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CALMING THE CAUCASUS: NEUTRALIZING AZERBAIJAN’S MILITARY “BATNA” TO RESTART THE PEACE PROCESS IN NAGORNO-KARABAKH (ARTSAKH)

Patrick Babajanian

I. INTRODUCTION

On the morning of Sunday, September 27, 2020, heavy fighting broke out between the Republics of Armenia and Azerbaijan over the disputed region of Nagorno-Karabakh (Artsakh).¹ This marked the latest major escalation in a decades-long ethnic conflict with deep historical roots.² After forty-four days, the fighting ended in a ceasefire agreement grossly lopsided in favor of Azerbaijan.³ To the present, prospects for a decisive,

¹ AL JAZEERA, *Fighting Erupts Between Armenia, Azerbaijan over Disputed Region* (Sept. 27, 2020), <https://www.aljazeera.com/news/2020/9/27/heavy-fighting-erupts-in-disputed-nagorno-karabakh-region>.

² See COUNCIL ON FOREIGN RELS., GLOBAL CONFLICT TRACKER: *Nagorno-Karabakh Conflict*, <https://www.cfr.org/global-conflict-tracker/conflict/nagorno-karabakh-conflict> (last updated Oct. 7, 2022) (describing conflict background, starting with how “the Soviet Union established the Nagorno-Karabakh Autonomous Oblast—home to a 95 percent ethnically Armenian population—within the Azerbaijan Soviet Socialist Republic”).

³ See BBC NEWS, *Armenia, Azerbaijan and Russia Sign Nagorno-Karabakh Peace Deal* (Nov. 10, 2020), <https://www.bbc.com/news/world-europe-54882564> (“Under the deal, Azerbaijan will hold on to areas of Nagorno-Karabakh that it has taken

peaceful, and mutually agreeable solution to the conflict remain bleak.⁴ With the status quo as such, it is arguably an appropriate time to consider a fresh approach to resolving this regional conflict, especially given the history of failure to do so over the past three decades.⁵

To that end, I present Roger Fisher and William Ury's theory of principled negotiation as one such alternative.⁶ Specifically, I argue the 2020 Nagorno-Karabakh War was the result of Azerbaijan considering military action a viable "Best Alternative [t]o a Negotiated Agreement [(BATNA)],"⁷ and restoring the peace process therefore requires the international community to recognize the gross power imbalance between Armenia and Azerbaijan and take concerted action to establish relative parity between the parties to in turn incentivize Azerbaijan to return to the figurative (and literal) negotiating table. I propose this as an immediate solution designed to create the conditions necessary to restart the peace process at the most basic level, and would highly welcome a separate, more extensive study that applies Fisher and Ury's theory of principle negotiation in full to the conflict.

The article begins by surveying the historical background of the Artsakh conflict, from its ancient roots to the immediate aftermath of the 2020 war. It then introduces the key issue I identify as obstructing the peace process from resuming, namely Azerbaijan's calculation that its military BATNA outweighs any value of continued negotiation. Next, the article evaluates two legal tactics the United States could implement in its national capacity to correct this situation, focusing on actions intended to limit Azerbaijan's military strength by withholding foreign aid and enacting targeted sanctions, with the goal of achieving greater parity between Armenia and Azerbaijan to deter further armed escalation and ultimately restart the peace process. The article concludes by

during the conflict. Armenia has also agreed to withdraw from several other adjacent areas over the next few weeks.").

⁴ See INT'L CRISIS GRP., *Improving Prospects for Peace After the Nagorno-Karabakh War* (Dec. 22, 2020), <https://www.crisisgroup.org/europe-central-asia/caucasus/nagorno-karabakh-conflict/b91-improving-prospects-peace-after-nagorno-karabakh-war> ("The biggest question remains the status and future governance of Nagorno-Karabakh—or, rather, the portion of Nagorno-Karabakh outside Azerbaijan's control, where Russian forces have deployed and to which ethnic Armenians are returning.").

⁵ See COUNCIL ON FOREIGN RELS., *supra* note 2 (describing the failure to meaningfully resolve the Artsakh conflict over the past three decades).

⁶ See generally ROGER FISHER & WILLIAM URY, *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* (Bruce Patton ed., Penguin Books, 3d ed. 2011) (1981).

⁷ *Id.* at 102.

summarizing key points of discussion and expressing hope that the findings here may guide the parties to the Artsakh conflict at least some degree closer to the meaningful negotiated solution that has eluded them for the past three decades.

II. HISTORICAL BACKGROUND

A. FROM ANTIQUITY TO THE SOVIET UNION'S COLLAPSE

The region of Artsakh was once part of an Armenian kingdom that existed as far back as 300 BCE.⁸ The semi-independent region was “populated mainly by Christian Armenians and ruled by an Azeri Turkic—and Muslim—leader known as a khan, under Safavid Iranian rule in the [nineteenth] century,” before “pass[ing] to the Russian Empire in the early 1800s, and then to the Soviet Union after the 1918 Bolshevik Revolution.”⁹ After declaring independence near the end of the First World War, Armenia and Azerbaijan “clashed several times over various territories, including [Artsakh], until 1920, when the Red Army occupied the entire area that Russia called the Transcaucasus and put an end to it.”¹⁰ As the Soviet Union’s Commissar of Nationalities, Joseph Stalin “oversaw map-making and administrative boundaries, in some cases arbitrarily drawing borders that purposely divided communities, something historians believe was done to dilute the political power of some ethnic groups.”¹¹ In fact, Stalin formalized the borders of Artsakh in 1923 as the so-called “Nagorno-Karabakh Autonomous Oblast,” which became part of the Azerbaijani Soviet Socialist Republic.¹² Until the late 1980s, “the Communist Party and the leadership in Moscow kept a tight lid on any sort of nationalist or religious sentiment that could stir trouble,” so the conflict over Artsakh remained relatively stagnant during the period of Soviet rule.¹³

B. FROM THE SOVIET UNION'S COLLAPSE TO THE 1994 CEASEFIRE

⁸ Mike Eckel, *Five Key Things to Know About Nagorno-Karabakh*, RADIO FREE EUR./RADIO LIBERTY, <https://www.rferl.org/a/30893222.html> (last updated Oct. 15, 2020, 11:01 GMT).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

The situation changed on February 20, 1988, when, encouraged by Mikhail Gorbachev's liberalizing policies of *glasnost* and *perestroika*, "the local governing Council of People's Deputies in [Artsakh], dominated by ethnic Armenians, declared its intention to unify with Armenia."¹⁴ At this time, "about three-quarters of the region's 190,000 people were Armenian, with one-quarter Azeri."¹⁵ The immediate aftermath of the declaration saw support from Armenia and outrage from Azerbaijan, with, on one occasion, "Azerbaijani mobs rampag[ing] through the Baku suburb of Sumgait, home to a large Armenian community," and officially killing thirty-two people—although Armenians claim the death toll was in the hundreds.¹⁶ After years of tension, full-scale war erupted in February 1992 after both Armenia and Azerbaijan had declared independence from the collapsing Soviet Union the year prior.¹⁷ The first round of fighting ended in May 1994 with a ceasefire that left "ethnic Armenian forces in control of almost all of [Artsakh], as well as several surrounding districts—a sizable chunk of Azerbaijani territory."¹⁸ The defeat humiliated Azerbaijan, and the human toll of the conflict was considerable.¹⁹

C. FROM THE 1994 CEASEFIRE TO THE PRESENT

Since the 1994 ceasefire, France, Russia, and the United States have overseen efforts to resolve the Artsakh conflict as co-chairs of the Organization for Security and Cooperation in Europe (OSCE) Minsk Group, but without success.²⁰ The quarter-century since the ceasefire has largely comprised "the two sides . . . fac[ing] off along a so-called Line of Contact, regularly trading angry rhetoric, sniper fire, and occasional mortar rounds, inflicting small casualties," with Azerbaijan spending "hundreds of millions of dollars—revenue from its large oil and gas reserves—to modernize its armed forces, leading observers to warn continually of the danger of new war."²¹ In addition to an escalation in April 2016 that saw 200 soldiers and civilians killed, factors that contributed to the 2020

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* ("It was a humiliating defeat for Baku. Some 30,000 people were killed and more than 1 million others were driven from their homes. Some 870,000 Azerbaijanis fled [Artsakh], the surrounding districts seized by ethnic Armenian forces, and Armenia itself, and about 300,000 ethnic Armenians fled Azerbaijan, according to United Nations refugee agency figures.") (citation omitted).

