# MILITARY-POLITICAL LEADERSHIP OF AZERBAIJAN IS AN AGGRESSOR

## PROBLEMS OF BRINGING THE REPRESENTATIVES OF THE MILITARY-POLITICAL LEADERSHIP OF THE AZERBAIJAN REPUBLIC TO REPONSIBILITY FOR COMMITTING AGGRESSION

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Beginning in the middle of the 16th century, professor at the University of Salamanca F. de Vitoria wrote that wars could only be fought to correct a wrong cause. Moreover, "if a subject is convinced of the injustice of a war, he may not serve in it, even though his sovereign commands"[1].

Spanish scientist of the same era, B. Ayala, argued that "wars cannot be declared against Gentiles only because they are Gentiles, even by order of an emperor or the Pope." War can be used only in self-defense or as an extreme means for ensuring law, "when justice and reason have failed"[2].

Hugo Grotius, considered a fair, permitted war only the one that was launched in response to a violation of law. War is permissible as self-defense: "In the event of an attack on people with open force and the impossibility of avoiding otherwise the danger to life, war is permitted, even entailing the killing of an attacker"[3].

According to B. Ferenz, many of Vitoria's ideas formulated in the first half of the 16th century, such as elements of defining aggression, boundaries of acceptable self-defense, (...) responsibility of heads of States, groundless references to orders from a superior for their protection, were early predecessors of doctrines, which became recognized principles of international law four centuries later"[4].

[1] See: "Nuremberg Process: the Law against War and Fascism"/editors Ledyakh I.A., Lukashuk I.I., M., 1995, p. 116.
[2] See: the same source, p. 117.
[3] See: Grotius G., The Laws of War and Peace, in Russian, M., 1956, pp. 186-189.
[4] See: Ferenz B., Enforcing International Law – A Way to World Peace, Vol. 1, London-New York, 183, p. 8.

Thus, despite the fact that the idea of the wrongfulness of an aggressive war emerged beginning in the middle of the 16th century, the legal prohibition of aggression was established only in the 20th century. So, in accordance with UN General Assembly Resolution No. 3314 adopted on 14 December, 1974, aggression is meant as "the use of armed force by a State against the sovereignty, territorial integrity and political independence of another State, or in any other manner inconsistent with the Charter of the United Nations"[5].

Article 3 of this Resolution provides a non-exhaustive list of acts the commission of which constitutes an act of aggression[6]. Analysis of the concept of "aggression" allows us to conclude that the fact of the declaration of war itself does not make it legal, and the Resolution, which was often referred to, until recently, was not a binding document for States, and the definition of aggression as an international crime also was not worked out, moreover the Resolution describes the actions of States, and not individuals – subjects of the crime of aggression[7]. This approach is related to the fact that aggression is distinguished as an act of a State for which they can be brought to international legal responsibility, and aggression as a criminal offense committed by individuals for which they can be criminally responsible[8].

After Nuremberg and until the creation of the International Criminal Court (hereinafter ICC), not a single international court was vested with jurisdiction related to the crime of aggression. After 1946, no international or national criminal court considered this crime, although in several cases the UN Security Council decided that the act of aggression was committed by States[9]. As it was rightly noted by I.S. Marusin, in the statutes of international criminal judicial institutions created later, such as the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, aggression was not included in the number of crimes covered by the jurisdiction of these bodies, which due to the fact that armed conflicts,

[5] See: UNO Charter, 25 June 1945.
[6] See: the same source.
[7] See: Trikoz E., Kampala International Conference on International Criminal Justice // International Criminal Law and International Justice, in Russian. 2011, N1, pp. 20-23; Bogush G., Overview Conference on Roman Statute: New Prospects of International Criminal Justice // Comparative Constitutional Overview, in Russian. 2010, N 5, pp. 87-95.
[8] See: Marusin I.S., The Definition of Aggression in the Statute of International Criminal Court and the Charter of Nuremberg Tribunal// Jurisprudence (Actual issues of public law and international law), in Russian, 2013, N4 (309), pp. 112-120.
[9] See: Cassese A., International Criminal Law, Oxford, 2003, p. 112.

during which the crimes pursued by these international judicial institutions were committed, were (mainly) of intra-State nature[10].

In 2010, as a result of the conference of the ICC member states, was adopted the Resolution RC/Res.6[11] "Crime of Aggression", which provides for the inclusion in the Rome Statute of new articles 8 bis, 15 bis, 15 ter defining the crime of aggression and harmonizing the order of the ICC jurisdiction. So, in two paragraphs of the new article of the Statute of the ICC 8 bis, a unified substantive definition of the crime of aggression for the purposes of the Statute is disclosed as follows:

1. For the purpose of this Statute, "crime of aggression" means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.

2. For the purpose of paragraph 1, "act of aggression" means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression:

(a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;

(b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

(c) The blockade of the ports or coasts of a State by the armed forces of another State;

(d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;

(e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the

[10] Marusin I. S., the mentioned source, pp. 112-120.

