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Submission by

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State examined: **Azerbaijan**

## **Accountability for Destruction of Cultural Heritage: The case of Jugha**

Violation of Articles 13 and 15 of the International Covenant on Economic, Social and Cultural Rights

### **Foreword**

We call your attention to the state of Azerbaijan, a nation remarkable in its status as both a fully accepted member of the international community and the United Nations, as well as a country unique for its blatant sanction of race-motivated violence and an underlying culture of impunity and irresponsibility. Recent events that have transpired reflect but another confirmation of already well-entrenched patterns of questionable behavior that one cannot excuse by merely pointing to individuals; what is in evidence today is clear state-sanctioned racist impunity.

The extradition of Azeri Mr. Ramil Safarov from Hungary back to his motherland resulted in our witnessing a hero's public welcome for a remorseless convicted criminal, and it seems now that a hapless and ill-construed decision by the Ministry of Public Administration and Justice of the Republic of Hungary has made of a European nation an unwitting conspirator to the base realpolitick of Baku. Safarov, for the record, committed the pre-meditated and brutal murder of Armenian Army Lieutenant Gurgun Margaryan in February 2004, during an English language training course held in Budapest, Hungary. Margaryan was hacked to death in his sleep with an axe. After being sentenced to life imprisonment without the right of appeal until 2036 by a national court of First Instance, in August 2012 Hungary announced its authorisation to transfer Safarov back to Azerbaijan. This was despite an obvious absence of supporting bilateral convention that would have, on a minimum level, ensured that the murderous lunatic in

question may have been transferred into a normal judiciary system capable of respecting basic principles of governing law.

What is perhaps most ironic is that this occurred in a well-understood and clearly documented political context wherein racial vitriol has been/is being injected into a highly receptive population by a head of state himself, President Ilham Alyiev. There is little that could have served as a clearer portent of the 'surprising' amnesty granted to Safarov upon his arrival, save perhaps of course the crimes of the destruction of the necropolis of Jougha in 2005. It seems Azerbaijan has not only a deep racist hatred for those Armenians who are living, but even also for those who are already dead.

## **Introduction**

Overwhelming evidence indicates that the Azerbaijani armed forces are responsible for the destruction of the Armenian medieval Necropolis in Jugha (Julfa) in the Autonomous Republic of Nakhijevan (Azerbaijan) in December 2005. Despite this, the international community, including UNESCO, has neither assessed this destruction nor condemned or sanctioned it.

The Switzerland-Armenia Association (SAA) underlines that these acts of hatred are in violation of the principles of the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as the «Covenant»), mainly expressed in the preamble as well as in the Articles 13 and 15 of the Covenant. International organizations are committed to the protection of universal values concerning cultural heritage.

OSCE Member States have, for instance, adopted a wide range of commitments to combating such crimes, including the condemnation of violent acts motivated by discrimination and intolerance. In addition, these States have also conducted response training of security-relevant officials and other public civil servants, reviewed legislation, facilitated the capacity of civil society to monitor hate-motivated incidents and assisted victims. These tangible commitments have been taken in recognition of the fact that hate crimes pose a potential threat to domestic and international security, as they undermine social cohesion and plant the seeds of violence. Yet, our Organization cannot but notice that the destruction of the Jugha Necropolis has remained a matter of indifference for the civil society in Azerbaijan at large and for international organizations.

Research has proven that an effective prevention of such acts is dependent on a consequential identification, legal prosecution and punishment supported by the development of a range of information and educational skills. This approach is applicable in cases where infringements involve individuals or groups, but not in cases where there is a direct or indirect institutional involvement. By not recognizing and, consequently, not taking responsibility for such acts, the international community runs the risk of siding unintentionally with hate-motivated perpetrators.

## **Situation Report**

Before its destruction, the Jugha Necropolis was the largest known Armenian cemetery anywhere in the world. In 1990 the town's cemetery, old Jugha's most important and valuable monument, was described by researcher Argam Aivazyán as a partially de-

stroyed forest of Khatchkars – which translate in their literal meaning to «cross-stones».

The site of the main Jugha cemetery was located on the western side of the settlement site of Old Jugha, and was spread out over three hills separated by small ravines; it occupied an area of about 1600 square meters, and once extended all the way to the Araxes River.