²⁰ *Id.*

²¹ *Id.*

war included the “advent of new weaponry: first and foremost drones, also known as unmanned aerial vehicles [(UAVs)],” in which Azerbaijan “has invested heavily . . . in recent years, buying and licensing production of Israeli drones, and more recently, more sophisticated Turkish UAVs.”²² All this came to a head on September 27, 2020, when renewed fighting broke out between Armenia and Azerbaijan over Artsakh.²³ After forty-four days, a ceasefire signed by the leaders of Russia, Armenia, and Azerbaijan ended the fighting, resulting in a new status quo favoring Azerbaijan by effectively allowing it to “hold on to areas of [Artsakh] that it [took] during the conflict,” while Armenia “agreed to withdraw from several other adjacent areas”²⁴

III. APPLYING PRINCIPLED NEGOTIATION: RECOGNIZING AND COUNTERING AZERBAIJAN’S MILITARY BATNA

A. OVERVIEW OF BATNA

Fisher and Ury argue “[n]o method can guarantee success if all the leverage lies on the other side,”²⁵ and the most any negotiation method can do in response to power is to “protect [oneself] against making an agreement [one] should reject” and “help [oneself] make the most of the assets [one does] have so that any agreement [one] reach[es] will satisfy [one’s] interests as well as possible.”²⁶ To achieve both goals, Fisher and Ury emphasize the importance of knowing one’s BATNA and developing it accordingly to serve as an asset in negotiations.²⁷

BATNAs are not set in stone, nor do their relative strengths depend solely on the status of parties in a vacuum; rather, they depend on the context in which they occur.²⁸ To illustrate this, Fisher and Ury use the example of a wealthy tourist seeking to purchase a small brass pot for a modest price from a Mumbai railroad station worker: though the tourist may be more “powerful” than the vendor in an objective sense, in this situation he is subjectively weaker because the vendor could easily resell the pot to another tourist, whereas the tourist, not knowing whether he can buy a better or similar pot elsewhere for a lower price, may have just this one opportunity to purchase the pot he desires.²⁹ Another

²² *Id.*

²³ *See* AL JAZEERA, *supra* note 1.

²⁴ *See* BBC NEWS, *supra* note 3.

²⁵ FISHER & URY, *supra* note 6, at 99.

²⁶ *Id.*

²⁷ *Id.* at 101–08.

²⁸ *Id.* at 104–05.

²⁹ *Id.* at 104.

example recounts a scenario between a small town trying to raise taxes on a large industry company's factory located just outside town limits: the town successfully negotiated an increase in the company's "goodwill" payment from \$300,000 to \$2.3 million by knowing it could expand the town limits to include the company's factory and tax it the full residential rate of about \$2.5 million per year.³⁰

All this shows BATNAs may vary in strength and attractiveness based on the context in which they appear. Proper evaluation of a conflict scenario requires a holistic exploration of their respective contexts, including the myriad of variables at play that may lead parties to act the way they do. Power disparities between parties certainly present a helpful starting point to this analysis, setting the stage for evaluations of potential actions one might take to level the proverbial playing field as needed.

B. AZERBAIJAN'S MILITARY BATNA

The conflict in Artsakh is no exception to the rule outlined above. Starting by examining the power disparity between the parties involved, one finds Azerbaijan in an objectively more advantageous position in terms of material resources, especially as they relate to its capacity to wage war. For example, just around the time the 2020 Nagorno-Karabakh War began, Armenia had less than one-third of Azerbaijan's population and less than half its area; Azerbaijan spent \$2.73 billion on military expenditures (5.4% of GDP) compared to Armenia's \$500,000 (4.7% of GDP); Azerbaijan had tens of thousands more active and reserve military personnel than Armenia; and Azerbaijan had 3 million individuals fit for military service whereas Armenia had just over 800,000.³¹ In terms of military hardware, Azerbaijan surpassed Armenia in every major area—having more ground forces,³² a greater air force,³³ and the only navy between the two countries.³⁴

³⁰ *Id.* at 104–105.

³¹ AL JAZEERA, *Infographic: Military Arsenals of Armenia and Azerbaijan* (Oct. 1, 2020), <https://www.aljazeera.com/news/2020/10/1/infographic-military-arsenals-of-armenia-and-azerbaijan>.

³² *Id.* (Azerbaijan having 665 tanks to Armenia's 529; 1,637 armored vehicles to Armenia's 1,000; and 740 artillery (including 237 self-propelled and 196 rocket) to Armenia's 293 (including 38 self-propelled and 105 rocket)).

³³ *Id.* (Azerbaijan having 127 aircraft (including 5 fighters, 11 attack aircraft, 13 multipurpose aircraft, and 75 helicopters) compared to Armenia's 65 (including 0 fighters, 13 attack aircraft, 0 multipurpose aircraft, and 42 helicopters)).

³⁴ *Id.* (Azerbaijan having 31 vessels (including 1 frigate and 4 submarines) compared to Armenia's 0 vessels).

Azerbaijan has fueled its military strength with billions of dollars in revenues derived from exploiting its oil reserves in the Caspian Sea,³⁵ and was aided in the 2020 Nagorno-Karabakh War by the Republic of Turkey, its “powerful ally” that “sent experienced military advisors to direct Baku’s war machine.”³⁶ Additionally, at a joint press conference with Turkish President Recep Tayyip Erdoğan after declaring victory in the 2020 war, Azerbaijani President Ilham Aliyev “highlighted the role Turkish technology played in delivering a victory to his people,” specifically citing as a “gamechanger” the Bayraktar drone manufactured by the Turkish defense industry and “used to deadly effect by Turkey in its campaigns in Syria and against Kurdish insurgents in eastern Turkey”³⁷ One of the primary advantages of using the drones granted to Azerbaijan during this round of the conflict was that it effectively “wiped out Armenia’s high-ground advantage” in Artsakh.³⁸

If one were to decide the conflict were purely in terms of military strength, the odds would overwhelmingly stack in Azerbaijan’s favor. This could have led Azerbaijan’s leadership to consider military action a perfectly viable, and in fact preferable, alternative to achieving its regional goals in the event negotiations proved unfruitful. This perception ultimately manifested in reality when Azerbaijan decided to resort to military escalation in 2020, ostensibly because of its failure to achieve its goals via negotiation.³⁹

C. COUNTERING AZERBAIJAN’S MILITARY BATNA TO ENCOURAGE A RETURN TO NEGOTIATION

Azerbaijan’s ample military resources, lucrative oil revenue, and steady support from Turkey likely emboldened it to resort to war in the fall of 2020 rather than continue negotiations. Because Armenia was unable to prevent this most recent escalation on its own, and future such escalations may occur if Azerbaijan remains

³⁵ Simon Ostrovsky, *How Azerbaijan Won the Karabakh War*, NEW LINES MAG. (Jan. 6, 2021), <https://newlinesmag.com/reportage/how-azerbaijan-won-the-karabakh-war/>.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* The source additionally notes that “a drone can surpass the highest mountain.”

