

# Armenia's Obligations under International Law in the Area of Mine Action

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Azerbaijan's conflict-affected territories that were previously under the occupation of Armenia are severely contaminated by landmines and the explosive remnants of war. This poses a serious threat to human life as well as creating a significant impediment to the implementation of rehabilitation and reconstruction efforts by the government of Azerbaijan. This commentary argues that Armenia's constant refusal to submit the remaining maps of mined areas located within Azerbaijan's liberated territories, as well as the deliberate planting of landmines in these territories even after the end of the war, is in violation of its international anti-mine obligations. This has resulted ipso facto (by the fact itself) in war crimes and crimes against humanity that raise the issue of Armenia's responsibility under international law for their perpetration. This author finds that, despite the fact that Armenia is not a state party to the international conventions on mine action, it should uphold their provisions because those conventions were created based on long-standing international customary rules regarding the conduct of warfare and address the humanitarian aspects of attacks on civilians and the violation of the jus cogens (peremptory norms) of international law.

**Keywords:** Azerbaijan, Armenia, landmines, explosive remnants of war, international humanitarian law, war crimes, crimes against humanity



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### *Introduction*

As a result of the Second Karabakh War in 2020, Azerbaijan restored its jurisdiction over its internationally recognized territories that had been under Armenian military occupation for almost three decades. After the signing of the Trilateral Statement by Armenia, Azerbaijan, and Russia that put an end to the Armenia–Azerbaijan conflict, Azerbaijan has launched a comprehensive policy of reconstruction of its liberated territories to establish decent conditions for the return of internally displaced people (IDP) to their homes.

However, today, when Azerbaijan is starting its post-conflict development policy, it faces another obstacle created by Armenia: that is, large-scale contamination of the liberated territories with landmines and unexploded ordnance. Such remnants of the war were deliberately planted during the period of occupation in blatant violation of international humanitarian law (IHL) and international human rights law. These international crimes of Armenia have caused the deaths of, or injuries to, far more than 200 people following the liberation of the occupied territories.<sup>1</sup>

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Although, last year, Armenia submitted to Azerbaijan the maps of anti-tank and anti-personnel mines planted in the Aghdam, Fuzuli, and Zangilan districts of Azerbaijan during the occupation,<sup>2</sup> Yerevan still has not released the remaining maps of mined areas located within Azerbaijan’s liberated territories. Moreover, the submitted maps were only 25% accurate.<sup>3</sup>

Furthermore, even after the end of the war, Armenia’s armed forces,

1 President.az, *Ilham Aliyev attended “New vision for South Caucasus: Post-conflict development and cooperation” international conference held at ADA University*, April 13, 2021, available at: <https://president.az/en/articles/view/51088> (accessed: May 2, 2022).

2 Permanent Representation of the Republic of Azerbaijan to the Council of Europe, “Armenia submits to Azerbaijani side maps of mines planted in Fuzuli and Zangilan districts”, available at: <https://coe.mfa.gov.az/en/news/3518/armenia-submits-to-azerbaijani-side-maps-of-mines-planted-in-fuzuli-and-zangilan-districts> (accessed: April 10, 2022).

3 Azertag.az, *Leyla Abdullayeva: Pashinyan’s baseless allegations seriously question Armenia’s desire for peace*, May 12, 2022, Available at: [https://azertag.az/en/xeber/Leyla\\_Abdullayeva\\_Pashinyan\\_039s\\_baseless\\_allegations\\_seriously\\_question\\_Armenia\\_039s\\_desire\\_for\\_peace-2131412](https://azertag.az/en/xeber/Leyla_Abdullayeva_Pashinyan_039s_baseless_allegations_seriously_question_Armenia_039s_desire_for_peace-2131412) (accessed: June 2, 2022).

while withdrawing from the then-occupied territories of Azerbaijan, deliberately planted landmines therein. As a result, two Azerbaijani journalists lost their lives in an anti-tank mine explosion in Kalbajar district in 2021. The aim of this incident was to inflict as much damage as possible on Azerbaijan and create additional obstacles for the safe return of the civilian population to their homes.<sup>4</sup>

The goal of this commentary is to provide an overview of the anti-mine obligations of Armenia under international law, including its responsibility for the neutralization of the explosive remnants of the war and for releasing all maps of mined areas. Hence, this commentary analyses the issue of the legal accountability of Armenia under international law for casualties among the civilian population as a result of mine explosions, as well as the legal instruments for enforcing mine action under the IHL and international human rights law.

