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Letter dated 1 June 2020 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith the implementation report of the Republic of Artsakh (Nagorno-Karabakh Republic) on the status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts (see annex).

I kindly request that the present letter and its annex be circulated as a document of the General Assembly, under agenda item 31, and of the Security Council.

(Signed) Mher **Margaryan**
Ambassador
Permanent Representative



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Implementation report of the Republic of Artsakh on the status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts

The Republic of Artsakh acceded to all four Geneva Conventions of 1949 and the Additional Protocols (1977) to the Conventions in 1993 by decision of the Supreme Council (Parliament) of the Republic. The instruments of accession have been introduced to the Swiss Federal Council, the depository of the documents.

The Republic of Artsakh remains committed to the implementation of the Conventions and its additional Protocols and continues to pursue measures to strengthen the existing body of international humanitarian law.

It should be noted that the Republic of Artsakh has adopted a monistic approach towards the implementation of international conventions in its national legal system. Article 13 of the Constitution of the Republic of Artsakh provides that the foreign policy of the Republic shall be implemented on the basis of international law with the aim of establishing good-neighbourly and mutually beneficial relations with all States. Article 5 of the Constitution provides that, in the case of a contradiction between the norms of international treaties ratified by the Republic of Artsakh and the national laws of the Republic, the norms of the international treaty shall apply. These constitutional provisions ensure the meaningful implementation of international humanitarian law in the Republic.

In order to raise awareness concerning international humanitarian law among its military personnel and to align the rules of engagement with the principles of international humanitarian law, the Defence Army of the Republic of Artsakh trains its military personnel using the “Law of Armed Conflict” and “International Humanitarian Law” training manuals approved and promulgated by the Minister of Defence of the Republic of Artsakh. The commander training programme furnished military personnel credit hours for the study of the norms of international humanitarian law. The training programme educates military personnel in times of both peace and war, and these studies are arranged and directly supervised by unit military commanders and officers, the latter of whom assist the commanders in teaching the legal aspects of the programme material.

In addition to the above-mentioned programme, training in international humanitarian law is also periodically organized and conducted directly by representatives of the Mission of the International Committee of the Red Cross (ICRC) in Nagorno Karabakh. ICRC training is geared towards military command staff and is engineered to advance knowledge of, and adherence to, the norms of international humanitarian law.

Furthermore, the Ministry of Defence of the Republic of Artsakh, in cooperation with the ICRC Mission in Nagorno Karabakh, organizes regular training sessions for the cadets of the Lieutenant-General Christopher Ivanyan Military-Sports Lyceum on the norms and principles of international humanitarian law.

For the purposes of coordination and promotion of international humanitarian law among military personnel, a special officer tasked with overseeing international humanitarian law education and training is appointed and serves at the Ministry of Defence of the Republic of Artsakh.

In close cooperation with the Mission of ICRC in Nagorno Karabakh, information sessions about the principles of international humanitarian law are also held for public employees. For example, in 2019, members of the civil protection team of the Service of Emergency Situations of the Republic of Artsakh were trained in international humanitarian law rules in civil protection.

In addition, various international humanitarian law courses have been organized for the law students, young researchers and law practitioners.

Furthermore, lectures on basic principles of international humanitarian law and the ICRC mandate are often delivered to media representatives in order to promote a better understanding of the need for proper coverage of humanitarian issues.

Incorporation into national legislation

Different aspects of the Geneva Conventions of 1949 and its Additional Protocols have been incorporated into the national legislation to ensure adherence by the Republic to the norms and principles of humanitarian law.

Repression of breaches of Additional Protocol I to the Geneva Conventions

The Republic of Artsakh has enacted legislation, in accordance with article 86 (1) of Additional Protocol I, establishing effective penal and administrative sanctions against perpetrators of breaches and grave breaches of the Geneva Conventions and Additional Protocol I.

Grave breaches of international humanitarian law

Section 13 of the Criminal Code of the Republic of Artsakh (“Criminal Code”), entitled “Crimes Against Peace and Human Security”, includes provisions that impose criminal liability for committing grave breaches of the obligations contained in the Geneva Conventions and Additional Protocol I, as well as other war crimes.

Article 416, parts 1 and 2, of the Criminal Code impose criminal liability for the commission of grave breaches of international humanitarian law as defined in article 50 of the First Geneva Convention, article 51 of the Second Geneva Convention, article 130 of the Third Geneva Convention and article 147 of the Fourth Geneva Convention. The relevant crimes under the Criminal Code of the Republic of Artsakh are defined as follows:

1. During armed conflicts, committing the following acts against civilians who do not take a direct part in hostilities, defenceless persons, wounded, sick, medical personnel, chaplains, sanitary units or sanitary transports, prisoners of war, civilians, the civilian population, refugees, protected persons or other persons entitled to protection in times of armed conflict, regarded as grave breaches of norms of international humanitarian law: (a) murder, (b) torture and inhuman treatment, including biological experiments; and (c) wilfully causing great suffering or damage to human physical or mental state.
2. During armed conflicts, committing the following acts against persons and objects mentioned in part 1 of this article, regarded as grave breaches of norms of international humanitarian law: (a) causing injury to health, (b) compelling a protected person or prisoner of war to serve in the forces of a hostile state, (c) deprivation of a protected person or prisoner of war of impartial court trial and due process, (d) unlawful deportation, transfer and detention or otherwise deprivation of liberty of a protected person, (e) taking hostages and (6) illegal, wilful, extensive destruction and appropriation of property, not justified by military necessity.