³⁹ See Svante E. Cornell, *How Did Armenia So Badly Miscalculate Its War with Azerbaijan?*, JEWISH INST. FOR NAT’L SEC. OF AM. (JINSA) (Nov. 14, 2020), <https://jinsa.org/how-did-armenia-so-badly-miscalculate-its-war-with-azerbaijan/> (“In 2019, President Ilham Aliyev [of Azerbaijan] noted that a world was emerging where ‘might is right,’ intimating that Azerbaijan would act accordingly if it could not achieve its goals through diplomacy.”).

unchecked, the international community should intervene in the conflict to restore the balance of power and push the parties back to negotiation. The United States, as a co-chair of the OSCE Minsk Group overseeing relevant negotiations, finds itself in a prime position to take a more active role in achieving this goal. Strategically, the United States should incentivize Azerbaijan to return to peace talks by shifting the cost–benefit analysis in favor of pursuing a negotiated solution. Tactically, the United States should pursue a two-pronged approach of (1) withholding its annual waiver of § 907 of the 1992 Freedom for Russia and Emerging Eurasian Democracies and Open Markets (FREEDOM) Support Act (FREEDOM Support Act) on one end, and (2) imposing targeted sanctions against Azerbaijan’s leadership under the Global Magnitsky Human Rights Accountability Act (Global Magnitsky Act) on the other. These options have been proposed,⁴⁰ and I focus the remaining bulk of this article on evaluating the viability of each as a potential avenue of legal engagement by the United States in the ongoing Artsakh conflict.

1. REVOKING THE WAIVER OF § 907 OF THE FREEDOM SUPPORT ACT

Under § 907 of the FREEDOM Support Act, the United States may not provide assistance, except for nonproliferation and disarmament programs and activities, to the Government of Azerbaijan until the latter demonstrates tangible steps to cease use of force against Armenia and Artsakh.⁴¹ However, since 2002, the

⁴⁰ See, e.g., Michael Rubin, *Sanctions on Azerbaijan Should Go Beyond Military and Aid Embargo*, THE NAT’L INT. (Nov. 30, 2020), <https://nationalinterest.org/feature/sanctions-azerbaijan-should-go-beyond-military-and-aid-embargo-173499> (§ 907 and Magnitsky); *Amendment to Revoke U.S. Presidential Waiver of Section 907 Restrictions on U.S. Aid to Azerbaijan*, ARMENIAN NAT’L COMM. OF AM. (Nov. 4, 2021), <https://anca.org/press-release/menendez-introduces-amendment-to-revoke-u-s-presidential-waiver-of-section-907-restrictions-on-u-s-aid-to-azerbaijan/> (§ 907); *Sherman, Cox and Colleagues Call for the Implementation of Magnitsky Sanctions Against Azeri Officials*, OFF. OF CONG. BRAD SHERMAN (Oct. 23, 2020), <https://sherman.house.gov/media-center/press-releases/sherman-cox-and-colleagues-call-for-the-implementation-of-magnitsky> (Magnitsky).

⁴¹ FREEDOM Support Act of 1992, S. 2532, 102d Cong. § 907 (1992) (The section reads in full: “SEC. 907. RESTRICTION ON ASSISTANCE TO AZERBAIJAN. United States assistance under this or any other Act (other than assistance under title V of this Act) may not be provided to the Government of Azerbaijan until the President determines, and so reports to Congress, that the Government of Azerbaijan is taking demonstrable steps to cease all blockades and other offensive uses of force against

United States Congress has empowered the President of the United States to annually waive the provisions of § 907 so long as certain conditions are met and he consults with the Committees on Appropriations.⁴² This waiver authority, implemented shortly after the September 11, 2001 terrorist attacks, came as a reward to Azerbaijan for the latter's offering itself as a useful ally in President George W. Bush's "Global War on Terror," and at the behest of major allies of the United States.⁴³

Subsequently, Presidents have annually waived the provisions of § 907, including just a few months after the 2020 Nagorno-Karabakh War, on April 26, 2021, under the authority of President Joseph R. Biden, Jr.⁴⁴ Interestingly, during the 2020

Armenia and Nagorno-Karabakh." Note that the terms "Artsakh" and "Nagorno-Karabakh" are used interchangeably in this article.

⁴² Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002, Pub. L. No. 107-115, 115 Stat. 2129 [hereinafter Foreign Operations] ("The President may waive section 907 of the FREEDOM Support Act if he determines and certifies to the Committees on Appropriations that to do so . . . (A) is necessary to support United States efforts to counter international terrorism; or (B) is necessary to support the operational readiness of United States Armed Forces or coalition partners to counter international terrorism; or (C) is important to Azerbaijan's border security; and (D) will not undermine or hamper ongoing efforts to negotiate a peaceful settlement between Armenia and Azerbaijan or be used for offensive purposes against Armenia.").

⁴³ Michael Rubin, *President Biden Must Shut Down Azerbaijan's Sanctions Waiver on Day One*, THE NAT'L INT. (Nov. 3, 2020), <https://nationalinterest.org/feature/president-biden-must-shut-down-azerbaijan%E2%80%99s-sanctions-waiver-day-one-171872>

("Azerbaijani [P]resident Heydar Aliyev, father of current leader Ilham Aliyev and mastermind of the initial attempt to encircle [Artsakh] and drive out Armenians, allied himself with the United States in the wake of the Al[-]Qaeda strikes and declared itself an ally in President George W. Bush's 'Global War on Terror.' Aliyev allowed Azerbaijan to be used for a number of counterterrorism operations, and the country also served as an important listening post as tensions mounted between the United States and Iran. The United Kingdom, perhaps motivated by British Petroleum's interests in Azerbaijan, encouraged the rapprochement as did Israel, which Azerbaijan cultivated both directly and through Jewish organizations in the United States.") (citation omitted).

⁴⁴ Laura Kelly, *Biden Waiving Restriction Blocking Aid to Azerbaijan over Armenia Conflict*, THE HILL (May 3, 2021), <https://thehill.com/policy/international/551577-biden-waiving-restriction-blocking-aid-to-azerbaijan-over-armenia> ("In a notification to Congress obtained by *The Hill* and sent on April 26, [2021,] Secretary of State Antony Blinken certified that such assistance to Azerbaijan would not 'undermine or hamper ongoing efforts to negotiate a peaceful settlement between Armenia and Azerbaijan or be used for offensive purposes against Armenia.'").

United States presidential election campaign, then-former-Vice President Biden called on then-President Donald J. Trump to refrain from waiving the provisions of § 907,⁴⁵ yet Biden himself waived them after he assumed office.⁴⁶ Many Members of Congress have expressed opposition to the waiver: for example, Representative David G. Valadao of California wrote a letter to Secretary of State Antony Blinken expressing his and thirty-one colleagues' view to that effect.⁴⁷

Azerbaijan failed to meet the conditions necessary to allow for U.S. assistance in 2020, as evidenced by state actions that downplayed the role of diplomats in the peace process and bolstered military strength, suggesting a strategic shift by Azerbaijani authorities toward preparing for violent armed conflict in lieu of continuing to pursue a peaceful negotiated settlement.⁴⁸ Ultimately, because of the conflict's ongoing nature and the lack of evidence that Azerbaijan is reversing its preference for military projection at the expense of diplomatic engagement in the Artsakh conflict, the United States would be clearly justified in withholding its waiver of § 907 of the FREEDOM Support Act and should do so as a means of achieving greater parity between the parties directly involved in the conflict.

⁴⁵ *Nagorno-Karabakh—Statement by Vice President Joe Biden*, BIDEN–HARRIS: DEMOCRATS, <https://joebiden.com/2020/10/28/nagorno-karabakh-statement-by-vice-president-joe-biden-2/> (last visited Feb. 5, 2022) (Then-former-Vice President Biden's statement reads in part: "The [Trump] administration must fully implement and not waive requirements under section 907 of the F[REEDOM] Support Act to stop the flow of military equipment to Azerbaijan, and call on Turkey and Russia to stop fueling the conflict with the supply of weapons and, in the case of Turkey, mercenaries. The United States should be leading a diplomatic effort to end the fighting, together with our European partners, and push for international humanitarian assistance to end the suffering; under my administration that is exactly what we will do.").

⁴⁶ See Kelly, *supra* note 44.

