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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,¹ its position at the crossroads of western and eastern civilization combined with the fact that the region contains over fifty different ethnic groups² 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.³ 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.⁴ The main source of the conflict between the two peoples was centered on a disputed territory called Nagorno-Karabakh.⁵ An ancient area traditionally associated with Armenians and

1. *Caucasus*, LIBRARY OF CONGRESS (May 2006), http://www.loc.gov/today/placesinthenews/archive/2006arch/20060503_caucasus.html.

2. *Caucasian Peoples*, BRITANNICA ACADEMIC EDITION, <http://www.britannica.com/EBchecked/topic/100262/Caucasian-peoples> (last visited Jan. 5, 2015).

3. Bill Frelick, *Faultlines of Nationality Conflict: Refugees and Displaced Persons from Armenia and Azerbaijan*, 6 INT'L J. REFUGEE L. 581, 589-90 (1994).

4. *See id.* at 589.

5. *See id.*

Armenian culture since the Middle Ages,⁶ Nagorno-Karabakh is formally within the borders of Azerbaijan.⁷

Tension from various pogroms⁸ in Azerbaijan along with the mutually aggressive behavior between the two sides led to in-fighting between Nagorno-Karabakh's Armenian and Azerbaijani populations.⁹ 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,¹⁰ which Armenia heavily supported.¹¹

Tensions continued to run high after the war.¹² In recent years, some progress was made as both sides came to the table to talk about the future of the conflict;¹³ 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 Gurgun Margaryan in Hungary in 2006.¹⁴ 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.¹⁵ Instead of enforcing the sentence, however, Azerbaijan welcomed Safarov as a hero,¹⁶ a brave soldier who had gotten revenge on the enemy by killing

6. Michael Ajemian, *Territorial Stalemate: Independence of Nagorno-Karabakh Following the Dissolution of the Soviet Union, and Its Lingering Effects Decades Later*, 34 SUFFOLK TRANSNAT'L L. REV. 375, 386 (2011).

7. Phil Gamaghelyan, *Rethinking the Nagorno-Karabakh Conflict: Identity, Politics, Scholarship*, 15 INT'L NEGOTIATION 33, 35 (2010).

8. Merriam-Webster's Dictionary defines a pogrom as "the organized killing of many helpless people usually because of their race or religion." *Pogrom*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/pogrom?show=0&t=1411929931> (last visited Sept. 25, 2014).

9. Arzu Turgut, *Who Benefits from Nagorno-Karabakh Conflict?*, 4 USAK Y.B. INT'L POL. & L. 341, 341 (2011).

10. Frelick, *supra* note 3, at 581-83.

11. Gamaghelyan, *supra* note 7, at 36.

12. See Tabib Huseynov, *Mountainous Karabakh, Paradigms for Peace and Development in the 21st Century*, 15 INT'L NEGOTIATION 7, 7-8 (2010).

13. *Id.* at 14-16.

14. EUR. PARL. DOC. P7_TA (2012) 0356 [hereinafter *Texts Adopted*]; see also Sarah Kendzior, *The Axe Murderer Who Became a Facebook Hero*, AL JAZEERA (Sept. 5, 2012), <http://www.aljazeera.com/indepth/opinion/2012/09/201293953565974.html>.

15. *Texts Adopted*, *supra* note 14.

16. See *id.*; *Hungary Red-Faced after Azerbaijan Frees Murderer*, BUDAPEST TIMES (Sept. 4, 2012), <http://www.budapesttimes.hu/2012/09/04/hungary-red-faced-after-azerbaijan-frees-murderer>.

on his own terms,¹⁷ and subsequently pardoned and promoted him.¹⁸ 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.¹⁹

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.

17. Kendzior, *supra* note 14.

18. *Texts Adopted*, *supra* note 14.

19. *Armenia Breaks Ties with Hungary over Clemency for Murder*, RT (Aug. 31, 2012), <http://rt.com/news/armenia-azerbaijan-hungary-murder-087/>.

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,²⁰ have an ongoing history of conflict with one another dating back to the end of World War I.²¹ After the fall of the Tsarist Russian Empire, both Armenia and Azerbaijan briefly became independent Republics,²² with conflict soon erupting between the two nations and peoples.²³ 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.²⁴ 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.”²⁵ 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.²⁶ 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.”²⁷

In 1921, both countries came under the rule of the Soviet Union.²⁸ The Soviet Union proclaimed to respect the cultural rights of minorities within the Union, and created the Armenian and Azerbaijani Soviet Socialist Republics.²⁹ Creating each republic along “nationality lines” helped with the development of a national consciousness and cultural identity in Armenia and Azerbaijan.³⁰ This put minority groups in each country, however, at a disadvantage; both the Armenians in Azerbaijan

20. Ajemian, *supra* note 6, at 385.

21. Huseynov, *supra* note 12, at 12.

22. Ajemian, *supra* note 6, at 387.

23. *Id.*

24. VAHAKN M. DADRIAN, *THE HISTORY OF THE ARMENIAN GENOCIDE: ETHNIC CONFLICT FROM THE BALKANS TO ANATOLIA TO THE CAUCASUS* 372 (Berghahn Books, reprinted paperback ed. 2004).