[11] Notifications of depositary C.N.651.2010 Treaties-8 of 29 November 2010, available with link: http://treaties.un.org.Resolution RC/Res.6 "The Crime of Aggression" adopted at the 13th Plenary Meeting on 11 June 2010. Annex I. Amendments to the Rome Statute of the International Criminal Court on the Crime of Aggression.

agreement or any extension of their presence in such territory beyond the termination of the agreement;

(f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

Article 8 bis, adopted in 2010, defines the elements of aggression as criminal offense as follows: planning, preparing, initiating or execution an act of aggression by a person who is able to effectively direct or control the political and military actions of the State. We share the fair opinion of I.S. Marusin that, from the point of view of ordinary law enforcement practice, the recognition of acts listed in Article 8 bis criminal and criminally punishable should mean that all persons involved in the commission of these acts, both the organizers and the direct perpetrators, should bear criminal responsibility. In other words, if State A commits an act of aggression against neighboring State B, then, according to this approach, both the head of the State A and the supreme commander of State A, who ordered the attack on State B, and all military personnel, including ordinaries, who fulfilled this order, should be held criminally responsible.

However, the adopted Article 8 bis indicates the circle of persons liable for aggression. These are, firstly, people who are able effectively to exercise control over the political or military actions of a State, and secondly, people who are able actually to exercise the directing of political or military actions of a State. "Actually" directing the actions of a State means that not all persons formally legally authorized to execute the act of aggression, such as the head of State, head of government or supreme commander, can be held accountable for an act of aggression, but only those who actually possessed such power.[12]

Such an approach, in our opinion, is caused not by an condescending attitude towards direct executors, but by exceeding the limits of the criminal law mechanism and the inability to prosecute thousands or a million representatives of the opposing side of an armed conflict without depriving them of their fundamental procedural rights and judicial guarantees. No judicial system can cope

[12] See: Marusin I.S., same source, pp. 112-120.

with so many accused, defendants and convicts. At the same time, the management of a State, in which such a number of accused, defendants and convicts will simultaneously appear, would be extremely difficult. But one can bring to justice one hundred, two hundred, a thousand people. It is precisely because of these considerations that the victorious states in the Second World War during the Nuremberg trials of 1945, the circle of persons responsible for the crimes committed by Germany was narrowed to the highest political and military leaders of the country. Millions of German and Austrian generals, officers, and soldiers who directly committed war crimes were not held accountable. The States participating in the ICC also did in the same manner. It is true that in the Statute of the Nuremberg Tribunal, the circle of persons liable for aggression was not precisely defined. All defendants at the Nuremberg Tribunal, according to the wording of Article 6 of the Charter, could be brought such accusation, but the circle of defendants at the Nuremberg Tribunal was individually determined[13].

Thus, the first paragraph of Article 8 bis includes the main definition of a crime, the main constituent elements of which are: the first - elements of the "actus reus" (alternative nature of the types of active actions, a special "threshold of gravity" in the form of "gross violation" of the UN Charter, blank description of an act of aggression with reference to the "Definition of Aggression" of 1974), the second is a special subject that characterizes this crime as "leadership crime". The characteristics of the "mens rea" of a crime are disclosed in the "Elements of Crimes" of the ICC Statute 2002, which were also supplemented by relevant provisions: the offender must have been aware of factual circumstances that established that such a use of armed force was inconsistent with the Charter of the United Nations, also the circumstances indicating a gross violation of the UN Charter by its character, gravity and scale of the act of aggression.

Strictly speaking, the main elements of the crime of aggression in accordance with this definition are the following: the blanket nature of the objective side; a special subject that characterizes the crime as "leadership crime"[14]; a special "threshold of gravity" in the form of a demand for a "gross violation" of the UN Charter. Even a single shelling of the territory of a foreign State according to the Definition of 1974 and Article 8 bis of the ICC Statute should be considered an act of aggression, but if the incident is quickly resolved, then there is obviously no need for the ICC to intervene. And in this case, the provisions of the ICC Statute provide for the responsibility for the

[13] See: the same source.

[14] In the novel Article on the crime of aggression is included the reference to the "Definition of aggression" approved by the Resolution of the General Assembly of the UN number 3314 (XXIX) on 14 December 1974, and its text is reproduced (point 2 Article 8 bis of the Statute).

outbreak and conduct of an aggressive war, and not for any single acts of the use of armed force. In addition, the two new Articles 15 bis and 15 ter of the Statute establish a different procedure for the exercise of the Court's jurisdiction over the crime of aggression. This is due to the role of the UN Security Council in establishing the fact that the State committed an act of aggression and with the restrictions on the territorial and personal jurisdiction of the Court. It should be noted that the competence to determine whether an event of international life is an aggression belongs only and exclusively to the UN Security Council (Article 39 of the UN Charter). However, such an assessment of the UN Security Council, in our opinion, is political, not legal.

