

BLOODSHED IN THE CAUCASUS

Escalation of the Armed Conflict in Nagorno Karabakh

September 1992

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TABLE OF CONTENTS

Acknowledgements	v
A Note on Geography	vii
Introduction	1
Conclusions	2
Recommendations	3
To both the government of Azerbaijan and the authorities in Nagorno Karabakh	3
To the government of Azerbaijan	3
To the government of Armenia	3
To the Bush Administration	4
To the International Community	4
Background	5
Stages of Armed Conflict	6
Operation Ring	7
The Current Armed Conflict	10
Press Access	11
Combatants	11
Blockades	12
Weaponry	13
Recent Developments	13
Regions of Conflict	14
Displaced Persons and Refugees	14
Negotiations and Prospects	15
Specific Violations of the Laws of Armed Conflict	19
Violence to civilians, summary executions, destruction of civilian property, pillage, forced evacuation of civilian population	19
By Armenians	19
Khojaly	19
Malybeyli and Gushchular	24
Kerkijahan	27
Djemili	27
Akholu	28
Kiusular	28
By Azerbaijanis	29
Maraga	29
Kazanchi	29
Shekher	30
Indiscriminate attacks, targeting of civilian structures	31
By Armenians	31
Shusha	31
Malybeyli and Gushchular	32
Khojaly	32
Agdam	33
Abu Gulabli	33

Popravent	33
By Azerbaijanis	34
Stepanakert and Environs	34
Martakert District: Vaguas	36
Martuni District (near the border with Fizuli): Tagavart	36
Shekher	37
Khanlar and Shaumian Districts (north of Nagorno Karabakh)	37
Hostage-Taking	38
By Armenians	39
Khojaly	39
Gushchular	40
By Azerbaijanis	41
Maraga	42
Kazanchi	42
Beating, Torture, and Rape of Hostages	42
By Armenians	42
By Azerbaijanis	43
Deprivation of Water as a Means of Combat	44
By Armenians	44
By Azerbaijanis	44
Abuse of Medical Personnel and Transports	45
By Armenians	45
By Azerbaijanis	46
Appendix I: Testimony on Human Rights Abuses Committed during Operation Ring ...	47
Introduction	47
Violations	48
Summary Executions	48
Displacement of Civilian Population	48
Theft and Damage to Civilian Property	50
Indiscriminate Attacks against Civilians	50
Beatings of Villagers and Prisoners	51
Appendix II: List of Deaths in Khojaly on the Night of February 26, 1992	55
Appendix III: List of Persons Reportedly Seized as Hostages in Maraga	63
Appendix IV: List of Deaths in Maraga	65
Appendix V: The International Humanitarian Law Regime Applicable to the Armed Conflict in Nagorno Karabakh	67

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Rachel Denber was in Baky from April 18 through 25, 1992 and again from May 6 through 8. Professor Goldman and Ms. Denber travelled to Agdam, Yevlakh, Stepanakert and Yerevan from April 25 through May 3. They interviewed victims, eyewitnesses, and government and hospital officials.

This report was written by Rachel Denber and Professor Goldman, and edited by Jeri Laber, Executive Director of Helsinki Watch. Christina Derry provided invaluable assistance.

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A NOTE ON GEOGRAPHY

The Nagorno Karabakh Autonomous Oblast¹ is an enclave covering 1,700 square miles of territory within Azerbaijan. It is separated from Armenia to the west by a six-mile land strip. According to the 1989 USSR census, Nagorno Karabakh's population of 189,085 was about seventy-five percent Armenian (in all 145,450), and twenty-five percent Azerbaijani (a total of 40,688).² Azerbaijanis routinely claim that these figures underrepresent the Azerbaijani share of the population; Armenian officials routinely point to the 1959 population figures for Nagorno Karabakh (according to which Armenians accounted for eighty-five percent of the region) and insist that Azerbaijanis were sent into the region in order to diminish the Armenian share of the population. Both sides also dispute who controlled the territory prior to the Soviet takeover of the Caucasus. During the early Soviet period the territory was placed under control of Soviet Azerbaijan and given the status of autonomous oblast.

Armenians practice Apostolic Christianity, which is similar to Eastern Orthodoxy. The Armenian language belongs to the Indo-European family of languages; its alphabet is unique. Azerbaijanis are mainly Muslim and speak Azerbaijani, which very closely resembles Turkish. During much of the Soviet period Azerbaijani was written in the Cyrillic alphabet; beginning in January 1993 it will be replaced with the Latin alphabet.

¹ In the Soviet system of territorial administration, autonomous oblasts were the second to the smallest political unit, and were subordinate to the next-highest administrative unit, either the autonomous republic (for example, Nakhichevan or North Ossetia) or the Union republic (such as Azerbaijan or Armenia).

² Национальный Состав Населения СССР, по данным всесоюзной переписи населения 1989 г. Москва, «Финансы и Статистика», 1991. (National Composition of the Population of the USSR, according to Data of the 1989 Census. Moscow, Finance and Statistics, 1991).

INTRODUCTION

The four-year-old struggle for control over Nagorno Karabakh has escalated in recent months to full-scale armed conflict, leaving in its wake hundreds of civilian casualties. Both parties to this tragic conflict have systematically violated the most basic rules of international humanitarian law, i.e., the laws and customs governing the conduct of armed conflicts. They have engaged in wide-scale hostage-taking, tortured hostages, intentionally targeted, terrorized, and committed other acts of violence against civilians, deliberately shelled civilian objects, forced out the civilian populations of villages, and intervened in attempts to rescue the wounded. Helsinki Watch condemns these practices, which have resulted in the needless deaths of civilians, Azerbaijani and Armenian alike. We call on the Armenian Popular Liberation Army of Artsakh (PLAA), the Azerbaijani National Army, the Azerbaijani militia, and on all informal self-defense units to end these practices immediately and, in particular, to return all hostages.

Hostilities are spreading to regions outside the boundaries of Nagorno Karabakh. This report, however, describes violations of humanitarian law primarily within Nagorno Karabakh. Given the flagrant disregard of minimum rules in the conduct of hostilities, Helsinki Watch is deeply concerned about recent reports that Azerbaijan has begun launching air strikes in Nagorno Karabakh and certain surrounding environs inhabited now entirely by Armenians. Moreover, we fear that the degree of mutual hatred and mistrust that exists between the parties strengthens the danger that military forces on both sides seek not only to regain lost territory but also to avenge past tragedies inflicted on their ethnic brethren.

Helsinki Watch takes no position on the claims for independent statehood by Armenians in Nagorno Karabakh. Our concern is with the humanitarian law violations that have occurred in the struggle for control of Nagorno Karabakh, and we report on abuses committed by all parties to the conflict. On the Azerbaijani side, these parties include the Azerbaijani National Army, the Azerbaijani militia, and local Azerbaijani paramilitary self-defense forces. Armenian parties are the Popular Liberation Army of Artsakh and local Armenian paramilitary self-defense forces. All parties are widely reported to employ mercenaries.

The government of the Republic of Armenia claims not to be a party to the armed conflict. Yet it does provide critical material and moral support to Nagorno Karabakh. While the Armenian government does not acknowledge sending military aid or soldiers to the region, reliable sources have informed Helsinki Watch that weapons flow freely into Nagorno Karabakh from Armenia. The Armenian government acts in the interests of Nagorno Karabakh at international negotiations on the conflict.¹ In this connection, the Armenian Parliament in July adopted a measure prohibiting Armenia from signing any agreement that recognizes Nagorno Karabakh as Azerbaijani territory.²

¹ It always insists, however, that authorities of Nagorno Karabakh must be present at and participate in these negotiations.

² See, "Supreme Soviet Adopts Nagorno Karabakh Decision," Yerevan ARMENPRESS International Service in Armenian, as reported in Foreign Broadcasting Information Service [hereinafter "FBIS"], July 13, p. 79. The Armenian Parliament has not formally recognized Nagorno Karabakh as an independent

Armenians believe that the self-determination rights of Armenians living in the territory of Nagorno Karabakh should determine who will govern the area, and that Armenians in Nagorno Karabakh are the victims of systematic discrimination and persecution by the Azerbaijani government. Azerbaijani officials insist that the territory has always belonged to Azerbaijan and deny charges of discrimination. In a recent interview with Helsinki Watch, Tamerlan Karaev, Deputy Chairman of the Azerbaijani Parliament, succinctly summed up the impasse: "Their demand is autonomy, and ours is that Karabakh must remain a part of Azerbaijan."

Many Armenian and Azerbaijani officials interviewed by Helsinki Watch demonstrated a sad recognition that violations of humanitarian law had to be viewed in context: in the case of Azerbaijan, in the context of the inviolability of Azerbaijan's territorial integrity; in the case of Armenia, in the context of the self-determination rights and the amount of suffering of Armenians in Nagorno Karabakh.

The armed conflict in Nagorno Karabakh is essentially a struggle for secession taking place within the territory of the Republic of Azerbaijan. Because the conflict during the period covered by this report was and continues to be non-international in character, and because Azerbaijan has not yet acceded to the 1949 Geneva Conventions, we evaluate the conduct of both sides against the customary humanitarian law rules and principles applicable to internal armed conflicts.³

CONCLUSIONS

Since the escalation of the armed conflict, Armenian and Azerbaijani forces have repeatedly committed appalling acts of violence against civilians absolutely forbidden by humanitarian law. Both sides:

- indiscriminately attack individual civilians and civilian populations;
- indiscriminately attack and destroy civilian structures, including homes and schools, that do not contribute to military objectives;
- either engage in or fail to stop the looting of civilian homes;
- intentionally attack hospitals, medical transports and rescue missions;
- commit summary executions; and
- routinely take civilians hostage, frequently abusing or torturing them, and use these hostages as barter.

state.

³ See Appendix V to this report for an explanation of the legal regime governing the armed conflict.

In addition, Azerbaijani police and prison officials either engaged in or did nothing to stop the brutal beating and other mistreatment of Armenian prisoners rounded up in Nagorno Karabakh prior to the escalation of the armed conflict.

RECOMMENDATIONS

To both the government of Azerbaijan and the authorities in Nagorno Karabakh⁴:

- abide by applicable humanitarian law rules for the protection of victims of the armed conflict; in particular,
- immediately cease attacks on individual civilians, the civilian population and civilian objects;
- immediately cease the practice of hostage-taking;
- immediately cease the inhuman and degrading treatment of all persons who are placed *hors de combat* by whatever cause; and
- allow the safe, voluntary departure of civilians from combat zones.

To the government of Azerbaijan:

- prosecute, in impartial and open trials, the persons who ordered and perpetrated these criminal acts, be they members of informal armed self-defense forces, the militia, or of the National Army;
- exert pressure at local levels to put an end to the practice of hostage-taking and to guarantee the safe return of all hostages;
- investigate allegations of torture of Armenian prisoners in Azerbaijani prisons and prosecute, in fair and open trials, those who ordered, failed to stop or engaged in these acts; and
- allow journalists access to the conflict zone so that they may provide objective information on the situation of civilians.

To the government of Armenia:

In addition, Helsinki Watch asks the government of Armenia to exert its influence on the authorities in Nagorno Karabakh to conduct hostilities in conformity with applicable humanitarian law rules and principles and especially to condemn illegal acts of violence

⁴ The self-styled government in Nagorno Karabakh is not recognized by any other state and is therefore not a subject of international law. However, we still hold the authorities in Nagorno Karabakh responsible for violations of humanitarian law committed by Armenian armed forces there.

committed by Karabakh forces against civilians, as described in this report, including the taking of civilian hostages.

To the Bush Administration:

- condemn forcefully and even-handedly all violations of humanitarian law committed by both Armenians and Azerbaijanis in Nagorno Karabakh;
- encourage and support more active United Nations involvement in peace negotiations; and
- abide strenuously by the conditions placed on aid under the Freedom Support Act.

To the International Community:

Helsinki Watch urges the CSCE team to reinvigorate its efforts at negotiating an end to the conflict in Nagorno Karabakh. We also ask

- the United Nations to reevaluate its deference to regional bodies seeking an end to the dispute in Nagorno Karabakh, and consider becoming involved in the negotiating process;
- the United Nations Secretary General to appoint a special envoy to Nagorno Karabakh who would frequently visit the region and report on the conflict to the Secretary General and Security Council; and
- the United Nations Commission on Human Rights to appoint a special rapporteur on Nagorno Karabakh.

BACKGROUND

The genesis of the current war in Nagorno Karabakh dates back to February 1988, when Armenians¹ in Stepanakert, the capital, held demonstrations demanding Nagorno Karabakh's incorporation into Armenia. This demand was taken up by the Karabakh Oblast Soviet, which voted to appeal to the USSR Supreme Soviet for incorporation. Demonstrations by Armenians in Yerevan (the capital of Armenia) in support of their ethnic brethren and continued rallies in Stepanakert prompted intervention by Soviet troops and triggered waves of pogroms and violent deportations of Armenians from Azerbaijan and Azerbaijanis from Armenia.² The most brutal of these events was the anti-Armenian pogrom in Sumgait, Azerbaijan, which took the lives of thirty-two Armenians, wounded hundreds more, and intensified the fears of ethnic Armenians living in other parts of Azerbaijan. In November 1988 anti-Armenian riots reportedly once again broke out, this time in the city of Kirovabad, located in central Azerbaijan.

In July 1988, the USSR government debated and then rejected Armenian demands for incorporation.³ Two months later, renewed clashes between Armenians and Azerbaijanis in Stepanakert sent nearly all of the capital's Azerbaijani population fleeing from the city. The USSR government placed Nagorno Karabakh under Moscow's direct rule in January 1989, but this stopped neither clashes between residents and government authorities (mainly USSR Interior Ministry troops), nor clashes between Azerbaijanis and Armenians. Soviet troops and tanks were deployed in Stepanakert in May 1989 to put down a general strike, in which protesters again called for unification of Nagorno Karabakh with Armenia and an end to new Azerbaijani settlements in the region.

The claim to continued Azerbaijani rule over Nagorno Karabakh helped galvanize the Azerbaijani Popular Front, which in August 1989 declared a boycott of Armenia and spearheaded a railway blockade of Armenia and Nagorno Karabakh.⁴ Three months later, Moscow ceased its direct rule over Nagorno Karabakh, and returned control to local authorities. In January 1990 USSR troops stormed Baky, the Azerbaijani capital, purportedly to protect Armenians, but more likely to put down the Popular Front. The crackdown did not prevent violent reprisals against Armenians: anti-Armenian pogroms in January resulted in the deaths

¹ This report refers to ethnic Armenians living in Nagorno Karabakh and other regions of Azerbaijan, as simply Armenian. They should not be confused with Armenians who are citizens of the Republic of Armenia.

² From 1988 through 1990 an estimated 300,000-350,000 Armenians either fled under threat of violence or were deported from Azerbaijan, and roughly 167,000 Azerbaijanis fled Armenia, sometimes under violent circumstances.

³ The Armenian Supreme Soviet voted on June 15, 1988, to accept Nagorno Karabakh into the Republic of Armenia. The Azerbaijani Supreme Soviet responded the following day, voting not to relinquish the region.

⁴ Azerbaijani economic and transport blockades against both Armenia and Nagorno Karabakh continued sporadically until the summer of 1991, when a full and permanent blockade was effected.

of about sixty-eight Armenians; moreover, the troops used brutal force in Baky, killing about 100 Azerbaijani residents, most of them unarmed.⁵

Armenians in both Armenia and Nagorno Karabakh continued to reject the Azerbaijani claim to Nagorno Karabakh. One month after the August 1991 putsch in Moscow, which ended Communist rule in the Soviet Union, the Nagorno Karabakh Oblast Soviet and the governing council of the Shaumian District (located to the north of Nagorno Karabakh Oblast, also on the territory of Azerbaijan) announced the establishment of the Nagorno Karabakh Republic and declared that it was no longer under Azerbaijani jurisdiction. In November 1991 the Azerbaijani parliament, facing increasingly fierce popular demands for decisive action in Nagorno Karabakh, voted to annul Nagorno Karabakh's status of autonomous oblast.⁶ The Nagorno Karabakh parliament responded by holding a referendum on independence. An overwhelming majority of residents voted in favor of independence from Azerbaijan, and on January 6, 1992, the Nagorno Karabakh "Republic" parliament declared independence from Azerbaijan.

Beginning in 1988 the issue of Nagorno Karabakh shaped the movements within both Armenia and Azerbaijan for greater independence of their respective republics from the USSR. The Karabakh Committee, which led the movement in Armenia for democratization and for an independent Karabakh, eventually was renamed the Armenian National Movement. Its leader, Levon Ter-Petrossian, was elected the first non-Communist Chairman of the Armenian Supreme Soviet in July 1990. The Popular Front of Azerbaijan gained popularity because of its tough stand on Nagorno Karabakh. In recent months the careers of some prominent Azerbaijani politicians, including the former president, Ayaz Mutaibov, ended because of their failure to assert Azerbaijani control over Nagorno Karabakh. The Popular Front came to power in Azerbaijan on June 7, 1992, when Abulfaz Elchibey, its chairman, was voted President in a popular election.

STAGES OF ARMED CONFLICT

The level of violence in Nagorno Karabakh and surrounding districts increased steadily during the course of the above events, despite occasional lulls. In the wake of the February 1988 demonstrations, Armenian and Azerbaijani residents engaged in communal violence, characterized by individual attacks, "mainly at night, aimed at destroying livestock and harassing people. There was also hostage-taking, which frightened people in neighboring villages."⁷ Stoning passing cars also became common.

⁵ See "Conflict in the Soviet Union: Black January in Azerbaijan," A Helsinki Watch/Memorial Report, May 1991.

⁶ This report refers to the region as "Nagorno Karabakh," and to the self-styled government there as "Nagorno Karabakh authorities" as a matter of convenience and not out of political conviction.

⁷ According to Ramiz Melikov, deputy press secretary of the Azerbaijani Ministry of Defense, who was interviewed by Helsinki Watch in Baky.

This kind of violence intensified toward the end of 1989, as Armenians staged strikes in Nagorno Karabakh to protest the Azerbaijani blockade of that region, as well as of Armenia.⁸ On January 15, 1990, roughly 17,000 additional troops of the USSR Ministry of Interior (MVD) were sent to the region to enforce a state of emergency declared the same day in Nagorno Karabakh and at the Armenian-Azerbaijani border.⁹ At least twice during the spring of 1990 these troops used force to put down demonstrations by Armenians who claimed they were unarmed. By the summer of 1990 military checkpoints had been set up on all roads leading to Stepanakert and travel within Nagorno Karabakh generally was reported to be under military control.

Raids on villages and shoot-outs between armed bands of Armenians and Azerbaijanis became a frequent occurrence, especially in the districts of Azerbaijan that border Nagorno Karabakh to the north. An estimated 115 attacks on law enforcement officials, military outposts and military patrols took place between January and May, 1991.¹⁰

Operation Ring

The increasingly open flow of arms apparently facilitated the formation of paramilitary self-defense forces of ethnic Armenians, leading to sporadic armed clashes between Armenians and Azerbaijanis in the region. A watershed came in the spring and summer of 1991, when Azerbaijani Special Function Militia Troops, or OMON, accompanied by Soviet Army troops, conducted a "passport regime"¹¹ and arms check known as "Operation Ring" in Armenian villages in Nagorno Karabakh and the Khanlar and Shaumian districts of Azerbaijan, located to the north of Nagorno Karabakh.

Azerbaijani Internal Ministry officials interviewed by Helsinki Watch in June 1991 claimed that the passport regime was necessary because Armenians were illegally moving to Nagorno Karabakh¹² and the Khanlar and Shaumian districts in order to increase artificially the Armenian population of these locations and to participate in armed insurrection. Moreover, Azerbaijani and Soviet forces sought to seize illegal weapons and apprehend members of Armenian paramilitary groups. One Azerbaijani official explained the participation of the Soviet Army in this operation as necessary to "prevent massive armed action, to get rid of

⁸ Indeed, Soviet officials characterizing the level of violence in the region said that not a day went by "without gunfire, explosives, mine blasts, arson, and pogroms." See David Remnick, "Soviet Official Warns of 'Homemade Lebanon,'" *The Washington Post*, October 2, 1989, p. A23.

⁹ Although the state of emergency was declared in response to the violence in Baky, it was inexplicably not declared in Baky itself.

¹⁰ Moscow TASS International Service in Russian, FBIS, May 6, 1991.

¹¹ Every citizen of the former Soviet Union had an internal passport which included, among other things, his or her residence permit, or *propiska*. In order to move to another town or village, a citizen had to obtain a *propiska* for the new location.

¹² That is, without a *propiska*.

bandits."¹³ According to the USSR press, the operation led to the confiscation of a variety of weapons from both Armenians and Azerbaijanis, including launchers for mortar shells, mortars, shotguns, grenades, and a variety of home-made weapons.

Armenians maintain that the aim of these attacks was to deport Armenians from the villages of Nagorno Karabakh and from the Khanlar and Shaumian districts.¹⁴ Moreover, according to Eduard Semoniants, deputy assistant on national security affairs to Armenia's President Ter-Petrossian, the entire operation was a "preparation for war, carried out under [USSR President Mikhail] Gorbachev's orders."¹⁵

The campaign resulted in the arrest and detention of hundreds of Armenian men, the temporary deportation of thousands of Armenians, and the emptying of between twenty-two and twenty-four Armenian villages.¹⁶ It was reportedly carried out with an unprecedented degree of violence and a systematic violation of human rights. It was known as "Operation Ring"

¹³ Helsinki Watch interview with Telman Khaliogly, then First Deputy Chairman of the Supreme Soviet of Azerbaijan, June 17, 1991.