⁴⁷ Letter from David G. Valadao, Member of Cong., to Antony Blinken, Sec'y of State (May 24, 2021), https://valadao.house.gov/uploadedfiles/2021.05.24_final_letter_to_secretary_blinken_raising_concerns_over_section_907_waiver_for_azerbaijan.pdf (A paragraph near the end of the letter reads: "The oil-rich Aliyev government, which continues to illegally hold Armenian prisoners of war and captured civilians six months after the end of hostilities, neither needs nor deserves U.S. assistance. American taxpayers should not be asked to subsidize Azerbaijan so long as they continue to take destabilizing action in the region, attack Armenians living in their indigenous homeland, and hamper ongoing efforts to negotiate a peaceful settlement to the conflict. As such, we ask for the immediate termination of all U.S. military or security aid to Azerbaijan.").

⁴⁸ See discussion *infra* Sections III.C.1.a–c.

**a. AZERBAIJAN’S DOWNPLAYING OF THE
ROLE OF DIPLOMATS IN THE PEACE PROCESS**

On the diplomatic front, after cross-border clashes during July 2020 two months before the start of the full-fledged 2020 Nagorno-Karabakh War, Azerbaijani President Ilham Aliyev removed his foreign minister of over sixteen years, Elmar Mamedyarov, accusing him of overseeing “meaningless negotiations” with Armenia.⁴⁹ Beyond blaming Minister Mamedyarov for allegedly failing to act sufficiently in his individual capacity as foreign minister to resolve the Artsakh conflict,⁵⁰ President Aliyev also criticized the fundamental value of the negotiation process in regards to Azerbaijan’s national interest.⁵¹ Moreover, President Aliyev replaced Minister Mamedyarov as foreign minister with Jeyhun Bayramov,⁵² a former education minister with no experience in the Azerbaijani Ministry of Foreign Affairs, a reality that both President Aliyev and Minister Bayramov have readily and publicly acknowledged.⁵³

That Minister Mamedyarov was replaced (1) by an individual with no prior experience in the Azerbaijani Ministry of Foreign Affairs, when individuals with more extensive institutional knowledge of that ministry were presumably available to take

⁴⁹ REUTERS Staff, *Azeri Minister Sacked for “Meaningless” Efforts over Conflict with Armenia*, REUTERS (July 16, 2020), <https://www.reuters.com/article/us-azerbaijan-armenia-minister-idUSKCN24H1SM>.

⁵⁰ *Id.* (President Aliyev is quoted as saying, during a government meeting, “What was the foreign minister doing? Where [was he]? We were all at work after the July 12 events . . . and I could not find him.”).

⁵¹ *Id.* (“Unfortunately, recently our diplomacy is not compatible with the successful development of our country [Azerbaijan]. In some cases it is engaged in meaningless work, meaningless negotiations.”).

⁵² *Id.*

⁵³ PRESIDENT OF THE REPUBLIC OF AZER.: ILHAM ALIYEV, *Ilham Aliyev Received in a Video Format Jeyhun Bayramov on His Appointment as Minister of Foreign Affairs* (July 16, 2020, 16:00), <https://president.az/en/articles/view/39702> [hereinafter ILHAM ALIYEV] (President Aliyev stating near the beginning of his speech receiving Minister Bayramov, “Although this area is new to you, you have quite a lot of managerial experience, have worked in various positions, including that of a minister”; Minister Bayramov, in his response, stating “Although, as you [President Aliyev] noted, this area is new to me, I will channel all my knowledge and skills into this work, analyze the situation more deeply[,] and present to your attention a number of proposals in a short time”).

charge; (2) two months before the advent of the 2020 Nagorno-Karabakh War, giving Minister Bayramov little time to acquaint himself with his new position and the diplomatic apparatus he was to lead; and (3) with the expectation of spearheading negotiations over a conflict as sensitive and complex as Artsakh, all suggest President Aliyev was setting his diplomats up to fail in any effort to oppose leadership's resort to military intervention in Artsakh in the fall of 2020, such that even if the Ministry of Foreign Affairs had wanted to intervene to prevent this from occurring, it would not have been able to do so with any meaningful effect.

b. AZERBAIJAN'S BOLSTERING OF ITS MILITARY IN PREPARATION FOR VIOLENT ARMED CONFLICT

Azerbaijan's preparations for war in 2020 manifested partly in certain concerted military actions between the nation and its ally Turkey. For example, the attack followed "an escalating series of joint military exercise[s] which the State Department and U.S. intelligence community seemingly ignored."⁵⁴ Specifically, between July 29 and August 10, 2020, Azerbaijan's and Turkey's respective armies "carried out the so-called TurAz Eagle 2020 exercises involving ground and air assaults with live fire."⁵⁵ Additionally, Turkish F-16 fighters used in those exercises "remained in Azerbaijan and subsequently participated in the September 27 attack."⁵⁶ Moreover, both countries' armies had conducted "war games" in May, and during that same month, "Azerbaijan deployed a Turkish-manufactured multiple launch rocket system near the Nagorno-Karabakh border."⁵⁷ On February 25, 2020, Presidents Erdoğan and Aliyev of Turkey and Azerbaijan, respectively, "inked an agreement to provide greater Turkish weaponry to Azerbaijan."⁵⁸

Another indication of Azerbaijan's premeditation of violent armed conflict prior to the 2020 war, and again with Turkey's assistance, revolves around the issue of importing Syrian mercenaries to supplement Azerbaijani armed forces in the latter's attempts to conquer Artsakh. *The Guardian*, just after the escalation that marked the start of the war, reported that while the idea that Azerbaijan's "highly-trained and well-armed" military forces would require the assistance of such mercenaries seems rather far-fetched, nevertheless, "men in Syria's rebel-held Idlib province . . . say that

⁵⁴ Rubin, *supra* note 40.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

a recruitment drive began a month ago.”⁵⁹ The circumstances of this recruitment drive, as detailed by two Syrian eyewitnesses who were summoned as potential recruits, reveal a nebulous process in which Turkish authorities promised recruits non-combat work in Azerbaijan for considerable pay, but without providing several major details about the kind of work involved.⁶⁰

Turkish deployment of Syrian mercenaries to foreign combat theaters is not without precedent,⁶¹ lending credibility to the argument that Turkey repeated this tactic to aid its ally in Azerbaijan in the latter’s attempts to conquer Artsakh by military force. Further lending credibility to this argument is the fact that Syrians actually did travel abroad to find work at Turkey’s behest, seeing the value of doing so as outweighing any prospects at economic success they had at home in Syria.⁶² Lest one argue all this suggests is that Syrian individuals were employed by Turkish authorities to participate in noncombat roles, the argument that at least some of these Syrians ultimately served as mercenaries for Azerbaijan against the Armenians of Artsakh finds strength in the fact that “[a]s with the Azerbaijan proposition, some [Syrian] men who went to Libya have said they were also told they would be employed as guards, but found themselves caught up in frontline fighting instead.”⁶³

As of the early days of the 2020 war, several sources in the Syrian National Army (SNA) (the main umbrella organization of

⁵⁹ Bethan McKernan, *Syrian Rebel Fighters Prepare to Deploy to Azerbaijan in Sign of Turkey’s Ambition*, THE GUARDIAN (Sept. 28, 2020), <https://www.theguardian.com/world/2020/sep/28/syrian-rebel-fighters-prepare-to-deploy-to-azerbaijan-in-sign-of-turkeys-ambition>.

⁶⁰ *Id.* (“Two brothers living in Azaz, Muhammad and Mahmoud, who asked for their names to be changed because of the sensitivity of the issue, said they were summoned to a military camp in Afrin on 13 September [2020]. On arrival they were told by a commander in the Turkish-backed Sultan Murad division that work was available guarding observation posts and oil and gas facilities in Azerbaijan on three[-] or six[-]month contracts at 7,000–10,000 Turkish lira (£700–£1,000) a month—significantly more than they could earn at home. The commander did not give details on what the job would entail, how long the posting would be, or when they were expected to leave. The men are also not clear about the name of the Turkish security company, or who would be paying their wages.”).

