SAM STRATEJİ ARAŞDIRMALAR MƏRKƏZİ

Center for Strategic Studies under the President of the Republic of Azerbaijan

NAGORNO-KARABAKH CONFLICT IN INTERNATIONAL LEGAL DOCUMENTS AND INTERNATIONAL LAW

Dr. Kamal Makili-Aliyev

Fall 2013

Contents

1. Introduction

The end of XX century was marked by horrible atrocities. Sudden increase of violence on the international level occurred in the period of fall of Soviet Union and followed by the horrible events of wars in Yugoslavia and genocide in Rwanda. In the beginning of 1990s the world's attention was bound to these inhuman events mostly troubled by the failure of international community to prevent situations in Yugoslavia and Rwanda. But in the light of these events one conflict was forgotten. One can only wonder why the conflict that was not less atrocious and started before events of Yugoslavia, for instance, suddenly went to shades and was not largely discussed by scholars of international community. It hasn't dragged that much attention, it was not discussed by media on the day-by-day basis; almost no scholars refer to it in their works. This conflict is known as the Nagorno-Karabakh Conflict between the Republic Azerbaijan and the Republic of Armenia.

The Nagorno-Karabakh conflict is one of the gravest conflicts in the modern history of mankind. This conflict is still poses considerable threat to the international peace and security as well as to the welfare of the states in the region of the South Caucasus. The conflict began in 1988 when Armenian population of Nagorno-Karabakh with the support of then Armenian Soviet Socialist Republic demanded the secession of the territory of Nagorno-Karabakh Autonomous Oblast' from the territory of then Azerbaijan Soviet Socialist Republic and transfer of that territory to Armenia. After the dissolution of Soviet Union in 1991 this conflict went into the full scale war between states that were newly independent and recognized *uti possidetis juris* in their territorial borders as they have existed in the former USSR.

The result of the war was the bloodiest outcome of all the conflicts in post-Soviet era (so far) with more than 25,000 lives lost. Moreover, the conflict has left approximately 1 million Azerbaijani people as internally displaced and refugees and around 20% of Azerbaijani territories occupied. Shaky ceasefire agreement is maintained between the parties from 1994.[1]

1 Kamer Kasim, *The Nagorno-Karabakh Conflict: Regional Implications and the peace process.* - Caucasus International (Ankara, Moda Ofset Basim Yayin), 2012, No:1, Vol.2, p. 94.

The importance of implementation of international humanitarian and international criminal law in any armed conflict should not be underestimated. Plus studying the related legal jurisprudence is of the value as well. Basic sources are invaluable for the research on these matters. As it can be seen in close history, international community became very concerned with issues such as violations of international humanitarian law and enforcement of international criminal law. The best examples can be international criminal tribunals for Yugoslavia and Rwanda created in the beginning of 90s specially (*ad hoc*) for the situations with mass grave breaches of international humanitarian law (Yugoslavia) and genocide crimes (Rwanda).

On the other hand effective implementation of aforementioned branches of international law is essential for the enforcement of international law in any conflict and thus supports the restoration of peace and security in the world.

What we see here is the need of maintenance of peace and security in the world pronounced (if not dictated) by the UN Charter and at the same time supported by the international community. Such situation demands responsibility of states for the effective enforcement of international law not only in times of peace, but also in times of war.

One question especially troubles when looking at all the international documents on Nagorno-Karabakh Conflict and failure of international law: why international community witnessing international crimes and having in its interest their prosecution and prevention, prefer to stay blind and silent to such events in the Nagorno-Karabakh Conflict, but on the other hand immediately reacts to the events in Yugoslavia and Rwanda? How is it possible that such atrocious conflict escaped from the eyes of international community? One can only speculate about that. However, it seems logical that though there are several resolutions of UN Security Council, political will of certain States blocks all attempts of UN to act in regard to this conflict. From that follows lack of attention of international community, poor media coverage, and on some point loss of interest from western states, which is so important for any international conflict. Though Security Council provided in its resolutions to be actively seized on the matter, no such concentration have been seen. Nagorno-Karabakh Conflict became frozen and suffered lack of attention until now. Such situation clearly shows impotence of UN to act in certain situation and high level of its dependence on political will of the States.

The same logic applied to all other international organizations with their subsequent resolutions and claims. The impotence of the international community to enact international law is horrifying in the eve of the current events in international armed conflicts. This study will thoroughly survey both international legal framework as well as all the legal instruments related to Nagorno-Karabakh Conflict with the appropriate commentary.

This work consists from 6 main chapters. Chapter 1 called "Introduction" gives short reasoning of the choice of the subject and Nagorno-Karabakh Conflict in particular and discusses questions in focus of work.

Chapter 2 called "Overview of International Legal Documents in Nagorno-Karabakh Conflict" gives a detailed overview of the legal instruments that are present up to date in regard of this international armed conflicts. The chapter is actually a detailed commentary encompassing every document separately through the legal analysis. It also provides the appropriate analysis on the matters confused in international law in Nagorno-Karabakh Conflict.

Chapter 3 called "Applicable International Law" begins with short introduction to international humanitarian law, including background and history of that branch of international law, introduction to The Law of The Hague, to The Law of Geneva, to Protocols Additional to the Geneva Conventions of August 1949, and also to fundamental principles of international humanitarian law. Then it proceeds with short introduction to international criminal law, including theory of international criminal law, introduction to *ad hoc* international tribunals and International Criminal Court and to international crimes. The purpose of that Chapter is to show what norms of international humanitarian and international criminal law are important to be applied in the Nagorno-Karabakh Conflict.

Chapter 4 called "Failure of International Law in Nagorno-Karabakh Conflict" discusses international humanitarian law applicable to Nagorno-Karabakh Conflict, combatants and civilians situation in Nagorno-Karabakh Conflict and rules of customary international humanitarian law in Nagorno-Karabakh Conflict. Then it discusses war crimes, genocide of Azerbaijanis, Armenian aggression and crimes against humanity in regard to Nagorno-Karabakh Conflict. This Chapter shows the actual failure of international law in Nagorno-Karabakh Conflict based on examples.

Chapter 5 called "Conclusions" provides concluding remarks and sums up the research, while Chapter 6 collects all the international legal documents on Nagorno-Karabakh Conflict for reader's reference and convenience.

In my previous research I came up with several articles shortly covering international humanitarian law in the conflicts of South Caucasus, general implementation of international criminal law, implementation of international humanitarian law into domestic legislation of Azerbaijan and other issues.[2] But this work is an attempt to actually focus on the Nagorno-Karabakh Conflict as a whole and on related international legal documents and international law.

2 See, K. Makili-Aliyev, "Problems in Implementing and Observing the Law of War in the Central Caucasus", 1 (37) *Central Asia and the Caucasus* (2006), Lulea, Sweden, pp. 86-95; "Некоторые аспекты международного гуманитарного права на Южном Кавказе" (Several Aspects of International Humanitarian Law in South Caucasus), 2 *Renessans* (2005), Baku, Azerbaijan, pp. 53-60; "Некоторые аспекты личной ответственности в международном гуманитарном праве" (Several Aspects of Personal Responsibility in International Humanitarian Law), 3-4 *Самартали / Право* (2006), Tbilisi, Georgia, pp. 47-51; "О применении международного уголовного права" (On enforcement of International Criminal Law), *Dirçəliş - XXI əsr* (2007), Baku, Azerbaijan; "Некоторые аспекты провала международного права в Нагорно-Карабахском конфликте" – *Армяно-азербайджанский Нагорно-Карабахский конфликт и конфликт в Приднестровье: современное состояние и перспективы урегулирования*. Материалы Международной научно-практической конференции, (Кишинэу, Молдова, 1 июня 2012 г.). – Кишинэу: Академия Публичного Управления при Президенте Республики Молдова, 2012, с. 38-44; "The Legal Status of Quasi-Autonomies in USSR: Case of Nagorno-Karabakh's Autonomous Oblast." - *Caucasus International* (Ankara, Pasifik Ofset Ltd.), 2013, No:1-2, Vol.3, pp. 113-145; "Problems of International Criminal Law in the Nagorno-Karabakh Conflict". - *Право и политология* (Кишинэу, Молдова), 2014, № 25, с. 20-25.

2. Overview of the International Legal Documents in Nagorno-Karabakh Conflict

International community have condemned the occupation of Azerbaijani territories and the aggression of Armenia many times in multiple international legal instruments and called for and demanded the withdrawal of Armenian armed forces from the occupied Azerbaijani territories on several occasions; however to no avail. Most notable of such legal documents are four United Nations (UN) Security Council resolutions 822, 853, 874 and 884 of 1993. Moreover, similar resolutions and declarations were adopted by the UN General Assembly, European Parliament, Parliamentary Assembly of Council of Europe, Organization of Islamic Cooperation and even NATO, that mentions in its declaration the unresolved conflicts in Nagorno-Karabakh as well as Georgia and Moldova in a long list of security challenges facing the West. It seems to single out territorial integrity of internationally recognized states as the guiding principle for their peaceful resolution. That document makes no references to people's right to self-determination which has been championed by the Armenian side.[3]

If we would take a look at aforementioned documents we would see that international community have always been convinced that Azerbaijan was a victim of aggression. The clearest message of that is delivered by the aforementioned resolutions of the UN Security Council. It is worth taking a look at them one by one.

In UN Security Council Resolution 822 (Chapter 6.1) that was adapted unanimously on 30 April 1993 the Council is clearly really concerned with the deterioration of relations between Armenia and Azerbaijan, escalation of armed hostilities and dreadful humanitarian situation that followed. Security Council thus demanded secession of all hostilities and withdrawal of Armenian occupying forces from Kalbajar district of Azerbaijan.[4] The

3 *See*, UN General Assembly Resolution 62/243; PACE Resolution 1416 (2005) "The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference"; European Parliament resolution of 20 May 2010 on the need for an EU strategy for the South Caucasus (2009/2216(INI)), paras. 8, 11, 41; OIC Resolution no. 10/11-P(IS) on the Aggression of the Republic of Armenia against the Republic of Azerbaijan; NATO Chicago Summit Declaration, para. 47.

4 Europa Publications Limited (1999). *Eastern Europe and the Commonwealth of Independent States, Volume 4* (30th ed.). Routledge. p. 176.

Council also called for the peace process that would not be disrupted by any actions of the sides of the conflict, reminded the parties about their obligations under international humanitarian law and highlighted its readiness to further deal with the matter in cooperation with OSCE.

As it can be seen from the text of the resolution, though Security Council does not openly calls out Armenian aggression, it attributes the hostilities to be between Armenia and Azerbaijan. Moreover, the Council recognizes the occupation of Kelbajar district and other areas of Azerbaijan. Pure logic of the text here dictates that if hostilities are between Armenia and Azerbaijan and if Azerbaijani territories are occupied, then the only logical occupational force can be Armenian. Thus, the main body of the UN responsible for maintenance of peace and security in the world recognized the occupation of Azerbaijani territories by Armenia already in 1993 in its first resolution on the matter. The trend continued subsequently.

In its Resolution 853 (Chapter 6.2) UN Security Council adapted 29 July 1993 the Council have reaffirmed its previous Resolution 822 and once again expressed grave concern that the situation continues to deteriorate and that armed hostilities are escalating. Then the Security Council condemns the occupation of Azerbaijan's district of Agdam and all other occupied parts of Azerbaijan and demands complete and unconditional withdrawal of all of the occupying forces from these territories. Again, these are logically attributed to Armenia. More so, as apart from the demand of deoccupation, secession of the hostilities, prevention of the attacks on civilians and bombardments of inhabited areas and the restoration of the communications and other links in the region – the Council makes a demand of the Government of Armenia.

In the text of this resolution UN Security Council demands that the Government of Armenia would exert its influence on the Armenians of Nagorno-Karabakh region of Azerbaijan to ensure their compliance with the Councils' resolutions and acceptance of the proposals of the Minsk Group of OSCE. With that, UN Security Council not only acknowledges the involvement of Armenia with the Armenian separatists of Nagorno-Karabakh, but also that the Nagorno-Karabakh is a territory of Azerbaijan that cannot be violated. That notion in conjunction with the fact that in this resolution UN Security Council reaffirms the territorial integrity of

Azerbaijan makes a clear indicator that the territories that are currently under occupation are clearly recognized as Azerbaijani territories.

Next resolution adapted by the UN Security Council on the situation later that year on 14 October was the Resolution 874 (Chapter 6.3). In this resolution the Council once again reaffirms its previous resolutions (822 and 853) and expresses the grave concern with the continuing conflict between Armenia and Azerbaijan in and around the Nagorno-Karabakh that continues to endanger peace and security. This resolution also concentrated on human suffering, humanitarian issues, the need of cease-fire to be enacted and support for the peace process championed by the OSCE. The resolution again demands the steps to be taken by the occupying forces to withdraw from all occupied territories of Azerbaijan and to remove obstacles for transportation and communications.

With all that this Resolution was the first one that demanded from the regional states to refrain from any hostile actions, interference or intervention into the conflict that may enlarge the scale of the conflict and endanger the whole regional security framework. With that Security Council sent a clear message to the regional states that it is aware that they may be involved in the escalation of the hostilities and pursue their own political agendas in the conflict. However, it calls upon them not to endanger regional peace and security and stay in the framework of international law to be able to solve the problem without enlargement of the hostilities and the area of the conflict.

In the fourth and final resolution on the matter, Resolution 884 (Chapter 6.4) UN Security Council have once again reaffirmed the previous resolutions (822, 853 and 874) and expressed yet again the grave concern over the continuing conflict between Armenia and Azerbaijan. In this resolution UN Security Council again notes the escalation of the armed hostilities and condemns the occupation of Zangilan district and Goradiz city of Azerbaijan. The Council also condemns the attacks on civilians and bombardments of the territory of Azerbaijan. It again turns its demands to Armenia to ensure that the occupying forces have no means to continue military campaign. It also calls for the humanitarian aid and the secession of all hostilities.

It has to be pointed out that this was the first time the Council have openly acknowledged the harm done by the occupying Armenian force

to Azerbaijan's territory and to the civilians that were on their way. This is also a resolution that throughout the text focuses on the occupation of Zangilan and Goradiz several times, stressing the need of deoccupation and prevention of future territorial conquests by the Armenian armed forces. Though it does not say it openly for political reasons, from the logic of the text it basically calls Armenia to stop occupying the territories of Azerbaijan. Especially these calls are evident in the demands to "ensure that the forces involved are not provided with the means to extend their military campaign further". As the forces involved were (and are today) clearly under control of the Republic of Armenia, this was the call for the aggressor state to cease its occupational campaign and start withdrawing forces.

Unfortunately, as it was mentioned before, these resolutions have not found their implementation and enforcement. The reasons why such was the case will be discussed below in this chapter. While these resolutions were the core of the legal documents that deal with Nagorno-Karabakh conflict, international community have expressed its opinion many more times in legally non-binding documents, that still reflect the position of the world on the matter. One such document was a UN General Assembly Resolution 62/243 (Chapter 6.5).

This resolution is dedicated solely to "The Situation in the Occupied Territories of Azerbaijan" as is evident through the name of the resolution. It was adapted on March 14, 2008 during the 62nd session of the UN General Assembly and counts as the fifth UN document on the Nagorno-Karabakh Conflict that was adopted by the vote and consensus so far.[5] It recalls all the previous UN documents that were adapted prior to this resolution and reaffirms them. Moreover, it recalls the report of the fact-finding mission of the Minsk Group of the OSCE to the occupied territories of Azerbaijan surrounding Nagorno-Karabakh and the letter on the fact-finding mission from the Co-Chairmen of the Minsk Group addressed to the Permanent Council of the OSCE.

In this document that was adopted by the majority of UN vote, the international community have reaffirmed again the territorial integrity of Azerbaijan, called attention to the violations of international humanitarian

5 It has to be pointed out, that UN General Assembly adopted the Resolutions 48/114 (1993) and 60/285 (2006) on Nagorno-Karabakh as well, however on plenary meetings and without a vote. Thus they cannot, in the point of view of the author, effectively reflect the will of international community.

law by Armenia, demanded full and unconditional withdrawal of Armenian armed forces from all occupied Azerbaijani territories and reaffirmed the right of all refugees and IDP's to return to their homes from where they have been expelled. Furthermore, it is first time that international community voiced the concern and recognized the necessity of providing normal, secure and equal conditions of life for Armenian and Azerbaijani communities in the Nagorno-Karabakh region of the Republic of Azerbaijan, which will allow an effective democratic system of self-governance to be built up in this region within the Republic of Azerbaijan. In addition it calls upon UN member-states not to recognize the present situation with the occupation of the Azerbaijani territories as lawful under any circumstances. This resolution was a great step for international community in recognition of the breach of international law that has been so outrageously disregarded for many years in Nagorno-Karabakh Conflict.

Turning to the international legal documents from local organizations it is logical to first turn to the Council of Europe where Armenia and Azerbaijan are members since 2001.

In 2005 Parliamentary Assembly of Council of Europe has adopted the Resolution 1416 that covered "The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference" (Chapter 6.6). That resolution expresses regret that the conflict is still unsolved and openly states that hundreds of thousands people are still displaced and live in miserable conditions. Moreover, the resolution carries in the first paragraph the solid recognition that Azerbaijani territories are under occupation by Armenian forces and that separatists are still in control of Karabakh. Resolution delivers great concern to the matters such as the fact that the military action, and the widespread ethnic hostilities which preceded it, led to large-scale ethnic expulsion and the creation of mono-ethnic areas which resemble the terrible concept of ethnic cleansing. It also reaffirms that independence and secession of a regional territory from a state may only be achieved through a lawful and peaceful process based on the democratic support of the inhabitants of such territory and not in the wake of an armed conflict leading to ethnic expulsion and the *de facto* annexation of such territory to another state. Moreover, Resolution reiterates that the occupation of foreign territory by a member state constitutes a grave violation of that state's obligations as a member of the Council of Europe and reaffirms the right of displaced

persons from the area of conflict to return to their homes safely and with dignity. Basically, urging the Republic of Armenia to reconsider its position and comply with its obligations under international law.

This resolution bares a great importance. It clearly showed the stance of regional organization in the question of the occupation of Azerbaijani territories and aggression of the Republic of Armenia. Furthermore, the Resolution recalls the aforementioned four resolutions of the UN Security Council and urges parties to comply with them. Special accent is made on the Armenia. The Resolution also brings in a very interesting suggestion should the negotiation process under Minsk group fail. It recalls that Armenia and Azerbaijan are signatory parties to the Charter of the United Nations and, in accordance with Article 93, paragraph 1 of the Charter, *ipso facto* parties to the statute of the International Court of Justice. Therefore, Armenia and Azerbaijan may consider using the International Court of Justice in accordance with Article 36, paragraph 1 of its statute. In light of recent events that show both ineffectiveness and inefficiency of Minsk Group Co-Chairs and the process they facilitate, this idea should not be forgotten.

Another interesting topic raised by the Resolution is the recognition of the two communities (Armenian and Azerbaijani) in Nagorno-Karabakh and call for Azerbaijani side to establish contact, without preconditions, with the political representatives of both communities from the Nagorno-Karabakh region regarding the future status of the region. It has to be pointed out that Azerbaijan on numerous occasions tried to facilitate the meetings between the two communities of Karabakh, however, unfortunately due to the destructive position of the Armenian side, that tries to deny existence of Azerbaijani community of Nagorno-Karabakh *per se*, the contacts are failing. The Resolution also calls for facilitation of interregional cooperation between Armenia and Azerbaijan.

Several years later EU have also expressed its just position on the Nagorno-Karabakh adopting the European Parliament resolution of 20 May 2010 on the need for an EU strategy for the South Caucasus (2009/2216(INI)) (Chapter 6.7). In this resolution EU urges parties (which are identified as Armenia and Azerbaijan) to show a more constructive attitude and to abandon preferences to perpetuate the *status quo* created by force and with no international legitimacy. It is worth noting that Armenia and Azerbaijan

are rightfully identified as parties contrarily to some claims from Armenian side that the conflict is between Azerbaijan and separatists of Karabakh. Moreover, the Resolution specifies that current status quo of the conflict is illegitimate as it was created by the use of force, hence with violations of international law.

The Resolution also brings attention to the breaches of ceasefire and urges parties to abstain from them. The document stresses the EU concern with hundreds of thousands of refugees and IDPs who fled their homes during or in connection with the Nagorno-Karabakh war remain displaced and denied their rights, including the right to return, property rights and the right to personal security and calls on all parties to unambiguously and unconditionally recognize these rights, the need for their prompt realization and for a prompt solution to this problem that respects the principles of international law. Such a humanitarian approach is welcome in light of the dire fate of around one million of Azerbaijani IDPs and refugees that still live in violation of their inherent human rights.

Most importantly, the aforementioned Resolution demands, the withdrawal of Armenian forces from all occupied territories of Azerbaijan. This clearly shows the position of the EU in regards of the occupation of Azerbaijani territories by Armenia and once again the attitude of the European community to the violations of international law. Moreover, this resolution urges for deployment of international forces to be organized with respect of the UN Charter in order to provide the necessary security guarantees in a period of transition, which will ensure the security of the population of Nagorno-Karabakh and allow the displaced persons to return to their homes and further conflicts caused by homelessness to be prevented.

The EU resolution has also expressed the view that the EU has the opportunity to support the resolution of the Nagorno-Karabakh conflict and underlined the importance of the EU contribution in this regard, thus it finds it inevitable for the EU's role in the Minsk Group to be upgraded through the establishment of an EU mandate for the French Co-Chair of the Minsk Group. This interesting notion was supported by Azerbaijan that has called for the changes in the Minsk Group Co-Chair format many times, but was not taken into account by the current Co-Chairs and no such reforms came up until today.

The support for Azerbaijan's just position in the conflict and territorial integrity was not localized only to European community. In Muslim world, Azerbaijan finds its position recognized as well. Organization of Islamic Cooperation (OIC) have adopted Resolution no. 10/11-P(IS) on the Aggression of the Republic of Armenia against the Republic of Azerbaijan (Chapter 6.8), during the Eleventh Session of the Islamic Summit Conference in 2008.

The aforementioned resolution directly recognizes the aggression of the Republic of Armenia against Azerbaijan that resulted in occupation of around twenty percent of its territory. The document also expresses the profound concern over continued occupation of significant part of the territories of Azerbaijan and illegal transfer of settlers of the Armenian nationality to those territories as well as deep distress over the plight of more than one million Azerbaijani displaced persons and refugees resulting from the Armenian aggression and over magnitude and severity of these humanitarian problems. Moreover, this resolution also reaffirms commitment by all Member States to respect the sovereignty, territorial integrity and political independence of the Republic of Azerbaijan.

The OIC resolution has raised one very serious problem with the illegal settlements of Armenians in occupied territories, unlike all previous resolutions discussed. This problem is rarely voiced in the international community, despite the fact that it creates large security and humanitarian problems in long term. Furthermore, while condemning the aggression of Armenia against Azerbaijan the OIC resolution rightfully considers the actions perpetrated against civilian Azerbaijani population in the occupied Azerbaijani territories as crimes against humanity. These crimes will be discussed in following chapters of this work which will show the just approach of the OIC to the matter. In line with previous resolutions the OIC resolution strongly demands the strict implementation of the United Nations Security Council resolutions 822, 853, 874 and 884, and the immediate, unconditional and complete withdrawal of Armenian forces from all occupied Azerbaijani territories including the Nagorno-Karabakh region and strongly urges Armenia to respect the sovereignty and territorial integrity of the Republic of Azerbaijan.

In addition this resolution calls on the UN Security Council to recognize the existence of aggression against the Republic of Azerbaijan, to take the

necessary steps under Chapter VII of the Charter of the United Nations to ensure compliance with its resolutions and to condemn aggression against the sovereignty and territorial integrity of the Republic of Azerbaijan. This is the first regional body that has openly called UN Security Council to fulfill its duties in regard to the Nagorno-Karabakh Conflict. Additionally, the OIC resolution calls upon states not to provide any military assistance to the aggressor-state of Armenia and deprive it from the opportunity to escalate the conflict and stresses that *fait accompli* may not serve as a basis for a settlement, and that neither the current situation within the occupied areas of the Republic of Azerbaijan, nor any actions, including arranging voting process, undertaken there to consolidate the status quo, may be recognized as legally valid.

All in all this resolution proven to be the strongest and most comprehensive one showing the whole range of issues in Nagorno-Karabakh Conflict and most adequate in terms of the reflection of international law.

Furthermore, it has to be pointed out, that even such and international security organization as NATO has reflected upon the international law in Nagorno-Karabakh conflict. In its Chicago Summit Declaration of 20 May 2012 (Chapter 6.9) it has clearly send a message of the recognition of territorial integrity of Azerbaijan. In the paragraph 47 of the Declaration NATO states that it remains committed in our support of the territorial integrity, independence, and sovereignty of Armenia, Azerbaijan, Georgia, and the Republic of Moldova, and will also continue to support efforts towards a peaceful settlement of these regional conflicts, based upon these principles and the norms of international law, the United Nations Charter, and the Helsinki Final Act. If we would take into account that the principles mentioned do not include the self-determination of the peoples that is usually wrongfully (as it will be explained below here) used by Armenia to justify its position, and that the mentioned documents focus on the principles of international law as well – it is obvious that NATO also approaches to the Nagorno-Karabakh Conflict through the prism of international law and supports the rightful position of Azerbaijan in these matters.

All of the aforementioned shows that though there is a clear recognition of the occupation from the international legal point of view, the situation on the ground is not reflective of the legal realities. It has to be pointed out that

South Caucasus is geopolitically a very complicated region and that the failure of international law is indirectly linked with the stagnation in geopolitics. Azerbaijan and Armenia as conflicting parties constitute two thirds of the South Caucasus where the interests of such regional players such as Russia, Iran and Turkey are intertwined into a very tight geopolitical knot with the outside interest of such international players as US, European Union and even Israel.[6] All that creates a very complicated situation of competing interests that only supports the current *status quo* in the Nagorno-Karabakh conflict as none of the interested players (with exception of Azerbaijan) wants to try to loosen the geopolitical knot. Thus, all the attempts of resolution have been failing to date.

Today in the doctrine of international law and international relations there are more and more voices asking the question of total failure of international law in the situations of armed conflicts, such as the recent cases of Libya and Syria, and now even Ukraine. That same question is on the agenda of the International Law Commission for some time now. Nonetheless, the failure of implementation and enforcement of international law in Nagorno-Karabakh conflict is usually avoided, despite the fact that this conflict is more than twenty years old now and started out long before the recent events in Libya, Syria and Ukraine.

Questions of the effective enforcement of international law are often deadlocked in the international community. Sometimes the good will of the states is lacking, sometimes there are not enough resources and sometimes the need for the enforcement is just plain forgotten. In Nagorno-Karabakh conflict the failure of international law occurred precisely because of the deadlocked international community.

From the start of Armenian aggression against Azerbaijan with the aim of annexation of the parts of its sovereign territory, UN Security Council has adopted aforementioned resolutions that are not enforced until today. In these resolutions Security Council actually demands the withdrawal of all occupying forces from the territories of Azerbaijan.[7] It is commonly known from the UN Charter Article 25 that the Security Council Resolutions are

6 Kamal Makili-Aliyev, *Azerbaijan's Foreign Policy: Between East and West…* – IAI Working Papers (Rome, Italy), 2013, №1305, http://www.iai.it/content.asp?langid=2&contentid=834

7 Heiko Krüger, *The Nagorno-Karabakh Conflict. A Legal Analysis* – (London, New York: Springer), 2010, p.106.

obligatory for the implementation for all the UN member-states[8] including the Republic of Armenia. However, Armenia till this day ignores these resolutions.

Surprising is that the UN Security Council has enough powers to make any state comply with its resolutions. In order to achieve such enforcement from the given state, the Council has to start the procedure in accordance with the Article 41 of the UN Charter.[9] In other words it should apply the sanctions of non-military character to the state-violator of the its resolutions (for example, complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations). If such sanctions prove to be insufficient to achieve the implementation of resolutions, UN Security Council may use military sanctions in accordance with Article 41 of the UN Charter.[10]

Unfortunately, none of the above has been used to make Armenia comply with the decisions of UN Security Council and the aggression is continuing even today. Precisely due to the inaction of the UN Security Council the Republic of Azerbaijan still retains the right of self-defense under the Article 51 of the UN Charter that declares that:"Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security…".[11] With that in mind, all the possible actions of Azerbaijan to liberate its territories from occupation should thus be considered as the exercise of the "inherent" right to self-defense.

Apart from that, there was a change in the framework of conflict resolution. The Nagorno-Karabakh Conflict resolution was shifted from the international organization such as UN to the responsibility of the regional organization – Organization for Security and Cooperation in Europe (OSCE) and its special creation, so-called "Minsk Group". Moreover, the peculiar paradox occurred in the understanding of principles of international law through the subsequent "peace process". To be precise – with the understanding of principles of

8 UN Charter, Article 25, http://www.un.org/en/documents/charter/chapter5.shtml
9 *Ibid.*, Article 41.
10 *Ibid.*, Article 42.
11 *Ibid.*, Article 51.

territorial integrity and the right of peoples to self-determination.

It has to be pointed out that in the process of the resolution of Nagorno-Karabakh Conflict there are often view expressed that aforementioned principles are in the collision and the parties of the conflict argue the superiority of one of the principles over the other. All such claims and views are incorrect by definition. The same goes to the incorrect assumptions of the Armenian side of the conflict that territorial integrity does not mean inviolability of borders.

