

ԻՐԱՎԱԳԻՏՈՒԹՅՈՒՆ

THE USE OF PROHIBITED WEAPONS BY THE AZERBAIJANI ARMED FORCES DURING THE 44-DAY WAR*

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Keywords: Azerbaijani-Artsakh War, Geneva Protocol, LAR-160, Azerbaijan's genocidal policy, cluster munitions, phosphorus weapons, prohibited weapons, war crime.

*Laws and customs of war, the international order of warfare, established in order to prohibit the most brutal means of warfare, to ensure the protection of the civilian population. The laws and customs of war also regulate the relations of the belligerents, the legal status of war victims (wounded, sick, etc.), citizens, the rights and obligations of neutral States. The most important agreements defining the laws and customs of war are the **Hague Conventions** (1899[1], 1907[2], 1954[3]), the **Geneva Protocol** of 1925[4], **Geneva Conventions of 1949 on the Preservation of Cultural Property in the Event of Armed Conflict**[5]. The laws and customs of war prohibit starting actions without declaring war, using weapons of mass destruction, the use of which is prohibited by a number of international declarations and conventions, in particular;*

- ***Declaration Renouncing the Use, in Time of War, of Explosive Projectiles under 400 Grammes Weight. Saint Petersburg, 29 November / 11 December 1868***[6];
- ***Project of an International Declaration concerning the Laws and Customs of War. Brussels, 27 August 1874***[7];
- ***Hague Conventions***[8];
- ***Declaration of the UN General Assembly on the Prohibition of the Use of Nuclear Weapons during War, 1961***[9];

It is forbidden to attack unprotected cities and towns, to bomb buildings of science, art, hospitals, squares and churches, to kill or insult prisoners, to seize or destroy enemy property, to wear the enemy's national flag, military uniform. It is prohibited to use poisons, poisoned weapons and materials, chemical, biological and other weapons as cruel means of warfare. The 1980 UN Convention prohibits or restricts the use of certain conventional weapons [10]. The laws and customs of war are regarded as an international offense and a crime against humanity. The guilty States are obliged to compensate for the damage caused, and persons are brought to criminal responsibility.

The types of weapons banned by Azerbaijan were used during all the wars unleashed against Artsakh. Even during the First Azerbaijani-Artsakh War, Azerbaijan repeatedly violated both the laws and customs of war and committed a number of war crimes. The Azerbaijani armed forces, with the permission and mediation of the political and military leadership, carried out ethnic cleansing, mass deportation, bombed and shelled peaceful settlements of Artsakh, killed civilians, including outside of Artsakh (in particular, in Sumgait in 1988 and Baku in 1990). In order to exchange or obtain a ransom, Azerbaijani militants took hostages minors and the elderly, wounded and sick, citizens of third countries of Armenian nationality. Hostages and prisoners of war were subjected to cruel torture, humiliated their human and national dignity, and often killed. During the shelling of peaceful settlements and civilian infrastructures of Artsakh, Azerbaijan

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mainly used Gosd rocket systems, ball bombs (the use of which against peaceful settlements is prohibited by international conventions), purposefully damaged, shelled, bombed and destroyed cultural values created by the Armenian people for centuries - hundreds of khachkars, churches, monasteries, works of art, monuments. Taking advantage of the fact that Azerbaijan did not bear any legal or political responsibility for the above crimes, involving hired terrorists in 2016 and 2020, it begins military aggression against the Republic of Artsakh, also using types of weapons prohibited by international declarations.

The Use of Vacuum Weapons by the Azerbaijani Armed Forces

The vacuum bomb - the old name ODAB (volume-detonating aviation bombs or FAE - fuel air explosive) - was created based on the effect of a volumetric explosion of dust-gas and dust-air clouds. The principle of operation is as follows: when dropping an aerial bomb, a cloud of sprayed combustible substance explodes in the air. The explosive projectile scatters the aerosol mixture and blasting elements for some distance. The main destruction is caused by a supersonic air shock wave and an incredibly high temperature. High-calorie liquid fuels (ethylene oxide) are used as the main charge in vacuum bombs. When such ammunition meets an obstacle, the explosion of a small charge destroys the body of the bomb and sprays fuel, which, passing into a gaseous state, forms an aerosol cloud in the air. As soon as the cloud reaches a certain size, it is undermined by special grenades fired from the bottom of the bomb[11].

Since December 2020, our research group has held a number of meetings with soldiers and volunteers opposing the war unleashed by Azerbaijan and Turkey against the Republic of Artsakh. Our interlocutors, including experienced military men, noted in their testimonies that the Azerbaijani Armed Forces used vacuum weapons against a number of settlements in Artsakh.