This overall stance that claims there has been a breach of international law is also linked with “the importance of pursuing every effort which may contribute to the progress towards general and complete disarmament under strict and effective international control”<sup>5</sup> created under the international conventions on mine action and labelled as “humanitarian disarmament”.<sup>6</sup>

### ***The legal framework for mine action: Humanitarian disarmament***

The legal framework for the humanitarian control of weapons has significantly changed in the last several decades, as marked by the dramatic shift from mere disarmament to “humanitarian disarmament” that implies the outlawing of certain weapons and providing remedial mechanisms for affected civilians. Today, the concept of human

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4 Ministry of Foreign Affairs of Azerbaijan, “No:202/21, Information of the Press Service Department of the Ministry of Foreign Affairs of the Republic of Azerbaijan on the death of civilians as a result of a mine explosion in Kalbajar”, June 4, 2021, available at: <https://mfa.gov.az/en/news/no20221-information-of-the-press-service-department-of-the-ministry-of-foreign-affairs-of-the-republic-of-azerbaijan-on-the-death-of-civilians-as-a-result-of-a-mine-explosion-in-kalbajar> (accessed: March 12, 2022).

5 ICRC, Advisory Service on International Humanitarian Law, “1980 Convention on Certain Conventional Weapons”, May 21, 2021, available at: <https://www.icrc.org/en/document/1980-convention-certain-conventional-weapons> (accessed: March 6, 2022).

6 The Geneva International Centre for Humanitarian Demining (GICHD), “Laws and Standards in Mine Actions”, 2014, available at: (accessed: March 6, 2022).

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security is a core dimension in this field, in which comprehensive international legal instruments have been established. Thus, mine action is realized within a context of special international treaties that regulate issues such as a total prohibition of certain types of weapons, including their production, transfer, and stockpiling, as well as requiring remedial measures such as the clearance of the explosive remnants of war, including landmines and unexploded ordnance.<sup>7</sup>

Among these international treaties are the 1980 “Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects” (Convention on Certain Conventional Weapons, CCCW) and its protocols; the 1997 “Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction” (Ottawa Convention), as well as the 2008 “Convention on Cluster Munitions” (CCM) that sets obligatory rules regulating particular methods of warfare through the prohibition of inhumane weapons that cause superfluous injury or unnecessary suffering.

These international treaties on mine action have been built on customary international rules codified in the 1949 Geneva Conventions (and their Additional Protocols) that aim to protect people not taking part in war<sup>8</sup> and minimize their suffering during armed conflict.

The 1980 CCCW adumbrated the beginning of the transition from “traditional” to “humanitarian” disarmament. This international treaty sought “to protect civilians from the effects of weapons used in an armed conflict and to protect combatants from suffering in excess of that necessary to achieve a legitimate military objective”,<sup>9</sup> and hence

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7 Ibid.

8 The First Geneva Convention protects wounded and sick soldiers on land during war; the Second Geneva Convention protects wounded, sick and shipwrecked military personnel at sea during war; the Third Geneva Convention applies to prisoners of war; The Fourth Geneva Convention protects civilians, including those in occupied territory, see: ICRC, The Geneva Conventions of 1949 and their Additional Protocols, Available at: <https://www.icrc.org/en/document/geneva-conventions-1949-additional-protocols> (Accessed: April 30, 2022).

9 ICRC, Advisory Service on International Humanitarian Law, “1980 Convention on

reflects the principles of IHL that provide for a similar regulation of conduct during armed conflicts. Notably, this Convention is a dynamic treaty that has been modified several times by additional protocols in response to the emergence of new weapons or their variations in the conduct of warfare.

