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Recommended Citation
Available at: http://digitalcommons.lmu.edu/ilr/vol36/iss3/3

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Caucasian Powder Keg: Ramil Safarov’s Transfer and its Effect on Armenian-Azerbaijani Relations

DANIEL ROSSI

I. INTRODUCTION

Throughout the centuries, the Caucasus region in the near east has hardly been a peaceful corner of the world. Situated on the divide between Europe and Asia, its position at the crossroads of western and eastern civilization combined with the fact that the region contains over fifty different ethnic groups means that the area has seen its fair share of turmoil.

The 20th century was no different for the Caucasus. Towards the end of the Cold War and immediately before the fall of the Soviet Union, friction again started to appear in the south Caucasus between the Armenian and Azerbaijani peoples. Ethnic tension had arisen between both countries as well as within each country; Armenia had a sizeable population of Azerbaijanis and Azerbaijan had a large population of Armenians. The main source of the conflict between the two peoples was centered on a disputed territory called Nagorno-Karabakh. An ancient area traditionally associated with Armenians and

4. See id. at 589.
5. See id.
Armenian culture since the Middle Ages, Nagorno-Karabakh is formally within the borders of Azerbaijan.

Tension from various pogroms in Azerbaijan along with the mutually aggressive behavior between the two sides led to in-fighting between Nagorno-Karabakh’s Armenian and Azerbaijani populations. After each country gained its independence as a result of the Soviet Union’s fall, the ethnic tension turned into a brutal and destructive six-year conflict between Azerbaijan and an ethnically Armenian-led Nagorno-Karabakh independence army, which Armenia heavily supported.

Tensions continued to run high after the war. In recent years, some progress was made as both sides came to the table to talk about the future of the conflict; progress soon came to a halt in 2012, when Azerbaijan had pardoned one of its military officers, Ramil Safarov, after he was convicted of having murdered Armenian military officer Gurgen Margaryan in Hungary in 2006. In September of 2012, Hungary transferred Safarov to Azerbaijan under the articles of the Convention on the Transfer of Sentenced Persons in order to serve out the remainder of his life sentence in his home country. Instead of enforcing the sentence, however, Azerbaijan welcomed Safarov as a hero, a brave soldier who had gotten revenge on the enemy by killing

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10. Frellick, supra note 3, at 581-83.

11. Gamaghelyan, supra note 7, at 36.


13. Id. at 14-16.


on his own terms, and subsequently pardoned and promoted him. As might be expected, the reaction from Armenia was one of outrage, and the fallout from the whole situation has led to a collapse in diplomatic relations between Armenia, Azerbaijan, and Hungary.

This note will argue that while Hungary’s transfer of Safarov was legitimate, Azerbaijan’s pardon of Safarov was contrary to international law and will further erode the relationship between Armenia and Azerbaijan by raising the possibility of war and by reinforcing negative ethnic views between the two peoples. Firstly, the note will explore the history of ethnic violence and tension between Armenians and Azerbaijanis, explain the circumstances of Safarov’s murder of Margaryan, Safarov’s trial and conviction in Hungarian court, and his transfer and pardon by the Azerbaijan government. Secondly, the note will explain the purpose and text of the Convention on the Transfer of Sentenced Persons (hereinafter “the Convention”), the treaty that permitted Hungary to transfer Safarov to Azerbaijan. Thirdly, the note will analyze the legality of Safarov’s transfer and pardon, arguing that while Hungary’s transfer of Safarov was legitimate, Azerbaijan’s pardoning of his crime violated Articles II, X, and XII of the Convention, in violation of international law. Finally, the note will explore the negotiation process that has existed between Armenia and Azerbaijan since the end of the Nagorno-Karabakh war, and explain that Azerbaijan’s pardon of Safarov will do nothing but destroy the likelihood of conflict resolution, raising tensions between the two nations.

II. THE VIOLENT HISTORY BETWEEN ARMENIA AND AZERBAIJAN AND SAFAROV’S CRIME AND TRANSFER

This section will begin by providing the historical context of Safarov’s motivation to kill Margaryan by exploring the violent history between Armenians and Azerbaijanis, the Nagorno-Karabakh War, and how the war impacted the peoples of Armenia, Azerbaijan, and Nagorno-Karabakh. The discussion will then move to the circumstances surrounding Safarov’s murder of Margaryan, his trial in Hungarian court, and his transfer to and pardon by Azerbaijan.

A. Tensions Created in Conflict: Ethnic Violence and the Nagorno-Karabakh War

To put the current situation between Armenia and Azerbaijan into context, one must understand the impact that ethnic violence, as well as the Nagorno-Karabakh War, has had on the two countries. Armenians, a Christian people, and Azerbaijanis, a Turkic Muslim people, have an ongoing history of conflict with one another dating back to the end of World War I. After the fall of the Tsarist Russian Empire, both Armenia and Azerbaijan briefly became independent Republics, with conflict soon erupting between the two nations and peoples. Before the end of World War I, Armenians living within the Ottoman Empire were victims of the Armenian Genocide, in which the Ottomans killed up to 1.5 million Armenians. This event “created a deep and lasting scar” and is a memory that “continues today to influence Armenia’s actions and attitudes towards its neighbors.” With the genocide still “fresh in the minds” of Armenians living within the new republic, and afraid that the advancing Ottoman army would subject them to the same fate, Armenians started to attack the local Turkic Azerbaijani population within Armenia. Both of the new republics also laid claim to Nagorno-Karabakh as well as the territories of Nakhichevan and Zangezur, fighting “over the fate of the three territories.”

In 1921, both countries came under the rule of the Soviet Union. The Soviet Union proclaimed to respect the cultural rights of minorities within the Union, and created the Armenian and Azerbaijani Soviet Socialist Republics. Creating each republic along “nationality lines” helped with the development of a national consciousness and cultural identity in Armenia and Azerbaijan. This put minority groups in each country, however, at a disadvantage; both the Armenians in Azerbaijan

20. Ajemian, supra note 6, at 385.
22. Ajemian, supra note 6, at 387.
23. Id.
25. Frelick, supra note 3, at 584.
26. Id. at 584-85.
27. Nadia Milanova, The Territory-Identity Nexus in the Conflict over Nagorno-Karabakh: Implications for OSCE Peace Efforts, 2 J. ETHNOPOLITICS AND MINORITY ISSUES IN EUROPE 3 (2003); Ajemian, supra note 6, at 387.
28. Ajemian, supra note 6, at 387.
29. Frelick, supra note 3, at 586.
30. Id. at 587.
and the Azerbaijanis in Armenia were not free to develop or express their respective cultures.\textsuperscript{31} In addition, the “nationality lines” that the Soviets drew were not completely accurate.\textsuperscript{32} Josef Stalin, at the time Lenin’s Commissioner of Nationalities,\textsuperscript{33} retained the borders in such a way that Nagorno-Karabakh, which at the time was ninety-four percent Armenian,\textsuperscript{34} remained a part of Soviet Azerbaijan. In addition, heavily Azerbaijani Zangezur remained a part of Armenia, while heavily Armenian Nakhichevan remained a part of Azerbaijan.\textsuperscript{35} Stalin did this as part of a “divide-and-rule policy,”\textsuperscript{36} which created “interdependent republics that would feel bound to remain in the [Soviet] union,” thus suppressing nationalist activity.\textsuperscript{37} Despite the issues of minority repression and inaccurate national borders, the Armenians and Azerbaijanis in Nagorno-Karabakh lived in relative peace throughout the Soviet period.\textsuperscript{38} This peace lasted until 1988, when Nagorno-Karabakh petitioned Azerbaijan to be annexed to Armenia.\textsuperscript{39} Armenians saw the unification of Nagorno-Karabakh and Armenia as important to the rebuilding of a dispersed Armenian nation.\textsuperscript{40} In response to the petition, “ethnic Azerbaijani delegates in Nagorno-Karabakh boycotted the vote.”\textsuperscript{41} Immediately afterwards, two Azerbaijanis were killed and many were injured in Stepanakert, the capital of Nagorno-Karabakh; the official cause of the casualties remains in dispute.\textsuperscript{42} Once word of the dead Azerbaijanis spread toward the Azerbaijani city of Sumgait, a violent pogrom began against Armenians, which resulted in the deaths of thirty-one people.\textsuperscript{43} Similar acts started occurring throughout Azerbaijan during 1988, with increasing numbers of Armenian residents coming under more danger.\textsuperscript{44} From 1989 until the fall of the Soviet Union, strife between the two ethnic groups persisted;

31. Id.
32. See id. at 587-88.
33. Id. at 587.
34. Ajemian, supra note 6, at 387.
35. Id.; Huseynov, supra note 12, at 12.
36. Huseynov, supra note 12, at 12.
37. Frelick, supra note 3, at 587-88.
40. Id. at 589.
41. Id. at 590.
42. Id.
43. Id.
44. Id.
an economic war between the two countries developed, spontaneous acts of violence against Armenians continued, and thousands of Armenians in Nagorno-Karabakh were deported from their homes. After the fall of the Soviet Union, Nagorno-Karabakh no longer sought unification with Armenia and subsequently declared its independence from Azerbaijan in 1992. No state, including Armenia, recognized the legitimacy of Nagorno-Karabakh’s independence; Armenia did, however, continue to lend support to Nagorno-Karabakh and remained involved in its politics.