⁶¹ *Id.* (“Since December [2019], Ankara has . . . facilitated the movement of thousands of Syrian rebels to Libya as mercenaries, where they have helped turn the tide of the civil war in favour of the UN-backed government fighting warlord Khalifa Haftar.”) (citation omitted).

⁶² *Id.* (One recruit from Idlib city reported, “When we first started being offered work abroad in Libya, people were afraid to go there, but now there are definitely thousands of us who are willing to go to either Libya or Azerbaijan There is nothing for us here [in Syria].”).

⁶³ *Id.*

Turkish-funded Syrian rebel groups) and the Syrian Observatory for Human Rights claimed 500 Syrian fighters from the SNA's Sultan Murad and Al Hamza divisions, including two seniors commanders, had already arrived in Azerbaijan.⁶⁴ These reports have been reinforced by videos on social media that, while unverified, “purport to show armed Syrian rebels travelling along an Azerbaijani road in the back of [pickup] trucks while chanting battle songs.”⁶⁵ While the Armenian government and Russian media alleged the presence of up to 4,000 Syrian men in Artsakh, Azerbaijan and Turkey denied this to be the case.⁶⁶

c. JUSTIFICATION TO WITHHOLD WAIVER OF § 907

All these actions, taken both at the diplomatic and military levels, suggest Turkey and Azerbaijan premeditated the attack of September 27, 2020. At the very least, Turkey and Azerbaijan “appear to have decided months before their surprise attack to dispense with the Minsk process to dispense with the Minsk process.”⁶⁷ Azerbaijan's abandonment of diplomacy in the Artsakh conflict alone would suffice to have the White House and State Department end their waiver of § 907.⁶⁸ Actions taken by the Azerbaijani presidential administration to restructure the Ministry of Foreign Affairs exemplify this abandonment, as previously discussed.⁶⁹

Moreover, Azerbaijan's collaboration with Turkish-backed Syrian mercenaries, many of whom have ties to terrorist organizations such as Al-Qaeda-linked groups or the Islamic State, directly violates the anti-terrorism conditions for waiver of § 907 of the FREEDOM Support Act.⁷⁰ It is also important to recall how a significant motivation for implementing the waiver provision for § 907 stemmed from Azerbaijan's pledge of assistance in the United States' “Global War on Terror” following the September 11, 2001

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Rubin, *supra* note 40.

⁶⁸ *Id.*

⁶⁹ See discussion *supra* Section III.C.1.a.

⁷⁰ Rubin, *supra* note 43 (“Whereas first Heydar and then Ilham Aliyev once stood against Al[-]Qaeda, Azerbaijan now works in conjunction with Turkish-backed Syrian mercenaries, many of whom previously served Al[-]Qaeda-linked groups or the Islamic State. In essence, Azerbaijan is following the lead of both Turkey and Pakistan, both of which often depict themselves as counterterrorism partners while covertly supporting anti-Western terrorists.”); Foreign Operations, *supra* note 42 (listing the conditions for waiver of § 907 of the FREEDOM Support Act).

terrorist attacks.⁷¹ President Aliyev of Azerbaijan certainly perceived the value his country offered in this aspect of United States–Azerbaijani diplomatic relations, highlighting in July 2020 the importance Azerbaijan held as a waypoint for transporting supplies to the combat theater of Afghanistan.⁷² However, since the official withdrawal of United States military forces from Afghanistan as of August 30, 2021,⁷³ one could argue Azerbaijan’s value as a regional supply waystation for the United States no longer merits the weight it once did, given the newfound lack of need to continue supplying a combat theater that no longer exists, which in turn suggests a lack of justification to waive § 907. Moreover, President Biden directly connected the decision to withdraw United States troops from Afghanistan with the reported success in neutralizing the latter as a safe haven for terrorists.⁷⁴ The fact that half the conditions for waiver of § 907 refer in some way to assistance with the United States’ anti-terrorism mission,⁷⁵ combined with Azerbaijani President Aliyev’s emphasis on his country’s utility as a supply waystation for the United States’ operations in Afghanistan,⁷⁶ combined in turn with the withdrawal of U.S. troops from Afghanistan in light of the conclusion of the country’s anti-terrorism mission there,⁷⁷ all strengthen the argument that Azerbaijan’s utility as an anti-terrorism ally no longer outweighs the costs of granting it funding by waiving § 907.

Finally, “[a]s the aggressor, Azeri forces further make a mockery of their own border security concerns and also act to undermine any pretense to a peaceful settlement,” violating the remaining § 907 waiver conditions.⁷⁸ Certainly, the 2020 Nagorno-

⁷¹ Rubin, *supra* note 43 (describing the U.S. Congress’s enactment of the § 907 waiver provision as “a reward for Azerbaijan’s positioning itself as a U.S. ally in a time of need”).

⁷² ILHAM ALIYEV, *supra* note 53 (“America appreciates the efforts Azerbaijan is making in the peacekeeping missions in Afghanistan. As you know, a very important transport corridor called the Northern Transport Corridor passes through Azerbaijan. In fact, this is an air corridor, and safe transportation of goods is very important for any country today.”).

⁷³ David Zucchino, *The U.S. War in Afghanistan: How It Started, and How It Ended*, N.Y. TIMES (Oct. 7, 2021), <https://www.nytimes.com/article/afghanistan-war-us.html>.

⁷⁴ *Id.* (“In mid-April, President Biden, declaring that the United States had long ago accomplished its mission of denying terrorists a safe haven in Afghanistan, announced that all American troops would leave the country by Sept. 11. He later moved the date up to Aug. 31.”).

⁷⁵ See Foreign Operations, *supra* note 42.

⁷⁶ See ILHAM ALIYEV, *supra* note 53.

⁷⁷ See Zucchino, *supra* note 73.

⁷⁸ Rubin, *supra* note 43; Foreign Operations, *supra* note 42 (listing the conditions for waiver of section 907 of the FREEDOM Support Act).

Karabakh War created regional instability that may invite direct cross-border intervention in Azerbaijan by its neighbors: for example, the escalation of the situation to war created a situation where either an Armenian or Azerbaijani victory would result in concern for Iran and make more likely the possibility of the latter's attention to and intervention in the situation to restore a balance of power around its border with the Caucasus.⁷⁹ Almost a year after the end of the 2020 war, tensions on the Iranian–Azerbaijani border have only increased, in part because of an episode where Azerbaijani authorities imposed a “road tax” on Iranian truck drivers entering the Nagorno-Karabakh region, “a path truck drivers must take to transport fuel and goods to Armenia.”⁸⁰ The incident escalated after Azerbaijani President Aliyev accused Iran of violating his country's sovereignty in an interview that transpired shortly after military exercises by Azerbaijan, Pakistan, and Turkey in Baku, allegedly prompting Iran to formulate its own military exercise on its border with Azerbaijan.⁸¹ It is important to note that this military exercise by Iran was its first on the Azerbaijani border since the fall of the Soviet Union,⁸² highlighting the unique escalatory role the 2020 Nagorno-Karabakh War played in creating the situation that led to this clash between Iran and Azerbaijan. Moreover, to emphasize the potential long-term consequences of this clash, “[w]hen the [Islamic Revolutionary Guard Corps] announced the end of the military drill, it left the combat battalions situated by the border area *in a state of readiness*.”⁸³ The unusual nature of this particular exercise further accentuates the stakes involved.⁸⁴ More concretely to date, the deal that ended the 2020

⁷⁹ Borzou Daragahi, *Nagorno-Karabakh: An Unexpected Conflict that Tests and Perplexes Iran*, ATLANTIC COUNCIL (Nov. 9, 2020), <https://www.atlanticcouncil.org/blogs/iransource/nagorno-karabakh-an-unexpected-conflict-that-tests-and-perplexes-iran/> (“Whatever the outcome, the conflict offers no advantage for Tehran. An Azerbaijan victory would further embolden Baku's patrons in Turkey and solidify Ankara's position on Iran's border with the Caucasus, where Iran has been losing influence for centuries. An Armenian victory would enrage Iran's massive Azeri-speaking minority and put extraordinary pressure on Tehran to intervene. The war is already creating cleavages within the Iranian ruling establishment.”).