¹⁴ The Armenian Parliament's Artsakh Committee furnished Helsinki Watch with a translated copy of an order, apparently issued by a Captain Yagodin of the USSR Ministry of Interior forces, dated May 1, 1991, that read:

To the population of the villages of Chaikent [Getashen] and Martunashen of Khanlar District of Azerbaijani Republic:

On the request of the population of the villages of Chaikent and Martunashen the state of emergency district commandant's office

1. Guarantees the security of the Chaikent [Getashen] and Martunashen population until June 1, [1991] while the documents for the sale of [their] homes and properties are being prepared;

2. Guarantees the security of transportation of the population during the same period;

3. Has coordinated the above two points with the Interior Ministries of the USSR and [Azerbaijani] republic.

The order was apparently signed by R. Mamedov, First Deputy Interior Minister of Azerbaijan, and Colonel Y. Mishin, Deputy Commandant of the USSR Ministry of Interior Division.

¹⁵ Interview with Helsinki Watch, May 2, 1992. In April 1991, when Operation Ring was in full swing, the Supreme Soviet of Armenia adopted a declaration charging that the USSR actions amounted to "state terrorism directed against the Armenian people and . . . aggression against the Armenian Republic. See, "Armenia Creates State of Emergency," Yerevan Domestic Service in Armenian, FBIS, May 1, 1991, p. 71.

¹⁶ Helsinki Watch has specific data, provided by the Artsakh Committee, only on the Gadрут District and on Bertadzor. According to this data, through May 21, 1991, 533 Armenians were deported from these locations.

because the round-ups followed a pattern that began with Soviet armed personnel carriers circling, sealing off, and, in some locations, shelling a given village. Next, troops of the 23rd Division of the USSR Fourth Army and of the Interior Ministry (MVD), along with Azerbaijani OMON troops, would enter the villages, search for weapons and guerrillas, and check the passports of inhabitants. In the process they interrogated and beat the inhabitants, rounded up male heads of households, and either participated in or allowed the looting and burning of homes. Men rounded up on suspicion of weapons possession, or of violating passport regulations, were taken to police lock-ups or prisons, where Azerbaijani police and jail personnel reportedly beat them on a routine basis.¹⁷ Families who were deported were forced to sign statements that they were leaving of their own accord. In some localities, the process was drawn out over the course of several weeks, during which villages offering resistance were apparently completely cut off from the outside and left without vital supplies.

Armenians in some villages affected by Operation Ring put up violent resistance. According to USSR and Azerbaijani reports, Armenians sometimes attacked or took as hostages Azerbaijani OMON and Soviet MVD troops.¹⁸ Among them were fourteen Soviet Army servicemen who were taken hostage April 30.¹⁹ Operation Ring, and the resistance to it, was particularly violent in the Khanlar and Shaumian districts of Azerbaijan, including the villages of Chaikent²⁰ (which Armenians call Getashen), Martunashen, Buzlukh, Erkech, Manashid, and Verishen, where villagers put up several weeks of resistance and were essentially cut off from supplies from the outside. The Republic of Armenia, which considered Martunashen and Chaikent under siege, attempted helicopter airlifts from Armenia to these villages to bring in supplies and take out the wounded.²¹

According to Azerbaijani officials, Chaikent, for example, had "become an outpost for Armenian guerrillas and military equipment, and tens of Azerbaijanis had been killed."²² One woman from Chaikent, who asked Helsinki Watch not to use her name, confirmed that the village was indeed arming itself: "Women prepared bottles with Molotov cocktails. The village

¹⁷ See "USSR: Recent Allegations of Ill Treatment by Law Enforcement Officials in the Republic of Azerbaydzhan," Amnesty International, August 1991. EUR\46\53\91.

¹⁸ See, for example, "Two Azerbaijanis Killed; Security Forces Fired On," Baku Domestic Service in Azeri, FBIS, April 22, 1991; and "Militia Officers, Servicemen Die," Yerevan Domestic Service in Armenian, FBIS, April 23, 1991.

¹⁹ See Moscow Radio Rossiia Network, FBIS, May 3, 1991.

²⁰ In the execution of Operation Ring at least twenty-two villagers were killed in the villages of Chaikent and Martunashen alone, which have a combined population of about 3,800 Armenians. This information was provided to Helsinki Watch by the Artsakh Committee of the Armenian Parliament.

²¹ For example, Levon Ter-Petrossian, President of the Republic of Armenia, charged that the Shaumian District, Chaikent, and Bertadzor were completely blocked and had no access to drinking water, food, or medical supplies. See "Ter-Petrossian Warns Moscow on Deportations," Yerevan Domestic Service in Armenian, FBIS, April 25, 1991, p. 72.

²² Helsinki Watch interview with Telman Khaliogly, June 17, 1991.

was prepared to defend itself. The villagers did have weapons to defend themselves and their families. People are afraid to talk about owning weapons." ²³ Toward the end of April, in response to this resistance, the USSR MVD forces took positions in the hills overlooking Chaikent and reportedly began shelling.²⁴

In June 1991, Helsinki Watch representatives interviewed victims and witnesses from Chaikent, Martunashen, Kirov (located in the Shaumian District) and Bertadzor (located in the Shusha District). The information received in these interviews, as well as information gathered about Operation Ring during the April-May 1992 mission, appears in Appendix I of this report. This testimony is generally consistent with reports by human rights and other organizations, including Amnesty International, Pax Christi Netherlands, and the Sakharov Foundation about the conduct of Operation Ring. Taken together, they point to the responsibility of the 23rd Division, the USSR MVD troops, and the Azerbaijani OMON troops for gross violations of human rights and humanitarian law, including violations of Common Article 3 of the 1949 Geneva Conventions and the United Nations Code of Conduct for Law Enforcement Officials.²⁵

In response to Operation Ring and as a result of the rapid collapse of the Soviet Union, skirmishes between Armenian and Azerbaijani forces became more frequent in Nagorno Karabakh and bordering districts. In the late summer and early autumn 1991 Armenians fought to re-seize their villages, and Azerbaijanis used force to counter Nagorno Karabakh's declaration of independence. The number of casualties and hostages began to mount rapidly.

THE CURRENT ARMED CONFLICT

After the formal break-up of the Soviet Union in December 1991, USSR MVD troops, believed by some to have had some mitigating effect on the hostilities, withdrew from Nagorno Karabakh, leaving Armenian and Azerbaijani forces in more open conflict with each other. The dissolution of the USSR also adversely affected control over, and discipline within, its armed forces. Heavy artillery, rocket-propelled grenades (RPGs), rocket launchers, tanks, armed personnel carriers, and the like, property of the Soviet Army, were either sold to, loaned to, or otherwise found their way into the hands of combatants on both sides, making the armed conflict even more lethal.

The total number of Armenian "civilian" casualties from October 1991 through April 1992 alone was 169 dead and 470 wounded. Armen Yesarulov, Interior Minister of the self-

²³ Helsinki Watch interviewed the woman in June 1991.

²⁴ See Yerevan ARMENPRESS International Service in Armenian, FBIS, May 3, 1991.

²⁵ Although the Azerbaijani government treated Operation Ring as a maneuver to put down internal strife, Common Article 3 is applicable in this situation as a result of a combination of the degree of communal violence that preceded the round-ups, the methods used to conduct the round-ups, the degree of resistance anticipated by the OMON and the Soviet Army, and the blockade that was already in effect against Nagorno Karabakh and the Shaumian and Khanlar Districts.

proclaimed Nagorno Karabakh Republic, provided these figures to Helsinki Watch, but was unable to explain the basis for this classification and certain circumstances surrounding these deaths, such as whether the "civilian" was directly participating in hostilities as a self-defense fighter or was in, or near, a legitimate military target at the time of death. The Press Service of the Azerbaijani Defense Ministry could not give an exact figure for the number of Azerbaijani civilian casualties during this period, but estimated that there were thousands.

Press Access

On July 10, 1992, the Azerbaijani government began limiting press access to Nagorno Karabakh and environs. According to a report from the TURAN News Agency, only those journalists "working for the analytical information center of the Azerbaijani Defense Ministry, Azerbaijani television, the television program 'Ostankino', and Russian television 'Vesti'" would be permitted in the zone of conflict. The measure is apparently aimed at preventing "unobjective interpretations of events" and the divulging of military secrets.²⁶

Combatants

Azerbaijani villages in Nagorno Karabakh usually had an armed self-defense formation, and in some cases, two villages would share a joint self-defense operation. These formations sometimes coordinated activities with local Azerbaijani OMON, which are acknowledged to have served as combatants.²⁷ The Azerbaijani National Army, formed in November 1991, throughout the winter and spring of 1992 was concentrated mostly in Shusha, but also was reported to have sent troops to several Azerbaijani villages in Nagorno Karabakh. The National Army was supposed to have established control over most self-defense formations in Azerbaijan; however, such control is widely believed to be weak.²⁸

In November 1991 Armenian forces in Nagorno Karabakh were organized under a single command structure into the Popular Liberation Army of Artsakh, which is answerable to the parliament of the self-proclaimed Nagorno Karabakh Republic.

The government of Armenia claims that it is not directly involved in military activities²⁹ and that it has only limited influence over developments in Nagorno Karabakh, although Azerbaijani officials hotly dispute this claim. Armenian officials interviewed by Helsinki Watch in Yerevan generally expressed their unqualified support for Nagorno Karabakh. Eduard Semoniants, for example, remarked that "not a single state can remain silent in the face of the destruction of its brothers." When asked specifically whether this meant that

²⁶ As cited in COVCAS Bulletin, no. II.21, July 23, 1992, p. 3, and confirmed by telephone interview on August 4, 1992, with the press secretary of the Azerbaijani Embassy in Moscow.

²⁷ According to First Deputy Interior Minister of Azerbaijan Ramiz Mamedov, whom Helsinki Watch interviewed on May 6.

²⁸ See James Rupert, "Azerbaijani Town Left to Fighters," *The Washington Post*, April 15, 1992, p. A3.

²⁹ Armenian officials assert that military activities along the Armenian-Azerbaijani border are also conducted only by self-defense forces.

Armenia would become directly engaged in hostilities in reaction to a strong Azerbaijani air offensive (which began a month later), he responded, "Any country can give aid . . . this does not rule out the use of force. . . . The key is to avoid an offensive."

Mr. Semoniants also expressed the view that the increasingly common skirmishes (at that time, mostly by shelling³⁰) on the Armenian-Azerbaijani border between Azerbaijani and Armenian forces were "intended by Azerbaijan to drag Armenia into the conflict."

Reliable sources, in addition to circumstantial evidence, strongly suggest that if the Armenian government is not directly involved in the arming of Nagorno Karabakh, it is certainly turning a blind eye to the transfer of weapons from Armenia to the region.³¹

Widespread rumors also tell of the use of mercenaries, including Russian soldiers, by both Azerbaijani and Armenian forces. Forces of the 366th Regiment of the Commonwealth of Independent States forces remained in Nagorno Karabakh until March 1992, and Azerbaijani officials and eyewitnesses claim that at least some members of these forces participated on the Armenian side in military hostilities during the winter of 1992.

Blockades

By the winter of 1991-92, as a result of Azerbaijan's three-year economic and transport blockade, Nagorno Karabakh was without fuel (though it did have natural gas), electricity, running water, functioning sanitation facilities, communications facilities, and most consumer goods. The only way for goods to come into Nagorno Karabakh and for Armenians to enter and leave with relative safety was via helicopter from neighboring Armenia. With the Armenian seizure of Khojaly, about ten miles from Stepanakert, Nagorno Karabakh regained the use of the airport located on the outskirts of that town. Life in Stepanakert during the Helsinki Watch visit in April 1992 was at a standstill: no schools, shops or workplaces operated, food was scarce, and the primary daily activity was fetching water from twelve artesian springs with outlets located throughout the city.³²

Azerbaijani villages in Nagorno Karabakh that were surrounded by Armenian villages were also virtually blockaded, often relying on helicopters to bring in supplies. Displaced persons from Khojaly, Malybeyli, and Gushchular, for example, reported that after the shooting down of an Azerbaijani helicopter in late January no further helicopters were sent to their villages, leaving them more or less without essential supplies. If Azerbaijanis could make their way to Lachin, located on the western border between Nagorno Karabakh and the rest of

³⁰ According to Armenian sources, in early August the Azerbaijani National Army launched ground and air assaults on the village of Ardzvashen, located on Armenian territory.

³¹ Until May this was achieved primarily by helicopter and IAK-40 flights into Karabakh. Arms are widely believed to be brought into Nagorno Karabakh from Armenia through the Lachin corridor, which opened in May 1992.

³² These conditions were reportedly alleviated after Armenian forces seized Lachin and established a land corridor between Armenia and Nagorno Karabakh.

Azerbaijan, they could obtain supplies. Such a trip involved travelling a long distance and incurring a risk of being taken hostage, or worse.³³ When Armenian forces in late October cut off the main road connecting Khojaly with the rest of Azerbaijan, for example, the town's lifeline was a helicopter route to the town of Agdam.

Weaponry³⁴

The introduction of missile systems, armed personnel carriers, heavy artillery and comparable conventional weapons brought the armed conflict to a new, vicious intensity. Alazani rockets, intended as anti-hail and anti-avalanche equipment, have reportedly been used by both sides at least since late summer 1991. In January 1992, Azerbaijani forces began attacking Stepanakert with Grad missiles, which are jet-propelled rockets intended as anti-personnel weapons. Both sides are reported to have used Krystal rockets and plastic land mines. In June 1992, Azerbaijani forces began bombing and strafing various districts of Nagorno Karabakh with SU-25 and other ground attack bomber planes, which they had inherited from the Soviet Air Force.

With the use of these weapons, and basically cutting loose any restraining force, Azerbaijani and Armenian forces engaged each other throughout the winter and spring of 1992. From their strategic vantage points of Shusha and Khojaly, Azerbaijani forces pounded Stepanakert and other Armenian villages with shells and grenades; Armenian forces shelled Shusha, Khojaly and other Azerbaijani villages from which Azerbaijani forces would launch attacks. Armenian forces succeeded in capturing the main Azerbaijani villages in Nagorno Karabakh, including Kerkijahan (December 1991), Malybeyli and Gushchular (February 1992), and Khojaly (February 1992).

Recent Developments

With the Armenian capture of Shusha and Lachin, an Azerbaijan town located a few miles from the border with Armenia, in mid-May 1992, Azerbaijanis have been basically ousted from Nagorno Karabakh. Control over Lachin allowed Armenian forces to establish a land link with Armenia, thus breaking Nagorno Karabakh's three-year isolation.

Azerbaijani forces began a counter-attack on June 12, 1992, with ground and air assaults, principally in the Martakert District of Nagorno Karabakh and in the Shaumian District north of it, but closing in on Stepanakert. Reports of humanitarian law violations during the course of these most recent events are consistent with the pattern of violations described to Helsinki

³³ Before their withdrawal in December, USSR MVD troops would provide accompaniment on roads in the conflict zone.

³⁴ Armenians and Azerbaijanis have accused each other of using chemical weapons in Nagorno Karabakh and in Nakhichevan. In July 1992, a United Nations team went to the region to investigate Azerbaijani claims that Armenia has used chemical weapons in April and May. The team concluded, however, that "no evidence of use of chemical weapons was presented . . ." As quoted in "No Evidence Chemical Weapons Used in Azerbaijan," Reuters Information Services [hereinafter "Reuters"], July 28, 1992. See, "Report of the Mission Dispatched by the Secretary General to Investigate Reports of Use of Chemical Weapons in Azerbaijan."

Watch during its April-May fact-finding mission. Western press reports from the region described the burning and looting of Azerbaijani houses in Lachin by Armenian self-defense forces.³⁵ Armenian sources claim that as a result of the Azeri counter-attack roughly 40,000 Armenians have been driven from their homes, that Azerbaijani military planes indiscriminately attacked Armenian towns and villages, and that civilians continue to be killed and seized as hostages.

Regions of Conflict

Struggle for control over Nagorno Karabakh spurred numerous border clashes between Armenia and Azerbaijan. Hence, sites of armed conflict between Armenian and Azerbaijani forces related to the Karabakh crisis encompass not only the territory of the former autonomous oblast, but also other regions of Azerbaijan. These include the Shaumian, Khanlar, Taus, and Kazakh districts to the north and northwest of Nagorno Karabakh, where skirmishes have reportedly taken place for well over a year.

In March 1992 fighting and shelling intensified in the border regions along the east of Nagorno Karabakh,³⁶ including mainly Agdam and Fizuli. The border regions between Armenia and Azerbaijan near the city of Goris came under fire in early May 1992, and clashes were reported in May in Nakhichevan, an autonomous republic of Azerbaijan that borders Armenia, Turkey, and Iran, but that shares no border with Azerbaijan.

Displaced Persons and Refugees

The armed conflict in Nagorno Karabakh has created thousands of internally displaced persons and refugees. According to figures provided by Tamerlan Karaev, since November/December 1991, 43,454 Azerbaijanis have left Nagorno Karabakh and 110,096 Azerbaijanis have been displaced from all parts of Azerbaijan. These figures include those who fled border towns such as Agdam and Fizuli, and who may have since returned to their homes.³⁷ Armenian sources had no concrete figures on the total number of Armenians refugees from Nagorno Karabakh. An estimated 40,000 Armenians fled the conflict zone after Azerbaijan began its counter-offensive on June 12. It is possible, however, that some return to the region once heavy fighting subsides.

³⁵ See Varona Bennet "Blind Hatred," Reuters article printed in Russian in *Izvestia*, May 25, 1992, p. 1. See Deborah Seward, "Nagorno Karabakh's Leaders Mapping out the Region's Future," Associated Press, May 25, 1992.

³⁶ Azerbaijani officials reject the term "border," since it suggests that Nagorno Karabakh is not part of Azerbaijani territory. Here the term is used for convenience, without political implications.

³⁷ These figures doubtless increased after the seizure of Lachin on May 15, 1992.

The United Nations High Commission on Refugees (UNHCR), in coordination with other U.N. agencies, is currently considering establishing a presence in the region to "alleviate human suffering and provide protection to refugees."³⁸

NEGOTIATIONS AND PROSPECTS

Neither the Republic of Armenia or Nagorno Karabakh, on the one hand, nor Azerbaijan, on the other, is willing to compromise on the issue of who shall control the region. Azerbaijani officials claim they are prepared to guarantee "cultural autonomy" to Armenians in Nagorno Karabakh. Officials in Armenia categorically reject this proposal. "No one believes any guarantees of Azerbaijan; it's a fairy tale," Seran Bagdasarian, head of the Commission on Karabakh Affairs of the Armenian Parliament, told Helsinki Watch in a May 1992 interview. "The problem has to be solved through international guarantees." Sadly, however, international efforts thus far have not brought an end to the hostilities.

Since the escalation of the conflict in the fall, a number of initiatives led jointly by Russia and Kazakhstan, and later by Iran, resulted in short-lived cease-fires. On May 8, for example, Iran brokered an eight-point agreement between Azerbaijan and Armenia, under which Azerbaijan would lift the economic blockade of Nagorno Karabakh and Iran would serve as a peaceful mediator for both sides.³⁹ The next day Armenian forces launched an attack on Shusha, the last Azerbaijani stronghold in Nagorno Karabakh. In early August Russia renewed its mediation efforts, offering to send peacekeeping forces to Nagorno Karabakh.⁴⁰

The Conference on Security and Cooperation in Europe (CSCE) has sent a number of fact-finding missions to the region to examine possibilities for peace-keeping roles. A series of CSCE meetings in Rome⁴¹ in June and July were to set up a larger peace conference in Minsk to discuss Nagorno Karabakh. The four rounds of Rome meetings held so far have encountered many obstacles involving the presence and status of representatives from Nagorno Karabakh and the legal status of the self-declared Nagorno Karabakh Republic.⁴² Armenians from Nagorno Karabakh, supported by the Republic of Armenia, wanted to be on equal footing with other parties to the talks. Azerbaijan categorically rejected this demand, threatening to quit the fourth

³⁸ According to Oldrich Andrysek, Senior Desk Officer of the European Bureau of the UNHCR in Geneva.

³⁹ The agreement also called for a cease fire, the guaranteeing of the rights of minorities, and the resolution of all disputes in accordance with international law.

⁴⁰ According to The Armenian Assembly of America, Daily Report, August 10, 1992.

⁴¹ Participants in the Rome meetings included Armenia, Azerbaijan, Belarus, Czechoslovakia, France, Germany, Italy, Russia, Sweden, Turkey, and the United States.

⁴² Early in the Rome rounds, the Republic of Armenia insisted that the matter of Nagorno Karabakh's juridical status be resolved after the establishment of a cease-fire. Azerbaijani officials, however, maintained that only the Minsk conference would be the proper forum in which to discuss this legal matter. See "Rome Meeting on Karabakh on the Brink of Failure," (in Russian) *Izvestia*, June 18, 1992, p. 5.

round of the talks "[i]f the chairman and the presidium . . . give us any grounds to assume the possibility of recognition in any form of the so-called 'Nagorno Karabakh Republic.'"⁴³ Because the last round ended in a deadlock on this issue, concrete plans and dates for the CSCE peace conference in Minsk have so far not materialized.

In early July eight member states of the CSCE proposed to send a peacekeeping mission of 100 to Nagorno Karabakh after the entering into effect of a cease-fire. The plan, however, failed to meet the approval of the entire CSCE. At the July CSCE summit Azerbaijani President Abulfaz Elchibey proposed a thirty-day cease-fire, which had no apparent effect on continued Azerbaijani attacks in Nagorno Karabakh. The Helsinki summit produced no declaration on Nagorno Karabakh.

Armenia, Azerbaijan, and the authorities in Nagorno Karabakh have repeatedly called for United Nations mediation and intervention in the conflict. The United Nations has sent three fact-finding missions to the region. The conclusions of the first two, held March 16-21, 1992, and May 21-28, 1992, respectively, are confidential. The third mission was sent in early July to examine Azerbaijani claims of Armenian use of chemical weapons.⁴⁴ The United Nations has so far not proposed the deployment of peace-keeping forces to Nagorno Karabakh or active involvement in negotiations. United Nations Secretary General Boutros Boutros-Gali has explained that the United Nations' position on intervention in Nagorno Karabakh is "to encourage decentralization in peacekeeping operations. We want to encourage the different regional organizations to play a role. . . . In the case that the regional framework . . . was not able to solve the dispute, then we can move at the Security Council."⁴⁵ As of this writing, no steps have been taken toward United Nations mediation, despite the deadlock in the Rome talks and the continuing escalation of the conflict.

