



# Armenian Bar Association

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*In loving memory (2014)*

Ambassador Joseph Manso  
U.S. Representative for OPCW  
U.S. Embassy The Hague  
John Adams Park 1  
2244 BZ Wassenaar, Netherlands

In Re: Azerbaijan's Use of Prohibited Chemical Weapons

Dear Ambassador Manso:

The citizens of the small Republic of Artsakh, also known as Nagorno-Karabakh, were recently under attack from Azerbaijan and Turkey during a 44-day conflict that subsided on November 9<sup>th</sup>. We are writing to bring to your attention the war crimes perpetrated by the Azerbaijani government and its armed forces during the conflict, particularly their use of chemical weapons. As shown in this [video](#), in an attempt to extinguish the civilian populations sheltered in forests, Turkey-backed Azerbaijani forces burned at least 1,815 hectares of forested land using lethal white phosphorus weapons. For additional information please refer to the Artsakh Human Rights Ombudsman's [report](#).

Pursuant to the Chemical Weapons Convention, the signatories of which include Armenia, Azerbaijan, and Turkey, each member state agrees "*never under any circumstances . . . [t]o use chemical weapons.*" According to Article II of the Convention, a chemical weapon includes "toxic chemicals" and "munitions . . . designed to cause death or other harm through the toxic properties." A toxic chemical is broadly defined as "[a]ny chemical which through its chemical action . . . can cause death, temporary incapacitation or permanent harm to humans or animals." When determining a weapon's lawfulness, it is necessary to consider whether it is lawfully *used*. While typically considered a lawful chemical, white phosphorus is being used in an unlawful manner as a chemical weapon against civilians and animals. When the burning particles of white phosphorus make contact with the skin, it results in serious burns that penetrate to the bone. It can cause irreversible injury and death. Additionally, inhalation of white phosphorus causes damage to internal organs and the respiratory system. White phosphorus was used in this instance against the human and organic ecosystems in Artsakh for its toxic effects on living organisms as well as its destructive effects on the environment.

In this case, the use of white phosphorus would even be prohibited by the narrower Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons of the Convention on Certain Conventional Weapons. According to Protocol III, an incendiary weapon is "any weapon or munition which is primarily designed to set fire to objects or to cause burn injury to persons through the action of flame, heat or combination thereof, produced by a chemical reaction of a substance delivered on the target." Article 1(b)(i) allows an exception for "incidental incendiary effects," which may apply to the conventional use of white phosphorus. However, this is not a case of a conventional use of the chemical. Article 2(1) specifically prohibits "in all circumstances" to take military action in an area with a concentration of civilians. Moreover Article 2(4) prohibits making forests the "object of attack." As such, the method with which Azerbaijani forces deployed white phosphorus

against civilians categorizes it as an incendiary weapon under this definition, excluding it from the Article 1(b)(i) exemption. Again, it would be a mistake to ignore the *actual use* of the chemical and focus only on its conventional, permitted use.

You are aware that this is [not the first time](#) Turkey has used white phosphorus in its attacks. After allegations were made that Turkey was using white phosphorus in Syria, the OPCW Director-General Fernando Arias explained that the chemical was “used in conventional armaments for producing smoke as an incendiary weapon or producing light. It does not fall under the chemical weapons convention.” This argument is inapposite to the case of Artsakh. There is nothing “conventional” or even commonsensical about using a flammable chemical substance in a forest, arguably the most flammable natural area known to man, merely for the purpose of “producing light.” While in certain instances white phosphorus may have conventional uses, that is not the case in Azerbaijan’s recent unleashing of the toxic chemical in Artsakh.

Please take all actions within your power to investigate these occurrences, condemn Azerbaijan and Turkey’s actions, and take immediate precautionary measures to ensure that chemical weapons are never again used in any future attacks by Azerbaijan and Turkey.

Please contact us if you have questions or would like more information.

Sincerely,

ARMENIAN BAR ASSOCIATION



Lucy Varpetian,  
Chairperson



Juliya Grigoryan,  
Member