



**European  
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**Section Human Rights and Justice in Exceptional Times**

**Panel 6 – The State of Emergency in the Context of Covid-19 and beyond (P450), Sept. 2, 2021, 14:30–16:15 CEST**

# **Nagorno-Karabakh and the Armenian Question: A Legal Conundrum**

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# Scope and purpose of the study

This study aims to investigate whether and how current international customary and treaty law applies to an unconventional conflict, such as the Nagorno-Karabakh (NK) conflict. The research scrutinizes:

- 1) the right to self-determination of the people of Nagorno-Karabakh;
- 2) the status of the Nagorno-Karabakh Republic (NKR or Artsakh), *de facto* sovereign country, *de jure* territory belonging to Azerbaijan;
- 3) the law of war (or the international humanitarian law – IHL) relevant during the hostilities;
- 4) the international law (IL) applicable before international courts and/or tribunals in the NK issue and in the broader Armenian question, including the so called ‘Armenian genocide’.

# Nagorno-Karabakh. A semi-frozen conflict



- In 1988 a conflict erupted in southwestern Azerbaijan, between the majority ethnic Armenians of Nagorno-Karabakh, backed by Armenia and Azerbaijan.
- In the eve of 1992 the authorities of Nagorno-Karabakh held a referendum and proclaimed the independence from Azerbaijan.
- No UN member or observer currently recognizes the sovereignty of Stepanakert, not even the government of Yerevan.
- In May, 1994 Azerbaijan, Nagorno-Karabakh and Armenia signed a ceasefire, which, despite violations, was effective until late September 2020, when it re-flamed.
- Turkey backed Azerbaijan in a proxy war that ended in November with a ceasefire mediated by Russian President Vladimir Putin.
- All the parties involved in the conflict have allegedly committed gross human rights violations during the 44-day conflict.
- The Nagorno-Karabakh conflict involves a set of questions and interests that make it hard to be solved within the framework of current international law. Reportedly, in this long-lasting conflict there were serious violations of international law and international humanitarian law, including war crimes.

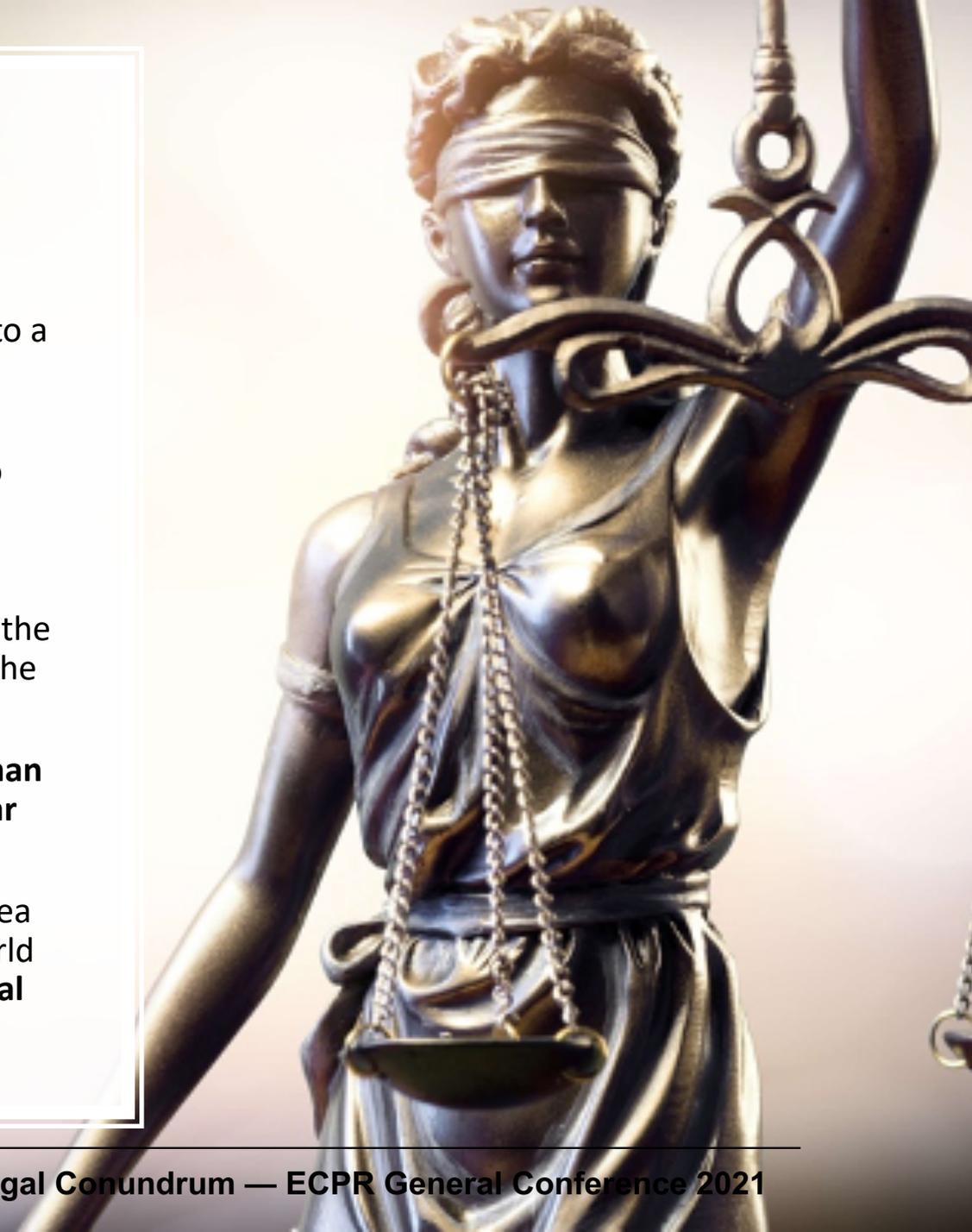
# Which law applies?