Since 1998, the Jugha Necropolis has been systematically submitted to destruction by the armed forces of the Republic of Azerbaijan. Between December 2005 and March 2006, these forces destroyed the Jugha complex permanently. This cemetery was since ancient times culturally and historically a continuous unique testimony of the Armenian legacy and presence in the region. With originally more than 10,000 memorial stelae, it constituted the largest collection of Armenian tombstones and cross-stones - finely carved artifacts, characterized by stylized geometrical patterns, many of them bearing philologically relevant inscriptions. They covered a period from the Middle Ages (5<sup>th</sup> century) until the early 17<sup>th</sup> century. In early March 2006, the cemetery had been completely leveled. The Azerbaijani authorities established a military training camp and a firing range on the site.

## **Violation of national and international law**

Azerbaijan's policy of destruction of the Armenian cultural heritage of Nakhijevan contradicts with the basic principles of various international instruments, subscribed to by the State of Azerbaijan, for the protection of cultural heritage. In particular, it violates the instruments defining the duty of a State to ensure the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage situated on its territory, both in times of peace and war.

The protection, safeguarding and respect of cultural heritage is provided in the following international documents adopted within UNESCO:

- The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (14 May 1954);
- The World Heritage Convention for the Protection of Global Cultural and Natural Heritage (16 November 1972);
- The Convention on the Protection and Promotion of the Diversity of Cultural Expressions (20 October 2005).

Additionally, it is worth remembering that other international instruments aiming at the protection of historical monuments have been violated by this ethnocide<sup>1</sup>, including:

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<sup>1</sup> The definition of *ethnocide*, or *cultural genocide*, first occurred in the original draft of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, prepared by the United Nations (UN) Secretariat, based upon Raphael Lemkin studies. The draft included definitions of physical genocide, biological genocide, and cultural genocide. The latter was defined as follows: *Destroying the specific characteristics of the group by: (a) forcible transfer of children to another human group; or (b) forced and systematic exile of individuals representing the culture of a group; or (c) prohibition of the use of the national language even in private intercourse; or (d) systematic destruction of books printed in the national language or of religious works or prohibition of new publications; or (e) systematic destruction of historical or religious monuments or their diversion to alien uses, destruction or dispersion of documents and objects of historical, artistic, or religious value and of objects used in religious worship.* Albeit the inclusion of cultural genocide in the Convention proved controversial and was finally rejected, some have taken the

- Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments (15 April 1935);
- The European Cultural Convention (19 December 1954);
- The European Convention on the Protection of the Archaeological Heritage (6 May 1969);
- The European Convention on Offences relating to Cultural Property (23 June 1985);
- The Convention for the Protection of the Architectural Heritage of Europe (3 October 1985). As a reminder, the Preamble of the Reviewed European Convention on the Protection of the Archaeological Heritage, also subscribed to by the Republic of Azerbaijan in 2000, stresses that «[...] *responsibility for the protection of the archaeological heritage should rest not only with the State directly concerned but with all European countries, the aim being to reduce the risk of deterioration and promote conservation by encouraging exchanges of experts and the comparison of experiences*».

Furthermore, Azerbaijan violated its own Constitution of 1995. In particular, the provisions of Article 77 hold responsible every citizen of the Republic of Azerbaijan for the protection of historical and cultural memorials.

### **Diplomatic initiatives, investigations and political steps undertaken within the UNESCO, the European Parliament and the Council of Europe**

Hoping to save what was still left, the Government of the Republic of Armenia at numerous occasions alerted the international community about the ongoing destruction of Armenian cultural heritage in Nakhijevan, in particular the destruction of monuments in Jugha. On 14 December 1998, the Armenian Minister for Foreign Affairs sent an official letter to the Director-General of UNESCO concerning the destruction of the medieval cemetery in Jugha and requested UNESCO's assistance in persuading the authorities of the Republic of Azerbaijan to stop the cultural genocide against Armenian cultural heritage and to organize a fact-finding mission of experts to Nakhijevan. On 20 November 2002, the destruction of tombs and the remaining (although already reduced

