometers away from the areas of hostilities) reportedly targetting an oil pipeline, Gabala (150 kilometers away from the areas of hostilities), Beylagan, Kurdamir, Khyzy (300 kilometers away from the areas of hostilities) and Absheron. The attacks have led to the deaths of civilians including children, killed one humanitarian worker and injured journalists. The attacks have also caused destruction to civilian objects. A school in Mahrizli village, Aghdam district was damaged.

Within Nagorno-Karabakh, numerous cultural sites have been found to have been damaged or destroyed, including the Mamar mosque in Mamar, Gubadly District, a mosque in the Alkhanli village of Fuzuli, as well as a mosque in Afandilar village, Gubadly District.

Reportedly, phosphorus projectiles have been allegedly used in Fizuli and Tartar districts and in the Shusha forests.

While we do not wish to prejudge the accuracy of these allegations, we express our most serious concern at the alleged intentional extrajudicial killing of a hors de combat Azerbaijani soldier, outrages upon personal dignity and cruel, inhuman or degrading treatment or punishment and even torture of persons and attacks which violate the prohibition of arbitrary killings under international human rights law and the principles of distinction, precaution, and proportionality under international humanitarian law. We are particularly concerned by the alleged use of cluster munitions.

Should the facts alleged above be confirmed, they would amount to a violation of the right to life and the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment, as codified in articles 6, and 7 of the International Covenant on Civil and Political Rights (ICCPR) to which Armenia acceded on 23 June 1993 and the latter is also codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Armenia acceded to on 13 September 1993.

We recall that the well-established principle that international human rights law continues to apply during war and public emergencies¹ has been confirmed by international jurisprudence² and the text of human rights treaties, including their derogations.³ We further point out that the allegations above concern cities and communities located several dozen kilometres away from the area of hostilities. As such, it is our opinion that the lawfulness of these strikes and allegations should be assessed under a *systemic integration* approach,⁴ derived from Article 31(3)(c) of the Vienna Convention on Treaties, and demanding a contextual analysis in the application of international humanitarian law and international human rights law principles, the territoriality and scope of contemporaneous military actions and State

¹ <https://www.justsecurity.org/34631/human-rights-armed-conflict-part/> and <https://www.justsecurity.org/34815/human-rights-armed-conflict-part-ii/> See also Hague, Law and Morality at War.

² See for instance ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996.

³ Marco Milanovic, 'Norm Conflicts, International Humanitarian Law and Human Rights Law', *Journal of Conflict & Security Law* 14 (2009), <https://www.tandfonline.com/doi/abs/10.1080/18918131.2017.1353213?journalCode=rnh20>;

behaviour overall.⁵

Article 6 of the ICCPR provides that “no one shall be arbitrarily deprived of his life.” It “is the supreme right from which no derogation is permitted even in situations of armed conflict and other public emergencies which threatens the life of the nation.”⁶ The State has “an obligation to respect and to ensure the rights under article 6 of all persons who are within its territory and all persons subject to its jurisdiction, that is, all persons over whose enjoyment of the right to life it exercises power or effective control.”⁷ Practices “inconsistent with international humanitarian law”, including the “failure to apply the principles of precaution and proportionality”, violate Article 6.⁸ States that “fail to take all reasonable measures to settle their international disputes by peaceful means might fall short of complying with their positive obligation to ensure the right to life”.⁹ While article 7 provides that, “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

If the alleged facts are correct, which include the targeting of civilians and civilian objects located some 50 to 100 kilometers away from where the fighting was taking place, these would constitute a blatant violation of the principles of necessity and proportionality and constitute a blatant violation of the prohibition against arbitrary killings and point to their deliberate targeting. Under international criminal law, such attacks may amount to war crimes.

We wish to recall that cluster munitions can release vast numbers of submunitions over an area of up to tens of thousands of square meters and their lack of accuracy can pose a significant danger to civilians both during the attack and in the immediate post-strike period when people resume their normal activities. As such their use cannot be considered as amounting to a proportionate use of force under international human rights law. Their use will inherently violate the right to life. Their use is also likely to violate the principles of discrimination, precaution and proportionality under international humanitarian law.

We remind your Excellency’s Government that the killing or ill-treatment of detainees is strictly prohibited. We further highlight that conduct which endangers protected persons or objects or which breaches important values such as by abusing dead bodies constitutes a war crime.