The Use of Cluster Munitions by the Azerbaijani Armed Forces During the 44-day War

On October 4, 2020, the RA Human Rights Defender published his second study, which, in particular, notes:

Since September 27 Azerbaijan has been repeatedly using forbidden cluster munitions to target civilian settlements and peaceful population in Artsakh (Nagorno Karabakh).

On September 27-28, October 2-4 Azerbaijan deployed LAR-160 and Smerch cluster-warhead missiles against the city of Hadrut, capital city of Stepanakert and against the village of Shosh near Stepanakert.

Repeated use of cluster munitions against densely populated settlements is a grave breach of international humanitarian law, and a grave breach of Azerbaijan's international human rights obligations, including its positive obligations with respect to the right to life and health, the prohibition of cruel, inhuman or degrading treatment, and the right to property, despite Azerbaijan is not a party to the 2008 Convention on Cluster Munitions.

It is forbidden to use cluster munitions in any case if the effects of such use cannot be limited as required by international humanitarian law, namely - when the distinction between military targets cannot be ensured.

The principle that states must never use weapons that are incapable of distinguishing between civilian and military targets is not only codified in Additional Protocol 1 to the 1949 Geneva Conventions (and additionally included in the legislation of non-member states), but has also been recognized by the International Court of Justice as a foundational principle of international humanitarian law. These principles derive from elementary considerations of humanity and dictates of public conscience, which are binding on all states in every situation of armed conflict.

The very nature of the cluster munitions in question inevitably makes them incapable of ensuring the required distinction between military and civilian targets when used in proximity with

civilians and civilian objects, let alone when used in heavily populated settlements. As reported on October 4 by the Human Rights Defender (Ombudsman) of Artsakh, shelling with LAR-160 and SMERCH cluster-warhead missiles towards civilian settlements is targeted. According to the Artsakh Ombudsman Interim Public Report “The Azerbaijani Atrocities against Arstakh Population in September 2020”, there is a great risk that the civilian population will be at a significant threat for a very long time, given the size, scope and type of weapons.

Hence by using cluster-warhead LAR-160 and Smerch missiles Azerbaijan is systematically committing grave breaches of international humanitarian law, demonstrating a blatant disregard for its human rights obligations.

The repeated use of such munitions is moreover evident that they constitute a part of a policy of ethnic cleansing - as such use clearly demonstrates a policy by Azerbaijan to use violent and terror-inspiring means against the civilian Armenian population.

These facts and assessments are based on fact-finding activities of the Human Rights Defender of Armenia; reports and fact-finding activities of the Artsakh Ombudsman; publications of media and credible information from civilian population, as well as confirmations from official sources of Armenia and Artsakh[12].

Azerbaijan has repeatedly used widely banned cluster munitions in residential areas in Nagorno Karabakh, Human Rights Watch said, summing up the on-site investigation in Nagorno Karabakh in October 2020.

Human Rights Watch documented four incidents in which Azerbaijan used cluster munitions.

“The continued use of cluster munitions - particularly in populated areas - shows flagrant disregard for the safety of civilians,” said Stephen Goose, arms division director at Human Rights Watch and chair of the Cluster Munition Coalition. “Cluster munitions should never be used by anyone under any circumstances, much less in cities, due to the foreseeable and unacceptable harm to civilians.”

In the conflict over Nagorno Karabakh, Human Rights Watch is investigating whether all sides of the conflict adhere to international humanitarian law, which requires armed forces to distinguish between combatants and civilians, and between military objects and civilian objects, at all times. As such, indiscriminate attacks are prohibited, including attacks which employ a method or means of combat which cannot be directed at a specific legitimate military target. Human Rights Watch has made repeated requests to the Azerbaijani government for access to conduct on-site investigations, but access has not yet been granted.

Human Rights Watch examined remnants of the rockets, impacts, and remnants of submunitions that exploded, as well as dud submunitions that failed to function at several locations in Stepanakert, the capital of Nagorno Karabakh. Human Rights Watch also examined photographs taken in the town of Hadrut of a rocket, impacts, and remnants of submunitions that exploded, and a dud submunition that failed to explode. Human Rights Watch also spoke to six people who witnessed the attacks.

Residents of Stepanakert told Human Rights Watch that attacks using cluster munitions began on the morning of September 27 in a residential area no more than 200 meters from the office of the International Committee of the Red Cross[13].

The fact of the use of cluster weapons by the Armed Forces of Azerbaijan was also recorded by the Amnesty International organization.

In October 2020, Amnesty International issued a message stating that cluster bombs banned by international agreements since 2010 had been used. The organization states that the information contained in the videos published by Armenian sources on Saturdays and Sundays testifies to the use of these weapons. The report notes that the Organization's experts "managed to identify the residential quarters of Stepanakert, where the shooting was carried out and where the Israeli-made m095 DPICM cluster bombs released by the Azerbaijani armed forces were located"[14].