Soon after Nagorno-Karabakh declared its independence, the Nagorno-Karabakh War officially started, with Azerbaijan launching military operations against Stepanakert. At the beginning of 1992, the ethnic Armenians of Nagorno-Karabakh had a number of military successes and also captured several Azerbaijani villages.

Since then, the war became a more general war for territory as opposed to one involving acts of ethnic violence. “Due to tactical failures,” the Azerbaijaniis began losing territory, including Shusha, the center of Azerbaijani life in Nagorno-Karabakh, where thousands of Azerbaijaniis became displaced as a result. Azerbaijan then responded by pushing into Nagorno-Karabakh and displacing thousands of Armenians; some of the displaced Armenians have since returned.

During a major political crisis in Azerbaijan in 1993, Armenian forces were able to take advantage of the political chaos and launch an offensive. As a result, Armenian forces were able to capture many towns outside of Nagorno-Karabakh, one of which included Safarov’s hometown, Jabrail.

After this string of Armenian victories, in 1994, “representatives of Armenia, Azerbaijan, and Nagorno-Karabakh signed a Russian-brokered ceasefire,” “cementing” the gains the Armenian military had

45. See id. at 591-93.
46. Id. at 593.
47. Id.
48. Ajemian, supra note 6, at 388.
49. Frelick, supra note 3, at 594.
50. Id. at 595.
51. Ajemian, supra note 6, at 388.
52. Frelick, supra note 3, at 595-96.
53. Id. at 596.
54. Id. at 596-98.
56. Ajemian, supra note 6, at 389.
made. As a result of the war, approximately 30,000 people died and 50,000 people were wounded. Furthermore, approximately 300,000 Armenians fled from Azerbaijan and 185,000 Azerbaijanis fled from Armenia; two-thirds of the original population of Nagorno-Karabakh, both Armenians and Azerbaijanis, are no longer there. Although “reconciliation [typically] follows conflict resolution,” this is not the case for Armenia, Azerbaijan, and Nagorno-Karabakh. This situation “remains the longest running and most intractable conflict in the region;” furthermore, its protracted negotiation process has given the Nagorno-Karabakh conflict the status of a “frozen conflict.”

B. Ramil Safarov’s Murder of Gurgen Margaryan in Hungary and his Subsequent Trial

In January of 2004, Azerbaijani military officer Ramil Safarov and Armenian lieutenant Gurgen Margaryan, both twenty-six years old at the time, traveled to Budapest to participate in a three-month English language course as a part of NATO’s Partnership for Peace program. Military officers of various nationalities, including Serbs, Uzbeks, Azerbaijanis, and Armenians attended the program, and despite the mix of backgrounds, the subject of international conflict between the attendants’ respective countries was never an issue outside of initial conversations. Balazs Kuti, Margaryan’s Hungarian roommate, said that Margaryan rarely talked about Armenian-Azerbaijani relations. In addition, Hayk Makuchyan, the other Armenian attending the program, stated that neither he nor Margaryan had any interactions with Safarov or the other Azerbaijani officer during the program; they would instead go straight to their rooms after class. During his first interrogation,
Safarov declared that he decided to kill Margaryan and Makuchyan after Safarov heard them mutter something in Armenian before smiling at him.69

On the night of February 18, Safarov left the premises where he and the other participants of the program were staying and bought an axe.70 Approximately five o’clock in the morning, Safarov entered the unlocked room of Margaryan and Kuti and swung the axe multiple times at Margaryan’s neck and face.71 A post-mortem report revealed that Safarov delivered a total of sixteen blows to Margaryan’s body.72 After Kuti woke up from the commotion to see his roommate being murdered, he yelled at Safarov to stop what he was doing; Safarov told him not to worry because he had no troubles with him.73 Kuti ran out of the room to wake up the other students for help.74

After murdering Margaryan, Safarov walked down the corridor looking to murder Hayk Makuchyan next.75 Along the way, Safarov admitted to asking one of the Uzbek participants if he wanted to join in the killing of Makuchyan.76 After failing to break down Makuchyan’s locked door with the axe, many of the other students surrounded Safarov to calm him down until Budapest police arrived and apprehended him.77 After the arrest, Budapest Police Major Valter Fulop commented to reporters that the murder was committed with “unusual cruelty” due to the murder’s extremely violent nature.78 A political motive was among the possibilities as to why Safarov committed the crime.79

At trial two years later in 2006, Safarov confessed to the murder of Margaryan and was given a life sentence in prison and a minimum of 30 years before any parole hearings could take place.80 Safarov presented

71. Id.
72. Grigorian, supra note 55.
73. Kuti Balazs, an eye-witness, supra note 65.
74. Ramil Safarov’s First Interrogation, supra note 70.
75. Grigorian, supra note 55.
76. Ramil Safarov’s First Interrogation, supra note 70.
77. Id.
many defenses to the court in order to somewhat justify his behavior. First, Safarov claimed his behavior was partly the result of post-traumatic stress stemming from his childhood in Nagorno-Karabakh, which included Armenians taking his hometown of Jabrail during the Nagorno-Karabakh War. Safarov’s father reported that during the Armenian taking of Jabrail, two cousins of Safarov lost their lives at the hands of the Armenian army.

Safarov then shifted the focus towards the alleged actions of Margaryan that supposedly pushed him to murder. Safarov first claimed that Margaryan insulted the Azerbaijani flag by wiping his boots with it, saying that the red on the flag represented the Azerbaijani blood that Armenians spilled during the war. Safarov also claimed that Margaryan played an audio recording of young Azerbaijani girls suffering during the Nagorno-Karabakh War. Witnesses, however, have not confirmed any of these two allegations by Safarov. Before the court gave its sentence, Safarov asked the court to take into consideration his mental state but refused to apologize for what he had done. The judge rejected this request, saying that the murder was premeditated and “carried out with extreme cruelty;” it was also “emphasized that the murder of a sleeping man in peace time is always a crime and cannot be an act of heroism.” Safarov appealed his sentence but the Hungarian appellate court upheld the trial court’s life sentence, noting that Safarov had killed Margaryan because he was Armenian.

C. Safarov’s Transfer to Azerbaijan and the International Reaction to His Pardon

In the summer of 2012, Armenian newspapers started reporting about the possible transfer of Safarov back to Azerbaijan, which took

81. Grigorian, supra note 55.
82. Id.
84. Grigorian, supra note 55.
85. Pearce, supra note 83.
86. Grigorian, supra note 55.
87. Id.
88. Hungary Jails Azerbaijani Killer, supra note 80.
89. Grigorian, supra note 55.