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.³¹

In addition, the “nationality lines” that the Soviets drew were not completely accurate.³² Josef Stalin, at the time Lenin’s Commissioner of Nationalities,³³ retained the borders in such a way that Nagorno-Karabakh, which at the time was ninety-four percent Armenian,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.³⁵ Stalin did this as part of a “divide-and-rule policy,”³⁶ which created “interdependent republics that would feel bound to remain in the [Soviet] union,” thus suppressing nationalist activity.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.³⁸ This peace lasted until 1988, when Nagorno-Karabakh petitioned Azerbaijan to be annexed to Armenia.³⁹ Armenians saw the unification of Nagorno-Karabakh and Armenia as important to the rebuilding of a dispersed Armenian nation.⁴⁰ In response to the petition, “ethnic Azerbaijani delegates in Nagorno-Karabakh boycotted the vote.”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.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.⁴³ Similar acts started occurring throughout Azerbaijan during 1988, with increasing numbers of Armenian residents coming under more danger.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.

38. Huseynov, *supra* note 12, at 13.

39. Frelick, *supra* note 3, at 589-90.

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.⁴⁵ After the fall of the Soviet Union, Nagorno-Karabakh no longer sought unification with Armenia and subsequently declared its independence from Azerbaijan in 1992.⁴⁶ 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.⁴⁷

Soon after Nagorno-Karabakh declared its independence, the Nagorno-Karabakh War officially started, with Azerbaijan launching military operations against Stepanakert.⁴⁸ At the beginning of 1992, the ethnic Armenians of Nagorno-Karabakh had a number of military successes and also captured several Azerbaijani villages.⁴⁹

Since then, the war became a more general war for territory as opposed to one involving acts of ethnic violence.⁵⁰ "Due to tactical failures," the Azerbaijanis began losing territory,⁵¹ including Shusha, the center of Azerbaijani life in Nagorno-Karabakh, where thousands of Azerbaijanis became displaced as a result.⁵² Azerbaijan then responded by pushing into Nagorno-Karabakh and displacing thousands of Armenians; some of the displaced Armenians have since returned.⁵³ During a major political crisis in Azerbaijan in 1993, Armenian forces were able to take advantage of the political chaos and launch an offensive.⁵⁴ As a result, Armenian forces were able to capture many towns outside of Nagorno-Karabakh, one of which included Safarov's hometown, Jabrail.⁵⁵

After this string of Armenian victories, in 1994, "representatives of Armenia, Azerbaijan, and Nagorno-Karabakh signed a Russian-brokered ceasefire,"⁵⁶ "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.

55. *Id.*; Marina Grigorian, *Murder Case Judgment Reverberates Around Caucasus*, INSTITUTE FOR WAR & PEACE REPORTING (Apr. 6, 2006), <http://iwpr.net/report-news/murder-case-judgement-reverberates-around-caucasus>.

56. Ajemian, *supra* note 6, at 389.

made.⁵⁷ As a result of the war, approximately 30,000 people died and 50,000 people were wounded.⁵⁸ 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.⁵⁹ Although “reconciliation [typically] follows conflict resolution,”⁶⁰ this is not the case for Armenia, Azerbaijan, and Nagorno-Karabakh. This situation “remains the longest running and most intractable conflict in the region,”⁶¹ furthermore, its protracted negotiation process has given the Nagorno-Karabakh conflict the status of a “frozen conflict.”⁶²

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,⁶³ traveled to Budapest to participate in a three-month English language course as a part of NATO’s Partnership for Peace program.⁶⁴ Military officers of various nationalities, including Serbs, Uzbeks, Azerbaijanis, and Armenians attended the program,⁶⁵ and despite the mix of backgrounds, the subject of international conflict between the attendants’ respective countries was never an issue outside of initial conversations.⁶⁶ Balazs Kuti, Margaryan’s Hungarian roommate, said that Margaryan rarely talked about Armenian-Azerbaijani relations.⁶⁷ 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.⁶⁸ During his first interrogation,

57. Huseynov, *supra* note 12, at 13.

58. *Id.*

59. *Id.* at 13-14.

60. Aytan Gahramanova, *Paradigms of Political Mythologies and Perspectives of Reconciliation in the Case of the Nagorno-Karabakh Conflict*, 15 INT’L. NEGOTIATION 133, 133 (2010).

61. Huseynov, *supra* note 12, at 14.

62. See Gahramanova, *supra* note 60, at 149.

63. Grigorian, *supra* note 55.

64. *Biography of Gurgen Margaryan*, BUDAPEST CASE, <http://budapest.sumgait.info/margaryan-bio.htm> (last visited Oct. 19, 2014).

65. *Kuti Balazs, an eye-witness*, BUDAPEST CASE, <http://budapest.sumgait.info/kuti-balazs-account.htm> (last visited Oct. 19, 2014).

66. *Murder of Lt. Gurgen Margaryan*, BUDAPEST CASE, <http://budapest.sumgait.info/murder.htm> (last visited Oct. 19, 2014).