Protocol II (on Landmines, Booby Traps, and other Devices)<sup>10</sup> and Protocol V (On Explosive Remnants of War, ERW) to the CCCW are of particular significance in this context. In accordance with Protocol II to this Convention, landmines, booby-traps, or other devices should not target the civil population, civilian objects or be used indiscriminately. The document also outlaws the use of anti-personal and anti-vehicle mines. Among the obligations of states under Protocol II are the removal of such weapons following the end of the active part of armed conflict, taking all feasible precautions to provide protection for the civilian population, guaranteeing advanced warning of the placement of these weapons, and maintaining records of their locations, as well as implementing measures for peacekeeping and the protection of humanitarian missions.<sup>11</sup>

Considering the severe post-conflict humanitarian problems produced by ERW, Protocol V (on Explosive Remnants of War) to the CCCW was adopted with the aim of providing remedial measures of a generic nature in order to minimize the negative effects of ERW.<sup>12</sup> This Protocol determines unexploded ordnance (UXO) and abandoned explosive ordnance (AXO) as being ERW. In accordance with Article 2(2) of the Protocol V, UXO “means explosive ordnance that has been primed, fused, armed, or otherwise prepared for use and used in an armed conflict. It may have been fired, dropped, launched or projected and

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Certain Conventional Weapons”, May 21, 2021, available at: <https://www.icrc.org/en/document/1980-convention-certain-conventional-weapons> (accessed: March 6, 2022).

10 In order to strengthen the provisions of Protocol II to the CCW, Amended Protocol II was adopted in 1996.

11 ICRC, International Review, Amended CCW Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and other Devices (Amended Protocol II), adopted 3 May 1996, available at: <http://www.icrc.org/Web/eng/siteengo.nsf/html/57JRLI> (accessed: March 8, 2022); United Nations Office for Disarmament Affairs “CCW Amended Protocol II”, available at: <https://www.un.org/disarmament/ccw-amended-protocol-ii/> (accessed: March 8, 2022).

12 United Nations Office for Disarmament Affairs, “CCW Protocol V on Explosive Remnants of War”, 2003, available at: <https://www.un.org/disarmament/ccw-protocol-v-on-explosive-remnants-of-war/> (accessed: March 10, 2022).

should have exploded but failed to do so”. Hand grenades, mine-thrower shells, explosive submunitions or bombs that have been utilized but which have not detonated as planned relate to the UXO group of ERW.<sup>13</sup> Pursuant to Article 2(3) of Protocol V, AXO is “explosive ordnance that has not been used during an armed conflict, that has been left behind or dumped by a party to an armed conflict, and which is no longer under control of the party that left it behind or dumped it”.<sup>14</sup>

Protocol V, which was defined by Human Rights Watch as a “new international law on ERW”,<sup>15</sup> assigns responsibility to state participants in an armed conflict with respect to all ERW in the territory under their control. Thus, after the end of an active phase of hostilities, such a state party to an armed conflict “shall mark and clear, remove or destroy ERW in affected territories under its control”.<sup>16</sup> It could be suggested that this provision also implies the responsibility of states with respect to ERW in territories occupied by them and where that occupying state realized effective control.

Protocol V also includes obligations for the state which no longer exercises control over the territory, demanding the provision of, *inter alia*, technical, financial, material, or human resource assistance, bilaterally or through a third party, to facilitate the marking and clearance, removal, or destruction of such ERWs.<sup>17</sup> This obligation also includes recording and retaining information on the use of ERW, and dissemination of such information to the party in control of the affected territories.<sup>18</sup> Reaffirming the “humanitarian” approach, Protocol V specifically addresses the responsibility of states to “take all feasible precautions” to protect civilians from the potential tragic consequences of ERW.<sup>19</sup>

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13 The Geneva International Centre for Humanitarian Demining (GICHD), “Laws and Standards in Mine Actions”, 2014, available at: <https://www.gichd.org/fileadmin/GICHD-resources/info-documents/guide-to-mine-action-2014/GICHD-guide-to-mine-action-2014-chapter-3-Laws-and-standards-in-mine-action.pdf> (accessed: March 6, 2022).

14 United Nations, Official Document System, Protocol on Explosive Remnants of War, November 23, 2003, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G03/653/61/PDF/G0365361.pdf?OpenElement> (accessed: March 10, 2022).

15 Human Rights Watch, “New International Law on Explosive Remnants of War”, November 28, 2003, available at: <https://www.hrw.org/news/2003/11/28/new-international-law-explosive-remnants-war> (accessed: March 10, 2022).