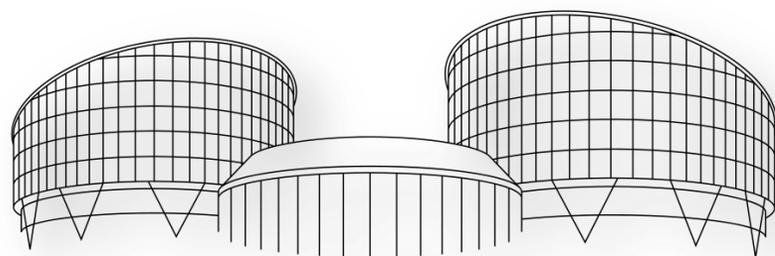
- Officially, **the conflict is non-international**, due to the **lack of recognition of Artsakh**. Yerevan has always referred to 'the Armenian side', avoiding to acknowledging a direct involvement in this (international) conflict. Nevertheless, **open support of Armenia**, on the NK side, and of **Turkey**, on the Azeri side, **may characterize the conflict as international**. Upon this characterization depends the law of war/IHL that applies to the conflict, namely which Geneva Convention and amendment Protocol is relevant.
- The Geneva Conventions apply to all cases of armed conflict between two or more signatory nations, even in the absence of a declaration of war.
- While Armenia has ratified/accessed all the Additional Protocols, Azerbaijan has ratified only the Geneva Conventions of 1949. Anyway, some norms set forth in the **Protocols are considered to be customary law** and therefore **apply regardless their ratification**. Additional Protocol I obtained customary status, particularly Art. 75 and Art. 51(8) which require states to comply with their obligation to respect civilians, even if these obligations are breached by the counterpart.
- **Common Art. 3** establishes fundamental rules from which **no derogation is permitted** (*ius cogens*) and **covers situations of non-international armed conflict**. Types vary greatly and **include traditional civil wars or internal armed conflicts that spill over into other States**, as well as **internal conflicts in which third-party States or multinational forces intervene alongside the government**. It applies also to **non-state actors or governing authorities like Artsakh**.