The Bush Administration has repeatedly condemned the violence in Nagorno Karabakh, urged the parties to the conflict to cooperate with the CSCE mediation effort, and called on them to observe cease-fires. It has been reluctant to state clearly its views on the involvement of Armenia in the hostilities in Nagorno Karabakh, and has not singled out any party for specific humanitarian law violations.

On August 7, 1992, the United States House of Representatives adopted the Freedom Support Act, providing, among other things, \$620 million in assistance to the new states that emerged from the Soviet Union. A House-Senate conference, scheduled for September, will bring the House Act in conformity with the Senate version of it, passed on July 2. Both the House and Senate versions exclude Azerbaijan from any assistance until the U.S. president determines that the government of Azerbaijan is taking "demonstrable steps to cease all blockades and other offensive uses of force against Armenia and Nagorno Karabakh; is respecting the internationally recognized human rights of Armenians and other minorities living

⁴³ See Richard Wallis, "Nagorno Peace Talks Start Race Against Time," Reuters, August 3, 1992.

⁴⁴ See above.

⁴⁵ Address to the National Press Club Luncheon, May 13, 1992, as reported in Federal News Service.

within its borders; and is participating in international efforts to resolve peacefully and permanently the conflict in Nagorno Karabakh."⁴⁶

Azerbaijan is the only country to be excluded from the aid package. While Helsinki Watch welcomes these sanctions, we are disturbed that neither the Congress nor the Administration has found a way to address forcefully humanitarian law violations committed by all sides in the conflict. No mention is made, not even in sense of the Senate language, of Armenia's responsibilities with regard to the conflict.

⁴⁶ U.S. Senate, An Act Entitled the "Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act." 102d Congress, 2d Session, S.2532.

SPECIFIC VIOLATIONS OF THE LAWS OF ARMED CONFLICT¹

VIOLENCE TO CIVILIANS, SUMMARY EXECUTIONS, DESTRUCTION OF CIVILIAN PROPERTY, PILLAGE, FORCED EVACUATION OF CIVILIAN POPULATION

By the winter of 1991-1992 a pattern of attacks on villages and abuses of civilians emerged. These abuses, committed by both sides, flagrantly violate customary law rules codified in Article 3 Common to the 1949 Geneva Conventions, the Second Additional Protocol of 1977², and United Nations General Assembly Resolution 2444. Armenian forces captured villages populated by Azerbaijanis, allegedly seeking to end missile attacks on Armenian locations. In the process, they killed unarmed civilians who either remained in the village or who were attempting to flee, looted and sometimes burned their homes, and essentially prevented them from returning to their villages.

Azerbaijani forces committed the very same abuses against Armenian civilians. During the winter and spring of 1992, however, Azerbaijani ground assaults on Armenian villages consisted mainly of those that could be conducted close to the border between Nagorno Karabakh and the rest of Azerbaijan.³ Instead of ground assaults, Azerbaijani forces primarily shelled Armenian towns and villages.⁴

By Armenians

Khojaly

On the night of February 25-26 Armenian forces seized the Azerbaijani town of Khojaly, located about ten miles from Stepanakert. As some of its residents, accompanied by retreating Azerbaijani militia and self-defense forces, fled Khojaly seeking to cross the border to reach Agdam, they approached Armenian military posts and were fired upon. The Azerbaijani government is currently conducting two investigations of the events, one carried out by a special parliamentary commission and another by the Procuracy. In addition, the Human Rights Center of Memorial, a prominent Russian nongovernmental organization, conducted an independent investigation of the incident in March 1992.⁵

¹ See Appendix V of this report for an explanation of the application of customary law rules governing the conduct of the parties to the armed conflict in Nagorno Karabakh.

² Hereinafter, Protocol II.

³ A concerted ground and air assault on the Shaumian and Martakert districts began on June 12. Helsinki Watch received reports that Azerbaijani forces are committing the same pattern of abuses, but has not yet conducted its own investigation.

⁴ See below.

⁵ See Report of the Memorial Human Rights Group on Massive Violations of Human Rights Committed in the Seizure of Khojaly during the Night of February 25-26, 1992. In Russian, available through Helsinki Watch, and reprinted in *Nezavisimaya Gazeta*, June 18, 1992, page 5.

According to Azerbaijani Procuracy officials, before the escalation of the conflict in Nagorno Karabakh, Khojaly had a population of about 6,000; its precise population in February is unknown since some residents may have fled earlier.⁶ In 1988 Khojaly had only 2,000 residents and had the status of a village; its numbers grew as Azerbaijani refugees from Armenia were resettled there. The Azerbaijani government had also settled in Khojaly several hundred Meskhetian Turks fleeing persecution in Central Asia. Finally, Azerbaijanis flocked there from other parts of Nagorno Karabakh, notably from Stepanakert, and continued to do so after Armenian forces overran their villages in the winter of 1991-92. It received the status of town from the Azerbaijani government only in December 1991, and, after Shusha, was the second most populous Azerbaijani town in Nagorno Karabakh.⁷

The only airport in Nagorno Karabakh is located in Khojaly. Since at least 1990, an Azerbaijani OMON militia unit was deployed in Khojaly, mainly with the purpose of defending the town and the airport. The exact number of militia deployed is unknown. Aiden Rasulov, who leads the Azerbaijani Procuracy's investigation of Khojaly, puts the number at twenty-two, although displaced persons said that as many as forty militia men fled with the town's population. In addition, Khojaly had a self-defense group of about 200.

Armenian fighters maintain that they sent ultimata to the Azerbaijani forces in Khojaly warning that unless missile attacks from that town on Stepanakert ceased, Armenian forces would attack.⁸ According to A.H., an Azerbaijani woman interviewed by Helsinki Watch in Baky,

After Armenians seized Malybeyli, they made an ultimatum to Khojaly . . . and that Khojaly people had better leave with a white flag. Alif Gajiev [the head of the militia in Khojaly] told us this on February 15, but this didn't frighten me or other people. We never believed they could occupy Khojaly.

According to nearly all of the twenty-two Azerbaijani witnesses of the Khojaly events interviewed by Helsinki Watch, the village had been shelled almost on a daily basis during the winter of 1991-92, and people had grown accustomed to spending nights in basements.

The attack on Khojaly began about 11:00 P.M.⁹ on February 25, with heavy shelling and artillery fire. Hassan Alahierov, a construction worker, told Helsinki Watch,

we were used to [hearing] shooting, but usually with machine guns. I was sleeping on the balcony and my son came to me and said that this was a different

⁶ The investigative team of the Azerbaijani Procuracy in April was still trying to establish the exact number of inhabitants of Khojaly by checking passport registrations.

⁷ For a description of life in Khojaly before the February 25 attack, see Thomas Golts, "A Town Betrayed: The Killing Ground in Karabakh," in *The Washington Post*, March 8, 1992, p. C1.

⁸ Helsinki Watch interview with A.G., a member of the PLAA, April 28, 1992.

⁹ According to S.A., a member of the OMON unit, shelling of the airport began at 5:00 P.M.

noise. I stood up and . . . saw BMPs [armed personnel carriers] and tanks were shooting from all directions. . . . When I went out I saw bombs falling everywhere.

Several refugees reported that they saw houses burning during the attack on Khojaly or while they were fleeing the village. Juleka Dunemalieva (whose sister died of exposure during their flight from Khojaly) said that at about midnight or 1:00 A.M. she saw the neighborhood where Meskhetian Turks lived go up in flames: "Meskhetians lived in our neighborhood in Finnish-style cottages. When their houses were burned we got out right away."

Most Khojaly residents remained in the town until about 3:00 A.M., some staying in basements in private homes. In addition, about 300 residents reportedly took shelter in the basement of one school. Some reported that they decided to leave at 3:00 A.M. because the self-defense forces were running through the streets shouting instructions to people to run away.

Residents fled the town in separate groups, amid chaos and panic, most of them without any belongings or clothes for the cold weather. As a result, hundreds of people suffered — and some died — from severe frostbite.

The majority of Khojaly residents went along a route that took them across a shallow river, through the mountains, and, by about dawn, towards an open field near the village of Nakhichevanik, controlled then by Armenians. It was here that the most intense shooting took place. Other people fled along different routes that took them directly by Shelli, an Azerbaijani village near Agdam. A number of Khojaly survivors wandered through the forest for several days before finding their way to Agdam's environs.

● Positioning of the Militia

Among one of these fleeing groups was the Azerbaijani OMON, led by Alif Gajiev, on retreat from the airport. Gajiev had, according to several Helsinki Watch interviewees, directed the group seeking shelter in the school basement to leave the village. At Nakhichevanik Armenians and troops of the CIS 366th regiment opened fire on the retreating OMON militia and the fleeing residents. All Azerbaijanis interviewed who were in this group reported that the militia, still in uniform, and some still carrying their guns, were interspersed with the masses of civilians. For example, Hijran Alekpera, a twenty-three-year-old former bakery worker, described a mass of civilians who moved along "surrounded by a ring of defenders. They tried to defend us. They had guns and they would try to shoot back."

According to a twenty-one-year-old Azerbaijani woman whose toes had to be amputated because of frostbite damage, "The leaders of our group were men. The Armenians opened fire as we approached the village [of Nakhichevanik]. They surrounded us and shot. There was shooting between Armenian soldiers and ours." S.A., a member of the OMON unit, told Helsinki Watch, "We were shooting and running in the pack, but it was not an organized retreat. We were all mixed together."

Another young Azerbaijani woman, who suffered frostbite on her legs, also described the crossfire: "When Armenians saw us they began to shoot. We hid. At the same time Azerbaijanis shot back. They were Azerbaijani OMON. Some of them were with us when we fled."

● **Firing on Civilians**

Witnesses to and victims of the shooting at Nakhichevanik told Helsinki Watch of varying numbers of people who fell under fire, and described how they received their gunshot wounds.

Thirty-three-year-old Nigar Azizova, who worked in a vegetable store, told Helsinki Watch that when the crowd started falling over bodies, they turned back and fled in different directions.

The crowd was about sixty meters long. I was in the middle, and people in the front were mostly killed. At Nakhichevanik we saw that people in front were falling. They shouted and fell. I recognized their faces. I could see their faces as we stepped over them. We covered the children's eyes so they wouldn't see.

Mrs. Azizova listed eight people whose bodies she had to step over, and claimed that they had no guns: Elshan Abushov, Hassan Abushov, Zelif Alekhpeliev, Tevagul Alekhpelieva, Sakhvet Alekhpeliev (who reportedly was nine years old), Elmar Abdulev, Etibar Aushov, and Habib Abushov.

A young Azerbaijani woman who was eventually taken hostage told Helsinki Watch, "It was a cultivated field. We approached it and saw that they began to shoot. I must have seen sixty people dead in the field. Those who were running away with me fell and died."

Hassan Alahierov said: "First we ran to Nakhichevanik, but when they began shooting people we ran to the other side. There was a BMP standing on the road — I didn't see it, I just saw the shells." Alahierov's eighteen-year-old daughter, who got separated from her father, said she saw the tank: "When the tank began to shoot we ran in all directions. I saw corpses scattered, and saw all the people surrounding them fall."

Hijran Alekpera reported that:

By the time we got to Nakhichevanik it was 9:00 A.M. There was a field and there were many people who had been killed. There were maybe one hundred. I didn't try to count. I was wounded on th[is] field. Gajiv Aliev was shot and I wanted to help him. A bullet hit me in the belly. I could see where they were shooting from. I saw other bodies in the field. They were newly killed — they hadn't changed color.

Fifty-one-year-old Balaoglan Allakhiarov said:

We got to Nakhichevanik at 8:00 A.M., and were in the middle of the field when they began to fire. They were shooting only from one direction — the forest. Then we ran off the field toward a canyon, where my wife and daughter-in-law were shot. They were shot from about twenty meters. My daughter-in-law was struck three times — through the skull, in her stomach and in her leg. My wife was hit from behind. [The Armenians] took off their rings.

At about 8:00 A.M. Nazile Khetemova received a gunshot wound in her left leg:

We were all crawling. Whoever stood up got wounded. I stood up to rest my legs and was wounded. I saw many people get shot, and we had to leave them as we crawled along. After I was wounded I didn't see many people pass me; they hid in the forest. I stayed in the snow until 7:00 P.M. Members of the Popular Front came and helped me escape.

Beginning February 27, Azerbaijani helicopters brought in personnel who attempted to collect bodies and assist the wounded. Some of the rescue team were wearing camouflage clothing, and they were constantly shot at by Armenian forces.¹⁰ Members of the first rescue group, who were accompanied by a French journalist, reported that some of the corpses had been scalped or otherwise mutilated. One member of the group videotaped the mission.

● Death Toll

There are still no definitive figures on the number of civilians who were shot while fleeing Khojaly. According to Aiden Rasulov, more than 300 bodies showing evidence of a violent death were submitted for forensic examination. At the time of Helsinki Watch's visit to Baky, the results of these examinations had not been completed, and the investigative team was in the process of tracking down the corpses of Khojaly victims that had been removed from Agdam by family members in the first days after the tragedy. Earlier figures made available by Azerbaijan and published by the Memorial group put the number of deaths resulting from gunshot, shrapnel, or other wounds at 181,¹¹ (130 men and fifty-one women, including thirteen children). In addition, an undetermined number died of frostbite. Namig Aliev, who heads the Department on Questions of Law and Order and Defense of the Azerbaijani Parliament and who is part of the parliamentary group investigating the Khojaly events, told Helsinki Watch in April that 213 Khojaly victims were buried in Agdam. Some of the bodies received at the makeshift hospital in Agdam were identified as combatants. Many male bodies that lacked all identification were not identified as civilian or combatant.¹²

Aliev also reported that of those bodies submitted for forensic examination, thirty-three had been scalped, had body parts removed, or had been otherwise mutilated.

One hundred eighty individuals from Khojaly are reported to be missing.

As noted in Appendix V to this report, the civilian population and individual civilians are not legitimate objects of attack in any armed conflict. The contending parties accordingly must distinguish at all times between civilians and combatants and direct their attacks only against the latter. Moreover, the parties may not use civilians to shield military targets from

¹⁰ See below, under "Abuse of Medical Personnel and Transports."

¹¹ See Appendix II for a list of these victims.

¹² In a letter of July 17, 1992, to Helsinki Watch, Mr. Aliev stated that 927 people died. It is not clear, however, whether these deaths were caused by frostbite, gunshot wounds, or some other cause.

attack or to shield military operations, including retreats. Thus, a party that intersperses combatants with fleeing civilians puts those civilians at risk and violates its obligation to protect its own civilians.

Although retreating combatants and civilians who assume a combatant's role while fleeing are subject to direct individualized attack, the attacking party is still obliged to take precautionary measures to avoid or minimize civilian casualties. In particular, the party must suspend an attack if it becomes apparent that the attack may be expected to cause civilian casualties that are excessive in relation to the concrete and direct military advantage anticipated.

The circumstances surrounding the attack at Nakhichevanik on those fleeing Khojaly indicate that Armenian forces and the troops of the 366th CIS regiment (who were not apparently acting on orders from their commanders)¹³ deliberately disregarded this customary law restraint on attacks. Nagorno Karabakh officials and fighters clearly expected the inhabitants of Khojaly to flee since they claim to have informed the town that a corridor would be left open to allow for their safe passage. No witnesses interviewed by Helsinki Watch, however, said that they knew beforehand of such a corridor. In addition, although witnesses and victims gave varying testimony on the precise time the shooting began at Nakhichevanik, they all indicated that there was sufficient light to allow for reasonable visibility and, thus, for the attackers to distinguish unarmed civilians from those persons who were armed and/or using weapons. Further, despite conflicting testimony about the direction from which the fire was coming, the evidence suggests that the attackers indiscriminately directed their fire at all fleeing persons. Under these circumstances, the killing of fleeing combatants could not justify the foreseeably large number of civilian casualties.

Malybeyli and Gushchular

This pair of Azerbaijani villages is separated by a low hill and shared the same village administration. They are located a few kilometers from Stepanakert, and, together, had a population of between 2,000 and 4,000.¹⁴ Malybeyli and Gushchular had a joint self-defense unit of about eighty. According to a member of Gushchular's self-defense forces, seventeen militia men served there, and a small unit of the National Army was deployed in Gushchular in January for about twenty days. Azerbaijani forces reportedly shelled Armenian villages from this area.

By October or November 1991 residents of Malybeyli and Gushchular were basically confined to their villages, as travel elsewhere could be done only by helicopter. The majority

¹³ The number of servicemen in the 366th who participated in the massacre of civilians is still unknown. The Azerbaijani Procuracy's investigative team sent a delegation to Tbilisi, where the 366th was relocated after it withdrew from Stepanakert, to inquire how many men from the regiment had been killed, wounded, and missing during their service in Nagorno Karabakh. According to Aiden Rasulov, military officials refused to meet with the investigative team, claiming that they are answerable only to Moscow. As of April, the investigative team had not asked for an accounting from Moscow military authorities.

¹⁴ Like Khojaly, in 1988 Gushchular and Malybeyli received Azerbaijani refugees from Armenia. The figures range from about 580 to 1500.

of women and children were evacuated on December 12, according to a Helsinki Watch interview with a member of Gushchular's self-defense forces, but many still remained.

According to witnesses' accounts, Armenian forces began heavy shooting and shelling of these two villages in December 1991. A report in the newspaper *Express Chronicle* asserted that on February 5 a helicopter distributed leaflets warning villagers that they had two days to leave before "the settlement would cease to exist,"¹⁵ but no interviewees confirmed this report. Armenian forces attacked these villages with heavy artillery and armed personnel carriers on the night of February 9-10, with the alleged aim of ending the shelling of Armenian villages. Malybeyli was attacked first, and most of its villagers reportedly fled to neighboring Gushchular. The entire attack lasted two days. Residents of Malybeyli and Gushchular reported that as they fled they saw, from atop a hill a kilometer away, houses in flames. They cannot return to their villages, which are now in Armenian hands. Eight people were reportedly killed as a result of the seizure of Malybeyli, some of whom were women and children.¹⁶

Residents of Gushchular fled to Agdam about 9:00 A.M. on February 11. An Azerbaijani who worked as a tractor mechanic on the local collective farm told Helsinki Watch,

at 7:00 A.M. Armenians surrounded the village from all sides and shot everywhere. At 8:00 A.M. [our] soldiers told us we had to leave the village. Some of us were killed on the road while fleeing.

According to the reports of several eyewitnesses, the militia and self-defense forces, which still had their guns, were mixed with civilians as they were fleeing. According to twenty-seven-year-old Gulbenes Zenalova, a woman from Gushchular:

On February 11, shooting started, and we could see that Malybeyli was burning. We fled to Agdam on the Abu Gulabli road, the only way out. While we fled they attacked us at Garov, Pirmali, and Deheraz villages, where the Armenians had posts. Everyone left together, at 9 or so. The militia defended us while we were retreating. My niece was injured on her head. I saw blood on her head. She's five years old. Bullets were flying in all directions. We would hurry along, and when they would shoot we would hide behind the trees. I saw three people fall from being shot. They weren't armed: Ali Allahverdiv, fifty-five to sixty years old, with seven sons and a daughter; Akhmedov Kunduz, eighteen years old; and a nineteen-year-old boy called El Shan.

Rafael Guliev, who described himself as Malybeyli's representative, alleged that the self-defense forces and Armenian fighters exchanged fire. Guliev told Helsinki Watch:

We met Armenian fighters in the forest around noon. We shouted at them to let the women and kids go and we men will stay here. The Armenians said "give us

¹⁵ See Arif Yunusov, "No Azerbaijanis — No Problems?" *Express Chronicle*, 1992, no. 6E, p. 7.

¹⁶ According to Rafael Guliev, who described himself as Malybeyli's representative and was interviewed by Helsinki Watch on April 25.

your weapons and we will let the women and kids through." There were soldiers in our village, Russians and Ukrainians who fled their divisions in Stepanakert. Three of them holding white handkerchiefs approached the Armenians but they opened fire. Then they shot at us, and the self-defense groups . . . returned the fire. We had to take the women out through the forest to Abu Gulabli village. During the eight hours on the way sometimes we had to fight. The men were fighting and people fled as best they could.

I don't know what's happened to my house, but I saw [houses] in the village burning. There was a mountain on the way when we left, in the village of Garokh. They were Finnish houses, and they had a stone foundation and the rest was made of pine. [One of them belonged to] a man named Wagif, who is an electrician.

Masahir Bairanov, who said he moved to Malybeyli in 1989 because "Armenians were pressuring us" in his home village of Hasanabad, also was an eyewitness to the exchange between Armenians, Azerbaijanis, and Russian soldiers described above by Mr. Guliev. A member of the self-defense forces, Bairanov told Helsinki Watch that

We told the [Russian soldiers], you're Russians — perhaps they won't kill you. The Russians just went. They didn't object. When Russians went up to them with white flags they had no arms. I had my hunting gun. All three of them were killed.

A thirty-six-year-old member of the self-defense forces of that village who was wounded during the retreat from Gushchular told Helsinki Watch that during the retreat "I saw my house on fire. From the mountain ridge I saw how the village was burning. . . . I saw from spy glasses how they entered the houses, and when they went out, the houses burned."