We note the agreement on a cessation of hostilities announced in the 9 November 2020 joint statement and hope that it will lead to sustained peace. However, we remind that states must investigate alleged or suspected violations of article 6 and 7, including in situations which may have been characterized as armed conflict in accordance with the relevant international standards. We also note that international humanitarian and human rights law also provide that States must investigate allegations of war crimes committed either by their nationals or armed forces, or on their territory by a foreign State, or over which they have jurisdiction, and, if appropriate, prosecute the suspects, and make full reparation for the loss of injury caused.

⁵ See Dapo Okande, 2019: <https://www.ejiltalk.org/the-diversity-of-rules-on-the-use-of-force-implications-for-the-evolution-of-the-law/>.

⁶ Human Rights Committee, General Comment 36 – GC36, para. 2

⁷ GC36, para. 63.

⁸ GC36, para. 64.
GC36, para. 70

In this connection, we refer your Excellency's Government to the **Annex on Reference to international human rights law** attached to this letter, which enumerates some of the main international human rights norms and standards that appear to be contravened by the previous allegations.

As it is our responsibilities under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for the observations of your Excellency's Government on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information, and where available the results of any investigation, judicial or other inquiries carried out in relation to the videos alleged to show the intentional extrajudicial killing of an Azerbaijani soldier torture and/or cruel, inhuman or degrading treatment of persons and desecration of human remains. If no investigation has been initiated, please explain why and how this is compatible with the international human rights obligations of Armenia.
3. Please provide information on the steps throughout the period concerned taken to ensure respect for the principles of distinction, precaution and proportionality.
4. In particular, please include information on the criteria for attacking with lethal force individuals or objects whose targeting is expected to result in deprivation of life, including the legal basis for specific attacks, the process of identification of military targets and combatants or persons taking a direct part in hostilities, the circumstances in which relevant means and methods of warfare have been used, and whether less harmful alternatives were considered. Please include information on whether cluster munitions were used and, if so, how this was compliant with your Excellency's Government's obligations.
5. Please provide information on any investigations undertaken into suspected violations of article 6 in the context of the conflict.
6. Please provide information on measures adopted by your Excellency's Government to ensure the right of persons to effective remedy for human rights violations, including torture and ill-treatment. If no such measures have been taken, please explain how this is compatible with the international human rights obligations of Armenia.
7. Please explain the circumstances surrounding the destruction of and damage to all sites of religious, historical and cultural significance in the Nagorno-Karabakh and surrounding regions, and whether and how such destruction and damage is compatible with the human rights and international humanitarian law standards mentioned in the Annex.

8. Please indicate what steps were and are being taken by Armenia to protect cultural heritage in accordance with its international obligations during the conflict, and in the post-conflict situation.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release would be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release would indicate that we have been in contact with your Excellency's Government to clarify the issue/s in question.

We would like to inform your Excellency's Government that a similar letter is being sent to the Government of Azerbaijan.

Please accept, Excellency, the assurances of our highest consideration.

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Karima Bennoune
Special Rapporteur in the field of cultural rights

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Annex

Reference to international human rights law

In connection with the above allegations and concerns, we would like to refer your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We refer to Human Rights Committee, General Comment 36 in particular paragraph 64 which states "like the rest of the Covenant, article 6 continues to apply also in situations of armed conflict to which the rules of international humanitarian law are applicable, including to the conduct of hostilities. While rules of international humanitarian law may be relevant for the interpretation and application of article 6 when the situation calls for their application, both spheres of law are complementary, not mutually exclusive. Use of lethal force consistent with international humanitarian law and other applicable international law norms is, in general, not arbitrary. By contrast, practices inconsistent with international humanitarian law, entailing a risk to the lives of civilians and other persons protected by international humanitarian law, including the targeting of civilians, civilian objects and objects indispensable to the survival of the civilian population, indiscriminate attacks, failure to apply the principles of precaution and proportionality, and the use of human shields, would also violate article 6 of the Covenant. States parties should, in general, disclose the criteria for attacking with lethal force individuals or objects whose targeting is expected to result in deprivation of life, including the legal basis for specific attacks, the process of identification of military targets and combatants or persons taking a direct part in hostilities, the circumstances in which relevant means and methods of warfare have been used, and whether less harmful alternatives were considered. They must also investigate alleged or suspected violations of article 6 in situations of armed conflict in accordance with the relevant international standards."

We further refer to paragraph 69 which notes "wars and other acts of mass violence continue to be a scourge of humanity resulting in the loss of lives of many thousands of lives every year. Efforts to avert the risks of war, and any other armed conflict, and to strengthen international peace and security, are among the most important safeguards for the right to life."