16 See: Article 3(2) of the Protocol V.

17 See: Article 3(1) of the Protocol V.

18 See: Article 4 of the Protocol V.

19 See: Article 5 of the Protocol V.

This “humanitarian” dimension also constitutes the very essence of the 1997 Ottawa Convention. The dramatic shift from “traditional” to “humanitarian” disarmament is tracked directly in the preamble to this treaty, which emphasizes the extent of human suffering from landmines and obliges states parties to put an end to human suffering caused by anti-personnel mines that kill or maim hundreds of innocent and defenceless civilians.<sup>20</sup> It is noteworthy that the preamble of the Convention makes explicit reference to IHL while proclaiming “the necessity to implement the principle of distinction that should be made between civilians and combatants”.<sup>21</sup>

The 2008 CCM, from the very first word, addresses the anxiety that “civilian populations and individual civilians continue to bear the brunt of armed conflict”.<sup>22</sup> The preamble of the treaty specifically addresses the humanitarian concern that “cluster munitions remnants kill or wound civilians, and delay or prevent the return of IDPs. Furthermore, the remnants of war hinder post conflict rehabilitation and reconstruction efforts, as well as have a potential to negatively impact the peacebuilding and humanitarian assistance actions.”<sup>23</sup> The CCM also imposes on states an obligation to clear mine-affected areas.<sup>24</sup>

All of these international treaties, built upon applicable IHL and international human rights law, constitute the comprehensive legal framework for mine action. Thus, it could be argued that their provisions should be implemented by all states of the international community, including Armenia. In support of this view, the CCM, for example, requires each state party to universalize this treaty “to promote the norms it establishes and to make its best efforts to discourage states not party to this Convention from using cluster munitions.”<sup>25</sup>

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20 United Nations Office for Disarmament Affairs, *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction*, September 18, 1997, available at: <https://geneva-s3.unoda.org/static-unoda-site/pages/templates/anti-personnel-landmines-convention/APLC%2BEnglish.pdf> (accessed: April 12, 2022).

21 Ibid.

22 UNMAS, “*Convention on Cluster Munitions*”, May 30, 2008, available at: <https://www.unmas.org/sites/default/files/documents/convention-eng.pdf> (accessed: March 12, 2022).

23 Ibid.

24 Ibid.

25 Ibid.

*'Law-making' international treaties*

One of the basic principles in classical international law is that an international treaty creates obligations only for the parties to it. The famous Latin maxim *pacta tertiis nec nocent nec prosunt* (a treaty binds the parties only, and not a third) is embodied into the 1969 Vienna Convention on the Law of Treaties (VCLT). Thus, the Convention provides that a treaty does not create obligations or rights for a third state without its consent, and consequently, in order to bind a third state with an obligation that arises from a provision of a particular treaty, the parties to that treaty should express their intent, as well as third state needing to expressly accept that obligation.<sup>26</sup>

However, as Hernandez argues, “that only tells a part of the tale”; not only do treaties “influence the development of other sources of international law, but also they are very much a part of the process through which custom is made.”<sup>27</sup> He asserts that the above-referenced VCLT provisions are about so-called “ordinary” treaties, but not about “law-making treaties”, i.e., multilateral conventions “which create a regime of legal rules of general application, and not merely limited to the conduct of the parties *inter se* (between each other)”.<sup>28</sup> Among these treaties are the 1949 Geneva Conventions, CCM, the Ottawa Convention, and CCCW, which set up basic obligations in the area of warfare, as well as landmark human rights treaties such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, and the Convention on the Prevention and Punishment of the Crime of Genocide, “which seek to prohibit such conduct universally and without exceptions”.<sup>29</sup>

Despite the fact that there is no formal classification regarding “ordinary” and “law-making” international treaties, the latter have received widespread acceptance by the whole international community.<sup>30</sup> Moreover, the specific provisions of the aforementioned treaties go further than setting obligations only for state parties and

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26 United Nations Treaty Series, “Vienna Convention on the Law of Treaties, May 23, 1969, available at: [https://legal.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf) (accessed: April 3, 2022).

27 G.Hernandez, *International Law*, (Oxford: Oxford University Press, 2019), p.45.

28 Ibid.

29 Ibid.

30 Ibid.

hence are treaties that “create general rules, and which arguably also guide states and other actors that are not parties”.<sup>31</sup>

All the above-analysed treaties on mine action are multilateral conventions that establish international legal rules of common application. Hence, it could be suggested that these “law-making” treaties make Armenia responsible under international law for upholding their rules and principles.