Among the eight civilians reported killed in the seizure of Malybeyli and Gushchular was Nubar Zenalova. Her son, a sixty-four-year-old retired collective farm worker stayed in his house with Zenalova, who was alleged to be 110 years old. Mr. Zenalov told Helsinki Watch:

We lived well, and had a good house. . . . On February 11 Armenians started attacking the village. . . . I didn't flee because my mother is very old and she couldn't leave. I was at home when they [the Armenians] came into my house and put a gun to my head. They killed my mother, Nubar Zenalova. There were three other women in my house, and they were taken hostage. . . . They took [at least three] people from the village, and all were my relatives. One was eighty-four, Unis Guliev — he's in the hospital; Kerim Kerimov, who is sixty-six years old (he's also in the hospital); and Gafar Zuneilov, who's sixty-one.

The same man told Helsinki Watch that he had heard that his house was burned, although he himself did not see it burn. He was eventually taken hostage; while his captors held him briefly in Malybeyli, the man allegedly saw about twelve cars hauling things away from the houses, including carpets.

He told Helsinki Watch:

I didn't see [my house] burn, but I heard when they were taking us to Stepanakert the commander ordering them to burn the house after they robbed it. I was in the basement when the [Armenians] came. They said they were ordered not to burn the house until they robbed it. . . . I saw the school and the club burning in the village.

Kerkijahan

Kerkijahan is a village that was inhabited entirely by Azerbaijanis, consisting of about 320 houses on a hill overlooking Stepanakert. It was attacked twice in land assaults by Armenian forces — on December 5-6 and on December 28 — seeking to seize its missile launchers. During these attacks many civilian houses were reportedly burned. Most of Kerkijahan's women and children left after the first attack in early December.

Rachel Husugeza, a young Azerbaijani woman who fled on December 5-6, told Helsinki Watch that "two houses were burning in our neighborhood, and then at midnight soldiers came to take out the women and children. Forty or fifty people fled that night to Shusha."

An elderly Azerbaijani woman who stayed on in Kerkijahan until December 28 reported that her nephew had returned to the village and discovered that her house had been burned. "He said that all the houses had collapsed and that their walls were blackened," she told Helsinki Watch.

According to another Azerbaijani woman interviewed by Helsinki Watch who had worked as a salesperson in Stepanakert until 1988, Garibe Elias, a woman of about fifty-five, attempted to return to Kerkijahan to get her documents and money she had left. On her way out of the village, she was reportedly killed along with her husband, and her body mutilated.

Djemili

According to Sevendikh Kerimov, Djemili was an Azerbaijani village of about 120 houses surrounded by three Armenian villages (Balodjo, Khannazek, and Mekhtkend) with which it shared a state farm. Kerimov told Helsinki Watch that his village was frequently shot at from nearby foothills, and that in January it was shelled. Houses in Djemili were made of stone and were very close to each other. He told Helsinki Watch:

During the shelling in January we were staying in a basement, and someone from the self-defense came and said my house had been struck by a BMP shell. We could see the house from a distance. It was destroyed, but not burned. Our house was on the top of the canyon. There were ten [Azerbaijani] OMON in our village, who mainly lived in people's houses. One lived in my house. There was no militia station at all. My house was not near any self-defense post. I saw the tanks [that were shelling us] from a distance. I saw four, but there may have been more.

Akholu

Located in the Gadрут district, this Azerbaijani village had about 102 houses and 600 people. The village was reportedly shot at and shelled every day. Shamama Guleieva, an Azerbaijani from Akholu who worked as a doctor's assistant, told Helsinki Watch that

We couldn't even get water. We had to go out of our house through the window because our door faced the Armenian side and if they saw us they would shoot at us. During the last month we had to live at our relatives' house.

Guleieva and her husband left with the other villagers on January 9 because the shelling — involving Alazani rockets, grenades, RPGs, and "other weapons" — became so bad that it

was impossible to stay. [The next morning] we crept through the bushes and cemetery and saw houses in our village burning. We did not go back to the village after that. The Armenians had posts — we tried the next morning to look but they saw us and opened fire.

No one was injured from that incident, however.

Kiusular

Kiusular consists of five separate clusters of about forty or fifty houses each, with a total population of about 2,000. Attacks on Kiusular reportedly began on December 25, and about February 25 the village's women and children left, leaving the men to fight. On February 9 the home of M.D., whom Helsinki Watch interviewed in Yevlakh, was hit with a rocket, destroying one of its sides. M.D. was in the cellar, located several meters from the house itself. No self-defense posts were in her area: "They shot right in the middle and we had to leave," she told Helsinki Watch.

Zerefina Guleieva told Helsinki Watch that she left February 26 because

There was shooting every day, then an attack with rockets. Some houses were burned, and so were the roofs of others. The rockets went off around all five sub-villages and in the center. In one of the sub-villages I saw two houses — one was totally destroyed and the other was burned.

Kiusular was later taken over by Armenian forces on May 10.

By Azerbaijanis

Maraga

On April 10 Azerbaijani forces¹⁷ attacked Maraga (an Armenian village of about 500 in the Martakert District) with an artillery and ground assault from Mir-Bashir. The only eyewitness to the events in Maraga available to Helsinki Watch was A.R., who participated in the village's self-defense and the military activities that day. According to his account, most of Maraga's inhabitants left the village after they got word that their self-defense troops could not hold their posts, which were about two kilometers from the village.¹⁸ Civilians who remained in underground shelters — mainly elderly and disabled people — were captured as hostages or murdered, according to accounts A.R. heard from people who had escaped. A.R. reported to Helsinki Watch that after his group of twenty-five self-defense fighters retreated to a spot above the village, he saw Azerbaijani forces enter the village (accompanied by civilians), loot its houses, and enter basements where people had been hiding.

The next day, after Armenian forces re-took the village, A.M. claims he went into a basement where villagers had been hiding and removed the bodies of forty-three victims who had been killed allegedly by Azerbaijani attackers. He helped dig a mass grave near the village and bury the victims, some of whom were missing their eyes or were decapitated.

According to Gevrog Petrossian, Chairman of the Parliament of Nagorno Karabakh, fifty-three civilians were killed during, or as a result of, the attack on Maraga. It is unclear, however, how the determination between "civilian" and member of the self-defense was made. Presumably, this statistic includes the forty-three victims who were allegedly executed by Azerbaijani forces.

Kazanchi

This village of about eighty households and about 400 people near Agdam was attacked in a ground assault on March 4 by Azerbaijani forces, which apparently had assistance from Russian soldiers. In an interview with Helsinki Watch, Hajkaz Hachutrian, a bus driver and part-time fighter in the self-defense, said that after the village's self-defense forces and population fled to nearby villages, Russians looted and burned its homes, leaving only four houses unscathed. Although Mr. Hachutrian could identify some of the attackers as Russian because he heard them speaking Russian, it is unclear how he was able to identify the looters as Russian.

¹⁷ It is unclear from the witnesses account whether the Azerbaijani forces that attacked Maraga were local self-defense forces from Mir-Bashir (the Azerbaijani village on the border between Nagorno Karabakh and the rest of Azerbaijan), acting on their own command or whether they were under the command of the Azerbaijani National Army. In a telephone interview with the press service of the Azerbaijani Ministry of Defense, Helsinki Watch was told only that by April 12 all the volunteer self-defense forces in Azerbaijan, including in the region where Mir-Bashir is located, were under the subordination of the National Army.

¹⁸ A.R. also reported that the self-defense forces had about fifty or sixty soldiers, sixty automatic weapons, one mortar and one armed personnel carrier.

Mr. Hachutrian told Helsinki Watch that when he returned to Kazanchi in mid-April he saw lying in the street six corpses that had been "eaten by animals." The circumstances surrounding the deaths of these six are unclear. Four were over the age of fifty-five, and one was a fifty-five-year-old blind woman named Arphy Mesgopian.

Shekher

On April 24, 1992, a bus carrying around thirty Armenian passengers left Stepanakert at about 5:00 or 6:00 P.M. and travelled southeast to Azokh. Among these thirty, there were reportedly seven women and three children. Nelli Markarian, a forty-four-year-old nurse who was a passenger on the bus told Helsinki Watch that at about 10:00 P.M., near the village of Shekher, Armenian fighters stopped the bus to warn the driver that "Azerbaijanis were shooting from Fizuli." The bus continued a few kilometers, when about fifteen armed men, allegedly Azerbaijanis and Russians, surrounded it and began to shoot with machine guns. About half of the passengers escaped the bus. A few minutes later three Azerbaijanis reportedly entered the bus and shot at the remaining occupants.

Since it was dark at the time of the attack the eyewitnesses could not identify the men who entered the bus. They all reported, however, that they heard them speaking Azerbaijani and Russian. Two witnesses, for example, said they heard the attackers say in Russian, "Hurry up, let's get out of here."

Helsinki Watch spoke with several witnesses who were on the bus when the Azerbaijanis entered it. Nelli Markarian said that when the men shot at the remaining passengers, the bodies of two women fell on her. Markarian received bullet wounds on her left elbow joint and on her left leg. She and her brother-in-law, Stephan Gabrelian, walked a few kilometers to a nearby village to get help.

In a separate interview with Helsinki Watch, Stephan Gabrelian, who was travelling to Azokh to collect his children, said that just one person got on the bus and began to shoot. He also reported that although it was dark, he saw at least one figure fall over after he or she had been shot.

The Press Service of the Azerbaijani Ministry of Defense claims that the bus was blown up by a mine, which does not correspond to the testimony of the above eyewitnesses.

Helsinki Watch cannot make a judgment about the lawfulness of the Azerbaijani attack on the bus at Shekher based solely on these testimonies. A bus, particularly when travelling in a combat zone at night, fits within the category of a dual-use object, having both civilian and military uses. As such, this vehicle did not enjoy the presumptive protection against direct attack that is accorded by customary laws only to purely civilian objects. Moreover, we received conflicting testimony about whether any passenger(s) on the bus was armed and/or returned fire from the bus or when the Azerbaijani attackers entered the vehicle.

However, even assuming the bus were a legitimate target and some of its passengers offered armed resistance, the attackers were absolutely prohibited by the most fundamental humanitarian law rules, codified in Common Article 3 and Article 4 of Protocol II, from mistreating, much less shooting, any disarmed and wounded passengers, whether or not they

had previously assumed a combatant's role. If the testimonies of these survivors — all of whom we found to be credible — are indeed true, then the deaths of such victims are tantamount to murder.

Similarly, if in fact the Azerbaijanis summarily executed the forty-five persons whose corpses were found in the basement of a building in Maraga, their deaths should also be considered as murders.

Although the Helsinki Watch representatives did not visit the above villages, we note that the testimonies we received are generally consistent with press reports from the region. These testimonies and related credible information bespeak a pattern of serious abuses of basic humanitarian law rules by both Armenian and Azerbaijani forces. Apart from their apparent indiscriminate nature, the attacks depicted above implicate these forces in the commission of, *inter alia*, the following prohibited attacks: summary executions, deliberate terrorization of the civilian population, intentional targeting of noncombatants, destruction of civilian property not justified by military necessity, and pillage.

We note, moreover, that while legitimate military targets were apparently interspersed within these locales, neither party had unlimited license in attacking these targets. Armenians and Azerbaijani forces had a duty to observe the rule of proportionality and to take the necessary precautions in launching attacks in order to avoid and, in any event, to minimize civilian casualties and damage to civilian objects incidental to such attacks. Both sides appear to have flagrantly disregarded these obligatory legal restraints on attacks in these particular military operations.

INDISCRIMINATE ATTACKS, TARGETING OF CIVILIAN STRUCTURES

Both Azerbaijani and Armenian forces actively shelled and engaged in sniper attacks on each other's towns and villages. The shelling alone damaged or destroyed hospitals, homes, and other objects that are not legitimate military targets under applicable humanitarian law rules. These attacks killed or left maimed hundreds of civilians, and generally terrorized the civilian population. Although both sides are guilty of these practices, Azerbaijani forces (while they still held Shusha) engaged in them with extraordinary ferocity and cruelty.

By Armenians

Shusha

Shusha was the major Azerbaijani stronghold in Nagorno Karabakh until it was seized by Karabakh forces on May 12, 1992. It was the launching site for missile attacks on Stepanakert and neighboring towns, and a target for shell fire from Stepanakert. Women and children began to be evacuated from Shusha in early February 1992. Some of the shelling of Shusha was, according to the accounts of former residents, either indiscriminate or intentionally aimed at civilian targets.

Gulsheli Hasanova, a twenty-two-year-old Azerbaijani woman, told Helsinki Watch:

We had to leave the city because it was often bombed and because there was no heat or running water. The shelling had been going on for a long time but lately it had become impossible to live. Our house had been damaged in the shelling, but I wasn't there when it happened. Many buildings were destroyed on my street, Niazi Street — one was destroyed during a funeral. The hospital and polyclinic were destroyed sometime in 1992. The factory where I worked and most municipal buildings were destroyed, and this all happened in the latest months.

Another young woman, who left Shusha on February 22, reported that her house was hit by a shell on February 15, destroying the balcony and its adjoining wall. Her house was located in the town's center, near the market and the city government building. Her mother, who lived with the young woman, reported that in early March most of the upper part of Shusha had been destroyed, with some damage done to the mosque.

Rachel Husugeza, who had fled Kerkijahan in early December to stay with relatives in Shusha, told Helsinki Watch that:

Chiefly the [Armenians] would try to shell military objects and the hospital. The hospital operating room was destroyed in February. The wall of one of our bedrooms was destroyed on February 3. The bedroom was destroyed and the corridor was damaged. Its windows faced Shusha Kent, where Armenians lived.

Malybeyli and Gushchular

Masahir Bahirov, a former collective farm worker and member of Malybeyli's self-defense forces, described to Helsinki Watch some of the damage done to his home by Armenian shelling attacks during the winter of 1992:

I lived in a house with my father and brother. There were three families living in the house. . . . While my father and brother were out defending the village the roof was destroyed. A BMP missile hit it and the stones fell in. The shrapnel remained in the house. This was February 5, and the children were in the basement. No one from my family was injured, but our neighbor's child was. He was also staying in our basement. His name is Niazi Aslanov, he was in the eighth grade, fourteen years old. He was wounded on the leg and stomach with shrapnel.

Khojaly

Before it was captured by Karabakh Armenian forces, Khojaly had been shelled continuously during the winter months of 1991-1992 (see above). The shelling would apparently take place mostly at night. According to reports from displaced persons from Khojaly, some of the shelling was indiscriminate, or directly aimed at civilian targets, and resulted in civilian casualties.

A middle-aged mother of six told Helsinki Watch that although her house had only been slightly damaged, some of the other houses were either fully destroyed or had holes in their

roofs caused by missile fire. She further provided a brief description of the deaths of two of her neighbors, a young, newly married couple who died in early February when a missile hit their house.

Agdam

In early March, Armenian forces began intense shelling of towns located along the eastern border separating Nagorno Karabakh from the rest of Azerbaijan. These towns include Agdam and Fizuli, which are staging grounds for Azerbaijani operations in Nagorno Karabakh. Among the civilian structures destroyed in Agdam was the central market. Helsinki Watch representatives noted that the market was totally burned out in what appeared to be a perfect hit, and that little damage was evident to the streets or houses surrounding it. The makeshift hospital, located in railroad cars near the Popular Front command headquarters, was bombed in early March.

An Azerbaijani cafe director told Helsinki Watch that two people in his neighborhood were killed when a Grad missile exploded, about March 23. One of them, Ekhbar Husseinov, was returning to his home during the daytime when a rocket exploded in front of a store. He also reported that he saw considerable damage on Azbekov, Varashlov and Kirov streets, all apparently residential areas.

On April 11 at 4:00 P.M. a grenade from an RPG reportedly blew up the house of Sevil Pashaieva, located in the woods near Agdam. Shrapnel from the explosion caused head wounds to her year-old son, Semur. According to Semur's doctors, whom Helsinki Watch interviewed at the Agdam Military Hospital, Mrs. Pashaieva, who was holding her son in her arms at the time, sustained shrapnel wounds to her legs.

Abu Gulabli

On April 24, fourteen-year-old Ali Biramov was herding cattle near his home when fragments from a high caliber machine gun hit his hands; all of his fingers had to be amputated. It is not known if his home was located near a military post.¹⁹

Popravent

On April 24 Zahir Gambarov, a twelve-year-old Azerbaijani boy, was playing in his yard when a shell, apparently from an RPG, exploded near him, causing shrapnel wounds. His house, located ten meters away from where he was playing, was unharmed. According to the boy's account, the village self-defense post is located in the mountains, and not near his home.

¹⁹ Helsinki Watch saw the boy at the Agdam Military Hospital.

By Azerbaijanis

Stepanakert and Environs

The Helsinki Watch delegation spent two days in Stepanakert, the capital of Nagorno Karabakh and seat of the secessionist Armenian authorities. Before the outbreak of hostilities, 70,000 persons resided in Stepanakert, but that number, according to these authorities, had dwindled to about 20,000 by May 1992.

Armenian authorities told the delegation that Stepanakert had been under constant attack by Azerbaijani forces since at least October of 1991. They stated that among the weapons deployed by the Azerbaijanis were Alazani anti-hail missiles, shells from cannons and tanks, and RPGs. They indicated that the shelling of the city had intensified in January 1992 with the introduction of Grad-type missiles, which are jet-propelled, reportedly can be launched forty at a time, and are capable of causing greater destruction than Alazanis. The Armenians said that the Azerbaijani attacks continued steadily throughout the winter and the spring. The city was periodically shelled during the Helsinki Watch delegation's visit in late April 1992.

During their stay in Stepanakert, the delegation's members toured the city and inspected and photographed the widespread and extensive damage to civilian structures. The delegation observed that nearly every apartment building on the western side of the city showed signs of shelling. Given the nature and extent of the damage to these structures, it is clear that they, in the main, had been directly targeted and repeatedly attacked. Moreover, clusters of houses in that and other parts of the city which were not adjacent to stationary military targets also had apparently been directly attacked. As a result of these attacks, most of Stepanakert's residents in the early winter took to living in basements to seek protection from the shelling.

In addition, according to Armenian authorities, Azerbaijani forces had attacked and destroyed the city's principal hospital and most of its schools. They stated that in February 1992, the Stepanakert hospital, a complex of several buildings, was repeatedly shelled with cannon fire and Alazani missiles. Helsinki Watch representatives visited and photographed the totally destroyed hospital complex, including the separate maternity building, and saw several school buildings in different parts of the city that had been similarly destroyed.

With the destruction of the hospital complex, the authorities set up a makeshift hospital, staffed by thirteen doctors, with surgical facilities in the basement of the former Communist Party Central Committee. Both wounded and sick civilians and combatants apparently were treated there. A makeshift maternity ward was installed in the basement of the parliament building.

Hospital facilities were placed in these government buildings apparently to take advantage and make efficient use of the few electrical generators available and operational in Stepanakert. The Helsinki Watch representatives were told that this was only a temporary arrangement and that both facilities would be relocated shortly to a new hospital building once that structure was made ready.

The placement, albeit temporary, of facilities to care for the wounded and sick in structures which arguably qualify as valid military targets is problematic. As previously noted,

civilians, including combatants who are *hors de combat*, cannot legitimately be used to shield military targets from attack. Thus, it can be argued that the party to the conflict which places such persons, who are clearly immune from individualized attack, within a military target can hardly complain if those persons are killed or wounded as a result of a direct attack against that target. Such was the case in May 1992 when the maternity ward was hit by Azerbaijani shells which reportedly killed two newborns.

But this argument is not altogether convincing given the *particular* circumstances of this case. These hospital facilities would not have had to be relocated had the Azerbaijanis not attacked and destroyed the city's principal hospital in flagrant violation of customary law. Because the Azerbaijanis had cut off electricity to Stepanakert, the Armenians, as a practical matter, had little, if no choice, other than to relocate these vital facilities in those few buildings in the city with generators. It is also not unreasonable to assume that the Azerbaijanis knew or should have known of these facilities' relocation, especially since foreign medical personnel maintained contact with and regularly crossed territory controlled by both warring parties. Moreover, assuming that the Azerbaijanis were so informed, they arguably breached customary law by failing to notify the Armenians prior to attacking the government building housing the maternity ward. Such a warning, under the circumstances, would not have jeopardized the physical security of the attackers and possibly could have spared the lives of those killed.

While in Stepanakert, Helsinki Watch representatives took the testimonies of many residents who had been directly affected by the violence. Among those testimonies are the following.

On April 27 Garik Abramian witnessed the landing of a tank shell, which killed a thirteen-year-old girl and wounded her father:

It was about 5:30 P.M. The girl was at a neighbor's house when the shooting started. She went back down the hill to her house with her little brother; her father came out to meet them and a shell landed. The girl got a fragment in her neck and nose, and her father was hit on his arm and leg. I was about 100 meters away.

Helsinki Watch representatives observed the site where the shelling took place, located at least a kilometer from Stepanakert's center. It was clearly a residential area, consisting of houses and gardens, near one of the springs where people frequently get water.

The representatives also spoke with the following people, all civilian victims of indiscriminate shelling, in various Yerevan hospitals.

- Fourteen-year-old Vachik Iskhanian was near his house on April 25, 1992, when he was hit by shell fragments, apparently from a Grad missile. His home is located near a pharmacy and school number 10 (which had already been destroyed by shelling prior to this incident). He stated that no government buildings or other structures that could be considered military targets are near his home. Although about five or six members of the self-defense forces apparently guarded the pharmacy, their presence could not justify the launching of an attack on a civilian-populated area. Iskhanian had to undergo surgery to save his foot, which was broken in various places from fragments.

- Gagik Nassabian is a twenty-three-year-old man from Karabad who worked as a cook. In early February 1992 while he was visiting a friend in Stepanakert a sniper bullet hit his leg. His friend's house was reportedly not located near any self-defense post or any other structure that could be considered a military target. Nassabian spent four days in the Stepanakert hospital, where adequate treatment for his leg could not be provided, and his leg later had to be amputated.
- Vazgen Baborian's home on Uzbekistan Street is behind the military quarters of the 366th regiment of the CIS forces. Baborian told Helsinki Watch that the quarters had already been fully destroyed in March, and that all that remained were blown-out vehicles. Helsinki Watch representatives saw the destroyed quarters during their visit. After the regiment withdrew, the Azerbaijanis apparently stopped shelling the site. On April 7, 1992, Baborian heard three tank shells land on it. After the third shell landed, he came out from his basement where he had been seeking shelter, "to have a look. I thought that would be the end of [the attack]. But then a fourth shell landed in our yard. Our balcony and the addition to the house were blown off."