# Universal jurisdiction

- The Geneva Conventions provide for universal jurisdiction, as opposed to a more traditional (and limited) territorial jurisdiction that was designed to respect the sovereignty of states over their citizens
- Universal jurisdiction, is ‘a legal principle allowing or requiring a state to bring criminal proceedings in respect of certain crimes irrespective of the location of the crime and the nationality of the perpetrator or the victim’ (Randall, 1988), based on the notion that ‘certain crimes are so harmful to international interests that states are obliged to bring proceedings against the perpetrator, regardless of the location of the crime and the nationality of the perpetrator or the victim’ (Robinson, 2001).
- **Universal jurisdiction allows for the trial of international crimes – human rights violations and crimes against humanity, including genocide and war crimes – committed by anybody, anywhere in the world.**
- The concept of universal jurisdiction is therefore closely linked to the idea that **some international norms are *erga omnes***, or owed to the entire world community, as well as the concept of *jus cogens* – that **certain international law obligations are binding on all states.**





EUROPEAN COURT OF HUMAN RIGHTS

## Which jurisdiction?

The international tribunals/courts that may be applied in a case like this are:

- **International Criminal Court (ICC)**, that works independently from the United Nations (UN);
- **International Court of Justice (ICJ)**, the main judicial organ of the UN established in 1945 by UN Charter;
- **European Court of Human Rights (ECHR)**.

**States only are parties to the ICC and to the ICJ** and therefore individuals, groups of people, companies or NGOs cannot have their cases taken to these courts, with the exception of the ECHR, thus excluding victims of crimes against humanity not backed by a member state. This is the only international court Artsakh may apply.

Artsakh is excluded to lodge a declaration to the ICC and the ICJ to open an investigation over Azeri's possible war crimes during the conflict.

# Legal pitfalls

- Armenia and Azerbaijan are not states parties to the Rome treaty of 1998 that establishes the ICC.
- The ICJ has compulsory jurisdiction limited to cases where both parties have agreed to submit to the Court's decision.
- Armenia and Azerbaijan have signed and ratified the European Convention on Human Rights (ECHR). Under Art. 33 of the Convention contracting states may lodge applications against each other in what are called '**inter-State applications**', although in practice this is **very rare**. ECtHR rulings have *erga omnes* effects, i.e. they are legally binding, although the court **lacks enforcement powers**.