⁸⁰ Abbas Qaidari, *Iranian War Games on the Border with Azerbaijan Were Really a Message to Israel*, ATLANTIC COUNCIL (Oct. 8, 2021), <https://www.atlanticcouncil.org/blogs/iransource/iranian-war-games-on-the-border-with-azerbaijan-were-really-a-message-to-israel/>.

⁸¹ *Id.*

⁸² *See id.*

⁸³ *Id.* (emphasis added).

⁸⁴ *Id.* (“Iran's campaign sent a fiery message to Azerbaijan on the first anniversary of the Nagorno-Karabakh war. It was also extraordinary

war has already invited the participation of foreign military forces from two additional regional powers, Russia and Turkey, in peacekeeping operations,⁸⁵ suggesting precedent for greater Iranian involvement as well.

With all these facts in mind, a United States presidential administration would arguably be justified in withholding waiver of § 907 based on the language of the governing statute.⁸⁶

2. IMPOSING SANCTIONS ON AZERBAIJANI MILITARY LEADERSHIP UNDER THE GLOBAL MAGNITSKY ACT

The Global Magnitsky Act takes its name from the Sergei Magnitsky Rule of Law Accountability Act of 2012⁸⁷ (Sergei Magnitsky Act), which required the U.S. President to “identify the person(s) involved in the detention, abuse, or death of [Sergei] Magnitsky,” a tax lawyer and auditor in Russia who “documented rampant tax fraud and other corruption by individuals associated with the Russian government.”⁸⁸ The Sergei Magnitsky Act additionally required the President to identify persons involved in “the ensuing cover-up, or those responsible for gross human rights violations against persons in Russia.”⁸⁹ Individuals the Sergei Magnitsky Act identifies are subject to “blocking of assets under U.S. jurisdiction, prohibited from U.S. transactions, and denied entry into the United States.”⁹⁰

Effectively extending the provisions of the Sergei Magnitsky Act to the international stage, and true to its name, the Global Magnitsky Act authorizes the President of the United States to “impose economic sanctions and deny entry into the United States

because the drill didn’t appear to be of the traditional sort held to test new equipment. Contrary to official military statements, Iran did not need to send large armored, mechanized, and infantry units to the region. Moreover, unlike when these forces were sent, there is no news of the return of combat battalions to the provinces where they belong. Therefore, it can be concluded that the real goal was to deploy the military force needed for a possible armed conflict under the guise of a military drill.” (citation omitted).

⁸⁵ BBC NEWS, *supra* note 3.

⁸⁶ See Foreign Operations, *supra* note 42 (listing the conditions for waiver of § 907 of the FREEDOM Support Act).

⁸⁷ Title IV of P.L. 112-208; 22 U.S.C. § 5811 note.

⁸⁸ MICHAEL A. WEBER & EDWARD J. COLLINS-CHASE, CONG. RSCH. SERV., IF10576, THE GLOBAL MAGNITSKY HUMAN RIGHTS ACCOUNTABILITY ACT 1 (2020).

⁸⁹ *Id.*

⁹⁰ *Id.*

to any foreign person identified as engaging in human rights abuse or corruption.”⁹¹ In particular, the law authorizes the President to “deny entry into the United States, revoke any already-issued visa, and block property under U.S. jurisdiction of, and prohibit U.S. persons from entering into transactions with, any foreign person (individual or entity) that the President determines” meet certain conditions.⁹² The President may terminate the application of sanctions upon determining the designee “did not engage in the activity for which sanctions were imposed; has been prosecuted for the offense; or has changed his or her behavior, ‘paid an appropriate consequence,’ and is committed to not engaging in future sanctionable activity,” with an additional option to terminate sanctions if the President “finds it in the U.S. national security interests to do so.”⁹³

On December 20, 2017, President Donald J. Trump implemented the Global Magnitsky Act by issuing Executive Order 13818 (E.O. 13818), which

broadens the standard of behavior for potentially sanctionable targets from those responsible for statutorily defined “gross violations of internationally recognized human rights” against certain individuals . . . to those determined “to be responsible for or complicit in, or to have directly or indirectly engaged in, serious human rights abuse.”⁹⁴

However, E.O. 13818 does not define “serious human rights abuse.”⁹⁵ Additionally, E.O. 13818 “specifies additional categories of persons as potential sanction targets, including, for example, any person determined ‘to be or have been a leader or official of’ an entity ‘that has engaged in, or whose members have engaged in’

⁹¹ *Id.*

⁹² *Id.* (This authority extends to persons “‘responsible for extrajudicial killings, torture, or other gross violations of internationally recognized human rights,’ as defined at 22 U.S.C. § 2304(d)(1), against those working (1) to expose illegal activities of government officials or (2) to obtain, exercise, defend, or promote human rights and freedoms, including rights to a fair trial and democratic elections; or is a foreign government official responsible for acts of significant corruption, a senior associate of such an official, or a facilitator of such acts, which include the expropriation of private or public assets for personal gain, corruption in government contracts or natural resource extraction, bribery, or the offshore sheltering of ill-gotten gains.”).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

serious human rights abuse or corruption.”⁹⁶ To date, the United States Department of the Treasury’s Office of Foreign Assets Control (OFAC), which administers economic Global Magnitsky Act sanctions,⁹⁷ has publicly designated 107 individuals under E.O. 13818 (105 active as of late October 28, 2020, following two removals).⁹⁸

The case for implementing Global Magnitsky Act sanctions against Azerbaijan’s military leadership is strong. In its 2021 report on Azerbaijan, Amnesty International states that “[a]llegations that Azerbaijani forces subjected captured Armenians to torture or other ill[treatment either when they were captured, during their transfer[,] or while in custody were not effectively investigated.”⁹⁹ Several authenticated videos detail frankly horrifying perpetrations of violence that demand accountability and justice:

One video . . . shows a group of men in Azerbaijani military uniforms holding down a struggling man, while another soldier decapitates him with a knife. The executioner is identifiable as an Azerbaijani soldier based upon the type of camouflage of his uniform, the Azerbaijani flag on his shoulder[,] and a patch with his blood type listed on his sleeve, as is standard among Azerbaijani soldiers. The victim is shirtless, and is wearing only his underwear and trousers. After the decapitation, the crowd claps and cheers loudly.¹⁰⁰

In [a] second video [of the incident above], the victim’s head has been placed on the nearby carcass of a pig. The men speak in Azerbaijani, and the camera’s microphone captures them addressing the victim with comments such as, “You have no honour, this is how we take revenge for the blood of our martyrs” and, “This is how we get revenge—by cutting heads[.]” Sources have confirmed to

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ AMNESTY INT’L, *Azerbaijan 2021* (last visited Nov. 6, 2022), <https://www.amnesty.org/en/location/europe-and-central-asia/azerbaijan/report-azerbaijan/>.

¹⁰⁰ AMNESTY INT’L, *Armenia/Azerbaijan: Decapitation and War Crimes in Gruesome Videos Must Be Urgently Investigated* (Dec. 10, 2020, 7:07 AM), <https://www.amnesty.org/en/latest/news/2020/12/armenia-azerbaijan-decapitation-and-war-crimes-in-gruesome-videos-must-be-urgently-investigated/>.

