

**IMPLEMENTATION REVIEW
of the
2020 CEASEFIRE TERMS
BETWEEN ARMENIA AND AZERBAIJAN**

DECEMBER 14, 2021



Map of Nagorno-Karabakh (Artsakh) and the surrounding region. Source: <https://www.rferl.org/a/azerbaijan-sues-armenia-at-european-court-over-nagorno-karabakh/31093587.html>

Background

Columbia University's Program on Peacebuilding and Rights (PBHR) has conducted an Implementation Review of the Ceasefire Terms between Armenia and Azerbaijan. It evaluates the compliance of signatories with terms of the ceasefire, as well as peacebuilding measures to stabilize the situation.¹

Nagorno Karabakh (historically and currently also known as "Artsakh") was attacked by Azerbaijan on September 27, 2020. Turkish drones and jihadist mercenaries shaped the battlefield in Azerbaijan's favor, resulting in the deaths of 4,005 Armenians, injury to more than 10,000, and the disappearance of 1,600.² Azerbaijan claims 2,879 of its troops were killed and 28 were missing in action. The Syrian Observatory for Human Rights reported the deaths of 541 Syrian fighters or mercenaries fighting for Azerbaijan.

On November 9, 2020, Russia's President Vladimir Putin brokered a ceasefire agreement between Armenia's Prime Minister Nikol Pashinyan and Azerbaijan's President Ilham Aliyev after 44 days of violent conflict. The ceasefire officially recognized Azerbaijan's battlefield victories³ and required Armenia to hand over territory to Azerbaijan, including the Lachin, Zangelan, and Qubadli regions.

While the agreement *de jure* ended the war, it failed to *de facto* end violence or create an

environment for peacebuilding. Azerbaijan continues its territorial demands, targeting churches and cultural monuments. Armenian Prisoners of War (POWs) are still held by Azerbaijan. There is no accountability for abusers of human rights and violators of international humanitarian law.

During the war launched on November 27, 2020, the PBHR began a project and released a website (<http://www.humanrightscolumbia.org/peace-building/atrocities-artsakh-nagorno-karabakh>) documenting "Human Rights and Foreign Terrorist Activities in Artsakh (Nagorno-Karabakh)." The project draws on primary sources documenting crimes against humanity and other atrocities committed by Azerbaijani armed forces and Turkish-backed Islamist fighters against Armenians. Information includes: (i) reports issued by the Ombudsman on Human Rights in Artsakh and reports by other reputable human rights sources; (ii) news articles and opinion pieces covering the events; (iii) password-protected videos (with gruesome imagery); (iv) targeting culture; (v) humanitarian agencies involved in the conflict; (vi) information on hate crimes in the West; (vii) perpetrators of the conflict and war crimes; (viii) commentaries from the project director, David L. Phillips; and (ix) consolidated information on Armenian prisoners of war. The website, which offers materials in English, is updated regularly to provide information in real-time.

¹ This report represents the current phase of PBHR's involvement in Artsakh. PBHR launched a documentation project soon after Azerbaijan attacked on September 27, 2020. The Artsakh Atrocities Project bears witness to crimes against humanity in the hope that transparency would deter future crimes and preserve evidence to hold perpetrators accountable. <http://www.humanrightscolumbia.org/peace-building/atrocities-artsakh-nagorno-karabakh>

² "Nagorno-Karabakh: A Fragile Peace", Arte TV, France, Nov 19, 2021.

³ "Armenia: Protesters storm gov't building amid political crisis", Al Jazeera, March 1 2021, <https://www.aljazeera.com/news/2021/3/1/armenian-protesters-break-into-government-building-report>.

This Columbia implementation review will be disseminated to stakeholders, including participants in the meeting of the Organization for Security and Cooperation in Europe (OSCE) on December 15, 2021. PBHR hopes that its report directs international attention to the conflict, engaging the international community, especially members of the OSCE's Minsk Group – the United States, Russian Federation, and France.

Article 1

Ceasefire and cessation of all hostilities with forces remaining at their current positions.

Azerbaijan continued its provocative and aggressive actions after the ceasefire, seizing 41 km² of Armenian territory on May 21, 2021. According to Pashinyan, the border is relatively calm, but "the general situation remains extremely tense".⁴ Armed conflict was renewed on November 14, 2021, when Azerbaijani forces launched a cross-border operation. Azerbaijan took control of 13 villages adjoining the city of Gabriel south of Artsakh with violence concentrated in the

southern Syunik region⁵ and along the Armenia-Azerbaijan border near Lake Sev. 15 Armenian servicemen died, 12 were taken hostage, and 4 wounded in the November operation. The Government of Armenia reports 56 incidents perpetrated by Azerbaijani Armed Forces during which 3 civilians were killed, 24 civilians were targeted, 9 civilians were wounded, 6 people were physically assaulted, and 2 were threatened with death. Azerbaijani operations targeted Armenian lands not affected by the war itself. This "creeping encroachment" seeks to leverage concessions from Armenia on border demarcation.⁶

As recently as December 10, 2021, media reports indicated that fighting has intensified.⁷ Aliyev has been consistent threatening force that contradicts the commitments undertaken.⁸

Extensive property damage resulted from the use of munitions. The Agrarian Union of Armenia asserts that 3,000 hectares of orchards were destroyed as a result of the conflict.⁹ Water supplies were interrupted, impacting livestock and the agricultural sector.¹⁰ Around 40,000 people are presently

⁴ "At the moment situation on Armenia-Azerbaijan border relatively calm – PM Pashinyan", ArmenPress, November 16, 2021, <https://armenpress.am/eng/news/1068344.html>.

⁵ "Azerbaijan keeps 41 sq. km of Armenian sovereign territory under occupation", Public Radio of Armenia, November 16, 2021.

⁶ Sheila Paylan, "The U.N. Must Investigate Nagorno-Karabakh War Crimes", Foreign Policy, October 7, 2021, <https://foreignpolicy.com/2021/10/07/the-u-n-must-investigate-nagorno-karabakh-war-crimes/>.