Serving the remaining twenty-five years from his sentence was the last thing that Safarov would do. Immediately upon returning to Azerbaijan, the president of Azerbaijan, Ilham Aliyev, pardoned Safarov and claimed that he was well within his power to pardon Safarov based on the Azerbaijani Constitution as well as article XII of the Convention.\footnote{See Barry, supra note 92; Hungary Red-Faced after Azerbaijan Frees Murderer, supra note 16.} Safarov was not only pardoned, but treated as a national hero. The government promoted him to the rank of major,\footnote{Id.} gave him an apartment in the Azerbaijani capital of Baku, and retroactively paid him to compensate for all of the time he spent incarcerated in Hungarian prison.\footnote{Id.}

On September 2, 2012, the Hungarian Ministry of Foreign Affairs (hereinafter “the Ministry”) denied that Hungary had known that
Azerbaijan would pardon and reward Safarov upon his return, citing a letter dated to August 15, 2012 from Azerbaijan that it would continue to enforce the sentence for at least twenty-five more years. The Ministry further condemned these actions by Azerbaijan. The Hungarian people followed suit by protesting against the decision, demanding an explanation from Hungarian Prime Minister Viktor Orban. On September 3, 2012, however, Orban was seemingly unapologetic about the whole affair, stating that this was an issue between Armenia and Azerbaijan that Hungary should not be involved in and that Hungary had done nothing wrong.

The international community responded in outrage to Safarov’s transfer and pardon. In Armenia, protestors pelted the Hungarian consulate with tomatoes and burned the Hungarian flag. Other examples of condemnation were shown outside of Armenia and Hungary as well. Secretary General Nikolai Bordyuzha of Russia said the pardon was a violation of international law; the U.S. Department of State, the French Ministry of Foreign Affairs, the Foreign Minister of Cyprus, and the European Parliament all expressed concerns over Azerbaijan’s actions and their effect on regional tensions between Armenia and Azerbaijan. In addition, further protests by Armenians outside of Armenia, such as those in Rostov-on-Don in Russia, took place at other Hungarian missions.

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103. Id.


105. Rácz, supra note 91.

106. Armenia Breaks Ties with Hungary over Clemency for Murder, supra note 19.


III. BACKGROUND AND APPLICABLE ARTICLES OF THE STRASBOURG CONVENTION ON THE TRANSFER OF SENTENCED PERSONS

The purpose of this section is to first explain why the Council of Europe drafted the Convention and what issues the Council was trying to address. Afterwards, it will describe the articles of the Convention that are relevant to the transfer and pardon of Safarov. These articles include: (1) Article II, which addresses the general principles of the Convention; (2) Article III, which lists the six requirements for a sentenced person to be transferred back to his home country; (3) Article IX, which addresses the effect of the transfer for the administering state; (4) Article X, which covers the situation in which the administering state decides to continue the sentencing state’s sentence; and (5) Article XII, which addresses the subject of pardons.

A. The Convention’s Background and Purpose

The Convention, opened for signing in Strasbourg, France on March 21, 1983[110] and entered into force on July 1, 1985, is one of multiple legal devices that the Council of Europe has penned over the last thirty years to address the issue of enforcing foreign criminal judgments.[111] The background of the Convention begins in 1978 during a conference of the European Ministers of Justice in Copenhagen, Denmark.[112] At this conference, the ministers discussed the various problems posed by foreign prisoners and the possibility of certain procedural measures that would allow for the transfer of foreign prisoners to carry out their sentences in their home countries.[113] This led the ministers to adopt Resolution No. 1, where the ministers asked the European Committee on Crime Problems (hereinafter “the CDPC”) to consider creating an agreement that would allow for a simple procedure in transferring foreign prisoners between member states and non-member states.[114] In response, the CDPC created the Select Committee of Experts on Foreign Nationals in Prison (hereinafter “the Committee”), the Committee’s primary task was to study the problems

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113. Id.
114. Id.
relating to the treatment of foreign prisoners in domestic prisons. The result of the Committee’s findings and studies led to the drafting and eventual adoption of the Convention.

According to the Convention’s explanatory report, the primary “purpose of the Convention is to facilitate the transfer of foreign prisoners to their home countries” with a simple and fast procedure. It is in this respect that the Convention was meant to supplement a previous prisoner transfer treaty, the European Convention on the International Validity of Criminal Judgments. Although this previous treaty allowed for the transfer of foreign prisoners to their home countries, the procedure was not efficient. In fact, not many states even ratified this previous convention.

There are numerous arguments in favor of prisoner transfers. One argument is that since a sentenced person will eventually return to his home country after release, the remainder of the sentence should be served in his home country. Another argument is that the process of rehabilitation would speed up if the sentenced person served their sentence in their home country. There are also financial arguments made as well; imprisonment costs a substantial amount of money and prisons are often overcrowded, two realities that may eventually lead to a weakened incentive to punish the person in the country where the crime was committed.

There appears to be three aspects of the Convention that separate it from previous prisoner transfer agreements that are necessary for a transfer to take place. First, in order for a transfer to occur, the consent of the sentenced person is required; without it, the transfer to the sentenced person’s home country would be impossible. The preamble lists rehabilitation of the sentenced person as a primary purpose that the Convention aims to address; a lack of consent would appear counterproductive to the sentenced person’s rehabilitation

115. Id. ¶ 2 (under Introduction).
116. Id. ¶¶ 3-5 (under Introduction).
117. Id. ¶ 8 (under General Considerations).
118. Id. ¶¶ 8, 10 (under General Considerations).
119. Id. ¶ 8 (under General Considerations).
120. Id.
121. Muller-Rappard, supra note 111, at 156.
122. Id.
123. Id.
124. Id. at 159.
125. Id. at 161.
A sentenced person may request a transfer from either the sentencing state or from the administering state. In addition, the sentencing state must inform the sentenced person of the Convention’s substance and must make sure that the sentenced person consents to the transfer “voluntarily and with full knowledge of the legal consequences.” Both the sentencing state and the administering state must inform the sentenced person of any decision they have made.

A second characteristic of the Convention is that both the sentencing state and the administering state must agree to the transfer. “Either state may request the transfer” from the other, but neither state is obligated to agree and comply with the request, even if the sentenced person has consented and all other requirements of a transfer are fulfilled. Because neither country has an obligation to honor a request for transfer, the Convention does not give a list of allowable reasons to turn down a request, although an explanation of why a country refused has proven to be useful.

The third characteristic of the Convention, which the European Convention on the International Validity of Criminal Judgments did not address either, is the requirement that the home state choose to either continue enforcing the sentence given by the sentencing state, or make a “‘conversion’ of the original sentence.” The option of “Conversion” allows the administering state to substitute the original sentence with a sentence that the same offense would receive in the state’s own legal system. If requested, the administering state must inform the sentencing state which of these two procedures it will follow before the sentencing state transfers the prisoner. Although the adjective “European” is not used in the actual name of the treaty itself, providing an option between “continued enforcement” and “conversion” of the sentence “reflects its European roots and multilateral character [of the Convention] in a much more flexible approach” to the countries involved in a transfer.

128. Muller-Rappard, supra note 111, at 161.
129. Id.
130. Id.
131. Id. at 162.
132. Id. at 162-63.
133. Id. at 163-64.
135. Id.
136. Id.
137. Mark Andrew Sherman, Book Review - Transfer Of Prisoners Under International Instruments And Domestic Legislation: A Comparative Study, By Michael Plachta. Frieburg,
Another unique aspect of the Convention is its focus on the human rights of sentenced persons.138 An argument in favor of transferring sentenced persons back to its home country is “rooted in humanitarian considerations” such as the separation from a sentenced person’s family and friends; being imprisoned abroad brings a certain set of challenges that should be avoided as much as possible for simple humanitarian reasons.139 The explanatory report to the Convention addresses such a concern directly. It also recognizes that penal policy has come to lay greater importance on rehabilitation as opposed to punishment; therefore, it might be in a foreign prisoner’s best interest to have rehabilitation take place in his home country.140

Behind this emphasis of rehabilitation in one’s home country are humanitarian concerns. The report of the Convention lists “difficulties in communication” due to language barriers, “alienation from local culture and customs,” and the lack of contact with relatives as reasons behind the purpose of the Convention.141 By addressing these humanitarian concerns, the sentenced person and the governments involved were thought to be better off as a result.142

B. Relevant Articles of the Convention to the Safarov Case

While the Convention contains twenty-five articles in total, one needs to refer to a handful of those articles to understand the legality of Hungary’s actions and the illegality of Azerbaijan’s actions in relation to Safarov’s case. Article II addresses the general principles of the Convention. Section 1 states that “[t]he Parties undertake to afford each other the widest measure of co-operation in respect of the transfer of sentenced persons in accordance with the provisions of this Convention.”143 In addition, section 2 states that a sentenced person may be transferred “in accordance with the provisions of this Convention, in order to serve the sentence imposed on him.”144

Article III of the Convention lists the six requirements for a

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139. Muller-Rappard, supra note 111, at 155-56.
140. Id.
141. Id.
142. Id.
144. Id. art. 2, § 2.
sentenced person to be transferred back to his home country. These six requirements are if: (1) the sentenced person is “a national of the administering state;” (2) “the judgment is final;” (3) at the time the transfer request is received, “the sentenced person still has at least six months of the sentence to serve;” (4) the sentenced person consents to the transfer; (5) the crime for which the sentenced was imposed constitutes a criminal offense in the administering state or would constitute an offense if it was committed in the administering state; and (6) both the sentencing and administering states agree to the transfer.

