

INTERNATIONAL LEGAL RESPONSIBILITY FOR CRIMES AGAINST HUMANITY

MURDERERS OF CIVILIANS MUST BE BROUGHT TO BOOK

AFTER WORLD WAR II, PROCEEDING FROM VITAL INTERESTS OF THE INTERNATIONAL COMMUNITY, THE ACTS QUALIFIED AS A CRIME AGAINST INTERNATIONAL PEACE AND SECURITY WERE DEFINED IN THE CHARTER AND THE JUDGMENT OF THE INTERNATIONAL MILITARY TRIBUNAL ON THE CASE OF MAJOR WAR CRIMINALS FOR THE FIRST TIME.

These principles were confirmed by **resolution No 95 (1) of the United Nations General Assembly dated 11 December 1946¹**, the **Convention on the**

* *The former first deputy military prosecutor of the Republic of Azerbaijan, the head of a joint group to investigate the crimes committed during Armenian aggression against Azerbaijan.*

¹ UN General Assembly Resolution No 95 (1) "Confirmation of the principles of international law recognized by the Statute of the Nuremberg Tribunal," 11 December 1946. See text at <<http://www.un.org/russian/ga/1/docs/res1.htm>>.





*Memorial for the victims of war in Bosnia and Herzegovina
and for Khojaly in Sarajevo, Bosnia and Herzegovina*

Prevention and Punishment of the Crime of Genocide², four Geneva Conventions on the Protection of Victims of War from 1949 and Additional Protocols thereto from 1977³.

The said documents and the international legal instruments adopted afterwards establish a complete list of actions that fall under the concept of “crimes against international peace and international security”, require States to investigate these facts, provide guarantees of a fair trial, and establish the principle of non-use of prescription and retroactivity of the law to such crimes.

Thus, the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights) prohibits the retroactive application of the criminal law (Article 7, paragraph 1), but makes an exception, providing in paragraph 2 of Article 7, that **“it does not prejudice the trial and punishment of any person for any act or omission which, at the time committed, was criminal according to the general principles of law recognized by civilized nations.”**⁴

The International Covenant on Civil and Political Rights prohibits states from derogating from any of



their obligations assumed under the Convention on the Prevention and Punishment of the Crime of Genocide (Article 6, §3). The Covenant also provides for the prohibition of retroactive application of the criminal law, and yet there are specified exceptions “in accordance with the general principles of law recognized by civilized nations” (Article 15).⁵

The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity ensures the certainty of punishment for such crimes no matter how long the offender may evade from justice.⁶

War crimes and crimes against



humanity, whenever and wherever they occur, are subject to investigation, while persons against whom there is evidence of such crimes must be searched, arrested, put on trial and, if found guilty, punished⁷. **States are under a duty to assist in the extradition of such persons, collection of information**

2 The Convention on the Prevention and Punishment of the Crime of Genocide adopted by UN General Assembly Resolution No 260 A (III) dated 9 December 1948. See text in the Collection of International Treaties on Human Rights (New York, Geneva: United Nations, 1994), Volume I (part Two), p. 780-785.

3 See text in the Collection of International Treaties on Human Rights, Volume I (part Two), p. 792-1132.

4 Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950. See text at the Council of Europe web-site: <<http://conventions.coe.int/Default.asp>>

5 The International Covenant on Civil and Political Rights adopted by Resolution of the UN General Assembly No 2200 (XXI) dated 16 December 1966. See text in the Collection of International Treaties on Human Rights, Volume I (part One), p. 22-47.

6 The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity was adopted by UN General Assembly Resolution No 2391 (XXIII) dated 26 November 1968. See text in the Collection of International Treaties on Human Rights, Volume I (part Two), p. 785-789.

7 Principles of International Cooperation in the Detection, Arrest, Extradition and Punishment of Persons Guilty of War Crimes and Crimes Against Humanity, UN General Assembly Resolution No 3074 (XXVIII) dated 3 December 1973. See text in the Collection of International Treaties on Human Rights, Volume I (part One), p. 790-791.

IRS Justice for Khojaly

Khojaly memorial in Berlin, Germany



and evidence which would help to bring them to justice, the exchange of such information, and not to provide asylum to any person with respect to whom there are serious reasons for considering that he has committed such crimes. In addition, States should not take any legislative or other measures which may be prejudicial to their international obligations in the detection, arrest, extradition and punishment of persons guilty of these crimes.