⁷ "Fighting Continues On Armenian-Azeri Border", Azatutyun, December 10, 2021, <https://www.azatutyun.am/a/31603166.html>; AP News, "Armenia reports 1 dead, 8 wounded in clashes with Azerbaijan", NBC News, December 10, 2021, <https://www.nbcnews.com/news/world/armenia-reports-1-dead-8-wounded-clashes-azerbaijan-n1285746>.

⁸ Ani Avetisyan, "Aliyev threatens to establish 'corridor' in Armenia by force", OC Media, April 21, 2021, <https://oc-media.org/aliyev-threatens-to-establish-corridor-in-armenia-by-force/>; "Armenia calls Russia, CSTO and UN to pay attention to Baku's threats against Yerevan", TASS, December 7, 2021, <https://tass.com/world/1371917>.

⁹ "Farmers in Nagorno-Karabakh lost some 3,000 hectares of orchard", Arka News Agency, March 15, 2021, http://arka.am/en/news/business/farmers_in_nagorno_karabakh_lost_some_3_000_hectares_of_orchard/.

¹⁰ Gevorg Mnatsakanyan, "Heatwave, drought and war leave Nagorno-Karabakh short of water", EurasiaNet, September 8, 2021, <https://eurasianet.org/heatwave-drought-and-war-leave-nagorno-karabakh-short-of-water>.

homeless, displaced by conflict.¹¹ Displaced persons lack livelihoods, surviving on subsistence support from Artsakh authorities.¹²

Aliyev's hate speech and warmongering exacerbate fears.¹³ Armenia filed a lawsuit with the UN International Court of Justice (ICJ), accusing Baku of violating the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination. The ICJ ruled in Armenia's favor, demanding that Azerbaijan stop racial hatred towards Armenians. It instructed Azerbaijan to "take all necessary measures to prevent the incitement and promotion of racial hatred and discrimination including by its officials in public institutions targeted at persons of Armenian national or ethnic origin", and to prevent and punish those who vandalize and desecrate Armenian cultural heritage, including churches and other places of worship, monuments, natural sites, cemeteries, and artifacts.¹⁴ "The [OSCE Minsk Group] Co-Chair countries issued a statement on November 26, 2021, calling on "Armenia and Azerbaijan to refrain from

inflammatory rhetoric and provocative actions and to implement in full their commitments and other jointly agreed ceasefire arrangements."¹⁵

Azerbaijan maintains that it has no territorial claims on Armenia. At the same time, Aliyev claims that Yerevan is historically Azerbaijani.¹⁶ This claim is a bargaining tactic as the countries start talks on demarcation and transportation agreements.¹⁷ After a trilateral meeting in Sochi on November 26, 2021, the US, Russia, and France called on Armenia and Azerbaijan to resume "direct dialogue" and fully comply with the agreements brokered by Moscow.¹⁸

In a hopeful step, Armenia and Azerbaijan recently agreed to establish a hotline between their ministries of defense to deter deadly clashes.¹⁹ Pashinyan maintains that the hotline will make communication between the Armenian and Azerbaijani governments more routine, which will "help stabilize the situation, find solutions and try to avoid crises."²⁰

¹¹ "34,000 people left homeless in Nagorno-Karabakh", Caucasian Knot, January 15, 2021, <https://www.eng.kavkaz-uzel.eu/articles/53394/>.

¹² "Karabakh President: Homeless people to be provided with dwellings in the course of three years", News.am, December 16, 2021, <https://news.am/eng/news/619255.html>.

¹³ US Rep. Jackie Speier on Twitter, December 12, 2020, <https://twitter.com/repspeier/status/1337570719924953091>.

¹⁴ Stephanie van der Berg, "World Court orders Azerbaijan to prevent incitement of racial hatred against Armenians", Reuters, December 7, 2021, <https://www.reuters.com/world/europe/world-court-orders-azerbaijan-prevent-incitement-racial-hatred-against-armenians-2021-12-07/>.

¹⁵ "Armenia, Azerbaijan Urged To Honor Russian-Brokered Deals", Azatutyun, December 8, 2021, <https://www.azatutyun.am/a/31599613.html>.

¹⁶ Ilham Karimli, "President Aliyev Says Azerbaijan Does Not Have Territorial Claims Against Armenia", Caspian News, April 19, 2021, <https://caspiannews.com/news-detail/president-aliyev-says-azerbaijan-does-not-have-territorial-claims-against-armenia-2021-4-19-0/>.

¹⁷ "Armenia, Azerbaijan: Russia-brokered Ceasefire Holds After Clashes", Stratfor, November 17 2021.

¹⁸ "Armenia, Azerbaijan Urged To Honor Russian-Brokered Deals", Azatutyun, December 8, 2021, <https://www.azatutyun.am/a/31599613.html>.

¹⁹ AP News Wire, "Armenian PM: Hotline with Azerbaijan set up after clashes", The Independent, November 23, 2021, <https://www.independent.co.uk/news/world/americas/us-politics/azerbaijan-nikol-pashinyan-nagornokarabakh-yerevan-vladimir-putin-b1963156.html>.

²⁰ AP News Wire, "Armenian PM: Hotline with Azerbaijan set up after clashes", The Independent, November 23, 2021, <https://www.independent.co.uk/news/world/americas/us-politics/azerbaijan-nikol-pashinyan-nagornokarabakh-yerevan-vladimir-putin-b1963156.html>.

Article 2

Return of Aghdam region to the control of the Republic of Azerbaijan by November 20, 2020, the Kelbajar region by November 15, 2020 [extended to November 25, 2020], and the Lachin region by December 1, 2020. The Lachin corridor (5 km wide), will provide for communication between Nagorno-Karabakh and Armenia and at the same time will not affect the city of Shushi, which shall remain under the control of the peacekeeping troops of the Russian Federation.