Baborian was hit with shell fragments in his left arm and leg and on his back.

- Elmira Mirzaian lived in a fifteen-floor building on Bagriamian Street, out of range of government buildings, but near the hospital (see above). On March 22, 1992, the entire building was destroyed by shelling and she and her husband went to live with her brother-in-law in the nearby village of Krasne. On March 29 a shell landed on the porch, blowing off both of Mirzaian's legs; she also has no movement in her arms. Mirzaian told Helsinki Watch,

It was about 6:00 P.M., and it was still light out. They started to shoot from Shusha. The shell pierced the roof [of the porch], and [all] five of us on the porch were wounded. In two minutes I lost everything.

The house was on a village road, surrounded by other houses. According to Mirzaian there was a mill, but no self-defense posts near the house.

Martakert District: Vaguas

Vaguas is a village of about 1,000 inhabitants that was reportedly the target of frequent shelling from a neighboring Azerbaijani village. Vartan Petrossian, a twenty-three-year-old resident, told Helsinki Watch that his house had been hit with a shell in January 1992, destroying the top floor. On February 28, from about 4:00 P.M. on, his house was shelled again. He was alone and received severe wounds to both his legs, which eventually had to be amputated. According to Petrossian's account, Vaguas' four self-defense posts circled the village. His house was in the village's center, about one kilometer from any post. He also reported that although most of the village was destroyed, people continued to live there.

Martuni District (near the border with Fizuli): Tagavart

Tagavart was shelled by Azerbaijani forces on April 11, 1992. Janna Balajian, a resident of Tagavart, received leg wounds in three places when a shell hit her brother-in-law's house,

where she and ten other family members were seeking shelter. In an interview with Helsinki Watch, Balaian said,

I lost consciousness. When I woke up I saw blood coming out of my leg. People were laying dead on the couch in the foyer. They had been sitting there because they thought it would be safe since the roof was made of cement.

According to her account, five of her relatives (including two children) in the house died as a result of the shelling,²⁰ and five others were wounded.

Balaian further said that there was frequent shelling from Gajan, and that her brother-in-law's house was at least seven kilometers from the self-defense post.

Shekher

Shekher is a village six kilometers from the Azerbaijani village of Gajar. On April 2, 1992, a sixteen-year-old Armenian boy called Erik was wounded on a farm about a kilometer from his home. Erik told Helsinki Watch, "It was after lunch, around 4:00 P.M. I was minding a herd of calves and three shells landed near me. The herd wasn't harmed, but the horse died. Shells land in the fields and near our house all the time." The boy claimed that there was no self-defense post in the field or anywhere near his house, and that the shooting came from the village of Gajar.

Khanlar and Shaumian Districts (North of Nagorno Karabakh)

This district has been frequently shelled since the escalation of the conflict, especially as Armenians began to reclaim the villages from which they were deported during the summer of 1991 (see above, under Operation Ring). The towns of Martunashen, Getashen, Verishen, Buzlukh, and Erkech have been the sites of frequent shellings and exchanges of fire, and in June 1992 Azerbaijani forces began to overrun them altogether. In one round of shelling on February 11, 1992, fifteen-year-old Hrair Babakekhian was hit in his right leg with shell fragments, creating a deep burn that covered much of his upper thigh. Babakekhian told Helsinki Watch that he was on his way to the district hospital in the center of town to have a tooth pulled:

It was about 4:30 P.M., and I saw a shell explode near the hospital, but not on the hospital. I also saw a house on the same road blow up, about fifty meters away. People ran in different directions. Another shell landed and I got hit.

Babakekhian lives in the village of Verishen, and reported that the roof of his house was hit by a shell in September. The roof collapsed, but did not explode. His house was nowhere near the self-defense post, which is located in another village.

²⁰ These are Olya Balaian, age fifty-five; Nikolai Balaian, age sixty; Valentina Balaian, age thirty; Arminye Balaian, age three; and Armen Balaian, age one.

Helsinki Watch received information from a wounded self-defense fighter that two children died in the village of Minaishen on April 24.

They were the kids of my comrade, their names are Karen and Artur Sakharian. They were about ten or twelve. On the 24th [of April] tanks shot on them when they were playing in the yard. A shell exploded. They were buried the same night. Their house was far from the self-defense post. The post is in the field, and their house was in the woods. I only heard about it. I was in the hospital by the time it happened.

HOSTAGE-TAKING

The customary laws of war absolutely forbid hostage-taking. This prohibition is clearly codified in Article 3 Common to the Geneva Conventions, as well as in Protocol II (Article 4 (2) (c)). Yet Armenians and Azerbaijanis so actively seize and exchange hostages, and hold corpses hostage, that the practice has become an institution, involving private individuals, military officials, and government officials. Both sides frequently trade lists of hostages for exchange, negotiate with each other over who should be released, and bicker over numbers. In the spring of 1992, for example, the Azerbaijani Popular Front Commander in Agdam and his Armenian counterpart in Askeran met daily on the border to exchange lists and photographs and to haggle over details.

Many government officials in Armenia and Azerbaijan recognize that hostage-taking is illegal and self-perpetuating. Yet they have been drawn into the process of hostage exchanging, arguing that they have no choice if they want the return of their civilians. When Helsinki Watch, during an interview with Tamerlan Karaev, inquired about the practice of hostage-taking and exchanging we were told explicitly to see the Popular Front Commander in Agdam because "he is in charge of these things."

Among the activities of the Armenian Parliament's Commission on Karabakh Affairs is making and maintaining lists of Armenian hostages, keeping track of their whereabouts, and making contacts to negotiate their release. The Minister of Interior of Nagorno Karabakh openly acknowledged that twelve families in the region were holding Azerbaijani hostages during the time of Helsinki Watch's visit to Stepanakert in April.

During the period covered by this report, hostages were seized chiefly, but not exclusively, during raids on villages and other military activities in Nagorno Karabakh. Helsinki Watch received reports that Armenians in Baky²¹ were being seized at airports or on trains to be used for exchange, reportedly with the explicit knowledge and/or complicity of the militia.

Armenians still living in Baky do so at significant risk: the local housing authority (ZhEK, or *Zhilishno Eksploatatsionnaia Kontora*) has access to information about individuals living in apartments — including their nationality. This information can easily be tapped by parties

²¹ Most Armenians fled Baky in 1988 and 1990. Those who remained were primarily spouses in mixed marriages.

seeking to seize Armenians as hostages. An Armenian woman who was seized hostage in Baky (see below), suspected that her national identity was revealed through ZhEK; in addition, Helsinki Watch received unconfirmed information about a similar seizure of an Armenian man in Baky that occurred on March 21.

Both sides hold hostages in prisons or detention centers and distribute hostages among private families whose members are being held by the other side. This personalized system is self-perpetuating: once, for example, an Azerbaijani family hears or believes that one of their own is being held by Armenians, they may approach local Popular Front or other officials to find a hostage to hold in their own home as "insurance." In addition, this system supposedly guarantees the safety of that family member: once, for example, an Armenian family learns that one of theirs is being held by an Azerbaijani family, and once they get a hostage of their own, they are motivated to make sure "their" hostage is kept in adequate conditions and returned healthy. In some cases, information about missing family members' whereabouts is sketchy at best, and people would rather believe their loved ones are being held hostage than to accept the fact that they may be dead.

Some intermediaries who broker hostage distribution or exchanges reportedly receive money for their efforts. Families who seek hostages to keep as an insurance measure were rumored to have "bought" such hostages from intermediaries. Some hostages reportedly are simply exchanged for money, which allows the "broker" to take a cut. Hostage exchanges occur frequently, at irregular intervals.

Helsinki Watch representatives conveyed to Armenian and Azerbaijani officials and to the authorities in Nagorno Karabakh the organization's grave concern about their apparent tolerance of the practices of taking and mistreating hostages. The representatives reminded them that such practices are absolutely prohibited under all circumstances by customary law applicable to internal armed conflicts. They noted, moreover, that hostage-taking arguably constitutes a crime against humanity requiring the trial and punishment of all perpetrators.

By Armenians

According to Allahverdy Bakhimov, the head of the Popular Front in Agdam who was "in charge" of hostage exchanges and whom Helsinki Watch interviewed on April 26, forty-seven hostages were seized at Karadigly (located in the Martuni District), seventeen from Malybeyli (many of them elderly), and five from Kerkijahan (who were all in the National Army). Most of these had already been exchanged by April 26, 1992.

Khojaly

According to Mr. Bakhimov, 773²² hostages were taken at Khojaly, most of them civilians. Exchange of most these hostages apparently began on the second day after the storming of Khojaly, when Armenians began to give back Azerbaijani women and children. Following are the accounts of several individuals captured during their flight from Khojaly:

²² The Memorial report estimated that 300 civilians were taken hostage.

- Miss Abasov, a twenty-one-year-old woman:

We got near Shelli at about 4:00 P.M. They opened fire on us. We lay down. There were no soldiers with us. Then we were surrounded. We asked them not to take us, but they said they couldn't release us and that they had to take us to their commander. They took us to Pirdjamal. When we got there we saw people from another group who had gotten separated from us earlier. I was kept with my family in an old building with sheep and cattle. Then they separated out the women and children to exchange them. They began to beat the men with rifle butts and billy clubs. There was a wall [separating us] but it didn't go to the end, so I could see a little. My father was beaten. They didn't beat women, but they stole everything. I was kept three days with my family and two days on my own. We were taken to Stepanakert with my sisters and other women.

- A twenty-year-old Azerbaijani woman who received a bullet wound in her left foot at Nakhichevanik was reportedly captured along with twelve other people (among them, five women) by seven or eight Armenians. According to her account, no members of the self-defense forces were with her. Her captors ordered the group to give up their valuables, mostly rings, chains, and earrings worn by women. The woman told Helsinki Watch,

We were taken by foot to the Askeran militia and put in one cell. All the men were taken away. Then I was put in a cell with thirty or forty other women from Khojaly. The militia chief came and told us not to be afraid, that we would be exchanged. . . . Long-haired men with beards and bullet-proof vests would come by [and threaten us]. Local Armenians brought us bread and water.

Gushchular

Twelve hostages were reported to have been seized as a result of the capture of Gushchular, most of them elderly and all of whom were reported to have been exchanged. Helsinki Watch spoke with one of them, a woman of about sixty named Kulustan Akhmedova, who was captured at Deheraz as she was fleeing. Mrs. Akhmedova told Helsinki Watch:

Two of us were taken, myself and Guleisha Zenalova. I had taken 6,000 rubles with me. The Armenians took that money and our gold things in Agbulak, and then they took us to Askeran. They kept us for a week in a KPZ (*hamera predvoritel'nogo zakliucheniia*, or pre-trial detention cell). Then an Armenian from Ketikh came and took us home for a week. We were the only ones in the KPZ. They didn't beat us. They gave us a piece of black bread in the mornings and evenings and a pot of tea.

The Armenian [who took us home] gave us things to eat, potatoes and stuff like that, nuts and things. He said his son was in Shusha and they were going to exchange us. He didn't beat us or do anything to us. Then we were taken to Dashalti. Two Armenian men beat us with sticks. They struck us on our hands and faces and insulted us in Muslim language [Azerbaijani]. They left black and blue marks. One of them said the Muslims had killed his father, the other said

they had killed his brother. They left us outdoors, and we two women were outside all night until morning.

Then they took us to the forest between Shusha and Dashalti and exchanged us there.

Niazi Zenialov, a sixty-four-year-old man whose mother was killed by Azerbaijani fighters,²³ related his experience to Helsinki Watch:

They came in about 9:00 or 10:00 A.M. They didn't say anything, they just hit me on the neck with a rifle butt. Then they said they would take us to Stepanakert and kill us. They said it in Armenian. [Other] Armenians spoke in wrong Armenian. They were speaking a different Armenian dialect I couldn't understand. . . . They took four of us in a truck to Malybeyli and then in a van. They didn't put handcuffs or blindfolds on us. We went to the headquarters in Stepanakert. One man came to the car, pointed at me and said, 'One of my relatives has been taken hostage by Azerbaijanis. I'll take him home.' Then three Armenians came and took the other three and I didn't see them again.

They took me by car to the home of the Armenian. They threw me in the basement and I stayed there for two months. . . . They allowed me to get fresh air. The house was on Gorki Street. Slavik Arapetian was a hostage of Azerbaijan, and his wife took good care of me. She's about thirty-five or forty, and taught Russian in school. She's educated. She said her husband was arrested in May. She said, 'I'm taking care of you only because of my husband. There's no food here -- how can I feed you?'

When fighters came to beat me up she wouldn't let them; she would fight with them. They used to come almost every night. They would talk about the villages they seized and said they would kill my sons.

I was exchanged between Askeran and Agdam.

By Azerbaijanis

The Azerbaijani side uses as currency for exchange mainly Armenians rounded up and imprisoned during "Operation Ring," carried out in May through July 1991. According to officials in Nagorno Karabakh, these numbered up to 1500. Azerbaijani officials claim that these men are convicted criminals, while Armenian and Karabakh officials maintain that the evidence used against them was planted, and that most confessions were torture-induced. Helsinki Watch interviewed six men who had been captured during "Operation Ring," most of whom had been tried, convicted, and sentenced. All reported severe mistreatment and torture, including beatings with rifle butts and billy clubs, and electric shock treatment.²⁴

²³ See above, under "Violence to Civilians."

²⁴ For details of their treatment, see Appendix I of this report.

Maraga

Helsinki Watch received a list of hostages reportedly seized at Maraga. Among the fifty persons enumerated are twenty-seven women, nine children, and at least three individuals over the age of sixty.²⁵ At the time of Helsinki Watch's visit to Stepanakert, seven of these hostages had been released.

Kazanchi

Hajkaz Hachutrian, who was in Kazanchi the day Azerbaijani forces attacked,²⁶ told Helsinki Watch that eighteen people were taken hostage during the March 4, 1992, attack, most of them elderly men and women who had not fled the village. The following five were reportedly freed twenty-five days later: Gulhas Aslanian, more than sixty years of age; Sonechka Aslanian, more than eighty; Harustam Mesropian, more than seventy-five; Hurma Mesropian, more than sixty-five; and Arevhat Minasian, more than eighty. According to Mr. Hachutrian, the remaining thirteen hostages were returned as corpses. It is not clear whether the latter were killed during their captivity or during the assault on the village.

BEATING, TORTURE AND RAPE OF HOSTAGES

Customary law embodied in Common Article 3 of the 1949 Geneva Conventions and Protocol II²⁷ not only forbid the seizure of hostages, but also their mistreatment by their captors. Many former hostages interviewed by Helsinki Watch either were beaten or tortured, or witnessed the beating and torture of other hostages. The testimonies of the following persons are illustrative.

By Armenians

Bakhlyl Pashaev, a man in his late fifties who took no part in military activities, told Helsinki Watch that he was captured on February 26, 1992, at Deheraz as he was fleeing Khojaly. Along with a huge crowd of other Khojaly residents, he was taken first to a barn, where their belongings were taken from them (and apparently never returned). Two days later a group of nineteen Azerbaijanis, including Pashaev, were taken back to Khojaly, where they were beaten with rifle butts, and then to the Stepanakert prison. He was detained in a cell along with seven other people; each day of his detention about five Armenian men reportedly came to the cell and beat them.

Pashaev and the other captives were given fifty grams of bread per day, and had no mattresses to sleep on. During Pashaev's captivity six separate international and humanitarian delegations visited the Stepanakert prison. Pashaev said that before each of these visits, his Armenian captors threatened to beat the hostages if the latter told the missions that they were

²⁵ See Appendix III for a list of names of these hostages.

²⁶ See above, under "Violence to Civilians."

²⁷ See Protocol II, Article 4.

beaten or related anything about their conditions. Pashaev was released on April 20, after fifty-five days of captivity.

A twenty-one-year-old Azerbaijani woman²⁸ and her brother were seized while fleeing Khojaly and brought to the Askeran militia. The woman witnessed the beating of her brother:

They wanted to exchange me but I didn't want to go because my brother was still a hostage. He was beaten for four days. I could hear voices crying. Then I stayed in a cell with my brother. They beat him in front of me with metal rods, and bashed his lip with a machine gun. I was released March 4 with my brother and four other people.

By Azerbaijanis

In Baky, an Armenian woman in her thirties²⁹ told Helsinki Watch that on the morning of February 14 twelve men dressed in work clothes seized her and her four-year-old son while she was preparing breakfast. According to her account, they demanded to see her documents, held her in a chair, and loaded all of her belongings — furniture, clothing, and the like — onto a truck. She was later brought to the Popular Front, where a group of people said that if she told them where other Armenians lived in Baky, she would be released. After she responded that even if she knew she would not tell them, she was taken to Lachin, where she was detained for four days with the military unit there. On February 18 she was taken to Shusha and held at the Shusha District Department of Internal Affairs (ROVD). She was separated from her son and brought to a separate room where OMON members, in uniform, stripped her, punched and kicked her, stole the 1,000 rubles she had in her pocket, and gang-raped her. She was kept for twenty days at the temporary military dormitory, where she received food and where the guard on duty reportedly beat her every day in front of her child. The child was also beaten and subjected to cigarette burns.

On March 4 the woman and her child were brought to the Popular Front headquarters in Agdam, where a military doctor treated her head wounds. The same night about ten soldiers reportedly came to the room where she was sleeping and beat and raped her in front of her son. The next day she was severely beaten by a woman whose first name was Seville, one of the two females in uniform at the headquarters. Later that day a militia car came and four men drove her and the boy to Barda, an Azerbaijani town north of Agdam. They were kept in separate detention cells; the boy was given some food, which he was instructed not to share with his mother. The woman was given no food.

The woman reported that each night of her "detention" in Barda she heard screams, coming from other cells, of people being beaten. She surmised from the insults she heard that the victims were Armenian. On March 14, she and her son were released with eleven badly bruised men, whom she assumed were the occupants of the other cells. The entire group was exchanged at Agdam.

²⁸ See above, under "Hostage-Taking."

²⁹ The woman requested Helsinki Watch not to identify her.

DEPRIVATION OF WATER AS A METHOD OF COMBAT

Article 14 of Protocol II prohibits starvation of the civilian population as a legitimate method of combat. This prohibition enjoins attacks against or destruction of, *inter alia*, drinking water installations and supplies indispensable for the survival of the civilian population. This prohibition, while new, is arguably so basic that it should be regarded as declaratory of customary law.

By Armenians

By the time most women and children had left Shusha in March 1992, the town was without electricity and running water. Many displaced persons interviewed by Helsinki Watch mentioned the lack of water as one of their reasons for leaving. Several suggested that Armenians had cut off the water supply at the village of Nabylar, and the electric lines, which run through Dashalti. Azerbaijani officials could not confirm the direction of the power and water lines.

By Azerbaijanis

The Azerbaijani blockade of Nagorno Karabakh left the region without most resources and supplies. Beginning in January 1992, the total curtailment of electricity (which flows from Agdam) left Stepanakert without the capacity to pump running water into homes and other buildings. In addition, Gevrog Petrossian, President of the Nagorno Karabakh Parliament, told Helsinki Watch that Azerbaijani attacks against water reservoirs that serve Karabakh were aimed at cutting off the region's water supply. As a result of these actions, the city's population was compelled to rely on twelve artesian springs for its water supplies, which previously accounted for one percent of the city's total water supply. Gathering water became the main occupation of residents, and sometimes a dangerous one. At least two of the springs were located in open areas that were clearly visible and within firing range of Shusha.

According to Interior Minister Yesarulov, on April 24, 1992, for example, Azerbaijani fighters in Shusha shot cannon shells at two of these springs, injuring four people at one spring and seven at another. Helsinki Watch representatives visited one of the springs, where they observed shell casings scattered around the area. Misha Petrossian, a man in his late twenties, told Helsinki Watch that on April 27, as he was walking away from the spring, about four tank shells landed at about 5:30 P.M. He was unharmed. The representatives were also told that Azerbaijani snipers periodically shot at civilians, including children, fetching water from these springs.

The deliberate targeting, by whatever methods or means, of civilians gathering water at these sources is a particularly grave violation of the customary laws of armed conflict. Moreover, as noted in Appendix V to this report, purposeful denial of objects indispensable to the survival of the civilian population is effectively prohibited as a lawful method of combat in internal armed conflicts. Since the Azerbaijanis have curtailed ninety-nine percent of the water supply to Stepanakert, its attacks against these few remaining water sources and civilians seeking that water are patently aimed at discouraging, if not denying, the civilian population from obtaining water, a resource necessary for life support. The fact that Armenian combatants may also make use of this water cannot justify this violation of humanitarian law.

When asked by Helsinki Watch for an explanation of how the power and water lines work in Nagorno Karabakh, and of Azerbaijan's blockade of water-generating power to the region, First Deputy Minister of Interior Ramiz Mamedov replied that Armenians cut electricity to Nakhichevan and Shusha. "If they [Armenians] want water, they have to stop these actions," said Mamedov.

ABUSE OF MEDICAL PERSONNEL AND TRANSPORTS

Customary law, reflected in Protocol II (Article 11), specifically guarantees the protection of medical personnel, units and transports from attack. Similarly, Article 12 requires that the emblem of the Red Cross or Red Crescent be displayed on such transports and respected in all circumstances. Helsinki Watch is concerned that the absence of the Red Cross or Red Crescent on some medical transports has resulted in attacks on rescue teams. In addition, medical transports, displaying the distinctive emblem, have also been attacked.

