

## **BRIEFING NOTE ON ARBITRARY DETENTION OF ARMENIANS BY AZERBAIJAN**

Continuous detention of Armenian servicemen and civilians detained in the context of armed conflict is arbitrary. To-date, at least 33 Armenian prisoners of war (hereinafter – POW) and civilians’ detention is acknowledged by Azerbaijani. Moreover, detained Armenians are used as a bargaining chip by Azerbaijan to extort concessions from Armenia, thus making the detainees hostages, as demonstrated below. All 33 captives are convicted in Azerbaijan on bogus charges.

The cases below relate to arbitrary detention of a group of over 60 Armenian servicemen who were captured as a result of the attack of Azerbaijani armed forces on positions in Khtsaber and Hin Tagher, Nagorno Karabakh on 11-13 December 2020 (hereinafter – Khtsaber Group), a month after the signature of the Trilateral Statement on Ceasefire by Azerbaijan, Armenia and the Russian Federation (hereinafter – Trilateral Statement).<sup>1</sup> The statement records the end of active hostilities, retaining positions by the parties as of 9 November 2020, contains an explicit provision stipulating an exchange of all POWs, hostages and other peoples detained in the context of the armed conflict.

Despite that, the fate and whereabouts of some of the Armenian captives remain unknown, and Azerbaijan has failed to acknowledge detention and whereabouts of dozens of Armenians who fell in its hands in the autumn of 2020 whose capture by Azerbaijani armed forces is proved by footage taken by Azerbaijani servicemen themselves and disseminated via social media by them or people affiliated with them.

During the hostilities and in the following months, the European Court of Human Rights (hereinafter – ECtHR) applied interim measures under Rule 39 with regard to at least 229 Armenians who reportedly fell in custody of the Azerbaijani armed forces during and in the immediate aftermath of the 44-day war, however the Government of Azerbaijan failed to acknowledge the capture and whereabouts of some of them, in some cases – to-date. In other cases, the fate of the detained Armenians became known either with their release (in minority of cases) weeks or even months after their capture or repatriation of their bodies coupled with persistent unwillingness of the Azerbaijani authorities to acknowledge the capture and custody over these persons while alive.

### **I. APPLICABLE LEGAL FRAMEWORK**

Azerbaijan is a state party to the majority of human rights treaties prohibiting arbitrary deprivation of liberty, including the European Convention on Human Rights, International Covenant on Civil and Political Rights (hereinafter – ICCPR), International Convention on the Elimination of All Forms of Racial Discrimination, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, etc.

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<sup>1</sup> “Заявление Президента Азербайджанской Республики, Премьер-Министра Республики Армения и Президента Российской Федерации”, November 10, 2020), para. 8, available at <http://kremlin.ru/events/president/news/64384> [last accessed: 09.09.2022]

In addition to the human rights treaties, Azerbaijan is also a state party to the 1949 Geneva Conventions. It has become widely accepted that in situations of armed conflicts, International Humanitarian law (hereinafter – IHL) and International Human Rights Law (hereinafter – IHRL) apply concurrently with the interrelationship between these two areas of law perceived as being complementary to each other.<sup>2</sup> Depending on the exact norm in question, for example the right to liberty, the primary norm of reference might be different depending on whether IHL or IHRL is applied, or both may apply. But for certain issues, like prisoners of war (hereinafter – POW), the sense is that Geneva Convention III is unique as it is specific to the topic. Complementary application of IHL and IHRL may entail the application of human rights norms in order to fill gaps in IHL and to apply the norms of both regimes in order to heighten the level of protection, or to interpret the norms in consideration of each other.

IHL applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached <...>. Until that moment, international humanitarian law continues to apply in the whole territory of the warring States <...>, whether or not actual combat takes place there.”<sup>3</sup> This definition has been adopted by other international bodies since then.<sup>4</sup>

Whereas IHL does not prohibit deprivation of liberty of persons taking part in hostilities – POWs may be interned for the duration of active hostilities<sup>5</sup> as well as civilians on security grounds – however, it stipulates clear grounds for that.