Armenia relinquished all territories specified in the agreement, in their entirety, and on schedule. Aghdam was transferred to Azerbaijan on November 20, 2020; Kelbajar on November 25, 2020, in accordance with an agreed extension of the deadline; and Lachin on December 1, 2020.²¹ The Lachin corridor continues to be patrolled by Russian peacekeepers and Azerbaijani soldiers, but there have been incidents, including explosions and the killing of Armenian civilians that hinder the functioning of the corridor, which connects Armenia and Artsakh.²²

Article 3

Deployment of peacekeeping troops of the Russian Federation along the line of contact in Nagorno-Karabakh and along the Lachin

corridor. The peacekeeping troops of the Russian Federation shall stay there for a period of 5 years, with automatic extension for the next 5-year periods.

Russia has total control over the Lachin corridor, as stated above. The presence of Russian peacekeepers is vital to mitigating deadly conflict and facilitating the return of displaced people to their homes. According to Putin, “The latest skirmishes along the Armenian-Azerbaijani border prove that the situation there has not finally calmed down yet. Russian peacekeepers, as guarantors of the ceasefire and the safety of the civilian population, is extremely important.”²³ By requesting an extended period of Russian peacekeeping operations, Armenia seeks to prevent future Azerbaijani aggression.²⁴

The mandate of Russian peacekeepers is not defined, nor has their role been endorsed by Minsk Group members or the OSCE as a whole. Russian peacekeepers lack an international mandate to mediate.²⁵ Instances have been reported when Russian peacekeepers observed Armenians being killed by Azerbaijani forces but did not intervene claiming that their responsibility excluded peace enforcement.²⁶

About 30 civilian settlements in Artsakh are near the line of contact in close proximity to Azerbaijani military positions. Artillery and

²¹ “Azerbaijani Forces Enter Third District Under Nagorno-Karabakh Truce”, RFE-RL, November 30, 2020, <https://www.rferl.org/a/azerbaijani-forces-enter-third-district-under-nagorno-karabakh-truce/30977052.html>.

²² Joshua Kecera, “Tension again spikes between Armenia and Azerbaijan”, EurasiaNet, November 15, 2021, <https://eurasianet.org/tension-again-spikes-between-armenia-and-azerbaijan>.

²³ “Putin Upbeat on Prospects Of Armenian-Azerbaijani Settlement”, RFE/RL Report, November 18, 2021.

²⁴ “Yerevan interested in Russian peacekeepers’ prolonged deployment to Karabakh”, TASS, October 29, 2021, <https://tass.com/world/1355877>.

²⁵ András Rácz, “In Russia’s Hands: Nagorno-Karabakh after the ceasefire agreement”, European Union Institute for Security Studies, Brief 8, April 2021, https://www.iss.europa.eu/sites/default/files/EUISSFiles/Brief_8_2021.pdf.

²⁶ “Karabakh Civilian Killed In Truce Violation”, Azatutyun, October 11, 2021, <https://www.azatutyun.am/a/31503243.html>.

small arms fire occur regularly, endangering civilians and agricultural workers. Russian troops often deny access to foreign reporters and humanitarian agencies, which hinders monitoring.²⁷

A legal and functional distinction exists between the “line of contact” and legally demarcated and recognized borders. The failure to demarcate the border is a flashpoint for conflict escalation. Beginning in May 2021, Pashinyan indicated his acceptance of three Russian proposals concerning the demarcation and delimitation of the border between Armenia and Azerbaijan.²⁸ After the Sochi meeting on November 26, 2021, the Minsk Group co-chairs admonished Armenia and Azerbaijan to resolve border disputes through negotiations.²⁹

Russian peacekeeping operations (PKO) lack transparency and accountability. While Moscow finds it convenient at times to work through the Minsk Group, it also acts unilaterally to advance its national interests and circumvent other co-chairs.³⁰ Russia collaborates with Turkey³¹, a member of the Minsk Group, without involving the co-chairs.³²

Article 4

Withdrawal in parallel of Armenian armed forces.

Armenia relinquished all territories in their entirety and on schedule as specified by the agreement. However, Azerbaijan’s Ministry of Defense claimed that “Illegal Armenian armed detachments occasionally try to commit provocations and affect the demarcation process.”³³ It cited skirmishes and shootings along the border, blaming Armenians.

Article 5

Creation of a peacekeeping center to monitor the ceasefire.

Both Armenia and Azerbaijan allege ceasefire violations. To deter provocations, Pashinyan proposed stationing of Russian troops on the border between Armenia and Azerbaijan.. While Azerbaijan is responsible for the preponderance of violent incidents, Baku and Yerevan each have their own version of events and deny allegations of the other. On November 22, Yerevan claimed that Azerbaijani soldiers killed an Armenian soldier, which Baku denied.³⁴ Russia and

²⁷ “Russian peacekeepers deny foreign reporters access to Nagorno-Karabakh”, Reporters Without Borders, April 9, 2021, <https://rsf.org/en/news/russian-peacekeepers-deny-foreign-reporters-access-nagorno-karabakh>.

²⁸ “Yerevan gives nod to Moscow’s proposals to prepare for border demarcation with Baku”, TASS, November 18, 2021.

²⁹ “Armenia, Azerbaijan Urged To Honor Russian-Brokered Deals”, Azatutyun, December 8, 2021, <https://www.azatutyun.am/a/31599613.html>.

³⁰ Vladimir Socor, “Russian ‘Peacekeeping’ in Karabakh: Old Model, New Features, Mission Creep (Part Three)”, Jamestown Foundation, January 26, 2021, <https://jamestown.org/program/russian-peacekeeping-in-karabakh-old-model-new-features-mission-creep-part-three/>.

³¹ Daria Isachenko, “Turkey–Russia Partnership in the War over Nagorno-Karabakh”, SWP, 2020, <https://www.swp-berlin.org/en/publication/turkey-russia-partnership-in-the-war-over-nagorno-karabakh>.

³² Laurence Broers, “Perspectives | The OSCE’s Minsk Group: A unipolar artifact in a multipolar world”, EurasiaNet, May 11, 2021, <https://eurasianet.org/perspectives-the-osces-minsk-group-a-unipolar-artifact-in-a-multipolar-world>.