Article IX addresses the effect of the transfer for the administering state. Section 1 gives the administering state the option to either continue the enforcement of the current sentence or convert the sentence. Section 2 states that upon the sentencing state’s request, the administering state shall inform the sentencing state whether it will continue the enforcement of the sentence or choose to convert it. Finally, section 3 states that the administering state’s law will control in the case of continued enforcement, and that the administering state alone will be competent to make all appropriate decisions.

Article X covers the situation in which the administering state decides to continue the sentencing state’s sentence. Section 1 states that if the administering state decides to continue enforcement, it “shall be bound by the legal nature and duration of the sentence as determined by the sentencing State.” If the sentence by its nature or duration is not compatible with the law of the administering state, however, section 2 allows for the sentencing state to “adapt the sanction to the punishment or measure prescribed by its own law for a similar offence. “As to its nature, the punishment or measure shall, as far as possible, correspond with that imposed by the sentence to be enforced.”

Finally, article XII addresses the subject of pardon, amnesty, and commutation. It allows either the sentencing state or the administering

145. Id. art. 3, § 1.
146. Id.
147. Id. art. 9.
148. Id. art. 9, § 1.
149. Id. art. 9, § 2.
150. Id. art. 9, § 3.
151. Id. art. 10.
152. Id. art. 10, § 1.
153. Id. art. 10, § 2.
154. Id.
155. Id. art. 12.
state to “grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws.”

IV. THE LEGALITY OF HUNGARY AND AZERBAIJAN’S ACTIONS REGARDING THE TRANSFER OF SAFAROV

The following section will provide an analysis of the legality of Safarov’s transfer and pardon according to Articles II, III, X, and XII of the Convention. The section begins with the argument that Hungary’s transfer of Safarov to Azerbaijan was legal because it met the six requirements of Article III. The section will then shift the analysis to the legality of Azerbaijan’s pardon of Safarov, arguing that Azerbaijan violated Articles II, X, and XII of the Convention, therefore making Azerbaijan’s pardon of Safarov contrary to international law.

A. Hungary’s Decision to Transfer Safarov to Azerbaijan was In Accordance with the Convention

Although possibly very misguided, Hungary’s decision to comply with the request to transfer Safarov back to Azerbaijan was legal. As stated in Article III of the Convention, six conditions need to be met in order for a transfer to take place; Hungary has met all six of those conditions. First, Safarov, an Azerbaijani military officer born in Azerbaijan, was a national of Azerbaijan. Second, his sentence was final.

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156. Id.

157. While the focus of this note is on Safarov’s pardon and its effects on the relations between Armenia and Azerbaijan, it should be noted that there is speculation that Hungarian President Viktor Orban transferred Safarov in order to strengthen Hungary’s economic ties with Azerbaijan. See The Axeman Goeth, ECONOMIST (Sept. 8, 2012), http://www.economist.com/node/21562199. Orban’s government has followed a policy called ‘Eastern Opening,’ which focuses on increased trade and activity with near-eastern nations in order to attract investments to counter the effects of the Western European financial crisis. Rácz, supra note 91. Azerbaijan has been important in Hungarian foreign policy since 2006 thanks to “the large energy reserves of Baku, and the gas supply diversification possibilities offered by them.” Id. The newest element of ‘Eastern Opening’ “is the broadening of Hungarian policy interests [in Azerbaijan].” Id. This includes “attracting Azerbaijani investments in Hungary, looking for/securing contracts for Hungarian construction companies, and establishing a Hungarian trading house in Baku.” Id. In 2011, the trade exchange between Hungary and Azerbaijan was estimated to be around €52.8 million. Dariusz Kalan, Ill Winds Blow for Viktor the Troublemaker, EUOBSERVER (Sept. 7, 2012), http://euobserver.com/opinion/117470. In June 2012, a month before the Azerbaijani government agreed to buy Hungarian public bonds worth €2-3 billion, Orban met personally with Aliyev in Azerbaijan. Id. While discussing Safarov’s pardon, an Azerbaijani governmental official claimed that “Aliyev clinched the deal [Safarov’s transfer] personally… with Orban in Baku in July.” Id. This has since fuelled “speculation… that Orban extradited Safarov in return for a promise that Azerbaijan will buy Hungarian bonds.” Andrew Reittman, Axe Murder Complicates EU-Azerbaijan Love Affair, EUOBSERVER (Sept. 9, 2012), http://euobserver.com/foreign/117404.
and even affirmed by a Hungarian appellate court.\textsuperscript{158} Third, at the time of the request for his transfer, Safarov had at least twenty-five years left on his sentence before he would even be considered for parole, which was more than enough to fulfill the requirement that the sentenced person have at least six months remaining on his sentence.\textsuperscript{159} Fourth, Safarov agreed to his transfer, fulfilling the prisoner consent requirement. Fifth, the crime of murder is an offense in both the Republic of Azerbaijan and Hungary.\textsuperscript{160} Sixth, both Hungary and Azerbaijan consented to Safarov’s transfer, fulfilling the sentencing and administering states’ consent requirements. Therefore, because Hungary met all six of the requirements for the transfer of a sentenced person in the transfer of Safarov, Hungary complied with the Convention and did not violate international law.

B. Azerbaijan’s Decision to Pardon Safarov Violated the Articles of the Convention and International Law

Although Azerbaijan initially complied with the articles of the Convention during the process of Safarov’s transfer, the country ultimately violated the articles of the Convention by pardoning Safarov. The first article Azerbaijan violated through Safarov’s pardon was Article II of the Convention.\textsuperscript{161} As previously introduced, Article II, section 1 of the Convention states that “[t]he Parties undertake to afford each other the widest measure of co-operation in respect of the transfer of sentenced persons in accordance with the provisions of this Convention.”\textsuperscript{162} Azerbaijan had previously abided by this provision in Article II by sending the Hungarian government a letter, dated August 15, 2012, informing the country that it would continue to enforce Safarov’s sentence in accordance with Article IX of the Convention.\textsuperscript{163} Additionally, Azerbaijan supplemented this promise by informing Hungary of Article 57.3 of Azerbaijan’s Criminal Code, which states

\textsuperscript{158} Azeri Jailed for Life in Hungary for Killing Armenian, supra note 90.
\textsuperscript{160} CRIM. CODE OF AZERBAIJAN REPUBLIC, art. 120, available at http://www.legislationline.org/documents/section/criminal-codes/country/43.
\textsuperscript{162} Convention on the Transfer of Sentenced Persons, supra note 126, art. 2, § 1.
that a convict serving a life sentence in prison may only be granted parole after serving at least twenty-five years. Azerbaijan immediately broke this promise to Hungary, however, by pardoning Safarov upon his return to Azerbaijan. Azerbaijan blatantly violated its duty to Hungary by providing “the widest measure of co-operation” regarding Safarov’s transfer when it informed Hungary of the specific provisions of Azerbaijan’s Criminal Code while concealing its intention to not apply them in practice upon Safarov’s return.