In May 2008, the Convention on Cluster Munitions was adopted in Dublin, prohibiting the use of cluster bombs. It came into force on August 1, 2010. To date, 108 States have signed the agreement: 14 States, although signed, have not yet ratified it. The largest manufacturing States, producers and owners of cluster munitions, including Brazil, Israel, India, China, Pakistan, Russia and the United States, have not joined the Convention.

According to paragraph 2 of article 2 of the Convention on Cluster Munitions, "cluster munitions" means conventional ammunition intended for the release or distribution of explosives, each of which weighs up to 20 kg and includes these explosive by-products" According to article 1 of the Convention, each State Party to the Convention undertakes never and under no circumstances:

- a. do not use cluster munitions;*
- b. not to develop, produce, otherwise acquire, accumulate, preserve or transfer to anyone, directly or indirectly, cluster munitions;*
- c. not to assist, encourage or encourage anyone to carry out activities prohibited for a State Party under this Convention.*

The parties to the Convention undertake to destroy the entire national Arsenal and stocks of cluster munitions within 8 years after the entry into force of the document, and to completely remove these munitions from the territory of the country within 10 years.

Paragraph 6 of article 3 states "Notwithstanding the provisions of article 1 of this Convention, the retention or acquisition of a limited number of cluster munitions and explosive submunitions for the purpose of developing methods for detecting, removing or destroying cluster munitions and explosive submunitions and training in these methods or for the purpose of developing measures to counter cluster munitions is permitted. The number of explosive submunitions retained or acquired should not exceed the minimum number absolutely necessary for these purposes" [15].

When summarizing the monitoring of open Internet sources, we found out that at least 360 people were affected by the use of cluster weapons around the world in 2020, of these, 142 were attacked by cluster bombs, and 218 were detonated by the remains of weapons. The events were recorded in Artsakh, Afghanistan, Cambodia, Iraq, South Sudan, and Syria. More than 40% of the victims are children. The total number of victims may be higher, as numerous cases have not been recorded.

The Use of Phosphorus Weapons by the Armed Forces of Azerbaijan

Evidence of white phosphorus incendiary attacks on Artsakh/Nagorno-Karabakh by Azerbaijan emerged in the last week of October 2020 - a month into the violent [16] and bloody war [17] - following rumors about fires raining down on the forests of the Republic of Artsakh. The de facto independent state controlled by ethnic Armenians became the target of indiscriminate scorched-earth tactics by the neighboring state that claimed those lands to be theirs by "law", and the ethnic Armenians populating them for millennia to be "alien invaders".

Since internet/communication lines were damaged [18], it wasn't until October 29, 2020, that the first video evidence of burning villages reached the outside world. In the following days more evidence of air-delivered incendiary weapons emerged. At that point, it was clear that Azerbaijan was prepared to unleash ecological and humanitarian devastation to seize control of the sovereign region over which it had lost authority decades ago.

On November 2, 2020, fifty one NGO's in Armenia issued an Ecocide Alert[19] for Artsakh/Nagorno-Karabakh condemning the use of incendiary weapons by Azerbaijan. The urgent call to action to prevent an imminent environmental disaster, fell on international community's deaf ears; Azerbaijan fiercely denied the attacks while mirroring accusations towards the Armenian side.

On October 30, 2020, Armenian Ombudsman Arman Tatoyan posted a video on his Facebook page with the corresponding inscription: «Azerbaijan uses, according to the data at the moment, phosphorous weapons, which have elements of chemical weapons. This is done in relation to forests located in the vicinity of civilian settlements.

According to the results of the urgent investigation of the Human Rights Defender of Armenia and the fact-finding work of the human rights defender of Artsakh, not only this fact was confirmed, but it also turned out that civilians are also hiding in the forests from armed attacks both during the day and at night.

That is, this type of weapons of mass destruction is currently being used by the Azerbaijani armed forces against the environment and civilians» [20]. The next day, the Artsakh Defense Army released another similar video. On November 6, the human rights defenders of Armenia and Artsakh published a joint special report [21] on the use of weapons of mass destruction of the civilian population and civilian infrastructure in Artsakh.

The report notes that the Azerbaijani armed forces used an unknown type of weapon from October 29 to 31. At the time of publication of the report, it was clearly unclear whether they contained phosphorus or not. However, independent research, based on open sources, from the outside FIP.am and the Atlantic Council's Digital Forensic Research Laboratory (DFRLab) has stated that it is, nevertheless, white phosphorus. Both investigations compared the Artsakh events with visually proven and confirmed cases of the use of white phosphorus in other places. The use of incendiary weapons is prohibited by the Protocol on the Prohibition or Restriction of the Use of incendiary weapons, which on certain traditional weapons in 1980 is part III of the protocol of the Convention[22].