To start from the roots, it has to be pointed out that majority of the grounding principles of international law are reflected in the UN Charter and long constitute customary international law (thus they are binding for all the states in the world). The same applies to the famed principle of territorial integrity.[12] Generally, this principle was included in the UN Charter[13] in 1945 with the aim not to repeat the World War II (and predecessor wars) experience and to prevent the eruption of aggressive and occupational wars of states against each other. The further development of this principle is linked with the 1975 Helsinki Final Act of the then Conference for Security and Cooperation in Europe (predecessor of OSCE). This document states that: "The participating States will respect the territorial integrity of each of the participating States. Accordingly, they will refrain from any action inconsistent with the purposes and principles of the Charter of the United Nations against the territorial integrity, political independence or the unity of any participating State, and in particular from any such action constituting a threat or use of force. The participating States will likewise refrain from making each other's territory the object of military occupation or other direct or indirect measures of force in contravention of international law, or the object of acquisition by means of such measures or the threat of them. No such occupation or acquisition will be recognized as legal."[14]

Norms of international law that cover inviolability of borders constitute a part of principle of territorial integrity and that is confirmed by the same Helsinki Final Act: "The participating States regard as inviolable all one another's frontiers as well as the frontiers of all States in Europe and therefore

12 Marcelo G. Kohen , in: Kohen (ed.), *Secession. International Law Perspectives,* – (Cambridge), 2006, pp.6 et seq.
13 UN Charter, Article 25, http://www.un.org/en/documents/charter/chapter5.shtml
14 1975 Helsinki Final Act, 1, IV, http://www.osce.org/mc/39501?download=true

they will refrain now and in the future from assaulting these frontiers".[15] In their own turn such norms require states to: 1) recognize the existing borders as legally binding in accordance with international law; 2) refrain from any territorial claims presently or in future; 3) refrain from any violation of these borders including threat or use of force for that matter. Thus, the principle of territorial integrity means not only inviolability of borders but even wider range of sub-principles. That includes even the internal matters and not only international relations of states concerned.[16]

To try and argue that these principles apply to Armenia through international treaty law is quite irrelevant, as all of these norms constitute customary international law for a long time now and thus are binding on all the states in the world. On the other hand the argument of Armenian side is based on the relevance and implementation of principle of self-determination of the peoples.

The problem with that argument is that such a founding principle of international law as a right of peoples to self-determination in its broader sense (with rights to secession), that was reflected in the UN Charter is in fact a "dead" principle of international law. It can be applied only in more narrow sense to the self-determination of minorities in cultural, religious and linguistic matters. The norms reflected in the Helsinki Final Act are only supportive of that position: "The participating States will respect the equal rights of peoples and their right to self-determination, acting at all times in conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States. By virtue of the principle of equal rights and self- determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development. The participating States reaffirm the universal significance of respect for and effective exercise of equal rights and self- determination of peoples for the development of friendly relations among themselves as among all States; they also recall the importance of the elimination of any form of violation of this principle".[17]

15 *Ibid.*, 1, III.
16 Marcelo G. Kohen , in: Kohen (ed.), *Secession. International Law Perspectives,* – (Cambridge), 2006, p.7.
17 1975 Helsinki Final Act, 1, VIII, http://www.osce.org/mc/39501?download=true

Specifically due to the fact that "peoples" can exercise their right to self-determination without going outside the norms of international law on territorial integrity of the states it can be pointed out that Helsinki Final Act of 1975 (one of the grounding legal instruments of OSCE) has endorsed the principle of right of self-determination of peoples in its narrow sense.

Moreover, this principle of international law in its broader sense became inapplicable after the decolonization in 1960-1970-s. It was included in UN Charter specifically with the purpose of final abolition of colonialism and imperialism. Such an approach is supported by the UN Declaration on principles of international law: "Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order: a) to promote friendly relations and co-operation among States; and b) to bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned; and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter... The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles".[18]

The declaration specifically points out the colonial peoples and the process of decolonization is long over. Moreover, Nagorno-Karabakh was never a colony and Armenian population residing there is in fact a national minority on the territory of the Republic of Azerbaijan and not any kind of "colonial people". In accordance with international law national minorities do not have right to self-determination in broader sense due to the fact that their "nation" (people) has already exercised the right to self-determination in

18 UN General Assembly Declaration on principles of international law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 1970, A/RES/25/2625, http://www.un-documents.net/a25r2625.htm

their own territory. In this case – the Republic of Armenia. This view is also supported in the prominent international legal doctrine.[19]

With that in mind, the principle of right of peoples to self-determination in its broader sense from the legal point of view has no application to Nagorno-Karabakh conflict. However, the speculations over this principle are present today in the framework of negotiations and peace process.

Furthermore, another false argument that comes from Armenian side is related to the recognition of the separatist entity in Nagorno-Karabakh. These claims are that in accordance with the Montevideo Convention of 1933 self-proclaimed so-called "Nagorno-Karabakh Republic" should be recognized on the international level. However, in accordance with Article 1 of Montevideo Convention that states that: "[t]he state as a person of international law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states" – these claims are totally groundless. It so happens that the territories occupied by the Republic of Armenia that have created a separatist entity there, include much more than just a territory of Nagorno-Karabakh itself (such as seven more regions of Azerbaijan). It is thus unclear where the separatists would draw borders. In general it is impossible to talk about clearly defined borders where there are shaky lines of contact between two military forces. Then, permanent population is out of question as well. Separatist regime has never defined its population and has not introduced clear "citizenship", which is of course impossible without clearly defined territory. In the attempts to claim the population that is right now *de facto* resides on the occupied territories it is unclear why that does not include Azerbaijani population that was forced out and ethnically cleansed from these territories. Such situation also speaks of impermanence of population. The government is non-existent by definition – the so-called "Nagorno-Karabakh Republic" is fully administrated by the Republic of Armenia. It would be very naïve to talk about independent administration of the "Republic" taking into account the full subordination of separatist entity (both politically and financially) to the Armenian kin-state. Finally, taking into account the fact that not a single state in the world (including Armenia) has recognized

19 Heiko Krüger, *The Nagorno-Karabakh Conflict. A Legal Analysis* – (London, New York: Springer), 2010, pp.53-92.

that separatist entity, there cannot be any capacity of so-called "Nagorno-Karabakh Republic" to enter into relations (namely diplomatic) with any other subjects of international law.

With all that taken into account the question arises on what are the reasons of such a situation with international law failure in this particular context. First of all, international law once again became a victim of the lack of political will of particular states to follow its norms. Uninterested position of the UN Security Council in implementation in this case its own resolutions led to the change of the organization from the mediating body to the regional body that does not have any effective instruments or mechanisms of the enforcement of international law. That in its turn led to the prolongation of the conflict and certain substitutions of definitions in the international legal context that have been demonstrated above.

Second, when parties to the conflict have been engaged in the active hostilities phase of the conflict there was a lack of serious attention and involvement from the international community that usually constitutes the most serious impulse behind international law. The attention of international community was more focused on Balkans and then to the genocide in Rwanda.

Third, international law have went through the process of politicization that led to the possibility of different speculations with its norms and that has considerably harmed the already fragile process of the recognition of the actions of the states as legitimate or quite opposite – as breaches of international law.

3. Applicable International Law

In this part of the work I would like to discuss parts of international law that are relevant to the events of the Nagorno-Karabakh Conflict and should be enforced in this particular conflict as well as in any other conflict that there may be.

3.1 Applicable International Humanitarian Law

This sub-chapter is discussing particular branch of international law (international humanitarian law) to focus attention on specific norms that will be discussed further in this work in connection with the Nagorno-Karabakh Conflict.

3.1.1 Background and history of International Humanitarian Law

The main aim of International Humanitarian Law (IHL) is to mitigate human suffering caused by war. Some scholars would call it even to "humanize" war. The philosophical background for this aim might be taken from Grotius. His work in the time of Thirty-Years War (1618-1648) coined term *temperamenta belli*, or 'moderations of war' – requirements of a higher, morel order in war. This corresponds with many rules of humanitarian law, as we know it nowadays.

Even long way back in ancient history military leaders occasionally ordered troops to spare lives of civilians and captured enemy soldiers, treat the wounded of both sides of conflict, arrange the exchange of prisoners, etc. This shows some practice of conducting the war by the rules. It was somewhat reciprocal process and these rules cannot be even treated as customary. However, this process continued and at some point in history humanity reached the point of eliminating the uncertainty in vague customs of war. This point was XIX century.

Today IHL can be very easily tracked to such persons of XIX century as *Henry Dunant*[20] and *Francis Lieber*.[21] They both made almost at the same time starting contributions to the contemporary IHL. They both developed

20 H. Dunant, *A memory of Solferino* (1862).

21 See, R. S. Hartigan, *Lieber's Code and the Laws of War* (Chicago, 1983).

on the idea of Jean-Jacques Rousseau that war is not relationship between people, but between States, thus individuals are enemies by accident as soldiers. Soldiers then, ones they will lay down their weapons are not soldiers anymore, but individuals whose life should be spared.[22]

The beginning of the development of IHL as a treaty law began in 1860s. There were two conferences held in that period of time. One was held in 1864 in Geneva, on the fate of wounded soldiers in the battlefield. The other one was held in 1868 in St. Petersburg, on the use of explosive rifle bullets.

First conference resulted in Convention for the Amelioration of the Condition of the Wounded in Armies in the Field of 22 August 1864. This convention made a legal background for the army medical units on the battlefield. These units were neutralized and thus had immunity from being attacked. It also provided identification of medical establishment and personnel. All the independent States accepted this convention in relatively short period of time. It was revised in 1906 and further after World War I revised again in 1929.

Second conference resulted in the St. Petersburg Declaration of 1868 to the Effect of Prohibiting the Use of Certain Projectiles in Wartime. This declaration prohibited the use of projectiles weighing less than 400 grammes. The reason for prohibiting such projectiles was that use of them uselessly aggravated the suffering of disabled man or made their death inevitable. This consideration of prohibition is known as very important one. It coined such principle of law of war as: "belligerents are obliged to limit the use of force in meeting a (legitimate) military objective".[23]

It should also be mentioned that these two conferences led to two distinct (but never totally separate) currents in IHL. One is known as law of Geneva and concerned mostly with conditions of war victims in enemy hands (prisoners of war, interned civilians). The other known as law of The Hague and relates to the conduct of war and permissible means and methods of warfare.[24]

Another convention, already of the beginning of XX century, is worth mentioning here. Hague Convention No. IV of 18 October 1907 respecting the

22 H.-P. Gasser, *International Humanitarian Law, An Introduction* (Henry Dunant Institute, Geneva, 1993) p. 7.
23 *Ibid*., p. 10.
24 F.Kalshoven and L. Zegveld. *Constraints on the Waging of War. Ann Introduction to International Humanitarina Law* (ICRC, Geneva, 2001), p. 16.

Laws and Customs of War on Land, and annexed Hague Regulations contains particular rules on the treatment of prisoners of war and conduct of military operations, also in occupied territories. Preamble of this Convention contains sentence that is of great importance by itself (even disregarding provisions of the rest of the Convention). It is so-called *Martens Clause* that provides that in cases not covered by the rules of war, "the inhabitants and belligerents remain under the protection and the rule of principles of the law of nations, as they result from the usages, established by civilized people, from the laws of humanity, and the dictates of public conscience". Basically if there is a loophole in IHL, solution should be based on basic humanitarian principles.

Following development of IHL was delayed by World War II (WWII). This tragic event in world history gave enough experience to ICRC to work on the new four Geneva Conventions of 12 August 1949. They replaced 1929 Conventions and partially Hague Convention No. IV. These Conventions cover such already known topics in IHL as protection of the wounded, sick and shipwrecked and prisoners of war and also introduce completely new for IHL at that period of time protection to civilian persons who had fallen into the enemy hands from arbitrary treatment and violence.[25] Provisions of these new IHL rules on occupied territories are of the great importance, judging from the worst crimes of WWII committed on such territories. Another very important development is the provision of the protection under IHL to the victims of 'civil wars' or in other words non-international armed conflicts.

Later the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, held in Geneva from 1974 to 1977, adopted the two Protocols additional to the Geneva Conventions of 1949 in 8 June 1977.[26] These Protocols made a giant step further in strengthening the protection of the victims of an armed conflicted. Provisions of these protocols are also bringing together the laws of Geneva and of The Hague, which until then had developed apart from each other. Following years of their adoption till nowadays Geneva Conventions of 1949 became the most universal treaty law ever: they are currently ratified by 194 states.[27]

25 See, Cassese (ed.), *The New Humanitarian Law of Armed Conflict* (Naples, 1979).

26 *Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts* (Geneva, 1974-1977).

27 As of 2 August 2006.

Other developments of IHL brought to the world such conventions as Convention on the Prohibition of Military or any other Hostile Use of Environmental Modification Techniques of 1976, Convention of 10 April 1972 on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and Their Destruction, The Chemical Weapons Treaty of 1993 (with total ban of chemical weapons), Convention of 10 October 1980 on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to Excessively Injurious or to have Indiscriminate Effects, and its protocols, etc.

However, talking about variety of treaties that are right now in IHL and covering most of the possible wartime situation, becoming complete with each year, one can forget about the custom as a source of law. Most of the provisions of the modern IHL are already customary rules. This is widely accepted in the world by international judicial bodies and promoted by International Committee of Red Cross in its publications on customary law rules of IHL.

There also many questions arise when it comes to the implementation and enforcement with IHL. Such factors as positive will of the states, sufficient and properly oriented training of armed forces and heavy discipline are playing very important role in the implementation and enforcement of IHL. The responsibility of the Sates concerned is a starting point in the case of implementation of IHL. When it comes to the action of States, they have to understand the importance of the implementation of recent development as well as basic rules of IHL for the sake of humanity and also for reciprocal treatment from opposite side. But what happens in the case where there is just pure ignorance of the rules and provisions of IHL, what follows the irrespective attitude of the States towards these rules? I will try to answer these questions further in my work on the example of the Nagorno-Karabakh Conflict.

Further I want to proceed with more detailed discussion of the basic rules of the IHL, following from law of The Hague, law of Geneva, recent developments in law of war and its principles.

3.1.2 The Law of The Hague

As it was mentioned before one of the currents of IHL that is a set of norms regarding some aspects of IHL generally referred to as a 'law of The Hague'. In this set of norms one should distinct between smaller groups of norms

addressing issues like: combatants and their qualifications, means and methods of war, civilian protection, cultural property, etc. Here I want briefly refer to some of these norms.

Starting with very important part of Hague law – norms on combatants – I need to mentioned that Hague provisions are quite clear on that persons that are entitled to commit belligerent acts are first of all members of armed forces (except military medical and religious personnel). However, Article 1 of Hague regulations also adds to the list militia and volunteer corps that fulfill the list of certain conditions, such as to be commanded by responsible person, to have fixed recognizable sign of distinction, to carry arms openly, etc. Article 2 adds another category, namely inhabitants of occupied territory that on approach of enemy are trying to resist this by taking up arms, but spontaneously without organization in the meaning of aforementioned Article 1.[28] This action is currently known as *levee en masse*. These qualifications of the combatants were revolutionary for IHL. Inclusion of militia and volunteer corps was a great step forward for IHL. It is quite obvious that now militia troops ones fallen into the enemy hands treated as combatants and thus would not be executed on the spot because they are not members of regular armed forces, made a difference.

In regard to the means of warfare there is a basic provision laid down in Article 22 of Hague Regulations that reads: "The right of belligerents to adopt means of injuring the enemy is not unlimited." Several principles were subtracted from this general one, such as prohibition of use of arms that cause "unnecessary suffering" (Article 23(e)), prohibition of use of poison or poisoned arms (Article 23(a)), etc.[29] Referral to 'unnecessary suffering' in Hague Regulations showed exactly the soul of basic provision in Article 22 – prohibition of means of warfare not justified by military utility. The over referral to the 'poison and poisoned arms' is also of great importance and was followed further buy such a development in Hague law as Geneva Gas Protocol of 1925. This Protocol prohibited the use of 'asphyxiating, poisonous or other gases' as means of warfare and extends this prohibition to the 'use of bacteriological methods of warfare'.[30]

28 *International Law Concerning the Conduct of Hostilities. Collection of Hague Conventions and some other International Instruments* (ICRC, Geneva, 1996) p. 17.
29 *Ibid*., p.21-22.
30 *Ibid*., p.178-179.

Hague Regulations are not very wide in determining the methods of war. However, there are some rules such as prohibition of treachery towards the enemy in Article 23(b). The problem is that there is a provision in Article 24 that ruses of war are permissible. The difficulty comes usually when defining which act is treacherous and which is a ruse of war. Some other prohibitions are, to kill or wound an enemy that laid down his arms, to declare that no prisoners shall be taken, pillaging town of village even in the assault situation, etc.[31]

As it was generally laid down in 1868 St. Petersburg declaration the only legitimate object of states during war is to weaken the military forces of the enemy.[32] This general rule is a solid base for the protection of civilian population in IHL. The way of how to achieve the goal mentioned in declaration is to eliminate those objects that can be considered as 'military objectives' (enemy armed forces units, their military technology and vehicles, etc.). But when it comes to such units as weapon factories and their supplements question comes in mind on what industries can be regarded as 'military objectives' and what others are not? Same also goes to bridges railroads, road intersections, etc. Unfortunately Hague Regulations do not provide answer to that.[33]

Regarding cultural property in Hague law I should mention 1954 Hague Convention for the protection of Cultural Property in the Event of Armed Conflict. Though it was ratified by a large amount of states, there is no evidence yet that its provisions become customary. The importance of that Convention is that it provided detailed system of protection of cultural property. It defined cultural property (Article 1); it obliged states with safeguards for their own cultural property, such as marking it and storing it in the safe place (Article 3, Article 6, etc.). There is also obligation for the states provided in Article 4 of Convention to respect cultural property on their own territory as well as on the territory of other contracting states. Also, system of special protection is provided in the Chapter II of Convention, dealing with cultural property added in the International Registry of Cultural Property under Special Protection of UNESCO. Under this special protection the states are obliged to ensure immunity of the object, by refraining from any

31 *Ibid*., p. 22.
32 *Ibid*., p. 171.
33 Kalshoven, *supra* note 24, p. 45.

hostile act against that object (Article 9). Another interesting point here is that there might be withdrawal of such immunity according to Article 11 of Convention. This can happen in two situations: 1) violation by the state its obligation under Article 9 of Convention, 2) in case of "unavoidable military necessity".[34]

The Hague law is silent about Nuclear Weapons. This quite controversial question of whether these weapons should be banned or not has been there since attacks on Hiroshima and Nagasaki. Mostly the arguments against ban of Nuclear Weapons are on their novelty and difference from over conventional weapons. These arguments offered little support from international humanitarian lawyers around the world, referring to the enormous damage to the civilian population that these weapons have caused on their use.

In this part of my work I gave a brief overview of Hague law and showed some most important parts of its wide variety of IHL provisions. Further I would like to proceed with law of Geneva and treatment of victims of war.

3.1.3 The Law of Geneva

The law of Geneva provides protection for those who as a consequence of war have fallen into the hands of the enemy. The main purpose of protection here is not against violence of war itself, but from the power that one side acquires over those persons of the over party that have fallen into its hands.

There four Geneva Conventions of 1949 that create a basis of law of Geneva:

1. Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva Convention I or GCI);
2. Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Geneva Convention II or GCII);
3. Convention Relative to the Treatment of Prisoners of War (Geneva Convention III or GCIII);
4. Convention Relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV or GCIV).

34 See, *supra* note 28, p. 31-35.

Geneva Conventions I-III are particularly dealing with persons that are directly participating in hostilities or combatants. GCIV is dealing on the other hand with certain categories of civilians. Categories falling under definition of the protected persons by Geneva Conventions I-III are referred to in Article 4 of GCIII. Persons protected by GCIV are defined in Article 4 of that convention. All four of Geneva Conventions of 1949 are applicable to international armed conflicts, except for the Article 3 common to these Conventions that provides minimal set of rules applicable to the non-international armed conflict.[35]

The system of protection of the Geneva Conventions of 1949 rests on the fundamental principle that protected persons must be respected and protected at the all circumstances, and must be treated humanely, without any adverse distinction found on sex, race, nationality, religion, political opinions, or any other similar criteria (Article 12 of GCI and GCII, Article 16 of GCIII and Article 17 of GCIV).[36]

In GCI general protection is provided in Article 12. It declares that treatment shall be given to the wounded and sick from the Party to the conflict in whose power they may be. It prohibits to murder or to exterminate these persons, to subject them to torture or biological experiments, to leave them without medical assistance on purpose or to expose them to the infection or contagion. Further in Article 15 there is an obligation of the Parties to search for and collect wounded and sick. The same goes for the dead, that later should receive honorable interment as provided in Articles 15-17. Further Article 18 of GCI provides that wounded and sick should be respected also by the civilian population. Civilians should not harm or in any other way treat protected persons violently. GCI contains large system of protection of medical personnel their units, buildings and equipment focused on the use of distinctive sign of red cross or red crescent on the white ground. Article 46 of GCI prohibits reprisals against wounded and sick.[37]

In GCII general protection is based on the same principles as in GCI. Article 12 provides that term 'shipwreck' shall include any form of such action (for example it can be also forced landing on sea by or from aircraft). Hospital ships play a big role in GCII. They are defined as ships built or

35 *The Geneva Conventions of August 12 1949* (ICRC, Geneva), pp. 76,155.
36 Kalshoven, *supra* note 24, p. 53.
37 See, *supra* note 35, pp. 27-42.

equipped specially and solely for the purpose of assisting wounded, sick and shipwrecked, their treatment and transportation in Article 22. Article 43 provides that they should be painted white with the distinctive emblem of red cross or red crescent. However, freedoms of hospital ships can be very restricted by the parties to the conflict. According to Article 31 these ships can be searched and controlled, their assistance can be refused; they can be even detained for a certain amount of time in the specific conditions. In Article 47 GCII also prohibits reprisals.[38]

General rule that goes to the combatants that fall into the enemies hand is that they are prisoners of war from the moment of capture. GCIII is dealing with the prisoners of war (POWs). Article 4 of GCIII provides the list of the persons that shall be recognized as POWs. Article 13 of GCIII provides that POWs must be treated humanely at all times. Their persons and their honor should be respected in all circumstances as provided by Article 14. POWs cannot be subjected to any physical or mental torture or any other type of coercion. POWs are only obliged to give their full name, rank, date of birth, and army, regimental, personal or serial number, or failing this equivalent information (Article 17). POWs captured in the combat zone shall be evacuated from there as soon as possible and transported into the camps situated outside the danger area, where they are kept at the expense of Detaining Power. There are no provisions that make it unlawful for the POWs to try to escape. Failed attempt can only be fined with disciplinary punishment (Article 92). Detention of the POWs last until the cessation of the hostilities. After that they shall be released and repatriated without delay (Article 118).[39]

GCIV is dealing with the civilians as the protected persons category. They are defined in the Article 4 of the GCIV. The general rule outside the scope of Article 4 is that all those who are not combatants should be treated as civilians.[40] Article 8 prohibits renunciation of rights provided to protected persons under GCIV. Part II of GCIV provides general protection of populations against certain consequences of war. Part III of GCIV deals specifically with status and treatment of protected persons. Furthermore,

38 *Ibid*., pp. 56-68.
39 *Ibid*., pp. 76-124.
40 M. Sassoli and A.A. Bouvier, *How Does Law Protect in War? Cases Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law* (ICRC, Geneva, Vol. I, 2006), p. 144.

Part III in its different sections provides rules that are common for all territories of the conflict, that are specific to the aliens in the territory of the party to the conflict, that are specific to the occupied territories, that are specific for the internees.[41] This convention will be discussed in more details later in this work as it contains very important provisions related to the Nagorno-Karabakh Conflict.

3.1.4 Additional Protocols to the Geneva Conventions of 12 Augutst 1949

Protocols Additional to Geneva Conventions of 12 August 1949 as mentioned before were adopted in 1977. Protocol I is applicable to international armed conflicts, Protocol II to non-international armed conflicts. Protocols were adopted without formal voting by consensus. Only States parties to the Geneva Conventions of 1949 can become parties to the Protocols.

First I would like to discuss some important issues regarding Protocol I. Its Preamble reaffirms provisions of the Geneva Conventions of 1949 stating that both Conventions and Protocol should be applied fully and totally in all the circumstances to all the subjects of protection given by these documents with no distinction based on nature or origin of conflict.[42] This reaffirmation is important because it shows that IHL doesn't distinct between the right or wrong side of the conflict. It at any time will apply equally for both parties.

Article 1 of the Protocol one also reaffirms some basic provisions of Geneva Conventions 1949, such as obligation of the parties to respect and ensure respect for its provisions in all circumstances, repeats slightly differently *Martens clause* of 1899, and includes new notion into its scope of application. This new notion is wars of national liberation and it was not included in the Geneva Conventions of 1949. Interesting situation comes with Article 1(4) that provides that people fighting in the exercise of their right of self-determination cannot become parties to the Conventions or Protocol. However, Article 96(3) of Protocol I states that authority representing such people can address declaration to the depositary stating that they undertake to apply Conventions and Protocol.[43]

41 See, *supra* note 35, pp. 155-206.
42 *Protocols Additional to the Geneva Conventions of 12 August 1949* (ICRC, Geneva, 1977), p. 3.
43 *Ibid*., pp. 4, 70.

Protocol I also solves the difficulty with the recognition of the combatant that troubled Geneva Conventions of 1949. Article 43 of the Protocol I gives new and more advanced definition of armed forces and combatants. It does not distinguish between regular and irregular armed forces as it was given in Conventions before, instead it includes all enemy units, on subject matter of their organization, responsible command, etc. and on the novel that all combatants have the right to participate directly in hostilities.[44]

Protocol I apart from issues brought by GC I-III also deals with means and methods of warfare, brings new provisions in protection of civilian population and also deals with treatment of persons in power of a party to the conflict.

Protocol II contains fewer articles than Protocol I and repeats some of its provisions. Article 1 of Protocol II provides that this protocol develops and supplements Article 3 common to Geneva Conventions of 1949. Preamble of Protocol II puts better protection for the victims of internal armed conflicts as a basic purpose of that document. It does not apply to the situations covered by Protocol I and to the situations that are of low violence nature, such as disturbances, tensions, riots, isolated and sporadic acts of violence, etc. Protocol II differs from common Article 3 also with its field of application. It is not applicable to each and every internal armed conflict as common Article 3, only to the ones stated in Article 1(1) of this protocol (that excludes for example fighting in the country between various groups with no involvement of governmental armed forces). Article 2 of the Protocol II defines persons protected by it as all persons affected by the armed conflict defined in Article 1 and adds non-discrimination clause. Article 4(1) clearly shows that Protocol II was made to protect people that do not take direct part in belligerent acts and hostilities or have already ceased to take part in such acts (except for the part with prohibition of no quarter). Article 4(1) also brings the general principle of whole Protocol II on humane treatment at all times without any distinction. [45]

Protocol II provides minimal rules for the persons detained or interned (Article 5). Part III of protocol deals with wounded, sick or shipwrecked. Article 7 guarantees the care and protection for the mentioned category of

44 *Ibid*., p. 30.
45 *Ibid*., pp. 89-92.

persons and Articles 9, 10 and 11 ensures respect and protection for the medical and religious personnel. Protocol II has some provisions dealing with civilian population. Article 13 for example provides principle that civilian population as well as civilians shall enjoy general protection against the dangers arising from military operations. Articles 14, 15 and 16 are prohibiting belligerent acts against several types of civilian objects including protected cultural property. Article 17 prohibits displacement of civilian population, with exception only if security of civilians is involved.[46]

As it was mentioned before, Protocol I contains provision that obliges state parties to respect and ensure respect to rules laid down in the Protocol I. However, Protocol II does not contain such provision. It is very weak on part of implementation and enforcement. Only provision that can be related to that and can be found in Protocol II is provision of its Article 19 that reads: "This Protocol shall be disseminated as widely as possible". This passive provision shows the attempt of drafters to link it with Protocol I.

Here I have finished my brief analysis of general provisions of IHL. Further I would like to shortly discuss basic and fundamental principles of IHL, that are very important for that work and analysis of Nagorno-Karabakh's problems and humanitarian issues.

3.1.5 Basic and fundamental principles of International Humanitarian Law

There are a lot of different groups of basic principles and rules of IHL defined by different scholars. Some are grouping them by the issues addressed in different sources of IHL, such as general obligation of human treatment, rules concerning wounded, sick and shipwrecked, prisoners of war, civilians. Others are formulating them based on their historical development. For example principles that are coming from the early stages of IHL development (XIX century-beginning of XX century), principles founded in 1949 (Geneva Conventions of 1949), principles added in 1977 (Additional Protocols of 1977), etc.

However, for the purposes of this work I would like to present a list of

46 *Ibid*., pp. 93-98.

the most important principles drafted by the group of experts from ICRC and published first in 1978. This list states some fundamental rules of IHL applicable in armed conflicts based on legal instruments of IHL and established practice:

1. Persons *hors de combat* and those who do not take a direct part in hostilities are entitled to respect for their lives and physical and moral integrity. They shall in all circumstances be protected and treated humanely without any adverse distinction.
2. It is forbidden to kill or injure an enemy who surrenders or who is *hors de combat*.
3. The wounded and sick shall be collected and cared for by the party to the conflict to which has them in its power. Protection also covers medical personnel, establishments, transports and *materiel*. The emblem of Red Cross (Red Crescent) is the sign of such protection and must be respected.
4. Captured combatants and civilians under the authority of an adverse party are entitled to respect for their lives, dignity, personal rights and convictions. They shall be protected against all acts of violence and reprisals. They shall have their right to correspond with their families and to receive the relief.
5. Everyone shall be entitled to benefit from fundamental judicial guarantees. No one shall be held responsible for an act he/she has not committed. No one shall be subjected to physical or mental torture, corporal punishment or cruel or degrading treatment.
6. Parties to a conflict and members of their armed forces do not have an unlimited choice of methods and means of warfare. It is prohibited to employ weapons or methods of warfare of a nature to cause unnecessary losses or excessive suffering.
7. Parties to a conflict shall at all times distinguish between the civilian population and combatants in order to spare the civilian population and property. Neither the civilian population nor civilian persons shall be object of attack. Attacks shall be directed solely against military objectives.[47]

47 *International Review of the Red Cross* (ICRC, Geneva, 1978), pp. 248-249.