In addition to requiring “the widest measure of co-operation” when transferring a prisoner, Article II, section 2 states that a prisoner will be transferred back to his home country “in order to serve the sentence imposed on him.” Most importantly, this means that the Convention prohibits the transfer of a prisoner “in order to evade the sentence imposed on him.” Although Article XII allows for the pardon of a prisoner when a transfer is complete, when one reads it together with Article II, section 2, the Convention suggests that the home country may not pardon the prisoner “immediately and for any reason.”

While citing Article XII as its primary reason for pardoning Safarov, Azerbaijan ignored and violated Article II, section 2 by immediately pardoning Safarov without reason instead of continuing to enforce his sentence as previously promised. Such an immediate and swift pardon was a clear demonstration that Safarov’s transfer “obviously did not have the purpose that [Safarov] serve his sentence there.” This immediate pardon, in addition to not continuing Safarov’s Hungarian sentence as promised in the August 15, 2012 letter, ultimately means that “Azerbaijan breached the international law obligations of good faith and cooperation in the performance of a treaty.”

The second article that Azerbaijan’s pardon of Safarov breached was Article X of the Convention. Under Article IX, Azerbaijan, as the administering state in the transfer, can choose to either continue
enforcing the sentence that Hungary, the sentencing state, gave Safarov or to convert the sentence.\textsuperscript{174} As shown in the August 15, 2012 letter to Hungary, Azerbaijan clearly chose to continue enforcing Safarov’s life sentence.\textsuperscript{175} Thus, Article X of the Convention, which covers situations in which the administering state continues enforcement, binded Azerbaijan.\textsuperscript{176}

Section 1 of Article X states that the administering state “shall be bound by the legal nature and duration of the sentence as determined by the sentencing state.”\textsuperscript{177} Reading only section 1, Azerbaijan clearly violated Article X; it failed to punish Safarov at all, let alone punish him according to the “nature and duration” of the Hungarian court’s life sentence for murder.\textsuperscript{178} This is not a violation in and of itself, however, because Section 2 provides that in the case the sentencing state’s sentence is incompatible with the law of the administering state, then the administering state can “adapt the sanction to the punishment as prescribed by its own law for a similar offense,” corresponding with the sentence given in the sentencing state.\textsuperscript{179} There are various examples from foreign cases that showcase how an administering state may adapt a sentencing state’s punishment to its own law when the punishment is incompatible with the administering state’s law.

\textit{Regina v. Secretary of State for the Home Department} is an example of how an administering state adapted a sentencing state’s punishment to its own law when the sentence was incompatible.\textsuperscript{180} In late 1984, Spanish authorities arrested British citizen Gary John Read and the court sentenced him with the offense of “introducing counterfeit currency into Spain;” he received a prison term of twelve years and one day in 1985.\textsuperscript{181} In 1986, Read successfully applied for transfer back to the United Kingdom under the provisions of the Convention as well as the United Kingdom’s 1984 Repatriation of Prisoner’s Act.\textsuperscript{182} The United Kingdom, like Azerbaijan, promised to continue the enforcement of Read’s sentence, and therefore had to abide by article X

\begin{enumerate}
\item[174.] Convention on the Transfer of Sentenced Persons, supra note 126, art. 9.
\item[175.] A Possible Chronology of the Azeri-Hungarian Negotiations, supra note 163.
\item[176.] See Novak, supra note 161.
\item[177.] Convention on the Transfer of Sentenced Persons, supra note 126, art. 10, § 1.
\item[178.] See Novak, supra note 161.
\item[179.] Convention on the Transfer of Sentenced Persons, supra note 126, art. 10, § 2.
\item[180.] See generally Regina v. Secretary of State for the Home Department Ex. p. Read (Gary John), [1988] 2 W.L.R. 236, 239 (Eng.).
\item[181.] Id. at 236.
\item[182.] Id.
\end{enumerate}
of the Convention.\textsuperscript{183} British law, however, was incompatible with Read’s Spanish sentence because it only allowed for a maximum ten years in prison for the same crime.\textsuperscript{184} In addition, due to the small amount of counterfeit money that Read introduced, under British law he would not have been incarcerated for more than four years if the crime had occurred in the United Kingdom instead of in Spain.\textsuperscript{185}

The \textit{Regina v. Secretary of State for the Home Department} court, after analyzing and interpreting the meaning of Article X of the Convention, came to two simple conclusions.\textsuperscript{186} First, if a foreign sentence is less than the maximum domestic sentence, then the prisoner serves the foreign sentence in full.\textsuperscript{187} Second, if the foreign sentence is greater than the maximum domestic sentence, then it shall be reduced.\textsuperscript{188} According to the court, “[t]his . . . was the intention of article 10. To go further would fly in the face of paragraph 2 of article 10.”\textsuperscript{189} The court subsequently ordered a reduction of Read’s sentence in line with British law.\textsuperscript{190}

\textit{Gilbey v. HM Advocate} presents another scenario in which the administering state’s law was incompatible with the prisoner’s sentence from the sentencing state. On October 19, 2001, Thai authorities arrested Julian Gilbey, a British citizen, for drug trafficking.\textsuperscript{191} Gilbey attempted to board a plane with more than 3.3 grams of high-quality heroin, which earned him a death sentence under Thai law (which was later reduced to life-in-prison).\textsuperscript{192} After two failed attempts to appeal in 2004 and 2006, Gilbey requested to be transferred back to the United Kingdom in 2009 in accordance with the Convention on the Transfer of Sentenced Persons; the United Kingdom decided to continue enforcement of the punishment.\textsuperscript{193} Similar to the previous case, British law was not compatible with Thai law in that a drug trafficking offense would not receive a sentence such as the death penalty or a life sentence in the United Kingdom.\textsuperscript{194} Thus, the goal for the \textit{Gilbey} court, like the

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\item \textsuperscript{183} Id. at 240.
\item \textsuperscript{184} Id. at 241.
\item \textsuperscript{185} Id.
\item \textsuperscript{186} Id. at 242.
\item \textsuperscript{187} Id.
\item \textsuperscript{188} Id.
\item \textsuperscript{189} Id.
\item \textsuperscript{190} See id. at 248.
\item \textsuperscript{191} Gilbey (Julian) v. H.M. Advocate, (2010) H.C.J. 4 [1] (Scot.).
\item \textsuperscript{192} Id.
\item \textsuperscript{193} Id.
\end{itemize}
\end{footnotesize}
goal in *Regina v. Secretary of State for the Home Department*, was to “fix an appropriate punishment” part referable to a life sentence received by the prisoner in Thailand for drug trafficking offenses.\(^\text{195}\)

After interpreting Article X of the Convention, the *Gilbey* court ruled similarly to the court in *Regina v. Secretary of State for the Home Department*; Article X allows for the administering state “to enforce the sentence imposed in the sentencing state,” but the administering state “does so in accordance with the requirements of its own penal system.”\(^\text{196}\) The court also took into account the severity of Gilbey’s crime, noting the amount of heroin he attempted to smuggle.\(^\text{197}\) As a result, the British court gave Gilbey a sentence of 10 years, which corresponded “as far as possible” to the essential characteristics of the original sentence and, in particular, to the earliest date at which Mr. Gilbey might have become eligible for parole had he remained in Thai custody.\(^\text{198}\)

If one follows the language of Article X, section 2, while also following the reasoning of *Regina v. Secretary of State for the Home Department* and *Gilbey v. HM Advocate*, Azerbaijan certainly did not have to enforce Hungary’s sentence of Safarov word for word if the Hungarian prison sentence was incompatible with Azerbaijani law.\(^\text{199}\) As demonstrated by Azerbaijan’s pardon despite their August 15, 2012 letter to Hungary, the sentence was unacceptable and inconsistent pursuant to Azerbaijani law.\(^\text{200}\) Whereas Azerbaijan allows for conditional parole after at least twenty-five years of incarceration, Hungarian law requires thirty years.\(^\text{201}\) This would mean that once Hungary transferred Safarov back to Azerbaijan, Azerbaijan could have lowered the amount of time Safarov needed to serve by five years.\(^\text{202}\)

This is obviously not what Azerbaijan did by releasing Safarov immediately and clearing him of all wrongdoing without any domestic review by the Azerbaijani courts.\(^\text{203}\) Azerbaijan selected the option of


\(^\text{196}\) *Id.* at 1065.

