

KHOJALY GENOCIDE AS AN INTERNATIONAL CRIME

I. The Khojaly Genocide as an international crime.

The legal definition of genocide is provided for by the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the UN General Assembly on 9 December 1948 as any of the following acts committed with an intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- killing members of the group;
- causing serious bodily or mental harm to members of the group;
- deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- imposing measures intended to prevent birth within the group;
- forcibly transferring children of the group to another group.

Special intention is a prerequisite for an act to be qualified as genocide. This aspect distinguishes genocide from similar international crimes. All actions to be qualified as genocide, must be committed deliberately. Such actions cannot be taken incidentally or negligently. However, merely having an intent to commit acts, mentioned above, as well as general understanding of their possible consequences is not enough to qualify them as genocide. What is required here, is revelation of the link between the specific intent of the perpetrator and the harmful results of his/her conduct. Nonetheless, direct and public incitement to commit genocide is a complete crime regardless of whether actual harm was caused or not.

In Khojaly case, the existence of the genocidal intent can be inferred, inter alia, from the fact that special traps were prepared in advance and then used for shooting civil Azeris, who were trying to escape.

The fact that those acts were aimed at the Azeri national group was also obvious.

The analysis of the crime of genocide shows that there are three major elements thereof:

- victims of the above-mentioned violent acts must belong to a particular national, ethnical, racial or religious group;
- there must be a specific intent (*mens rea*) to destroy such group in whole or in part;
- any of the genocidal acts must be actually committed (*actus reus*).

Consequently, genocide can be committed only against certain national, ethnical, racial or religious group. Similar actions directed against, for example, political or social group cannot be qualified as genocide.

The concept of genocide requires the existence of a specific intent regarding general consequences of an illegal deed. As a feature of genocide, intent includes following aspects:

- intent must not to be directed against one or more persons belonging to a certain group, but rather to the group as such. In other words, the qualifying criteria is not the victims' personalities, but their being a member of the certain group;
- intent must be aimed at a group, as such. Genocide means denial to accept the right to exist of entire human group. On the contrary, killing of a human being (homicide) is characterized as a denial of the right to exist of an individual being. Consequently, *actus reus* (prohibited act) may be committed against even one person, but *mens rea* (intent) must be directed against the existence of the entire human group;
- intent must contain the desire to destroy a group in whole or in part;

- such a group must be national, ethnical, racial or religious.

It is not required that a group is indeed totally or partially destroyed, so that the responsibility for the genocide could be inferred. For that, it is necessary that the acts, constituting the material element of the crime concerned, be committed with such an intent.

The concept of extermination, which constitutes a material element of genocide, includes, *inter alia*, killings by means of different methods.

The International Court of Justice held in its judgment on Barcelona Traction case that prohibiting acts of genocide constituted an *erga omnes* obligation. The ICJ has considered the basic principles of the Convention on the Prevention and Punishment of the Crime of Genocide as a part of the customary international law obligatory for all states.

II. Legal basis for qualification of the massacre in Khojaly as an international crime.

The following instruments must be considered as a legal basis for qualifying the massacre in Khojaly as an international crime.

1. Convention on the Prevention and Punishment of the Crime of Genocide (came into force in 1951) adopted by the UN General Assembly on 9 December 1948 (resolution 260 (III)).
2. Statute of the Nuremberg Military Tribunal (although this statute does not point out genocide actions directly, these actions constituting genocide are considered to be crimes against humanity and war crimes);
3. Statute of the International Criminal Tribunal for the Former Yugoslavia (par. 4);
4. Statute of the International Criminal Tribunal for Rwanda (par. 1);
5. Statute of the International Criminal Court (par. 6);
6. Criminal Code of the Republic of Azerbaijan (par. 103);
7. Decree of the President of Azerbaijan on Genocide of Azeris dated March 26, 1998.

III. Legal consequences of the massacre in Khojaly at the international level.

International law determines the following regarding genocide:

1. Persons who committed genocide must be tried and punished;
2. Not only perpetrators but also those who conspired or directly and publicly incited to commit genocide must be held responsible.
3. The principle of universal jurisdiction must be applied;
4. Acting in furtherance of an order must not exempt the perpetrator from responsibility;
5. Superiors must bear responsibility for failure to prevent the acts of genocide;
6. Statutory limitations must not be applicable to the crime of genocide;
7. With regard to genocide, the retroactive application of the law is allowed;
8. Perpetrators must be either tried and punished by the detaining state or extradited to the requesting one.

Thus, the acts committed by the Armenian side against the ethnic Azerbaijanis of the Khojaly district should be qualified as genocide and crime against humanity in accordance with the international legal documents.

IV. Informing the international community about the fact that Khojaly tragedy, as an international crime, was a constituent part of the policy of genocide carried out by Armenia against the people of Azerbaijan.

This document named "The tragedy in Khojaly, being an international crime, is a constituent part of the genocidal policy carried out by Armenia against the people Azerbaijan", adopted by the Board of Experts of the Institute on Human Rights (Azerbaijan National Academy of Sciences) will be sent to the parliaments of Azerbaijan, Turkey, Georgia, Russia and other countries, as well as the international organizations, including UN High Commissioner for Human Rights, Parliamentary Assembly of the Council of Europe, General Directorate on Human Rights of the Council of Europe, OSCE Parliamentary Assembly, OSCE Office for Democratic Institutes and Human Rights, international human rights NGO's, Azerbaijan Diaspora organizations.

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More than a million of people having undergone aggressive policy of Armenia live under hard conditions - they have found asylum in tent stations, houses-in-built, luggage wagons and other places unavailable to live.

Armenia has been paying no attention to the will of the international community by showing full distrust towards the UN Security Council Resolutions of 822 (1993), 853 (1993), 874 (1993) and 884 (1993) adopted in response to the Armenian unlawful use of force against Azerbaijan and occupation of its territories.

Regular, fundamental and firm political line carried out by state of Azerbaijan, constructive attitude of Azerbaijan Republic for fair settlement of Karabakh problem is known well by world states. Major directions for settlement of problem in a peaceful manner and through talks were approved and confirmed by 53 states of the world in OSCE Lisbon Summit in December of 1993.

All we are residents of this planet and we together should conduct firm fight against those threatening our common house with death and blood. We deeply believe that states, parliaments, international organizations in the world will support restoration of equity for happy life of nations having entered the 21st century, for equity, for high humanist values. Supporting the settlement of Karabakh problem in a peaceful manner and through talks, we once again express our certainty that due to joint efforts of states, parliaments, international organizations in the world territorial integrity of Azerbaijan Republic will be ensured and refugees and IDPs will return to their native lands.

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