3.2 Applicable International Criminal Law

This sub-chapter is discussing particular branch of international law (international criminal law) to focus attention on specific norms that will be discussed further in this work in connection with the Nagorno-Karabakh Conflict.

3.2.1 Theory of International Criminal Law

International Criminal Law is the law that governs international crimes. Some scholars say that this branch of international law is where penal aspects of international law, including that body of law protecting victims of armed conflict known as international humanitarian law, and the international aspects of national criminal law, converge.[48] International Criminal Law should always be distinguished from international human rights law and national criminal law.

To better understand theory of international criminal law further I want to discuss some issues of sources and subjects of international law as well as international criminalization process and principle of legality.

Statute of International Court of Justice of 1945 recognizes two types of sources of international law: primary and secondary (Article 38(1)).[49] Primary sources include treaties, international customs and general principles of law, all being independent and capable of producing binding rules. Writings of renowned publicists and the decisions of international courts are simply serve to interpret or ascertain primary sources, and form secondary sources of international law. Treaties are agreements between states framed by international law and binding for states only parties to particular agreement-treaty. Customary international law composed of two elements: uniform and continuous State's practice (objective) and so-called *opinio juris* (subjective). These customary rules bind all States, except for those that have consistently and openly objected to the formation of a rule from its inception. The exception to that, however, is certain part of customary rules called *jus cogens* that consists generally from fundamental human rights and rules of IHL as well as prohibition of use of unlawful armed force, and cannot be

48 J.J. Paust, M.C. Bassiouni, S.A. Williams, M. Scharf, J. Gurule, and B. Zagaris (eds.), *International Criminal Law: Cases and Materials* (Caroline Academic Press, 1996), pp. 3-19.

49 *Charter of the United Nations and Statute of the International Court of Justice* (United Nations, New York, 1994), p. 75.

derogated from.[50] General principles of law can be found in international law itself, as well as in the domestic legal systems of States. General principles of international law such as *pacta sunt servanda* underlie both customary and treaty law. Practice of international law also proves, however, general principles deriving from national laws and systems.[51]

As to the subjects of international law, for a long time only State responsibility was recognized on the international plane. Concept of sovereignty of States stood on the way of efforts to realize individual responsibility in international law. However, it is a well-known in modern international law that State responsibility and individual criminal responsibility under international law are not the same thing. For instance, for an individual to be held criminally liable for an act of genocide under international law, he would have to be prosecuted and punished by an international criminal tribunal applying an international criminal statute.[52] In the case of State responsibility, contemporary international law only permits one State to demand that the State committing genocide cease and desist from committing genocide against nationals of the victim State; wipe out the consequences of genocide and restore the situations existing before the genocide; and provide to the victim State, in its own right and as *parens patriae* for its citizens, compensation for the damage and losses caused by another State committing genocide against the nationals of the victim State.[53]

The notion of State sovereignty and its attendant ramifications was also linked to another principle that blocked some development of international criminal law – principle of legality. This is very specific principle of criminal justice.[54] This principle was codified in Article 11(2) of Universal Declaration of Human Rights that states: "No one shall be held guilty of any penal offence on account of any act of omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed."[55] In accordance with principle

50 I. Bantekas and S. Nash, *International Criminal Law* (Cavendish Publishing Limited, London, 2003), pp. 2-3.
51 B. Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (Cambridge, 1987).
52 K. Kittichaisaree, *International Criminal Law* (Oxford University Press, New York, 2001), p.9.
53 See, e.g. *Case Concerning Application of the Convention of the Prevention and Punishment of the Crime of Genocide* (*Bosnia-Herzegovina v. Yugoslavia*), 11 July 1996, ICJ, Preliminary Objections, paras. 13-14.
54 Kittichaisaree, *supra* note 52, p. 14.
55 *Human Rights in International Law. Basic Texts* (Council of Europe Publishing, Strasbourg, 2006), p. 83.

of legality prosecution of individuals before international criminal court or tribunal means pre-existence of at least two things: 1) international recognition that individual as opposed to State could be subject to criminal punishment by an international tribunal; 2) conduct for which the individual could be guilty would have to be proscribed by the international community of States as a crime subject to international sanction, with a clear set of penalties.[56] Common example of precedent of state recognition of individual being punished under international criminal law is *Lotus case* dealing with piracy (*jure gentium*).[57] That case brought up principle that any nation may, in the interest of all, exercise jurisdiction to capture and punish piracy by law of nations, and a pirate is a subject to universal jurisdiction of any State. However, pirates are tried by domestic law, not international law. No international tribunal required for these purposes. The effort to try German Emperor Kaiser Wilhelm II in 1919 for the international crimes met strong opposition of US claiming that this would violate principle of legality. Only International Military Tribunal at Nuremberg that proceeded with international criminal prosecution violated principle of legality and set first precedents for future criminal prosecutions of individuals before international tribunal applying international law.[58]

An international offence is any act entailing criminal liability of a perpetrator and, emanating from treaty or custom. Even the heinous nature of an act, such as the extermination of an identified group, is not the sole determinant for elevating such behavior to the status of an international offence. The establishment of international offences is the direct result of interstate consensus, all other considerations bearing a distinct subordinate character. The legal basis for considering an offence to be of an international character is where existing treaties of custom consider the act as being an international crime.[59] Cherif Bassiouni after analysis of most of international crimes in treaties comes up with ten penal characteristics: 1) explicit recognition of proscribed conduct as constituting international crime, or a crime under international law, or as a crime; 2) implicit recognition of penal nature of

56 M.C. Bassiouni and P. Manikas, *The Law of the International Criminal Tribunal for the Former Yugoslavia* (Transnational Publishers, 1996), pp. 265-291.

57 *Lotus case* (*The Case of the S.S. "Lotus"*), 7 September 1927, PCIJ, Ser. A., No. 10, 1927, Judgment, <http://www.worldcourts.com/pcij/eng/decisions/1927.09.07_lotus/>, visited 1 October 2007.

58 Kittichaisaree, *supra* note 52, p. 16.

59 Bantekas, *supra* note 50, p. 5.

the act by establishing a duty to prohibit, prevent, prosecute, or the like; 3) criminalization of proscribed conduct; 4) duty or right to prosecute; 5) duty or right to punish proscribed conduct; 6) duty or right to extradite; 7) duty or right to cooperate in prosecution, punishment (including judicial assistance in penal proceedings); 8) establishment of a criminal jurisdiction basis (or theory of criminal jurisdiction or priority in criminal jurisdiction); 9) reference to the establishment of an international criminal court or international tribunal with penal characteristics (or prerogatives); 10) elimination of the defense of superior orders. Bassiouni concluded that if any of the penal characteristics described above exists in convention or any other treaty that kind of agreement becomes part of International Criminal Law (ICL).[60]

The importance of theory of ICL cannot be underestimated. The core principles of international law merged with fundamental human rights and basic principles of IHL predefined development of such a branch of international law as ICL. Importance of prosecution of most serious crimes that are in concern of whole international community is unarguable.

In this section I have showed the basics of theory of ICL. Discussed subjects and sources of international law and ICL, presented definition of international crime or offence, and stated the Bassiouni's theory of treaties that constitute part of ICL. Further I would like to discuss *ad hoc* International Tribunals and International Criminal Court.

3.2.2 *Ad hoc* International Tribunals and International Criminal Court

Nuremberg and Tokyo Tribunals: The creation of these tribunals was unprecedented and the legal and procedural grounds of these tribunals represented the first proper expression of international criminal law and procedure. The International Military Tribunal at Nuremberg (Nuremberg Tribunal) was set up by Great Britain, France, Soviet Union and the US to whom Germany had surrendered after WWII. It had four judges appointed by each of the aforementioned countries. Prosecutors were also appointed by them. The Charter of Nuremberg Tribunal was considered a product of exercise of the sovereign legislative power by the countries to which Germany surrendered unconditionally and the right of these countries to legislate on

60 M.C. Bassiouni (ed.), *International Criminal Law* (Dobbs Ferry, New York, 1986), pp.2-4.

occupied territories was without doubt. The tribunal tried twenty-four major German war criminals. Article 6 of Nuremberg Charter demanded individual responsibility for crimes against peace, violations of the laws or customs of war, and crimes against humanity and that led to critique for violation of principle of legality. The Nuremberg tribunal also rejected the doctrine of State sovereignty in favor of that of individual criminal responsibility. Offences for war crimes were applied as *inter alia* norms of 1929 Geneva Conventions and Hague regulations, despite that these instruments contained to reference to the possibility of criminal sanctions. Crimes against humanity were absolutely new invention of Nuremberg Tribunal. Atrocities committed by Germans against their own nationals or nationals of their allied territories (Hungary, Romania, etc.) that were not technically violations of laws of war were considered to be crimes against humanity.[61]

The International Military Tribunal for Far East (Tokyo Tribunal) was set up by US Supreme Commander-in Chief in Tokyo, Japan, who also appointed eleven judges. Judges were appointed from lists of names submitted by US, Australia, Canada, China, France, Great Britain, the Netherlands, New Zealand, and the Soviet Union.[62] Tokyo Tribunal was based on Nuremberg Tribunal. It proclaimed similar Charter, reasoning, proceedings, etc. All suspects were classified into three categories A, B and C. A category for suspects charged with crimes against peace, B – with conventional war crimes, C – with crimes against humanity. Only A suspects were tried in Tokyo Tribunal. All other categories were left to be tried in States where crimes were committed.[63]

Both Tribunals were heavily criticized for victor's justice and violation of principle of legality. However, they left extremely valuable output of precedents and principles of international law recognized by the Charter of Nuremberg Tribunal and Judgment of the Tribunal that were adopted by the UN General Assembly (UN GA) Resolution 95(1) on 11 December 1946 and formulated by ILC and accepted by UN GA in 1950.[64]

The ICTY and the ICTR: The International Tribunal for the Prosecution of

61 Kittichaisaree, *supra* note 52, p. 18-19.
62 B.V.A. Roling and C.F. Ruter (eds.), *The Tokyo Judgment* (University Press Amsterdam, 1977), chap.1.
63 Bantekas, *supra* note 50, p. 335.
64 UN GA Resolution 95(1), <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/033/46/IMG/NR003346.pdf>, visited 28 June 2007.

Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia (ICTY) was established in 1993 with the UN Security Council (SC) Resolution 827. This was a major breakthrough for the role of Security Council. The establishment of ICTY on the basis of SC Resolution under Chapter VII of the UN Charter was preferred to a treaty because it was faster in procedure and did not require consent of States that would slow down process crumbling Yugoslavia.[65] Major reason of establishment was consideration by SC of widespread violations of IHL on the territory of former Yugoslavia, including ethnic cleansings to be threat to international peace and security. The ICTY is based in Hague, Netherlands and consists of sixteen permanent independent judges and a maximum at any one time of nine *ad litem* independent judges, elected by UN GA from a list of nominations received from States submitted by the SC, taking into account principle of representation of legal systems of the world. The ICTY proceedings are governed by ICTY Statute and by the Rules of Procedure and Evidence adopted by judges. According to articles 8-9 of ICTY Statute Tribunal is not subject to any national laws and has concurrent jurisdiction alongside, as well as primacy over national courts to prosecute persons for serious violations of IHL committed on territory of the former Yugoslavia since 1991.[66] Subject-matter jurisdiction of ICTY consists of the power to prosecute natural persons responsible for grave breaches of the Geneva Conventions of 1949 relating to the protection of victims of international armed conflicts, violations of the laws or customs of war, genocide and crimes against humanity when committed in armed conflict, which are beyond any doubt part of customary international law.[67] Customary international law application for ICTY is crucial to avoid violation of principle of legality in a case when party to the conflict was not bound by any specific treaty at the time of the offence in question.[68]

The International Criminal Tribunal for the Prosecution of Persons Responsible for the Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for the Genocide and Other Such Violations

65 J.C. O'Brien, "The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law ", 87 *American Journal of International Law*, p. 639.

66 ICTY Statute, <www.icls.de/dokumente/icty_statut.pdf>, visited 28 June 2007.

67 *Ibid*., Articles 2-5.

68 *Tadic case* (*Prosecutor* v. *Dusko Tadic*), 10 August 1995, Case No. IT-94-1-T, Decision of the Defense Motion on Jurisdiction, para. 143.

Committed in the Territory of Neighboring States between 1 January 1994 and 31 December 1994 (ICTR) was created by SC Resolution 955 in 1994. The Prosecutor for ICTY is the same for ICTR. Provisions of ICTR Statute mirror provisions of ICTY Statute when it comes to organization of Tribunal, investigation and preparation of indictment, rights of accused, penalties, cooperation and judicial assistance, etc. However there are no *ad litem* judges in ICTR. One unique characteristic of both ICTY and ICTR is that they don't have exclusive jurisdiction over crimes included in their mandates. They are created complementary to the national judicial systems. ICTR has jurisdiction only over crimes committed in internal armed conflict; ICTY jurisdiction goes also to international armed conflicts. Both tribunals have different grounds of prosecution of crimes against humanity.[69]

International Criminal Court: International Criminal Court (ICC) Statute (Rome Statute) was signed on 17 July 1998 in Rome. One hundred twenty States voted in favor of the treaty, seven voted against (US, China, Libya, Iraq, Israel, Qatar, Yemen) and twenty-one abstained. Following the required sixtieth ratification, the Rome Statute entered into force on 1 July 2002. Unlike two *ad hoc* tribunals (ICTY and ICTR), the ICC according to its Statute is a permanent international criminal court established by its founding treaty (Article 1).[70] It has is own legal personality and although it is an independent judicial institution it is related with UN through special agreement.[71] The court consists of judicial, prosecutorial and administrative (registry) branches. Eighteen full time judges, elected for nine-year non-renewable terms form judicial branch.[72] The ICC enjoys subject-matter jurisdiction over four core offences: genocide, crimes against humanity, war crimes and aggression.[73] Further in this section each of these crimes will be discussed in detail.

ICC shall have jurisdiction only where State is unwilling or unable to carry out the investigation or prosecution of the crimes within ICC's jurisdiction where such prosecution or investigation has been carried out but is a mere sham, where the person concerned has already been tried for conduct, or where the case is not of sufficient gravity to justify further action by ICC.

69 Kittichaisaree, *supra* note 52, pp. 25-26.
70 Rome Statute, < www.un.org/law/icc/statute/romefra.htm>, visited 28 June 2007.
71 *Ibid*., articles 2, 4.
72 *Ibid*., article 35.
73 *Ibid*., article 5.

Court jurisdiction covers only offences committed after 1 July 2002.[74] No person shall be tried before ICC with respect to conduct which formed the basis of crimes for which the person have been convicted or acquitted by the ICC, or tried before another court for a crime within the ICC's jurisdiction for which that person has already been convicted or acquitted by the ICC – principle *ne bis in idem* (except for the cases where proceedings in other court had an intention of merely shielding person at a trial).[75]

This section shortly covered international tribunals and ICC that constitute a development line in international criminal justice. These short topics will be important further in this work to understand nature of recommendations to the development of situation with ICL in the Nagorno-Karabakh Conflict. Further I would like to proceed to the discussion of major groups of international crimes.

3.2.3 International Crimes

In this part of the work I would like to discuss several international crimes that are relevant to the Nagorno-Karabakh Conflict that contains precedents of such crimes. Further in this work arguments that some these crimes took place will be presented.

Genocide: The crime known nowadays as genocide was prosecuted for the first time in Nuremberg Tribunal under heading of crimes against humanity. It was the only time this crime was prosecuted until creation of ICTY and ICTR. Crime of genocide is defined in the Convention on the Prevention and Punishment of Crime of Genocide of 1948 (Genocide Convention) and has become a part of customary international law and a norm of *jus cogens*.[76] Article 2 of aforementioned convention defines genocide as any of the following acts committed with intent to destroy in whole or in part, a national, ethnical, racial or religious group, as such:

a. Killing members of the group;

b. Causing serious bodily or mental harm to members of the group;

c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

74 Bantekas, *supra* note 50, pp. 378-381.
75 Rome Statute, *supra* note 70, article 20.
76 *Jelisic case* (*Prosecutor* v. *Goran Jelisic*), 14 December 1999, Case No. IT-95-10, para.60.

d. Imposing measures intended to prevent births within the group;

e. Forcibly transferring children of the group to another group.[77]

These provisions are replicated by ICTY Statute (Article 4(2)), ICTR Statute (Article 2(2)), and ICC Statute (Article 6). However, not a lot of States implemented these provisions in their national legislation (even those that have ratified Genocide Convention). Genocide is one of the gravest crimes. An accused must be found guilty on the basis of his own individual criminal responsibility. However, the victim of crime of genocide is group itself and not individual.

Actus reus of genocide does not presume the actual extermination of a group. Genocide is committed ones any of the acts provided in Genocide Convention is committed with the requisite of *mens rea* and can be committed by acts or omissions.[78]

On a part of *mens rea* in order to convict an accused of genocide it must be proven that the accused had the specific intent (*dolus specialis*), or a psychological nexus between the physical result and the mental state of the perpetrator, to destroy, at least in part, a national, ethnic, racial, religious group as such, or that the accused had at least the knowledge (*conscience claire*) that he was participating in genocide, that is the destruction, at least a part, of national, ethnic, racial or religious group, as such.[79]

Genocide should always be distinguished from the crime against humanity of persecution. Perpetrator of persecution selects his victims by qualification of belonging to a specific community but does not seek the destruction of that community as such.[80]

Crimes against humanity: Crimes against humanity differ from genocide in the part that there is no *dolus specialis* of destruction of members of particular group needed in the case of crimes against humanity.[81] For the first time crimes against humanity were prosecuted in Nuremberg and Tokyo Tribunals' trials. Further the concept of crimes against humanity continued

77 Convention on the Prevention and Punishment of Crime of Genocide of 1948, <www.preventgenocide.org/law/convention/text.htm>, visited 29 June 2007.

78 *Akayesu case* (*Prosecutor* v. *Jean-Paul Akayesu*), 2 September 1998, Case No. ICTR-96-4-T, para. 497; *Kambanda case (Prosecutor* v. *Jean Kambanda*), 4 September 1998, Case No. ICTR-97-23-S, para. 40.

79 *Jelisic*, *supra* note 76, para. 66, Oral Judgment of 19 October 1999.

80 *Ibid*., para. 79

81 *Akayesu*, *supra* note 78, paras. 565-568.

to develop in municipal courts of France, Israel and others.[82] In present crimes against humanity are international crimes according to customary international law and perpetrators of these crimes incur individual criminal responsibility. Crimes against humanity under customary international law in present time need not to be linked to international armed conflict (like it was required in Nuremberg and Tokyo Charters) or any conflict at all.[83]

Article 7 of Rome Statute provides that crimes against humanity are the following acts when committed as a part of widespread or systematic attack directed against any civilian population, with knowledge of the attack: murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in Article 7(1), or any other crime within the ICC's jurisdiction; enforced disappearance of persons; the crime of apartheid; other inhumane acts of a similar character intentionally causing great suffering or serious injury to the body or mental or physical health.[84]

The *actus reus* of a crimes against humanity comprises commission of an attack that is inhumane in nature and character, causing great suffering, or serious injury to body or to mental or physical health and must be committed as a part of a widespread or systematic attack against members of the civilian population.[85]

On the part of *mens rea* of the crimes against humanity, if we abstract from specific elements of each individual crime against humanity, the perpetrator in each case must knowingly commit the crime in the sense that he must understand the overall broader context in which his act occurs. Perpetrator must know that his acts are part of widespread or systematic attack on a civilian population, forming context of mass crimes and pursuant to the

82 *Ibid*., paras. 567-577.
83 *Tadic*, *supra* note 68, para. 141.
84 Kittichaisaree, *supra* note 52, p. 90.
85 *Akayesu*, *supra* note 78, para. 578.

policy or plan.[86] Without such knowledge the perpetrator would have *mens rea* of an ordinary crime.

War Crimes: These crimes committed in violation of IHL applicable during armed conflicts. Main principle here is that in the conduct of hostilities opposing forces should be governed by three principles: necessity, humanity, and chivalry.[87] Not every crime committed in an armed conflict is a war crime. A war crime must be sufficiently linked to an armed conflict itself and does not need to be a part of the policy or of practice officially sanctioned or tolerated by one of the parties to conflict.[88]

War crimes in Rome Statute are divided into four main categories. War crimes in international armed conflicts are dealt with by Article 8(2)(a), which penalizes grave breaches of the Geneva Conventions of 1949, and by Article 8(2)(b), which penalizes other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law. War crimes in non-international armed conflicts are covered by Article 8(2)(c), which penalizes serious violations of common Article 3 of Geneva Conventions of 1949, and by Article 8(2)(e), which penalizes other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law.[89]

The list of war crimes in Rome Statute is exhaustive and no other legal document of international character contains more exhaustive list. However, Article 8 of Rome Statute provides that elements of crimes should be interpreted within the established framework of international law of armed conflict. This provision was needed as an outcome of the fact that customary IHL continues to evolve.[90]

Crimes under Rome Statute include for example acts against persons and property protected by IHL, such as willful killing, torture or inhumane treatment, willfully causing great suffering or injury to body and health, destruction and appropriation of property, intentional direction of attacks against civilian population, etc.

86 *Tadic*, *supra* note 68, Judgement, paras. 626, 638, 656, 657.
87 L.C. Green, *The Contemporary Law of an Armed Conflict* (Manchester University Press, 1993), chaps. 2, 18.
88 *Tadic*, *supra* note 68, para. 70.
89 Rome Statute, *supra* note 70, article 8(2).
90 T. Meron, *War Crimes Law Comes of Age: Essays* (Clarendon Press, 1998), chap. XIV.

Perpetrator of war crimes can be soldiers as well as civilians. However, for civilian to be held liable for the war crime his connection to the belligerent acts and armed forces should be proven. Each war crime should be considered on a case-by-case basis, taking into account the material evidence and facts.[91]

For the purposes of identification of war crime difference between international and internal armed conflict should be always made. International armed conflict takes place between two or more States. Internal armed conflict breaks out on the territory of one State and can become international or be international and internal at the same time if another State intervenes with its armed forces or if some participants of internal armed conflict act on behalf of that other State.[92]

Aggression: According to Rome Statute ICC has jurisdiction over crime of aggression.[93] However Article 5(2) of the Statute provides that ICC shall exercise jurisdiction over such crime only when this provision will be adopted in accordance with Articles 121 and 123 of Rome Statute, when crime will be defined and the conditions on which ICC will exercise its jurisdiction over aggression will be set. In any case this provision shall be consistent with the relevant provisions of the Charter of United Nations.[94] According to the amendment procedure of Rome Statute after the expiry of seven years from the entry into force of Rome Statute, any State Party can propose amendments to the Rome Statute that can be adopted by consensus by majority of two-thirds of all State Parties. Amendment will enter into force for all State Parties, but State Party that wished not to accept the amendment can withdraw from Statute with immediate effect.[95] Amendment of Article 5 however is exception from general rule. It will enter into force only for those State Parties that accepted the amendment.

The inclusion of the crime of aggression in the ICC's jurisdiction is obviously a desire of States to punish the similar crime that was dealt with by Nuremberg and Tokyo Tribunals under heading 'crimes against peace'. However, Nuremberg Tribunal never defined 'aggression'. It only distinguished between 'aggressive

91 *Kayishema and Ruzindana case* (*Prosecutor* v. *Kayishema and Obed Ruzindana*), 21 May 1999, Case No. ICTR-95-1-T, para. 176.

92 Kittichaisaree, *supra* note 52, p. 135.

93 Rome Statute, *supra* note 70, article 5(1)(d).

94 H. von Hebel and D. Robinson, "Crimes within the Jurisdiction of the Court", *The International Criminal Court: The Making of the Rome Statute – Issues, Negotiations, Results* (Kluwer, 1999), pp. 80-85.

95 Rome Statute, *supra* note 70, article 121.

actions' and 'aggressive wars'. Further, prohibition of use of force in UN Charter obliged UN to maintain international peace and security, but still left aggression undefined. It was feared that new and progressing techniques of modern warfare will make the list of defined aggression acts incomplete and will allow for the aggressor to use this as a loophole to distort definition to its advantage.[96] Finally aggression was defined in UN GA Resolution 3314 of 14 December 1974 on the Definition of Aggression.[97] However crime of aggression was never defined. Thus it will be only possible to talk about elements of this crime when it will be actually defined. Nonetheless, further I would like to present opinions of scholar on elements of crime of aggression based on international jurisprudence of present time.

Common understanding of *actus reus* of the crime is planning, preparing, initiating and waging of crime of aggression as will be prosecuted by ICC. Conspiracy however is not included as a mode of commission of crime of aggression. What is clear is that omission can amount to an *actus reus* of such crime. It is also agreed that *mens rea* of the crime consists from intent and knowledge. Tokyo Tribunal for example found publicist Hashimoto guilty of waging war of aggression for having been fully apprised that the war against China was a war of aggression and making all the effort for this war to be a success.[98]

96 A.C. Carpenter, "The International Criminal Court and the Crime of Aggression", 64 *Nordic Journal of International Law* (1995), n. 35.

97 UN GA Resolution 3314, <jurist.law.pitt.edu/3314.htm>, visited 30 June 2007.

98 For example see, Kittichaisaree, *supra* note 52, pp. 220-221.

4. Failure of International Law in the Nagorno-Karabakh Conflict

In this part of the work I would like to discuss process of failure of enforcement of international law in the Nagorno-Karabakh Conflict and how this affected people in the region of conflict, brought suffering to human beings and resulted in lack of justice and lasting war.

4.1 Problems of International Humanitarian Law in the Nagorno-Karabakh Conflict

This sub-chapter is discussing failure of international humanitarian law in the Nagorno-Karabakh Conflict. It analyses law applicable to the aforementioned conflict and then shows actual situation with combatants and civilians throughout the conflict. Next sub-chapter will discuss specific issues of international criminal law in the context of the Nagorno-Karabakh Conflict and will give some examples of international crimes in this conflict.

4.1.1 Law Applicable to the Nagorno-Karabakh Conflict

Azerbaijan is party to Geneva Conventions of 1949 but have not ratified Addtitional Protocols. Armenia is party do both of these documents.

Common Article 2 states that the 1949 Geneva Conventions ”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”. Approximately 20 percent of the territory of Azerbaijan has been occupied by Armenia, including Nagorno-Karabakh territory itself and seven neighboring regions. Then the conduct of the Republic of Armenia is governed by Protocol I as well, applicable also to international armed conflicts. Since the Republic of Azerbaijan has not acceded to Protocol I, its conduct is not governed by Protocol I. Many of the relevant provisions of Protocol I, however, are reflective of customary international humanitarian law, which applies to all parties to the conflict.

The enclave of Nagorno-Karabakh is part of the territory of Azerbaijan as that republic was internationally recognized when it became independent

of the USSR in 1991. The enclave is surrounded on all sides by territory of Azerbaijan. Although Nagorno-Karabakh has declared its independence, this has not been recognized by the international community, nor is it likely to be. Prior to the war approximately 180.000 individuals lived in Nagorno-Karabakh. Nagorno-Karabakh has an area of roughly 1.700 square miles. This armed conflict is an example of an "internationalized" internal or non-international armed conflict, that is, a civil war characterized by intervention of the armed forces of other states on behalf of rebels.[99] The Republic of Armenia has become a party to the conflict by virtue of its commitment of troops to fight in Azerbaijan against the Azerbaijani armed forces. Armenia also gives substantial assistance to the rebels.[100]

The rules of war are based on an artificial distinction between international armed conflicts and non-international (internal) armed conflicts, with different rules for each. Thus a different legal scheme applies to the parties according to their legal character (whether they are States or rebels) and to the conventions to which the State parties have acceded.

The original conflict between Azerbaijan and its citizens of Armenian origin in the enclave of Nagorno-Karabakh (with support from Armenians living in the then Armenian SSR), is an internal armed conflict governed by the provisions of Article 3 common to the four Geneva Conventions of 1949. Common Article 3 expressly binds all parties to the internal conflict, including insurgents such as the militia of Nagorno-Karabakh, although they do not have legal capacity to sign the Geneva Conventions of 1949. However, as private individuals within the national territory of a State Party, certain obligations are imposed on insurgents.[101]

Application of common Article 3 cannot be construed as recognition of independence or belligerence of the Nagorno-Karabakh rebels, from which recognition of additional legal obligations would flow. Nor is it necessary for any government to recognize the independence or belligerent status of these rebels for common Article 3 to apply.

As to the conflict between the Republic of Armenia and the Republic of Azerbaijan, common Article 2 to the four Geneva Conventions of 1949

99 H.-P. Gasser, "Internationalized Non-International Armed Conflicts: Case Studies of Afghanistan, Kampuchea, and Lebanon", *American University Law Review* 33 (Washington, D.C, 1983), pp. 145 *et seq.*

100 *Azerbaijan. Seven Years of Conflict in Nagorno-Karabakh* (Human Rights Watch, Helsinki, 1994), pp. 90-118.

101 *Commentary on the Additional Protocols of 1977* (ICRC, Geneva, 1987), p. 1345.

states that the Conventions "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".

All that is required to trigger the definition of international armed conflict is the occurrence of *de facto* hostilities between Armenia and Azerbaijan, which is defined as use of members of the armed forces.

Any difference arising between two States and leading to the intervention of members of the armed forces is an armed conflict within the meaning of Article 2, even if one of the Parties denies the existence of a state of war. It makes no difference how long the conflict lasts, how much slaughter takes place. The respect is due to the human person is not measured by the numbers of victims.[102]

This is a short introduction to the IHL applicable in the Nagorno-Karabakh Conflict. Further I would like to discuss particular problems of IHL concerning such categories of protected persons as combatants and civilian population in aforementioned conflict and also discuss some problems of customary IHL in respect to that conflict.