\(^\text{197}\) *Id.* at 1064.

\(^\text{198}\) *Id.* at 1063.


\(^\text{200}\) Armenia Breaks Ties with Hungary over Clemency, *supra* note 19.

\(^\text{201}\) *Id.*


\(^\text{203}\) *Texts Adopted*, *supra* note 14.
continuing Safarov’s enforcement, which bound it to Article X as well as obligated it to apply the Azerbaijani equivalent of Safarov’s Hungarian sentence.\(^{204}\) Instead, Azerbaijan pardoned Safarov when its only option would be to lower Safarov’s sentence by five years.\(^{205}\) This decision by Azerbaijan to not abide by its obligation to Article X and apply its domestic law to Safarov’s sentence means that it violated Article X, “fly in the face of paragraph 2,”\(^{206}\) therefore violating the Convention for a second time.\(^{207}\)

Azerbaijan has never addressed the violation of Articles II and X in regards to Safarov’s pardon; the country focused its arguments on Article XII, which allows a country to pardon, though with limitations.\(^{208}\) According to Article XII, “[e]ach party may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws.”\(^{209}\) Azerbaijan claims that since the pardon was in accordance with the Azerbaijani Constitution along with Article XII, which allows for pardons, it did not do anything contrary to the Convention or international law.\(^{210}\) It seems at first that Azerbaijan’s contention is seemingly correct, since Article XII “expresses the right to pardon in such a plain language that it seems almost impossible to argue that the contested move [of Safarov] constitutes a breach of the Convention.”\(^{211}\) Ultimately, this is an incorrect argument.

As discussed previously, when one reads Article XII with Article II, the Convention does not allow a prisoner to transfer so that the prisoner may evade the sentence imposed on him.\(^{212}\) To allow a prisoner to evade the sentence imposed on him would go directly against the purpose of “enforcing the sentence” of the transferred prisoner.\(^{213}\) In addition, the preamble of the Convention states that cooperation through the treaty “should further the ends of justice.”\(^{214}\) Allowing a prisoner to

\(^{204}\) Convention on the Transfer of Sentenced Persons, supra note 126, art. 10.
\(^{205}\) See Convention on the Transfer of Sentenced Persons, supra note 126, art. 10; see generally Read (Gary John), 2 W.L.R. at 242; Gilbey (Julian) v. H.M. Advocate, (2010) H.C.J. 4 [1] (Scot.).
\(^{206}\) See Read (Gary John), 2 W.L.R. at 242.
\(^{207}\) See Novak, supra note 161.
\(^{208}\) Top official: Safarov’s pardon fully complies with European Convention on Transfer of Sentenced Persons, supra note 159.
\(^{209}\) Convention on the Transfer of Sentenced Persons, supra note 126, art. 12.
\(^{210}\) Top official: Safarov’s pardon fully complies with European Convention on Transfer of Sentenced Persons, supra note 159.
\(^{211}\) Novak, supra note 161.
\(^{212}\) Movsesian, supra note 168.
\(^{213}\) Id.
\(^{214}\) Convention on the Transfer of Sentenced Persons, supra note 126, at Preamble.
evade a deserved sentence would in no way “further the ends of justice,” especially in a case like Safarov’s where due process was afforded to him and the evidence of his violent murder was undisputed.

It seems then that although the language of Article XII seems so plain as to allow a pardon at any time, to do so would directly violate the whole purpose of the Convention: enforcing a prisoner’s sentence. Article XII thus appears to be a catchall provision, to be used in a situation where something has gone wrong in the transfer process or in the sentencing process of the sentencing state. If Article XII is viewed as a catchall provision, a last resort, it would mean that the Articles before it, which would be Articles II and X in Azerbaijan’s case, would preempt article XII; those two articles would have to be followed first before Article XII becomes a usable option. As discussed previously, Azerbaijan did not follow Articles II and X of the Convention and instead, used Article XII immediately. In doing so, Azerbaijan ignored the primary Articles of the Convention and immediately used the catchall provision intended for a situation that had not arisen.

Even in the event that an administering state such as Azerbaijan had followed the preceding articles that preempt Article XII before invoking Article XII’s power to pardon, the fact that the Convention’s purpose is to enforce sentences implies that a pardon cannot be granted freely. Arguments have been made that the administering state “may not pardon a prisoner immediately and for any reason at all,” which means that “there must be some changed circumstance casting doubt on the sentence,” such as “the prisoner’s remorse or good behavior” before the state proceeds to possibly pardoning the person.\textsuperscript{215} Unfortunately, foreign cases do not provide many examples of the sorts of “changed circumstances” that would cast enough doubt on a sentence to justify a pardon. Regina (Shields) v. Secretary of State for Justice, however, does provide an example of the “changed circumstances” that could justify the use of Article XII.\textsuperscript{216}

In Shields, Bulgarian authorities arrested Michael Shields, a British citizen, for attempted murder on May 30, 2005; the Bulgarian court sentenced him to ten years in prison.\textsuperscript{217} Earlier that day, English soccer fans had been involved in a fight at a diner in which they had assaulted and inflicted serious injuries on a barman.\textsuperscript{218} Authorities later arrested

\begin{itemize}
  \item 215. Movsesian, \textit{supra} note 168.
  \item 217. \textit{Id.} at 153.
  \item 218. \textit{Id.} at 152.
\end{itemize}
Shields for being involved. Another one of the arrested men signed a confession after Shields’ trial that stated that Shields was not the assailant. Despite this confession absolving Shields of any wrongdoing, the Bulgarian court still denied Shields’ multiple appeals. In 2007, Bulgaria transferred Shields to the United Kingdom under the Convention on the Transfer of Sentenced Persons in order to serve the remainder of his sentence at home. In the United Kingdom, there had been much public support for Shields to be pardoned, calling his sentence a miscarriage of justice.

In deciding whether or not the Secretary of State had the power to consider granting a pardon, the Shields court discussed the scenario in which the Convention intended for a pardon to be issued. The court concluded that pardons are “intended in very rare cases to secure justice which the concluded court process cannot achieve.” Such a situation might arise when “fresh evidence was available which was, or would be, inadmissible or not capable of being given in court proceedings” that would acquit the prisoner. For example, the court in Shields notes that a pardon could be appropriate where newly discovered video surveillance, though inadmissible, inconclusively establishes the prisoner’s innocence. If the court concludes that this new evidence, which was unavailable at the time of trial, justifies a conclusion that a prisoner is “morally and technically innocent,” then the court may consider granting a pardon, although it is not required to.

Azerbaijan’s reasoning that it had the right to grant Safarov a full pardon thus fails on two counts. First, the Convention implies that in order to grant a pardon, “there must be some changed circumstance casting doubt on the sentence,” such as “the prisoners remorse or good behavior.” There exists no evidence to suggest that any new circumstances ever arose to cast doubt on Safarov’s sentence for the murder of Margaryan. On the contrary, Azerbaijan’s August 15 letter to Hungary promising to continue enforcement of Safarov’s sentence

219. Id.
220. Id. at 153.
221. Id.
222. Id.
223. Id.
224. Id. at 161-62.
225. Id. at 161.
226. Id. at 161-62.
227. Id. at 162.
228. See Movsesian, supra note 168.
229. Movsesian, supra note 168.
supports the contention that Azerbaijan had no doubts about the sentence itself. In addition, not only did Safarov fail to show any remorse for his actions, which may cast some doubt on his sentence, he was in fact justifying them, claiming that he was exacting revenge for the Nagorno-Karabakh War and that Margaryan allegedly insulted the Azerbaijani flag.

Second, the circumstances of Safarov’s sentence are not analogous to the type of situation that the Shields court suggests would allow a party to the Convention to consider granting a pardon in accordance with Article XII. No new evidence arose between Safarov’s trial and his pardon; there was no surveillance video suggesting the contrary or a confession from another individual clearing Safarov of his wrongdoing. This lack of evidence makes it impossible for an Azerbaijani court to have found Safarov as “morally and technically innocent,” meaning that Azerbaijan should not have even considered granting Safarov a pardon.