Arbitrary deprivation of liberty is also prohibited under customary IHL. Common Article 3 of the 1949 Geneva Conventions require that all civilians and persons *hors de combat* be treated humanely, whereas arbitrary deprivation of liberty is not compatible with this requirement.<sup>6</sup>

Detention that is not in conformity with the various rules provided by the Geneva Conventions is referred to as “unlawful confinement”. “Unlawful confinement” of a person protected under the Geneva Conventions is a grave breach under the Statute of the International Criminal Court, the Statute of the International Criminal Tribunal for the former Yugoslavia.<sup>7</sup> The Elements of Crimes for the

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<sup>2</sup> Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, ICJ, 8 July 1996, para 25; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ, 9 July 2004, para 106; Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, ICJ Reports 2005, paras 168, 216-219; HRC, General Comment no 36, para 64.

<sup>3</sup> ICTY, The Prosecutor v. Dusko Tadic, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-A, 2 October 1995, para. 70, <https://casebook.icrc.org/case-study/icty-prosecutor-v-tadic>

<sup>4</sup> How is the Term "Armed Conflict" Defined in International Humanitarian Law? International Committee of the Red Cross (ICRC), Opinion Paper, March 2008, available at <https://www.icrc.org/data/rx/en/assets/files/other/opinion-paper-armed-conflict.pdf>

<sup>5</sup> Articles 21 and 118, International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention), 12 August 1949, 75 UNTS 135, available at: <https://www.refworld.org/docid/3ae6b36c8.html> [accessed 2 December 2022].

<sup>6</sup> Rule 99, [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule99](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule99)

<sup>7</sup> Article 2(g), UN Security Council, Statute of the International Criminal Tribunal for the Former Yugoslavia (as amended on 17 May 2002), 25 May 1993, available at: <https://www.refworld.org/docid/3dda28414.html> [accessed 2 December 2022]; Article 8(2)(a)(vii), UN General Assembly, Rome Statute of the International Criminal Court (last

International Criminal Court states that unlawful confinement may be in relation to any person protected under one of the Geneva Conventions and not only in relation to civilians.<sup>8</sup>

In light of the above-mentioned, we conclude that if:

- ✓ in circumstances where there is an armed conflict, that is to say a resort to armed force between States up until a general conclusion of peace is reached,
- ✓ a person belonging to one of the categories listed in Art. 4 of Geneva Convention III,
- ✓ falls into the hands of the adverse party,
- ✓ has not committed a war crime or other breaches of Geneva Conventions, was not caught as a spy or mercenary,

the person is entitled to a prisoner of war status, **cannot be prosecuted for taking a direct part in hostilities and for acts of violence that are lawful under IHL** (enjoys combatant privilege) and must be released and repatriated without delay after the end of active hostilities.

Detention of such person constitutes arbitrary detention. If the detainee is treated inhumanely, this is also incompatible with lawful detention.

## II. ARE THE KHTSABERD GROUP MEMBERS PRISONERS OF WAR?

### 2.1 Determination of status

Under Art. 4 of Geneva Convention III, POWs are, among others, persons belonging to one of the following categories, who have fallen into the power of the enemy:

(1) Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces.

(2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions:

- (a) that of being commanded by a person responsible for his subordinates;
- (b) that of having a fixed distinctive sign recognizable at a distance;
- (c) that of carrying arms openly;

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amended 2010), 17 July 1998, ISBN No. 92-9227-227-6, available at: <https://www.refworld.org/docid/3ae6b3a84.html> [accessed 2 December 2022].

<sup>8</sup> Elements of Crimes for the ICC, Definition of unlawful confinement as a war crime (ICC Statute, Article 8(2)(a)(vii)), available at [https://asp.icc-cpi.int/sites/asp/files/asp\\_docs/Publications/Compendium/ElementsOfCrime-ENG.pdf](https://asp.icc-cpi.int/sites/asp/files/asp_docs/Publications/Compendium/ElementsOfCrime-ENG.pdf)

(d) that of conducting their operations in accordance with the laws and customs of war.

(3) Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.

Under customary IHL, all members of the armed forces of a party to the conflict are combatants, except medical and religious personnel.<sup>9</sup> The armed forces of a party to the conflict consist of all organized armed forces, groups and units which are under a command responsible to that party for the conduct of its subordinates, that is to say all persons who fight on behalf of a party to a conflict and who subordinate themselves to its command.<sup>10</sup>

According to the 2020 commentary to Geneva Convention III, “a person may fall into the hands of the enemy for the purpose of Article 5 at any time during an armed conflict. For example, a person included in one of the categories listed in Article 4 who falls into the hands of the enemy following a ceasefire, but prior to the cessation of active hostilities, will be protected by the Third Convention. Likewise, the capture by a State of members of the armed forces of another State may constitute the start of an international armed conflict, triggering the application of the Third Convention from then on”.<sup>11</sup>

The Trilateral Statement stipulates that the parties – Azerbaijan and Armenia, stop and stay at the positions held by them as of the day of signature of the Trilateral statement, that is to say midnight of 10 November 2020.<sup>12</sup> However, on 11 December 2020, the Azerbaijani armed forces attacked positions held by Armenian servicemen in Khatsaberd and Hin Tagher, Nagorno Karabakh.