Amnesty International that the victim was an Armenian civilian.¹⁰¹

A video from [a] second incident shows two men wearing uniforms consistent with the Azerbaijani military, including a clear Azerbaijani flag on one man's right shoulder and a ["cutaway"] helmet that is normally reserved for special operations forces. The victim is an older man in civilian clothes, who is pinned to the ground. He is filmed begging for mercy, repeatedly saying: "For the sake of Allah, I beg you." While the man speaks in Azerbaijani, he does not have an Azerbaijani accent. Amnesty International believes he was most likely an Armenian resident of Nagorno-Karabakh. One of the men is heard to say, "Take this one" and hands a knife over to the other man, who begins to brutally cut the older man's throat before the video abruptly ends.¹⁰²

Beyond the videos detailed above, seven others reveal violations by Azerbaijani forces, including Azerbaijani soldiers "kick[ing] and beat[ing] bound and blindfolded Armenian prisoners, and forc[ing] them to make statements opposing their government."¹⁰³

To counter any potential arguments that the accounts described above have been exaggerated, as well as to place responsibility for the violence with all the appropriate parties, it is important to recognize the virulent presence of anti-Armenian sentiment ("Armenophobia") among Azerbaijani society, cultivated in large part by Azerbaijani authorities. Instances of Armenophobia in Azerbaijan, especially since the modern inception of the Artsakh conflict, have been numerous and well-documented.¹⁰⁴ Many, if not all (at least those that can be directly or indirectly traced to Azerbaijani state actors), suggest potential liability under various

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ See OFF. OF OMBUDSMAN OF THE REPUBLIC OF ARTSAKH, *Armenophobia in Azerbaijan: Organized Hate Speech & Animosity Towards Armenians* (2018), <https://agbueurope.org/wp-content/uploads/sites/17/2017/02/Armenophobia-in-Azerbaijan-1.00-Interactive-25.09.2018.pdf> (presenting examples of Armenophobic conduct by Azerbaijani politicians, civil society figures, and organizations).

provisions of international law.¹⁰⁵ One particularly gruesome example of Armenophobic conduct occurred in 2004, when, during a NATO English-language training program in Budapest, Hungary, Azerbaijani army officer Ramil Safarov murdered his Armenian counterpart, Gurgen Margaryan, with an axe and attempted to murder another Armenian attending the program, Hayk Makuchyan.¹⁰⁶ It became clear at trial that “hatred for Armenia and Armenians . . . due to the war between [Armenia and Azerbaijan]” motivated Safarov to commit his crime, and that he showed no remorse.¹⁰⁷ Though sentenced to life in prison by the Hungarian court, upon return to Azerbaijan in 2012 to complete his sentence there, Safarov was “promptly pardoned, released[,] and given a hero’s welcome.”¹⁰⁸ Specifically, Safarov “was given an official pardon by the president, Ilham Aliyev, a promotion in rank, a free apartment[,] and back pay for the eight years he had spent in a Hungarian jail.”¹⁰⁹ Moreover, as recently as 2020, Safarov was “believed to still be in active service with the Azerbaijani army.”¹¹⁰ Whether or not Azerbaijani leadership intended to provoke a reaction from Armenia through its *carte blanche* rehabilitative treatment of Safarov, the message it sent in doing so is clear: Azerbaijani soldiers who murder Armenians in cold blood will be treated to a hero’s welcome by the Azerbaijani government.

Almost a decade after the Safarov affair, many of the soldiers who participated in the conquest of the 2020 Nagorno-Karabakh War “had been born long after the end of the first war” and “encountered ethnic[]Armenians for the first time.”¹¹¹ Moreover, “[e]verything they knew about these strangers came from state propaganda that has declared Armenia to be a fascist state and Armenians to be bloodthirsty murderers.”¹¹² The tragic, but predictable, result was that “[t]hose Armenians who were foolish enough to remain in their homes or too frail to leave, were put to the

¹⁰⁵ *See id.* (reviewing various provisions of international law brought into question by Armenophobic conduct sanctioned by Azerbaijani authorities).

¹⁰⁶ Shaun Walker, *Relatives of Armenian Axed to Death by Azeri Officer Call for Justice*, THE GUARDIAN (May 25, 2020), <https://www.theguardian.com/law/2020/may/25/relatives-armenian-axed-death-by-azeri-officer-call-justice-ramil-safarov>.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Ostrovsky, *supra* note 35.

¹¹² *Id.*

sword,”¹¹³ some literally so.¹¹⁴ One could draw a direct parallel here to Ramil Safarov’s use of an axe to murder Gurgun Margaryan.¹¹⁵ Furthermore, one could argue just as Safarov was actively rewarded with no punishment from the Azerbaijani government for his crime of murdering an Armenian,¹¹⁶ the Azerbaijani soldiers who participated in the 2020 Nagorno-Karabakh War anticipated similar treatment for similar acts.

As Amnesty International reports, “[i]nternational humanitarian law expressly prohibits acts of violence against any detained person, including prisoners of war, the mutilation of dead bodies, and the filming of confessions or denunciations for propaganda purposes.”¹¹⁷ Specifically, the third Geneva Convention contains provisions specifically targeted at prisoners of war.¹¹⁸ Furthermore, because “[w]il[l]ful killing, torture or inhuman treatment, and committing outrages upon personal dignity—in particular humiliating or degrading treatment and desecration of the dead—are war crimes,”¹¹⁹ and Azerbaijan’s military forces have been documented to have committed offenses that fall within this ambit,¹²⁰ it would be reasonable to argue Azerbaijan’s military forces have committed human rights abuses sufficient to trigger Global Magnitsky Act sanctions under E.O. 13818.

Adding insult to injury, after the end of the 2020 war, Azerbaijani President Aliyev inaugurated a so-called “Military Trophies Park” in Azerbaijan’s capital, Baku, a “sprawling exhibit featur[ing] dozens of Armenian tanks, trucks, and other heavy military equipment captured on battlefields during [the 2020

¹¹³ *Id.*

¹¹⁴ *Id.* (describing two Amnesty International verified videos depicting Azerbaijani troops holding down two men; the first presents a struggling elderly man crying for mercy in accented Azeri, and the other a shirtless young man; both executed with a knife, the latter beheaded to “loud cheers and clapping” from the crowd).

¹¹⁵ See Walker, *supra* note 106.

¹¹⁶ See *id.*

¹¹⁷ AMNESTY INT’L, *supra* note 100.

¹¹⁸ *Id.* (“The third Geneva Convention states that ‘prisoners of war must at all times be humanely treated

. . . [.] In particular, no prisoner of war may be subjected to physical mutilation . . . [.] Likewise, prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity. Measures of reprisal against prisoners of war are prohibited.”).

¹¹⁹ *Id.*

¹²⁰ See, e.g., *supra* notes 100–03.

Nagorno-Karabakh War].”¹²¹ The park opens with “an enclosure adorned with the helmets of Armenian soldiers killed in fighting,” then “takes visitors through a number of makeshift Armenian positions, including mock bunkers and barracks, adorned with wax models of Armenian soldiers.”¹²² The wax models “bear exaggerated features such as hooked noses and distorted faces,”¹²³ qualities the creators openly admitted they included with anti-Armenian animus in mind.¹²⁴ An Armenian observer of images circulated in the Azerbaijani media after the park’s opening commented how Azerbaijanis “brought their kids [there] to pretend to kill Armenians,” going on to question how Armenians “can . . . ever live with such people[].”¹²⁵ Another person who saw the photos of the park, a resident of an Armenian village near the Azerbaijani border who had arranged for fellow villagers to “receive military training in case of a new conflict,” expressed similar incredulity and cited this as “exactly why [they] must always prepare.”¹²⁶ Finally, an Azerbaijani journalist recognized the potentially irreversible detrimental effect dehumanizing Armenians may have on long-term prospects for peaceful coexistence between Armenians and Azerbaijanis.¹²⁷ Certainly, such negative public portrayals of Armenians pose a major obstacle to any possibility of a meaningful peaceful settlement to the Artsakh conflict. Unfortunately, they are hardly surprising given Azerbaijani leadership’s longtime track record of exploiting Armenophobia.¹²⁸ Azerbaijan must certainly deal with its immediate war criminals from 2020, and it has done so at least to some extent.¹²⁹

¹²¹ Neil Hauer, *Azerbaijan’s “Ethnic Hatred” Theme Park Draws Ire, Imperils Reconciliation*, RADIO FREE EUR./RADIO LIBERTY (Apr. 22, 2021, 9:05 PM), <https://www.rferl.org/a/azerbaijan-karabakh-theme-park-armenia-ethnic-hatred-aliyev/31217971.html>.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.* (“A few days after the park’s opening, the creators of the mannequins gave an interview removing all doubt as to their intentions, stating that they had ‘tried to create the most freakish depictions’ of Armenians possible.”).