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view that the present text of the Genocide Convention excludes the concept of cultural genocide. However, there is now much more awareness of both the frequent interpenetration of physical and cultural genocide, as well as the need to preserve threatened cultures. Although courts will, in criminal prosecutions, apply the legal definition of genocide included in the Convention or in one of the other international instruments granting them such jurisdiction, as the undisputed minimum content of that crime, this does not exclude the use of Lemkin's explicit definition of cultural genocide in other contexts. (Excerpts from: Dinah L. Shelton, Encyclopedia of Genocide and Crimes Against Humanity). Also, it is referred to the concept of ethnocide, although not expressively, in the Article 8 of the United Nations Declaration on the Rights of Indigenous Peoples, also subscribed by the Azerbaijani State, where it is expressively quoted: *1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture. 2. States shall provide effective mechanisms for prevention of, and redress for: (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities; [...]*. It is nonetheless helpful to have a separate term for this crime, since popular usage has followed the limited definition in the Genocide Convention as referring only to the physical destruction of persons. This is why we decided to define the crime committed in Jugha as ethnocide.

in number) churches and monastic sites in Jugha was accomplished. Since then, numerous workers have again been engaged in dismantling valuable relics of medieval culture. On 16 December 2002, in an official letter addressed to the Director-General of UNESCO, the Minister for Foreign Affairs again expressed concerns about the renewed attempts of the Azerbaijani authorities to carry out the destruction of the Armenian cemetery and church in Jugha. He suggested that an inspection mission to Nakhijevan should determine the extent of the systematic destruction. Answering this letter, UNESCO representatives promised to contact relevant authorities in Azerbaijan to obtain the necessary prior authorization for such a mission. UNESCO's intention to send an expert commission to Nakhijevan to research the destruction first-hand did have the effect of slowing down the destructive activities of the Azerbaijani authorities; however, the destruction did not stop entirely. The National Council of Armenians of Nakhijevan submitted several alert notes to various international organizations, such as the European Parliament, the Council of Europe, the International Council on Monuments and Sites (ICOMOS) and UNESCO, requesting them to put under international protection the ancient Armenian monuments that had been destroyed in Nakhijevan from 1999 to 2003.

On 10 February 2003, the Armenian National Committee ICOMOS appealed to the presidents of the National Committees of ICOMOS for their assistance in protecting Armenian historic and cultural heritage in Nakhijevan. Attached to the appeal were photographs, taken by eye-witnesses, of several destroyed monuments.

On 7 October 2005, in Paris, at the 33<sup>rd</sup> General Conference of UNESCO, the Armenian Minister for Foreign Affairs once again addressed the international community in an official Statement regarding the destruction of the Armenian cultural heritage in Nakhijevan.

On 16 December 2005, the Armenian Minister informed the Director-General of UNESCO in an official letter that Azerbaijani soldiers were destroying the remnants of historically and religiously significant Khatchkars in the medieval Armenian cemetery in Nakhijevan. The Minister urged UNESCO officials to put an end to these acts of vandalism and violence.

In a 16 February 2006 Resolution P6\_TA (2006) 0069 on «Cultural Heritage in Azerbaijan», the European Parliament, underlining the exceptional nature of the Djulfa (Jugha) cemetery, with still 6000 Khatchkars remaining at that time testifying to the ethnic and cultural diversity of the region, strongly condemned the destruction of the Jugha cemetery. Also condemned was the destruction of all sites of historical importance that has taken place on Armenian or Azerbaijani territory, as well as any similar action that seeks to destroy cultural heritage. Recalling that there were numerous reactions by the international community to the first wave of destruction of the cemetery and that Azerbaijan did not provide answers to inquiries by Mr Abdelfattah Amor, the former special rapporteur of the United Nations concerning the events of November 1998 and December 2002, the above resolution demanded that the Republic of Azerbaijan allow the visit of a delegation comprised of experts such as those working with ICOMOS. These were individuals who are specialized in surveying and protecting archaeological heritage (particularly of Armenian origin), and who were meant to access its territory, followed furthermore by a European Parliament delegation with intentions to visit the archaeological site at Jugha. Further, the European Parliament instructed its President to forward the resolution to the Council, the Commission, the Parliaments and Governments of the Member States, the Government and the President of Armenia, the

Government and the President of Azerbaijan, as well as the Parliamentary Assembly of the OSCE, the Parliamentary Assembly of the Council of Europe, the Director-General of UNESCO, and the Secretary-General of the United Nations.

By March 2006, photographs of the cemetery site showed that it had been turned into an army shooting range. An Azerbaijani journalist who visited the area on behalf of the London-based Institute for War and Peace reported in April 2006 similarly that no traces of the cemetery remained.

On 16 March 2006, the Armenian Minister for Foreign Affairs sent an official complaint to the UNESCO Director-General explaining the definitive destruction of the Jugha cemetery and the construction of a military shooting-area on the site.

