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THE CRIME IN KHOJALY: PERPETRATORS, QUALIFICATION AND RESPONSIBILITY UNDER INTERNATIONAL LAW



Introduction

At the end of 1987, the Soviet Socialist Republic of Armenia openly laid claim to the territory of the Nagorno-Karabakh Autonomous Oblast (NKAO) of the Soviet Socialist Republic of Azerbaijan. Contrary to the Constitution of the USSR, which guaranteed the territorial integrity and inviolability of borders of the Union Republics, both the Armenian SSR and members of the Armenian community of the NKAO adopted a number of decisions to institute the process of unilateral secession of the autonomous region from Azerbaijan. These decisions were made to achieve either the incorporation of the NKAO into the Armenian SSR or the establishment of an independent



“Republic of Nagorno-Karabakh”. The logical consequence of the territorial claims against Azerbaijan was the occupation in 1992-1993 of a significant part of its territory, including Nagorno-Karabakh and seven adjacent districts. The war led to the deaths and wounding of thousands of people; hundreds of thousands became refugees and were forcibly displaced and several thousand disappeared without trace.

The capture of Khojaly was particularly tragic. Before the conflict, 7,000 people lived in this town of the Nagorno-Karabakh region of Azerbaijan inhabited by the Azerbaijanis. From October 1991, the town was entirely surrounded by the Armenian forces. Over the night from the 25th and 26th of February 1992, following massive artillery bombardment of Khojaly, the assault on the town began from various directions. The infantry regiment of the former Soviet army stationed in Nagorno-Karabakh, which was mainly composed of the Armenians, participated directly in the capture of Khojaly by the Armenian armed units. The attack and capture of the town involved the extermination of hundreds of Azerbaijanis, including women, children and the elderly, and thousands of civilians were wounded and taken hostage, many of whom remain missing, while the town was razed to the ground.

Perpetrators of the Crime

There have been numerous instances in the practice of states

disguising their role in the forcible capture of the territory of another state, as well as denial of the crimes committed in this territory. These features are evidenced in the policies and practices followed by Armenia. It denies both involvement with the armed conflict, along with the fact that it has anything to do with controlling these territories, and the fact of occupation within the meaning of international law. Thus, according to the incumbent president Serzh Sargsyan of Armenia, “only volunteers had fought for Nagorno-Karabakh”. At



the same time, Armenia, in his words, acted as “a guarantor of the security of Nagorno-Karabakh”, prepared to intervene immediately in the event of the outbreak of new war.¹ The question of Armenia providing guarantees is also mentioned in the country’s national security strategy of 7 February 2007.² No explanation is provided, however, as to how these guarantees, which affect a portion of Azerbaijan’s territory, fit into international law.

Generally speaking, attempts to disguise aggression against a neighboring state and thereby to assert its innocence for crimes committed in the course of this aggression are unlikely to be taken seriously given the incontrovertible evidence testifying to the diametrically opposite situation. In addition to the facts at the disposal of the government of Azerbaijan attesting to the direct involvement of the Armenian armed forces in the military hostilities against Azerbaijan and the presence of these forces in the occupied territories — issues which merit a separate and careful investigation — the assessment of Armenia’s role given by other states, international organizations and independent observers is also completely unequivocal.

Thus, the Human Rights Watch report entitled “Seven Years of Conflict in Nagorno-Karabakh” made it clear that: “While there are probably volunteers to the rebel forces from among the Republic of Armenia population, active duty members of the Armenian armed forces, including conscripts, have been ordered by their military commanders to participate in hostilities in Azerbaijan against Azerbaijani armed forces”.³ The report concluded by stating that: “As a matter of law, Armenian troop involvement in Azerbaijan makes Armenia a party to the conflict and makes the war an international armed conflict, as between the government of Armenia and Azerbaijan”.⁴

- 1 Caucasus Context 2007, vol. 4, issue 1, pp. 43-44. See also the message by Serzh Sargsyan of 1 September 2007 on the occasion of the “sixteenth anniversary of the independence of the Republic of Nagorno-Karabakh”, “Hayinfo” website: http://www.hayinfo.ru/page_rev.php?tb_id=18&sub_id=1&id=18956.
- 2 National security strategy of the Republic of Armenia of 7 February 2007, chapter III, see website of the Ministry of Defence of Armenia <http://www.mil.am/eng/?page=49>.
- 3 Human Rights Watch/Helsinki Report entitled “Seven Years of Conflict in Nagorno-Karabakh”, 1994, p. 92.
- 4 Ibid., p. 73. In addition, see the reference to some relevant sources also in the “Report on the international legal rights of the Azerbaijani internally displaced persons and the Republic of Armenia’s responsibility”, UN Doc. A/66/787-S/2012/289, 3 May 2012, pp. 6-9, paras. 15-27.