So, when preparing the Statute of the ICC, some permanent members of the UN Security Council believed that as aggression can be considered only those actions that were qualified as such by the UN Security Council[15]. If such proposal were accepted, it would mean that the actions of any of the permanent members of the Security Council would never have been recognized as aggression, since the relevant state has the opportunity to veto a resolution in which its actions are qualified as such. However, this proposal was not accepted in the end. Thus, Article 15 bis of the ICC Statute is prescribed for the case when the situation is transferred to the ICC by a State party or when the prosecutor initiates an investigation by proprio motu and establishes the following procedure for initiating proceedings in the Court on charges of aggression. If the Prosecutor comes to the conclusion that there are sufficient grounds for initiating the criminal prosecution of a certain person on this charge, then he must first find out did the UN Security Council qualify as aggression the actions now being considered by the Prosecutor, and also notify the UN Secretary General of his intentions by providing him with all the necessary materials and documents. If such a qualification by the Security Council has already been implemented, as well as if the Security Council has not given any assessment of this situation and will not give it within 6 months after the Prosecutor has notified the UN Secretary General of his intention to initiate criminal prosecution, the Prosecutor has the right to continue the proceedings in this case under the usual manner. Thus, the UN Security Council can, qualifying certain actions not as aggression, thereby stopping the proceedings in this case at the ICC. But if the Security Council cannot qualify a particular situation, then the ICC will be able to act in accordance with its assessment. However, qualifying the actions of a particular State as aggression does not mean that the persons who directed these actions or exercised control

[15] See: Arsanjani M.H., The Rome Statute of the ICC//American journal of International law, 1999, N1, p. 29.
On divergence related to this issue at the preparatory committee of International Criminal Court, see also: Kolodkin R.A., On International Criminal Code //Russian Yearbook of International Law, in Russian. 1996-1997, Saint-Petersburg, 1998, pp. 231-232.

over them are liable in the ICC. Article 15 ter of the Statute, in its turn, refers to the exercise of jurisdiction by the Court when transferring a situation by the UN Security Council. In this case, the jurisdiction of the ICC may be carried out in relation to any crimes, including those committed in the territory of the "third States" or by their citizens.

The correlation of the definition "Crime of aggression" developed for the purposes of the ICC Statute has some specificity than Article 384 of the Criminal Code of the Republic of Armenia (adopted on April 29, 2003, further the RA Criminal Code)[16]. The problem is that aggression as a crime under national and international criminal law is not identical. So, analysis and comparison of the Article 384 of the Criminal Code of the Republic of Armenia "Aggressive War", which is disclosed in two parts and contains two separate elements of a crime, provides for responsibility in part 1 for planning or preparing an aggressive war, and in part 2 for unleashing or waging an aggressive war. At the same time, the planning of an aggressive war is understood as the fulfillment of any actions of an intellectual nature to achieve the goals of such a war, in particular: the development of its ideological - political and military concept; drawing up plans for strategies and tactics of military operations; mobilization plans; development of plans for the structure, composition, deployment and tasks of the armed forces; organization of intelligence activities; informational activity[17]. The preparation of an aggressive war is understood as the implementation of actions aimed at implementing the developed plans of aggression: building up armed forces, accumulating weapons and ammunition, creating food supplies, intensifying intelligence against another State, conducting command-and-staff exercises to develop aggression, etc.[18]. The outbreak of an aggressive war is the beginning of concrete actions for its conduct, with a view to its further conduct, and not an act of sporadic aggressive use of military force against another State.[19] So, in the fair opinion of N.F. Kuznetsova, untying aggressive war is the facts of aggression, "preceding the full-scale conduct of an aggressive war", such as: diplomatic demarches with aggressive goals, reconnaissance, the seizure of ships and the like "acts of aggressive behavior"[20]. Usually in the literature it is argued that the unleashing of aggression is a "treacherous" act committed in spite of

[16] Criminal Code of the Republic of Armenia of 29 April 2003, N LR-528.
[17] Borzenkova V.S and Komissarova G. (editors), Course of Criminal Law: Special Part, in Russian. Volume 5, M., 2002, pp. 354-355.
[18] Kruglikov L. (responsible editor), Criminal Law in Russia. Special part, in Russian, M., 1999, p. 769.
[19] Malakhova O.V., Aggression as a Crime in National and International Law, dissertation in Russian, Candidate of law, Stavropol, 2003, p. 139.
[20] Borzenkova V.S and Komissarova G. (editors), Course of Criminal Law: Special Part, in Russian. Volume 5, M., 2002, pp. 357-358.

the existence of peace treaties. The conduct of an aggressive war is a continuation of an aggressive war after the fact of its unleashing[21], and can be expressed in large-scale aggression against another state in the form of an attack, attack, invasion of its territory with the aim of capture or other aggressive purposes. It seems that the conduct of an aggressive war may be an undeclared conduct of hostilities against another state de facto - after all, legally, an act of aggression is stated regardless of the declaration of a state of war.

Thus, if the Article 384 of the RA Criminal Code establishes criminal responsibility in accordance with Article 3 "Definition of aggression," provided for by UN General Assembly Resolution No. 3314 of 14 December, 1974, even for a single shelling of a foreign state's territory, regardless of purpose and intent[22], without specifying the subject, which from the point of view of ordinary law enforcement practice means that criminal responsibility for them should be borne by all persons who participated in the commission of these acts, both the organizers and the direct perpetrators, then Article 8 bis establishes criminal responsibility for an act of aggression, which by its character, seriousness or scale is a gross violation of the UN Charter, and not for any single acts of the use of armed force, narrows the range of persons who hold criminal responsibility for aggression only by the highest state and military leaders, freeing from it lower-level performers, i.e., generals, officers and ordinaries, directly and carrying out actions that qualify as aggression[23]. Such a restriction testifies to the desire of the ICC member states to consider really significant, serious crimes, and if a single shelling of the territory of a foreign state, which should be considered an act of aggression, is quickly settled, then there is no need for ICC intervention.