³³ Letter sent by Azerbaijan’s Ministry of Defense to the Russian Ministry of Defence and the Command of the Peacekeeping Forces on September 12, 2021.

³⁴ “Yerevan Claim That Armenian Soldier Was Killed By Azerbaijani Forces Is Denied By Baku”, RFE-RL, November 22, 2021, <https://www.rferl.org/a/armenia-troop-killed-karabakh/31573894.html>.

Turkey have established their own ceasefire monitoring center³⁵, which is problematic because (i) Turkey was not a signatory to the ceasefire, (ii) Armenia has not agreed to this center as an objective monitor³⁶, and (iii) Turkey backs Azerbaijan politically and militarily.³⁷ More transparency and cooperation is expected from Turkey, as a member of the Minsk Group as well as the North Atlantic Treaty Organization (NATO).

This expectation is likely unrealistic. Turkey is a party to the conflict; its vice president confirmed that Turkey's National Intelligence Organization (MİT) played an active role in the 2020 Nagorno-Karabakh war. This was confirmed by Sergey Naryshkin, head of the Russian Foreign Intelligence Service, "We know the work of Turkish intelligence, and we see certain elements of its work." He also indicated that Russia had obtained confirmed intelligence about the participation of Turkish-backed Syrian mercenaries on the battlefield. "We have precise information about the presence of terrorists in the combat zone in the Karabakh region, from the Middle East, and from Syria primarily."³⁸ At the same time, Turkey was and continues to be a participant in the war.³⁹ It has opened a joint

monitoring center with Russia which further undercuts the OSCE and efforts toward lasting peace.⁴⁰

Article 6

Plan for construction of a new route along the Lachin corridor within the next three years, providing communication between Nagorno-Karabakh and Armenia, with the subsequent redeployment of Russian peacekeeping troops to protect this route.

Putin emphasized that "Restoring economic ties in the South Caucasus and unblocking transport corridors" is critical to peacebuilding. He indicated, "We have created a corresponding interstate commission at the level of deputy prime ministers, it is working..."⁴¹ The ceasefire terms call for the Lachin corridor to be 5 Km wide in order to effectively facilitate contact, communication, and cooperation between Armenians and Azerbaijanis.

Talks on new transport constructions collapsed after Azerbaijan insisted on building a "corridor" through Armenia, connecting Azerbaijan and the Nakhichevan

³⁵ "Turkish-Russian Center Begins Monitoring Nagorno-Karabakh Truce", Reuters, January 30, 2021, <https://www.reuters.com/article/uk-armenia-azerbaijan-monitoring-centre-idUSKBN29Z0FL>.

³⁶ András Rácz, "In Russia's Hands: Nagorno-Karabakh after the ceasefire agreement", European Union Institute for Security Studies, Brief 8, April 2021, https://www.iss.europa.eu/sites/default/files/EUISSFiles/Brief_8_2021.pdf.

³⁷ Kareem Fahim, "Turkey's military campaign beyond its borders is powered by homemade armed drones", Washington Post, November 29, 2020, https://www.washingtonpost.com/world/middle_east/turkey-drones-libya-nagorno-karabakh/2020/11/29/d8c98b96-29de-11eb-9c21-3cc501d0981f_story.html.

³⁸ Levent Kenez, "VP confirms Turkish intelligence was involved in Nagorno-Karabakh war", Nordic Monitor, December 3, 2021, (accessed December 7, 2021), <https://nordicmonitor.com/2021/12/vice-president-confirms-turkish-intelligence-involved-in-nagorno-karabakh-war-refuting-long-denied-claim/?fbclid=IwAR0yL6siBzzSHqT45TLTKrvyiRpmmaP4VTDmwf1Lkk2OBcScvPTx3C45s>.

³⁹ "Ilham Aliyev summed up the results of Azerbaijan's chairmanship in the Turkic Council", Vestnik Kavkaza, November 12, 2021, <https://vestnikkavkaza.net/news/Ilham-Aliyev-summed-up-the-results-of-Azerbaijan-s-chairmanship-in-the-Turkic-Council.html>.

⁴⁰ "Turkish-Russian Center Begins Monitoring Nagorno-Karabakh Truce", RFE-RL, January 30, 2021, <https://www.rferl.org/a/turkey-russia-nagorno-karabakh-cease-fire-center-/31077154.html>.

⁴¹ "In pictures: Azerbaijan's controversial war park", BBC News, April 26, 2021, <https://www.bbc.co.uk/news/world-europe-56885719>.

Autonomous Republic.⁴² Armenia is concerned about further incursions into its territory.⁴³ No new discussions on this topic have occurred since mid-2021, though Aliyev insists on moving forward. Some steps have been taken to connect Nakhichevan and other parts of Azerbaijan, which delays the establishment of a new route along the Lachin corridor (“Berzdor” in Armenian).⁴⁴

Article 7

The Republic of Azerbaijan shall guarantee traffic safety for citizens, vehicles, and goods in both directions along the Lachin corridor.

Ilham Aliyev continues to demonize Armenians through hate speech. Azerbaijan established a war trophies park, displaying helmets and other personal effects taken from dead Armenian soldiers.⁴⁵ In January 2021, a commemorative stamp of the Karabakh

conflict was released by Azerbaijan, with an image of an Azerbaijani soldier in a hazmat suit.⁴⁶ Aliyev’s vitriol is consistent and incendiary, generating ill-will towards Armenians in Azerbaijani society.

Russian peacekeepers assert arbitrary control of the Lachin corridor⁴⁷, restricting access by international media and humanitarian organizations.⁴⁸ Lachin has been mostly depopulated as a result of the war and the Russian PKO. Access for both Armenians and Azerbaijanis is limited,⁴⁹ violating accessibility called for in the agreement.

Article 8

Internally displaced persons and refugees shall return to Nagorno-Karabakh and adjacent areas under the control of the Office of the UN High Commissioner for Refugees.

⁴² “Armenian side hasn’t discussed and will not discuss issues within logic of “corridor” – caretaker deputy PM”, ArmenPress, June 1, 2021, <https://armenpress.am/eng/news/1054006.html?fbclid=IwAR1rEPitBjv-iBmeRvXTaSepe-F1NmNWKMJ2YtKehbDJZqblqLufacUVqD0>.