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Apart from the denial of its responsibility for the occupation of and military presence in the territories of Azerbaijan, the official Yerevan spares no efforts to represent matters in regard to the massacre in Khojaly in such a manner as if it were the Azerbaijanis themselves who allegedly obstructed the evacuation of the civilian population from the area of military hostilities and, even worse, gunned down their own fellow countrymen, in order to exploit the large numbers of civilian casualties for their own internal political ends.⁵ There are more than sufficient facts and reports from various sources, including eyewitnesses of the events, governments, intergovernmental and non-governmental organizations, which refute these fabrications and testify to the responsibility of Armenia, as well as its political and military leadership and subordinate local armed groups for the crimes committed in Khojaly.

In its judgment of 22 April 2010, the European Court of Human Rights pointed out that: "It appears that the reports available from independent sources indicate that at the time of the capture of Khojaly on the night of 25 to 26 February 1992 hundreds of civilians of Azerbaijani ethnic origin were reportedly killed, wounded or taken hostage, during their attempt to flee the captured town, by Armenian fighters attacking the town" (emphasis added).⁶

In her letter dated 24 March 1997 addressed to the Minister for Foreign Affairs of Armenia, the Executive Director of Human Rights Watch/Helsinki responded as follows to attempts by the Armenian propaganda to obfuscate this human rights organization with its fabrications: "Our research and that of the Memorial Human Rights Center found that the retreating militia fled Khojaly along with some of the large groups of fleeing civilians. Our report noted

that by remaining armed and in uniform, the Azerbaijani militia may be considered as combatants and thus endangered fleeing civilians, even if their intent had been to protect them. *Yet we place direct responsibility for the civilian deaths with Karabakh Armenian forces. Indeed, neither our report nor that of Memorial includes any evidence to support the argument that Azerbaijani forces obstructed the flight of, or fired on Azeri civilians*" (emphasis added).⁷

The Armenian author Markar Melkonian, who dedicated his book to his brother — Monte Melkonian, who personally took part in the assault on Khojaly, describes in detail how Armenian soldiers butchered the peaceful inhabitants of this town. Thus, as he puts it, some inhabitants of Khojaly had almost made it to safety, after fleeing for nearly six miles, when "[Armenian] soldiers had chased them down". The soldiers, in his words, "unsheathed the knives they had carried on their hips for so long, and began stabbing"⁸

It should be particularly noted that the Khojaly events took place in a period when the incumbent president Serzh Sargsyan of Armenia served as head of the illegal separatist regime's "Self-Defence Forces Committee" and, accordingly, his recollections constitute one of the most important sources of evidence. The following words by Serzh Sargsyan leave no doubts as to the question of the perpetrator of the crimes in Khojaly: "Before Khojali, the Azerbai-

5 See, e.g., the letter dated 24 February 2012 from the Permanent Representative of Armenia to the United Nations, UN Doc. A/66/708-S/2012/117.

6 *Fatullayev v. Azerbaijan*. Judgment of the European Court of Human Rights of 22 April 2010, para. 87.

7 See full text of the letter at <http://www.hrw.org/news/1997/03/23/response-armeniangovernment-letter-town-khojaly-nagorno-karabakh>.