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### ***Armenia’s responsibility for international crimes on mine action***

As argued in the previous section, the international treaties on mine action laid the foundation for the dramatic shift from “traditional” to “humanitarian” disarmament through the outlawing of certain inhumane weapons and providing remedial mechanisms for civilian victims. As these international treaties have been built upon legally binding IHL, including international customary rules, it could be suggested that Armenia could be bound by their provisions that address customary rules. Thus, the VCLT’s Article 38 also provides that a rule set forth in a treaty could become binding upon a third state (non-state-party) as a customary rule of international law.<sup>32</sup>

Armenia is not a party to any of the international treaties on mine action specified above. Meanwhile, Armenia is fully engaged in the consumption of the prohibited types of weapons, including anti-personal landmines and other devices, with the aim of causing damage and suffering to combatants, as well as to civilians.<sup>33</sup> However, being a

31 *Reparation for Injuries suffered in the Service of the United Nations*, Advisory Opinion, ICJ Reports 1949, p. 174, 185; *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa)* notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, ICJ Reports 1971, p. 16, 59.

32 United Nations Treaty Series, “Vienna Convention on the Law of Treaties”, May 23, 1969, available at: [https://legal.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf) (accessed: April 3, 2022).

33 Ministry of Foreign Affairs of Azerbaijan, “No:121/21, Statement by the Ministry of Foreign Affairs of the Republic of Azerbaijan on the 4th of April - International Mine Awareness Day”, April 4, 2021, available at: <https://mfa.gov.az/en/news/no12121-statement-by-the-ministry-of-foreign-affairs-of-the-republic-of-azerbaijan-on-the-4th-of-april-international-mine-awareness-day> (accessed: April 28, 2022).

non-signatory state of the international conventions on mine action does not waive Armenia's anti-mine obligations under international law, i.e., IHL that has been created upon long-lasting international customary rules regarding the conduct of warfare and which have been further codified within the 1949 Geneva Conventions and their Additional Protocols.

*IHL: 1949 Geneva Conventions*

Under IHL, namely the 1949 Geneva Conventions and their Additional Protocol I relating to the Protection of Victims of International Armed Conflicts, Armenia is obliged to implement its anti-mine obligations, including the disclosure of information on the location of landmines and other explosive devices that pose a threat to civilians in the liberated territories of Azerbaijan. By joining these treaties that were adopted in order to limit the atrocities of wars,<sup>34</sup> Armenia undertook a legal obligation to comply with their provisions under any circumstances.<sup>35</sup>

The Geneva Conventions and their Additional Protocols include the principles of 'distinction' and 'proportionality', which constitute a part of customary IHL and provide protection to individuals who are not taking part in war. It is noteworthy that these principles have been addressed in some international treaties on mine action such as the Ottawa Convention, Protocol II to CCM, etc.<sup>36</sup>

The principle of distinction demands that belligerents distinguish between combatants and non-combatants, i.e., civilians, who are not taking part in hostilities and thus receive protection under IHL. This principle that demands parties to armed conflict distinguish between civilians and combatants is codified in Article 48 of the Additional Protocol I to the 1949 Geneva Conventions. The rule of 'principle of distinction' is further developed by the rule against indiscriminate

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34 ICRC, "The Geneva Conventions of 1949 and their Additional Protocols", available at: <https://www.icrc.org/en/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm> (accessed: March 12, 2022).

35 Safarov, N. and Mustafayeva, N., "Violations of international humanitarian law by Armenia in the Second Karabakh War", *Caucasus Strategic Perspectives*, Vol.1, Issue 2, Winter 2020, pp.131–142.

36 Safarov, N., "Failure to provide Azerbaijan with maps of mined areas is contrary to international humanitarian law", *Oxu.az*, April 12, 2021, available at: <https://oxu.az/politics/483819> (accessed: May 2, 2022).

attacks enshrined in Article 51 of Protocol I, which entails, *inter alia*, that the civilian population, as well as individual civilians, shall not be the object of attack.<sup>37</sup>

Another important principle of customary IHL is the principle of proportionality that is codified in Article 51(5)(b) of the Additional Protocol I to the Geneva Conventions of 1949 and demands that belligerents refrain from attacks “which may be expected to cause incidental loss of civilian life, injury to civilians”<sup>38</sup> that cannot be justified by military purpose.