On this occasion, we share the fair opinion of I.S. Marusin[24], who notes that such a position of the ICC court member states could be agreed if the text of the Statute or the Rules of Procedure and Evidence would give objective criteria for distinguishing an manifest (gross) violation of the UN Charter. That means the criteria for this assessment in the normative acts, on the basis of which the ICC should make its decisions, are absent. The Appendix to the "Elements of Crimes", adopted

[21] Naumov A, Russian Criminal Law: Course of Lectures, in Russian. M., 2007, p. 610.

[22] In the point 1 of Article 5 of "Definition of Aggression" of 1974 is clearly stated that no consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression.

[23]By this aggression differs from other types of international crimes, for example, from genocide, for the commission of which to criminal responsibility are brought all people who participated in its commission - both the heads and the perpetrators.

[24] Marusin I., The Definition of Aggression in the Statute of International Criminal Court and the Charter of Nuremberg Tribunal// Jurisprudence (Actual issues of public law and international law), in Russian, 2013, N4 (309), p. 119.

simultaneously with the amendments to the Statute of the ICC, only states that the term "manifest" is an objective characteristic (Article 8 bis, paragraph 3 of the Introduction). This means that a person's subjective assessment of his actions as legitimate or as violating the provisions of the UN Charter, but not rudely, does not relieve him of responsibility. At the same time, the grounds for holding accountable for aggression are formulated in the adopted amendments to the ICC Statute so that they allow for a different approach to similar situations and leave too much room for judicial discretion. This situation necessitates the introduction of appropriate amendments and expansion of the circle of persons responsible for the crime of aggression.

In the framework of the goals and objectives of this article, it is also necessary to consider such an important question: how to qualify the conduct of an aggressive war if such actions are accompanied by the commission of criminal violations of the laws and customs of military operations.

It seems that the commission of war crimes in the course of an aggressive war should always receive an independent legal assessment - that is, the deed should be qualified in the totality of crimes.

Thus, on July 12, 2020, the Armed Forces of Az.R, under the general command of Defense Minister Colonel-General Zakir Hasanov, 1st Deputy Defense Minister – Chief of General Staff Colonel-General Najmeddin Sadykov, violating the ceasefire agreement, by the forces and means of the 3rd army corps, in particular, 812 motorized rifle brigade of the 3rd army corps, 065 rifle brigade (stationed in the village of Soyuzbulakh), 196 infantry battalion (stationed in the village of Akhstafa) and 052 special brigades (stationed in the village of Yashma), under the command of Major-General Kh. Dzhabrailov, Chief of Staff of the army corps Major-General P. Khashimov, commander of the 812 motorized rifle brigade Colonel Shukurov and other high-ranking military officials, when interacting with mortar-missile-artillery weapons of fire destruction, in violation of paragraph (a) (invasion or attack by the armed forces of a State on the territory of another State ...), paragraph (b) (Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State) and paragraph (d) (An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State) of the Article 3 of the Resolution of the United Nations General Assembly of December 14, 1974; and Article 8 bis of the Statute of the International Criminal Court (hereinafter ICC), infringing on the territorial integrity of the Republic of Armenia (hereinafter RA), unleashed an aggressive war and carried out an act of aggression.

During the conduct of an aggressive war of the Armed Forces of Azerbaijan Republic, in order to achieve military superiority, grossly violating the norms 1 (the principle of distinction between civilians and combatants), 7 (the principle of distinction between civilian objects and military objects), 11 (indiscriminate attacks), 54 (attack on objects necessary for the survival of the civilian population) of the customary rules of international humanitarian law (i.e. the practice of States establishes responsibility regardless of whether the State is a party to Additional Protocol I or the ICC Statute); Article 25 of the Hague Regulations, and Articles 48, 51 (2) and 52 (2), Article 51 (4), paragraph 3 (b) and paragraph 5 of Article 85 of Additional Protocol I, using prohibited methods of warfare, without distinction between civilians and combatants, targeting systematic, deliberate and targeted attacks against civilians who were deep in home front and were not participating in hostilities in 8 peaceful settlements including, in particular, women and elderly people living in densely populated areas adjacent to the line of contact between the armed forces of the Republic of Armenia and Azerbaijan Republic, the most important civil infrastructures - buildings, roads, houses, other infrastructure, individual civilians, which led to injuries to persons protected by international law, as well as illegal large-scale deliberate destruction of private and state property in the preliminary total amount of AMD 145.844.000. Thus, in a result of mortar-missile-artillery strikes, 55 private residential houses were damaged in the indicated settlements, of which: 24 - in the village of Aygepar, 19 - in the village of Nerkin Karmirakhbyur, 12 - in the village of Chinari; 5 public buildings, of which 1 kindergarten and 2 factories in the village of Aygepar, 1 greenhouse in the village of Chinari, 1 brandy factory in the town of Berd, 1 cemetery in the village of Tavush; 3 civil infrastructures, of which 1 water pipeline in the village of Aygepar, 1 gas pipeline and 1 water pipeline in the village of Nerkin Karmirakhbyur; 7 cars, of which 1 car belonged to the RA Ministry of Emergency Situations, 6 – to civilians[25]. The shelling killed several heads of livestock. The mentioned acts are war crimes.