8 Markar Malkonian, *My Brother's Road: An American's Fateful Journey to Armenia* (London and New York: I. B. Tauris, 2005), pp. 213-214.



janis thought that they were joking with us, they thought that the Armenians were people who could not raise their hand against the civilian population. We were able to break that [stereotype]. And that's what happened. And we should also take into account that amongst those boys were people who had fled from Baku and Sumgayit".⁹

Recently, some 12 years later, the then interviewer of Serzh Sargsyan — British journalist Thomas de Waal — published the full transcript of his conversation with the future president of Armenia, the contents of which offer the most effective rebuttal to the fabrications of Armenian propaganda.¹⁰ Take, for example, the following words by Serzh Sargsyan, which need no further comment: "Yes, it's true that there were civilians in Khojaly. But there were also soldiers together with the civilians. And when a shell flies through the air, it doesn't distinguish between civilian and soldier, it has no eyes. If the civilian population remains behind, even when they have a perfectly good opportunity to leave, it means that they are also taking part in the hostilities..."

Serzh Sargsyan would most probably refrain from voicing such unconvincing arguments if he were aware of the universally recognized laws of the conduct of military operations, including, above all, those mandating that a clear distinction be maintained between civilians and combatants and also prohibiting attacks of an indiscriminate nature. Having made the incontrovertible observation that an artillery shell flying through the air has no eyes, the

current president of Armenia could hardly then dispute the fact that those who choose the target and fire the shell against it are the ones with eyes.

Further, Serzh Sargsyan debunked the myth about the corridor allegedly left open by the assailants for the civilian population of Khojaly. Thus, answering the interviewer's question on this issue, Sargsyan readily concedes that "generally speaking, this was after Khojaly", since at the time "there was a certain



amount of ethnic cleansing", as "it's impossible to do this any other way". In answer to de Waal's question as to whether things could have happened differently and whether he had any regrets about the death of thousands of people, the Sargsyan answers quite unabashedly that "he has absolutely no regrets", since "such upheavals are necessary, even if thousands have to die". These revelations of a person who would soon

become Armenia's president speak for themselves.

Qualification of the Crime

The full range of international legal principles is applicable to the situation concerning the territories of Azerbaijan currently under the occupation of Armenia: that is, the Nagorno-Karabakh region and the surrounding territories seized during the armed conflict of the early 1990s. Such legal principles include those relating to the use of force; international humanitarian law; international human rights law and international responsibility.¹¹

There are sufficient grounds to conclude that the government of Armenia and subordinate forces for which it is liable under international law are responsible for serious violations of international humanitarian and human rights law amounting to crimes under international law. A body of reliable information indicates that during the conflict war crimes have been committed on a large scale. There is also a wealth of credible material which suggests that criminal acts were committed as part of widespread or systematic attacks directed against the civilian population, with knowledge of the attacks. These acts, therefore, may amount to crimes against humanity.

The relevant Security Council resolutions adopted in 1993 in response to the illegal use of force against Azerbaijan and occupation of its territories¹² made specific reference to violations of international humanitarian law, including the displacement of a large number of civilians

9 Thomas de Waal, *Black Garden: Armenia and Azerbaijan through Peace and War* (New York and London, 2004), p. 172.

10 See <http://carnegieendowment.org/2012/02/24/president-interview-andtragic-anniversary/9vpa>.

11 UN Doc. A/66/787-S/2012/289, p. 10, paras. 28-30.

12 UN Security Council resolutions 822 (1993), 853 (1993), 874 (1993) and 884 (1993).

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in Azerbaijan, attacks on civilians and bombardments of inhabited areas. The violations of the rules of war by the Armenian side include, inter alia, indiscriminate attacks, including killing of civilians, taking and holding of hostages, and the mistreatment and summary execution of prisoners of war and hostages.¹³ It is beyond dispute that such acts amount to war crimes, crimes against humanity and racial discrimination.

In its judgment of 22 April 2010, the European Court of Human Rights qualified the massacre of the Azerbaijani civilian population of the Khojaly town as “acts of particular gravity which may amount to war crimes or crimes against humanity”.¹⁴

Depending on the specific circumstances, a single action may constitute a number of offences. Thus, the war crimes committed by the Armenians during the conflict in some cases compound other international crimes such as crimes against humanity and even genocide or are coterminous with them. At the same time, it is known from the practice in the past¹⁵ that, in some instances, international offences such as the crimes against humanity and war crimes may be no less serious and heinous than genocide.