To-date, Azerbaijani authorities deny the prisoner of war status to those of the captured 62 who are still in detention in Azerbaijan and refuse to repatriate the captives claiming that they committed criminal offences and are not entitled to prisoner of war status.

To decide whether these servicemen shall be granted a POW status and whether they may be convicted in Azerbaijan, we need to establish the following circumstances:

- ✓ whether there is an armed conflict, that is to say a resort to armed force between States up until a general conclusion of peace is reached,
- ✓ a person belongs to one of the categories listed in Art. 4 of Geneva Convention III,
- ✓ the person is in the hands of the adverse party.

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<sup>9</sup> Rule 3, [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule3](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule3)

<sup>10</sup> Rule 4, [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule3](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule3)

<sup>11</sup> Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949, Commentary of 2020, Para. 1101, available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=0837F01F5B0DBC5BC125858500469047>

<sup>12</sup> Para. 1, Commentary of 2020.

## **2.2 Existence of an armed conflict**

As indicated above, international armed conflict exists when there is resort to armed force between at least two states. Signature of the Trilateral Statement itself indicates that that was an ongoing armed conflict prior to 9 November 2020 and it has not ceased to exist as no peace treaty has been concluded to-date.

As clearly indicated above, on 11 December 2020, armed Azerbaijani servicemen in uniform attacked military positions held by armed uniformed Armenian servicemen, thus violating the ceasefire, that is to say there was resort to armed force between at least two states resulting in death, capture and wounding servicemen. This means that there is an ongoing armed conflict and IHL continues to apply.

Open source information also confirms that by 11 December 2020, positions in Khtsaberd were held by the Armenian side.<sup>13</sup>

## **2.3 Belonging to one of the categories listed in Art. 4 of Geneva Convention III**

All 62 captured Armenian servicemen are officially mobilized as reservists. Under the applicable legislation, mobilized reservists are part of the armed forces. The captives confirmed this in court in Baku, Azerbaijan when they were facing trials that they were officially mobilized, officially deployed, officially provided with arms, had an official commander, etc. They were captured as a result of engagement when Azerbaijani armed forces attacked their position.<sup>14</sup>

Analysis of the video posted by Azerbaijanis following the capture demonstrates that all Armenian servicemen wear uniform and they had arms prior of being disarmed.<sup>15</sup>

This means that they fall under category 4(1) of Geneva Convention III and shall be treated as prisoners of war.

In case of doubt as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal.

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<sup>13</sup> See more at ‘Over 70 Armenian soldiers missing after fresh clashes in Nagorno-Karabakh’, <https://oc-media.org/over-70-armenian-soldiers-missing-after-fresh-clashes-in-nagorno-karabakh/>, ‘Armenian MoD: Azerbaijan has resumed attacks on Karabakh villages’, <https://jam-news.net/azerbaijani-armed-forces-attack-armenian-villages-of-khtsaber-d-in-taher/>, ‘Renewed Fighting Reported in Southern Karabakh’, <https://www.civilnet.am/en/news/474714/renewed-fighting-reported-in-southern-karabakh/amp/>

<sup>14</sup> See, for example, ‘Armenian detainee talks orders on armed resistance against Azerbaijani soldiers’, <https://en.trend.az/azerbaijan/politics/3447059.html>

<sup>15</sup> See videos here <https://bit.ly/3W1fXXd>

Despite that, since the very beginning of detention, Azerbaijan denied the Khatsaberd group captives a prisoner of war status and charged them with the following crimes under its Criminal Code.