4.1.2 Combatants in the Nagorno-Karabakh Conflict

One principle difference between the rules applicable to internal and international armed conflicts is the treatment of captured combatants. The combatant's privilege[103] applies in international armed conflict, but not in internal armed conflicts. Captured combatants in international armed conflicts are prisoners of war. The minimum treatment they must receive is detailed in the Geneva Convention III.

Prisoners of war include the members of the armed forces of a party to the conflict as well as members of militia or volunteer corps forming part of such armed forces, who have "fallen into the power of the enemy" (Article 130 GCIII).[104] Thus the members of the Republic of Armenia armed forces who

102 *Commentary on IV Geneva Convention* (ICRC, Geneva, 1958), p. 20-21.

103 The combatant's privilege is a license to kill or capture enemy troops, destroy military objectives and cause unavoidable civilian casualties. This privilege immunizes members of armed forces or rebels from criminal prosecution by their captors for their violent acts that do not violate the laws of war but would otherwise be crimes under domestic law. Prisoner of war status depends on and flows from this privilege. See Solf, "The Status of Combatants in Non-International Armed Conflicts Under Domestic Law and Transnational Practice", *American University Law Review* 33 (Washington, D.C., 1953), p. 59.

104 See, *supra* note 35, p. 131.

have been captured by Azerbaijani government forces are prisoners of war, and indeed the Azerbaijani government refers to them as such.

Members of the Azerbaijani armed forces captured by the Armenian armed forces are also prisoners of war. Unless the Republic of Armenia then holds them or otherwise is involved in their detention, those who are captured solely by the rebels probably do not qualify as prisoner of war under the Geneva Convention III. It appears that the rebels do not treat the captured Azerbaijani forces as prisoners of war.

Nagorno-Karabakh rebels do not enjoy any special status when captured, since they are not combatants in the meaning of law and do not enjoy privilege of combatants to participate in hostilities and thus can be tried by Azerbaijani government as ordinary criminals. The Azerbaijani government is not obliged to grant captured Nagorno-Karabakh rebels prisoner of war status. It may, however, agree to treat its rebel captives as prisoner of war, and appears to have done so.[105] Note that the term "prisoner of war" is restricted to captured combatants and does not include civilians.

Willful killing, torture or inhuman treatment, and willfully causing great suffering or serious injury to body or health, of prisoners of war are grave breaches of the Geneva Conventions. Willfully depriving a prisoner of war of the rights of fair and regular trial prescribed in the Geneva Convention III is also a grave breach (Article 130 GCIII).[106] Prisoners of war need not to be tried at all because of the combatants' privilege, they may not be tried for military activities that do not violate the rules of war.

However, many international observers, including some humanitarian and human rights organizations were troubled by the low number of captured combatants taken by both sides relative to the level and scale of combat. After these organizations conducted survey with captured combatants from both sides it came out that they were slashed with bayonets or knifes at the time of their capture. Most were beaten thereafter, sometimes to the point of unconsciousness. One released Karabakh Armenian captive reported that hot water had been poured on him while in detention. A released Azeri captive told that he and two of his comrades were beaten terribly, then tied

105 The Azerbaijani *de facto* recognition of captured Karabakh rebels as prisoners of war precludes the need to examine whether the rebels are militia belonging to a party to the conflict, *i.e.*, Republic of Armenia, GCIII, Art, 4(A)(2).

106 See, *supra* note 104.

to the outside of an armored personnel carrier and a tank and driven off. Prisoners of war in Armenia Novruz Muhammad ogly Dashdamirov and Namig Javashir ogly Garayev became mentally ill after being beaten, branded with hot objects, and hit on the head. Prisoners were sometimes subject to ridicule and scorn from civilian crowds. According to Armenian authorities, the eight Azeri men detained as a prisoners of war in Armenian camp killed a guard, took his gun, and attempted to escape, but were immediately discovered. The Armenian military procurator alleges that seven of the men then committed serial suicide with one guard's gun after the escape attempt was foiled. International observers consider this serial suicide inherently improbable and accuse Republic of Armenia in being responsible for the event. This kind of treatment of prisoners of war is inadmissible and constitutes grave breaches of IHL.[107]

In 1993 both Azerbaijan and Nagorno-Karabakh authorities formed committees to deal with prisoners of war and hostages. While private trading still occurs, most observers believe these official committees handle the majority of prisoner of war and hostage exchanges. Armenian side is quite open about hostage-taking while engaging in military operations. However, hostage-taking or holding is explicitly forbidden in internal armed conflicts. Karabakh rebels have violated this prohibition during the conflict. In addition, hostages have been held in the Republic of Armenia, and there are reports that Armenian forces took hostages. Taking or holding hostages in an international armed conflict is also forbidden and constitutes a grave breach of the Geneva Conventions of 1949 that can be found in Article 147 of GCIV.[108] Thus government of Armenia that allowed these hostage-taking and holding processes are responsible for another grave breach of IHL.

The situation with wounded and sick in the Nagorno-Karabakh conflict is monitored closely by ICRC. Recent developments in this situation in Azerbaijan are following. The ICRC endeavored to ensure that amputees and other disabled people had access to quality rehabilitation services.

Discussions continued with the new head of the Ministry of Labour and Social Protection on the functioning of the physical rehabilitation system on the basis of the findings of a joint evaluation. The ICRC's decision to phase out support to physical rehabilitation services in the country by the end of

107 See, *supra* note 100, p. 50.
108 See, *supra* note 35, p. 211.

2007 was communicated to the Azerbaijani authorities. The physiotherapy services of the Ahmedly Orthopaedic Centre in Baku were assessed, while the centre and its two branches in Ganja and Nakhichevan received support, with the last delivery of raw materials in September 2006. Additionally, 22 detainees received rehabilitation services.[109]

On the part of the Armenian recent developments lead by ICRC training of military surgeons is only worth mentioning. As reported by ICRC four surgeons from the Ministry of Defense participated in a war-surgery seminar organized by the ICRC in Saint Petersburg, Russian Federation. Since 2002, 15 Armenian war surgeons have been trained.[110]

This concludes the part dedicated to some issues of IHL concerning combatants in the Nagorno-Karabakh conflict. Further, I would like to refer to issues of the same nature regarding civilians.

4.1.3 Civilians in the Nagorno-Karabakh Conflict

In situations of armed conflict, generally speaking, a civilian is anyone who is not a member of the armed forces or of an organized armed group of a party to the conflict. Accordingly, "the civilian population comprises all persons who do not actively participate in the hostilities".[111] Basically, as it was mentioned before civilians are everyone who is not combatants (See under heading 2.1.3. Law of Geneva of this thesis). Civilians may not be subject to deliberate individualist attack since they pose no immediate threat to the adversary. Combatant persons who are otherwise engaged in civilian occupations lose their immunity from attack for as long as they directly participate in hostilities. "[D]irect participation [in hostilities] means acts of war which by their nature and purpose are likely to cause actual harm to the personnel and equipment of enemy armed forces," and includes acts of defense.[112] 'Hostilities' not only covers the time when the civilian actually makes use of a weapon but also the time that he is carrying it, as well as situations in which he undertakes hostile acts without using a weapon.[113]

109 *ICRC Annual Report 2006. Azerbaijan* (ICRC, Geneva, 2006), p. 241.
110 *Ibid*., p. 236.
111 R. Goldman, "International Humanitarian Law and the Armed Conflicts in El Salvador and Nicaragua", *American University Journal of International Law & Policy* 2 (1987), p. 553.
112 M. Bothe, K. Partsch, & W. Solf, *New Rules for Victims of Armed Conflicts: Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949* (Martins Nijhoff, Geneva, 1982), p. 303.
113 *Commentary on the Additional Protocols of 1977* (ICRC, Geneva, 1987), p. 619.

Once their participation in hostilities ceases, that is, while engaged in their civilian vocations, these civilians may not be attacked.

However, these rules were violated by Armenian aggressors during the first period of the Nagorno-Karabkh Conflict – the actual active hostilities and step-by-step occupation of Azerbaijani territories until 1994 cease-fire agreement. International human rights and humanitarian organization report major violations of GCIV and Protocol I on the part of the protection of civilians from Armenian side especially during period of time from 1993 to 1994. Violations of the rules of war, such as indiscriminate fire, the destruction of civilian objects, the taking of hostages, and looting, were the direct result of Karabakh Armenian offensives supported by forces from the Republic of Armenia. Rather than capture the rest of Karabakh as Sarkissian predicted, Karabakh Armenian forces - with alleged Russian and Armenian military support - seized all of the Kelbajar Province of Azerbaijan in a 'blitzkrieg' operation that began March 27 and ended by April 5. During this offensive, they committed several violations of the rules of war, including forced displacement of the civilian population, indiscriminate fire, and the taking of hostages. In the space of a week 60.000 people were forced to flee their homes. Today all are displaced, and Kelbajar stands empty and looted. The swift and short nature of the Kelbajar offensive, the mountainous terrain with few good roads, over which it was fought, and the late winter timing of the attack left the civilian population extremely vulnerable; many were taken hostage or killed by indiscriminate fire, even though most expected a Karabakh Armenian move against Kelbajar, civilians had little or no advance warning of the actual attack and even less time to make their escape after the limited roads still available were closed by advancing Karabakh Armenian forces. The Azerbaijani army put up little resistance often melting away into the civilian population. Main Karabakh Armenian units fired on escaping civilians, sometimes mistaking them for retreating Azerbaijani forces. During these hostilities as we can see Azeri civilians were attacked and that constitutes violation of the prohibition on targeting civilians. Looting and destruction of civilian property are also prohibited but occurred frequently during the offensive. During the offensive against Agdam, Karabakh Armenian forces committed several violations of the rules of war, including hostage-taking, indiscriminate fire, and the forcible displacement of civilians. After the city was captured, it was looted and burned under orders of Karabakh Armenian

authorities, another serious violation of the rules of war.[114]

This kind of similar violations from Armenian side went all the way through the whole Nagorno-Karabakh war. It happened when Armenian forces moved towards Iranian border and captured Zanghelan, Shusha and other Azerbaijani territories. These hostilities clearly showed the whole spectrum of violations against civil population from the side of aggressors. Further I would like to discuss violations of Armenian forces as occupying Power on the occupied Azerbaijani territories since cease-fire agreement of 1994 till present time.

Situations with civilians during the period of occupation: Civilians residing in territory occupied by a party to the international conflict, in this case Azerbaijani civilians residing in Azerbaijani territory occupied by the Republic of Armenia armed forces are entitled to extensive protection detailed in the Fourth Geneva Convention. Corporal punishment, torture, murder and brutality toward civilians are forbidden (Article 4 GCIV).[115] Provisions of GCIV that relate to the Occupied territories in Section III start with the total ban of deprivation of persons protected by GCIV from benefits of that document in any circumstances (Article 47). Individual or mass forcible deportations are forbidden. However, temporary evacuations of some areas area allowed, but only in the case of security of population and imperative military demand (Article 49). There are limitations of compelled labor towards civil population on occupied territories. Only people over 18 years can be compelled to work only on works of public necessity of the population of the territory under occupation or needs of army of occupation (excluding any relations to the future army military actions). The work should be carried on the occupied territories and civilians cannot be compelled to serve in the army of occupation (Article 51). There is prohibition of the destruction of any property on the occupied territories by Occupying Power, unless destruction is absolutely unavoidable and necessary by military operations (Article 53). The Occupying Power cannot alter the status of public officials and judges on occupied territories (Article 54). Furthermore, it should devote special care to the well being of the children on occupied territories (Article 50). The Occupying Power should ensure the food and medical supplies to the population as well as public health and hygiene (Articles 55-56). One of most

114 See, *supra* note 100, pp. 8-28.

115 See, *supra* note 35, p. 155.

important provisions is obligation of the Occupying Power to maintain in force the penal laws of the occupied territory and abolish these rules only if they constitute threat to the implementation of provisions of GCIV (Article 64). Penal provisions enacted by Occupying Power can come into force only after their publication on occupied territory in the language of inhabitants of that territory and shall be implemented by competent courts such as non-political military courts on condition that they sit on occupied territories (Articles 65-66). Article 67of GCIV lays down standards such courts must meet in order to administrate criminal justice. There are limitations on death penalty. For example Occupying Power can impose such highest measure only for gravest crimes espionage, intentional offences that caused death of one or more persons, sabotage of military operation, but only under condition that these acts were punishable by death under the law of occupied territory before occupation began (Article 68). [116] There are also some more rules concerning treatment of detainees, their right of appeal, etc.

However, all of aforementioned rules were breached by Armenian occupational forces during the Nagorno-Karabakh Conflict. Civilians on the occupied territories were subjected to tortures, mass murders, rape and degrading treatment. Over 20,000 civilians have been killed, and over 50 000 civilians disabled during the whole time of occupation as a result of violation of Article 4 of GCIV by Armenians. In violation of Article 49 of GCIV more that 100,000 of civilians were forcefully removed from the territories of occupation as a part of ethnic cleansings. A lot of civilians were subjected to the forced labor under threat of being killed in violation of Article 51 of GCIV. As a result of violation of Article 53 of GCIV by Armenian occupants over 900 settlements have been plundered, burned and destroyed, 6000 industrial, agricultural and other enterprises destroyed and plundered, 150 000 residential buildings with over 9,000,000 square meters of living space, 4366 facilities for social and cultural purposes have been ruined, and 695 medical centers and institutions had the same destiny. Children have not received any protection from Armenian occupants instead cases occurred like with three-years-old boy Shovgi Aliyev who was taken hostage at the time of occupation of Agdam region on July 24, 1993. Armenian "doctors" in Khankendi removed his humerus crippling him for the rest of his life. No cases of food and medical help to population registered from Armenian

116 *Ibid*., pp. 171-178.

side. Also penal laws of Azerbaijan are not enforced. There only "martial laws" that are working on the occupied territories dictated by the occupants. Civilian executions reported even for minor crimes.[117]

Though these numbers can be miscalculated and arguable this information is the one that can be obtained in the large informational vacuum on the Nagorno-Karabakh Conflict. One fact remains unarguable – that there have been a lot of innocent civilian's deaths as the result of the war and later occupation.

It can be clearly seen that this situation is in deep breach of IHL provisions and basic rules of war. Further I would like to talk about customary IHL in the Nagorno-Karabakh Conflict.

4.1.4 Customary International Humanitarian Law in the Nagorno-Karabakh Conflict

Customary IHL plays important role in the Nagorno-Karabakh Conflict. As it was mentioned before Armenia is a part both to the Geneva Conventions of 1949 and Additional Protocols. However, Azerbaijan ratified only Geneva Conventions of 1949, but not Additional Protocols (at the same time Azerbaijan implemented almost all provisions of Protocols into its national legislation both criminal and administrative). It figures that in conduct of war Armenia is bound by more strict and developed rules than Azerbaijan. This, however, is not completely true. Though Azerbaijan has not ratified Additional Protocols at the same time some of the most important rules of these protocols are already Customary IHL. Here I want to discuss some rules that Azerbaijan has to follow as a part of Customary IHL in the Nagorno-Karabakh Conflict and some rules that were breached by Armenia.

One of the rules that we can be concerned with is denial of quarter that is prohibited by Article 40 of Protocol I and Article 4 of Protocol II. Both norms became part of Customary IHL. It is contained in numerous military manuals and is an offence in significant number of States, including Armenia. Another rule is prohibition of attack of persons recognized as *hors de combat*. This rule is particularly important when in comes to military operations and engaging in the combats. This rule should be implemented

117 Statistical facts and numbers taken from The State Commission on Prisoners of War, Hostages and Missing Persons <www.human.gov.az>, visited on 22 June 2007.

and enforced strictly. This rule contained in Article 41(1) and Article 85(3)(e) of Protocol I and Article 4 of Protocol II. It can be found in many military manuals and is an offence in many states. From case law that relates to state practice we should mention here Germany cases (*Strenger and Cruisus case*, *Llandovery Castle case*), UK cases (*Peleus case*, *Renoth case*), US cases (*Von Leeb case*, *Dostler case*). This rule is acknowledged as Customary IHL rule.[118]

It is also known in Customary IHL that combatants must distinguish themselves from the civilian population while they are engaged in attack or in a military operation preparatory to an attack. The main reason is that if they fail to do so they lose their right to POW status. For Azerbaijani side that rule is also very important. Because unidentified resistance on the occupied territory may leave even rightful combatants unprotected by rules of IHL concerning POWs. This rule contained in Article 44(3) of Protocol I. It is also specified in many military manuals and supported by official statements and other practice. One of the most significant cases that can be found in state practice is *Swarka case*.[119]

Two very important Customary IHL rules were breached by Armenia in Nagorno-Karabakh Conflict: 1) parties to both international and non-international armed conflict may not deport or forcibly transfer the civilian population of an occupied territory, in whole or in part, unless the security of civilians is involved of imperative military reasons so demand; 2) States may not deport or transfer parts of their own civilian population into a territory they occupy. First rule was breached by major ethnic cleansings that went through occupied territories of Azerbaijan during the first years of occupation. Breach of second rule followed later when Armenia arranged flow of its civilians to settle on occupied territory. Both rules are stated in Article 85(4)(a) of Protocol I and constitute grave breach of that protocol. Many military manuals prohibit these kinds of actions. These rules also included in legislation of numerous States. Loudest case on that subject is *Case of Major War Criminals* in 1946 of International Military Tribunal at Nuremberg.[120]

And from my point of view for both states there is a rule that is particularly important for effective development in implementation and enforcement of

118 For customary rules reference see, J.-M. Henckaerts and L. Doswald-Beck. *Customary International Humanitarian Law. Volume I: Rules* (Cambridge University Press, Cambridge, 2005), pp. 161-165.
119 *Ibid*., pp. 384-385.
120 *Ibid*., pp. 457-463.

IHL. The rule of Customary IHL that provides that obligation to respect and to ensure respect for IHL does not depend on reciprocity. These rule often misunderstood in military manuals that provide that following the rules of IHL can encourage reciprocal reaction, however these manual do not imply that respect is subject to reciprocity. Both Armenia and Azerbaijan should do their best in following IHL rules disregarding negative actions of other side, avoiding putting them in the position of excuse for violations of IHL. This Customary IHL rule was part of such cases as Martic case and Kupreskic case in International Criminal Tribunal for the Former Yugoslavia.[121]

Further I would like to proceed to the next part of this work to problems of International Criminal Law in the Nagorno-Karabakh Conflict.

4.2 Problems of International Criminal Law in the Nagorno-Karabakh Conflict.

This section of the work does not set a goal to accuse anyone in international crimes. Person can be found guilty of international crime only by competent court or tribunal (such as international court or tribunal or domestic court exercising universal jurisdiction). This section only brings attention to the events during Nagorno-Karabakh that are from the point of view of author are clearly containing elements of international crimes and sets ground for the recommendations for investigation and prosecution of such events.

Further in this section I would like to group and discuss aforementioned cases in groups of crimes as they are contained in Rome Statute.

4.2.1 War Crimes in the Nagorno-Karabakh Conflict

As it was mentioned above in this work there was a large amount of grave breaches of IHL during the Nagorno-Karabakh Conflict and their number is growing from day to day. However, grave breaches and serious violations of IHL according to the Rome Statute are war crimes.[122] It is impossible to talk about all the crimes committed during the Nagorno-Karabakh Conflict due to the large number of such events. In this work, however, I would like to bring most serious and common of the war crimes in the Nagorno-Karabakh Conflict.

121 *Ibid*., pp. 498-499.
122 Rome Statute, *supra* note 70, article 8(2).

One of the most common crimes to the Nagorno-Karabakh Conflict is willful killing. Willful killing is war crime according to Rome Statute.[123] *Actus reus* of that offence is the taking lives of protected persons by any means. It can be committed by an act or an omission, provided that the conduct is beyond any doubt substantial cause of the death of the victim.[124] *Mens rea* of the crime is demonstration of intention on the part of the accused to kill, or inflict serious injury, in reckless disregard of human life.[125] Large numbers of persons protected by IHL were killed during Armenian attacks when conquering presently occupied territories of Azerbaijan. Willful killing of prisoners of war and civilian population were reported during attacks on Kelbajar, Agdam, Qubatli, Djabrail, Fuzuli, Zangelan, and other parts of Azerbaijani territory.[126] This kind of crime is common to most of the armed conflicts and represents one of the gravest crimes as it undermines whole principle of protection of IHL.

Another common crime for the active part of the Nagorno-Karabakh Conflict is taking of hostages. Taking of hostages is a war crime according to Rome Statute.[127] Hostages are non-combatants on the occupied territory unlawfully deprived of their liberty, often arbitrarily and sometimes under threat of death, ceased and held as an anticipatory precaution against the enemy or in order to secure a promise from the enemy (for example using them as a shield against the enemy for operations of own forces or killing them in order to terrorize resistance movements).[128] Their detention can be lawful only when it is necessary for the protection of civilians or other reasons of security. To find someone guilty of that crime, facts have to be established by prosecution that at the time of detention condemned act was committed with a goal of gaining a concession or an advantage.[129] Taking of hostages were reported in large numbers during Nagorno-Karabakh War. Almost in every military operation taking of hostages took place. Later hostages were traded for the hostages from the other side and POWs.[130] Taking hostages is a very serious crime as it endangers lives of innocent people by using them in military operations.

123 *Ibid*., article 8(2)(a)(i).
124 *Celebici case (Prosecutor* v. *Delalic, Mucic, Delic & Landzo*), 16 November 1998, Case No. IT-96-21-T, para. 431.
125 *Ibid*., para. 437-439.
126 See, *supra* note 100, pp. 8-34.
127 Rome Statute, *supra* note 70, article 8(2)(a)(viii).
128 Green, *supra* note 87, pp. 272-273.
129 *Blaskic case* (*Prosecutor* v. *Tihomir Blaskic*), 3 March 2000, Case No. IT-95-14-T, para. 158.
130 See, *supra* note 100, pp. 51-58.

Another war crime common to the Nagorno-Karabakh Conflict and recognized by Rome Statute is intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.[131] The *actus reus* of this offence is the launching of an attack to cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment in the violation of principles of necessity and proportionality. However, such attack can be legitimate if takes place far away from populated areas and would not affect civilian population.[132] *Mens rea* of such offence is the intent to launch the attack in the knowledge (certainty) that it will be disproportionate to the military advantage anticipated in the circumstances.[133] Indiscriminate fire by Armenians against civilian population and civilian objects of Azerbaijan was very common for the beginning of the Nagorno-Karabakh Conflict and takes place eventually in present time. These actions constitute one of ways to commit aforementioned crime, because indiscriminate fire is clearly one of the types of attack launched to cause incidental loss of life or injury to civilians and damage to civilian objects. Such cases were reported during attacks on Kelbajar, Agdam, Qubatli, Djabrail, Fuzuli, Zangelan, and other parts of Azerbaijani territory.[134]

One of the most serious war crimes recognized by Rome Statute[135] and committed by Armenians in the Nagorno-Karabakh Conflict is the transfer directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory. Article 49 of GCIV prohibits individual of mass deportations or transfers of all or parts of protected person from occupied territories to the territory of Occupying Power or to that of any other country, occupied or not, regardless of motive. Article 85(4)(a) of Protocol I makes it a grave breach to transfer by Occupying Power parts of its own civilian population

131 Rome Statute, *supra* note 70, article 8(2)(b)(iv).
132 Green, *supra* note 87, pp. 149-150.
133 Kittichaisaree, *supra* note 52, p. 162.
134 See, *supra* note 100, pp. 8-34.
135 Rome Statute, *supra* note 70, article 8(2)(b)(viii).

into the territory it occupies or the deportation of transfer in violation of Article 49 of GCIV. Transfer needs to be interpreted in accordance with the relevant provisions of IHL. The word indirectly in the name of the offence suggests that population of the Occupying Power need not to be physically forced or otherwise compelled to be transferred to occupied territory, but may be induced or facilitated to be transferred there.[136] During the Nagorno-Karabakh Conflict more than 450.000 Azerbaijanis were forced by Armenian occupation to move from occupied territories.[137] In addition Armenians are transferring some parts of its civilian population to territories they are occupying to settle them there and create problems when it comes to the settlement of the conflict. This crime have brought, probably, most pain and suffering to the civilian population. Such large number of displaced civilians constitutes the clear example of forcible transfers as a type of aforementioned crime.

Another crime common to the Nagorno-Karabakh Conflict is pillaging a town or place, even when taken by assault. The ICTY held in *Celebici case* that the concept of pillage in the traditional sense implies an element of violence; whereas the offence of plunder embraces all forms of unlawful appropriation of property in armed conflict for which individual criminal responsibility attaches in international law, be it committed with or without violence. Therefore, 'plunder' includes those acts traditionally described as 'pillage'.[138] Appropriations of enemy property justified by military necessity, and not by private or personal use, cannot constitute the crime of pillaging. . Pillaging, plundering or simply – looting cases were and still are common to the Nagorno-Karabakh Conflict. In any seizure of any Azerbaijani town or village by the Armenians pillaging cases were reported. Civilian property lost in pillaging estimated up to several hundreds of thousands of US dollars.[139]

Numerous amounts of other war crimes were committed during Nagorno-Karabakh Conflict and continue to be committed today. For example such crimes are: torture or inhumane treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, attacking or bombarding, by whatever means towns, villages, dwellings or buildings

136 Kittichaisaree, *supra* note 52, p. 168.
137 See, *supra* note 100, pp. 58-62.
138 *Celebici*, *supra* note 124, para. 591.
139 See, *supra* note 100, pp. 8-34.

which are undefended and which are not military objectives, killing or wounding a combatant who, having laid down his arms or having no longer means of defense, has surrendered at discretion, and others.

4.2.2 Genocide of Azerbaijanis in the Nagorno-Karabakh Conflict

During Nagorno-Karabkh Conflict Armenians committed several acts of genocide against Azerbaijani population on the occupied territories and against Azerbaijani population in Armenia. These acts were committed with the intention to destroy parts of Azerbaijani national group living on aforementioned territories. Thus according to the definition of genocide in Genocide Convention and Rome Statute, which was discussed above in this work, these acts were committed as genocide of parts of ethnical group. Ethnical group is one whose members share a common language and culture. An ethnic group may identify or distinguish itself as such or maybe identified as such by others, including perpetrators of genocide.[140] Further I would like to proceed with facts of genocide starting from the beginning of conflict and till present time as some acts of genocide are continued to be committed.

Since January 1988, the Armenians began to implement into life the policy of "Armenia without Turks". The government of Armenia, nationalistic organizations "Karabakh" and "Krunk", and representatives of the church of Echmiezdin committed thousands of bloody crimes under the protection of the administration of the USSR in the process of forcible deportation of the Azerbaijanis from Armenia.

As a result of first ethnic cleansings 185 Azerbaijani settlements were emptied, over 250,000 Azerbaijanis were compelled to leave their houses; 217 Azerbaijanis were murdered and 49 of them froze in the mountains when escaping to save their lives, 41 of them were beaten to death, 35 of them were tortured to death, 115 of them were burnt, 16 of them were shot, 10 of them died of heart attacks unable to endure the tortures, 2 of them were murdered by physicians in the hospital, some people were drowned in the water, some were hung, some were electrified to death, and some were beheaded.[141]

140 *Akayesu*, *supra* note 78, para. 513.

141 See, <http://www.human.gov.az>, visited 3 July 2007.

For the purposes of this work it is important to show the examples of genocidal acts of Armenians against Azerbaijanis. Presenting some facts and drawing the actual picture of some events that took place in the Nagorno-Karabakh Conflict will help me to argue further that these events were genocide.

One of the most horrible events of the Nagorno-Karabakh Conflict is the genocide in Khojali. It is like the genocides committed in Khatyn**,** Lidisia**,** Oradur, Yugoslavia and Rwanda reflected in the history of mankind. In the early hours of 26 February 1992, the armed forces of Armenia, the armed Armenian militants of the Nagorno-Karabakh, and Motor-Infantry Regiment No. 366 of the former Soviet Union dislocated between Askaran and Khankendi occupied the town and committed genocide against the Azerbaijanis. Preparation for Khojali attack began in the evening of February 25 when the military equipment of Motor-Infantry Regiment No. 366 began to take positions around the city.

The assault of the city began with the 2 hours firing by tanks, armored cars and guns with the missile "Alazan". Khojali was blocked from three sides and people tried to escape in Askeran direction. Parts of the population trying to escape the violence encountered ambushes on the way out of the town and were murdered. Very soon they understood that it was the ominous trap. The organized nature of the extermination of the population of Khojali was evident from that the killing took place in prepared in advance ambushes on peaceful inhabitants who fled the town in desperation to save their lives. For example, Elman Mamedov, chief of administration in Khojaly, reported that a large group of people who had left Khojaly came under intensive fire from Armenian positions near the village of Nakhichevanik. It is reported that near Nakhchivanik village the Armenian armed forces were prepared in advance to open fire on the unarmed people. Just here, in Askeran-Nakhchevanik shallow gully many of the children and women, elders, frostbitten and weaken in the snow of forests and mountain passes became the victims of the brutality of Armenian armed forces.

Those days Azerbaijani forces couldn't burst through to help the population of Khojali, and there was also no ability to take away the dead bodies. At the same time special groups of Armenians in white camouflage cloaks using helicopters searched the people in the forests, groups of people who came out the forest were shot or taken as hostages and subjected to tortures.

That event also shows the intent of Armenians to exterminate the rest of Azerbaijani population of Khojali at any cost.[142]

Episodes of Khojali genocide are terrifying. Antiga, the resident of Khojali, was burned alive because she did not say: "these places are part of Great Armenia". Khojali resident Sariya Talibova told: "heads of 4 meskhetis and 3 Azeris were cut off over Armenian grave. Then they extracted eyes of 2 Azeris". Khazangul Tavakkul qizi Amirova said: "My family was wholly taken hostage by the armed Armenians when Khojali was occupied. They shot and killed my mother Raya, my seven-years old sister Yegana, and my aunt Goycha. They poured petrol on my father Tavakkul and set him on fire".