Given the gravity of the crime committed against the Azerbaijani civilian population in Khojaly, the question, however, is whether there is a clear evidence of the commission of genocide, as that term has been defined in international law.

In 1948, the United Nations Gen-

eral Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide, to which both Armenia and Azerbaijan are parties.¹⁶ This international instrument represents a competent codification of basic legal principles relating to genocide. The Convention confirmed that genocide is a crime under international law entailing individual criminal responsibility. In accordance with this multilateral treaty, genocide means acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.

In the following years genocide



was included in the list of offences falling under the jurisdiction of the international tribunals on the former Yugoslavia and Rwanda and of the International Criminal Court. Important case law has been developed through these first two international judicial institutions, but the leading judgment is now that of 26 February 2007 in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (“the Bosnia Genocide case”).¹⁷

In addressing the question of whether genocide was committed in Khojaly, the following elements of this crime need to be addressed. First, the *actus reus* consisting of killing, or causing serious bodily or mental harm, or deliberately inflicting conditions of life likely to bring about physical destruction. Second, on the basis of a subjective standard, the existence of a protected group being targeted by the authors of criminal conduct. Finally, the crucial element is the specific genocidal intent to annihilate, in whole or in part, a group distinguished on racial, ethnic, national or religious grounds.

From the International Court’s important 2007 judgment, three things should be noted for the purpose of sustaining the genocidal charges in regard to the crime committed in Khojaly. First, the required intent to destroy the group in whole or in part must be clearly and convincingly proved; secondly, the destruction that has taken place must be “significant” enough to affect the defined group as a whole and, thirdly, genocide must be committed within a specific geographic locality and need not be spread across the territory within which the conflict is taking place.

Responsibility under International Law

Offences committed during the conflict between Armenia and Azerbaijan entail state responsibility and individual criminal responsibility under international law.

The key provisions of international

¹³ See, e.g., Human Rights Watch/Helsinki Report entitled “Seven Years of Conflict in Nagorno-Karabakh”, p. ix.

¹⁴ *Fatullayev v. Azerbaijan*, para. 87.

¹⁵ See, e.g., Report of the International Commission of Inquiry on Darfur to the Secretary-General, UN Doc. S/2005/60.

¹⁶ Armenia became a party to the Genocide Convention on 23 June 1993 and Azerbaijan on 16 August 1996.

¹⁷ *The Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, 20 March 1993 (series of Orders and Judgments culminating in the judgment dated 26 February 2007).



responsibility are laid down in the articles on State responsibility adopted by the United Nations International Law Commission ("ILC") on 9 August 2001¹⁸ and commended to States by the General Assembly on 12 December 2001.¹⁹ According to article 1 of the Articles, "[e]very internationally wrongful act of a State entails the international responsibility of that State", while article 2 provides that "there is an internationally wrongful act of a State when conduct consisting of an action or omission (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State."²⁰ This principle has been affirmed in the case-law. Thus, as early as 1928, in its ruling in the *Factory at Chorzów* case, the Permanent Court of International Justice described the principle of international responsibility as one of the principles of international law and, furthermore, of the general understanding of the law.²¹

The principle of responsibility is closely bound up with the principle of the conscientious fulfillment of obligations under international law (*pacta sunt servanda*).

The responsibility of the state is incurred for any act or omission of its authorities which occurs either within or beyond its national borders. An



internationally wrongful act is also perpetrated by the organs of a State or by its agents, acting *ultra vires* or contrary to instructions.²²

There is a convincing body of evidence attesting to the use of force by Armenia against the territorial inviolability of Azerbaijan and the exercise by Armenia of effective military and political control over the occupied territories of Azerbaijan. This control is being exercised both directly by the armed forces of Armenia and indirectly through its subordinate separatist regime established in the occupied ter-

ritory, which, by performing the functions of a local administration, survives by virtue of the military and other support of the occupying power.

Armenia's responsibility arises as the consequence both of the internationally wrongful acts of its own organs and agents in the occupied territories and the activities of its subordinate local administration. Furthermore, there is responsibility even in the event of consent to, or tacit approval of, the actions of this administration.²³

Armenia's international responsibility, which is incurred by its

18 UN Doc. A/56/10, 2001. See also James Crawford, *The International Law Commission's Articles on State Responsibility. Introduction, Text and Commentaries* (Cambridge: Cambridge University Press, 2002), and James Crawford, Alain Pellet, Simon Olleson (eds.), *The Law of International Responsibility* (Oxford: Oxford University Press, 2010).