The Soviet Union, one of the main military prosecutors at Nuremberg taking an active part in the creation of norms and principles of a new legal relationship and signing international legal conventions, **for whatever reason did not incorporate criminal sanctions for the commission of the said international crimes into the national criminal law.** Neither were such sanctions established in the Criminal Code of the Azerbaijan SSR adopted in 1960, which remained in force with some modifications until 1 September 2000.

As a result, **despite the existence of evidence of the most serious international crimes committed during the Armenian aggression against Azerbaijan, the principle of criminal liability of individuals has been breached. Accordingly, no-one has been brought to trial for these crimes, while the acts themselves were not classified as international crimes.** In the Azerbaijan SSR and then in the independent Republic of Azerbaijan, criminal proceedings were instituted and investigations conducted on acts of terror, mass murders, violations of the international humanitarian law which were qualified as crimes against the state, crimes against the person, public safety and public order.

The principle of state sovereignty was seen in absolute terms in the USSR, citizens were denied the opportunity to submit complaints concerning violations of their civil and political rights to international bodies. The influence of democratic legal ideas and rules of international humanitarian law on the develop-

ment of national criminal law began to enhance following Azerbaijan's accession to the Council of Europe. Obviously, a judicial system that was not based on the principles of the Convention on the Protection of Human Rights and Fundamental Freedoms could not fully ensure the prosecution of perpetrators and recognition of such deeds as crimes.

The Criminal Code of the Republic of Azerbaijan, which entered into force on 1 September 2000, was supplemented with regulations internationally recognized as war crimes and crimes against humanity. The Code of Criminal Procedure, which came into force at the same time, laid down high human rights standards in the implementation of criminal prosecution.

Since it is the responsibility of national judicial authorities to prosecute those liable for war crimes and crimes against humanity, **a joint investigative team was set up in December 2003 to look into more than 800 criminal cases investigated previously by the competent investigating authorities of the Azerbai-**



Khojaly memorial in the Hague, the Netherlands

jan SSR and then of the Republic of Azerbaijan in the format of common crimes which were suspended in the early 1990s.

In March 2004, Interpol organized a first international conference on genocide, war crimes and crimes against humanity, inviting representatives of international tribunals, nongovernmental organizations, representatives of authoritative institutions and member states. Interpol has held two more conferences on the same topic and established a special working group of experts. Azerbaijan actively participated in these activities, submitted materials documenting the international crimes committed in the occupied Azerbaijani territories and put forward the initiative on Interpol acting as a coordinator in the investigation of such crimes.

The Interpol General Assembly, referring to Articles 2 and 41 of the Interpol Charter, adopted very important Resolution No AC-2004 17 "On strengthening the support for national offices in the prosecution of those accused of war crimes, geno-



cide and crimes against humanity".

In May 2005, management of the joint investigative team was vested in the Military Prosecutor's Office of Azerbaijan.

On 12 May 2006, a constitutional law on war crimes, crimes against humanity and genocide was adopted. Thus, the criminal law of the country was brought into line with international standards.

At present, there are three main areas to investigate and punish those responsible for international crimes: (i) specialized tribunals

(Rwanda, the former Yugoslavia, Sierra Leone); (ii) The International Criminal Court which has jurisdiction only with respect to crimes committed after the entry into force of the Rome Statute, which places responsibility for the prosecution of the perpetrators of these crimes on national judicial authorities, and (iii) the principle of universal jurisdiction, which requires States to prosecute those suspected of committing the most serious international crimes or to take action with a view to their extradition.

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Memorial for the victims of Khojaly in Mexico City