The analysis of the factual circumstances allows us to conclude that an indiscriminate mortar-missile-artillery fire strike, or rather, systematic, deliberate and targeted attacks on predetermined squares of the civilian population could not be associated with military necessity, could not make a significant contribution into hostilities, and the complete or partial destruction of civilian objects, their neutralization under the circumstances existing at a particular moment did not give any military

[25] See: the synthesized analytical statement "On violations of ceasefire regime by Azerbaijani Armed Forces in 2020" of the Operational Department of the General Staff of the RA Armed Forces.

advantage, and also could not be associated with the enforcement of peace and could not significantly affect the provision of military superiority over the armed forces of the RA.

So, under the command of Major-General H. Dzhabrailov, with the use of multiple rocket launch systems BM-21-Grad, heavy flame-thrower systems TOS 1A - Solntsepek (diameter 220mm, firing range 6000m, number of guides 24), large-caliber artillery, caliber up to 125 mm., D-30 (122mm, howitzer, firing range 15.3 km), T-72 A tanks (as a result of modernization by Turkey and Israel it was renamed into T-72-Aslan, 125mm, sighting range 4000m), mortars of caliber 120, 82 and 60 mm., "2 S12 SANI" (range of strike from 500-7100 meters), "2 B 14 Podnos" (82 mm, range of strike from 58 to 3922 meters), "M-57DPM" (60 mm, range of strike due to the type of mine - 1800-2500 meters), the actions of which were corrected by unmanned aircraft, an indiscriminate mortar-missile-artillery fire strike was carried out on predetermined squares of the civilian population and other infrastructure objects of a civilian nature at a depth of 11 km. 45 shells were fired from tank guns, 48 from D-30 artillery mounts, 316 from 120 mm mortars, 8 from 82mm mortars, 7 from 60 mm mortars, from various types of small arms, including large-caliber 12 449 shots were fired.

It is noteworthy that the Armed Forces of Az.R violating the norms 23, 97 of customary international law and the requirements of Article 28 IV Geneva Convention (concerning protected civilians) and Article 51 (7), 58 (b) of Additional Protocol I (concerning civilians in general), Article 8 (2) (b) (xxiii) of the Rome Statute prohibiting the use of human shields (i.e. deliberately combining military objects and civilians in space in order to prevent an attack on these military objects), mortar-missile-artillery fire weapons deployed in peaceful settlements Ashagi-Oksyuzlu, Yukhari-Oksyuzlu, Alibeyli, Dondar-Kushchu, Aghdam, Kyognakishlak, Musakey. Thus, 6 units of 60 mm mortars, 10 units of 82 mm mortars and 4 units of 120 mm mortars were deployed near the settlements of Aghdam, Alibeyli, Kyognakishlak, Asrikjirdan; up to 2 tank platoons (6 units) of T-72-Aslan tanks: 2 - near the settlement of Aghdam, 1 - Alibeyli, 3 - Kyognakishlak; one BM-21 multiple rocket launch battery (4 units) - near the Ashagi-Oksyuzlu settlement, one D-30 artillery battery (6 units) - near the Yukhari-Oksyuzlu settlement, one battery near Tovuz and one battery - near the Hajilari settlement[26]. The specified acts are war crimes.

Using human shields, (i.e., covering military facilities with the civilian population), mortar-missile-artillery shelling of the front line of defense, positions, posts, trenches, company strongholds and

[26] See: the synthesized analytical statement "On violations of ceasefire regime by Azerbaijani Armed Forces in 2020" of the Operational Department of the General Staff of the RA Armed Forces.

communications of the units of the Armed Forces of the Republic of Armenia (hereinafter the AF of the Republic of Armenia) was carried out. Striking unmanned aerial vehicles (hereinafter UAVs), reconnaissance UAVs "Aerostar", "Hermes", "Orbiter" and others of Israeli, Turkish and Azerbaijani production were also widely used.

The intelligence activity of the Azerbaijani Armed Forces testifies to the fact that systematic, deliberate and purposeful attacks were carried out on predetermined squares of civilian population.

So, in 2019, the enemy carried out 544 reconnaissance UAV flights, of which 333 were on the territory of Azerbaijan, 37 along the length of the state border of the Republic of Armenia, 1 with crossing the border.

From 1 January to 11 July, 2020, inclusive, the enemy carried out 325 reconnaissance UAV flights, 1 in violation of the state border (July 8, 2020) up to 5 km deep.

The number of UAV reconnaissance flights of the Azerbaijani Armed Forces in 2020 by months was: in January – 5; in February – 11, of which 4 crossed the contact line; in March – 22, of which 2 crossed the contact line; in April – 21, of which 12 crossed the contact line; in May – 11; in June – 11, of which 1 crossed the contact line; from 1 July to 11 July – 14.