19 UN General Assembly resolution 56/83. See also General Assembly resolutions 59/35 and 62/61 and document A/62/62.

20 Crawford, *op. cit.*, p. 61.

21 *Factory at Chorzów (Claim for Indemnity) Case (Germany v. Poland)* (Merits), P.C.I.J. Series A (1928) No. 1, Permanent Court of International Justice. For text, see Martin Dixon and Robert McCorquodale, *Cases and Materials on International Law* (Oxford: Oxford University Press, 3rd ed., 2003), p. 404. See also I.I. Lukashuk, *International Law* (Moscow: Walters Kluwer, 3rd ed., 2007), p. 376.

22 *Ilaşcu and others v. Moldova and Russia*, ECHR Judgment of 8 July 2004, para. 319. See also *Ireland v. United Kingdom*, ECHR Judgment of 18 January 1978, para. 159, ECHR Portal, HUDOC Collection; Crawford, *op. cit.*, p. 62, article 7.

23 See *Louizidou v. Turkey*, ECHR Judgment of 23 March 1995, para. 62; *Louizidou v. Turkey*, ECHR Judgment of 18 December 1996, para. 52; *Cyprus v. Turkey*, ECHR Judgment of 10 May 2001, para. 77; *Ilaşcu and others v. Moldova and Russia*, paras. 314-319, ECHR Portal, HUDOC Collection.



internationally wrongful acts, involves legal consequences manifested in the obligation to cease these acts, to offer appropriate assurances and guarantees that they will not recur and to provide full reparation for injury in the form of restitution, compensation and satisfaction, either singly or in combination.²⁴

As stated in the commentary to the Articles on Responsibility of States for Internationally Wrongful Acts, “[e]very State, by virtue of its membership in the international community, has a legal interest in the protection of certain basic rights and the fulfillment of certain essential obligations.”²⁵ A significant role in securing recognition of this principle was played by the decision of the International Court of Justice in the *Barcelona Traction* case. This identified the existence of a special category of obligations — obligations towards the international community as a whole. The International Court of Justice states: “[b]y their very nature the former [the obligations of a State towards the international community as a whole] are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*.”²⁶

Accordingly, serious breaches of obligations flowing from peremptory norms of general international law may have additional consequences affecting not only the state bearing the responsibility, but also all other

states. Inasmuch as all states have a legal interest, they are all entitled to invoke the responsibility of the state which has breached its responsibility *erga omnes*. Furthermore, states must cooperate with a view to ending such breaches by lawful means.²⁷

It is generally accepted and recognized that peremptory norms of general international law (*jus cogens*) include the prohibitions of aggression, genocide, slavery, racial discrimination, crimes against humanity and torture, and the right to self-determination.²⁸ There can be no doubt that Armenia bears full international responsibility for a violation of a number of such norms and, consequently, for the breaches of international law that have occurred and continue to occur.

In accordance with international law, “[n]o State shall recognize as lawful a situation created by a serious breach [of obligations under peremptory norms of general international law], nor render aid or assistance in maintaining that situation.”²⁹

Furthermore, serious violations of international human rights and humanitarian law amounting to crimes under international, such as war crimes, crimes against humanity and genocide, fall under the purview of the principle of universal jurisdiction in international criminal law which empowers states to establish their jurisdiction over such crimes and, accordingly, provides unavoidability of punishment of the perpetrator, regardless of the place of commission

of the crime and the nationality of the perpetrator or of the victim. Thus, with the aim of protecting universal values, states have been authorized to substitute territorial and national states in order to prosecute and punish, on behalf of the whole international community, persons responsible for international crimes. Under the influence of international rules, a number of states have included the principle of universal jurisdiction into their national legislation. This situation and the existing judicial practice in these and some other states create the necessary legal prerequisites for effective criminal prosecution of those individuals responsible for international crimes against the citizens of Azerbaijan.