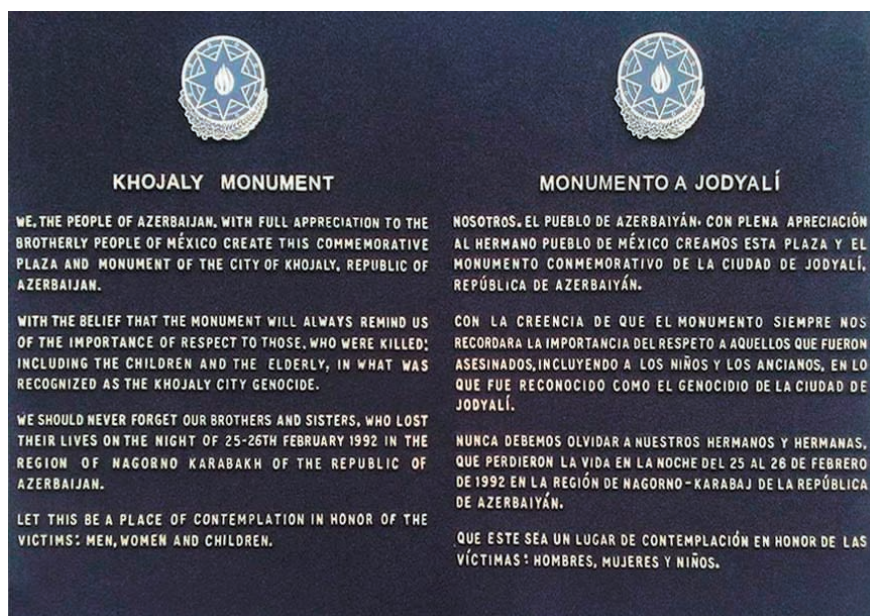
Given the specificity of the case examined by the joint investigating team, the large number of crimes committed and a lack of experienced and qualified professionals, the investigating team was divided in several groups to study the available material: **the genocide in Khojaly, Garadagly, crimes against prisoners of war, murders, deportation of the peaceful population and terror.**

In accordance with international law, the criminal case instituted earlier as a massacre in Khojaly and suspended in 1994, was reopened and re-qualified as a crime of genocide. The investigation collected **sufficient evidence to charge a total of 37 people, including soldiers of the 366th regiment of the former Soviet army who were directly involved in the mass murder of civil-**

ians in Khojaly, including women, children and the elderly. All of them were charged and the investigating materials forwarded to Interpol. Documents were also collected identifying the said persons and many others suspected of committing the crime of genocide. Interpol agreed to the charges, accepted the findings of the Republic of Azerbaijan with regard to the arrest of the perpetrators of international crimes and circulated them in 184 countries.

Armenian aggression against Azerbaijan was also accompanied by numerous systemic and systematic violations of international humanitarian law. Almost every prisoner of war regardless of gender, age and condition was subjected to physical and mental abuse the forms and methods which can not be disclosed for ethical reasons. All these tortures was fixed by cameras and video equipment and later shown to the prisoners in an attempt to blackmail them in the process of recruitment for Armenian secret services. The presence of prisoners of war was for the most part concealed by the Armenian side. The prisoners were kept both in Armenia and in occupied territories, where they were held in temporary detention centers of police departments and security agencies, in corrals or in the basements of private homes.

Complete personal data has been collected on 4,407 Azerbaijani citizens who went missing during the conflict, including children, women and the elderly. A total of 1,392 people have been freed from Armenian captivity. Physical and psychological violence subsequently caused the death of 137 people, while 32 people have lost their reason. Of those freed from captivity, 248 persons were kept in



Armenia, while the rest in the occupied territories of Azerbaijan.

According to eye-witnesses, the majority of prisoners were executed without trial, others died from torture or starvation. The investigation has revealed 851 facts of violations of international humanitarian law committed by 628 suspects. A total of 73 terrorist attacks have been perpetrated. A total of 29 people have been charged with these offenses. The joint investigative team has brought charges against a total of 274 persons.

The need for effective cooperation among states is confirmed by the deportation in 2005 from the United States by a decision of a San Diego court of Armenian citizen V. Patatyan who had committed crimes in the occupied territories of Azerbaijan.

International treaties require States to enact any legislation necessary to provide effective penal sanctions for persons committing or ordering to commit grave crimes and to search for them. At the same time, the accused are guaranteed due process of law and the right to defense. It is made explicitly clear that in order

to avoid any doubt as to the prosecution and trial of these individuals, the generally accepted rules of international law apply to them.

The guarantor of due process in the administration of justice in the Convention signatory states is the European Court of Human Rights. Decisions of the Court form a common European legal space and impose obligations on States. They serve as guidelines for judicial and legislative authorities,

which generally improves the democratic capacity of the judicial system. The Court accepts complaints from states, individuals and nongovernmental organizations. These efficient legal tools were absent at the time of emergence of conflicts and prior to the accession of interested States to the Council of Europe.

Despite the collapse of the USSR as a result of the underlying political events of the late 1980s and early 1990s, the "birthmarks" of the totalitarian regime based on the suppression of human rights still haunt the newly independent states. The integration of independent states into the international and European legal space has triggered a slow but irreversible process of overcoming the vestiges of the totalitarian past in their legal systems. In light of this progressive trend, it is becoming increasingly important to implement the rules and principles of international humanitarian law, establish cooperation of States in the investigation, fair trial and punishment of those who have committed crimes against peace and international security. 🌱