Because the purpose of the Convention is to enforce the sentences of prisoners, Article XII’s power to pardon is a catchall provision to resort to should there be a problem in the transfer or in the sentencing process from the original sentencing state. Viewed as a catchall provision, the state must first follow the previous articles of the Convention that preempt Article XII, which in Azerbaijan’s case are Articles II and X. Even if an administering state such as Azerbaijan were to pardon under Article XII, it still should not pardon a prisoner for merely any reason. Past case law interpreting appropriate scenarios for an Article XII pardon includes changed circumstances casting doubt on the prisoner’s sentence or the presence of new evidence that would allow a court to find the prisoner “morally and technically innocent.” In Safarov’s case, neither of these scenarios was present. Therefore, Azerbaijan violated Article XII of the Convention by disregarding Articles II and X before invoking Article XII, and by immediately pardoning Safarov after his transfer without a proper reason.

230. See A Possible Chronology of the Azeri-Hungarian Negotiations, supra note 163.
233. Id.
234. Id.
235. See Movsesian, supra note 168.
237. See Movsesian, supra note 168; see also Shields, [2010] Q.B. 150 at 153.
unfavorable, the most unfavorable part of this whole situation, however, is the negative effects that Safarov’s pardon will have on the already tense relations between Armenia and Azerbaijan.

V. THE EFFECTS OF SAFAROV’S PARDON ON THE RELATIONSHIP BETWEEN ARMENIA AND AZERBAIJAN

This final section of the note will begin by explaining the state of Armenian-Azerbaijani relations between the end of the Nagorno-Karabakh War and Safarov’s pardon, focusing on the negotiation process between the two countries. It will then describe the ramifications that Safarov’s pardon will have on Armenian-Azerbaijani relations. These ramifications include both the short-term effect of significantly raising tensions, which might potentially incite another war, and the long-term effect of worsening the already negative ethnic views that Armenians have towards Azerbaijanis.

A. The Negotiation Process Between Armenia and Azerbaijan Since the End of the Nagorno-Karabakh War

Since the end of the Nagorno-Karabakh War, the momentum of hostilities between Armenia and Azerbaijan has hardly ceased. Clashes have continued since the end of large-scale warfare, increasing in intensity up until the present day. Despite the horrors of the war and the continued skirmishes, however, a negotiation process has existed since 1992 that has sought a peaceful resolution to the Nagorno-Karabakh conflict. Spearheading the original 1992 mediation process was the Organization for Security and Co-operation in Europe [hereinafter OSCE] Minsk Group, whom has dominated the peace process ever since. The Minsk Group, co-chaired by France, Russia, and the United States, is responsible for finding a solution to the Nagorno-Karabakh conflict. Since these original 1992 negotiations, there have been a number of various proposals and summits between Armenia, Azerbaijan, and Nagorno-Karabakh.

In 1997, the Minsk Group presented the first two major proposals

238. See Turgut, supra note 9, at 341.
239. Id.
240. Ajemian, supra note 6, at 389.
242. Ajemian, supra note 6, at 389.
244. See Huseynov, supra note 12, at 14; Milanova, supra note 27.
for peace. The first was a packaged deal that called for an end to all disputes among the parties, and proposed that Nagorno-Karabakh remain a sovereign part of Azerbaijan. The second was a step-by-step proposal that proposed the withdrawal of Armenian forces from Azerbaijani territory outside of Nagorno-Karabakh, the return of displaced persons to their homes, and an end to economic embargoes; the status of Nagorno-Karabakh would become a talking-point once the parties completed all of these steps. Although Armenia and Azerbaijan agreed to both of these plans, Nagorno-Karabakh authorities rejected both, citing the importance of Nagorno-Karabakh’s independence.

After the failure of the 1997 proposals, more failed talks followed. In 1998, the Minsk Group presented a common state proposal in which Nagorno-Karabakh would have de facto and not de jure independence status. Azerbaijan rejected this proposal as “defeatist.” The Key West and Paris talks of 2001 reportedly saw the possibility of a land-exchange; Armenian-held Azerbaijani territories in exchange for an Armenian-governed Nagorno-Karabakh. Domestic pressure in both countries destroyed the negotiations and led leaders in each country to deny that the talks ever happened, which only delayed negotiations further.

In 2004, a series of meetings took place in Prague between Armenian and Azerbaijani officials, which led to the Minsk Group presenting the Armenian and Azerbaijani presidents with basic principles outlining a settlement in 2005. In 2006, the Minsk co-chairman “partially revealed the basic principles” in order to pressure the parties to agree to them. The basic principles consisted of actions such as the “renunciation of the use of force . . . gradual withdrawal of Armenian forces from occupied districts,” and “restoration of communications between Armenia and Azerbaijan.”

In 2007, the Minsk Group presented these same principles to Armenia and Azerbaijan in Madrid, reaffirming the principles as a basis
for settlement. 255 This was a significant development because it was “no longer a non-paper but an official proposal deposited with the Chairman-in-office of the OSCE which would serve as a basis for the future negotiations.” 256 With the “Madrid Proposals,” both Armenia and Azerbaijan came to an agreement that “the final status [of Nagorno-Karabakh] would be determined at the last stage after all other confidence building measures had been put in place.” 257 These measures, however, would only take place after a mechanism for determining Nagorno-Karabakh’s status had been reached as well. 258 Once again, the parties were not able to solve the conflict, disagreeing over the Madrid principles themselves as well as the mechanism for determining Nagorno-Karabakh’s status. 259

The latest of the talks to resolve the Nagorno-Karabakh conflict occurred in October of 2010. 260 With Russian president Dmitry Medvedev hosting the negotiations, both the Armenian and Azerbaijani sides “agreed to swap prisoners captured during fighting and the bodies of soldiers and civilians killed in the recent conflicts.” 261 Needless to say, despite the past failures of the negotiations and the hostility between the two sides, the meeting that Medvedev hosted inspired “a somewhat moderate optimism” that the conflict could still end peacefully. 262 Azerbaijan’s pardon of Safarov, however, has effectively destroyed this optimism.

B. Safarov’s Pardon and an End to the Hope for Peace

On the one hand, Safarov’s pardon had the immediate effect of raising tensions between Armenia and Azerbaijan, presenting the possibility of war once again. 263 In the immediate aftermath of Safarov’s pardon, the Armenian reaction was one of outrage, with Armenian president Serzh Sarkisian stating that Armenia does not “want a war, but if we [Armenia] have to, we will fight and win. We are not afraid of killers, even if they enjoy the protection of the head of state.” 264 Armenian Foreign Minister Edward Nalbandian later expounded on

255. Id.
256. Id.
258. Id.
259. Id.
260. Turgut, supra note 9, at 342.
261. Id.
262. Id.
263. Barry, supra note 92.
Armenia’s anger over Azerbaijan’s actions in a speech at the United Nations on October 1, 2012.\(^\text{265}\) In the speech, Nalbandian accused Azerbaijan of violating international commitments, instilling “anti-Armenian hysteria” into Azerbaijani society, and blatantly infringing upon the human rights of Armenians.\(^\text{266}\) Nalbandian also accused Azerbaijan of ruining the Nagorno-Karabakh peace process, “warmongering,” “systematic ceasefire violations” on the borders of Nagorno-Karabakh and Armenia, and working with Turkey to continue a blockade of economic cooperation with Armenia “until there are no more Armenians in Armenia.”\(^\text{267}\) In response to the criticism, Azerbaijan claimed that the “Armenian reaction was ‘hysterical’ and that President Sargsyan of Armenia had even secretly ordered the assassination of Safarov.”\(^\text{268}\)

This escalation of hostility threatens to end the peace process that, since the end of the Nagorno-Karabakh War, has prevented Armenia and Azerbaijan from “sliding back into bloody conflict.”\(^\text{269}\) Without a peace process, “what’s left is a vacuum, which gets filled with an escalation toward war,” making the already tumultuous situation “suddenly more dangerous.”\(^\text{270}\) Such fears that another war between Armenia and Azerbaijan may begin due to Safarov’s pardon is not just mere speculation either.\(^\text{271}\) Various governmental bodies from around the world, including the European Union and the United States House of Representatives Committee on Foreign Affairs, have expressed concern that Safarov’s pardon will obliterate “any near-term hopes for building trust between Armenia and Azerbaijan,” undermining the


\(^{266}\) Id.