The Office of the Armenian Ombudsman stated on November 2 that “Azerbaijani Armed Forces to use ammunition of mass destruction containing chemical elements in Artsakh (Nagorno Karabakh) yesterday and today.

According to the information the ammunition contained phosphorus. A number of reports have been released since then certifying that the ammunitions contain other chemicals of mass destruction.

Nonetheless, at least the following facts should be highlighted:

- 1) mass destruction ammunitions are used;**
- 2) ammunitions contain chemical elements;**
- 3) are used towards forests, causing mass fires and destruction;**
- 4) according to expert assessments, the fire, caused by this type of weapon is not stopped even with the extinguishing materials or water;**
- 5) the forests where these ammunitions were used, are located near the civilian communities (according to the current data these are regions of Shushi, Martakert, Askeran);**
- 6) according to the fact-finding activities, civilians are hiding from attacks of Azerbaijani military forces in those forests.**

The usage of these ammunitions especially through these methods, are prohibited by international law”[23].

Summing up the results of this study, the authors came to the following conclusions:

- Azerbaijan's use of weapons prohibited by international declarations and conventions during the 44-day war is not only a war crime, but also a continuation of Azerbaijan's genocidal policy.
- The use of prohibited weapons has caused great damage to the ecosystem not only of the Republic of Artsakh, but also of the region.
- Cluster munitions and unexploded bombs remained in various settlements of the Republic of Artsakh until the day, which is a great threat to the civilian population.

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SUMMARY

The Use of Prohibited Weapons by the Azerbaijani Armed Forces During the 44-day War Hovik Avanesov, Yana Davtyan

In the given article, the authors referred to the use by the Azerbaijani armed forces of weapons prohibited by international conventions and declarations during the large-scale war unleashed in 2020 by the Turkish terrorist tandem against the Republic of Artsakh. In the study, a certain comparison was made with the first Azerbaijani-Artsakh war.

Summing up the results of the study, the authors came to the conclusion that as long as Azerbaijan is not held accountable for the use of prohibited weapons and committed war crimes, it means that such crimes will be repeated.

ԱՄՓՈՓԱԳԻՐ

Ադրբեջանի զինված ուժերի կողմից արգելված զինատեսակների կիրառումը 44-օրյա պատերազմի ընթացքում Հովիկ Ավանեսով, Յանա Դավթյան

Բանալի բառեր` ադրբեջանաարցախյան պատերազմ, ժնկյան կոնվենցիաներ, LAR-160, Ադրբեջանի ցեղասպանության քաղաքականություն, Կասետային զինամթերք, ֆոսֆորային զենք, արգելված զենք, ռազմական հանցագործություն:

Հոդվածում հեղինակներն անդրադարձել են 2020 թվականին թուրքաադրբեջանաահաբեկչական տանդեմի կողմից Արցախի Հանրապետության դեմ սանձազերծված լայնածավալ պատերազմի ընթացքում Ադրբեջանի զինված ուժերի կողմից միջազգային կոնվենցիաներով և հռչակագրերով արգելված զինատեսակների օգտագործմանը: Ոսումնասիրության մեջ որոշակի համեմատություն է անցկացվել ադրբեջանաարցախյան առաջին պատերազմի հետ:

Ամփոփելով սույն հետազոտությունը` հեղինակները եկել են այն եզրահանգման, որ քանի դեռ Ադրբեջանն արգելված զինատեսակների կիրառման և իրականացրած ռազմական հանցագործությունների համար չի ենթարկվել պատասխանատվության, նման հանցանքները կրկնվելու են:

РЕЗЮМЕ

Применение запрещенного оружия вооруженными силами Азербайджана в ходе 44-дневной войны

Овик Аванесов, Яна Давтян

Ключевые слова: Азербайджано-Арцахская война, Женевский протокол, LAR-160, политика геноцида Азербайджана, кассетные боеприпасы, фосфорное оружие, запрещенное оружие, военное преступление.

В статье авторы обратились к использованию вооруженными силами Азербайджана оружия, запрещенного международными конвенциями и декларациями в ходе широкомасштабной войны, развязанной в 2020 году турецким террористическим тандемом против Республики Арцах. В исследовании было проведено определенное сравнение с первой азербайджано-Арцахской войной.

Подводя итоги исследования, авторы пришли к выводу, что пока Азербайджан не привлечен к ответственности за применение запрещенных видов оружия и совершенные военные преступления, значит, подобные преступления будут повторяться.