⁴³ Joshua Kecera, “Armenia and Azerbaijan suspend “corridor” talks”, EurasiaNet, June 4, 2021, <https://eurasianet.org/armenia-and-azerbaijan-suspend-corridor-talks>.

⁴⁴ “In Sochi, Putin refers to the opening of transport corridors between Armenia and Azerbaijan”, CivilNet, November 26, 2021, <https://www.civilnet.am/news/641239/in-sochi-putin-refers-to-the-opening-of-transport-corridors-between-armenia-and-azerbaijan/?lang=en>.

⁴⁵ “Fury in Armenia as Azerbaijan displays war trophies”, Al Jazeera, April 13, 2021, <https://www.aljazeera.com/news/2021/4/13/fury-in-armenia-as-azerbaijan-displays-war-trophies>.

⁴⁶ Lucia de la Torre, “Azerbaijani postal stamps accused of spreading anti-Armenian propaganda”, The Calvert Journal, January 12, 2021, <https://www.calvertjournal.com/articles/show/12442/azerbaijan-stamps-nagorno-karabakh-war-anti-armenian-propaganda>.

⁴⁷ “Photo Gallery: Russian peacekeepers at observation posts provide round-the-clock control of the situation and the ceasefire regime in Nagorno-Karabakh”, Ministry of Defence of the Russian Federation, November 22, 2021, https://eng.mil.ru/en/russian_peacekeeping_forces/news/more.htm?id=12394921@egNews.

⁴⁸ Jonah Fisher, “BBC Our World: Who Won the Karabakh War”, BBC Our World, March 2021, <https://www.youtube.com/watch?v=7lsq8db5-8I>.

⁴⁹ Sara Petrosyan, “A small number of Armenians still live in Kashatagh, but it is due to the whim of the Russians”, Hetq, February 22, 2021, translated by Google Translate from Armenian to English, https://hetq-am.translate.goog/hy/article/127779?_x_tr_sl=auto&_x_tr_tl=en&_x_tr_hl=en-GB&_x_tr_pto=nui.

Azerbaijan blocks access by international humanitarian organizations to Artsakh, including UN agencies.⁵⁰ The Council of Europe asserts that humanitarian agencies have limited access to all conflict-affected areas, which undermines the return of displaced persons.⁵¹

The agreement refers to “internally displaced refugees”, a term that does not exist in international law. The United Nations defines internally-displaced people (IDPs) as “persons or groups of persons who have been forced...to leave their homes...to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized border.”⁵² Since Karabakh is internationally recognized as part of

Azerbaijan, this means only Azerbaijanis can be considered “internally-displaced”.⁵³

Aliyev insists that IDPs will be returned in 2022.⁵⁴ However, there is no plan for returning refugees, whom the UN defines as “[those who] owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable...to avail himself of the protection of that country”.⁵⁵ This applies particularly to the 90,000 Armenians displaced by the conflict.⁵⁶

Article 9

*Exchange of prisoners of war, hostages, and other detained persons and bodies of the dead.*⁵⁷

⁵⁰ “Azerbaijan Prevents Humanitarian Organizations Access to Karabakh Even After Putin’s Call”, CivilNet, March 18, 2021, <https://www.civilnet.am/news/573554/azerbaijan-prevents-humanitarian-organizations-to-karabakh-even-after-putins-call/?lang=en>.

⁵¹ “Memorandum: Humanitarian and human rights protection needed following the 2020 outbreak of hostilities between Armenia and Azerbaijan over Nagorno-Karabakh”, Council of Europe, November 11, 2021, <https://www.coe.int/en/web/commissioner/-/humanitarian-and-human-rights-protection-needed-following-the-2020-outbreak-of-hostilities-between-armenia-and-azerbaijan-over-nagorno-karabakh>.

⁵² “Guiding Principles on Internal Displacement”, UNHCR Office of the High Commissioner, <https://www.ohchr.org/EN/Issues/IDPersons/Pages/Standards.aspx>.

⁵³ “UNHCR publication for CIS Conference (Displacement in the CIS) - Conflicts in the Caucasus”, UNHCR, May 1, 1996, <https://www.unhcr.org/uk/publications/refugeemag/3b5583fd4/unhcr-publication-cis-conference-displacement-cis-conflicts-caucasus.html>.

⁵⁴ “Azerbaijani refugees to return to Nagorno-Karabakh in 2022: Aliyev”, Daily Sabah, April 14, 2021, <https://www.dailysabah.com/politics/diplomacy/azerbaijani-refugees-to-return-to-nagorno-karabakh-in-2022-aliyev>.

⁵⁵ “Refugees”, UN Global Issues, <https://www.un.org/en/global-issues/refugees>.

⁵⁶ Andrew Connelly, “Nagorno-Karabakh refugees see little chance of returning home after peace deal”, Politico, November 30, 2020, <https://www.politico.eu/article/nagorno-karabakh-refugees-see-little-chance-of-returning-home-after-peace-deal/>.

⁵⁷ Incorporates analysis provided by Tom McDonnell, Professor of Law, Pace University (provided on December 9, 2021).

Armenia has released all Azeri POWs,⁵⁸ but Azerbaijan has not.⁵⁹ Over 100 Armenian captives have been repatriated, while at least an equal number is still held by Azerbaijan.⁶⁰ Azerbaijan acknowledges that it initially refused to repatriate 72 POWs, and held them for further investigation and trial.⁶¹ It claims they are terrorists, saboteurs, or war criminals from the 1988-94 Armenia-Azerbaijan conflict. Azerbaijan also seized 62 Armenian soldiers and civilians near the border with Armenia in December 2020, alleging that they were spies and criminals.⁶² In some instances, civilians mistakenly crossed into the territories under the control of Azerbaijan and were apprehended, beaten, and treated inhumanely. Mediation of Russian peacekeepers enabled their return.