### III. ARE PRISONERS OF WAR SUBJECT TO CRIMINAL PUNISHMENT?

Article 85 of Geneva Convention III stipulates that “Prisoners of war prosecuted under the laws of the Detaining Power for acts committed prior to capture shall retain, even if convicted, the benefits of the present Convention”, that is to say that they retain their status. These provisions “thus preclude any attempt to deny prisoner of war status to members of independent or regular armed forces on the allegation that their force does not enforce some provision of customary or conventional law of armed conflict (as construed by the Detaining Power)”.<sup>16</sup> According to the 2020 commentary of Geneva Convention III, Article 85 must be read in conjunction with other provisions of the Convention that restrict the authority of the Detaining Power to prosecute prisoners for acts committed prior to capture, such as Articles 82(2), 86, 91(2), 92(1), 93 and 99(1).<sup>17</sup>

Only the failure to distinguish oneself from the civilian population or being caught as a spy or a mercenary warrant forfeiture of prisoner-of-war status.<sup>18</sup>

The Detaining Power’s authority to prosecute POWs for acts committed prior to capture is also circumscribed by the so-called ‘combatant’s immunity’ or ‘combatant’s privilege’. POWs who are combatants **may not be prosecuted for lawful acts of war committed in the course of an armed conflict, even if their acts constitute a criminal offence under the domestic laws of the Detaining Power** (emphasis added).<sup>19</sup>

POWs cannot be prosecuted for taking a direct part in hostilities.<sup>20</sup> Their detention is not a form of punishment, but only aims to prevent further participation in the conflict. They must be released and repatriated without delay after the cessation of active hostilities.

Azerbaijan charged the Khatsaberd group members with crimes under Articles 214 (terrorism), 228 (illegal acquisition, possession of weapons and explosives), 279 (creation of groups in an illegal armed formation, participation in them), 318 (illegal crossing of the state border).<sup>21</sup> More specifically, as

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<sup>16</sup> Michael Bothe, Karl Josef Partsch, Waldemar A. Solf, *New Rules for Victims of Armed Conflicts*, Martinus Nijhoff, The Hague, 1982, p. 239.

<sup>17</sup> Para. 3633, Commentary of 2020.

<sup>18</sup> Rule 4, [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_cha\\_chapter1\\_rule4](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter1_rule4)

<sup>19</sup> See e.g. Dinstein, ‘Unlawful Combatancy’, *Israel Yearbook on Human Rights*, Vol. 32, 2002, pp. 247–270, at 250; Knut Dörmann, ‘The legal situation of “unlawful/unprivileged combatants”’, *International Review of the Red Cross*, Vol. 85, No. 849, March 2003, pp. 45–74, at 45–48; and Rowe, 2015, p. 1031. See also Introduction, para. 20, and the commentary on Article 5, para. 1114. Cited from the commentary, para. 3634

<sup>20</sup> ‘Prisoners of war and detainees protected under international humanitarian law’, <https://www.icrc.org/en/doc/war-and-law/protected-persons/prisoners-war/overview-detainees-protected-persons.htm>

<sup>21</sup> See more at ‘Trial of 14 Armenian terrorists to continue in Baku soon’, <https://en.trend.az/azerbaijan/politics/3445339.html>; ‘Armenian soldiers on trial in Azerbaijan’, <https://eurasianet.org/armenian-soldiers-on-trial-in-azerbaijan>

reported in Azerbaijani media, Azerbaijan accused the captured Armenians in acquisition of weapons and explosives, creation of illegal armed group, then penetration into Azerbaijani territory on 26-27 November 2020 and taking over military positions, attacking institutions situated in Azerbaijan up until 13 December 2020, including attacks on people, organization of explosions and other acts aimed at creation of panic and violation of security.<sup>22</sup>

Five of 62 were repatriated few weeks later, on 28 January 2021.<sup>23</sup>

Four others were repatriated on 12 June 2021. Though they were charged with the same charges, as the rest of the group, Azerbaijan repatriated them before they were even convicted in exchange for Armenian maps of the minefields.<sup>24</sup>

53 remaining captives were divided and tried in four groups: three groups of 13 and one group of 14. The trials took place in June-July 2021 (two-three hearings in total).

As reported in Azerbaijani media, the state prosecutor dropped terrorism, sabotage, and other grave charges in court. The prosecutor pressed only the charge of illegal crossing of the state border in case of the group of 14 and illegal crossing of the state border in case of the group and possession of arms in case of 39 captives. As we can see, members of the same group were convicted for different acts and received different prison terms for the same conduct. The prosecutor did not explain in court why he was dropping the charges of terrorism and other grave charges. As a result, the court sentenced:

- a) One group of 14 Armenians - two of the captives to four years, and all the rest 12 Armenians only to six months in prison for illegal border crossing.<sup>25</sup>
- b) Three groups of 13 detainees were convicted to six years of imprisonment for illegal border crossing and possession of arms.