The night, in which the Armenians committed the genocide in Khojali, 613 peaceful residents were murdered with a special cruelty, tortured, beheaded, and blinded. Pregnant women were bayoneted; same destiny reached 63 children, 106 women and 70 old men.

The genocide was committed with the participation of Motor-Infantry Regiment No. 366 commanded by Major Seyran Mushegovich Oganyan (at present he is the "defense minister" of the illegal Nagorno-Karabakh regime), companies and platoons of the same battalion commanded by Eugenie Nabokikhin, chief of headquarters of the first battalion Valeri Isayevich Chitchyan and over 50 officers and senior personnel of the Armenian nationality.[143]

Another event of genocide acts of Armenians against Azerbaijanis is evident from the April 1, 1993 when Armenian military formation began large-scale attacks over Kelbajar region. During this operation a new radio network was used operating on frequency of 6721 kHz, in order to implement coordination of the operation and general control.

Materials obtained as a result of radio intelligence service during the operation on the 6-7-th of April 1993 witness that the order was given by the head quarter radio station placed in Vardenis region of Armenia ("GSM -7") to the head radio station in the region of military operation ("Uragan") to liquidate and burry quickly all the captives and hostages including old people, women and children in Kelbajr region. The cause of that act was to

142 See, <http://www.nuhun.net/xocali/index_en.html>, visited 3 July 2007.
143 See, *supra* note 124.

sweep off all the evidences of ethnic cleansings against Azerbaijanis from the representatives of international organizations including journalists who arrived at the region of the military operation at that time and at the same time exterminate as many Azerbaijanis as possible.[144]

The genocide acts in Khojali and Kelbajar is only one piece of a pattern of destruction and ethnic cleansings methodically carried out by the Armenian armed forces against Azerbaijani population. The similar events were taking place in diffeent parts of occupied territories.

Actus reus of the crimes can be seen from the facts above. *Mens rea* of crimes is however less clear, but there are a lot of details like ambushes prepared by Armenians in advance in Khodjali, following refugees on helicopters and orders given by radio in Kelbajar that suggest that *mens rea* was formed prior to the commission of an act of genocide. Pre-formed *mens rea* is one of the necessary elements of crime of genocide.[145] The other qualification that perpetrator must choose the victim not because of his individual identity, but because of membership in specific group (in our case Azerbaijanis),[146] is also very clear as there were no Armenians killed in the events of Khojali or Kelbajar or other. It was clearly Azerbaijanis who were chosen to be a victim of genocidal acts. Another requirement for *mens rea* of crime is that perpetrator must intent to destroy a large portion of the group[147] in our case is also quite obvious. Azerbaijanis against who genocide was attempted were quite a large share of population of that ethnical group presented in currently occupied territories and on territory of Republic of Armenia.

On the first group of acts committed as a killing of the group, as a part of Genocide Convention, I want to set example of ICTR ruling that 'killing' is homicide committed with the intent to cause death. By its constituent physical elements, the very crime of genocide necessarily entails premeditation.[148] Rome Statute makes it clear that the act of killing or causing death forms essential element of crime of genocide, where 'causing death' means intentional omission that leads to death of the victim. All of these requirements are clearly present in genocide acts of Armenians.

144 See, <http://www.khojaly.org.az/kelb.html>, visited 3 July 2007.
145 *Kayishema and Ruzindana*, *supra* note 91, para. 91
146 *Akayesu*, *supra* note 78, paras. 521-522.
147 *Jelisic*, *supra* note 76, para. 81-82.
148 *Akayesu*, *supra* note 78, para. 501.

Causing serious bodily or mental harm is another way to commit genocide also present in the Nagorno-Karabakh Conflict. A large number of acts of torture, inhumane and degrading treatment, rape, sexual violence, etc. and serious injuries to the health of victims of genocide in the Nagorno-Karabakh Conflict formed another group of acts of genocide of Azerbaijanis by Armenians. These aforementioned acts form one of the groups of acts of genocide according to the international criminal practice. In addition, harm done by these acts need not to be permanent or irremediable.[149] The fact that all the requirements are there on their places can be seen from the information on genocide acts provided above.

4.2.3 Armenian Aggression Against Azerbaijan

In this section I want to argue that though 'crime of aggression' is not defined yet, Armenian aggression against Azerbaijan can be still prosecuted as a crime in international criminal court or tribunal if the international society will find it necessary and important.

Though, as it was said before in this work, 'crime of aggression' was never defined, 'aggression' itself was defined by UN GA Resolution 3314 of 14 December 1974 on the Definition of Aggression (hereinafter Definition). In order to prove that Armenian aggression can be prosecuted, first there is a need to prove Armenian aggression itself.

According to Article 1 of Definition: "Aggression is the use of armed force by a State against sovereignty, territorial integrity, or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition..."[150] Further in Article 2 Definition provides: "The first use of armed force by a State in contravention of the Charter shall constitute *prima facie* evidence of an act of aggression although the Security Council may in conformity with the Charter, conclude that a determination that act of aggression have been committed would not be justified in the light of relevant circumstances, including the fact that the acts concerned or their consequences are not of sufficient gravity."[151] As it can be seen from Article 2 of the Definition it empowers Security Council to decide whether the first use of armed forces is an act of aggression.

149 *Ibid*., para. 504.
150 UN GA Resolution 3314, *supra* note 97.
151 *Ibid.*

Article 3 of Definition provides non-exhaustive list of events that qualify as acts of aggression such as invasion, attack, temporary military occupation, or annexation by the armed forces of one State by another; bombardment of one state by another; blockade of ports; attack on land, sea or air; allowing the territory to be used by a State to attack a third State; and sending or being substantially involved in sending, armed bands, groups, irregulars, or mercenaries, to carry out armed attack against another State of such gravity as to amount to the acts listed in preceding paragraphs of Article 3.[152]

From the information provided above in this work we can see that acts of Republic of Armenia clearly fall under definition of aggression as provided in Article 1 of Definition. Also the acts of Republic of Armenia against Azerbaijan Republic match some acts provided by Article 3 of Definition including attack on land and air by armed forces and military occupation of victim state – Azerbaijan Republic and support of irregulars or illegal armed bands, in this case Nagorno-Karabakh separatists. The fact of support of Nagorno-Karabakh separatists by Armenian armed forces was discussed previously in this work and indirectly recognized by SC Resolution 884 of 12 November 1993 in paragraph 2.[153] At the same time fact that support of separatists constitutes an act of aggression is also a rule under customary international law.[154]

Further, Security Council in its resolutions of 822 and 853 of 1993 actually recognizes the aggression of Republic of Armenia against Azerbaijan Republic. In these resolutions Security Council reaffirms sovereignty and territorial integrity of all States in the region of conflict and also inviolability of international borders and inadmissibility of use of force. It also demands for full and unconditional withdrawal of Armenian occupying forces from territories of Azerbaijan.[155] With all that Security Council Resolutions show that acts of armed forces of Republic of Armenia constitute an act of aggression against Azerbaijan Republic according to the definition of aggression provided by UN GA Resolution 3314.

152 *Ibid.*

153 SC Resolution 884 (1993), S/RES/884, <http://daccessdds.un.org/doc/UNDOC/GEN/N93/631/20/PDF/N9363120.pdf>, visited 5 July 2007.

154 *Nicaragua case* (*Military and Paramilitary activities in and against Nicaragua*), 1986, ICJ, <www2.uakron.edu/low/Nicaragua.doc>, visited 5 July 2007.

155 SC Resolution 822 (1993), S/RES/822, <http://daccessdds.un.org/doc/UNDOC/GEN/N93/247/71/IMG/N9324771.pdf>, visited 5 July 2007; SC Resolution 853 (1993), S/RES/853, <http://daccessdds.un.org/doc/UNDOC/GEN/N93/428/34/IMG/N9342834.pdf>, visited 5 July 2007.

The crime of aggression was brought to a trial only once in history during Nuremberg and Tokyo Tribunals' trials. It was punished, as said before in this work, under heading of 'crimes against peace'. According to Nuremberg Tribunal war is essentially an evil thing because its consequences affect the whole world. Therefore, to initiate a war of aggression is 'not only an international crime; it is the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole'.[156] The crimes against peace according to the Article 6(a) of Charter of Nuremberg Tribunal were: 'planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing'. Same Article also provides that responsibility for crime of aggression lies on leaders, organizers, instigators and accomplices participating in aforementioned acts lead to war of aggression.[157]

It is unarguable that Armenian leaders and organizers cannot be tried in present time under Rome Statute due to two reasons: 1) crime of aggression needs definition under Rome Statute; 2) jurisdiction of ICC covers cases after year 2002 (and Armenian aggression started in the beginning of the Nagorno-Karabakh conflict). However, if international community will find this necessary and important *ad hoc* tribunal can be set up to bring to trial persons responsible for the Armenian aggression against Azerbaijan. Some can argue that it would be a breach of principle of legality. However Nuremberg Tribunal already set up a precedent that is now considered justifiable and history can repeat itself. For the temporary solution of definition of crime of aggression I would like to propose definition brought up by Kittichaisaree, based on Nuremberg definition and linked with determination of aggression by Security Council: "… and subject to prior determination by the United Nations Security Council of an act of aggression by the State concerned, the crime of aggression means any of the following acts: planning, preparing, initiating, or carrying out a war of aggression".[158]

156 *Trial of the Major War Criminals*, 'Proceedings of the Internatinal Military Tribunal, Nuremberg', 41 *American Journal of International Law* 172 (1947), p.221.
157 *Ibid.*
158 Kittichaisaree, *supra* note 52, p. 217.

4.2.4 Crimes Against Humanity in the Nagorno-Karabakh Conflict

As it was mentioned above in this work definition of crimes against humanity provides that they can be committed against 'any civilian population'. This means that crimes against humanity can be committed against stateless persons or civilians of the same nationality of the perpetrator as well as against foreign citizens.[159] In our case the fact that crimes against humanity can be committed against own civilian population of the perpetrator is very important. This fact is the only one that differs crimes against humanity of Armenians from war crimes committed by them against civilian population of Azerbaijan.

As it was mentioned above in the beginning of the Nagorno-Karabakh Conflict Armenians organized widespread attacks directed against Azerbaijani civilian population living on the territory of modern Republic of Armenia. These attacks resulted in murder of several parts and deportation of the rest of Azerbaijani population from Armenia.

As there is not much to tell about murder as a part of crimes against humanity committed by Armenians, as its conduct is quite clear, the deportation should be defined. Rome Statute proscribes deportation of population and defines it as forced displacement of persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.[160] In other words deportation is forcible removal of persons to the territory of another State. The provision 'without grounds permitted by international law' suggests that conduct is unlawful.

Azerbaijanis that have been leaving on the territory of Republic of Armenia were Armenian citizens and there were no grounds under international law for their removal from Armenian territory. This means that Armenians committed crimes against humanity in murdering parts and deporting other parts of Azerbaijani population from Republic of Armenia; against their own nationals at that time. As result of these crimes 250,000 Azerbaijanis were deported from Armenia and 217 were killed.[161]

159 *Tadic*, *supra* note 68, para. 626.
160 Rome Statute, *supra* note 70, article 7(1)(d).
161 See, <http://www.human.gov.az>, visited 3 July 2007.

5. Conclusions

It is really impossible to disregard the role of international legal documents and international law in Nagorno-Karabakh Conflict. Above I have discussed the role these documents have played in shaping the international law around the conflict as it is right now as well as serious of violations of IHL during the active part of the conflict (Nagorno-Karabakh War) and passive occupation of Azerbaijani territories that lasts in present time. These violations lead to enormous amount of suffering of whole population of region that is influenced by the conflict. The numbers of civilian population murdered, tortured, driven from their homes, forced to refugee conditions, suffered from discrimination and violence as a result of that conflict comes by its numbers up to more than one million. Lives of soldiers that fought at that war, that could have been saved, were lost forever, because of the simple ignorance to the rules of war from both State parties to the conflict. Development of both countries slowed down as much as it leads to degradation of certain social and economical factors of countries passively creating even more suffering. Even information spread by media on violations of IHL that happened during conflict leaves inerasable tracks in souls of population of both countries.

A lot of suffering caused by this conflict, however, was avoidable. Implementation of the rules of war by both countries could have saved many lives of innocent people and reduce amount of suffering caused by war to adequate minimum. The mere ignorance of these rules, that countries voluntarily accepted, led to irreparable consequences. The conflict however is still there and is likely to cause more suffering and more dangers to the humanity. Continuation of this conflict will be a test of attitude of the States engaged in conflict towards victims of war. States in their activity related to the Nagorno-Karabakh Conflict should never forget about who is really suffering as a result of war. They should not forget about soldiers on the field and civilians on occupied territories. At the same time they should understand sometimes blinded by striving towards justice in conflict solution that IHL does not have rights or wrongs in the conflict. These rules protect all the victims of war no matter on which side they are – be it aggressors recognized in accordance with Charter of United Nations, or victims of aggression using force in self-defense. The sole purpose of rules of war is to mitigate human suffering as a result of war, to restrain parties from

unnecessary cruelty during that war, and to make parties understand that they are not unlimited in the choice of means and methods of war because international community agreed on certain behavior and deviance from that would be unacceptable. Above in this work I showed the connections of IHL to Nagorno-Karabakh Conflict. The amount of work to do on implementing and enforcing IHL in this conflict though seem enormous is a noble and just labor for the sake of victims of that terrible event.

The importance of ICL in Nagorno-Karabakh Conflict is also more than obvious. Above I have tried to show some of the international offences committed in the Nagorno-Karabakh Conflict. The numbers of these of offences of course are several times higher than the ones I have related to. The Conflict is still there even now and there more crimes that are being committed every day. Amount of suffering caused by these crimes cannot be counted in any way it can only be felt when looking at the victims of such crimes. I am talking about victims of war crimes, crimes against humanity, genocide and generally aggression – murdered, tortured, sexually violated, deported and displaced from their homelands, from their history, deprived from their pride, dishonored, treated more than just inhumanely… Is it fair to leave offenders of these people unpunished, free from any obligations to the international community, sure in their total impunity?

As I mentioned before in this work one of the objectives of ICL is to prevent international crimes. Effective implementation of rules of ICL would be the answer to that problem. This means effective investigation and prosecution on the case-by-case basis without ignoring any event that might be suspected of being international crime. Only with such methods it would be possible to prevent, prosecute and punish offenders of international crimes.

States should understand their responsibility for actions of their citizens. They should understand that international community is far from the days of closing its eyes on the actions of the States when it comes to the conflict situation where the victims of disputes are innocent human beings. It is impossible now in the time of such globalization to live in the world next to impunity causing more and more human suffering.

States such as Azerbaijan and Armenia with aid of international community should take all appropriate measures to avoid impunity in the Nagorno-

Karabakh Conflict. Prosecution of the international criminals in the conflict is first of all responsibility of the States concerned in the conflict. However, if the states are *nolle prosequi* this should become a concern of international community, as I have mentioned before that protection of fundamental human rights even by prosecuting the offenders is common interest of all States in the world. Thus international community has to make measures to prosecute offenders even against the will of the State concerned. In our modern world we already have a lot of examples: Germany and Japan after WWII, Former Yugoslavia, Rwanda and recently situation in Darfur and also a lot of situations concerning universal jurisdiction. Thus there are some ways for international community to intervene and take situation that concerns whole world under control.

With this I want to call on both Armenia and international community to follow their international obligations and to follow the many international legal documents reviewed in this work. To implement and enforce all the resolutions of aforementioned international organizations as well as IHL rules that they bound with by international agreements. To make their best to refrain from negative reciprocity, reprisals and other actions that undermine noble goal of IHL. To always think about victims of the conflict before the irreparable actions. With this kind of attitude it will be possible to reduce suffering that may be brought by continuation of the Nagorno-Karabakh Conflict to minimum and strive for just resolution of this protracted international armed conflict.

I also call for the international community not to stay blindfolded and unconcerned with situation in the Nagorno-Karabakh Conflict. To take measures to help to restore justice and make States comply with the rules of ICL and with relevant provisions of UN Charter, especially when it comes to use of force. This Conflict should be seen as an example to the failure of international law. All States should take that into account and follow recommendations presented in this work to avoid similar situations in future.

For the rest it is only left to hope for the fastest final settlement of the Nagorno-Karabakh Conflict, to the restoration of justice, and at least some compensation to the victims. Also, for what is even more important, to hope for the precedents like this Conflict to never happen again in the history of human kind.

6. International Legal Documents

6.1 UN Security Council Resolution 822 (1993)

S/RES/822 (1993)

Recalling the statements of the President of the Security Council of 29 January 1993 (S/25199) and of 6 April 1993 (S/25539) concerning the Nagorno-Karabakh conflict,

Taking note of the report of the Secretary-General dated 14 April 1993 (S/25600),

Expressing its serious concern at the deterioration of the relations between the Republic of Armenia and the Republic of Azerbaijan,

Noting with alarm the escalation in armed hostilities and, in particular, the latest invasion of the Kelbadjar district of the Republic of Azerbaijan by local Armenian forces,

Concerned that this situation endangers peace and security in the region,

Expressing grave concern at the displacement of a large number of civilians and the humanitarian emergency in the region, in particular in the Kelbadjar district,

Reaffirming the respect for sovereignty and territorial integrity of all States in the region,

Reaffirming also the inviolability of international borders and the inadmissibility of the use of force for the acquisition of territory,

Expressing its support for the peace process being pursued within the framework of the Conference on Security and Cooperation in Europe and deeply concerned at the disruptive effect that the escalation in armed hostilities can have on that process,

1. Demands the immediate cessation of all hostilities and hostile acts with a view to establishing a durable cease-fire, as well as immediate withdrawal of all occupying forces from the Kelbadjar district and other recently occupied areas of Azerbaijan;

2. Urges the parties concerned immediately to resume negotiations for the resolution of the conflict within the framework of the peace process of the Minsk Group of the Conference on Security and Cooperation in Europe and refrain from any action that will obstruct a peaceful solution of the problem;
3. Calls for unimpeded access for international humanitarian relief efforts in the region, in particular in all areas affected by the conflict in order to alleviate the suffering of the civilian population and reaffirms that all parties are bound to comply with the principles and rules of international humanitarian law;
4. Requests the Secretary-General, in consultation with the Chairman-in-Office of the Conference on Security and Cooperation in Europe as well as the Chairman of the Minsk Group of the Conference to assess the situation in the region, in particular in the Kelbadjar district of Azerbaijan, and to submit a further report to the Council;
5. Decides to remain actively seized of the matter.

6.2 UN Security Council Resolution 853 (1993)

S/RES/853 (1993)

The Security Council,

Reaffirming its resolution 822 (1993) of 30 April 1993,

Having considered the report issued on 27 July 1993 by the Chairman of the Mink Group of the Conference on Security and Cooperation in Europe (CSCE) (S/26184),

Expressing its serious concern at the deterioration of relations between the Republic of Armenia and the Azerbaijani Republic and at the tensions between them,

Welcoming acceptance by the parties concerned at the timetable of urgent steps to implement its resolution 822 (1993) ,

Noting with alarm the escalation in armed hostilities and, in particular, the seizure of the district of Agdam in the Azerbaijani Republic,

Concerned that this situation continues to endanger peace and security in the region,

Expressing once again its grave concern at the displacement of large numbers of civilians in the Azerbaijani Republic and at the serious humanitarian emergency in the region,

Reaffirming the sovereignty and territorial integrity of the Azerbaijani Republic and of all other States in the region,

Reaffirming also the inviolability of international borders and the inadmissability of the use of force for the acquisition of territory,

1. Condemns the seizure of the district of Agdam and of all other recently occupied areas of the Azerbaijani Republic;
2. Further condemns all hostile actions in the region, in particular attacks on civilians and bombardments of inhabited areas;
3. Demands the immediate cessation of all hostilities and the immediate complete and unconditional withdrawal of the occupying forces involved from the district of Agdam and all other recently occupied areas of the Azerbaijan Republic;
4. Calls on the parties concerned to reach and maintain durable cease-fire arrangements;
5. Reiterates in the context of paragraphs 3 and 4 above its earlier calls for the restoration of economic, transport and energy links in the region;
6. Endorses the continuing efforts by the Minsk Group of the CSCE to achieve a peaceful solution to the conflict, including efforts to implement resolution 822 (1993) , and expresses its grave concern at the disruptive effect that the escalation of armed hostilities has had on these efforts;
7. Welcomes the preparations for a CSCE monitor mission with a timetable for its deployment, as well as consideration within the CSCE of the proposal for a CSCE presence in the region;
8. Urges the parties concerned to refrain from any action that will obstruct a peaceful solution to the conflict, and to pursue negotiations within the

Minsk Group of the CSCE, as well as through direct contacts between them, towards a final settlement;

9. Urges the Government of the Republic of Armenia to continue to exert its influence to achieve compliance by the Armenians of the Nagorny-Karabakh region of the Azerbaijani Republic with its resolution 822 (1993) and the present resolution, and the acceptance by this party of the proposals of the Minsk Group of the CSCE;

10. Urges States to refrain from the supply of any weapons and munitions which might lead to an intensification of the conflict or the continued occupation of territory;

11. Calls once again for unimpeded access for international humanitarian relief efforts in the region, in particular in all areas affected by the conflict, in order to alleviate the increased suffering of the civilian population and reaffirms that all parties are bound to comply with the principles and rules of international humanitarian law;

12. Requests the Secretary-General and relevant international agencies to provide urgent humanitarian assistance to the affected civilian population and to assist displaced persons to return to their homes;

13. Requests the Secretary-General, in consultation with the Chairman-in-Office of the CSCE as well as the Chairman of the Minsk Group, to continue to report to the Council on the situation;

14. Decides to remain actively seized of the matter.

6.3 UN Security Council Resolution 874 (1993)

S/RES/874 (1993)

The Security Council,

Reaffirming its resolutions 822 (1993) of 30 April 1993 and 853 (1993) of 29 July 1993, and recalling the statement read by the President of the Council, on behalf of the Council, on 18 August 1993 (S/26326),

Having considered the letter dated 1 October 1993 from the Chairman of the Conference on Security and Cooperation in Europe (CSCE) Minsk

Conference on Nagorny Karabakh addressed to the President of the Security Council (S/26522),

Expressing its serious concern that a continuation of the conflict in and around the Nagorny Karabakh region of the Azerbaijani Republic, and of the tensions between the Republic of Armenia and the Azerbaijani Republic, would endanger peace and security in the region,

Taking note of the high-level meetings which took place in Moscow on 8 October 1993 and expressing the hope that they will contribute to the improvement of the situation and the peaceful settlement of the conflict,

Reaffirming the sovereignty and territorial integrity of the Azerbaijani Republic and of all other States in the region,

Reaffirming also the inviolability of international borders and the inadmissibility of the use of force for the acquisition of territory,

Expressing once again its grave concern at the human suffering the conflict has caused and at the serious humanitarian emergency in the region and expressing in particular its grave concern at the displacement of large numbers of civilians in the Azerbaijani Republic,

1. Calls upon the parties concerned to make effective and permanent the cease-fire established as a result of the direct contacts undertaken with the assistance of the Government of the Russian Federation in support of the CSCE Minsk Group;
2. Reiterates again its full support for the peace process being pursued within the framework of the CSCE, and for the tireless efforts of the CSCE Minsk Group;
3. Welcomes and commends to the parties the Adjusted timetable of urgent steps to implement Security Council resolutions 822 (1993) and 853 (1993) set out on 28 September 1993 at the meeting of the CSCE Minsk Group and submitted to the parties concerned by the Chairman of the Group with the full support of nine other members of the Group, and calls on the parties to accept it;
4. Expresses the conviction that all other pending questions arising from the conflict and not directly addressed in the adjusted timetable should

be settled expeditiously through peaceful negotiations in the context of the CSCE Minsk process;

5. Calls for the immediate implementation of the reciprocal and urgent steps provided for in the CSCE Minsk Group's Adjusted timetable, including the withdrawal of forces from recently occupied territories and the removal of all obstacles to communications and transportation;

6. Calls also for an early convening of the CSCE Minsk Conference for the purpose of arriving at a negotiated settlement to the conflict as provided for in the timetable, in conformity with the 24 March 1992 mandate of the CSCE Council of Ministers;

7. Requests the Secretary-General to respond favourably to an invitation to send a representative to attend the CSCE Minsk Conference and to provide all possible assistance for the substantive negotiations that will follow the opening of the Conference;

8. Supports the monitoring mission developed by the CSCE;

9. Calls on all parties to refrain from all violations of international humanitarian law and renews its call in resolutions 822 (1993) and 853 (1993) for unimpeded access for international humanitarian relief efforts in all areas affected by the conflict;

10. Urges all States in the region to refrain from any hostile acts and from any interference or intervention which would lead to the widening of the conflict and undermine peace and security in the region;

11. Requests the Secretary-General and relevant international agencies to provide urgent humanitarian assistance to the affected civilian population and to assist refugees and displaced persons to return to their homes in security and dignity;

12. Requests also the Secretary-General, the Chairman-in-Office of the CSCE and the Chairman of the CSCE Minsk Conference to continue to report to the Council on the progress of the Minsk process and on all aspects of the situation on the ground, and on present and future cooperation between the CSCE and the United Nations in this regard;

13. Decides to remain actively seized of the matter.

6.4 UN Security Council Resolution 884 (1993)

S/RES/884 (1993)

The Security Council,

Reaffirming its resolutions 822 (1993) of 30 April 1993, 853 (1993) of 29 July 1993 and 874 (1993) of 14 October 1993,

Reaffirming its full support for the peace process being pursued within the framework of the Conference on Security and Cooperation in Europe (CSCE), and for the tireless efforts of the CSCE Minsk Group,

Taking note of the letter dated 9 November 1993 from the Chairman-in-Office of the Minsk Conference on Nagorny Karabakh addressed to the President of the Security Council and its enclosures (S/26718, annex),

Expressing its serious concern that a continuation of the conflict in and around the Nagorny Karabakh region of the Azerbaijani Republic, and of the tensions between the Republic of Armenia and the Azerbaijani Republic, would endanger peace and security in the region,

Noting with alarm the escalation in armed hostilities as consequence of the violations of the cease-fire and excesses in the use of force in response to those violations, in particular the occupation of the Zangelan district and the city of Goradiz in the Azerbaijani Republic,

Reaffirming the sovereignty and territorial integrity of the Azerbaijani Republic and of all other States in the region,

Reaffirming also the inviolability of international borders and the inadmissibility of the use of force for the acquisition of territory,

Expressing grave concern at the latest displacement of a large number of civilians and the humanitarian emergency in the Zangelan district and the city of Goradiz and on Azerbaijan's southern frontier,

1. Condemns the recent violations of the cease-fire established between the parties, which resulted in a resumption of hostilities, and particularly condemns the occupation of the Zangelan district and the city of Goradiz, attacks on civilians and bombardments of the territory of the Azerbaijani Republic;

2. Calls upon the Government of Armenia to use its influence to achieve compliance by the Armenians of the Nagorny Karabakh region of the Azerbaijani Republic with resolutions 822 (1993) , 853 (1993) and 874 (1993) , and to ensure that the forces involved are not provided with the means to extend their military campaign further;

3. Welcomes the Declaration of 4 November 1993 of the nine members of the CSCE Minsk Group (S/26718) and commends the proposals contained therein for unilateral cease-fire declarations;

4. Demands from the parties concerned the immediate cessation of armed hostilities and hostile acts, the unilateral withdrawal of occupying forces from the Zangelan district and the city of Goradiz, and the withdrawal of occupying forces from other recently occupied areas of the Azerbaijani Republic in accordance with the Adjusted timetable of urgent steps to implement Security Council resolutions 822 (1993) and 853 (1993) (S/26522, appendix), as amended by the CSCE Minsk Group meeting in Vienna of 2 to 8 November 1993;

5. Strongly urges the parties concerned to resume promptly and to make effective and permanent the cease-fire established as a result of the direct contacts undertaken with the assistance of the Government of the Russian Federation in support of the CSCE Minsk Group, and to continue to seek a negotiated settlement of the conflict within the context of the CSCE Minsk process and the Adjusted timetable, as amended by the CSCE Minsk Group meeting in Vienna of 2 to 8 November 1993;

6. Urges again all States in the region to refrain from any hostile acts and from any interference or intervention, which would lead to the widening of the conflict and undermine peace and security in the region;

7. Requests the Secretary-General and relevant international agencies to provide urgent humanitarian assistance to the affected civilian population, including that in the Zangelan district and the city of Goradiz and on Azerbaijan's southern frontier, and to assist refugees and displaced persons to return to their homes in security and dignity;

8. Reiterates its request that the Secretary-General, the Chairman-in-Office of the CSCE and the Chairman of the CSCE Minsk Conference

continue to report to the Council on the progress of the Minsk process and on all aspects of the situation on the ground, in particular on the implementation of its relevant resolutions, and on present and future cooperation between the CSCE and the United Nations in this regard;

9 Decides to remain actively seized of the matter.

6.5 UN General Assembly Resolution 62/243 (2008) The Situation in the Occupied Territories of Azerbaijan

The General Assembly,

Guided by the purposes, principles and provisions of the Charter of the United Nations,

Recalling Security Council resolutions 822 (1993) of 30 April 1993, 853 (1993) of 29 July 1993, 874 (1993) of 14 October 1993 and 884 (1993) of 12 November 1993, as well as General Assembly resolutions 48/114 of 20 December 1993, entitled "Emergency international assistance to refugees and displaced persons in Azerbaijan", and 60/285 of 7 September 2006, entitled "The situation in the occupied territories of Azerbaijan",

Recalling also the report of the fact-finding mission of the Minsk Group of the Organization for Security and Cooperation in Europe to the occupied territories of Azerbaijan surrounding Nagorno-Karabakh and the letter on the fact-finding mission from the Co-Chairmen of the Minsk Group addressed to the Permanent Council of the Organization for Security and Cooperation in Europe,

Taking note of the report of the environmental assessment mission led by the Organization for Security and Cooperation in Europe to the fire-affected territories in and around the Nagorno-Karabakh region,

Reaffirming the commitments of the parties to the conflict to abide scrupulously by the rules of international humanitarian law,

Seriously concerned that the armed conflict in and around the Nagorno-Karabakh region of the Republic of Azerbaijan continues to endanger international peace and security, and mindful of its adverse implications

for the humanitarian situation and development of the countries of the South Caucasus,

1. Reaffirms continued respect and support for the sovereignty and territorial integrity of the Republic of Azerbaijan within its internationally recognized borders;
2. Demands the immediate, complete and unconditional withdrawal of all Armenian forces from all the occupied territories of the Republic of Azerbaijan;
3 Reaffirms the inalienable right of the population expelled from the occupied territories of the Republic of Azerbaijan to return to their homes, and stresses the necessity of creating appropriate conditions for this return, including the comprehensive rehabilitation of the conflict-affected territories;
4. Recognizes the necessity of providing normal, secure and equal conditions of life for Armenian and Azerbaijani communities in the Nagorno-Karabakh region of the Republic of Azerbaijan, which will allow an effective democratic system of self-governance to be built up in this region within the Republic of Azerbaijan;
5. Reaffirms that no State shall recognize as lawful the situation resulting from the occupation of the territories of the Republic of Azerbaijan, nor render aid or assistance in maintaining this situation;
6. Expresses its support to the international mediation efforts, in particular those of the Co-Chairmen of the Minsk Group of the Organization for Security and Cooperation in Europe, aimed at peaceful settlement of the conflict in accordance with the norms and principles of international law, and recognizes the necessity of intensifying these efforts with a view to achieving a lasting and durable peace in compliance with the provisions stipulated above;
7. Calls upon Member States and international and regional organizations and arrangements to effectively contribute, within their competence, to the process of settlement of the conflict;
8. Requests the Secretary-General to submit to the General Assembly at its sixty-third session a comprehensive report on the implementation of the present resolution;

9. Decides to include in the provisional agenda of its sixty-third session the item entitled "The situation in the occupied territories of Azerbaijan".