Article 118 of the 1949 Third Geneva Convention states, “Prisoners of war shall be released and repatriated without delay after the cessation of hostilities.”⁶³ Both Armenia and Azerbaijan, as parties to the Third Geneva Convention, are obligated to comply. Additionally, the Fourth Geneva Convention

requires ending the “internment” of civilians “as soon as possible after the close of hostilities.”⁶⁴

Combatants in an international armed conflict have immunity from criminal prosecution for using force, including intentionally killing or wounding other combatants and, in some cases, noncombatants. Under the doctrine of combat immunity, a soldier who kills an enemy combatant in a battle may not be tried for murder or for any lesser offense. Combatants may not be charged if property is destroyed during an international armed conflict.

The main exception to combat immunity is committing a war crime, such as purposely killing civilians or destroying a hospital, a church, a temple, or mosque or killing combatants who have laid down their arms or torturing or otherwise mistreating prisoners of war or detained civilians. A closely related exception to combat immunity covers soldiers or any state agent who is on the battlefield without wearing a uniform. Azerbaijan claims that some of the Armenian soldiers and

⁵⁸Russia says all Azeri captives returned under Karabakh deal” Reuters, <https://www.reuters.com/article/us-armenia-azerbaijan-prisoners-russia/russia-says-all-azeri-captives-returned-under-karabakh-deal-idUSKBN29N1SQ>. See also Dozens of Armenian POWs Remain in Azerbaijan Captivity, Eurasianet, January 14, 2021, <https://eurasianet.org/two-months-after-war-dozens-of-armenian-pows-remain-in-azerbaijani-captivity>.

But note that Armenia convicted and sentenced to life two Syrian mercenaries allegedly brought into the conflict by Turkey; mercenaries are not considered prisoners of war and, therefore, lack combat immunities. See also Two Syrians Sentenced to Life for Fighting with Azerbaijan in Karabakh War, Al-Arabiya News May 4, 2021, <https://english.alarabiya.net/News/world/2021/05/04/Two-Syrians-sentenced-to-life-by-Armenia-for-fighting-with-Azerbaijan-in-Karabakh-war>.

⁵⁹ See Azerbaijan: Allow Human Rights Court to Investigate Reports of Detainee Torture, Freedom House, May 11, 2021 (noting the fate of “200 Armenians reportedly in Azerbaijani custody”).

⁶⁰ “Memorandum on the Humanitarian and Human Rights Consequences Following the Outbreak of Hostilities between Armenia and Azerbaijan over Nagorno-Karabakh”, Human Rights Commission, Council of Europe, August 11, 2021, <https://eurasianet.org/a-year-after-war-armenian-prisoners-still-bargaining-chips-in-azerbaijan>.

⁶¹ Armenia v. Azerbaijan and alleged captives: [European Court of Human Rights] Notification to the Committee of Ministers of interim measures indicated, (March 3, 2021) (stating, “Of the 249 Armenians [allegedly captured by Azerbaijan], 72 are still in Azerbaijan, their captivity and detention having been acknowledged by the Azerbaijani Government. In regard to the remaining 112 individuals, the Azerbaijani Government claim that they have not been able to identify them among their captives.”). See also “There are Armenians Captured Before the November 9 statement; Lavrov is Wrong”, Fact Investigation Platform, September 1, 2021, <https://fip.am/en/1675>.

⁶² Memorandum of the Commissioner of Human Rights, *supra* note 7 at 8, para. 37.

⁶³ “Geneva Convention Relative to the Treatment of Prisoners of War (‘Third Geneva Convention’), August 12, 1949, art. 118.

⁶⁴ Geneva Convention Relating to the Status of Civilians, 12 of August 1949, art. 133.

captives it is refusing to repatriate were spies or have committed war crimes.

Five Armenian POWs were repatriated on October 19, 2021.⁶⁵ POWs who returned to Armenia recounted grave violations of human rights and mistreatment in Azerbaijan, beginning immediately upon detention. They described being beaten, tortured, and humiliated by the military personnel who had taken them captive, with abuses continuing during interrogations and the duration of their time in custody. Captives were transported between various penitentiary locations, where they were arbitrarily subjected to physical and psychological torture. POWs were not provided with sufficient food or water. They were deprived of sleep and received minimal medical attention. Poor hygiene conditions affected their health. They also suffered psychological abuse, forced by Azerbaijani guards to chant derogatory anti-Armenian statements.⁶⁶

“Victor’s justice” is widely practiced.⁶⁷ Azerbaijan conducted 45 trials, with no international observers. Forty Armenian

POWs and civilian captives were convicted with sentences of up to 20 years. On July 29, 2021, an Azerbaijan court sentenced 13 Armenian POWs to six years in prison for allegedly carrying out a sabotage operation.⁶⁸ On August 2, 2021, an Azerbaijan military court sentenced two Armenian prisoners of war to 20 years in prison for allegedly torturing Azerbaijan POWs in the first Armenian-Azerbaijan war.⁶⁹ Armenia argued that Azerbaijan denied defendants a series of rights, including the right to counsel.⁷⁰ Among other trial rights, the Third and Fourth Geneva Conventions of 1949 guarantee “assistance of a qualified advocate or counsel” and “defense by a qualified advocate or counsel of his own choice.”⁷¹ The ICCPR likewise provides a plethora of trial rights, including the right to counsel.⁷² Denial of such a fundamental fair trial right as that of counsel undermines not only the legitimacy of these war crime trials but also of the justification for keeping the Armenian POWs in captivity.

⁶⁵ “40 Armenian POWs and civilian captives convicted on baseless charges in Azerbaijan – Artsakh Ombudsman”, Public Radio of Armenia, (Accessed November 24, 2021).

⁶⁶ “Responsibility of Azerbaijan for Torture and Inhuman Treatment of Armenian Captives”, Human Rights Defender of the Republic of Armenia, September 2021.

⁶⁷ Although neither Armenia nor Azerbaijan are parties to the Rome Statute of the International Criminal Court (Armenia has signed but not ratified), they are both parties to the International Covenant on Civil and Political Rights.