From 12 to 22 July 2020 inclusive, the enemy carried out 67 reconnaissance and attack UAV flights, of which: 44 from Azerbaijan side (34 reconnaissance, including 1 Hermes-900, the rest Orbiter-2, Orbiter-3, Aerostar, and 10 – striking), including 28 with crossing the state border in the direction of Ijevan-Berd.[27]

Having determined in advance the squares of the civilian population and other infrastructural objects of a civilian nature, the Armed Forces of Azerbaijan subjected the following settlements of the Republic of Armenia to an intensive mortar-missile-artillery fire strike of an indiscriminate nature:

- the town of Berd - located at a distance of 11 km from the state border;

- Aygepar village - located at a distance of 700 meters from the state border;

- the village of Nerkin Karmirakhbyur is located at a distance of 1.7 km from the state border;

- the village of Tavush - located at a distance of 3 km from the state border;

[27] See: the synthesized analytical statement "On violations of ceasefire regime by Azerbaijani Armed Forces in 2020" of the Operational Department of the General Staff of the RA Armed Forces.

- the village of Norashen - located at a distance of 6.9 km from the state border;

- the village of Chinari - located at a distance of 2.5 km from the state border;

- the village of Movses - located at a distance of 2.5 km from the state border;

- Merab village - located at a distance of 3 km from the state border.

On the facts of these crimes, the RA Investigative Committee is currently considering the possibility of initiating a criminal case on the totality of crimes under part 2 (Unleashing or waging an aggressive war) of the Article 384 of the RA Criminal Code "Aggressive War", part 1 of Article 387 of the RA Criminal Code "Use of prohibited means and methods of warfare", point 1 (Attack on the civilian population or individual civilians), point 2 (An indiscriminate attack that affects the civilian population or civilian objects, if it is obvious that such an attack will lead to excessive losses among civilians or cause excessive damage to civilian objects, if the infliction of such harm is excessive to achieve concrete and direct military superiority) part 3 of the Article 390 of the RA Criminal Code "Serious violations of the norms of international humanitarian law during armed conflicts", Article 391 "Inaction or issuance of a criminal order during an armed conflict", according to point 2 (murder of a person or his relatives, in connection with the performance by this person of his official activity or public duty), point 6 (in the way dangerous for the life of many people), point 13 (motivated by national, racial or religious hatred or religious fanaticism) of the part 2 of Article 104 of the RA Criminal Code “Murder”, point 1 (committed by arson, explosion or any other generally dangerous method), point 4 (committed on the basis of national, racial or religious hatred or religious fanaticism) of the part 2 of Article 185 of the RA Criminal Code "Intentional destruction or damage to property". At present, the Investigative Committee of the Republic of Armenia has initiated 37 criminal cases for each fact of attempted murder or wounding of citizens and military personnel, as well as destruction of property, for the multiple offences under point 2, point 6, point 13 of the part 2 of the Article 104 of the RA Criminal Code "Murder" or as attempted murder and according to point 1, point 4 of the part 2 of the Article 185 of the RA Criminal Code "Intentional destruction or damage to property".

At this stage of investigation, the involvement of the following servicemen of the Armed Forces of Azerbaijan Republic was established in the commission of war crimes: Defense Minister Colonel-General Hasanov Zakir; 1st Deputy Defense Minister – Chief of the General Staff, Colonel-General Sadykov Najmeddin; the commander of the 3rd army corps, Major-General H. Dzhabrailov; Chief of

Staff of the 3rd army corps, Major-General P. Khashimov; commander of the 812 motorized rifle brigade, Colonel Shukurov. Operational-search measures are being carried out to identify other servicemen of the Armed Forces of Azerbaijan Republic, involved in war crimes.

Thus, based on the evidences collected during the investigation of 37 criminal cases initiated by the Investigative Committee of the Republic of Armenia on the facts of a number of international crimes committed by the armed forces of Azerbaijan in the period from 12 to 22 July 2020, as well as the volume, nature, system, tactical and technical characteristics and locations of the used mortar-missile-artillery weapons of fire destruction, the degree of thoroughness of the analysis of the selected ground targets, the involvement of high-ranking military officials responsible for the development and conduct of the military operation, the number of personnel involved, the observance of the established procedure for this, the extent of ignoring the norms of international humanitarian law, the Investigative Committee of the Republic of Armenia has come to the conclusion that this is the result of in advance planned, thorough military, political and propaganda training, planned, organized and sanctioned directly by the highest political and military leaders of Azerbaijan.

It should be noted that for a more complete and in-depth consideration of the research issues outlined in this article, we consider it appropriate to clarify the nature of the Armenian-Azerbaijani and Karabakh-Azerbaijani armed conflicts in the light of the recent events that took place in the period from 2 – 6 April, 2016. International humanitarian law establishes a direct dependence of the classification of aggression and other war crimes on the nature of the armed conflict, recognizing similar acts, in some cases, as war and other international crimes, and in others not. To date, individual criminal responsibility for war crimes committed in the course of conflicts of a non-international character is a rule of customary international law, which is also confirmed by the practice of international organizations. In our opinion, the Nagorno-Karabakh armed conflict has all the features inherent in an armed conflict of an international character and qualifies as international. At the same time, this qualification corresponds to both the Armenian and Azerbaijani positions, which differ only in the argumentation on which they come to this conclusion. It should be taken into consideration that Nagorno-Karabakh as an independent state has already been recognized by Abkhazia, South Ossetia, Transnistria, etc. Despite the fact that the NKR de facto has all the features of a sovereign state, nevertheless, as such it has not yet been recognized by the world powers. In this regard, NKR is not a subject of international law, but is a subject of self-determination. It seems that

this provision cannot be significant even with the qualification of acts of aggression, which in the event of the commission of the Armed Forces of Azerbaijan Republic against both Armenia and the NKR, if there are appropriate signs, should be qualified as aggression, since Article 7 of the Resolution of the UN General Assembly No. 3314 of December 14, 1974 "Definition of aggression" provides for the provision that nothing in this definition, and in particular in Article 3, may in any way prejudice the right of peoples to self-determination, freedom and independence, arising from the Charter, as well as the right of these peoples to fight against this goal.[28]