86th plenary meeting

14 March 2008

6.6 PACE Resolution 1416 (2005) The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference

Resolution 1416 (2005)

The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference

1. The Parliamentary Assembly regrets that, more than a decade after the armed hostilities started, the conflict over the Nagorno-Karabakh region remains unsolved. Hundreds of thousands of people are still displaced and live in miserable conditions. Considerable parts of the territory of Azerbaijan are still occupied by Armenian forces, and separatist forces are still in control of the Nagorno-Karabakh region.

2. The Assembly expresses its concern that the military action, and the widespread ethnic hostilities which preceded it, led to large-scale ethnic expulsion and the creation of mono-ethnic areas which resemble the terrible concept of ethnic cleansing. The Assembly reaffirms that independence and secession of a regional territory from a state may only be achieved through a lawful and peaceful process based on the democratic support of the inhabitants of such territory and not in the wake of an armed conflict leading to ethnic expulsion and the de facto annexation of such territory to another state. The Assembly reiterates that the occupation of foreign territory by a member state constitutes a grave violation of that state's obligations as a member of the Council of Europe and reaffirms the right of displaced persons from the area of conflict to return to their homes safely and with dignity.

3. The Assembly recalls Resolutions 822 (1993), 853 (1993), 874 (1993) and 884 (1993) of the United Nations Security Council and urges the parties concerned to comply with them, in particular by refraining from any armed hostilities and by withdrawing military forces from any occupied territories. The Assembly also aligns itself with the demand expressed in Resolution 853 of the United Nations Security Council and thus urges all member states to refrain from the supply of any weapons and munitions which might lead to an intensification of the conflict or the continued occupation of territory.

4. The Assembly recalls that both Armenia and Azerbaijan committed themselves upon their accession to the Council of Europe in January 2001 to use only peaceful means for settling the conflict, by refraining from any threat of using force against their neighbours. At the same time, Armenia committed itself to use its considerable influence over Nagorno-Karabakh to foster a solution to the conflict. The Assembly urges both governments to comply with these commitments and refrain from using armed forces against each other and from propagating military action.

5. The Assembly recalls that the Council of Ministers of the Conference on Security and Co-operation in Europe (CSCE) agreed in Helsinki in March 1992 to hold a conference in Minsk in order to provide a forum for negotiations for a peaceful settlement of the conflict. Armenia, Azerbaijan, Belarus, the former Czech and Slovak Federal Republic, France, Germany, Italy, the Russian Federation, Sweden, Turkey and the United States of America agreed at that time to participate in this conference. The Assembly calls on these states to step up their efforts to achieve the peaceful resolution of the conflict and invites their national delegations to the Assembly to report annually to the Assembly on the action of their government in this respect. For this purpose, the Assembly asks its Bureau to create an ad hoc committee comprising, inter alia, the heads of these national delegations.

6. The Assembly pays tribute to the tireless efforts of the co-chairs of the Minsk Group and the Personal Representative of the OSCE Chairman-in-Office, in particular for having achieved a ceasefire in May 1994 and having constantly monitored the observance of this ceasefire since then. The Assembly calls on the OSCE Minsk Group co-chairs to take

immediate steps to conduct speedy negotiations for the conclusion of a political agreement on the cessation of the armed conflict. The implementation of this agreement will eliminate major consequences of the conflict for all parties and permit the convening of the Minsk Conference. The Assembly calls on Armenia and Azerbaijan to make use of the OSCE Minsk Process and to put forward to each other, via the Minsk Group, their constructive proposals for the peaceful settlement of the conflict in accordance with the relevant norms and principles of international law.

7 The Assembly recalls that Armenia and Azerbaijan are signatory parties to the Charter of the United Nations and, in accordance with Article 93, paragraph 1 of the Charter, ipso facto parties to the statute of the International Court of Justice. Therefore, the Assembly suggests that if the negotiations under the auspices of the co-chairs of the Minsk Group fail, Armenia and Azerbaijan should consider using the International Court of Justice in accordance with Article 36, paragraph 1 of its statute.

8 The Assembly calls on Armenia and Azerbaijan to foster political reconciliation among themselves by stepping up bilateral inter-parliamentary co-operation within the Assembly as well as in other forums such as the meetings of the speakers of the parliaments of the Caucasian Four. It recommends that both delegations should meet during each part-session of the Assembly to review progress on such reconciliation.

9 The Assembly calls on the Government of Azerbaijan to establish contact, without preconditions, with the political representatives of both communities from the Nagorno-Karabakh region regarding the future status of the region. It is prepared to provide facilities for such contacts in Strasbourg, recalling that it did so in the form of a hearing on previous occasions with Armenian participation.

10 Recalling its Recommendation 1570 (2002) on the situation of refugees and displaced persons in Armenia, Azerbaijan and Georgia, the Assembly calls on all member and Observer states to provide humanitarian aid and assistance to the hundreds of thousands of people displaced as a consequence of the armed hostilities and the expulsion of ethnic

Armenians from Azerbaijan and ethnic Azerbaijanis from Armenia.

11 The Assembly condemns any expression of hatred portrayed in the media of Armenia and Azerbaijan. The Assembly calls on Armenia and Azerbaijan to foster reconciliation and to restore confidence and mutual understanding among their peoples through schools, universities and the media. Without such reconciliation, hatred and mistrust will prevent stability in the region and may lead to new violence. Any sustainable settlement must be preceded by and embedded in such a reconciliation process.

12. The Assembly calls on the Secretary General of the Council of Europe to draw up an action plan for support to Armenia and Azerbaijan targeted at mutual reconciliation processes, and to take this resolution into account in deciding on action concerning Armenia and Azerbaijan.

13. The Assembly calls on the Congress of Local and Regional Authorities of the Council of Europe to assist locally elected representatives of Armenia and Azerbaijan in establishing mutual contacts and interregional co-operation.

14. The Assembly resolves to analyse the conflict-settlement mechanisms existing within the Council of Europe, in particular the European Convention for the Peaceful Settlement of Disputes, in order to provide its member states with better mechanisms for the peaceful settlement of bilateral conflicts as well as internal disputes involving local or regional territorial communities or authorities which may endanger human rights, stability and peace.

15. The Assembly resolves to continue monitoring on a regular basis the evolution of this conflict towards its peaceful resolution and decides to reconsider this issue at its first part-session in 2006.

6.7 European Parliament resolution of 20 May 2010 on the need for an EU strategy for the South Caucasus (2009/2216(INI))

P7_TA(2010)0193

The European Parliament,

– having regard to its previous resolutions on the South Caucasus, including

its resolution of 15 November 2007 on strengthening the European Neighbourhood Policy (ENP) and its resolutions of 17 January 2008 on a more effective EU policy for the South Caucasus and on a Black Sea Regional Policy Approach ,

– having regard to its recent resolutions of 17 December 2009 on Azerbaijan: freedom of expression , of 3 September 2008 on Georgia ; of 5 June 2008 on the Deterioration of the Situation in Georgia ; and of 13 March 2008 on Armenia ,

– having regard to the Communication from the Commission to the European Parliament and the Council of 3 December 2008 entitled 'Eastern Partnership' (COM(2008)0823),

– having regard to the Joint Declaration of the Prague Eastern Partnership Summit of 7 May 2009,

– having regard to the ENP Action Plans adopted with Armenia, Azerbaijan and Georgia in November 2006 and to the European Neighbourhood and Partnership Instrument (ENPI), closely linked to the implementation of the ENP Action Plans,

– having regard to the ENP Progress Reports on Armenia, Azerbaijan and Georgia adopted by the Commission on 23 April 2009,

– having regard to the Country Strategy Papers 2007-2013 and the National Indicative Programmes 2007-2010 under the ENPI for Armenia, Azerbaijan and Georgia,

– having regard to the Mid-Term Review of the ENPI Programming Documents for Armenia, Azerbaijan and Georgia,

– having regard to the Partnership and Cooperation Agreements concluded with Armenia, Azerbaijan and Georgia in 1996,

– having regard to the relevant monitoring reports of the Parliamentary Assembly of the Council of Europe (PACE),

– having regard to the report of the International Fact-Finding Commission on the Conflict in Georgia published on 30 September 2009 (the Tagliavini Report),

– having regard to Rule 48 of its Rules of Procedure,

– having regard to the report of the Committee on Foreign Affairs and the opinion of the Committee on International Trade (A7 0123/2010),

A. whereas at the Foreign Affairs Council held on 8 December 2009 the EU reaffirmed its intention to promote stability, cooperation, prosperity and good governance throughout the South Caucasus, including through technical assistance programmes,

B. whereas, as a result of the August 2008 war in Georgia, of the EU's successful intervention to achieve a ceasefire agreement and of the great need for further engagement in order to secure its full implementation, the EU became a significant security actor in the region, through the deployment of the EU Monitoring Mission, the launch of a major post-war assistance programme and the start of a fact-finding mission on the causes and course of the war,

C. whereas 2009 has seen intensification of the negotiations for the settlement of the Nagorno-Karabakh conflict mediated by the Organization for Security and Cooperation in Europe (OSCE) Minsk Group,

D. whereas persons forcefully displaced from the conflict zones in the South Caucasus are still denied the right to return to their homes; whereas the three countries have embarked on programmes for local integration of their refugees and internally displaced persons, however they still face numerous difficulties hindering their success; whereas refugees and internally displaced persons (IDPs) should not be used by the authorities concerned as political instruments in conflicts,

E. whereas Armenia and Turkey's signing in October 2009 of protocols on the establishment and development of diplomatic relations and the opening of their shared border is a promising step, but ratification has not followed,

F. whereas the frozen conflicts are an impediment to the economic and social development and hinder the improvement of the standard of living of the South Caucasus region as well as the full development of the Eastern Partnership of the ENP; whereas a peaceful resolution of the conflicts is essential for stability in the EU Neighbourhood; whereas

further efforts should be made so as to identify common areas of interests that can overcome divergences, facilitate dialogue and promote regional cooperation and development opportunities,

G. whereas the EU respects the principles of sovereignty and territorial integrity in its relations with the South Caucasus states,

H. whereas the Eastern Partnership creates new possibilities for deepening bilateral relations and also introduces multilateral cooperation,

I. whereas the Eastern Partnership aims at accelerating reforms, legal approximation and economic integration, and bringing tangible support for the consolidation of statehood and territorial integrity of partner countries, is based on the principles of conditionality, differentiation and joint ownership and envisages the negotiation of new Association Agreements, which will require the assent of the European Parliament,

J. whereas the EU Neighbourhood East (EURONEST) Parliamentary Assembly is to be officially constituted as a crucial multilateral mechanism of intensified interparliamentary dialogue between the European Parliament and the EU's six Eastern partners, including Armenia, Azerbaijan and Georgia, with the aim of bringing these countries closer to the EU,

K. whereas the situation in the South Caucasus region calls for an increasingly proactive policy in the EU engagement in this region and whereas the launch of the Eastern Partnership and the entry into force of the Lisbon Treaty provide a good opportunity to devise an EU strategy towards the South Caucasus,

1. Reaffirms that the EU's main objective in the region is to encourage the development of Armenia, Azerbaijan and Georgia towards open, peaceful, stable and democratic countries, ready to establish good neighbourly relations and able to transform the South Caucasus into a region of sustainable peace, stability and prosperity, with a view to enhancing the integration of these countries in European policies; considers that the EU needs to play an increasingly active political role to achieve this objective, by developing a strategy that would combine its soft power with a firm approach, in agreement with the countries of the region and complemented by bilateral policies;

Security issues and peaceful resolution of conflicts

2. Emphasises that retaining the status quo in the conflicts in the region is unacceptable and unsustainable, since it bears the constant risk of an escalation of tensions and a resumption of armed hostilities; considers that all sides should actively engage to achieve stability and peace; advocates the use of cross-border programmes and dialogue among civil societies as tools for conflict transformation and confidence-building across the division lines; underlines that the EU has an important role to play in contributing to the culture of dialogue in the region and in ensuring the implementation of relevant UN Security Council resolutions, including UN Security Council Resolution 1325 (2000);

3. Notes that conflict management and conflict resolution as well as basic dialogue necessitate inter alia recognition of the rights and legitimate interests of all relevant parties and communities, openness to review perceptions of past events and reach a common understanding of past events, willingness to overcome hatred and fear, preparedness to compromise over maximalist positions, abandon revanchist attitudes and readiness to discuss real concessions, in order to be able to consolidate stability and prosperity;

4. Points to the importance of conflict prevention, including through respect for the rights of all members of national minorities, religious tolerance and efforts to strengthen social and economic cohesion;

5. Stresses the responsibility of external actors to use their power and influence in ways that are fully consistent with international law, including human rights law; believes that further and balanced cooperation between external actors in the region should be pursued to contribute to achieving peaceful settlement of conflicts; considers it unacceptable for any external actors to introduce conditions for the respect of the sovereignty and territorial integrity of the South Caucasus states;

The Nagorno-Karabakh conflict

6. Welcomes the dynamic pace of the negotiations on the Nagorno-Karabakh conflict illustrated by the six meetings between the presidents of Armenia and Azerbaijan held over the course of 2009 in the spirit of

the Moscow Declaration; calls on the parties to intensify their peace talk efforts for the purpose of a settlement in the coming months, to show a more constructive attitude and to abandon preferences to perpetuate the status quo created by force and with no international legitimacy, creating in this way instability and prolonging the suffering of the war-affected populations; condemns the idea of a military solution and the heavy consequences of military force already used, and calls on both parties to avoid any further breaches of the 1994 ceasefire;

7. Fully supports the mediation efforts of the OSCE Minsk Group, the Basic Principles contained in the Madrid Document and the statement by the OSCE Minsk Group Co-Chair countries on 10 July 2009 on the margins of the G8 Summit in L'Aquila; calls on the international community to show courage and political will to assist in overcoming the remaining sticking points which hinder an agreement;
8. Is seriously concerned that hundreds of thousands of refugees and IDPs who fled their homes during or in connection with the Nagorno-Karabakh war remain displaced and denied their rights, including the right to return, property rights and the right to personal security; calls on all parties to unambiguously and unconditionally recognise these rights, the need for their prompt realisation and for a prompt solution to this problem that respects the principles of international law; demands, in this regard, the withdrawal of Armenian forces from all occupied territories of Azerbaijan, accompanied by deployment of international forces to be organised with respect of the UN Charter in order to provide the necessary security guarantees in a period of transition, which will ensure the security of the population of Nagorno-Karabakh and allow the displaced persons to return to their homes and further conflicts caused by homelessness to be prevented; calls on the Armenian and Azerbaijani authorities and leaders of relevant communities to demonstrate their commitment to the creation of peaceful inter-ethnic relations through practical preparations for the return of displaced persons; considers that the situation of the IDPs and refugees should be dealt with according to international standards, including with regard to the recent PACE Recommendation 1877(2009), 'Europe's forgotten people: protecting the human rights of long-term displaced persons';

9. Stresses that real efforts are needed to pave the way for a lasting peace; asks all relevant authorities to avoid provocative policies and rhetoric, inflammatory statements and manipulation of history; calls on the leaders of Armenia and Azerbaijan to act responsibly, tone down speeches and prepare the ground, so that public opinion accepts and fully understands the benefits of a comprehensive settlement;
10. Believes the position according to which Nagorno-Karabakh includes all occupied Azerbaijani lands surrounding Nagorno-Karabakh should rapidly be abandoned; notes that an interim status for Nagorno-Karabakh could offer a solution until the final status is determined and that it could create a transitional framework for peaceful coexistence and cooperation of Armenian and Azerbaijani populations in the region;
11. Stresses that security for all is an indispensable element of any settlement; recognises the importance of adequate peacekeeping arrangements in line with international human rights standards that involve both military and civilian aspects; calls on the Council to explore the possibility of supporting the peace process with Common Security and Defence Policy (CSDP) missions, including sending a large monitoring mission on the ground that could facilitate the establishment of an international peacekeeping force, once a political solution is found;

The Armenia-Turkey rapprochement

12. Welcomes the protocols on the establishment and development of diplomatic relations between Armenia and Turkey, including the opening of the common border; calls on both sides to seize this opportunity to mend their relations through ratification and implementation without preconditions and in a reasonable time frame; stresses that the Armenia-Turkey rapprochement and the OSCE Minsk Group negotiations are separate processes that should move forward along their own rationales; notes, however, that progress in one of the two processes could have wide-ranging, potentially very positive consequences in the region as a whole;

The conflicts in Georgia

13. Reiterates its unconditional support for the sovereignty, territorial integrity and inviolability of the internationally recognised borders of

Georgia, and calls on Russia to respect them; encourages the Georgian authorities to make further efforts to achieve a settlement of Georgia's internal conflicts in Abkhazia and South Ossetia; welcomes the Tagliavini Report and supports its main observations and conclusions; expects that the extensive background information provided by the Report can be used for legal proceedings at the International Criminal Court and by individual citizens as regards infringements of the European Convention on Human Rights; supports the EU Monitoring Mission (EUMM) mandate and calls for its further extension; calls on Russia and the de facto authorities of the breakaway regions of Abkhazia and South Ossetia to stop blocking parts of its implementation;

14. Notes with satisfaction that the international community almost unanimously rejects the unilateral declaration of independence of South Ossetia and Abkhazia; deplores the recognition by the Russian Federation of the independence of Abkhazia and South Ossetia as contrary to the international law; calls on all parties to respect the Ceasefire Agreement of 2008 as well as to guarantee the safety and free access of EUMM personnel on the ground and calls on Russia to honour its commitment to withdraw its troops to the positions held before the outbreak of the August 2008 war; notes with concern the agreement of 17 February 2010 between the Russian Federation and the de facto authorities of Abkhazia to establish a Russian military base in Abkhazia without the consent of the Government of Georgia and notes that such an agreement is in contradiction with the Ceasefire Agreements of 12 August and 8 September 2008;

15. Stresses the importance of protecting the safety and rights of all people living within the breakaway regions, of promoting respect for ethnic Georgians' right of return under safe and dignified conditions, of stopping the process of forced passportisation, of achieving a reduction of the de facto closed borders, of obtaining possibilities for the EU and other international actors to assist people within the two regions; underlines the need for more clearly identified short- and medium-term objectives in this respect; encourages Georgia to continue implementing its IDP Action Plan and assisting the IDPs within its territory;

16. Stresses the need to address the Georgian-Abkhaz and Georgian-South

Ossetian dimension of the conflicts and ensure that the rights and concerns of all populations involved are equally taken into account; stresses the fact that the isolation of Abkhazia and South Ossetia is counterproductive to conflict resolution and welcomes the State Strategy on engagement through cooperation adopted on 27 January 2010; encourages the Georgian authorities to consult all stakeholders regarding the preparation of an action plan on the implementation of this Strategy; emphasises the importance of confidence-building measures and people-to-people contacts across the conflict; furthermore, encourages the EU to promote projects of freedom of movement along with Administrative Border Lines between affected people;

17. Considers the great importance of the Geneva Talks as the only forum in which all sides to the conflict are represented and where three major international actors – the EU, the OSCE and the UN – work in close cooperation for the security and stability of the region; regrets that the potential of this forum has not yet yielded substantial results and that incidents continue to take place on the ceasefire line despite the welcome establishment of the Incident Prevention and Response Mechanism; calls on the parties to fully exploit the Mechanism and its potential for the enhancement of mutual confidence; calls on the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy (VP/HR) to make every effort to give new and fresh impetus to these talks with a view to reaching a satisfactory stabilisation of the situation and fully implementing the August 2008 Ceasefire Agreement;

Progress towards democratisation and respect for human rights and the rule of law

18. Stresses that democratisation, good governance, political pluralism, the rule of law, human rights and fundamental freedoms are of paramount importance for determining the future relations of Armenia, Azerbaijan and Georgia with the EU; calls for renewed efforts by the countries to implement in full the ENP Action Plans and calls on the Commission to continue to assist them in such efforts; is concerned by the limited progress made by the countries in the South Caucasus region in this

area, as shown in the Commission 2009 progress reports and reflected in Council of Europe recommendations; welcomes the initiation of the human rights dialogues between the EU and Georgia and Armenia and invites Azerbaijan and the EU to finalise discussions on an equivalent cooperation structure;

19. Highlights the importance of engaging further in democratic reforms and the essential role of political dialogue and cooperation as key to developing a national consensus; stresses the importance of strengthening more independent, transparent and stronger democratic institutions, including the independence of the judiciary, strengthening parliamentary control over the executive and ensuring democratic change of power, supporting and empowering civil society and developing people-to-people contacts in promoting democracy and the rule of law; notes the slow progress in democratisation, despite the commitments made;

20. Points to the still widespread corruption in the region and calls on the authorities to step up the measures to fight it, as it threatens the economic growth and social and political development of the countries concerned; greater attention should be paid to the fight against monopolies as well as recruitment in public services; welcomes the progress made by Georgia in the fight against corruption;

21. Takes note of the elections that took place recently in the countries of the region; underscores the importance of free and fair elections to be held in accordance with international commitments and standards and the need for these countries to make further efforts in adopting and implementing reforms to reach these standards, including with the view to strengthening post-election control mechanisms and ensuring proper investigation and accountability for any post-election violence; highlights the role for the EU in providing technical assistance and securing international and independent monitoring of elections; confirms the position that the EU does not recognise the constitutional and legal framework in which the elections in the breakaway territories take place and defends the political rights of displaced persons;

22. Considers freedom of expression to be a fundamental right and principle and the role of the media to be essential, and stresses the need for the media

to be free and independent; is concerned by the restrictions on freedom of expression and the lack of media pluralism in the countries of the South Caucasus and calls on the authorities to ensure both; deplores the continuing harassment and intimidation of media professionals, attacks, torture and ill-treatment of journalists; considers that self-regulatory principles and mechanisms, an important element of freedom of speech, need to be enhanced and strengthened by competent professional bodies;

- is preoccupied about attacks on journalists in Armenia and in particular about the continued detention of opposition activist and journalist Nikol Pashinian, despite the welcomed amnesty of 18 June 2009;
- remains concerned about the deterioration of the media climate in Azerbaijan; while welcoming the Presidential pardon of 99 prisoners on 25 December 2009 and of 62 prisoners on 17 March 2010, deplores the detention and sentencing of the two youth activists and bloggers, Emin Milli and Adnan Hajizade; accordingly calls for their release;
- calls on the Georgian authorities to clarify the situation regarding media ownership and the granting of media licences; notes the initiative of the Georgian Parliament to extend the Public Broadcaster Board to include more opposition and civil society representatives and expects results in this respect;

23. Takes the view that freedom of assembly must be guaranteed, as it is essential to the development of a free, democratic and vibrant society; notes with concern the difficulties, direct and indirect, which civil society faces in organising itself and is disturbed by the adoption of laws and practices that might indirectly limit freedom of assembly, including administrative harassment on fiscal matters; underlines the important role of civil society for the democratisation, peace and reconciliation processes in the region;

24. Calls on the countries in the region to participate actively in the work of the EURONEST Parliamentary Assembly and use fully its potential as a framework for multilateral and bilateral exchanges of views, as well as for legislative approximation to EU standards and parliamentary scrutiny on democratic reforms; in this regard notes that the intensified dialogue between the members of parliament of the countries in the region is

crucial; hopes that this could create a framework for bilateral meetings between members of the parliaments of Armenia and Azerbaijan in order to start a parliamentary dialogue , in the presence of members of the European Parliament; also calls on interested EU Member States' national parliaments and on the European Parliament to strengthen parliamentary cooperation with the parliaments of the region in order to increase their role and policy-making capacities;

Economic issues and social development

25. Holds the view that broader cooperation on a regional level and with the EU in sectors such as economy, transport, energy and environment is essential for the optimal development of the sectors themselves and for ensuring stability in the region, but that cooperation should also embrace the building of human capital in the whole region as a long-term investment; welcomes the fact that all three countries benefit from the EU's Generalised System of Preferences (GSP) and takes note that they all qualify for the GSP+ for sustainable development and good governance; notes that regional cooperation in the judicial and police fields and the establishment of integrated border management are essential for further promoting mobility in the region and towards the EU; deplores the fact that implementation of regional projects with the involvement of all three countries is still hindered by the persistence of unresolved conflicts;

26. Underscores the importance of building a favourable business climate and the development of the private sector; notes that the noteworthy economic growth of Azerbaijan is mainly based on oil and gas revenues; supports the reform process, which makes the economy more attractive to foreign investors; encourages the Azerbaijani authorities to accelerate the negotiations on accession to the World Trade Organization (WTO) and calls on the Commission to further support Azerbaijan in this process; welcomes the progress made in economic reforms in Armenia and Georgia; notes, however, that the economic development of Armenia and Georgia has been affected by the global economic crisis and welcomes the EU decision at the end of 2009 to provide macrofinancial assistance to the two countries;

27. Expresses its concern at the rapidly increasing military and defence

spending in the South Caucasus and the build-up of military arsenals; points out that this relevant part of domestic budgets drains away a remarkable amount of financial resources from more urgent issues like poverty reduction, social security and economic development; calls, in this regard, on the Council and the Commission to prevent EU macrofinancial assistance from funding indirectly the military build-up in the region;

28. Notes the strategic geopolitical location of the South Caucasus and its increasing importance as an energy, transport and communications corridor connecting the Caspian region and Central Asia with Europe; considers it of the utmost importance therefore that EU cooperation with the South Caucasus be given high priority, not least in matters relating to energy; emphasizes the role of the three countries as essential for the transit of energy resources, as well as for the diversification of the EU's energy supply and routes; in light of this, recalls once again that the Union should take concrete steps to ensure the political stability of the region; welcomes the readiness of Azerbaijan and Georgia to further play an active role in the promotion of market-based energy supply and transit diversification in the region; strongly recommends to the countries involved and the Commission to include Armenia in relevant transport and energy projects in the region;

29. Recognises the significance of the region for the EU's energy cooperation and energy security, especially in the context of the development of the Southern Corridor (Nabucco and White Stream); stresses the importance of deepening the EU-Azerbaijani energy partnership and notes the great value of Azerbaijan's energy resources and the essential role these play in its economic development; underscores the importance of ensuring that the benefits deriving from the exploitation of natural resources are evenly distributed and invested in the development of the country as a whole, permitting it to brace itself against the negative repercussions of an eventual decline in oil production; notes the intensifying Azerbaijani - Russian partnership, particularly in the energy sector, and welcomes in this context the intention of Azerbaijan to diversify its economy; underlines the importance of transparency in the energy sector in this region as a key requisite for investors' confidence and commends

Azerbaijan for its participation in the Extractive Industries Transparency Initiative;

30. Recognises the vital role of the development of new infrastructures and transport corridors, projects connecting the Caspian Sea and Black Sea regions through or from the South Caucasus, as also referred to in the communication on the 'Second Strategic Energy Review'; in this context, supports all the initiatives that will contribute to establishing a more robust producer-consumer and transit countries dialogue, with an exchange of expertise on energy regulatory systems and on security of supply legislations and an exchange of best practices, including transparency and solidarity mechanisms and the development of early warning mechanisms for energy disruptions; believes that this goes hand-in-hand with the convergence of regulatory frameworks, market integration and non-discriminatory regime to cross-border transmission infrastructures;

31. Underscores the importance of promoting energy efficiency measures, investing in renewable energy sources and ensuring that environmental concerns are catered for; recognises that generating diversity of supply is vital and can only be attained through enhanced cooperation with neighbouring states; takes the view that the Regional Environmental Centre for the Caucasus should be adequately funded and supported so that credible cross-border projects can also be run; considers the plans announced by Azerbaijan to make the development of alternative energy sources a government priority to be praiseworthy and encourages the pursuit of such objectives; welcomes the decision of Armenia to decommission the nuclear plant in Medzamor and encourages the Armenian authorities to seek viable alternative solutions for energy supplies, as requested by the EU; welcomes the efforts of the Georgian government to develop the hydropower sector and underlines the need for EU support in that regard;