⁶⁸ “Azerbaijan Imprisons 13 Armenian Military Personnel For Six Years”, Radio Free Europe, July 23, 2021, <https://www.rferl.org/a/armenian-military-personnel-prison/31373868.html>.

⁶⁹ See also “A fake trial of Armenian prisoners of war was organized in Baku,” First Channel News, June 2, 2021, <https://www.1lurer.am/en/2021/06/02/A-fake-trial-of-Armenian-prisoners-of-war-was-organized-in-Baku/487466>.

⁷⁰ The Armenian representative to the ECtHR stated as follows: “Azerbaijan violates all these norms. It failed to provide prior notification about judicial proceedings, to specify the charges, as well as to extend appropriate legal assistance to the detainees. None of them is represented by a lawyer of their choice in a country where independence of courts is basically non-existent. The judge, who presides over the trials, is notorious for the politically-motivated sentences imposed upon several Azerbaijani HRDs”. “Trial of POWs by Azerbaijan Violates International Law, Yerevan Tells Rights Court”, Asbarez, July 28, 2021, <https://asbarez.com/trial-of-pows-by-azerbaijan-violates-international-law-yerevan-tells-rights-court/>. See also “A Fake Trial of Armenian Prisoners of War Was Organized in Baku”, *supra note 12* (law professor noting that Azerbaijan fails to allow Armenian POWs counsel).

⁷¹ “Geneva Convention Relating the Status of Prisoners of War”, 12 August 1949, arts. 99, 105;” Geneva Convention Relating to the Status of Civilians”, 12 August 1949, art. 72(1).

⁷² International Covenant on Civil and Political Right, 16 December 1966, 993 U.N.T.S. 171, art. 14.

Another measure of the validity and legitimacy of such war crimes charges is cooperation with international bodies investigating the parties' claims. In a suit brought by Armenia against Azerbaijan, the ECHR requested that the Azerbaijan Government "provide specific information on the individuals concerned [the detained Armenians POWs and other captives], including the conditions of their detention, any medical examinations they have undergone and details of the measures that have been taken or are planned to be taken to repatriate them."⁷³ In notifying the Committee of Ministers of the Council of Europe, the ECHR found that Azerbaijan "failed to respect the time-limits set by the Court for the submission of information on the individuals concerned [the Armenian POWs and other captives] and the rather general and limited information provided by them."⁷⁴ The ECHR required Azerbaijan to provide information on the whereabouts and health of Armenian servicemen by December

6. However, Armenia did not receive any notification from the Court by the deadline in response to its lawsuit on November 22 demanding the protection of the fundamental rights of Armenian captives.⁷⁵

According to Amnesty International, both Armenia and Azerbaijan have violated humanitarian law.⁷⁶ However, the scale of violations differs. The former commander of Russian peacekeepers in Nagorno-Karabakh, Rustam Muradov, affirms that Armenia has returned all Azerbaijani POWs.⁷⁷ A full adjudication by the ECHR, the ICJ or by UN Human Rights bodies on the various claims asserted by Armenia and Azerbaijan against one another is pending.

There is more than a *prima facie* case that Azerbaijan failed to fully comply with article 8 of the Trilateral Ceasefire Agreement, with Article 118 of the Third Geneva Convention of 1949, and with Article 133 of the Fourth Geneva Convention, to repatriate without

⁷³ Armenia v. Azerbaijan and alleged captives, *supra* note 8. See also "The interim measure indicated in the case of Armenia v. Azerbaijan and Rule 392 proceedings with regard to alleged captives to remain in force," European Court of Human Rights (March 16, 2021) ("noting that a very large number of Rule 39 9 [interim measures] requests, predominantly directed against Azerbaijan, continue to arrive at the Court, containing allegations that individuals have been captured and, in some cases, severely ill-treated. The Azerbaijani Government have frequently failed to provide the information requested by the Court") (emphasis added).

⁷⁴ *Ibid.*

⁷⁵ "Azerbaijan does not comply with ECHR request for prisoners", First Channel News, December 7, 2021, <https://www.1lurer.am/en/2021/12/07/Azerbaijan-does-not-comply-with-ECHR-request-for-prisoners/618793>.

⁷⁶ "Unlawful Strikes in Nagorno Karabakh," Human Rights Watch December 11, 2020, <https://www.hrw.org/news/2020/12/11/azerbaijan-unlawful-strikes-nagorno-karabakhArmenia>

(condemning Azerbaijan for using "apparently indiscriminate" weapons (cluster bombs) on civilian areas); see also "Unlawful Rocket and Missile Attacks on Azerbaijan", Human Rights Watch, December 11, 2020, <https://www.hrw.org/news/2020/12/11/armenia-unlawful-rocket-missile-strikes-azerbaijan> (describing Armenian attacks on Azerbaijan as "apparently indiscriminate"); see also "Amnesty International, Armenia/Azerbaijan: Decapitation and War Crimes in Gruesome Videos Must be Urgently Investigated", Amnesty International, December 10, 2020 (noting that a video shows Armenian soldiers cutting the ear off a dead Azerbaijani soldier and other videos showing extrajudicial executions of two Armenians by decapitation by Azerbaijani forces).

⁷⁷ "All Azerbaijan soldiers captured in Karabakh have been returned, says Rustam Muradov", News.am, December 9, 2021, <https://news.am/eng/news/676553.html>.

delay prisoners of war and other civilian captives⁷⁸. Unless Azerbaijan makes an immediate and compelling showing that the POWs it detains are responsible for war crimes or espionage, it is required to unconditionally release all Armenian POWs and civilians,⁷⁹ as called for in humanitarian law.⁸⁰

Article 10

Unblocking of all economic and transport links in the region. The Republic of Armenia guarantees the safety of transport links between the western regions of the Republic of Azerbaijan and the Nakhichevan Autonomous Republic with a view to organizing the unimpeded movement of citizens, vehicles and goods in both directions. Control over transport communication is exercised by the Border Guard Service bodies of the FSS of Russia. New transport communications linking the Nakhichevan Autonomous Republic with the western regions of Azerbaijan.