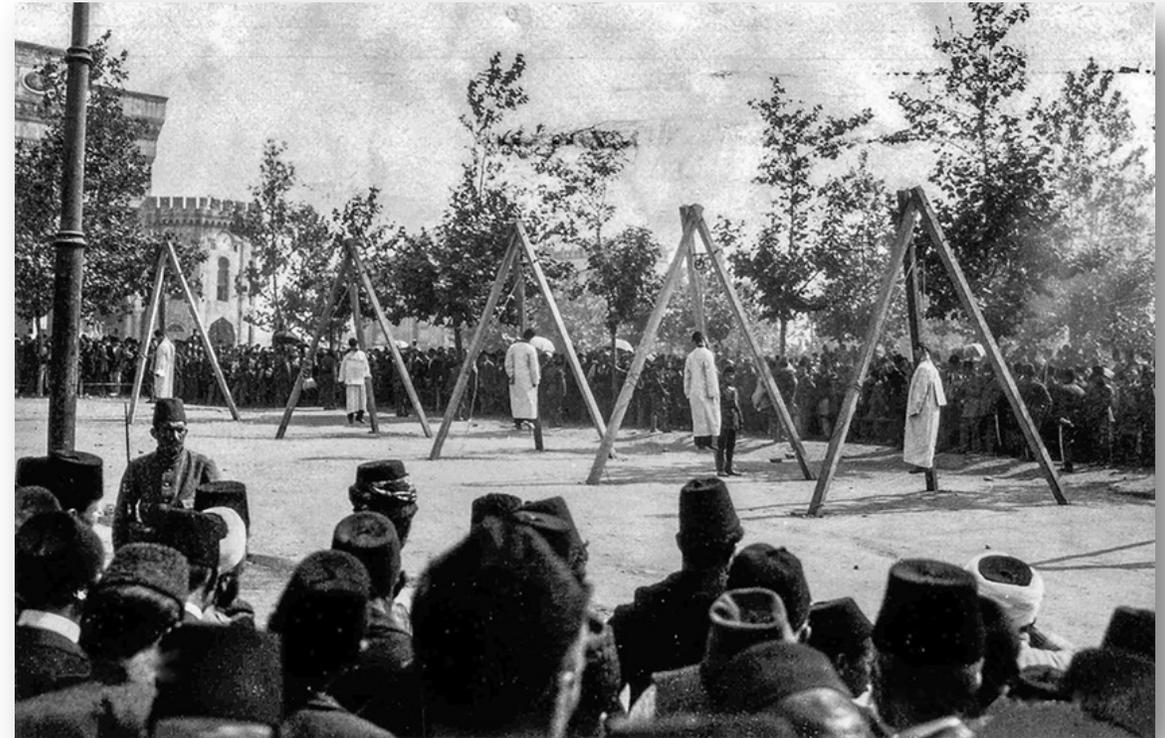


# Mercenaries

- Another legal issue regards the **Turkish support to Azeri** armed forces through the alleged **recruitment of Syrian and Lebanese fighters**.
- Reportedly the employment of mercenaries by Azerbaijan dates to the first stage of the NK conflict in 1992–1994.
- It is very likely that this practise constitutes a **violation of the *International Convention against the Recruitment, Use, Financing and Training of Mercenaries* of 1989** which Azerbaijan has accessed in 1997.

# The Armenian genocide: a disputed question

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# About genocide

Genocide is the deliberate and systematic destruction, in whole or in part, of an ethnic, racial, religious or national group. So far, widely recognized genocides are:

- **Holocaust (*Shoah*), 1933–1945**, whose unprecedented scale led to the adoption of an *ad hoc* convention;
- **Cambodian genocide (1975–1979)**;
- **Rwandan Genocide (1994)**;
- **Bosnian Genocide (1995)**.

The **Armenian genocide** perpetrated by the Ottoman Empire (1915–1916) and any other ‘genocides’ like the **Darfur genocide**, the **Rohingya genocide** or the **Yazidis genocide**, just to name a few, despite having obtained **some kind of political recognition**, **lack of a broad consensus** or of an international court ruling – however, international tribunals face limits on their recognition, effective jurisdiction or applicability of their rulings.



# Recognition of the Armenian genocide

- The massacre of Armenians under the Ottoman government was reported as **'crime against humanity'** by a joint declaration of France, Great Britain, and Russia of May 24, 1915. Nevertheless, the UK refuses to recognize the massacre as genocide because of **'lack of sufficient evidence that the events constituted genocide'**.
- So far, **32 UN Member States, out of 193, acknowledge in some way the Armenian genocide through a wide range of binding and not-binding legislative means.**
- On April 20, 2021, on the 160th anniversary of the beginning of the Armenian genocide by the Ottoman Empire, U.S. President Joe Biden spoke openly of 'genocide': a heavy stance.
- Some regional political organizations recognized the Armenian genocide by adopting resolutions or through statements: the European Parliament; the Parliamentary Assembly of the Council of Europe (PACE); The Latin American Parliament (Parlatino); the Andean Parliament; the Central American Parliament (PARLACEN).





# Crime? What crime?

- In the ECtHR case-law 189 (*Perinçek v. Switzerland*) the Grand Chamber ruled that the **denial of the Armenian genocide does not amount to crime, but in contrast it constitutes the exercise of the right to freedom of expression** guaranteed by Art. 10(1) of the ECHR.
- Relying on the ECtHR judgment, in January 2017 the **French Constitutional Council ruled that the law on the denial of genocide is an unnecessary and disproportionate attack against freedom of speech and expression on historical matters.**

# Findings and conclusions



- Nationalism plays a key role in the Armenian question; it fuels the conflict with Azerbaijan and Turkey and makes a political settlement hard, while a legal solution seems impossible.
- In the background, historical claims and never healed wounds that keep the Armenian question and the conflict with neighbors open.
- The international community, divided on national and geopolitical interests, is not able to achieve a solution for the Armenian question.
- Lacking a defined international legal framework, the the Armenian question is hard to be fixed.

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**YOUR  
QUESTION  
TIME**

*“That’s all Folks!”*

**Thanks for your attention**

**La commedia è finita!**

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