On 28 May 2006, Edward O'Hara, reporter of the PACE's sub-committee on cultural heritage, made clear his intention to visit Baku. According to the Azerbaijani office of the Council of Europe, the British Parliamentarian aimed to examine the state of monuments in Azerbaijan and would have departed for Yerevan on 31 May. The initiative of sending PACE representatives to Armenia and Azerbaijan came from CoE Secretary General Terry Davis after the destruction of Armenian monuments in Nakhijevan early 2006. The aim of the delegation was to examine historic and cultural monuments in Azerbaijan, Armenia and Nagorno Karabakh. At the last moment, MP O'Hara was refused the right to visit Nakhijevan.

On 17 October 2006, an international Parliamentary Delegation headed by two Swiss National Councilors, Ueli Leuenberger and Dominique de Buman met with UNESCO Director General Koïchiro Maatsura in the Organisation Headquarters in Paris in order to hand out a Memorandum, where the destruction of the Jugha Necropolis was described in details. The delegation, which included Members of the National Parliaments of Switzerland, France, Canada, United Kingdom, Greece and Belgium, urged UNESCO to undertake, among others, the following steps:

- To condemn in no uncertain terms the willful destruction of the cultural sites of Jugha, irreversibly annihilated during the last destruction phase begun by Azeri military forces on 10 December 2005 and completed in mid-March 2006;
- To denounce the ethnocidal nature and context of the destruction of the site within a systematic demolition operation, to which all Armenian architectural monuments from the Middle Ages have been subjected in Nakhijevan;
- To demand a formal international investigation in this area, coordinated by UNESCO, aimed at preparing an accurate report about the destruction;
- To publish a multi-disciplinary study (archaeological, architectural, ethnographic, etc.) of the Jugha area, to be undertaken by international experts and overseen by UNESCO;

In 2007, according to a UNESCO spokesperson, there were serious talks underway and that the organization was working out the details of a visit both to Nakhijevan – where Jugha is located – and Karabakh, where Azerbaijan alleges Armenians have destroyed Azeri monuments. Late in June 2007, the Armenian Foreign Ministry spokesman said that UNESCO had already determined the composition of its monitoring group and that currently the issue remained with the visits' timing. But as well in this case, the visit was cancelled because of a last minute opposition emanating from authorities in Baku.

The Science and Human Rights Program of the American Association for the

Advancement of Science (AAAS) investigated reports of the destruction of Armenian cultural artifacts by Azerbaijan that occurred between 1998 and 2005. Given that Azerbaijan has consistently barred on-site investigation by outside groups, AAAS acquired and analyzed high-resolution satellite imagery to assess whether damage to the artifacts in fact occurred. Using high-resolution satellite imagery, AAAS was able to document the phased destruction of the cemetery in Jugha. Based on the assessment of satellite images from 2003 and 2009, AAAS found evidence that the cemetery area was in fact likely destroyed and later leveled by earth-moving equipment.

## Conclusion and Recommendations

Retrospectively, we would like to question, why did the Azerbaijani State decided to destroy this necropolis, which could have been a serious contender for the World Heritage List and which represented a high value site on a number of levels including the artistic, archaeological, memorial and, not least, the religious.

Given the unequivocally intention of the European Parliament as well as of the Council of Europe to assess the extent of the Jugha destruction, and given the CoE membership of Azerbaijan, we would like to understand why Baku authorities refused entry of the above fact finding missions to Nakhijevan.

Furthermore, we would like to ask if Azerbaijan would be in favour of a selected representation of the Committee on Economic, Social and Cultural Rights (should the latter agree) in joining an experts mission in visiting, as was provided for in the Resolution P6\_TA (2006) 0069 of the European Parliament and as requested in the Memorandum of the International Parliamentary Delegation to UNESCO, both in 2006.

In light of Article 13 of the Covenant providing that *States Parties [...] agree that education shall enable all persons to participate effectively in a free society, **promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace***, the destruction of the Jugha Necropolis cannot but be seen as a major example of violation of this Article, committed by a State. In contrast to individuals, a State perpetrating hate crimes amounting to effective cultural genocide should and must be expected to assume higher levels of responsibility and accountability.

The Switzerland-Armenia Association (SAA) therefore recommends to the Committee that they consider a fully qualified recognition and condemnation of the hate-motivated crimes perpetrated by the Azerbaijani State against the Armenian cultural heritage in Jugha, as provided for in such cases by public international law.

Bern, 8 October 2012

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