By Armenians

In relation to the Khojaly events, the Azerbaijanis claim that Armenian forces prevented the rescue of the dead and wounded. Representatives of the Azerbaijani Procuracy's team investigating Khojaly told Helsinki Watch that attempts to rescue the wounded and collect the bodies of the dead, which began on February 27, 1992, were repeatedly either cut short or had to be aborted because of shooting by Armenian forces. As a result, some victims were left lying in the snow awaiting help. Aiden Rasulov, head of the Procuracy's effort, told Helsinki Watch that during the first rescue attempt the team saw a girl lying on the ground and trying to move to attract attention. When the helicopter attempted to land, however, Armenian forces opened fire.

The Azerbaijani helicopters used in these rescue attempts landed in what was then Armenian-held territory and did not bear a Red Cross or Red Crescent; some of the rescue squad members wore camouflage articles of clothing, which might have given Armenian forces grounds to suspect that they had hostile intentions.

The sending of a helicopter, a clearly legitimate military target, without the distinctive emblem of the Red Cross or Red Crescent, into enemy-controlled territory with passengers dressed in combatants' clothing is an open invitation to the adverse party to attack and destroy that transport. Under these circumstances, the Armenians cannot reasonably be presumed to have constructive knowledge of that transport's humanitarian mission. Without having agreed to permit this particular mode of rescue operation by the Azerbaijanis, the Armenian attackers cannot be faulted for their actions.

If such tragic incidents are to be avoided in the future, the Azerbaijanis must ensure that all medical transport and personnel display the distinctive emblem of the Red Cross or Red Crescent and that such transports and units are not used except for their humanitarian purposes.

By Azerbaijanis

The virtual absence of fuel in Nagorno Karabakh makes ambulance trips extremely irregular. Even so, during an interview with Helsinki Watch, the Stepanakert Rescue Squad reported two incidents in which Azerbaijani forces fired on its ambulance, which is clearly marked with a Red Cross. In early January 1992, for example, the squad went to Kerkijahan, located just above Stepanakert, to fetch wounded. They were allegedly fired upon "at all times" during this mission. On April 12 the squad received a call to retrieve wounded combatants in Dashushen. Azerbaijanis fired on the ambulance from Shusha with high-caliber machine guns, making it impossible initially to collect the wounded.

Although rescue squad members dress in khaki and camouflage-type garb that may make it difficult to distinguish them from combatants, their mode of dress cannot justify attacks against medical transports marked with a Red Cross. As noted in Appendix V to this report, the fact that members of the armed forces or other combatants are in a unit for medical reasons cannot be considered a hostile act entailing loss of protection for such units and transports. Such medical units and transports, whether civilian or military, permanent or temporary, may not, however, be used for any purposes other than medical ones.

APPENDIX I

TESTIMONY ON HUMAN RIGHTS ABUSES COMMITTED DURING OPERATION RING¹

INTRODUCTION

Operation Ring took place in the spring and summer of 1991, while the USSR still existed, however tenuously, as a state and hence a subject of international law. Azerbaijan was, at the time, a constituent unit of this state. The USSR was then a party to the 1949 Geneva Conventions and Protocol II, the International Covenant on Civil and Political Rights, and the International Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. Accordingly, the conduct of troops of the 23rd regiment of the Soviet Army and of the USSR Internal Ministry, and the conduct of the Azerbaijani OMON must be judged against the normative rules in these instruments.

Villagers interviewed by Helsinki Watch in June 1991 described the arrival of Soviet Army troops and the Azerbaijani OMON, which usually took place in the morning. Derenik Tokhian, a bus driver born in 1931, told Helsinki Watch that when the operation began in Chaikent (Getashen) on April 30,

My family sat at home. All of a sudden, we saw . . . tanks at one spot in our village. Around the village I counted at least 120 tanks. My house is the last in the village by the river. The Soviet army and the Azerbaijani OMON started to shoot at 8:00 A.M. They hit my refrigerator. A special Soviet tank with chains and without license plates shot at houses and they soon caught fire.

According to another resident of Chaikent, Emma Akopian, who worked as a deputy brigadier and was interviewed by Helsinki Watch, "OMON guys were inside their tanks. The tanks surrounded our town. Soldiers and OMON came to our town from the state farm across the hill." Ms. Akopian stayed in Chaikent until May 6, 1991, when a helicopter evacuated her.

Nina Yatsenko, a thirty-seven-year-old resident of Martunashen (in the Khanlar District), claimed that more than one hundred tanks surrounded Martunashen that morning, along with two trucks carrying personnel. "Forty or fifty people got out of the bus, their faces were painted green," she told Helsinki Watch.

¹ See above, under "Background," for a general description of the Operation Ring campaign.

VIOLATIONS

Summary Executions²

● Lena Zakharian, a fifty-five year old nurse from the village of Bertadzor (in the Shusha District) reported to Helsinki Watch that

We heard the OMON killed Anushavan Grigorian, by shooting him in the mouth. His wife was pregnant and he defended her. We asked the soldiers if we could help carry the corpse. One officer, a Russian, took a photo while the OMON were killing Grigorian. Although the Russian said how horrible the killing was, he did nothing to stop them. He also helped carry the corpse.

An Armenian man who asked Helsinki Watch to refer to him as H.M. claimed he witnessed the murder of Mr. Grigorian from a bus, onto which he had been rounded up on May 15. H.M. told Helsinki Watch:

I was on the bus. I was sitting there — there were forty of us. It was light already. [Grigorian] wanted to protect his pregnant wife. They were saying, "give us your money, give us your money." The OMON told Anushavan to open the door to the basement. Anushavan asked his sister to get the key. When the sister was late coming back with the key, the OMON thought the basement had guns. After she was gone about three minutes they fired a magazine into his mouth.³

● Nina Yatsenko, who described the seizure of a respected 70-year-old teacher,⁴ told Helsinki Watch that "they shot the teacher. Three other neighbors were also taken to the edge of the village. Their dead bodies were left on the road. Soviet trucks drove over the corpses, making them into mush."

Displacement of Civilian Population

Armenians allege that Azerbaijani OMON forced villagers to sign statements saying they were voluntarily leaving their villages. By effectively forcing the civilian population to evacuate their villages, the Azerbaijani OMON violated Article 12 (1) of the International Covenant on Civil and Political Rights, which guarantees freedom to choose one's residence. Such action was

² *SOS Torture*, a publication of the World Organization Against Torture, reported that in carrying out Operation Ring Azerbaijani OMON and forces committed two summary executions in the villages of Karachinar and Erkech.

³ This interview took place in Yerevan on May 3, 1992.

⁴ See below.

also utterly inconsistent with Article 17 of Protocol II which generally prohibits the forced displacement of civilians.⁵

In interviews with Helsinki Watch in June 1991, Azerbaijani officials referred to these forced deportations as "voluntary relocations." Telman Khalioglu, First Deputy Chairman of the Azerbaijani Supreme Soviet, referring specifically to the events in Chaikent, said that "peasants wrote voluntary statements asking to be resettled in Armenia."

According to the accounts of villagers interviewed by Helsinki Watch, the signing of these documents, and the villagers' relocation, was anything but voluntary. Nina Yatsenko described one such incident in Martunashen. As soon as the OMON arrived in her village,

They went to the first house, where they called the husband to come out. The OMON surrounded this seventy-year-old man, a well-respected teacher, and asked him to sign a statement that he would leave the village. He was taken away, and his wife asked where he was being taken.

- Emma Akopian reported to Helsinki Watch that in Chaikent the chairman of the Khanlar district soviet forced Armenians to sign statements that they were leaving voluntarily.

- Samvel Asrian, the seventy-eight-year-old Armenian man from Kirov said that

On May 17 the [district soviet] chairman, Yozalov, and the district procurator, Aliskerov, and the OMON with weapons and the district militia by force of arms forced us to sign statements that we wanted to resettle and leave our village. They had also done this with people on the bus [who had already gone through the passport check] who were forced to sign such statements under force of bayonets. We were given three days to complete our resettlement.

On May 18, at 6:00 A.M., USSR MVD troops, the Azerbaijani OMON and the Azerbaijani militia by force of arms forced us to take what we could and get on buses. "Otherwise," they said, "we will kill you."

- According to Suren Davtutian, who was the chairman of the village soviet in Kirov, the chairman of the Shusha district soviet also applied pressure on Kirov villagers to leave.

[He] advised us to sign statements that we were voluntarily leaving our homes. Under machine gun and knife — under threat of death — I signed a statement that I had voluntarily sold my car for 7,000 rubles. I wrote in my statement that

⁵ Article 17 allows for the displacement of civilian populations for reasons related to the conflict only if their own security is involved or if "imperative military reasons so demand." The level of conflict experienced by spring 1991 could not have warranted the invocation of civilian's security as a sufficient cause for evacuation. The military aim of Operation Ring was to ferret out fighters, and not to prepare for a more conventional military engagement. Such an aim cannot be said to fall under Article 17's standard of "imperative military reasons."

I could no longer live under such conditions, and therefore was forced to sell my car to leave.

Theft of and Damage to Civilian Property

Some witnesses reported that as part of the siege of their villages, Azerbaijani OMON and Soviet MVD troops looted and burned houses and robbed residents.

- Ms. Akopian claimed that the Azerbaijani OMON looted her home:

As soon as the OMON came into my house, I had ten carpets stolen. Everything of value disappeared. Cloths were cut up with scissors. All of our money was taken. The Soviet Army and the OMON acted together in destroying everything.

- Nina Yatsenko reported that in Martunashen "One neighbor, a woman, was forced to hand over all her jewelry, since the soldiers said that they would cut off her ears. When she handed over the jewelry, the soldiers undressed her."

- Samvel Asrian said that when the villagers of Kirov were forced onto buses on May 18,

We were only allowed to take a few things — the OMON said that the rest was for them. They also robbed us of our things while we were in the car. They stole all our farm animals (412 heads) and all the household animals as well. And all our possessions from the kolkhoz and our chickens.

- Mr. Davtutian reported that after he was beaten (see below), Azerbaijani OMON

stole the 1,060 rubles in my pocket — my pay, and that of my wife and son. They entered my house and broke glass and china. I had an old locked trunk. . . . I had hidden some money in there (14,000 rubles were hidden in various places). I had a feeling there might be deportations. I also had forty-five heads of sheep and goats.

Just then an Azerbaijani major entered my house. He told the soldiers to hand over the 4,445 rubles they had found in my trunk to the investigator. The soldiers kept all my money, but on May 15 the 4,445 rubles which had been given to the investigator were returned to me.

Indiscriminate Attacks against Civilians

- Nina Yatsenko described the gunfire on Martunashen as "bullets like hail. [They] fell on our house in the middle of the village. We hid in the basement." She further asserted that when people gathered in the cemetery to "honor our new dead . . . the Soviet tanks fired on us as we were standing there."

Beatings of Villagers and Prisoners

According to victims and eyewitnesses, Azerbaijani OMON carrying out Operation Ring beat many villagers, especially men. Armenian men who were rounded up were subjected to regular and fierce beatings once they were detained in Azerbaijani jails and lock-ups.⁶ Because Helsinki Watch was deeply disturbed about reports of this ill-treatment, a representative went to the Shuveliansk prison near Baky in April 1992 to seek access specifically to Armenians detained in connection with Operation Ring. Azerbaijani Parliament and Interior Ministry officials fully cooperated with the request to visit Armenian prisoners. When Helsinki Watch reached the prison, however, Jabiv Kasimov, the head of Shuveliansk, told us that all the Armenian detainees had been exchanged the previous week, and presented us with the particulars and case histories of the most recently released Armenian detainees.

Following are some of the accounts of Armenians describing the beatings they witnessed or suffered.

● Karen Grigorian, a twenty-three-year-old Armenian man, was rounded up in Getashen. He gave Helsinki Watch⁷ details of the beatings he received and witnessed during his detention in Azerbaijan. His experience began when Russian soldiers came to his house in Getashen on April 30, 1991, demanding to see his identification.

I showed my birth certificate, and they said "We don't believe you, it's not you." Then I showed my father's passport, but they said they didn't believe me, that I was a fighter sent from Armenia. Right there I was given to the Azerbaijani OMON. They had machine guns and they beat me in my ribs. One of the OMON, Elshan Makhmedov, stabbed me twice in the leg when I was being taken.

I was taken with two other Armenians to Achkent and . . . to Kamo. We were beaten again brutally for ten minutes. Five minutes, then a break, then they started again. They didn't question me at that time. They asked us to sign a letter saying that we left the village freely. They kept us in Kamo for five or six hours, then took us back to Achkent. There were many Armenian detainees, about thirty-four. The Azerbaijanis had a list of detainees and read out seven names. I was with six other [Armenians] sent by bus to Khanlar. We were beaten until morning.

Then we were sent to Ganja, to jail. There was no charge, we didn't sign anything. When they opened up the jail there was a row of Azerbaijanis and I was beaten as I went through them. There were about seven of them. There were three other Armenians already there. One of them was Jakob Melikhagopikhian.

⁶ According to a report by Pax Christi Netherlands, forty-seven inhabitants of Chaikent were tortured in the Ganja prison in Azerbaijan in May and June 1991.

⁷ Interview with Helsinki Watch in Yerevan, May 2, 1992.

They told me to take off all my clothes, but I refused, and they beat me. After the beating they poured cold water on me. I was bleeding. My fingers were beaten and they ordered me to sign."

Mr. Grigorian's fingers showed clear signs of disfigurement, and one of his left side ribs was broken as a result of the beatings.

- Samvel Asrian from Kirov reported that "from our three villages, 111 people were taken to a militia station in Lachin. They were forced to lie on the floor and were beaten with heavy sticks. People were badly hurt." He was not among this group, however.

- "One guy in civilian clothes carrying a knife came in with four armed OMON men, said Suren Davtutian, also of the village of Kirov. "Three times they checked for my passport. I would not leave my house. 'Where are you, bad guy?' he asked. All four men began to beat me for two minutes. They held a knife to my stomach. They told me not to move."

Davtutian also described the treatment detainees received in Lachin:

We were all taken to Lachin. There were sixty-four people in sixteen square meters. There was no air and water was very expensive. We were held there until 2:00 A.M. I think we were called by listed names and then interrogated. I was not summoned. There seemed to be three categories. We were called and put in separate buses according to our categories. We were sent two or three kilometers from Stepanakert to a gas station. The buses stopped. We were beaten worse than cattle. They swore at us. I cannot tell you everything they did. They forced us to lie on the floor of the bus. This went on until 7:00 A.M. One seventy-year-old war veteran, Major Petrossian, was beaten very badly.

- Lena Zakharian, a fifty-five year old nurse from Bertadzor told Helsinki Watch that "on May 15, the Azerbaijani OMON and Soviet soldiers attacked. . . . First the soldiers took my son (born in 1962), then they took my husband. They tied their hands behind their heads and they beat them."

- N.G., an Armenian man of about thirty, was picked up in Bertadzor. He was taken to a lock-up in Lachin, then to a jail in Shusha. He told Helsinki Watch, "They treated us real nice. They beat us with billy clubs and metal rods. The supervisor did it. In Shusha they beat us every day, too. I stayed there for two months. . . ."

N.G. was transferred to the Shoveliansk prison in Baky on July 13, where he said prison guards beat him "only once every three days or so." He was exchanged for Azerbaijani hostages in mid-December, 1991.

- A fifty-seven-year-old teacher and his son from the town of Aterk (in the Martakert district) was taken from his bed early in the morning. The man, who requested anonymity because his son was still in prison, told Helsinki Watch⁸ that they were taken

⁸ Interview with Helsinki Watch in Yerevan on May 2, 1992.

by Russians and OMON. They were rough with us. They beat my son. I had a 1915 gun, but I didn't have a permit for it. They took my son, too. They said, "You knew your father had a gun but you didn't say anything."

We were taken first to Mir-Bashir, then to Agdam, Sharbularm, Shusha, and then to Baky. They beat us everywhere, every day, but it was a little better once we got to Baky. I had black and blue marks all over my body. They beat us only with billy clubs. I would ask them, "Why are you beating me?" They would say, "Because you're Armenian and in Azerbaijan all Armenians are [making trouble]."

The man also noted that beatings lessened whenever commissions visited to inspect the prisons and the conditions of prisoners.

Identification checks aimed at rounding up suspected arms smugglers and terrorists also took place at the airport at Khojaly, near Stepanakert (the capital of Nagorno-Karabakh). Gabriel Gaiamian was picked up there on July 3, 1991, and taken to Shusha, where he claimed he was beaten. According to Mr. Gaiamian, who is fifty-one years old and works as a carpenter in Yerevan, he was detained for breaking the passport regime and taken to the procurator's building in Shusha, where, during his questioning, he was beaten by different persons.

Mr. Gaiamian told Helsinki Watch:⁹

I was on my way to Ashan and was told by Azerbaijanis that my village had attacked Azerbaijanis, and they asked me the names of the villagers. They accused me of going to the village to assist the attackers. They tortured me there for two days, and then took me to the Shusha jail.

I spent six months in the Shusha jail. I was treated terribly there to make me confess to having killed an Azerbaijani during an attack. On January 1, 1992, I was transferred to Baky but I wasn't officially charged with a crime. Then I was exchanged on March 27, 1992.

Helsinki Watch interviewed A.G., a twenty-six-year-old Armenian from the village of Ashan (in the Martuni district), who was also taken at the Khojaly airport. According to his account, A.G. was kept in Shusha for six months, then transferred to Baky, and then in March was exchanged for Azerbaijani hostages. A.G. told Helsinki Watch:

We were taken on July 3. They took us to Shusha and kept us there for a month. Then they accused us of a murder in a far-away village of Karadigly. Three of us from the same village were taken, including the *kolkhoz* chairman. They cut his legs to make him confess. We were beaten every day in Shusha. There was one room for interrogations, and in the other rooms they would beat us.

⁹ Interview with Helsinki Watch in Yerevan on May 2, 1992.

A.G. said police officials tortured him with electric shocks in order to make him confess. He sketched a picture of an apparatus that consisted of a generator with one cord in the back, which was plugged into the wall, and two cords in the front. He continued, "They gave me electric shocks. They tied my legs together and put one probe on my toe and the other in other places. There was a generator that would run. I lost consciousness. I had no other choice -- I had to confess."

APPENDIX II

LIST* OF DEATHS IN KHOJALY ON THE NIGHT OF FEBRUARY 26, 1992

Name	Sex	Age	Profession
Unknown (body of an unidentified man)**	male	20-25	
Unknown**	male	26-30	
Unknown**	male	30-35	
Unknown**	male	22-27	
Unknown**	male	21-26	
Unknown**	male	25-30	
Unknown**	male	22-28	
Unknown**	male	20-25	
Unknown**	male	25-30	
Unknown**	male	22-28	
Unknown**	male	22-24	
Unknown**	male	24-28	
Unknown**	male	25-30	
Unknown**	male	22-27	
Unknown**	male	25-30	
Unknown**	male	23-28	
Unknown**	male	22-26	
Unknown**	male	25-30	
Unknown**	male	24-28	
Unknown**	male	20-25	
Unknown**	male	22-28	

* List provided by Namig Aliev, Chief of the Department on Questions of Law Enforcement and Defense of the Supreme Soviet of the Republic of Azerbaijan. This list does not include those identified by profession as soldiers of the National Army.