As we can see, all these acts are legitimate belligerent acts and POWs cannot be convicted for that. This means that their detention has been arbitrary.

Arbitrariness of the detention is also demonstrated by the fact, that nine of them were repatriated weeks or months after being captured without being convicted, 15 of the convicted captives were repatriated the day after they were convicted in exchange for landmine fields maps.<sup>26</sup> Six months was exactly the

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<sup>22</sup> 'Дело 14 армянских военных поступило в бакинский суд', <https://www.kavkaz-uzel.eu/articles/364570/>

<sup>23</sup> <https://armenpress.am/arm/news/1041757/>

<sup>24</sup> [theguardian.com/world/2021/jun/13/azerbaijan-swaps-15-armenian-pows-for-map-of-landmines](https://theguardian.com/world/2021/jun/13/azerbaijan-swaps-15-armenian-pows-for-map-of-landmines), <https://www.euractiv.com/section/eastern-europe/news/georgian-mediation-obtains-the-release-of-15-armenian-pows-by-azerbaijan/>, <https://iravaban.net/336053.html>

<sup>25</sup> 'Armenian terrorists turned out to be border violators', [https://www.turan.az/ext/news/2021/7/free/politics\\_news/en/5557.htm](https://www.turan.az/ext/news/2021/7/free/politics_news/en/5557.htm), 'Fifteen Armenian POWs released in Russian mediated deal', <https://oc-media.org/fifteen-armenian-pows-released-in-russian-mediated-deal/>

<sup>26</sup> See more at 'Armenian soldiers on trial in Azerbaijan', <https://eurasianet.org/armenian-soldiers-on-trial-in-azerbaijan>, <https://www.azadliq.org/a/erm%C9%99ni-%C9%99sir-mina-x%C9%99rit%C9%99/31306598.html>

time the majority of captives spent in detention in Azerbaijan. This is a clear indication that the sentence was political and not in line with fair trial.

Since then, more captives from the group were repatriated:

- On 3 July 2021, 15 prisoners were released and sent back to Armenia, 12 of them were convicted to six months of imprisonment and three detainees convicted to six years of imprisonment for illegal border crossing from one of the 13-member groups,<sup>27</sup>
- On 19 October 2021, five captives from the group convicted to six years of imprisonment,<sup>28</sup>
- On 4 February 2022, three captives from the group convicted to six years of imprisonment,<sup>29</sup>
- On 8 September 2022, four captives from the group convicted to six years of imprisonment.<sup>30</sup>

Moreover, in case of four of them, on 8 September 2022, the Supreme Court of Azerbaijan commuted the sentence to formally permit repatriation.<sup>31</sup> They were repatriated on the same day – 8 September 2022.<sup>32</sup> Such selective approach with the justice in Azerbaijan attests to the fact that this detention is arbitrary.

As a result, out of 62 group members, 26 servicemen remain in detention in Azerbaijan.

To-date, a half of the Khatsaberd group members were repatriated in exchange of maps and concessions from Armenia. This fact makes their detention not only arbitrary but makes them hostages.

#### **IV. DETAINEES ARE HOSTAGES**

Hostage-taking – the seizure or detention of a person (the hostage), combined with threats to kill, to injure or to continue to detain the hostage, in order to compel a third party to carry out or to abstain from carrying out any act as an explicit or implicit condition for the release of the hostage.<sup>33</sup>

Hostage-taking is prohibited under IHL.<sup>34</sup> Prohibition of hostage-taking is now firmly entrenched in customary international law and is considered a war crime.<sup>35</sup>

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<sup>27</sup> ‘Armenia and Azerbaijan exchange detainees for mine maps’, <https://eurasianet.org/armenia-and-azerbaijan-exchange-detainees-for-mine-maps>

<sup>28</sup> ‘Plane carrying Armenian captives landed at Erebuni Airport’, <https://www.1lurer.am/en/2021/10/19/Plane-carrying-Armenian-captives-landed-at-Erebuni-Airport/581299>

<sup>29</sup> ‘MFA releases names of 8 captives returned to Armenia from Azerbaijan’, <https://news.am/eng/news/685630.html>