Thus, in accordance with the Article 7 "Definition of aggression", on the part of the Azerbaijan Republic there is an illegal use of armed forces in violation of the UN Charter, however, the interpretation and application of the above provisions should be interrelated and each provision should be considered in the context of all other provisions. This approach, in our opinion, is legally legitimate. However, the qualification of actions of a certain state as aggression does not mean that the persons who directed these actions or exercised control over them are subject to responsibility in the ICC.

It seems that if the unleashing and waging of an aggressive war is accompanied by the commission of other war crimes, the latter should always be qualified independently, that is, as multiple offences provided for in part 2 of the Article 384 of the RA Criminal Code – "Aggressive War"; part 1 of the Article 387 of the RA Criminal Code – "Use of means and methods of warfare prohibited by an international treaty in hostilities or armed conflicts"; and in some cases, in conjunction with Article 390 of the RA Criminal Code “Serious violations of the norms of international humanitarian law during armed conflicts”.

It should be noted that in some cases, on the facts of deliberate attacks on the civilian population in the prosecutor's and investigative practice of the Republic of Armenia, criminal cases were initiated under Article 389 of the RA Criminal Code "International terrorism", and in the prosecutor's and investigative practice of the Russian Federation, on the facts of acts that took place, from 8 to 12 August 2008 in South Ossetia and from April 12, 2014 to the present in the Southeast of Ukraine (on

[28] Article 7 Resolution of the UN General Assembly No. 3314 of December 14, 1974. “Definition of aggression”: nothing in this definition, and in particular in Article 3, may in any way prejudice the right coming from the Charter to self-determination, freedom and independence of peoples that are forcibly deprived of this right and referred to in the Declaration of Principles of international law relating to friendly relations and cooperation between states in accordance with the UN Charter, in particular of peoples under the rule of colonial and racist regimes or other forms of foreign domination, as well as the right of these peoples to fight against this goal and to seek and receive support in accordance with the principles of the Charter and in accordance with the aforementioned Declaration.

the territory of the self-proclaimed Lugansk and Donetsk People's Republics), the Investigative Committee of the Russian Federation initiated criminal cases under Article 357 of the Criminal Code of the Russian Federation "Genocide"[29], which were initially instituted under various points of part 2 of the Article 105 (“Murder under aggravated circumstances”) and part 1 of the Article 356 of the Criminal Code of the Russian Federation - "Use of prohibited means and methods of warfare."

Thus, on the facts of almost continuous shelling by the Armed Forces of Azerbaijan Republic of the civilian population of the Tavush region of RA on 21.08.2014 a criminal case No. 38106514 was initiated under the Article 389 of the RA Criminal Code “International terrorism”. Only from June to August 2014, as a result of shelling of civilians in the villages of the Tavush region of the Republic of Armenia, the following was damaged: civilian objects - 747; cars - 9; pastures - 25; vineyards - 4.5 hectares; other agricultural facilities, including tobacco plantations, with a total area of 63 hectares. Damaged civilian objects in the villages: Aygepar - 160; Barekamavan - 20; Berkashen - 70; Vazashen - 30; Nerkin Karmirakhbyur - 200; Movses - 12; Paravakar - 105; Chinari - 150. the villages of Aygehovit, Baganis, Berkaber, Voskevan, Doveg, Kayanavan, Koti, Tavush were also subjected to shelling. During this period, the Armed Forces of Azerbaijan Republic violated the ceasefire 93 times, firing 25,777 shots[30]. For the period from 2001 to 2014, in result of the actions of the Armed Forces of Azerbaijan Republic, 5 RA citizens were deliberately murdered[31], 27 attempts to murder RA citizens were committed[32]. 22 RA citizens were captured, 5 RA citizens were murdered when in captivity[33].

Other crimes have been committed against the citizens of the Republic of Armenia.

It seems that in the above example of violation of the ceasefire by the Armed Forces of Azerbaijan Republic, elements of terrorism as a war crime, and in our opinion, rather terrorizing the civilian population[34] (the purpose of which can be expressed in creating and spreading an atmosphere of

[29] See: URL.http://sledcom.ru/news/item/510275 (the date of application 04.02.2017).
[30] See: the synthesized analytical statement “On violations of ceasefire regime by Azerbaijani Armed Forces in 2014” of the Operational Department of the General Staff of the RA Armed Forces. See the joint criminal case number 38106514 initiated on 21.08.2014 under the Article 389 RA Criminal Code (International terrorism), criminal cases number 90754414; 90754814; 90754814 etc.