Hence, there is a total violation of the entire set of 1949 Geneva Conventions and their Additional Protocols by Armenia through, *inter alia*, the deliberate and large-scale planting of landmines in the territories of Azerbaijan with the aim of inflicting damage on the civilian population and hindering the post-conflict rehabilitation and reconciliation efforts. As a result of mine explosions in the liberated territories of Azerbaijan after the end of hostilities, more than 200 persons, including civilians and military personnel, lost their lives or were injured.<sup>39</sup> Armenia is responsible under international law for all these intentional killings that *ipso facto* are war crimes and crimes against humanity.

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### *War crimes and crimes against humanity*

The concept of war crimes has been established through the codification of customary IHL. The most recent and comprehensive definition for war crimes is provided by the 1998 Rome Statute of the International

37 ICRC, “Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)”, June 8, 1977, available at: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/470?OpenDocument> (accessed: April 23, 2022).

38 ICRC, “Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)”, June 8, 1977, available at: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/470?OpenDocument> (accessed: April 23, 2022).

39 The Prosecutor General’s Office of the Republic of Azerbaijan periodically reveals the numbers of victims who have been killed or wounded as a result of a landmine explosions – see: Office of the General Prosecutor of the Republic of Azerbaijan, available at: <https://genprosecutor.gov.az/az/page/media/xeberler> (accessed: May 30, 2022).

*Hence, intentional killings committed by Armenia through, inter alia, the use of prohibited inhumane weapons (such as certain conventional weapons like cluster munitions and anti-personal mines) that cause superfluous injury or unnecessary suffering in violation of the principles of distinction and proportionality fall under the above-mentioned definitions of international crimes.*

Criminal Court (ICC) in the form of grave violations of the 1949 Geneva Conventions, specifically through acts against persons or properties protected under these documents. Among these acts, Article 8(2) of the Rome Statute lists, *inter alia*, wishful killings and intentionally directing attacks against the civilian population as a whole or against individual civilians not taking direct part in hostilities.<sup>40</sup>

Crimes against humanity are crimes committed on a widespread and systematic scale against a civil population. Under the ICC's Statute they include, *inter alia*, murder and other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.<sup>41</sup> Prior to this codification, crimes against humanity had

been formulated within long-established customary rules and further developed through the jurisdiction of international criminal tribunals.<sup>42</sup>

Hence, intentional killings committed by Armenia through, *inter alia*, the use of prohibited inhumane weapons (such as certain conventional weapons like cluster munitions and anti-personal mines) that cause superfluous injury or unnecessary suffering in violation of the principles of distinction and proportionality fall under the above-mentioned definitions of international crimes.

Moreover, the issue of responsibility of Armenia is based also on the *jus cogens* (peremptory norms of international law) character of the norms that outlawed war crimes and crimes against humanity.

In accordance with Article 53 of the VCLT, "A peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character".<sup>43</sup> Thus,

40 International Criminal Court, "Rome Statute of ICC", 1998, available at: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf> (accessed: %20April%207,%202022).

41 Ibid.

42 United Nations, "Office on Genocide Prevention and Responsibility to Protect, Crimes against humanity", available at: <https://www.un.org/en/genocideprevention/crimes-against-humanity.shtml> (accessed: May 2, 2022).

43 United Nations Treaty Series, "Vienna Convention on the Law of Treaties",

*jus cogens* norms are recognized as hierarchically superior to the ordinary norms of international law.<sup>44</sup> Regarding war crimes and crimes against humanity, it should be also noted that they had been recognized as a breach of *jus cogens* norms by the International Court of Justice (ICJ) in its verdict on *Jurisdictional Immunities of the State (Germany v Italy: Greece Intervening)*.<sup>45</sup>

The enforcement of *jus cogens* norms is implemented within obligations *erga omnes* (towards all), i.e., obligations “toward the international community as a whole”.<sup>46</sup> In accordance with the concept of *erga omnes*, all states have a legal interest in ensuring compliance with obligations contained in particular treaties, and consequently could invoke the issue of responsibility under international law, even if they are not directly affected.<sup>47</sup> Thus, any state party to 1949 Geneva Conventions and its Additional Protocols can invoke the issue of the responsibility of Armenia for violation of the principles of distinction and proportionality due to the war crimes committed by Armenia.