<sup>30</sup> ‘Azerbaijan returns five Armenian POWs’, <https://armenpress.am/eng/news/1092022.html>

<sup>31</sup> See Reply submitted by the Permanent mission of the Azerbaijani Republic to the United Nations Office and Other International Organizations in Geneva, 21 February 2023, <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=37389>

<sup>32</sup> <https://en.armradio.am/2022/09/08/azerbaijan-returns-five-pows-to-armenian-side/>

<sup>33</sup> ‘What does IHL say about deprivation of liberty ?’, <https://blogs.icrc.org/ilot/2017/08/13/ihl-say-deprivation-liberty/#:~:text=IHL%20protects%20all%20those%20who,persons%20deprived%20of%20their%20liberty.>

<sup>34</sup> Common article 3; Geneva Convention IV, Article 34 and Article 147.

<sup>35</sup> Rule 96, [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule96](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule96)

International human rights law does not specifically prohibit “hostage-taking”, but the practice is prohibited by virtue of non-derogable human rights law because it amounts to an arbitrary deprivation of liberty. In its General Comment on Article 4 of the ICCPR (concerning states of emergency), the UN Human Rights Committee stated that States parties may “in no circumstances” invoke a state of emergency “as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance by taking hostages”.<sup>36</sup>

Prisoners of war repatriated on 12 June 2021 were swapped for maps of the minefields.<sup>37</sup>

On 3 July 2021, 15 prisoners were released and sent back to Armenia, while Armenia agreed to hand over maps of mines in the Aghdam region.<sup>38</sup> “[I]n exchange for providing Azerbaijan with maps of 97,000 anti-tank and anti-personnel mines in the Aghdam region, 15 detained Armenians were handed over to Armenia on the Azerbaijani-Georgian border with the participation of Georgian representatives,” the Azerbaijani MFA said in a statement.<sup>39</sup>

Some other Armenian servicemen convicted for the same incriminated acts as the above-mentioned repatriated captives together with them continue to be in detention in Azerbaijan.

As of 17 January 2023, Azerbaijan acknowledges detention of 33 Armenians, 26 of them captured in Khatsaberd. All of them have been convicted by Azerbaijan.

Repatriated POWs reported being subjected to torture and other forms of ill-treatment. In particular, one of them stated that they were subjected to three-day long severe beating by a group of at least 10 Azerbaijanis. The aggressors used batons, wooded sticks, metal sticks, kicked, etc. They forced the detainees to stand on one leg for hours, and those who failed to comply were punished.<sup>40</sup>

## V. INTERNATIONAL REACTION

Human rights organizations consider these convictions as a breach of Geneva Convention III. “Azerbaijan’s prosecution of Armenian Prisoners of war on illegal border crossing charges is a breach of Geneva Convention III. Captured combatants should have been afforded POW status & returned after hostilities ended”, Giorgi Gogia, South Caucasus Director of Human Rights Watch wrote on

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<sup>36</sup> UN Human Rights Committee, General Comment No. 29 (Article 4 of the International Covenant on Civil and Political Rights), para.11, available at <https://digitallibrary.un.org/record/451555?ln=en>

<sup>37</sup> [theguardian.com/world/2021/jun/13/azerbaijan-swaps-15-armenian-pows-for-map-of-landmines,](https://www.euractiv.com/section/eastern-europe/news/georgian-mediation-obtains-the-release-of-15-armenian-pows-by-azerbaijan/)  
<https://www.euractiv.com/section/eastern-europe/news/georgian-mediation-obtains-the-release-of-15-armenian-pows-by-azerbaijan/>, <https://iravaban.net/336053.html>

<sup>38</sup> ‘Armenia and Azerbaijan exchange detainees for mine maps’, <https://eurasianet.org/armenia-and-azerbaijan-exchange-detainees-for-mine-maps>

<sup>39</sup> <https://mfa.gov.az/en/news/7396/view>

<sup>40</sup> «10 հոգով ոտքի տակ էին տալիս մեկին». գերությունից վերադարձած Միսակ Ենգոյան, <https://ipress.am/hy/page/10-hogov-voti-tak-ein-talis-mekin>

Twitter on Thursday.<sup>41</sup> Human Rights Watch reported on 19 March 2021 that Azerbaijani security and armed forces had abused Armenian POWs, subjecting them to cruel and degrading treatment and torture either when they were captured, during their transfer, or while in custody at various detention facilities.<sup>42</sup>