** It is unknown whether these individuals were part of Khojaly's self-defense forces.

Name	Sex	Age	Profession
Unknown**	male	25-30	
Unknown**	male	30-35	
Unknown**	male	20-25	
Unknown**	male	37-32	
Unknown**	male	22-25	
Srudkev, Talman Yenverogly	male	36	
Tysainov, Gabib Gamzaogly	male	b. 1938	worker
Pashaev, Yellshad Aleksandrogly	male	b. 1961	worker
Unknown	female		
Unknown	male		
Pashaev, Aleksandr Tatsdiigogly	male	b. 1932	worker
Mekhtiev, Bafa Babaogly	male	b. 1938	worker
Khalikhova, Zarifa Zakara	female	b. 1965	housewife
Khalikhova, Lal Tair	female	b. 1987	pupil
Unknown	male		
Abdulov, Elmar Iskandarogly	male	b. 1949	worker
Salimov, Fakjraddun Bakhadurogly	male	b. 1958	worker
Salimov, Araz Bakhadurogly	male	b. 1960	worker
Alimamedov, Faig Shakhmaliogly	male	b. 1968	worker
Salimov, Mikhail Bakhadurogly	male	b. 1970	worker
Aliez, Isa Abdulaliogly	male	b. 1933	worker
Aliez, Sekher Cherkaz	female	b. 1932	housewife
Adlakhayarova, Shafuga Zeinal	female		housewife
Amirov, Tavakniil Bakhishogly	male	b. 1952	worker

Name	Sex	Age	Profession
Bagiev, Shirinogly	male	b. 1928	worker
Babaeva, Agiba Khicai	female	b. 1958	housewife
Allakhvardiava, Zalida Astan	female	b. 1960	housewife
Kalilov, Tair Gachaiogly	male	b. 1954	worker
Samadov, Gamid Baglyarogly	male	b. 1956	worker
Samadov, Bamid Gamidogly	male		worker
Oglan, Tapdiigogly	male	10	child
Kurbanov, Abdul Gucaeen	male		worker
Abbasov, Abtiyu Gaidarogly	male	b. 1960	worker
Salakhova, Bokhra Abbac	female	b. 1956	housewife
Mamedov, Talid	male	b. 1942	worker
Guseinov, Gusein	male		
Guseinova, Zinit	female		housewife
Araev, Vidadi	male		
Habuava, Zakaba	female		
Gadzhiev, Khrif	male		
Abdullaev, Yosef Godzhaogly	male		
Guseinov, Raped	male		
Museinb	male		
Aliev Zleman Karimogly	male		
Guceinova, Maria Kamil	female	6	child
Guceinova, Lurad	female	3	child
Veliev, Alasaf Zakirogly	male	45	worker
Safarova, Ler Mukhtar	female	b. 1956	housewife
Mamedova, Gulle	female		housewife
Mamedov, Khokhrat Ibinogly	male	b. 1956	worker

Name	Sex	Age	Profession
Allakhvardieva, Irana Astan	female		worker
Allakhverdiev, Takhir	male	25-30	worker
Chobaesva, Hazekhat Tapdig	female	8-10	child
Orudkhava, Izafa Ali	female	b. 1965	housewife
Gasnov, Lurcalogly	male	36	worker
Eibazsv, Idaiat Aliogly	male	28	worker
Habieva, Sara Akper	female	b. 1968	housewife
Habieva, Maral	female	8	child
Kanmamedov, Barat	male	b. 1969	worker
..., Shirastan	male	22-25	worker
Gasnov, Gymbat	male	25-28	worker
Iskandarov, Aliabbas Garaogly	male	b. 1956	
Agvardsev, Marif Geigiozogly	male	b. 1956	
Zainalov, Magomad Masiogly	male	b. 1957	
Kerimov, Manaf Tanarverdiogly	male	b. 1969	worker
Akhmadov, Radkhab Allakhverdiogly	male	b. 1957	worker
Rustamov, Fizuli	male		
Gasnov, Ilgar Alakhverdogly	male	b. 1939	
Azimov, Gasanbala Makhmuradogly	male	b. 1935	worker
Azimov, Parvana Gyceiln	female	b. 1947	housewife
Gulueva, Eshkra Liatif	female	b. 1970	
Mamedov, Yeldar Amirkhanogly	male	b. 1958	worker
Karimova, Firangiz Muralim	female	b. 1932	housewife
Orudzheva, Khaiala Tezhman	female	b. 1989	pupil

Name	Sex	Age	Profession
Pzaav, Dkhanbulag Yagubogly	male		
Aliev, Abulfat Aliogly	male	b. 1964	worker
Zainalova, Ainur Tofik	female	b. 1986	pupil
Guceinov, Murshud Samedogly	male	b. 1934	worker
Azimov, Sakhavat Iragimogly	male		worker
Bakhmanov, Bakhman Salamnogly	male	b. 1966	worker
Guluav, Zakara Gamishogly	male	b. 1932	worker
Alekhperov, Aidin Tavakogly	male	b. 1980	pupil
Body of an unidentified woman	female		
Nasibov, Faizil Ramizogly	male	b. 1990	child, juvenile
Rasanov, Mazakhir Yagubogly	male	b. 1969	worker
Alekperov, Sakhavat	male		
Alekperov, Tavakkiul Alekperogly	male		
Mamedov, Bagif Shamilogly	male	b. 1951	worker
Allakhverdkeva, Geiouba Nabia	female	b. 1942	worker
Gofik, Seiidogly	male		
Ganifaeva, Dilara Magerram	female	b. 1955	housewife
Chobanov, Tatsdig Khadshaogly	male	b. 1948	worker
Drudzhev, Faizil Anvarogly	male	b. 1961	worker
Makhmudaova, Raza Dzhafar	female	b. 1932	housewife
Body of an unidentified woman	female	b. 1987	pupil
Zeinadova, Ainura Tatsdig	female	b. 1986	pupil
Allakhyarova, Ramza Garash	female	b. 1937	housewife

Name	Sex	Age	Profession
Makhtieva, Aisel Murad	female	b. 1986	pupil
Ganimov, Salim	female		
Makhadov, Vasif	female		
Gasanova, Yegiul	female		
Gasanova, Fitat	female		
..., Gabiba	female		
Unknown	male	20-30	
Unknown	male	25-35	
Unknown	male	20-25	
Unknown	male	20-30	
Abdulov, Yelmar Babaogly	male		
Gadmanova, Hazkhia Shamily	female		
Aliev, Islam	male		
Alimamedov, Alik Narimanogly	male		
Gulieva, Zarifa	female		
Guliev, Shurik	female		
Zeinadova, Shafiga	female		
Musatafaev, Rza	female		
Mamedov, Rasim Salimogly	male		
Gasanov, Isklat Usubogly	male		
Alekmerova, Zeinab Dzhumshud	female		
Abidov, Ali Abdulogly	male		
Azimova, Dilara Seidulla	female		
Azimov, Natig Abbasuluogly	male		
Khalalov, Gachai Ragimogly	male		
..., Sakhib	male		

Name	Sex	Age	Profession
Nuraliava, Dilara Orudzh	female		
Abbasov, Talekh Umudvarogly	male		
Mamedova, Maruza	female		
Dzhafarova, Rafiga Iman	female		
Kerimov, Samuran	male		
Kerimova, Firangiul	female		
Safieva, Giozel	female		
Bakhbudova, Suraia Ibragim	female		
Bakhbudova, Suraia Yusif y.	female		
Giozalov, Savindik	male		
Mamadova, Tamara Salim	female		
Dadashova, Asli Babir	female		
Amirova, Makhi Babir	female		
Gumbatova, Hakhida Zldar	female		
Adilov, Savalan	male		

APPENDIX III

LIST* OF PERSONS REPORTEDLY SEIZED AS HOSTAGES IN MARAGA

1. Avestisian, Iasha, b. 1932
2. Avestian, Irina Oganexovna, b. 1936
3. Mserian (Avestian) Gevork Lavrent'evich (five years old)
4. Agadjanian, Mania Markocovna, b. 1948
5. Agadjanian, Gago Karoievich, b. 1967
6. Agadjanian, Apres Karoievich, b. 1971
7. Agadjanian, Rafik Karoievich, b. 1971
8. Aivazian, Leva Shuraievich
9. Aivazian, Seda
10. Aivazian, Vigen Levaievich (child -- exchanged)
11. Alekhanian, Artur Grantovich, b. 1956
12. Alekhanian, Albert Grantovich, b. 1969
13. Ambartsumian, Iasha
14. Ambartsumian, Kamo Iashwievich
15. Pogosian, Karina Evaal'dikova
16. Ambartsumian, Narek Koliaievich (three years old)
17. Ambartsumian, Lilia Koliaievana (child)
18. Ambartsumian, Narine
19. Ambartsumian, Karine
20. Amoian, Amo
21. Arakelian, Lucik
22. Arakelian, Razmik Asaturovich
23. Arakelian, Rima
24. Babaian, Sasha (eighty six years old)
25. Bagirian, Zhenia Misakovich, b. 1928
26. Bagirian, Kima Koliaievna
27. Badalian, Asia
28. Badalian, Sasun Edikovich, b. 1963
29. Barsegian, Liana Vagirovna (ten years old)
30. Barsegian, Iuliana Vagirovna (child)
31. Barsegian, Lena Vladimirovna (six years old)
32. Barsegian, Artsvik Avanesivna
33. Barsegian, Lena Ovsepovna (sixty years old)
34. Bartanian, Zaria
35. Gazarian, Iurik
36. Gazarian, Anush Beibudovna (fifty years old)
37. Gazarian, Zhenia Isakovich, b. 1938
38. Gazarian, Karine (fifty-eight years old)
39. Erep'ian, Sergie Mnatsakanovich

* List provided by the Commission on Karabakh Affairs of the Armenian parliament.

40. Ivanenko, Galina, b. 1912
41. Karapetian, Montan
42. Mnatsakanian, Rita Lendurshevna, b. 1966
43. Movsesian, Razmik Ervandovich, b. 1961
44. Movesian, Sveta Surenovna
45. Papikian, Gevork Lavrent'evich
46. Papikian, Armen Lavrent'evich
47. Pogosian, Seda
48. Kharatian, Paidar (fifty-eight years old)
49. Aivadian, Karen (three years old, returned dead)

APPENDIX IV

LIST* OF ARMENIAN NON-COMBATTANTS KILLED IN THE VILLAGE OF MARAGA (MARDAKERT DISTRICT IN NAGORNO KARABAKH), APRIL 10-11, 1992, DURING AN OFFENSIVE OF THE AZERBAIJANI ARMY.

1. Melkurmian, Zarvard
2. Arakelian, Levon Pazmikovich — born 1972
3. Airapetian, Parandzem Zinavorovna — born 1910
4. Airapetian, Seda G. — born 1926
5. Simonian, Sasha
6. Badalian, Serezha Arsenovich — born 1927
7. Markocian, Anait
8. Barsegian, Gurgen Ovanesovich — born 1926
9. Stepanian, Nora Nikolaevna — born 1951
10. Bagirian, Kima Nikolaevna — born 1964
11. Oganian, Bagrat Nikolaevich —
12. Oganian, Marucia Ishkhanovna — born 1928
13. Barsegian, Roza
14. Bairamian, Izabella
15. Osipian, Bigen Aleshovich — born 1937
16. Osipian, Rima Avakovna — born 1936
17. Osipian, Gersilia Arzumanovna — born 1905
18. Sargcian, Misha (Kamo Arshavirovich) — born 1960
19. Ovakimian, Alik
20. Gabrielian, Mish Ervandovich — born 1947
21. Minasian, Vardan Shakhnazarovich
22. Khachatrian, Vardan Armenovich — born 1936
23. Vardanian, Borik Arshakovich — born 1931
24. Vardanian, Zaryia
25. Vardanian, Karo Rubenovich
26. Balalian, Edik Samsanovich — born 1931
27. Balalian, Ofik Ovanesovna — 1939
28. Karapetian, Vardanush
29. Ananian, Ruben Shamirovich — born 1926
30. Ananian, Maria Miazovna — born 1927
31. Arutiunian, Anna
32. Grigorian, Tamara
33. Mserian, Tsovik
34. Gabrielian, Ervand Martirosovich — born 1911
35. Lalaian, Aoiia Aleksandrovna — born 1935
36. Papikian, Olennka
37. Zakarian, Tamara Akopovna — born 1921 (Mardakert)

* List provided by the Commission on Karabakh Affairs of the Parliament of the Republic of Armenia. It is unknown how the compilers of this list distinguished between civilians and combatants.

38. Ovakimian, Ervand Arkappevich — born 1909
39. Illiasian, Anush
40. Alekhverdian, Armen (Arfen F., born 1960)
41. Alekhverdian, Valerik
42. Martirosian, Dzhora
43. Avetician, Lena
44. Mserian, Varia A. — born 1937
45. Mserian, Shura E. — born 1939

APPENDIX V¹

THE INTERNATIONAL HUMANITARIAN LAW REGIME APPLICABLE TO THE ARMED CONFLICT IN NAGORNO KARABAKH

INTRODUCTION: NAGORNO KARABAKH, A NON-INTERNATIONAL ARMED CONFLICT

As noted in this report, the hostilities in Nagorno Karabakh are largely the product of the ongoing armed attempt by ethnic Armenians living in that enclave to secede from Azerbaijan and the use of force by the Azerbaijani government to put down that rebellion. Since virtually no state has recognized Nagorno Karabakh's claim to independent statehood, the armed conflict there is properly classified under humanitarian law as non-international, i.e., internal, in nature.²

Although the government of Azerbaijan has not yet acceded to the 1949 Geneva Conventions and its Second Additional Protocol of 1977³, it is nonetheless bound by customary law rules applicable to internal armed conflicts. The principal sources of these rules are Article 3 common to the 1949 Geneva Conventions ("Article 3"), United Nations General Assembly Resolution 2444, and those provisions of Protocol II that crystalize or are declaratory of customary law.

COMMON ARTICLE 3 AS CUSTOMARY LAW

Article 3⁴ automatically applies as soon as a situation of internal armed conflict

¹ This Appendix was written by Robert Kogod Goldman, Professor of Law at American University Law School and member of Helsinki Watch.

² Even if other states directly intervene with their armed forces on the side of either party to the conflict in Nagorno Karabakh, such intervention, while certainly "internationalizing" that conflict, would *not* change the humanitarian law regime at least as *between* Azerbaijani forces and ethnic Armenians. See H.P Gasser, *Internationalized Non-International Armed Conflicts: Case Studies of Afghanistan, Kampuchea and Lebanon*, American University Law Review, Vol. 33, (Washington, DC: 1983) p.145.

³ International Committee of the Red Cross, Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), (Geneva: 1977), [hereinafter Protocol II].

⁴ Article 3 states:

Persons taking no active part in the hostilities, including members of armed forces who had laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

objectively exists and is the only provision of the Geneva Conventions that directly applies to internal armed conflicts. Significantly, the International Court of Justice has authoritatively found its provisions to essentially be customary law.⁵

Unlike human rights law, which generally restrains violations inflicted only by a government and its agents, the obligatory provisions of Article 3 expressly bind *both* parties to internal armed conflicts, i.e., government and dissident forces. Thus, Azerbaijani government forces and ethnic Armenian forces are equally bound to observe the customary rules in Article 3 for the protection of persons not, or no longer, taking an active part in hostilities.⁶ Moreover, the obligation to apply Article 3 is absolute for both parties and independent of the obligation of the other party.

Protection of the Civilian Population Under Article 3

Unlike treaty law governing international armed conflicts, Article 3 contains no rules regulating the means and methods of warfare. In addition, the terms "civilians" and "combatants" do not appear in any of its provisions. Although Article 3 does not provide explicit protection for the civilian population from attacks or their effects, its prohibition of "violence to life and person" against "persons taking no active part in the hostilities" may be broad enough to encompass attacks against civilians in territory controlled by an adverse party in an internal armed conflict. The primary purpose of Article 3, however, is absolutely to insure humane treatment of those persons who do not or no longer actively participate in the hostilities when they are in the power of a party to the internal conflict. Such persons are entitled to humane treatment without adverse distinction.

Persons protected by Article 3 include members of both government and dissident forces who surrender, are found wounded, sick or unarmed or are otherwise captured by the other side. Individual civilians are similarly entitled to the guarantees contained in Article 3 when they are captured by or subjugated to the power of a warring party, even if they had fought for

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- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - (b) taking of hostages;
 - (c) outrages upon personal dignity, in particular, humiliating and degrading treatment;
 - (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

⁵ See *Military and Paramilitary Activities In and Against Nicaragua* (Nicar. v. U.S.), 1986 I.C.J. 14, Para. 220 (Merits Judgement of June 27).

⁶ Active or direct participation in hostilities means participating in an attack intended to cause physical harm to enemy personnel and/ or objects. See International Committee of the Red Cross, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, (Geneva, Martinus Nijhoff Publishers: 1987) p.619 [hereinafter ICRC *Commentary*].

the opposing party, or indirectly participated in the hostilities, such as by providing either party with food or other logistical support.

It is important to note that application of the customary law rules in Article 3 by the Azerbaijani government cannot legally be construed as recognition of the belligerence of the ethnic Armenian authorities in Nagorno Karabakh or otherwise affect the legal status of either party to that conflict.

Customary International Law Applicable to Internal Armed Conflicts

Although Article 3 does not by its terms prohibit attacks against the civilian population in non-international armed conflicts, such attacks are prohibited by the customary laws of armed conflict. United Nations General Assembly Resolution 2444⁷, "Respect for Human Rights in Armed Conflict" (United Nations Resolution 144), adopted by unanimous vote on December 19, 1969, expressly recognized this customary principle requiring the warring parties to distinguish civilians from combatants at all times.

The preamble to this resolution clearly states that these fundamental humanitarian law principles apply "in all armed conflicts," meaning both international and internal armed conflicts. Furthermore, the ICRC has long regarded these principles as basic rules of the laws of war that apply in all armed conflicts. These principles, therefore, constitute legal obligations for the parties to the armed conflict in Nagorno Karabakh.

CUSTOMARY LAW RULES IN PROTOCOL II

The implicit and explicit protection accorded the civilian population from direct attack and the effects of warfare under Article 3 and these customary international law principles would be illusory guarantees without appropriate standards defining and distinguishing civilians and civilian objects from combatants and other military objectives in internal armed conflicts.

⁷ G.A. Res. 2444, 23 U.N. GAOR supp. (No.18) p.164, U.N. Doc. A/7433 (1968). This resolution reaffirms in pertinent part:

[T]he following principles for observance by all governmental and other authorities responsible for action in armed conflicts:

- (a) That the right of the parties to conflict to adopt means of injuring the enemy is not unlimited;
- (b) That it is prohibited to launch attacks against the civilian population as such;
- (c) That distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible....

Although not directly applicable to the conflict in Nagorno Karabakh, Protocol II⁸ contains various rules that provide authoritative guidance for the protection of the civilian population in the conduct of military operations. These same rules can provide interpretive standards for similar purposes in internal armed conflicts not directly governed by Protocol II. Moreover, as many of the detailed provisions of these rules reaffirm, strengthen and/or clarify customary law, these provisions should also be regarded as customary law by the parties to that conflict. In addition, many of the rules contained in Protocol I additional to the 1949 Geneva Conventions (Protocol I), which apply only to international armed conflicts and which are not generally replicated in Protocol II, also provide guidance for interpreting the substantive content of similar, but less detailed, provisions in Protocol II.

Classification of Civilians and the Civilian Population in Internal Conflicts

The basic provision⁹ in Protocol II relating to civilian immunity is Article 13. This article merely refers to "individual civilians" and "civilian population" without explaining the meaning of these terms. Article 50 of Protocol I, however, defines the term "civilian population" as comprising "all persons who are civilians" and defines a "civilian" negatively as anyone who is not a member of the armed forces or of an organized armed group of a party to the conflict. These definitions are also relevant for distinguishing civilians from combatants in internal armed conflicts governed by Protocol II and Article 3.

Unlike Article 43¹⁰ of Protocol I, Article 13 of Protocol II also does not explicitly define the term "combatants". Protocol II, however, contains the basic elements of the concept of armed forces in its allusion to the "armed forces of the High Contracting party" and to "dissident armed forces or other organized armed groups...under responsible command." The authors of

⁸ Protocol II's threshold of application is clearly above that of Article 3; the objective conditions which must be satisfied to trigger its application contemplate a situation of civil war essentially comparable to a state of belligerency under customary international law. This instrument also applies cumulatively and simultaneously with Article 3.

⁹ Article 13 states:

1. The civilian population and individual civilians shall enjoy general protection against the danger arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.
2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence, the primary purpose of which is to spread terror among the civilian population, are prohibited.
3. Civilians shall enjoy the protection afforded by this Part, unless and for such time as they take a direct part in hostilities.

¹⁰ Article 43 of Protocol I defines armed forces of a party as consisting of "all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system...."

the *New Rules for Victims of Armed Conflict* state that "inferentially these terms recognize the essential conditions prescribed under art. 43 of Protocol I: that the armed forces be linked to one of the parties to the conflict; that they be organized; and that they be under responsible command."¹¹ They significantly conclude that "[i]t thus follows that civilians are all persons who are not members of organizations meeting these qualifications."¹² Accordingly, the civilian population comprises all other persons who do not actively participate in the hostilities.

In addition, the authors of the *New Rules* indicate that the term "civilian" also includes the following:

Persons directly linked to the armed forces, including those who accompany the armed forces without being members thereof, such as civilian members of military aircraft crews, supply contractors, members of labor units, or of services responsible for the welfare of the armed forces, members of the crew of the merchant marine and the crews of civil aircraft employed in the transportation of military personnel, material or supplies. . . . Civilians employed in the production, distribution, and storage of munitions of war. . . .¹³

Like other civilians, these particular civilians may not be directly attacked; however, they implicitly assume the risk of death or injury by virtue of their presence in or proximity to legitimate military targets.

In contrast, civilians who actively participate in hostilities are subject to individualized attack while they assume the role of a combatant. Once they cease their participation, they are no longer military targets and, thus, cannot be directly attacked. In this regard, "hostilities" cover not only the time when the civilian actually makes use of a weapon but also the time that he is carrying it, as well as situations in which he undertakes hostile acts without using a weapon.¹⁴ Examples are provided in the United States Army Field Manual which lists some hostile acts

as including sabotage, destruction of communication facilities, intentional misleading of troops by guides, and liberation of prisoners of war.... This is also the case of a person acting as a member of a weapons crew, or one providing target information for weapon systems intended for immediate use against the enemy such as artillery spotters or members of ground observer teams. [It] would include direct logistical support for units engaged directly in battle such as the delivery of ammunition to a firing position. On the other hand civilians

¹¹ M. Bothe, K.J. Partsch & W. Solf, *New Rules for Victims of Armed Conflict: Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949*, (Boston, Martinus Nijhoff Publishers: 1982), p. 672 [hereinafter *New Rules*].

¹² *Ibid.*

¹³ *Ibid.*, pp. 293-294.

¹⁴ ICRC *Commentary*, *supra*, pp. 618-619.

providing only indirect support to the armed forces, such as workers in defense plants or those engaged in distribution or storage of military supplies in rear areas, do not pose an immediate threat to the adversary and therefore would not be subject to deliberate individualized attack.¹⁵

Article 50 of Protocol I also provides that the presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character. The point of this provision, according to the *New Rules*, is that "[t]he presence of a small number of off-duty combatants, or even of some engaged in the transaction of business for the armed forces within a community of civilians would not subject that community to attack."¹⁶ Such a community, therefore, is similarly immune from direct attack.

Prohibited Use of Civilians

The general protection of the civilian population against the effects of attacks would also be frustrated if the party in control of the population used civilians to render certain areas immune from military operations. Accordingly, customary law protects civilians against such deliberate abuse by prohibiting their use as shields for defensive positions, to hide military objectives or to screen attacks. Nor may civilians be induced or compelled to leave their homes or shelters to interfere with the movement of the enemy.¹⁷ However, such deliberate misuse of civilians to gain a military advantage does not permit the attacking party to disregard customary precautions designed to avoid or minimize incidental civilian casualties.

Designation of Military Objectives

The definition of the term "military objective" in Protocol I inferentially applies to that term's usage in Protocol II. Article 52(2) of Protocol I defines military objectives only as they relate to objects or targets, rather than to personnel. To constitute a legitimate military objective, the object or target selected by its nature, location, purpose, or use, must contribute effectively to the enemy's military capability or activity, and its total or partial destruction or neutralization must offer a definite military advantage in circumstances ruling at the time. Except for certain objects given special immunity, such as dikes and dams, Protocol I does not delineate specific categories of property or persons as military objectives.