\(^{267}\) Id.

\(^{268}\) Simon Tisdall, Pardoning of Azeri Axe Murderer Raises Tensions in the Caucasus, GUARDIAN (Sept. 6, 2012), http://www.guardian.co.uk/commentisfree/2012/sep/06/azeri-axe-murderer-caucasus.

\(^{269}\) Barry, supra note 92.

\(^{270}\) Id.

\(^{271}\) See Armenian FM Slams Azerbaijan over Safarov Affair at UN, supra note 265; Statement by the spokespersons of EU High Representative Catherine Ashton and Commissioner Stefan Füle on the release of Ramil Safarov, Brussels (Sept. 3, 2012); Howard Berman Writes Secretary of State Clinton, Calls for Azerbaijan’s Suspension from NATO Partnership for Peace Program and Ending Arms Sales to Azerbaijan, UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE ON FOREIGN AFFAIRS DEMOCRATS (Sept. 27, 2012), http://democrats.foreignaffairs.house.gov/press_display.asp?id=1003.
“attempts to foster peace in the volatile Caucasus region.”

Furthermore, Armenia’s plans to reopen an airport within Nagorno-Karabakh could raise even more hostilities, due to the fact that the population in and around Nagorno-Karabakh “is extremely vulnerable to violations of ceasefire and escalation of the conflict.” At the moment, international efforts to prevent immediate conflict have worked, “but more by luck than judgment.”

The fact that this conflict between Armenia and Azerbaijan is a “‘frozen-conflict’ left over from the Cold War,” however, means that it “can and will re-ignite with appalling speed if ignored for long enough.”

On the other hand, Safarov’s pardon will have the longer-lasting effect of negatively influencing the ethnic tensions and feelings Armenians have toward Azerbaijanis. Armenians often refuse “to acknowledge Azerbaijanis as a distinct ethnic group.” Armenians closely associate “the Turkic speaking Azerbaijanis with Turks,” whose ancestors Armenians see as having “played a devastating role in Armenian history” through invasions, massacres, and colonization of the area since the 10th century. These historic injustices “culminated in the Armenian Genocide of 1915 in Ottoman Turkey.”

“Though the Azerbaijanis were never a part of the Ottoman Empire,” Armenians consider the Azerbaijanis to be members of the “‘genocidal’ Turkish nation,” instilling within them the fear of “genocide of the Nagorno-Karabakh Armenians, should NK [Nagorno-Karabakh] become part of independent Azerbaijan.”

Likewise, Azerbaijanis see Armenians as a destructive force as well. During the Tsarist period of Russian rule, “Russia employed policies of assimilation and relocated” many Christian Armenians to Azerbaijani regions while “deporting Muslims from the same areas.” In addition, Azerbaijanis remember “examples of [the] 1918 Russian

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274. Tisdall, supra note 268.
275. Id.
276. Gamaghelyan, supra note 7, at 37.
277. Id.
278. Id. at 37-38.
279. Gahramanova, supra note 60, at 140.
280. Gamaghelyan, supra note 7, at 38.
281. Id.
282. Id.
massacres of Azerbaijans that Armenians participated in. As a result, Azerbaijanis view Armenians “as opportunistic aggressors that used their good relationship with Russia to expand into Azerbaijani territories in the east.”

Since the beginning of the Nagorno-Karabakh War in 1988, these negative views that Armenians and Azerbaijanis hold for each other have become more hostile. Each side sees the other as “the archenemy who methodically destroys their population and cultural heritage,” and guilty of the Nagorno-Karabakh War, ethnic cleansing, and lying about history in order to push political agendas. Such negative views have also given rise to powerful radicals on both sides, producing rhetoric that labels moderates as traitors and turns educational institutions into propaganda machines. As a result, an entire generation of Armenians and Azerbaijanis has grown up with propaganda that promotes these negative stereotypes, intensifying “mistrust and hatred” for each other.

With such an atmosphere of mutual hate and distrust already in existence, Safarov’s pardon only made these hateful views stronger, and gave more power to the radicals on each side. Especially on the Armenian side of the conflict, Safarov’s pardon strengthens “the hands of those Armenian hardliners who say that this proves that Azerbaijanis are barbarians who cannot be trusted.” With Armenians and Azerbaijanis having held such powerful and negative stereotypes of each other in the past, Safarov’s pardon does nothing but reinforce these stereotypes, especially the Armenian views of Azerbaijanis, and will reinforce “the ‘us versus them’ dynamic [that] is central to defining relations between the two societies.”

283. Id. at 39.
284. Id.
285. Id.
286. Id.
287. Id. at 39-40.
288. Id. at 40.
289. de Waal, supra note 96.
290. Id.
291. Gamaghelyan, supra note 7, at 40.
VI. CONCLUSION

Azerbaijan’s pardon of Safarov was undoubtedly a direct violation of international law and the underlying principles of the Convention on the Transfer of Sentenced Persons. Azerbaijan argues that under Article XII, it had the authority to pardon Safarov unconditionally. Azerbaijan, however, simply ignored the other articles of the Convention relevant to Safarov’s pardon in order to reach this conclusion.

Azerbaijan violated Article II by not providing Hungary with the “widest measure of co-operation” in Safarov’s transfer and by agreeing to accept Safarov without the intent of having him serve his sentence.392 Azerbaijan also violated Article X by not continuing the enforcement of Safarov’s Hungarian sentence. Additionally, although Azerbaijan believes that it had the unrestricted right to pardon Safarov under Article XII, this is simply untrue when one looks to the purpose of the Convention and the international interpretation of when a pardon is appropriate. Because the purpose of the Convention is the enforcement of sentences, Article XII is a catchall provision to invoke in the event that something has gone wrong with the transfer or the sentencing process. Even when an administering state does use Article XII’s pardoning power, it may not pardon for any reason at all. A pardon would be appropriate if there is a changed circumstance casting doubt on the prisoner’s sentence or if new evidence would allow a court to find the prisoner “morally and technically innocent.”293 These scenarios were not present in Safarov’s case, and because Azerbaijan pardoned Safarov in the absence of such a scenario, it violated Article XII.

Azerbaijan’s violation of the Convention, however, is not even the most regretful outcome of Safarov’s pardon. What’s worst is how Azerbaijan’s actions will negatively affect the already strained relationship it has with Armenia. In the aftermath of the Nagorno-Karabakh War until Azerbaijan’s pardon of Safarov, a peace process existed that tried to settle the conflict. Safarov’s pardon effectively ended any remaining optimism and has the short-term effect of raising tensions between the two nations, introducing the possibility of more violence. In addition, Safarov’s pardon will have the long-term effect of reinforcing the negative stereotypes that Armenians hold toward Azerbaijanis, further putting strain on the ethnic relations between the

293. Regina v. Secretary of State for the Home Department Ex. p. Read (Gary John), [1988] 2 W.L.R. 236, 239 (Eng.).
two peoples.

At this point it appears as though there is no return from the low state of Armenian-Azerbaijani relations that Safarov’s pardon has caused, which ultimately means there is no end in sight to the Nagorno-Karabakh conflict. Ideally, the principles espoused in the Madrid Proposals would bring the most resolution to the conflict. Such principles would first open up communication between the two sides, put an end to any force, and lead to the withdrawal of Armenian forces from occupied Azerbaijani territory. However, although the original proposals called for Nagorno-Karabakh’s status to be decided upon after these steps, this is ultimately unrealistic.

Nagorno-Karabakh is wholly Armenian, and at this point there is nothing that Azerbaijan can do to convince the Nagorno-Karabakh government to willingly join Azerbaijan once again. The only way Azerbaijan could try and reclaim the territory is through more war, which would be a very misguided move considering the past successes of the Armenian-backed Nagorno-Karabakh military. Azerbaijan needs to abandon the prospect of claiming Nagorno-Karabakh as its own. Allowing Nagorno-Karabakh to permanently remain independent and having Armenia give back any other occupied Azerbaijani territory is the only way to avoid war and achieve peace, simply because it is the only option that will not forcibly move or kill more people on either side of the conflict. However, only time will tell as to how realistic this option is.