[31] See: criminal cases: 2001 year- number 47200701, 56201301; 2008 year- number 56102108, 56102208, 2014 year- number 56103214.
[32] See: criminal cases: 2001 year – number 47201101; 2008 year – number 47101108, 47103508, 2009 year – number 56106609, 2012 year – number 56100212, 56102312, 56103612, 2014 year – number 56100214, 56108914, 56102714, 56102914, 38106514, 56103714, 56103814 etc.
[33] See: for example the criminal case number 56103214.
[34] With regard to “terrorizing the civilian population”, the legal acts prohibiting acts of violence with the main purpose

horror, fear, anxiety, causing extreme fear when everyone is under fear of possible murder, torture or other inhuman acts), however, the qualification of such an act as "international terrorism", in our opinion, is possible only if such acts are committed by terrorist organizations or individuals, not states or their official bodies. If one state, in violation of the UN Charter, uses armed forces against another, the act may be classified under the heading "Aggressive war", and if in the context of an armed conflict, with the aim of murdering civilians, causing damage to civilian objects or otherwise using prohibited methods of warfare in violation of the norms of international law, then, as a war crime, or as analyzed above according to the rules of the totality of these crimes.

As for other corpus delicti, the scope of this article does not allow us to reveal the signs that distinguish the corpus delicti of the "aggressive war" from related corpus delicti of war crimes, crimes against humanity and genocide.

Thus, the question of the possible prosecution for committing the crime of aggression is currently devoid of any practical plane and remains the subject of academic theorizing. This statement applies to the ICC as long as the ICC does not consider such crimes in its practice. In any case, the prosecution of representatives of the opposing side of the armed conflict for committing the crime of aggression is currently possible only at the international level. Nevertheless, in our opinion, it is precisely this qualification of what is created under national legislation is most correct due to its obviousness and legal certainty.

It seems that one of the best options for the Republic of Armenia will be the ratification of the Statute, signed on October 1, 1999, and active participation in the activities of the ICC. It is necessary already today, in the absence of a decision to ratify the ICC Statute, in accordance with

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of terrorizing the civilian population are Article 33 Geneva Convention IV (1949), Article 51 (2) Additional Protocol I (1979), Article 4 (b) and Article 13 (2) of Additional Protocol II (1979). So, "acts of terrorism" as a separate war crime are provided for by Article 4 (d) of the ICTR Charter and Article 3 of the SCSL Charter, while the ICTY, for example in the case of General Blaškić, viewed “terrorism”, the creation of an “atmosphere of terror”, as an act constituting elements of other war crimes, such as ill-treatment. “Terrorizing the civilian population” as an independent corpus delicti of a war crime was examined by the ICTY Trial Chamber in the case of General S. Galić, who was found guilty of violating the laws and customs of war and crimes against humanity in connection with the fact that he “contributed to the campaign of illegal violent actions against civilians through orders transmitted to them through the chain of command (...) and had the intention of conducting this campaign with the primary goal of spreading terror among the civilian population of Sarajevo". At the same time, artillery shelling of the city and sniper fire on civilians were recognized as actions that terrorized the civilian population. The ICTY has defined the elements of this war crime, which “consist of elements common to offenses falling under Article 3 of the Charter, as well as specific elements, which include acts of violence directed against the civilian population or individual civilians who do not directly participate in hostilities causing the death of civilians or causing them serious bodily harm or damage to their health. The perpetrator deliberately made the civilian population or individual civilians not directly involved in hostilities the target of such acts of violence. The crime was committed with the main purpose of terrorizing the civilian population.

Article 88 of the ICC Statute, stating that the participating States ensure the existence of procedures envisaged by their national law for all forms of cooperation with the ICC, begin lawmaking activities to provide legal support for the investigation of war crimes in the legislation of the Republic of Armenia, which provides for the enhancing of work on the implementation of the provisions of the ICC Statute, preparation of draft laws on introducing amendments and additions to the legislation of the Republic of Armenia aimed at ensuring cooperation between Armenia and the ICC, and bringing the legislation of the Republic of Armenia in line with the Rome Statute of the ICC, eliminating the gaps in the RA Criminal Procedure Code, ensuring the possibility of independent investigation of war crimes falling under jurisdiction of the ICC.

With this approach, the Republic of Armenia, by virtue of the principle of pacta sunt servanda (i.e., the principle of good faith fulfillment by the state of its obligations under the relevant international agreement, which is stipulated in Article 26 of the Vienna Convention on the Law of Treaties of 1969), taking into account the fact that the grounds for the exercise of universal jurisdiction over war crimes are also present in customary law[35], has every legal basis to initiate criminal proceedings on the facts of war crimes, including committed on the territory of the Republic of Artsakh and without any bilateral agreements or treaties with the Republic of Artsakh, as an act of goodwill in the fight against war crimes, with the consent of the state authorities of the Republic of Artsakh, capable of exercising effective control, maintaining law and order and independently conducting effective investigations, in general order to investigate cases in the territory of the Republic of Artsakh, on the principle of in absentia (i.e. in the absence of the suspect or accused in the territory of the state conducting the criminal case).

While there are no such legal mechanisms, the administration of justice against representatives of the military-political leadership of the Republic of Azerbaijan for committing crimes against the peace and security of mankind remains only a subject of academic theorizing.

[35] Treaty law covers only serious violations; customary law covers all the violations of laws and customs of warfare, which are war crimes.