32. Considers that promoting social cohesion and social dialogue through the involvement of all social actors, promoting gender equality and women's rights, investing in education and health, developing human capital and ensuring adequate standards of living are essential in order to build vibrant democratic societies; takes positive note of the adoption by

the three countries of their respective programmes on poverty reduction and encourages their thorough implementation;

Towards an EU strategy

33. Welcomes the Eastern Partnership and takes note of the related initiatives that have been activated and the meetings that have been held; stresses that, in order to make it credible, it should be accompanied by concrete projects and adequate incentives; intends to develop further the parliamentary dimension of the Partnership;

34. Welcomes the possibility provided by the Eastern Partnership to deepen bilateral relations with the countries of the South Caucasus and the EU by establishing new contractual relations in the form of Association Agreements; highlights the importance of incorporating milestones and benchmarks to be included in the successor documents of the current Action Plans; recalls that the conditions for starting negotiations include a sufficient level of democracy, the rule of law and human rights, and calls on the Commission to provide technical assistance where necessary, in order to assist the countries in meeting the preconditions; welcomes, in particular, the Comprehensive Institution-Building Programme offered by the Eastern Partnership as an innovative tool, specifically intended to help the countries to meet these preconditions; reiterates the prerogative of the European Parliament to be immediately and fully informed at all stages of the process of the negotiation of Association Agreements, also since it will have to give its consent for the conclusion thereof; expects the implementation of Association Agreements by all South Caucasus countries to accelerate the process of economic integration and political cooperation with the EU;

35. Considers that the ENP Action Plans and the implementation thereof constitute an essential basis for evaluating respect for commitments and the progress of bilateral relationships with the EU and for considering the upgrading of contractual relations with the countries concerned; notes Armenia's and Georgia's commitment to the implementation of the ENP Action Plans and calls on Azerbaijan to accelerate its efforts in this regard; takes the view that the European Parliament should be involved in this process; notes that progress differs among the three countries in the implementation of the respective ENP Action Plans;

believes that negotiations on the new Association Agreements should take into account these differences and the different objectives as well as the regional dimension and that the countries must be treated equally;

36. Takes the view that the regional dimension of the EU Strategy for the South Caucasus should be duly strengthened; welcomes, in this regard, the allocation of additional financial resources for the ENPI within the framework of the Eastern Partnership for regional development programmes and multilateral cooperation; calls on the Commission to define a set of regional and cross-border projects and programmes for the three South Caucasus countries in fields such as transport, environment, culture and civil society, in order to provide concrete incentives for enhancing cooperation and building confidence between the parties;

37. Recalls that all the South Caucasus countries are also part of the Black Sea Synergy initiative, which enhances mutual confidence between the partners by fostering regional cooperation in certain areas, including through cross-border programmes; underlines the importance for the EU of the Black Sea region and asks the Council and the Commission, and especially the VP/HR, to develop ideas and strategies for stronger cooperation between all the Black Sea countries and for increasing links with the European Union; with a view to this, recommends the establishment of an institutionalised structure taking the form of a Black Sea Union;

38. Reaffirms that the positions of Russia, Turkey and the USA play an important role in conflict resolution in the South Caucasus; points out that the development of the Eastern Partnership is not aimed at isolating Russia but, on the contrary, is aimed at bringing peace, stability and a sustainable economic progress to all the parties concerned, with benefits for the whole region and the neighbouring countries;

Security issues and peaceful resolution of conflicts

39. Believes that providing support to conflict resolution processes is crucial and that the EU is well placed to support confidence-building, reconstruction and rehabilitation and has the possibility to help involve the communities affected; in this regard, the creation of spaces for civic engagement not just between leaders but also between civic organisations

is pivotal; furthermore, considers it essential to maintain a high level of international attention to all the conflicts in the region to ensure their swift resolution; recognises regional cooperation as a necessary condition for confidence-building and the reinforcement of security, in accordance with the ENP priorities; calls on all parties to fully engage in the multilateral cooperation track of the Eastern Partnership without linking it to the final solution of the conflicts;

40. Stresses the dangerous potential for a spillover of frozen conflicts in the region; in this context, recommends the setting-up of a Conference on Security and Cooperation in the South Caucasus, embracing the countries concerned and the relevant regional and global actors, with a view to developing a Stability Pact for the South Caucasus;

41. Takes note of the current EU involvement in conflict resolution processes in the region and believes that the entry into force of the Lisbon Treaty justifies a more prominent role for the EU; fully supports the EU Special Representative (EUSR) for the South Caucasus, Peter Semneby; welcomes the work of the EUMM in Georgia and calls for increased EU action to persuade Russia and the relevant de facto authorities to stop blocking the EUMM from entering South Ossetia and Abkhazia; considers that the EU now has the opportunity to support the resolution of the Nagorno-Karabakh conflict and underlines the importance of the EU contribution in this regard; therefore finds it inevitable for the EU's role in the Minsk Group to be upgraded through the establishment of an EU mandate for the French Co-Chair of the Minsk Group; calls on the Commission to explore the possibility of providing humanitarian aid and assistance to the population in the Nagorno-Karabakh region as well as to the IDPs and refugees who fled the region; asks the Commission and EUSR Semneby to consider extending to Nagorno-Karabakh aid and information dissemination programmes as in Abkhazia and Ossetia;

42. Calls on the VP/HR to follow closely the developments in the region and to be actively involved in the conflict resolution processes; acknowledges the work of the Special Representative for the South Caucasus and expresses the hope that the High Representative will ensure its continuity

and consistency; encourages the Council to consider the possible use of tools from the CSDP to step up its participation in the peace-building and conflict-management processes;

43. Calls on the Commission to explore the possibility of granting substantial financial and technical support to measures building confidence and promoting trust between and among the populations and to participate in rehabilitation and reconstruction in all conflict-affected regions, such as income-generating projects and projects targeting the socio-economic integration of IDPs and returnees and the rehabilitation of housing and aiming at dialogue and mediation, as well as to continue elaborating and supporting civil-society projects that aim to promote reconciliation and contacts between local populations and individuals;

Democratisation, human rights and the rule of law

44. Supports EU funding and assistance to the region to promote these principles and processes and considers that such EU assistance should take place within the framework of political conditionality, such as progress in political dialogue and reform and democratisation processes; warns against the possibility for governments to misuse conflicts to distract the interest of the international community from domestic issues;

45. Calls on the Commission and the Council to ensure that the commitments included in political conditionality packages are respected, such as the specific commitment by the Georgian Government to inject new momentum into democratic reforms included in the EU post-conflict assistance agreed between the Commission and Georgia in January 2009, and to report regularly to the European Parliament on progress;

46. Welcomes the work of the High Level EU Advisory Group to Armenia; welcomes the possibility of increased financial assistance within the framework of the Eastern Partnership, including assistance to prepare for the negotiation of new Association Agreements with the EU, and calls on the Commission to study the possibility of offering tailor-made assistance also to Azerbaijan and Georgia;

47. Takes the view that special attention should be given to the rights of minorities and vulnerable groups and encourages Armenia, Azerbaijan

and Georgia to implement public education programmes in the area of human rights which promote the values of tolerance, pluralism and diversity, including the respect of the rights of sexual minorities and other marginalised and stigmatised groups;

48. Expresses its concern regarding the refusal of Eutelsat to broadcast the Russian language service of the Georgian public broadcaster, as this refusal appears to be politically motivated; points out that this refusal leaves de facto satellite transmission monopoly over the regional Russian-speaking audience to Intersputnik and its main client, Gazprom Media Group; stresses that it is of the utmost importance that in a democratic and pluralistic society the airing of independent media is not impeded;

49. Recognises the potential role of the Eastern Partnership Civil Society Forum as the forum to foster the development of a genuine civil society and strengthen its entrenchment in the states of the region and calls on the Commission to ensure that the Forum receives sufficient financial support; draws attention to the importance of financing civil society projects and the role that the EU Delegations in the region play in selecting these, and the significance that the projects can have in promoting contacts at regional level;

Economic cooperation and social development

50. Considers that the EU should continue to support economic development, trade and investment in the region and that trade policy is a fundamental factor in political stability and economic development and will lead to a reduction in poverty in the South Caucasus; believes that the negotiation and establishment of the Deep and Comprehensive Free Trade Area could play a very important role in this respect; calls on the Commission to consider possible ways to assist the countries in the region in their preparation, negotiation and implementation in the future, including sustaining the commitments deriving from the future deep and comprehensive Free Trade Agreements (DCFTAs), and to provide in due time a comprehensive evaluation of the social and environmental impact of these agreements; furthermore, encourages the countries of the South Caucasus to consider establishing a free trade area among themselves;

51. Highlights the geopolitical situation of Armenia, Georgia and Azerbaijan in relation to the European Union, Turkey as an EU candidate country, Russia and Iran; considers that trade is one of the key components of the EU's overall policy of fostering political stability, respect for human rights, sustainable growth and prosperity and takes the view that the regional dimension of the EU Strategy for the South Caucasus calls for a regional approach to negotiations on trade agreements; calls on the Commission to identify common areas of economic interest that can overcome divergences, facilitate dialogue and promote regional cooperation; calls for greater EU engagement and involvement with a view to bringing about integration in the region, given that the Community now has exclusive competence on trade policy;

52. Welcomes the conclusion in May 2008 of the feasibility studies for Georgia and Armenia, showing that DCFTAs would bring significant economic benefits to these countries and the EU, thereby allowing the Commission to enter into a preparatory phase for future negotiations on DCFTAs; encourages Georgia, Armenia and Azerbaijan to improve their progress towards fulfilling their respective ENP Action Plans and the Commission's recommendations, particularly in terms of improving their administrative and institutional capacity and implementation of regulatory reforms (especially regarding the poor levels of intellectual property protection in all three countries), which is one of the necessary preconditions for the effective implementation and sustaining the effects of such ambitious FTAs; believes that the conclusion of FTAs with Georgia, Armenia and Azerbaijan could not only lead to economic growth, but could also increase foreign investment, create new jobs and eradicate poverty;

53. Recalls that energy security is a common preoccupation; urges the EU, therefore, to give more robust support to the energy projects in the region in accordance with European standards, including projects promoting energy efficiency and the development of alternative energy sources, to step up its cooperation on energy issues and to work firmly towards realisation of the southern energy corridor, including completion of the Nabucco pipeline as soon as possible; also calls on the Commission to ensure that the energy- and transport-related projects in the South Caucasus foster

relations between the three countries and are not a cause of exclusion of certain communities; reaffirms the importance of the Baku Initiative and its corresponding supporting programmes, INOGATE and TRACECA;

54. Stresses that political stability is essential for the reliable and uninterrupted supply of energy resources so as to ensure the proper conditions for infrastructure development; in this respect, recalls that the double energy corridor formed by the Baku-Tbilisi-Ceyhan (BTC) and Baku-Tbilisi-Erzerum (BTE) pipelines fosters rapprochement between the EU and the Caspian region; calls for the rejuvenation of the existing bilateral agreements or Memorandums of Understanding concluded with the three South Caucasian countries in the field of energy, with the inclusion of an 'energy security clause' laying down a code of conduct and specific measures in the event of energy disruption; considers that energy supply and transit provisions should be a component in the negotiation of wide-ranging Association Agreements with those countries;

55. Reiterates the significance of people-to-people contacts and mobility programmes, especially those aimed at youth, and of twinning programmes with EU regions and local communities with national minorities experiencing a high degree of autonomy; believes there is a need for a significant increase in the numbers of students, teachers and researchers participating in mobility programmes; welcomes the conclusion of the visa facilitation and readmission agreements with Georgia and calls on the Council and the Commission to make progress towards visa facilitation and readmission agreements with Armenia and Azerbaijan;

56. Reaffirms the need for the EU to develop a strategy for the South Caucasus, given the importance of the region for the EU and the potential role that the EU has in fostering further the development of the region and in the solution of its conflicts;

57. Instructs its President to forward this resolution to the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy, the Council, the Commission and the governments and parliaments of Armenia, Azerbaijan and Georgia.

6.8 OIC Resolution no. 10/11-P(IS) on the Aggression of the Republic of Armenia against the Republic of Azerbaijan

The Eleventh Session of the Islamic Summit Conference (Session of the Islamic Ummah in the 21st Century), held in Dakar, Republic of Senegal, from 6 to 7 Rabiul Awal 1429h (13-14 March 2008),

Proceeding from the principles and objectives of the Charter of the Organization of the Islamic Conference;

Gravely concerned over the aggression by the Republic of Armenia against the Republic of Azerbaijan which has resulted in the occupation of about 20 percent of the territories of Azerbaijan;

Expressing its profound concern over continued occupation of significant part of the territories of Azerbaijan and illegal transfer of settlers of the Armenian nationality to those territories;

Deeply distressed over the plight of more than one million Azerbaijani displaced persons and refugees resulting from the Armenian aggression and over magnitude and severity of these humanitarian problems;

Reaffirming all previous relevant resolutions and, in particular, the Resolution No. 21/10-P(IS), adopted by the Tenth Session of the Islamic Summit Conference held in Putrajaya, from 20 to 21 Shaban, 1424H (16-17 October 2003);

Urging strict adherence to the Charter of the UN and full implementation of the relevant Security Council resolutions;

Welcoming all diplomatic and other efforts for the settlement of the conflict between Armenia and Azerbaijan;

Reaffirming commitment by all Member States to respect the sovereignty, territorial integrity and political independence of the Republic of Azerbaijan;

Noting also the destructive influence of the policy of aggression of the Republic of Armenia on the peace process within the OSCE framework;

Taking note of the Report of the Secretary General (Document No. OIC/ICFM-34/POL/SG-REP.6);

1. Strongly condemns the aggression of the Republic of Armenia against the Republic of Azerbaijan.

2. Considers the actions perpetrated against civilian Azerbaijani population in the occupied Azerbaijani territories as crimes against humanity.

3 Strongly condemns any looting and destruction of the archeological, cultural and religious monuments in the occupied territories of Azerbaijan.

4. Strongly demands the strict implementation of the United Nations Security Council resolutions 822, 853, 874 and 884, and the immediate, unconditional and complete withdrawal of Armenian forces from all occupied Azerbaijani territories including the Nagorno-Karabakh region and strongly urges Armenia to respect the sovereignty and territorial integrity of the Republic of Azerbaijan.

5. Expresses its concern that Armenia has not yet implemented demands contained in the above stated UN Security Council resolutions.

6. Calls on the UN Security Council to recognize the existence of aggression against the Republic of Azerbaijan; to take the necessary steps under Chapter VII of the Charter of the United Nations to ensure compliance with its resolutions; to condemn and reverse aggression against the sovereignty and territorial integrity of the Republic of Azerbaijan, and decides to take coordinated action to this end at the United Nations.

7. Urges all States to refrain from providing any supplies of arms and military equipment to Armenia, in order to deprive the aggressor of any opportunity to escalate the conflict and to continue the occupation of the Azerbaijani territories. The territories of the Member States should not be used for transit of such supplies.

8. Calls upon Member States, as well as other members of the international community, to use such effective political and economic measures as required in order to put an end to Armenian aggression and occupation of the Azerbaijani territories.

9. Calls for a just and peaceful settlement of the conflict between Armenia and Azerbaijan on the basis of respect for the principles of territorial

integrity of states and inviolability of internationally recognized borders.

10. Decides to instruct the Permanent Representatives of Member States at the United Nations in New York, while voting at the UN General Assembly, to give full support to the issue of territorial integrity of the Republic of Azerbaijan.

11. Urges Armenia and all Member States of the OSCE Minsk Group to engage constructively in the ongoing OSCE peace process on the basis of the relevant resolutions of the UN Security Council and the relevant OSCE decisions and documents, including those of the First Additional Meeting of the OSCE Council of 24 March 1992, OSCE Summits of 5-6 December 1994, 2-3 December 1996, 18-19 November, 1999, and refrain from any action that will make it more difficult to reach a peaceful solution.

12. Expresses its full support for the three principles of the settlement of the armed conflict between Armenia and Azerbaijan contained in the statement of the OSCE Chairman-in-Office at the 1996 Lisbon OSCE Summit, namely the territorial integrity of the Republic of Armenia and the Republic of Azerbaijan, highest degree of self-rule of the Nagorno-Karabakh region within Azerbaijan and guaranteed security for this region and its whole population.

13. Stresses that fait accompli may not serve as a basis for a settlement, and that neither the current situation within the occupied areas of the Republic of Azerbaijan, nor any actions, including arranging voting process, undertaken there to consolidate the status quo, may be recognized as legally valid.

14. Demands to cease and reverse immediately the transfer of settlers of the Armenian nationality to the occupied territories of Azerbaijan, which constitute a blatant violation of international humanitarian law and has a detrimental impact on the process of peaceful settlement of the conflict, and agrees to render its full support to the efforts of Azerbaijan undertaken to this end, including at the General Assembly of the United Nations, inter alia, through their respective Permanent Missions to the United Nations in New York.

15. Requests the OIC Member States to encourage their legal and physical persons not to be engaged in economic activities in the Nagorno-Karabakh region and other occupied territories of Azerbaijan.

16. Expresses its support to the activities of the OSCE Minsk Group and consultations held at the level of the Foreign Ministers of Azerbaijan and Armenia and its understanding that a step-by-step solution will help to ensure gradual elimination of the most serious consequences of the aggression against the Republic of Azerbaijan.

17. Requests the Secretary General to communicate the principled and firm position of the OIC vis-à-vis the Armenian aggression against the Republic of Azerbaijan, to the current Chairman of the Organization for Security and Cooperation in Europe.

18. Reaffirms its total solidarity with and support for the efforts undertaken by the Government and people of Azerbaijan to defend their country.

19. Calls for enabling the displaced persons and refugees to return to their homes in safety, honour and dignity.

20. Expresses its appreciation to all Member States which have provided humanitarian assistance to the refugees and displaced persons and urges all the others to extend their contribution to these people.

21. Expresses its concern over the severity of humanitarian problems concerning the existence of more than one million displaced persons and refugees in the territory of the Republic of Azerbaijan and requests the OIC Member States, the Islamic Development Bank and other Islamic Institutions to render much needed financial and humanitarian assistance to the Republic of Azerbaijan.

22. Considers that Azerbaijan has the right for appropriate compensation with regard to damages it suffered as a result of the conflict and puts the responsibility for the adequate compensation of these damages on Armenia.

23. Requests the Secretary-General to follow up the implementation of this resolution and to report thereon to the 12th Islamic Summit Conference.

6.9 NATO Chicago Summit Declaration

Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Chicago on 20 May 2012

Press Release (2012) 062

1. We, the Heads of State and Government of the member countries of the North Atlantic Alliance, have gathered in Chicago to renew our commitment to our vital transatlantic bond; take stock of progress in, and reconfirm our commitment to, our operations in Afghanistan, Kosovo and elsewhere; ensure the Alliance has the capabilities it needs to deal with the full range of threats; and strengthen our wide range of partnerships.

2. Our nations are united in their commitment to the Washington Treaty and to the purposes and principles of the Charter of the United Nations. Based on solidarity, Alliance cohesion and the indivisibility of our security, NATO remains the transatlantic framework for strong collective defence and the essential forum for security consultations and decisions among Allies. Our 2010 Strategic Concept continues to guide us in fulfilling effectively, and always in accordance with international law, our three essential core tasks – collective defence, crisis management, and cooperative security – all of which contribute to safeguarding Alliance members.

3. At a time of complex security challenges and financial difficulties, it is more important than ever to make the best use of our resources and to continue to adapt our forces and structures. We remain committed to our common values, and are determined to ensure NATO's ability to meet any challenges to our shared security.

4. We pay tribute to all the brave men and women from Allied and partner nations serving in NATO-led missions and operations. We commend them for their professionalism and dedication and acknowledge the invaluable support provided to them by their families and loved ones. We owe a special debt of gratitude to all those who have lost their lives or been injured during the course of their duties, and we extend our profound sympathy to their families and loved ones.

5. Today we have taken further important steps on the road to a stable and secure Afghanistan and to our goal of preventing Afghanistan from ever again becoming a safe haven for terrorists that threaten Afghanistan, the region, and the world. The irreversible transition of full security responsibility from the International Security Assistance Force (ISAF) to the Afghan National Security Forces (ANSF) is on track for completion by the end of 2014, as agreed at our Lisbon Summit. We also recognise in this context the importance of a comprehensive approach and continued improvements in governance and development, as well as a political process involving successful reconciliation and reintegration. We welcome the announcement by President Karzai on the third tranche of provinces that will start transition. This third tranche means that 75% of Afghanistan's population will live in areas where the ANSF have taken the lead for security. By mid-2013, when the fifth and final tranche of provinces starts transition, we will have reached an important milestone in our Lisbon roadmap, and the ANSF will be in the lead for security nationwide. At that milestone, as ISAF shifts from focusing primarily on combat increasingly to the provision of training, advice and assistance to the ANSF, ISAF will be able to ensure that the Afghans have the support they need as they adjust to their new increased responsibility. We are gradually and responsibly drawing down our forces to complete the ISAF mission by 31 December 2014.

6. By the end of 2014, when the Afghan Authorities will have full security responsibility, the NATO-led combat mission will end. We will, however, continue to provide strong and long-term political and practical support through our Enduring Partnership with Afghanistan. NATO is ready to work towards establishing, at the request of the Government of the Islamic Republic of Afghanistan, a new post-2014 mission of a different nature in Afghanistan, to train, advise and assist the ANSF, including the Afghan Special Operations Forces. This will not be a combat mission. We task the Council to begin immediately work on the military planning process for the post-ISAF mission.

7. At the International Conference on Afghanistan held in Bonn in December 2011, the international community made a commitment to support Afghanistan in its Transformation Decade beyond 2014.

NATO will play its part alongside other actors in building sufficient and sustainable Afghan forces capable of providing security for their own country. In this context, Allies welcome contributions and reaffirm their strong commitment to contribute to the financial sustainment of the ANSF. We also call on the international community to commit to this long-term sustainment of the ANSF. Effective funding mechanisms and expenditure arrangements for all strands of the ANSF will build upon existing mechanisms, integrating the efforts of the Government of the Islamic Republic of Afghanistan and of the international community. They will be guided by the principles of flexibility, transparency, accountability, and cost effectiveness, and will include measures against corruption.

8. We reiterate the importance Allies attach to seeing tangible progress by the Government of the Islamic Republic of Afghanistan regarding its commitments made at the Bonn Conference on 5 December 2011 to a democratic society, based on the rule of law and good governance, including progress in the fight against corruption, where the human rights and fundamental freedoms of its citizens, including the equality of men and women and the active participation of both in Afghan society, are respected. The forthcoming elections must be conducted with full respect for Afghan sovereignty and in accordance with the Afghan Constitution. Their transparency, inclusivity and credibility will also be of paramount importance. Continued progress towards these goals will encourage NATO nations to further provide their support up to and beyond 2014.

9. We also underscore the importance of our shared understanding with the Government of the Islamic Republic of Afghanistan regarding the full participation of all Afghan women in the reconstruction, political, peace and reconciliation processes in Afghanistan and the need to respect the institutional arrangements protecting their rights. We recognise also the need for the protection of children from the damaging effects of armed conflict.

10. We also recognise that security and stability in the "Heart of Asia" is interlinked across the region. The Istanbul Process on regional security and cooperation, which was launched in November 2011, reflects the

commitment of Afghanistan and the countries in the region to jointly ensure security, stability and development in a regional context. The countries in the region, particularly Pakistan, have important roles in ensuring enduring peace, stability and security in Afghanistan and in facilitating the completion of the transition process. We stand ready to continue dialogue and practical cooperation with relevant regional actors in this regard. We welcome the progress on transit arrangements with our Central Asian partners and Russia. NATO continues to work with Pakistan to reopen the ground lines of communication as soon as possible.

11. We look forward to our expanded ISAF meeting tomorrow.

12. The Alliance continues to be fully committed to the stability and security of the strategically important Balkans region. We reiterate our full support for KFOR, which continues to act carefully, firmly and impartially in accordance with its United Nations mandate set out in United Nations Security Council Resolution (UNSCR) 1244. KFOR will continue to support the development of a peaceful, stable, and multi-ethnic Kosovo. KFOR will also continue to contribute to the maintenance of freedom of movement and ensuring a safe and secure environment for all people in Kosovo, in cooperation with all relevant actors, including the European Union Rule of Law Mission in Kosovo (EULEX) and the EU Special Representative, as agreed, and the Kosovo authorities. We will maintain KFOR's robust and credible capability to carry out its mission. We remain committed to moving towards a smaller, more flexible, deterrent presence, only once the security situation allows. We welcome the progress made in developing the Kosovo Security Force, under NATO's supervision and commend it for its readiness and capability to implement its security tasks and responsibilities. We will continue to look for opportunities to develop NATO's ongoing role with the Kosovo Security Force.

13. Last year, through the UN-mandated Operation Unified Protector (OUP), and with the support of the League of Arab States, our Alliance played a crucial role in protecting the civilian population in Libya and in helping save thousands of lives. We commend the Libyan people for the progress achieved to date on their path towards building a new, free, democratic Libya that fully respects human rights and fundamental freedoms, and encourage them to build on that progress.

14. Our successful operation in Libya showed once more that the Alliance can quickly and effectively conduct complex operations in support of the broader international community. We have also learned a number of important lessons which we are incorporating into our plans and policies. With OUP, NATO set new standards of consultation and practical cooperation with partner countries who contributed to our operation, as well as with other international and regional organisations. In this context, we recognise the value of the Libya Contact Group.

15. The Alliance is also contributing to peace and security through other operations and missions:

- We welcome the extension of the mandate of our counter-piracy operation off the Horn of Africa, Operation Ocean Shield, for a further two years through to 2014. The decision to carry out enhanced actions at sea should allow us to be more effective in eroding the operational reach of pirates at sea. We remain committed to supporting international counter-piracy efforts, including through working together with the EU Operation Atalanta, as agreed, Combined Task Force 151 and other naval forces, and through our ongoing participation in the Contact Group on Piracy off the Coast of Somalia. We encourage the shipping industry to adopt Best Management Practices and other measures proven effective against piracy, in compliance with international law.

- Operation Active Endeavour is our Article 5 maritime operation in the Mediterranean which contributes to the fight against terrorism. We are reviewing strategic options for the future of this operation.

- We continue to provide the African Union (AU) with operational support, at its request. We have agreed to extend strategic air and maritime lift support for the AU's Mission in Somalia (AMISOM) and support the development of the AU's long-term peacekeeping capabilities, including the African Stand-by Force. We stand ready to consider further AU requests for NATO training assistance.

- We have successfully concluded the NATO Training Mission in Iraq (NTM-I) which contributed to a more stable Iraq by assisting in the capacity building of Iraq's security institutions.

16. Widespread sexual and gender-based violence in conflict situations, the lack of effective institutional arrangements to protect women, and the continued under-representation of women in peace processes, remain serious impediments to building sustainable peace. We remain committed to the full implementation of United Nations Security Council Resolution (UNSCR) 1325 on Women, Peace and Security and related Resolutions which are aimed at protecting and promoting women's rights, role, and participation in preventing and ending conflict. In line with the NATO/ Euro-Atlantic Partnership Council (EAPC) Policy, the Alliance, together with its partners, has made significant progress in implementing the goals articulated in these Resolutions. In this regard, we have today endorsed a Strategic Progress Report on mainstreaming UNSCR 1325 and related Resolutions into NATO-led Operations and Missions, and welcomed Norway's generous offer to provide a NATO Special Representative for these important issues. In this context, and to further advance this work, we have tasked the Council to: continue implementing the Policy and the Action Plan; undertake a review of the practical implications of UNSCR 1325 for the conduct of NATO operations and missions; further integrate gender perspectives into Alliance activities; and submit a report for our next Summit.

17. We also remain committed to the implementation of UNSCR 1612 and related Resolutions on the protection of children affected by armed conflict. We note with concern the growing range of threats to children in armed conflict and strongly condemn that they are increasingly subject to recruitment, sexual violence and targeted attacks. NATO-led operations, such as ISAF in Afghanistan, are taking an active role in preventing, monitoring and responding to violations against children, including through pre-deployment training and a violations alert mechanism. This approach, based on practical, field-oriented measures, demonstrates NATO's firm commitment on this issue, as does the recent appointment of a NATO Focal Point for Children and Armed Conflict in charge of maintaining a close dialogue with the UN. NATO-UN cooperation in this field is creating a set of good practices to be integrated in NATO training modules and taken into account in possible future operations.

18. Our operational experiences have shown that military means, although

essential, are not enough on their own to meet the many complex challenges to our security. We reaffirm our Lisbon Summit decisions on a comprehensive approach. In order to fulfil these commitments, important work on NATO's contribution to a comprehensive approach and on stabilisation and reconstruction is ongoing. An appropriate but modest civilian crisis management capability has been established, both at the NATO Headquarters and within Allied Command Operations, in accordance with the principles and detailed political guidance we set out at our Summit in Lisbon.

19. We will continue to enhance our political dialogue and practical cooperation with the UN in line with the UN-NATO Declaration of September 2008. We welcome the strengthened cooperation and enhanced liaison between NATO and the UN that has been achieved since our last Summit meeting in Lisbon in November 2010, and which also contributed to the success of OUP.

20. NATO and the EU share common values and strategic interests. The EU is a unique and essential partner for NATO. Fully strengthening this strategic partnership, as agreed by our two organisations and enshrined in the Strategic Concept, is particularly important in the current environment of austerity; NATO and the EU should continue to work to enhance practical cooperation in operations, broaden political consultations, and cooperate more fully in capability development. NATO and the EU are working side by side in crisis management operations, in a spirit of mutual reinforcement, and in particular in Afghanistan, Kosovo and fighting piracy. NATO recognises the importance of a stronger and more capable European defence. NATO also recognises non-EU Allies' ongoing concerns and their significant contributions to strengthening the EU's capacities to address common security challenges. For the strategic partnership between NATO and the EU, non-EU Allies' fullest involvement in these efforts is essential. In this context, NATO will work closely with the EU, as agreed, to ensure that our Smart Defence and the EU's Pooling and Sharing initiatives are complementary and mutually reinforcing; we welcome the efforts of the EU, in particular in the areas of air-to-air refuelling, medical support, maritime surveillance and training. We also welcome the national efforts in these and other areas by

European Allies and Partners. We also encourage the Secretary General to continue his dialogue with the EU High Representative with a view to making our cooperation more effective, and to report to the Council in time for the next Summit.