Azerbaijan has taken steps to control roads, linking transport and other infrastructure with Nakhichevan. The seizure of Armenian lands is intended to pressure Armenia into concessions as the two nations negotiate border and transportation agreements. When US Secretary of State Antony Blinken met his Russian and French counterparts in Sochi on November 26, 2021, they called on Baku and Yerevan to “work constructively” to restore economic and transport links. After the meeting, Putin announced the creation of a Russian-Armenian-Azerbaijani working group to address transport issues.⁸¹

Aliyev insists on connecting Azerbaijan with Nakhichevan through the Zangezur corridor, which would advance commercial and security cooperation between Azerbaijan and Turkey. He demands that Armenia provide a date when Zangezur will be opened. Armenia strongly opposes the corridor due to fear of Azerbaijan unilaterally controlling it.⁸² Zangezur would have the negative affect of perpetuating tensions in the region.⁸³

⁷⁸ Detained enemy civilians have the right to be treated humanely and to be released shortly after hostilities cease, but they do not enjoy combat immunities and may therefore be charged and tried for ordinary crimes and other crimes they commit.

⁷⁹ In addition, Armenia and Azerbaijan should conduct full, fair and independent investigations into those combatants and civilians who are missing. See “Thousands of People Still Waiting to Receive News About Their Loved Ones”, ICRC (August 2021), <https://www.icrc.org/en/document/armenia-thousands-people-still-waiting-receive-news-about-their-loved-ones>.

⁸⁰ See also “European Parliament Resolution of 20 May 2021 on Prisoners of War in the Aftermath of the Most Recent Conflict between Armenia and Azerbaijan”, May 21, 2021, https://www.europarl.europa.eu/doceo/document/TA-9-2021-0251_EN.html (“Demand[ing of Azerbaijan] the immediate and unconditional release of all Armenian prisoners, both military and civilian, detained during and after the conflict, and that Azerbaijan refrain from making arbitrary detentions in the future . . .”).

⁸¹ “Armenia, Azerbaijan Urged To Honor Russian-Brokered Deals”, Azatutyun, December 8, 2021, <https://www.azatutyun.am/a/31599613.html>.

⁸² “In Sochi, Putin refers to the opening of transport corridors between Armenia and Azerbaijan”, CivilNet, November 26, 2021, <https://www.civilnet.am/news/641239/in-sochi-putin-refers-to-the-opening-of-transport-corridors-between-armenia-and-azerbaijan/?lang=en>.

⁸³ Nargiz Ahmedzade, “A year after the agreement between Armenia, Azerbaijan and Russia: Uncertainty lingers”, Modern Diplomacy, November 18, 2021, <https://moderndiplomacy.eu/2021/11/18/a-year-after-the-agreement-between-armenia-azerbaijan-and-russia-uncertainty-lingers/>.

On August 25, 2021, Azerbaijan blocked the Goris-Kapan highway and set-up police posts. In a further effort to isolate Armenia, Azerbaijan's State Customs Agency began levying tolls on Iranian truckers traversing the Goris-Kapan highway.⁸⁴ Azerbaijan set-up customs checkpoints on entry and exit points of the highway.⁸⁵ Armenia itself is pursuing the opening of two routes, one through the exclave of Nakhichevan onwards to Iran and another through Azerbaijan proper to Russia.⁸⁶

Recommendations

The deployment of Russian peacekeepers played a useful role at the time, preventing more aggression by Azerbaijan. However, a multilateral approach would be better to achieve sustainable peace. The entirety of the Minsk Group, in line with its international mandate, should now take the lead. More robust engagement by the Biden administration would signal the US commitment to stabilizing the South Caucasus, ending abuses, and furthering accountability of the perpetrators. It would also constrain Russia's ambition to exert greater influence in its near abroad, by forging alliances to advance its geopolitical objectives.

Other recommendations include:

- Consolidate border demarcation and transportation agreements with Minsk

- Group mediation and eliminate overlapping initiatives.
- Expand buffer zones that are enforceable and effective.
- Establish a monitoring and investigative mechanisms through the Minsk Group, calling out the perpetrators and naming parties responsible for escalating violence.
- Encourage a role for civil society in monitoring ceasefire conditions and promoting peacebuilding through transport and economic activities.
- Ensure greater transparency of Russian peacekeeping operations.
- Obtain visibility into the joint Russia-Turkey Military center.
- Mitigate risks of conflict escalation by removing Azerbaijani armed positions from the vicinity of civilian settlements.
- Insist on the return of all POWs and accountability for their captors who abused human rights and violated international humanitarian law.
- Establish a tribunal at the ECHR to promote accountability and deter future atrocities and crimes.
- Focus on developing regional transport and trade routes, other than the Zangezur corridor, connecting western regions of Azerbaijan with Nakhchivan and Turkey.
- Engage UNESCO and the World Monuments Fund in efforts to preserve Armenian churches and

⁸⁴ Joshua Kucera, "Azerbaijan's blockade of southern Armenia continues", EurasiaNet, November 16, 2021, <https://eurasianet.org/azerbajjans-blockade-of-southern-armenia-continues>.

⁸⁵ Siranush Ghazanchyan, "Armenia, Azerbaijan to set up customs checkpoints on Goris-Kapan road", Public Radio of Armenia, November 10, 2021, <https://en.armradio.am/2021/11/10/armenia-azerbaijan-to-set-up-customs-and-border-checkpoints-on-goris-kapan-road/>.

⁸⁶ Thomas de Waal, "In the South Caucasus, Can New Trade Routes Help Overcome a History of Conflict?", Carnegie Europe, November 8, 2021, <https://carnegieeurope.eu/2021/11/08/in-south-caucasus-can-new-trade-routes-help-overcome-history-of-conflict-pub-85729>.

cultural icons, which should be put under international control.

- Provide assistance to rehabilitate the agricultural and livestock sector damaged by the conflict.
- Allow Artsakh free transportation through the Lachin Corridor, including the right to admit international journalists, diplomats, and human rights monitors.