¹⁵ *New Rules, supra*, p. 303.

¹⁶ *Ibid*, p. 296.

¹⁷ *See*, for example, Article 51(7) of Protocol I which provides:

The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.

It is clear, however, that legitimate military objectives do include enemy combatants. Full-time combatants, be they part of regular or irregular forces, militias or groups, are subject to direct attacks, individually or collectively, until such time as they become *hors de combat*, that is, are wounded, sick, captured or have surrendered. Part-time combatants, like other civilians, forfeit their immunity from direct attack whenever they assume a combatant's role. Thus, when they prepare for, actively participate in, and return from combat, they are proper military targets.

Other lawful military targets include the enemy's weapons, convoys, installations, and supplies. In addition, the *New Rules* states that "an object generally used for civilian purposes, such as a dwelling, a bus, a fleet of taxicabs, or a civilian airfield or railroad siding, can become a military objective if its location or use meets both of the criteria set forth in Article 52."¹⁸ For example, a defending party may organize an entire town or village as part of its defensive position, thereby making it a "defended locality."¹⁹ The town or village thus constitutes a legitimate target. The civilians remaining in that locale, however, would retain the benefits of the rule of proportionality as it applies to collateral civilian casualties.

Designation of Civilian Objects

The definition of the term "civilian objects" in Article 52(1) of Protocol I should be accorded similar meaning for purposes of Protocol II. Article 52(1) negatively defines civilian objects as all objects that are not military objectives as defined in paragraph 2 of that same article, which sets forth the twofold test for military objectives. Therefore, Article 52 implicitly characterizes all objects as civilian, unless they make an effective contribution to the enemy's military action and unless destroying, capturing, or neutralizing them offers a definite military advantage in the prevailing circumstances.

In doubtful situations, Article 52 creates a presumption that objects normally dedicated to civilian use, such as churches, houses, or schools, are not employed to contribute effectively to military action. This presumption attaches *only* to objects that ordinarily have no significant military use or purpose. For example, this presumption would not include objects that constitute a legitimate military target under the criteria established in Article 52, such as transportation and communication systems.

Protection of Civilians and Civilian Objects from Indiscriminate Attacks under Protocol II

Although Article 13 of Protocol II accords the civilian population and individual civilians general protection against attack,²⁰ it does not expressly provide them or civilian objects express protection against indiscriminate or disproportionate attacks. The *New Rules* indicates, however, that "the concept of general protection is broad enough to cover protections which

¹⁸ *New Rules, supra*, pp. 306-307.

¹⁹ *Ibid*, p. 307.

²⁰ The term "attack(s)" refers to acts of violence, whether offensive or defensive.

flow as necessary inferences from other provisions of Protocol II.²¹ In addition, the detailed rules in Protocol I designed to protect civilians and civilian objects from such attacks provide relevant guidance for interpreting the extent of similar protection for these persons and objects under Protocol II.

For example, Article 51(4) of Protocol I expressly protects the civilian population from indiscriminate or disproportionate attacks.²² The Article prohibits attacks that are not directed at specific military objectives or that employ a method or means of combat that a party cannot direct at a specific military objective. Thus, the Article prohibits the parties from attacking military objectives and civilians or civilian objects without distinction.

Article 51(5)(a) characterizes an attack as indiscriminate when it treats a number of clearly separate and distinct military objectives located in a city, town, village, or other area containing a concentration of civilians or civilian objects as a single military objective. An assault on a single military objective within that locale, on the other hand, would not constitute an unlawful, indiscriminate attack. An attack on a populated area in order to destroy several military objectives that a party could have attacked separately, however, would be indiscriminate. In addition, Article 51(5)(b) also characterizes as indiscriminate an attack that might cause civilian casualties and damage disproportionate to the "concrete and direct military advantage anticipated."

²¹ *Ibid*, p. 676.

²² Article 51(4) and (5) states:

4. Indiscriminate attacks are prohibited. Indiscriminate attacks are:

- a. those which are not directed at a specific military objective;
- b. those which employ a method or means of combat which cannot be directed at a specific military objective; or
- c. those which employed as a method or means of combat the effects of which cannot be limited as required by this Protocol;

and consequently, in each case, are of a nature to strike military objectives and civilians or civilian objects without distinction.

5. Among others, the following types of attacks are to be considered as indiscriminate:

- a. an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects; and
- b. an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

The legitimacy of a target, however, does not provide unlimited license to attack it. The prohibitions on indiscriminate and disproportionate attacks affecting civilians limit the methods of attacking legitimate military targets located in the midst of a high concentration of civilian population. For example, an attack on an entire farm or cooperative in order to destroy a military target that could be separately attacked would be indiscriminate. The use of "blind" weapons, such as unmarked land mines, can also constitute an indiscriminate attack.²³

The *New Rules* also indicates that the absence of an explicit prohibition against indiscriminate attacks in Article 13 is due merely to the simplification of the text of the Article.²⁴ It argues, therefore, that "attacks against densely populated places which are not directed at military objectives, those which cannot be so directed, and the area bombardments prohibited by para. 5(a) of Art. 51 [Protocol I] are inferentially included within the prohibition against making the civilian population the object of attack."²⁵ The "principle of humanity," expressly stated in the preamble of Protocol II, also implicitly prohibits disproportionate or indiscriminate attacks against the civilian population in a non-international armed conflict.

Precautionary Measures

Article 57 of Protocol I codifies pre-existing customary law regarding precautions that an attacking party must observe to avoid and minimize collateral damage to civilian objects.²⁶

²³ *New Rules, supra*, p. 324.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ Article 57 states in pertinent part:

1. In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects.
2. With respect to attacks, the following precautions shall be taken:
 - a) those who plan or decide upon an attack shall:
 - (i) do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection but are military objectives within the meaning of paragraph 2 of Article 52 and that it is not prohibited by the provisions of this Protocol to attack them;
 - (ii) take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians, ... damage to civilian objects, ... or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;
 - b) an attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to

As they are designed to implement and strengthen the customary principle of civilian immunity, these measures effectively impose additional restraints on attacks against legitimate military targets in *all* armed conflicts, including that in Nagorno Karabakh.

Thus, the planners of a particular attack must (1) initially verify that the object selected is a lawful military objective; (2) avoid, or at least minimize, incidental civilian casualties and damage; (3) ensure that such casualties and damages are not disproportionate to the "direct and concrete" military advantage anticipated; and (4) do everything feasible to verify that military objectives are in fact being attacked and not civilians and civilian objects.

Article 57 adopts a "feasible" precautions standard in connection with target verification and the rule of proportionality. The *New Rules* explains that the word "feasible" means "that which is practicable or practically possible."²⁷ It also indicates that the requirement that the planner do "everything feasible" to verify that the target selected is a military objective involves

a continuing obligation to assign a high priority to the collection, collation, evaluation and dissemination of timely target intelligence. It must be observed, however, that the adverse party will do its utmost to frustrate target intelligence activity and may be expected to employ ruses to conceal, deceive and confuse reconnaissance means.²⁸

cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;

- c) effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit.
- 3. When a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected shall be that the attack on which may be expected to cause the least danger to civilian lives and to civilian objects.
- 4. In the conduct of military operations at sea or in the air, each Party to the conflict shall, in conformity with its rights and duties under the rules of international law applicable in armed conflict, take all reasonable precautions to avoid losses of civilian lives and damage to civilian objects.
- 5. No provision of this article may be construed as authorizing any attacks against the civilian population, civilians or civilian objects.

²⁷ *New Rules, supra*, p. 362.

²⁸ *Ibid*, p. 363.

The attacking party also has an affirmative duty to "take all feasible precautions in the choice of means²⁹ and methods of attack" to avoid or minimize collateral damage in attacking military targets located in civilian locales. Furthermore, he must refrain from such an attack if the foreseeable injury to civilians and civilian objects would be excessive or disproportionate compared with the "concrete and direct" military advantage anticipated.

Customary law and traditional military doctrines similarly require the cancellation or suspension of an attack if it becomes apparent that a given target is not a military objective or that the attack will cause excessive collateral casualties and damage. The *New Rules* indicates that this obligation is so phrased as to "apply to all commanders who have the authority to cancel or suspend attacks, including those at higher echelons who frequently have better intelligence sources than those actually engaged. But it also applies to the commander of military organizations actually engaged in combat."³⁰

The authors of the *New Rules* make the following important point concerning application of the rule of proportionality:

In a co-ordinated military operation, the relative importance of the military objective under attack in relation to the concrete and direct military advantage anticipated is not a matter which can be determined by individual tank leaders, the commanders of lower echelon combat units or individual attacking bomber aircraft. If assigned a fire or bombing mission they must assume that an appropriate assessment has been made by those who assigned the mission. Thus, in this situation, the decision to cancel will have to be made at the level where the decision to initiate the attack was made.³¹

Certain Prohibited Acts

Hostage-Taking

Customary law, codified in Article 3 and Article 4 of Protocol II, absolutely forbids hostage-taking. The ICRC *Commentary* defines the term "hostage" as follows:

hostages are persons who find themselves, willingly or unwillingly, in the power of the enemy and who answer with their freedom or their life for compliance with the orders of the latter and for upholding the security of its armed forces.³²

²⁹ The term "means" of attack, combat or warfare generally refers to the weapon deployed, while the term "method" of attack generally refers to the way by which such weapons are used. ICRC *Commentary*, *supra*, p. 621.

³⁰ *New Rules*, *supra*, p. 366.

³¹ *Ibid.*, pp. 366-367.

³² ICRC *Commentary*, *supra*, p. 874.

Accordingly, persons captured and held for exchange purposes are hostages, since they answer with their freedom for compliance with the orders of their captors.

Interfering with Transport of the Wounded and Sick

The fundamental principle that the wounded and sick should be respected and protected, enshrined in Article 3, is declaratory of customary law. Article 7³³ of Protocol II in essence reaffirms and elaborates on this principle. The ICRC *Commentary* notes that "protection is due to all the wounded, sick and shipwrecked, 'whether or not they have taken part in the armed conflict.' No distinction is made between members of the armed forces and civilians or according to whether they belong to the one party or the other concerned: the obligation to respect and protect is general and absolute."³⁴

Article 11³⁵ of Protocol II implements this mandatory principle by forbidding attacks against medical units, including hospitals, and medical transports. The immunity of such units or transports only ceases if they are used to commit hostile acts outside their humanitarian function and after a warning has been given with reasonable time limits and remains unheeded. The ICRC *Commentary* indicates that hostile acts are ". . . those which are harmful to the adversary."³⁶ In this regard, Article 13 (Discontinuance of protection of civilian medical units) of Protocol I, on which Article 11 is patterned, gives the following examples of acts not considered to be harmful to the enemy:

- (a) that the personnel of the unit are equipped with light individual weapons for their own defense or for that of the wounded and sick in their charge;

³³ Article 7 provides:

1. All the wounded, sick and shipwrecked, whether or not they have taken part in the armed conflict, shall be respected and protected.
2. In all circumstances they shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones.

³⁴ ICRC *Commentary*, *supra*, p. 1410.

³⁵ Article 11 stipulates:

1. Medical units and transports shall be respected and protected at all times and shall not be the object of attack.
2. The protection to which medical units and transports are entitled shall not cease unless they are used to commit hostile acts, outside their humanitarian function. Protection may, however, cease only after a warning has been given setting, whenever appropriate, a reasonable time-limit, and after such warning has remained unheeded.

³⁶ ICRC *Commentary*, *supra*, p. 1435.

- (b) that the unit is guarded by a picket or by sentries or by an escort;
- (c) that small arms and ammunition taken from the wounded and sick, and not yet handed to the proper service, are found in the units;
- (d) that members of the armed forces or other combatants are in the unit for medical reasons.

The parties to internal armed conflicts are obliged to respect in all circumstances the distinctive emblem of the Red Cross and Red Crescent. This rule is codified in Article 12 of Protocol II.

Interference with the transport of sick and wounded to the hospital by shooting at or stopping an ambulance and removing the patients does not comply with this duty to respect and protect the sick and wounded. Where patients are gravely wounded, such intervention and delay can cause a serious deterioration in their condition, if not their death. It is the combatant's duty to treat such patients with the least possible delay, which in the majority of cases will mean permitting the ambulance to continue on its way, with the patients. While it may be proper to halt briefly a medical vehicle to establish its noncombatant role, attacking a medical vehicle without warning violates these rules.

Prohibition Against Starvation of the Civilian Population

Article 14³⁷ of Protocol II explicitly prohibits starvation of the civilian population as a permissible method of combat. Although a new rule, this prohibition arguably should be regarded as customary law, binding on the parties to *all* internal armed conflicts, since it essentially supplements and develops existing customary law.

The ICRC *Commentary*, for example, states that this prohibition ". . . is really only a specific application of common Article 3, which imposes on parties to the conflict the obligation to guarantee humane treatment for all persons not participating in hostilities, and in particular violence to life."³⁸ The *Commentary* also pointedly observes: "It should be noted that even if starvation were not subject to an official legal prohibition, it is nowadays no longer an acceptable phenomenon, irrespective of how it arises (natural disaster or induced by man)."³⁹

³⁷ Article 14 provides:

Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works.

³⁸ ICRC *Commentary*, *supra*, p. 1456.

³⁹ *Ibid*, p. 158.

While not making the use of blockade and siege warfare illegal, this basic rule effectively prohibits attacks, destruction, removal, or rendering useless covered objects where such action is taken for the purpose of denying their sustenance value to the civilian population. The ICRC *Commentary* importantly notes:

The text does not distinguish between objects intended for the armed forces and those intended for civilians. Except for the case where supplies are specifically intended as provisions for combatants, it is prohibited to destroy or attack objects indispensable for survival, even if the adversary may benefit from them. The prohibition would be meaningless if one could invoke the argument that members of the government's armed forces or armed opposition might make use of the objects in question. Of course, the possibility cannot be excluded that, for example, a source of drinking water might at some point be used by soldiers.⁴⁰

The authors of *The New Rules* make a basically similar point, stating: "If it is assumed . . . that the Martens clause of The Preamble requires the application of the principle of proportionality to Protocol II, that principle would restrict denial actions against objects having sustenance value for both the armed forces and the civilian population to those whose effects on civilians are not disproportionate to the military advantage anticipated."⁴¹

APPLICATION OF THE LAW TO THE INTERNAL ARMED CONFLICT IN NAGORNO KARABAKH

Based on preceding examination of relevant authoritative rules and principles, one can make the following statements regarding application of these rules and principles to the conflict in Nagorno Karabakh.

Civilians

The following persons generally should be considered civilians and thus not be subjected to direct attack:

- A. The peaceful population not directly participating in hostilities.
- B. Persons providing only indirect support to either party to the conflict by, *inter alia*, distributing or storing military supplies within conflict areas, supplying labor and food, serving as messengers, or disseminating propaganda. These persons may not be subject to direct individualized attack because they pose no immediate threat to the adversary. They assume, however, the risk of incidental death or injury arising from attacks against legitimate military targets.
- C. Persons, other than members of either party's full-time armed forces, who take a direct part in the hostilities. These civilians, however, temporarily lose their immunity from attack any time they assume a combatant's role. Included in this

⁴⁰ *Ibid*, pp. 1458-1459.

⁴¹ *New Rules, supra*, pp. 680-690.

category are part-time members of Azerbaijani and ethnic Armenian self-defense and paramilitary groups.

Civilian Objects

The following should be considered civilian objects immune from direct attack:

- A. Structures and locales, such as houses, hospitals, churches, dwellings, schools, farm villages, and cooperatives, that in fact are exclusively dedicated to civilian purposes and, in the circumstances prevailing at the time, do not make an effective contribution to military action.
- B. Those historical monuments, works of art, or places of worship constituting the cultural or spiritual heritage of peoples, provided that are not used to support the enemy's military effort.

Military Objectives

While not an exhaustive list, the following persons, groups and objects may be regarded as legitimate military targets subject to direct attack:

1. Members of the Azerbaijani National Army
2. Members of the Popular Liberation Army of Artsakh
3. Members of the Azerbaijani OMON while they have combat duties
4. Part-time members of Azerbaijani and ethnic Armenian self-defense and paramilitary groups while they are actively participating in hostilities.
5. Positions, installations or construction occupied by the forces, as well as combat objectives (that is to say, those objectives which are directly contested in battle between land or sea forces including airborne forces).
6. Installations, construction and other works of a military nature, such as barracks, fortifications, War Ministries (e.g. Ministries of Army, Navy, Air Force, National Defence, Supply) and other organs for the direction and administration of military operations.
7. Stores of arms or military supplies, such as munitions dumps, stores of equipment or fuel, vehicles parks.
8. Airfields, rocket launching ramps and naval base installations.
9. Those of the lines and means of communication (railway lines, roads, bridges, tunnels and canals) which are of fundamental importance.

10. The installations of broadcasting and television stations, telephone and telegraph exchanges of fundamental military importance.
11. Industries of fundamental importance for the conduct of the war:
 - (a) industries for the manufacture of armaments;
 - (b) industries for the manufacture of supplies and material of a military character, such as transport and communications material, equipment for the armed forces;
 - (c) factories or plant constituting other production and manufacturing centers of fundamental importance for the conduct of war, such as the metallurgical, engineering and chemical industries, whose nature or purpose is essentially military;
 - (d) storage and transport installations whose basic function is to serve the industries referred to in (a) - (c);
 - (e) installations providing energy mainly for national defense, e.g. coal, other fuels, or atomic energy, and plants producing gas or electric mainly for military consumption.
12. Installations constituting experimental, research centers for experiments on and the development of weapons and war material.⁴²

Prohibited Attacks and Use of Land Mines

Although not an all encompassing list, the following kinds of attacks and uses of land mines should be prohibited in the conduct of hostilities:

- A. Direct attacks and direct use of these weapons against individuals or groups of unarmed civilians where no legitimate military objective, such as enemy combatants or war material, is present. Such attacks and uses of these weapons are indiscriminate.
- B. Direct attacks and such direct weapons use against civilian objects dedicated to civilian purposes, such as towns, hospitals, villages, dwellings, or buildings, where no military objective is present. This type of attack and weapons use are similarly indiscriminate.
- C. Attacks, and threats of such acts, which are launched or threatened with intent to terrorize the civilian population. To the extent that attacks are launched or

⁴² This is based on a list of proposed military objectives published by the ICRC in its *Commentary*, *supra*, pp. 632-633.

threatened solely or primarily for political ends, they are unlawful and violate the principles of civilian immunity, humanity and proportionality.

- D. The use of any remotely delivered mine that is not effectively marked and has no self-activating or remotely controlled mechanism to cause destruction or neutralization of the mine once its military purpose has been served. Such mines are "blind weapons" and their use is indiscriminate in terms of time.
- E. The use of hand-delivered mines, such as those of the Claymore variety, in or near a civilian locale containing military objectives, if those devices are deployed *without* any precautions, markings or other warnings or do *not* self-destruct or are *not* removed after their military purpose has been served. Such uses are also indiscriminate.
- F. Direct attacks against medical and religious personnel, medical units and transports, particularly when they are recognized as such by the display of the distinctive emblem of the Red Cross or Red Crescent.

Other Prohibited Practices

Again, while not an all-encompassing list, applicable humanitarian law rules prohibit the following kinds of practices, orders, or action:

- A. Orders to combatants that there shall be no survivors, such threats to combatants, or direction to conduct hostilities on this basis.
- B. Attacks against combatants or civilians who are captured, surrender, or are placed *hors de combat*.
- C. Attacks, destruction, removal, or rendering useless objects indispensable for the survival of the civilian population, such as, *inter alia*, foodstuffs, crops, livestock and drinking water installations.
- D. Use of "blind" weapons that cannot be directed with any reasonable assurance against a specific military objective.
- E. Torture and other cruel treatment of persons under any circumstances.
- F. The taking of hostages.
- G. The infliction of humiliating or degrading treatment on civilians or combatants who are captured, have surrendered, or are *hors de combat*.
- H. Assassination of civilian officials, such as judges or political leaders.
- I. The execution of civilians or combatants without previous and proper trial by independent and impartial courts.

- J. Pillage.
- K. Failure to respect the Red Cross or Red Crescent emblem so as to guarantee the safety of medical personnel and red cross and red crescent workers carrying out their humanitarian mandate.
- L. The use of asphyxiating, poisonous or other gases and of bacteriological methods of warfare.

Classification of Civilian Casualties

- A. The appropriate labeling and attribution for the deaths of civilians killed in military operations conducted by the warring parties will depend on the circumstances of death. However, civilian casualties under the following circumstances may be properly classified as homicides or felonious assaults attributable to the responsible party to the conflict:
 - 1. Death or injuries to civilians as a result of prohibited or indiscriminate attacks or weapons use as indicated above.
 - 2. Death to civilians as a result of summary execution or torture and injuries resulting from torture. In addition to violating international humanitarian law, such homicides and assaults, if attributable to members of Azerbaijani armed forces, would constitute human rights violations for which the Azerbaijani government would be internationally responsible. In contrast, the same acts, if committed by members of ethnic Armenian dissident forces, while clearly violating humanitarian law, would not be human rights violations, but rather infractions of the particular country's domestic laws.
- B. Death or injury to civilians under the following circumstances should be classified as legitimately combat related:
 - 1. The deaths and injuries to civilians when they directly participate in hostilities. Such persons forfeit their immunity from direct attack while assuming the role of a combatant.
 - 2. The deaths or injuries to civilians who, because they are near or located within a legitimate military objective, are killed or injured as a result of direct, proportional attack or weapons use against such objectives. Because such persons assume the risk of death or injuring arising from such attacks, their deaths and injuries are collateral or incidental to the primary purpose of these attacks.

Deaths resulting from situations in which attending circumstances are unclear or unknown and proper attribution, consequently, is not possible, fall within a "grey area" between these two extremes. These deaths, therefore, must be excluded from the tallies of killings that are regarded as homicides by international humanitarian or human rights law.