21. We continue to work closely with the Organisation for Security and Cooperation in Europe (OSCE), in particular in areas such as conflict prevention and resolution, post-conflict rehabilitation, and in addressing new security threats. We are committed to further enhancing our cooperation, both at the political and operational level, in all areas of common interest.

22. NATO has a wide network of partnership relations. We highly value all of NATO's partners and the contributions they make to the work of the Alliance as illustrated through several partnership meetings we are holding here in Chicago. Partnerships play a crucial role in the promotion of international peace and security. NATO's partnerships are a key element of Cooperative Security which is one of the core tasks of the Alliance, and the Alliance has developed effective policies in order to enhance its partnerships. Through the Euro-Atlantic Partnership Council and the Partnership for Peace, we have pursued cooperation with our Euro-Atlantic partners to build a Europe whole, free and at peace. For twenty years, our partnerships have facilitated, and provided frameworks for, political dialogue and practical regional cooperation in the fields of security and defence, contribute to advancing our common values, allow us to share expertise and experience, and make a significant contribution to the success of many of our operations and missions. NATO Foreign Ministers in Berlin in April 2011 approved a More Efficient and Flexible Partnership Policy to enhance the effectiveness of NATO's partnerships. We will continue to actively pursue its further implementation with a view to strengthening NATO's partnerships, including by: reinforcing the Euro-Atlantic Partnership Council, the Mediterranean Dialogue, the Istanbul Cooperation Initiative, and our relationships with partners across the globe, while making full use of flexible formats; further developing our political and practical cooperation with partners, including in an operational context; and through increasing partner involvement in training, education, and exercises, including with the NATO Response

Force. We will intensify our efforts to better engage with partners across the globe who can contribute significantly to security, and to reach out to partners concerned, including our newest partner Mongolia, to build trust, increase transparency, and develop political dialogue and practical cooperation. In this context, we welcome the Joint Political Declaration between Australia and NATO.

23. We appreciate our partners' significant contributions to our practical cooperation activities and to the different Trust Funds which support our partnership goals. We welcome the Status Report on Building Integrity and the progress achieved by NATO's Building Integrity Programme which has made important contributions to promoting transparency, accountability, and integrity in the defence sector of interested nations.

24. We welcome our meeting in Chicago with thirteen partners 1 who have recently made particular political, operational, and financial contributions to NATO-led operations. This is an example of the enhanced flexibility with which we are addressing partnership issues in a demand and substance-driven way. Our meeting in Chicago with partners provides us with a unique opportunity to discuss the lessons learned from our cooperation, and to exchange views on the common security challenges we face. Joint training and exercises will be essential in maintaining our interoperability and interconnectedness with partner forces, including when we are not engaged together in active operations. We will share ideas generated at this Chicago meeting with all our partners, within the appropriate frameworks, for additional discussion.

25. In accordance with Article 10 of the Washington Treaty, NATO's door will remain open to all European democracies which share the values of our Alliance, which are willing and able to assume the responsibilities and obligations of membership, which are in a position to further the principles of the Treaty, and whose inclusion can contribute to security in the North Atlantic area. Based on these considerations, we will keep the progress of each of the partners that aspire to join the Alliance under active review, judging each on its own merits. We reaffirm our strong commitment to the Euro-Atlantic integration of the partners that aspire to join the Alliance in accordance with previous decisions taken at the Bucharest, Strasbourg-Kehl, and Lisbon Summits. We welcome

progress made by these four partners and encourage them to continue to implement the necessary decisions and reforms to advance their Euro-Atlantic aspirations. For our part, we will continue to offer political and practical support to partners that aspire to join the Alliance. NATO's enlargement has contributed substantially to the security of Allies; the prospect of further enlargement and the spirit of cooperative security continue to advance stability in Europe more broadly.

26. We reiterate the agreement at our 2008 Bucharest Summit, as we did at subsequent Summits, to extend an invitation to the former Yugoslav Republic of Macedonia 2 to join the Alliance as soon as a mutually acceptable solution to the name issue has been reached within the framework of the UN, and strongly urge intensified efforts towards that end. An early solution, and subsequent membership, will contribute to security and stability in the region. We encourage the negotiations to be pursued without further delay and expect them to be concluded as soon as possible. We welcome, and continue to support, the ongoing reform efforts in the former Yugoslav Republic of Macedonia, and encourage continued implementation. We also encourage its efforts to further build a multi-ethnic society. We appreciate the former Yugoslav Republic of Macedonia's substantial contributions to our operations, as well as its active role in regional cooperation activities. We value the former Yugoslav Republic of Macedonia's long-standing commitment to the NATO accession process.

27. We welcome the significant progress that Montenegro has made towards NATO membership and its contribution to security in the Western Balkans region and beyond, including through its active role in regional cooperation activities and its participation in ISAF. We also welcome the increasing public support for NATO membership in Montenegro, and will continue to assist this process. Montenegro's active engagement in the MAP process demonstrates firm commitment to join the Alliance. Montenegro has successfully implemented significant political, economic and defence reforms, and we encourage it to continue on that path so it can draw even closer to the Alliance. We will keep Montenegro's progress towards membership under active review.

28. We continue to fully support the membership aspirations of Bosnia

and Herzegovina. We welcome the significant progress that has been made in recent months, including the establishment of the Bosnia and Herzegovina Council of Ministers, and the political agreement reached on 9 March 2012 on the registration of immovable defence property as state property. These developments are a sign of the political will in Bosnia and Herzegovina to move the reform process forward, and we encourage all political actors in the country to continue to work constructively to further implement the reforms necessary for its Euro-Atlantic integration. The political agreement on defence and state properties is an important step towards fulfilment of the condition set by NATO Foreign Ministers in Tallinn in April 2010 for full participation in the MAP process. We welcome the initial steps taken regarding implementation, and we urge the political leaders in Bosnia and Herzegovina to further their efforts to work constructively to implement the agreement without delay in order to start its first MAP cycle as soon as possible. The Alliance will continue to follow progress in implementation and will provide assistance to Bosnia and Herzegovina's reform efforts. We appreciate Bosnia and Herzegovina's contribution to NATO-led operations and commend its constructive role in regional and international security.

29. At the 2008 Bucharest Summit we agreed that Georgia will become a member of NATO and we reaffirm all elements of that decision, as well as subsequent decisions. The NATO-Georgia Commission and Georgia's Annual National Programme (ANP) have a central role in supervising the process set in hand at the Bucharest Summit. We welcome Georgia's progress since the Bucharest Summit to meet its Euro-Atlantic aspirations through its reforms, implementation of its Annual National Programme, and active political engagement with the Alliance in the NATO-Georgia Commission. In that context, we have agreed to enhance Georgia's connectivity with the Alliance, including by further strengthening our political dialogue, practical cooperation, and interoperability with Georgia. We continue to encourage and actively support Georgia's ongoing implementation of all necessary reforms, including democratic, electoral, and judicial reforms, as well as security and defence reforms. We stress the importance of conducting free, fair, and inclusive elections in 2012 and 2013. We appreciate Georgia's substantial contribution, in

particular as the second largest non-NATO troop contributing nation to ISAF, to Euro-Atlantic security.

30. We reiterate our continued support to the territorial integrity and sovereignty of Georgia within its internationally recognised borders. We welcome Georgia's full compliance with the EU-mediated cease-fire agreement and other unilateral measures to build confidence. We welcome Georgia's commitment not to use force and call on Russia to reciprocate. We continue to call on Russia to reverse its recognition of the South Ossetia and Abkhazia regions of Georgia as independent states. We encourage all participants in the Geneva talks to play a constructive role as well as to continue working closely with the OSCE, the UN, and the EU to pursue peaceful conflict resolution in the internationally-recognised territory of Georgia.

31. Here in Chicago, our Foreign Ministers are meeting with their counterparts from the former Yugoslav Republic of Macedonia, Montenegro, Bosnia and Herzegovina, and Georgia, in order to take stock of their individual progress, plan future cooperation, and exchange views with our partners, including on their participation in partnership activities and contributions to operations. We are grateful to these partners that aspire to NATO membership for the important contributions they are making to NATO-led operations, and which demonstrate their commitment to our shared security goals.

32. In the strategically important Western Balkans region, democratic values, regional cooperation and good neighbourly relations are important for lasting peace and stability. We are encouraged by the progress being made, including in regional cooperation formats, and will continue to actively support Euro-Atlantic aspirations in this region. Together, Allies and partners of the region actively contribute to the maintenance of regional and international peace, including through regional cooperation formats.

33. We continue to support Serbia's Euro-Atlantic integration. We welcome Serbia's progress in building a stronger partnership with NATO and encourage Belgrade to continue on this path. NATO stands ready to continue to deepen political dialogue and practical cooperation with

Serbia. We will continue assisting Serbia's reform efforts, and encourage further work.

34. We call upon Serbia to support further efforts towards the consolidation of peace and stability in Kosovo. We urge all parties concerned to cooperate fully with KFOR and EULEX in the execution of their respective mandates for which unconditional freedom of movement is necessary. We urge Belgrade and Pristina to take full advantage of the opportunities offered to promote peace, security, and stability in the region, in particular by the European Union-facilitated dialogue. We welcome progress made in the European Union-facilitated Belgrade-Pristina dialogue, including the Agreement on Regional Cooperation and the IBM technical protocol. Dialogue between them and Euro-Atlantic integration of the region are key for a sustained improvement in security and stability in the Western Balkans. We call on both parties to implement fully existing agreements, and to move forward on all outstanding issues, including on the conclusion of additional agreements on telecommunications and electricity. We welcome progress achieved and encourage further efforts aimed at consolidating the rule of law, and other reform efforts, in Kosovo.

35. An independent, sovereign and stable Ukraine, firmly committed to democracy and the rule of law, is key to Euro-Atlantic security. Marking the fifteenth anniversary of the NATO-Ukraine Charter on a Distinctive Partnership, we welcome Ukraine's commitment to enhancing political dialogue and interoperability with NATO, as well as its contributions to NATO-led operations and new offers made. We note the recent elimination of Ukraine's highly enriched uranium in March 2012, which demonstrates a proven commitment to non-proliferation. Recalling our decisions in relation to Ukraine and our Open Door policy stated at the Bucharest and Lisbon Summits, NATO is ready to continue to develop its cooperation with Ukraine and assist with the implementation of reforms in the framework of the NATO-Ukraine Commission and the Annual National Programme (ANP). Noting the principles and commitments enshrined in the NATO-Ukraine Charter and the ANP, we are concerned by the selective application of justice and what appear to be politically motivated prosecutions, including of leading members of the opposition,

and the conditions of their detention. We encourage Ukraine to address the existing shortcomings of its judicial system to ensure full compliance with the rule of law and the international agreements to which it is a party. We also encourage Ukraine to ensure free, fair and inclusive Parliamentary elections this autumn.

36. NATO-Russia cooperation is of strategic importance as it contributes to creating a common space of peace, stability and security. We remain determined to build a lasting and inclusive peace, together with Russia, in the Euro-Atlantic area, based upon the goals, principles and commitments of the NATO-Russia Founding Act and the Rome Declaration. We want to see a true strategic partnership between NATO and Russia, and we will act accordingly with the expectation of reciprocity from Russia.

37. This year, we mark the tenth anniversary of the establishment of the NATO-Russia Council (NRC) and the fifteenth anniversary of the NATO-Russia Founding Act. We welcome important progress in our cooperation with Russia over the years. At the same time, we differ on specific issues and there is a need to improve trust, reciprocal transparency, and predictability in order to realise the full potential of the NRC. In this context, we intend to raise with Russia in the NRC Allied concerns about Russia's stated intentions regarding military deployments close to Alliance borders. Mindful of the goals, principles and commitments which underpin the NRC, and on this firm basis, we urge Russia to meet its commitments with respect to Georgia, as mediated by the EU on 12 August and 8 September 2008 3. We continue to be concerned by the build-up of Russia's military presence on Georgia's territory and continue to call on Russia to ensure free access for humanitarian assistance and international observers.

38. NATO and Russia share common security interests and face common challenges and our practical achievements together reflect that reality. Today, we continue to value the important role of the NRC as a forum for frank and honest political dialogue – including on subjects where we disagree – and for promoting practical cooperation. Our cooperation with Russia on issues related to Afghanistan – notably the two-way transit arrangements offered by Russia in support of ISAF, our joint training of counter narcotics personnel from Afghanistan, Central Asia,

and Pakistan, and the NRC Helicopter Maintenance Trust Fund in support of a key ANSF need – is a sign of our common determination to build peace and stability in that region. NATO-Russia counter-terrorism cooperation has expanded and all NRC nations will benefit from the lessons to be learned from the first civil-military NRC Counter-Terrorism exercise, and the capabilities available under the NRC aviation counter-terrorism programme which is now operational. We also note with satisfaction our growing counter-piracy cooperation off the Horn of Africa. We are committed to, and look forward to, further improving trust and reciprocal transparency in: defence matters; strategy; doctrines; military postures, including of non-strategic nuclear weapons in Europe; military exercises; arms control and disarmament; and we invite Russia to engage with the Alliance in discussing confidence-building measures covering these issues.

39. At a time of unprecedented change in the Mediterranean and broader Middle East, NATO is committed to strengthening and developing partnership relations with countries in the region, with whom we face common security challenges and share the same goals for peace, security and stability. NATO supports the aspirations of the people of the region for democracy, individual liberty and the rule of law – values which underpin the Alliance.

40. The Libya crisis illustrated the benefits of cooperation with partners from the region. It also showed the merit of regular consultations between the Alliance and regional organisations, such as the Gulf Cooperation Council and the League of Arab States.

41. NATO is ready to consult more regularly on security issues of common concern, through the Mediterranean Dialogue (MD) and Istanbul Cooperation Initiative (ICI), as well as bilateral consultations and 28+n formats. We recall our commitment to the MD and the ICI and to the principles that underpin them; the MD and ICI remain two complementary and yet distinct partnership frameworks. We are also ready to consider providing, upon request, support to our partners in the region in such areas as security institution building, defence modernisation, capacity development, and civil-military relations. Individualised programmes will allow us to focus on agreed priorities for each partner country.

42. The MD helps to strengthen mutual understanding, political dialogue, practical cooperation and, as appropriate, interoperability. We welcome the Moroccan-led initiative to develop a new, political framework document for the MD, and look forward to developing it together soon with our MD partners. We encourage the MD partner countries to be proactive in exploiting the opportunities offered by their partnership with NATO. The MD remains open to other countries in the region.

43. We welcome Libya's stated interest to deepen relations with the Alliance. We are ready to welcome Libya as a partner, if it so wishes. In that perspective, the MD is a natural framework for this partnership. We stand ready, if requested, and on a case-by-case basis, to consider providing assistance to Libya in areas where NATO can add value. NATO's activities would focus primarily on security and defence sector reform, while taking into account other international efforts.

44. We will strengthen political dialogue and practical cooperation in the ICI. We warmly welcome the generous offer by the State of Kuwait to host an ICI Regional Centre, which will help us to better understand common security challenges, and discuss how to address them together. We encourage our ICI partner countries to be proactive in exploiting the opportunities offered by their partnership with NATO. We remain open to receiving new members in the ICI.

45. We are following the evolution of the Syrian crisis with growing concern and we strongly support the efforts of the United Nations and the League of Arab States, including full implementation of the six-point Annan plan, to find a peaceful solution to the crisis.

46. We welcome progress being made in Iraq. The NATO Transition Cell now established in Iraq is helping to develop our partnership.

47. With our vision of a Euro-Atlantic area at peace, the persistence of protracted regional conflicts in South Caucasus and the Republic of Moldova continues to be a matter of great concern for the Alliance. We welcome the constructive approach in the renewed dialogue on Transnistria in the 5+2 format, and encourage further efforts by all actors involved. With respect to all these conflicts, we urge all parties to engage constructively and with reinforced political will in peaceful

conflict resolution, and to respect the current negotiation formats. We call on them all to avoid steps that undermine regional security and stability. We remain committed in our support of the territorial integrity, independence, and sovereignty of Armenia, Azerbaijan, Georgia, and the Republic of Moldova, and will also continue to support efforts towards a peaceful settlement of these regional conflicts, based upon these principles and the norms of international law, the United Nations Charter, and the Helsinki Final Act.

48. The Black Sea region continues to be important for Euro-Atlantic security. We welcome the progress in consolidating regional cooperation and ownership, through effective use of existing initiatives and mechanisms, in the spirit of transparency, complementarity and inclusiveness. We will continue to support, as appropriate, efforts based on regional priorities and dialogue and cooperation among the Black Sea states and with the Alliance.

49. Cyber attacks continue to increase significantly in number and evolve in sophistication and complexity. We reaffirm the cyber defence commitments made at the Lisbon Summit. Following Lisbon, last year we adopted a Cyber Defence Concept, Policy, and Action Plan, which are now being implemented. Building on NATO's existing capabilities, the critical elements of the NATO Computer Incident Response Capability (NCIRC) Full Operational Capability (FOC), including protection of most sites and users, will be in place by the end of 2012. We have committed to provide the resources and complete the necessary reforms to bring all NATO bodies under centralised cyber protection, to ensure that enhanced cyber defence capabilities protect our collective investment in NATO. We will further integrate cyber defence measures into Alliance structures and procedures and, as individual nations, we remain committed to identifying and delivering national cyber defence capabilities that strengthen Alliance collaboration and interoperability, including through NATO defence planning processes. We will develop further our ability to prevent, detect, defend against, and recover from cyber attacks. To address the cyber security threats and to improve our common security, we are committed to engage with relevant partner nations on a case-by-case basis and with international organisations, inter

alia the EU, as agreed, the Council of Europe, the UN and the OSCE, in order to increase concrete cooperation. We will also take full advantage of the expertise offered by the Cooperative Cyber Defence Centre of Excellence in Estonia.

50. We continue to be deeply concerned about the proliferation of nuclear weapons and other weapons of mass destruction (WMD), as well as their means of delivery. Proliferation threatens our shared vision of creating the conditions necessary for a world without nuclear weapons in accordance with the goals of the Nuclear Non-Proliferation Treaty (NPT). We share the United Nations Security Council's serious concern with Iran's nuclear programme and call upon Iran to fully comply with all its international obligations, including all relevant Resolutions of the United Nations Security Council and the International Atomic Energy Agency Board of Governors. We further call upon Iran to cooperate with the international community to build confidence in the exclusively peaceful nature of its nuclear programme in compliance with its NPT obligations. We support the immediate resolution of the Iranian nuclear issue through diplomatic means and encourage a sustained process of engagement within the format of the P5+1 and Iran talks. We are deeply concerned by the proliferation activities of the Democratic People's Republic of Korea (DPRK) and call on it to comply fully with all relevant UNSCRs and international obligations, especially by abandoning all activities related to its existing nuclear weapons and ballistic missile programmes, in a complete, verifiable and irreversible manner. We strongly condemn the launch by the DPRK on 13 April 2012 using ballistic missile technology. We call for universal adherence to, and compliance with, the NPT and the Additional Protocol to the International Atomic Energy Agency Safeguard Agreement, and call for full implementation of UNSCR 1540 and welcome further work under UNSCR 1977. We also call on all states to strengthen the security of nuclear materials within their borders, as called for at the 2012 Seoul Nuclear Security Summit. We will continue to implement NATO's Strategic-Level Policy for Preventing the Proliferation of WMD and Defending Against Chemical, Biological, Radiological and Nuclear (CBRN) Threats. We will ensure NATO has the appropriate capabilities, including for planning efforts, training and exercises, to address and respond to CBRN attacks.

51. Terrorism in all its forms and manifestations can never be tolerated or justified. We deplore all loss of life from acts of terrorism and extend our sympathies to the victims. We reaffirm our commitment to fight terrorism with unwavering resolve in accordance with international law and the principles of the UN Charter. Today we have endorsed NATO's Policy Guidelines on Counter-Terrorism, and task the Council to prepare an Action Plan to further enhance NATO's ability to prevent, deter, and respond to terrorism by identifying initiatives to enhance our threat awareness, capabilities, and engagement.

52. A stable and reliable energy supply, diversification of routes, suppliers and energy resources, and the interconnectivity of energy networks, remain of critical importance. While these issues are primarily the responsibility of national governments and other international organisations concerned, NATO closely follows relevant developments in energy security. Today, we have noted a progress report which outlines the concrete steps taken since our last Summit and describes the way forward to integrate, as appropriate, energy security considerations in NATO's policies and activities. We will continue to consult on energy security and further develop the capacity to contribute to energy security, concentrating on areas where NATO can add value. To this end, we will work towards significantly improving the energy efficiency of our military forces; develop our competence in supporting the protection of critical energy infrastructure; and further develop our outreach activities in consultation with partners, on a case-by-case basis. We welcome the offer to establish a NATO-accredited Energy Security Centre of Excellence in Lithuania as a contribution to NATO's efforts in this area. We task the Council to continue to refine NATO's role in energy security in accordance with the principles and the guidelines agreed at the Bucharest Summit and the direction provided by the new Strategic Concept as well as the Lisbon decisions. We task the Council to produce a further progress report for our next Summit.

53. Key environmental and resource constraints, including health risks, climate change, water scarcity and increasing energy needs will further shape the future security environment in areas of concern to NATO and

have the potential to significantly affect NATO planning and operations.

54. In Lisbon, we called for a review of NATO's overall posture in deterring and defending against the full range of threats to the Alliance, taking into account the changes in the evolving international security environment. We have today approved, and made public, the results of our Deterrence and Defence Posture Review. NATO is committed to maintaining an appropriate mix of nuclear, conventional and missile defence capabilities for deterrence and defence to fulfil its commitments as set out in the Strategic Concept. Consistent with the Strategic Concept and their commitments under existing arms control treaties and frameworks, Allies will continue to support arms control, disarmament, and non-proliferation efforts.

55. We will ensure that the Alliance continues to have the capabilities needed to perform the essential core tasks to which we committed ourselves in the Strategic Concept. To that end, we have agreed a separate Chicago Defence Declaration and endorsed the Defence Package for the Chicago Summit, outlining a vision and a clear way forward towards our goal of NATO Forces 2020.

56. We welcome the recent Council decision to continue the NATO Air Policing Mission in the Baltic states, and appreciate the recent commitment by the Baltic states to enhance their host nation support to the participating Allies. Allies remain committed to contributing to this mission, which is also an example of Smart Defence in practice. This peacetime mission and other Alliance air policing arrangements demonstrate the Alliance's continued and visible commitment to collective defence and solidarity.

57. The Alliance's recent operational experiences also show that the ability of NATO forces to act together seamlessly and rapidly is critical to success. We will, therefore, ensure that the Alliance's forces remain well connected through expanded education, training and exercises. In line with the Alliance's commitment to transparency, and in the expectation of reciprocity, these activities are open for partner participation and observation on a case-by-case basis. In this context, we attach particular importance to next year's "Steadfast Jazz" exercise for the NATO Response

Force which, along with other exercises, will contribute to the ability of NATO forces to operate together anywhere on Alliance territory and in wider crisis management operations.

58. We continue to be concerned by the increasing threats to our Alliance posed by the proliferation of ballistic missiles. At our Summit in Lisbon we decided to develop a NATO Ballistic Missile Defence (BMD) capability to pursue our core task of collective defence. The aim of this capability is to provide full coverage and protection for all NATO European populations, territory and forces against the increasing threats posed by the proliferation of ballistic missiles, based on the principles of indivisibility of Allied security and NATO solidarity, equitable sharing of risks and burdens, as well as reasonable challenge, taking into account the level of threat, affordability and technical feasibility and in accordance with the latest common threat assessments agreed by the Alliance. Should international efforts reduce the threats posed by ballistic missile proliferation, NATO missile defence can, and will, adapt accordingly.

59. Missile defence can complement the role of nuclear weapons in deterrence; it cannot substitute for them. This capability is purely defensive.

60. We are pleased today to declare that the Alliance has achieved an Interim NATO BMD Capability. It will provide with immediate effect an operationally significant first step, consistent with our Lisbon decision, offering the maximum coverage within available means, to defend our populations, territory and forces across southern NATO Europe against a ballistic missile attack. Our aim remains to provide the Alliance with a NATO operational BMD that can provide full coverage and protection for all NATO European populations, territory and forces, based on voluntary national contributions, including nationally funded interceptors and sensors, hosting arrangements, and on the expansion of the Active Layered Theatre Ballistic Missile Defence (ALTBMD) capability. Only the command and control systems of ALTBMD and their expansion to territorial defence are eligible for common funding. Within the context of the NATO BMD capability, Turkey hosts a forward-based early-warning radar. We note the potential opportunities for cooperation on missile defence, and encourage Allies to explore possible additional voluntary contributions, including through multinational cooperation, to provide

relevant capabilities, as well as to use potential synergies in planning, development, procurement, and deployment.

61. As with all of NATO's operations, full political control by Allies over military actions undertaken pursuant to this Interim Capability will be ensured. Given the short flight times of ballistic missiles, the Council agrees the pre-arranged command and control rules and procedures including to take into account the consequences of intercept compatible with coverage and protection requirements. We have tasked the Council to regularly review the implementation of the NATO BMD capability, including before the Foreign and Defence Ministers' meetings, and prepare a comprehensive report on progress and issues to be addressed for its future development, for us by our next Summit.

62. The Alliance remains prepared to engage with third states, on a case by case basis, to enhance transparency and confidence and to increase ballistic missile defence effectiveness. Given our shared security interests with Russia, we remain committed to cooperation on missile defence in the spirit of mutual trust and reciprocity, such as the recent NRC Theatre Missile Defence Exercise. Through ongoing efforts in the NATO-Russia Council, we seek to determine how independent NATO and Russian missile defence systems can work together to enhance European security. We look forward to establishing the proposed joint NATO-Russia Missile Data Fusion Centre and the joint Planning Operations Centre to cooperate on missile defence. We propose to develop a transparency regime based upon a regular exchange of information about the current respective missile defence capabilities of NATO and Russia. Such concrete missile defence cooperation is the best means to provide Russia with the assurances it seeks regarding NATO's missile defence plans and capabilities. In this regard, we today reaffirm that the NATO missile defence in Europe will not undermine strategic stability. NATO missile defence is not directed against Russia and will not undermine Russia's strategic deterrence capabilities. NATO missile defence is intended to defend against potential threats emanating from outside the Euro-Atlantic area. While regretting recurrent Russian statements on possible measures directed against NATO's missile defence system, we welcome Russia's willingness to continue dialogue with the purpose of finding an

agreement on the future framework for missile defence cooperation.

63. We remain committed to conventional arms control. NATO CFE Allies recall that the decisions taken in November 2011 to cease implementing certain CFE obligations with regard to the Russian Federation are reversible, should the Russian Federation return to full implementation. NATO CFE Allies continue to implement fully their CFE obligations with respect to all other CFE States Parties. Allies are determined to preserve, strengthen and modernise the conventional arms control regime in Europe, based on key principles and commitments, and continue to explore ideas to this end.

64. At our Summit in Lisbon, we agreed on an ambitious reform programme. This package of reforms remains essential for guaranteeing the Alliance is responsive and effective in carrying out the ambitious tasks envisioned in our Strategic Concept, the Lisbon Declaration, as well as the Declaration on Defence Capabilities we have adopted today. To this end:

- NATO Command Structure. We are implementing a leaner, more effective and affordable NATO Command Structure with its first phase and its package elements being effective during 2012. The number of subordinate headquarters, as well as the peacetime staffing and establishment, are being significantly reduced and implementation will be complete by 2015.

- NATO Headquarters. We have rationalised a number of services between the International Staff (IS) and the International Military Staff (IMS). The move to the new headquarters in 2016 provides a unique opportunity to achieve more efficient and effective support to the work of the Alliance. We welcome the ongoing review of the IS, and the forthcoming review of the IMS; we look forward to the continuation of these reforms in line with those being carried out by nations. An important part of this comprehensive reform will be a review of our priorities and IS and IMS spending to identify activities that are no longer needed, improve efficiency, and achieve savings. This review will take place with the appropriate involvement of the Military Committee.

- NATO Agencies. The consolidation and rationalization of the existing NATO Agencies' functions and services is underway with new NATO

Agencies for Support, Communication & Information, and Procurement, to be stood up on 1 July 2012. The new Agencies' executives will work to optimise savings and improvements in effectiveness as the new entities mature over the next two years.

o Resource Management. We have achieved solid progress in reforming the management of NATO's resources in the areas of programming, transparency, accountability, and information management. These reforms are making NATO resource and financial management more efficient, and are helping us to match resources to requirements. In this context, we will continue to reform our structures and procedures in order to seek greater efficiencies including from better use of our budgets.

We look forward to a further report on progress on these reforms by the time of our next Summit.

65. We express our appreciation for the generous hospitality extended to us by the Government of the United States as well as the people and City of Chicago. The decisions we have taken at our Summit in Chicago reinforce our common commitments, our capabilities and our cooperation, and will strengthen the Alliance for the years ahead.

1. Australia, Austria, Finland, Georgia, Japan, Jordan, Republic of Korea, Morocco, New Zealand, Qatar, Sweden, Switzerland and the United Arab Emirates.
2. Turkey recognises the Republic of Macedonia with its constitutional name.
3. As complemented by the French President's letter dated 16 August 2008 and subsequent correspondence on this issue.

NAGORNO-KARABAKH CONFLICT IN INTERNATIONAL LEGAL DOCUMENTS AND INTERNATIONAL LAW

Dr. Kamal Makili-Aliyev

Fall 2013