We further highlight that the Special Rapporteur on extrajudicial, summary or arbitrary executions has observed that contextual and situational analyses are inherent to all effective assessments of the use of force. For compliance with international human rights law, this means assessing necessity, proportionality and precaution through a situational analysis that takes into account the location, circumstances, possibilities of armed resistance and planning involved. It also means that the lethal use of force cannot be justified or allowed when it is not necessary, is likely to cause disproportionate harm or could reasonably have been avoided by feasible precautionary measures (A/HRC/44/38, para 50).

We would like to recall paragraph 5 of Human Rights Council Resolution 16/23, which, "emphasizes that acts of torture are serious violations of international human rights law and humanitarian law and can constitute crimes against humanity and, when committed in a situation of armed conflict, war crimes, and that the perpetrators thereof are liable to prosecution and punishment."

We also highlight the ICRC's study on customary international humanitarian law (IHL), in particular the following rules:

- 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.
- Rule 11. Indiscriminate attacks are prohibited.
- 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.
- Rule 15. In the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects. All feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects.
- Rule 31. Humanitarian relief personnel must be respected and protected.
- Rule 34. Civilian journalists engaged in professional missions in areas of armed conflict must be respected and protected as long as they are not taking a direct part in hostilities.
- Rule 156. Serious violations of international humanitarian law constitute war crimes.
- Rule 158. States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects.

We would like to refer your Excellency's Government to article 8 of the Universal Declaration of Human Rights, article 2 paragraph 3 of the International Covenant on Civil and Political Rights (ICCPR), articles 1, 14 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and article 39 of the Convention on the Rights of the Child, as well as article 3 of the Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV), and article 91 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977. These legal provisions all provide for a right to a remedy for victims of serious human rights violations.

The right of access to and enjoyment of all forms of cultural heritage is guaranteed by international human rights law, including the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the ICCPR, deriving its legal basis, in particular, from the right to take part in cultural life, the right of members of minorities to enjoy their own culture... (A/71/371, para. 14). The Committee on Economic, Social and Cultural Rights has explained that States' obligations to ensure the right to participate in cultural life under article 15 of the ICESCR includes the obligation to respect and protect cultural heritage (general comment No. 21, para. 50).

In its resolution 6/1 on the protection of cultural rights and property in situations of armed conflict, the Human Rights Council reaffirmed that the destruction of or any other form of damage to cultural property may impair the enjoyment of cultural rights, in particular under article 15 of the ICESCR. In its resolution 33/20 on Cultural rights and the protection of cultural heritage, the Council noted "that the destruction of or damage to cultural heritage may have a detrimental and irreversible impact on the enjoyment of cultural rights, in particular the right of everyone to take part in cultural life, including the ability to access and enjoy cultural heritage," (preamble) and "Urge[d] all parties to armed conflicts to refrain from any unlawful military use or targeting of cultural property, in full conformity with their obligations under international humanitarian law" (para. 2).

A specific protection regime governs the protection of cultural heritage in times of armed conflict. Core standards to which Armenia is a state party include the Geneva Conventions of 1949, the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and the 1954 and 1999 Protocols thereto. The 1954 Hague Convention requires States parties to respect cultural property and refrain from any act of hostility directed against it or any use of it likely to expose it to such acts, subject only to imperative military necessity (article 4). In accordance with article 28, parties must prosecute and impose penal or disciplinary sanctions upon those persons, of whatever nationality, who commit or order a breach of the Convention. The Second Protocol to the Hague Convention strengthens this provision by requiring the codification of a criminal offence, including extension of responsibility to higher command (article 15 (2)).

The Second Protocol narrows the application of the "military necessity" waiver to those cases where "no feasible alternative (is) available to obtain a similar military advantage" and it imposes standards of proportionality to prevent or minimize collateral damage. (A/71/317, para. 20).

In the United Nations Educational, Scientific and Cultural Organization (UNESCO) Declaration concerning the Intentional Destruction of Cultural Heritage, adopted in 2003, the international community reaffirms its commitment to fight against the intentional destruction of cultural heritage in any form so that it may be transmitted to the succeeding generations. States are unequivocally instructed to prevent, avoid, stop and suppress intentional destruction, wherever such heritage is located.

In her 2016 report to the General Assembly on the intentional destruction of cultural heritage, the Special Rapporteur in the field of cultural rights called for a human rights approach to this issue. She underscored that "[a]dopting a human rights approach entails consulting the people who have particular connections with heritage,

including for the purpose of understanding and incorporating the multiplicity of interpretations of that heritage, and determining whether (or not) they wish to rebuild, reconstruct and re-establish such a heritage and if so, how. Such consultations must include marginalized groups; further, women must be fully involved.” (A/71/317, para. 58).