Alongside Armenia’s responsibility as the state which unleashed war against Azerbaijan, under the customary and treaty norms of international criminal law, certain acts perpetrated in the context of an armed conflict are viewed as international criminal offences and responsibility for them is borne on an individual basis by those participating in the said acts, their accomplices and accessories.

It is well known that both the present and former presidents of Armenia, Serzh Sargsyan and Robert Kocharian, together with many other high-ranking officials of this state and leaders of the separatist regime set up by Armenia in the occupied territory of Azerbaijan, personally participated in seizing Azerbaijani lands and in the reprisals against

24 See Crawford, *op. cit.* pp. 66-68, articles 28, 30, 31 & 34-37.

25 *Ibid.*, comment to article 1, p. 79, para. 4.

26 *Case Concerning the Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, I.C.J. Judgment of 5 February 1970, I.C.J. Reports 1970, para. 33. See also Lukashuk, *op. cit.*, pp. 379-380.

27 Lukashuk, *op. cit.*, pp. 379-380, 394-396; Crawford, *op. cit.*, comment to article 1, p. 79, para. 4.

28 See Crawford, *op. cit.*, comment to article 26, p. 188, para. 5.

29 *Ibid.*, article 41, p. 69; See also General Assembly resolution 62/243 of 14 March 2008, entitled “The situation in the occupied territories of Azerbaijan”, op. 5.



civilian population. It is clear that, given the scale and gravity of the offences which they committed, the criminal prosecution of these persons would be an inevitable consequence of their crimes.

Conclusion

The international community, acting chiefly through the United Nations, has proclaimed and set down in international instruments a compendium of fundamental values, such as peace and respect for human rights. The consensus on them was reflected in the adoption in 1948 of the Universal Declaration of Human Rights, according to which "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world". At the same time, the Universal Declaration emphasizes that "disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind".³⁰

Regrettably, over the years passed since the adoption of the Universal Declaration of Human Rights, the conspicuous "silence" in certain international criminal proceedings serves to accentuate a deficiency characteristic of the international community today: the gap between the theoretical values of law and harsh reality, which impedes the application in practice of the rich potential of international law standards. At the same time, if one is to be consistent in upholding universally accepted values, it is



essential to take steps to inhibit any brazen attempt to reject these and not to permit lawlessness, including by prosecuting their supposed perpetrators.³¹ It is clear that there can be no long-term and sustainable peace without justice and respect for human dignity, rights and freedoms.

The overall assessment of the causes and consequences of the war unleashed by Armenia against Azerbaijan and all existing facts of the tragic events in Khojaly make it absolutely clear that the crimes committed in that Azerbaijani town was not an isolated or sporadic act, but was part of Armenia's widespread and systematic policy and practice of atrocities, at the core of which are odious ideas of racial superiority, ethnic differentiation and hatred. The intentional slaughter of the civilians in Khojaly was directed at their mass extermination only because they were Azerbaijanis.

Measures taken at the national level as well as existing legal framework of prosecution of and punishment

for international crimes secure conviction in the perspective of ending impunity for the crimes committed against the Azerbaijani population of Khojaly. Some are inclined to believe that the possibility of recognition of the unilateral secession of Kosovo from Serbia may create a precedent to address similarly the fate of other separatist territories, including the Nagorno-Karabakh region of Azerbaijan. However, among a number of differences between the Nagorno-Karabakh conflict and the Kosovo situation, the following stand out: the actions of Armenia are clearly aimed at capturing by force a part of the territory of Azerbaijan; the "puppet" nature of the regime established by it in the occupied territories of Azerbaijan; as well as war crimes, acts of genocide and crimes against humanity committed by the occupying power during the conflict. These differences a priori rule out the application of the Kosovo scenario to the Nagorno-Karabakh region of Azerbaijan. 🌱

30 Universal Declaration of Human Rights, General Assembly resolution 217 A (III), 10 December 1948. For text, see United Nations Centre for Human Rights, *Human Rights: A Compilation of International Instruments*, ST/HR/1/Rev.5, vol. 1 (First Part), New York and Geneva, United Nations, pp. 1-7, at p. 1.

31 See, e.g., Antonio Cassese, *International Criminal Law* (Oxford: Oxford University Press, 2003), p. 446.