On 30 August 2022, the United Nations Committee on Elimination of All Forms of Racial Discrimination in its Concluding Observations on Azerbaijan raised its deep concern about the “allegations of severe and grave human rights violations committed during the 2020 hostilities and beyond by Azerbaijani military forces against prisoners of war and other protected persons of Armenian ethnic or national origin – including extrajudicial killings, torture and other ill-treatment and arbitrary detention <...>”, “Incitement to racial hatred and the propagation of racist stereotypes against persons of Armenian national or ethnic origin, including on the Internet and social media, as well as by public figures and government officials, and the lack of detailed information on investigations, prosecutions, convictions and sanctions for such acts” and the lack of an independent and comprehensive mechanism to investigate such reports of violations and to provide victims with redress and support”.<sup>43</sup>

PACE in its Resolution 2391 (2021) also expressed concerns “about the detention conditions of around 48 Armenians captured after the trilateral statement, who are still in captivity, most of whom have faced or are facing speedy criminal trials, which may raise fair trial issues under the European Convention on Human Rights” and called “on the Azerbaijani authorities to release all remaining captives and return them to Armenia without further delay”. PACE considered “that the clear intention of Article 8 of the trilateral statement was the exchange of all detained persons, without distinction as to the status assigned by one or other of the parties”.<sup>44</sup>

European Parliament resolution of 20 May 2021 on prisoners of war in the aftermath of the most recent conflict between Armenia and Azerbaijan explicitly acknowledged that “<...>military personnel taken into captivity before and after the ceasefire should be recognised as POWs and benefit from protection under the Geneva Conventions and demanded “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; urges the parties to fully implement the tripartite ceasefire statement of 9 November 2020, which provides for an exchange of prisoners of war, hostages and other detainees, as well as the remains of those killed during hostilities”.<sup>45</sup>

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<sup>41</sup> Twitter account of Giorgi\_Gogia, Associate director, Europe and Central Asia Division, Human Rights Watch, [https://twitter.com/Giorgi\\_Gogia/status/1420673398707998721](https://twitter.com/Giorgi_Gogia/status/1420673398707998721)

<sup>42</sup> ‘Azerbaijan: Armenian POWs Abused in Custody’, <https://www.hrw.org/news/2021/03/19/azerbaijan-armenian-pows-abused-custody>

<sup>43</sup> CERD, Concluding Observations on the combined tenth and twelfth periodic reports on Azerbaijan, CERD/C/AZE/CO/10-12, 30 August 2022, para. 4, available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fAZE%2fCO%2f10-12&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fAZE%2fCO%2f10-12&Lang=en)

<sup>44</sup> Humanitarian consequences of the conflict between Armenia and Azerbaijan / Nagorno-Karabakh conflict, <https://pace.coe.int/en/files/29483/html>

<sup>45</sup> European Parliament resolution of 20 May 2021 on prisoners of war in the aftermath of the most recent conflict between Armenia and Azerbaijan (2021/2693(RSP)), available at [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0251\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0251_EN.html)

European Parliament stated that it “continues to be concerned about the fate of Armenian prisoners, both military and civilian, detained during and after the conflict and still held by Azerbaijan <...>; calls for the immediate and unconditional release of all the remaining detainees, including those captured during the recent military confrontations, and for them to be treated in accordance with international humanitarian law.”<sup>46</sup>

## **VI. CONCLUSIONS**

The analysis demonstrates that all Armenian captives detained in Khatsaberd are members of the armed forces who fell in the hands of the adverse party in the context of international armed conflict. All of them were convicted for belligerent acts not prohibited under IHL which is not a legitimate ground for prosecution of adversary’s combatants during an international armed conflict. These facts coupled with several instances of release of detainees in exchange of landmine field maps and acknowledgment of this practice by high-level Azerbaijani authorities demonstrates that Azerbaijan keeps the detainees as hostages to compel Armenia to carry out or to abstain from carrying out certain acts as an explicit or implicit condition for the release of the detainees. This detention is arbitrary both under IHL and IHRL and may amount to hostage-taking.

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<sup>46</sup> Draft report on EU-Azerbaijan relations (2021/2231(INI)), Committee on Foreign Affairs, 2021/2231(INI), available at [https://www.europarl.europa.eu/doceo/document/AFET-PR-736480\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/AFET-PR-736480_EN.pdf)