Thus, considering the landmark principles of IHL that prohibit weapons and methods of warfare that cause superfluous injury or unnecessary suffering to humans, the international community, in the framework of obligations *erga omnes*, should raise the issue of Armenia’s responsibility under international law for its intentional killings, i.e., war crimes and crimes against humanity.

Azerbaijan is not a state party to the international conventions on mine actions on due to the fact that its contaminated-with-landmines territories, remaining since the period of occupation of Armenia, deprives the former from full implementation of the provisions of these treaties. However, considering the humanitarian nature of these landmark documents, Azerbaijan constantly supports their objects and purposes, as well as endorsing common efforts to address concerns about

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May 23, 1969, available at : [https://legal.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf) (accessed: April 3, 2022).

44 International Law Commission, “Second Report on *Jus Cogens*”, UN Doc A/CN.4/706, 2017, pp.12-14.

45 ICJ, *Jurisdictional Immunities of the State (Germany v Italy: Greece Intervening)*, 2012, available at: <https://www.icj-cij.org/en/case/143> (accessed: May 1, 2022).

46 Barcelona Traction Heat, Light, and Power Co. (*Belgium v Spain*), Second Phase, ICJ Reports, 1970, para 33, p.3.

47 Obligation to Prosecute or Extradite (*Belgium v Senegal*), Judgement, ICJ Reports, 2012.

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civilian casualties. Azerbaijan, albeit it is not a state party to the Ottawa Convention and acknowledging the indiscriminate danger of landmines for civilians, has consistently voted in favour of resolutions relating to the implementation of this Convention adopted by the UN General Assembly.<sup>48</sup> In fact, this is a vivid example of how a state even without formally acceding to the international treaty can uphold their terms and provisions, due to considering the humanitarian nature of these agreements, as well as

the mandatory character of the IHL rules that constitute the very basis of these documents.

### **Conclusion**

It is argued in this paper that the IHL, namely the 1949 Geneva Conventions and their Additional Protocol I related to the Protection of Victims of International Armed Conflicts, create international obligations for Armenia in, *inter alia*, the area of mine action. Since Armenia is a state party to these international documents, the large-scale mine contamination by Armenia of the liberated [formerly occupied] territories of Azerbaijan and official Yerevan's unwillingness to release the location of all mined areas that could prevent human casualties make Armenia responsible under these treaties.

Considering the fact that there have been more than 200 human casualties as a result of mine explosions in the liberated territories of Azerbaijan even after the end of the war in 2020, Armenia is also responsible under international law for committing intentional killings (i.e., war crimes and crimes against humanity). These crimes represent breaches of the hierarchically superior and non-derogable *jus cogens* norms of the international law, violation of which entails obligations *erga omnes*.

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48 Permanent Mission of the Republic of Azerbaijan to the UN Office and other International Organizations in Geneva, "Intersessional meetings of the Anti-Personnel Mine Ban Convention, Thematic session, Statement of the Deputy Permanent Representative of the Republic of Azerbaijan to the UN Office and other international organizations in Geneva, June 22, 2021", available at: [https://new.apminebanconvention.org/fileadmin/\\_APMBC-DOCUMENTS/Meetings/2021/IM21-3-Universalization-Azerbaijan](https://new.apminebanconvention.org/fileadmin/_APMBC-DOCUMENTS/Meetings/2021/IM21-3-Universalization-Azerbaijan) (accessed: March 25, 2022).

Furthermore, it also suggested in this commentary that an overall stance, through the obligations *erga omnes*, asserting Armenia's violation of international law and its anti-mine obligations may contribute to common efforts towards complete disarmament for the creation of a *mine-free world*.

Adoption of the comprehensive legal framework for mine action, i.e., the “humanitarian disarmament” conventions analysed in this commentary, could be evaluated as a milestone in the move towards a mine-free world. These international conventions have been built upon IHL and international human rights law, as well as being ‘law-making treaties’ that create a regime of legal rules of general application. Hence, it is argued that Armenia should uphold the rules and principles of these conventions – even without being a state party to them.

Armenia could be bound to uphold the provisions of these international conventions due to the fact that they were created, *inter alia*, upon long-lasting international customary rules in the area of the conduct of warfare. This statement emanates from the rule enshrined in Article 38 of the VCLT which provides for rules in a treaty becoming binding on third states through international custom.