In addition, parts 3 and 4 of article 416 of the Criminal Code impose criminal liability for committing grave breaches of international humanitarian law, as defined in article 85 of Additional Protocol I. The corresponding crimes under the Artsakh Criminal Code are as follows:

3. The following acts are regarded as grave breaches of norms of international humanitarian law, causing death or serious damage to human physical or mental state in armed conflicts: (a) launching an attack on the civilian population or individual civilians; (b) launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such an attack will result in excessive losses among the civilian population or will cause excessive damage to civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated; (c) launching an attack against structures or installations containing dangerous forces in the knowledge that such an attack will result in excessive losses among the civilian population or will cause excessive damage to civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated; (d) making non-defended localities and demilitarized zones the object of attack; and (e) launching an attack on a person in the knowledge that he is “hors de combat”.

4. The following acts are regarded as grave breaches of norms of international humanitarian law: (a) the transfer by the occupying State of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, (b) unjustified delay in the repatriation of prisoners of war or civilians, (c) practices of outrages upon personal dignity, other inhuman and degrading practices based on “apartheid” and racial discrimination; (d) making the clearly recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given, the object of attack, causing as a result extensive destruction thereof, when they are not located in the immediate proximity of military objectives and where there is no evidence that the adversary uses such historic monuments, works of art and places of worship in support of the military effort.

Moreover, grave breaches, as defined in article 11 of Additional Protocol I, are manifested in part 5 of article 416 of the Criminal Code of the Republic of Artsakh. The provision reads as follows:

5. During armed conflicts, subjecting persons who are in the power of the adversary, detained or otherwise deprived of liberty to a medical procedure which is considered a grave breach of norms of international humanitarian law and endangers their health, physical or mental integrity and which is not indicated by the state of health of such persons and is not consistent with generally accepted medical standards, in particular, even with their consent, carrying out on such persons physical mutilations, medical or scientific experiments, removal of tissue or organs, or transplant surgery is punished with imprisonment for 8 to 12 years.

Protection of distinctive objects

Article 423 of the Criminal Code of the Republic of Artsakh bans the misuse of distinctive emblems and provides sanctions in case of violation. Article 423 reads as follows:

During armed conflicts, the use of the protective emblems and other distinctive signs of the red cross, red crescent or cultural property provided by international

law and international treaties or the improper use of State flags or distinctive State signs of adversary or neutral States or the improper use of flags and distinctive signs of an international organization in breach of international treaties is punished with a fine in the amount of 200 to 600 minimal salaries or imprisonment for up to three years.

Methods and means of warfare

The Republic of Artsakh recognizes and respects the basic rules enshrined in article 35 of Additional Protocol I and the general principle that, in any armed conflict, the right of the parties to the conflict to choose methods or means of warfare is not unlimited. Accordingly, article 413 (1) of the Criminal Code establishes criminal liability for the use of methods and means of warfare that are prohibited by international treaties:

Use of means and methods of warfare in military action and armed conflict which are prohibited by international treaties is punished with imprisonment for the term of up to 20 years .

Command/superior responsibility for failure to act when under a duty to do so

The Republic of Artsakh, in accordance with the obligation stemming from articles 86 (2) and 87 (3) of Additional Protocol I, also sets penal responsibility for superiors who, without excuse, fail to prevent their subordinates from committing breaches of the law of armed conflict. A superior's failure to act may result in criminal liability both in cases of breaches and grave breaches of international humanitarian law. Likewise, the mens rea (mental state) standard for superior responsibility – “had reason to know” – is incorporated into the Criminal Code, establishing criminal responsibility both for military commanders and civilian officials. Article 417 of the Criminal Code of the Republic of Artsakh, which provides for imprisonment for superiors who fail to act when under a duty to do so, reads as follows:

1. During armed conflict, failure by the superior or official to take all feasible measures, within his power, to prevent crimes under articles 413 (use of prohibited means and methods of war), 416 (grave breaches of international humanitarian law) committed by his subordinates, if he knew or had information which should have enabled him to conclude in the circumstances at the time, that the subordinate was committing or was going to commit such a breach, and if within his power, he did not take all feasible measures to prevent or repress such breach, is punished with imprisonment for 5 to 10 years.
2. The same action which was committed recklessly is punished with imprisonment for two to five years.

Serious crimes of international concern

The Criminal Code of the Republic of Artsakh also provides criminal responsibility for serious crimes of international concern. The crime of genocide and the crime of aggression are incorporated into the Criminal Code. Article 419 provides punishment for the crime of genocide, described as acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group. Moreover, article 410 provides punishment with imprisonment for the planning, preparation, initiation or execution of an aggressive war. The Criminal Code also provides punishment for crimes against human security, described as deportation, illegal arrest, enslavement, mass, summary and extrajudicial execution, kidnapping as well as torture, or the cruel treatment of civilians, due to racial, national, ethnic identity, political views and/or religion.