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.* (“‘We’ve dehumanized the other side almost to the point of no return,’ she said. ‘When you call a race of people “dogs” [a slogan repeated by Aliyev during the war], how do you come back from that?’”).

¹²⁸ *Id.* (“Anti-Armenianism and demonization has been a part of [Azerbaijani President Ilham] Aliyev’s ideological stance for nearly two decades of his authoritarian rule and his government has projected it onto Azerbaijani society.”).

¹²⁹ See Ostrovsky, *supra* note 35 (“A recent announcement by the [Azerbaijani] Prosecutor General’s office that four soldiers had been

However, the underlying evil that motivated these soldiers to murder their victims in such cold blood runs deep within the roots of Azerbaijan's national consciousness, reinforced by official celebrations of convicted axe murderers¹³⁰ and public displays of dehumanization.¹³¹ This evil must be decisively exposed, addressed, and resolved to neutralize it as a source of destabilization of any future peace talks. This necessity reflects the commonsense notion that meaningful negotiation cannot occur if one party views the other as inherently inferior and deserving of brutality instead of basic human dignity.

IV. CONCLUSION

It has not been long since the first shots of the 2020 Nagorno-Karabakh War were fired that fateful morning of September 27, 2020. While fighting of similar intensity has not resumed since that day, there has certainly not been a lasting peace. There is a clear imbalance of military power weighing grossly in favor of Azerbaijan, which I argue has helped convinced the latter that violent armed conflict is a perfectly viable, if not preferable, option to resolving the Artsakh conflict in lieu of continued negotiation.

In the interest of applying Fisher and Ury's theory of principled negotiation to alter a negotiation status quo that has yielded limited tangible results, the international community must incentivize a return to negotiation by acknowledging Azerbaijan's military BATNA and taking steps to diminish its attractiveness. The United States, in its national capacity, can aid in pursuing this goal in two ways: first, by ending its waiver of § 907 of the 1992 FREEDOM Support Act, in light of Azerbaijan's abandonment of diplomacy over Artsakh and its ensuing preference for a military option; and second, by imposing Global Magnitsky Act sanctions against Azerbaijani leadership for human rights abuses committed under its control in Artsakh.

While these tactics are certainly punitive in a sense, they are also arguably necessary to restore conditions that would encourage a resumption of negotiation. So long as Azerbaijani leadership perceives military options as preferential to negotiation, there is no incentive to resume peace talks. Certainly, there is no guarantee the United States' implementation of these proposed tactics would move Azerbaijan back to the negotiating table if Azerbaijan nevertheless perceives a negotiated solution to the conflict as being

arrested for mutilating the bodies of Armenia's war dead and desecrating Armenian tombstones does not go far enough as long as more serious offenders go free.”).

¹³⁰ See Walker, *supra* note 106.

¹³¹ See Hauer, *supra* note 121.

less attractive than its at-that-point-diminished military BATNA. However, at the very least, implementation would move the metaphorical needle *closer* to a return to negotiation by affecting Azerbaijan's cost-benefit analysis in that direction, even if it may not be enough on its own to kickstart the process. Implementation would likely prove more effective if it occurred as part of a suite of coordinated similar efforts by other members of the international community, or by concerted action by the international community as a whole.

Unfortunately, while this article encourages optimism, I find it difficult at this point in time to imagine Azerbaijan ever agreeing to a negotiation that does not conclude with an unequivocal recognition of Azerbaijani territorial sovereignty over Artsakh (a possibility that would, of course, be a non-starter for parties seeking to secure and build upon Artsakh's independence as an entity separate and apart from Azerbaijan). Indeed, early August 2022 saw a renewed escalation in the conflict via an Azerbaijani attack on Artsakh positions.¹³² In response to the violence, the U.S. Department of State "urge[d] immediate steps to reduce tensions and avoid further escalation" and noted that "[t]he recent increase in tensions underscores the need for a negotiated, comprehensive, and sustainable settlement of all remaining issues related to or resulting from the Nagorno-Karabakh conflict."¹³³

Both the escalation and the resulting statement came just a few weeks after the Biden administration once again renewed the waiver of § 907 concerning Azerbaijan.¹³⁴ Indeed, Azerbaijan's aggression toward ethnic Armenians did not end with the ceasefire of November 9, 2020, but has continued well past that date with incursions into the internationally recognized territory of the Republic of Armenia itself.¹³⁵ Additionally, Azerbaijan has

¹³² See Heydar Isayev, Joshua Kucera & Ani Mejlumyan, *In Renewed Fighting, Azerbaijan Captures Additional Territory in Karabakh*, EURASIANET (Aug. 4, 2022), <https://eurasianet.org/in-renewed-fighting-azerbaijan-captures-additional-territory-in-karabakh>.

¹³³ Press Release, U.S. Dep't of State, De-Escalation In and Around Nagorno-Karabakh, U.S. Dep't of State (Aug. 3, 2022) (on file at <https://www.state.gov/de-escalation-in-and-around-nagorno-karabakh/>).

¹³⁴ Extension of Waiver of Section 907 of the Freedom Support Act with Respect to the Government of Azerbaijan, 87 Fed. Reg. 39,886 (July 5, 2022).

¹³⁵ See, e.g., Laurence Broers, *New Armenia-Azerbaijani Border Crisis Unfolds*, CHATHAM HOUSE (May 27, 2021), <https://www.chathamhouse.org/2021/05/new-armenian-azerbaijani-border-crisis-unfolds>; Robin Forestier-Walker, *Armenia and Azerbaijan's New-Old Border War*, AL JAZEERA (Nov. 19, 2021), <https://www.aljazeera.com/news/2021/11/19/armenia-and-azerbajians-new-old-border-war>; Alexa Fults & Paul Stronski, *The Ukraine War is*

continued to act hostilely against Artsakh as well, most recently blockading the civilian population of the region from receiving critical food, medical, and other supplies, and in doing so, creating a major humanitarian crisis that has prompted calls for condemnation in the U.S. House of Representatives.¹³⁶ That being the case, the most viable solution for restoring the negotiation process between Armenia and Azerbaijan at the present time would be to create the situation described in this article wherein, although Azerbaijan may desire to reconquer Artsakh (and perhaps even Armenia) in full, external forces acting in concert have created deterrents to preclude Azerbaijan from reconquering Artsakh—essentially the situation that followed the original 1994 ceasefire.

Developments in Azerbaijan could shift the calculus. For example, witnessing a national awakening in Azerbaijan would be interesting, similar to when Prime Minister Nikol Pashinyan rose to power in Armenia in 2018,¹³⁷ that gave a voice to reformers who wanted to genuinely pursue a negotiated settlement to resolve the conflict in Artsakh. Until that time, by withholding aid and imposing new sanctions to alter the cost–benefit analysis of continued intransigence, the United States can assert itself as a powerbroker in resolving the conflict between Armenia and Azerbaijan over Artsakh, and in so doing help revive the peace process in fact and not just in name.

Reshaping the Armenia–Azerbaijan Conflict, CARNEGIE ENDOWMENT FOR INT’L PEACE (Apr. 25, 2022), <https://carnegieendowment.org/2022/04/25/ukraine-war-is-reshaping-armenia-azerbaijan-conflict-pub-86994>.

¹³⁶ See H.R. Res. 108, 118th Cong. (2023).

¹³⁷ See AL JAZEERA, *Armenia: Nikol Pashinyan Elected as New Prime Minister* (May 8, 2018), <https://www.aljazeera.com/news/2018/5/8/armenia-nikol-pashinyan-elected-as-new-prime-minister>.