67. *Kuti Balazs, an eye-witness*, *supra* note 65.

68. *Murder of Lt. Gurgen Margaryan*, *supra* note 66.

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

69. Vladimir Polupanov, *Об убийцах с топором и национальных героях* [About the Axe Murderer, and National Heroes], АРГУМЕНТЫ И ФАКТЫ (Sept. 6, 2012), <http://www.aif.ru/society/article/54923>.

70. *Ramil Safarov's First Interrogation*, BUDAPEST CASE, <http://budapest.sumgait.info/safarov-interrogation.htm> (last visited Oct. 19, 2014).

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.*

78. *Armenian Officer Murdered By Azeri Colleague in Hungary*, ASBAREZ (Feb. 19, 2004), <http://asbarez.com/49541/armenian-officer-axe-murdered-by-azeri-colleague-in-hungary>.

79. *Murder of Lt. Gurgen Margaryan*, *supra* note 66.

80. *Hungary Jails Azerbaijani Killer*, BBC (Apr. 13, 2006), <http://news.bbc.co.uk/2/hi/europe/4907552.stm>.

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.⁸¹ 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.⁸²

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,⁸³ saying that the red on the flag represented the Azerbaijani blood that Armenians spilled during the war.⁸⁴ Safarov also claimed that Margaryan played an audio recording of young Azerbaijani girls suffering during the Nagorno-Karabakh War.⁸⁵ Witnesses, however, have not confirmed any of these two allegations by Safarov.⁸⁶ 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.⁸⁷ The judge rejected this request, saying that the murder was pre-meditated and "carried out with extreme cruelty,"⁸⁸ 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."⁸⁹ 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.⁹⁰

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.*

83. Katy Pearce, *Deep Dive: Filling in the Gaps – Reading The Ramil Safarov Case In Azerbaijan*, RADIO FREE EUROPE RADIO LIBERTY (Sept. 10, 2012), <http://www.rferl.org/content/filling-in-the-gaps-azerbaijani-media-construction-of-narrative-over-ramil-safarov-case-armenia/24703619.html>.

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.

90. *Azeri Jailed for Life in Hungary for Killing Armenian*, REUTERS (Feb. 22, 2007), <http://www.reuters.com/article/2007/02/22/idUSL22518458>.

many Hungarians by surprise.⁹¹ After much lobbying from Azerbaijan⁹² in addition to the constant pressure Azerbaijan gave Hungary since Safarov's conviction,⁹³ Hungary agreed to transfer Safarov according to the Convention.⁹⁴ Despite pressure from Armenia to not comply with Azerbaijan's request, Hungary emphasized the legality of its decision to transfer Safarov under the Convention.⁹⁵ To reinforce its position, Hungary claimed that Azerbaijan had sent assurances that Safarov would serve the twenty-five years that remained on his sentence.⁹⁶ Hungary transferred Safarov back to Azerbaijan on August 31, 2012;⁹⁷ Armenia officially cut diplomatic ties with Hungary later that evening.⁹⁸

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.⁹⁹ Safarov was not only pardoned, but treated as a national hero. The government promoted him to the rank of major,¹⁰⁰ 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.¹⁰¹

On September 2, 2012, the Hungarian Ministry of Foreign Affairs (hereinafter "the Ministry") denied that Hungary had known that

91. András Rác, *'The Shadow of an Axe': Exploring the Hungary-Azerbaijan-Armenia Diplomatic Tensions*, E-INT'L RELATIONS (Sept. 30, 2012), http://www.e-ir.info/2012/09/30/the-shadow-of-an-axe-the-background-of-the-hungary-azerbaijan-armenia-diplomatic-tensions/#_ftn9.

92. Ellen Barry, *A Hero's Welcome for Convicted Killer Reignites Tensions*, N.Y. TIMES (Sept. 4, 2012), <http://www.nytimes.com/2012/09/05/world/europe/pardon-reignites-azerbaijan-armenia-tensions.html>.

93. A.L.B., *Hungary, Armenia and the Axe-Murderer Blunder in Budapest*, ECONOMIST (Sept. 4, 2012), <http://www.economist.com/blogs/easternapproaches/2012/09/hungary-armenia-and-axe-murderer>.

94. *Közlemény Ramil Sahib Safarov Azerbajdzsán részére történt átadásáról* [Ramil Safarov Azerbaijan Sahib happened to notice for the transfer of] (Sept. 1, 2012), available at kormany.hu/hu/.../kozlemeny-ramil-sahib-safarov-azerbajdzsan-reszere-tortent-atadasarol.

95. *Id.*

96. Thomas de Waal, *Viewpoint: Setback for Peace in the Caucasus*, BBC (Sept. 4, 2012), <http://www.bbc.co.uk/news/world-europe-19477043>.

97. *Texts Adopted*, *supra* note 14.

98. *Armenia Cuts Ties with Hungary over Azerbaijan Killer Pardon*, BBC (Aug. 31, 2012), <http://www.bbc.co.uk/news/world-europe-19440661>.

99. *Texts Adopted*, *supra* note 14.

100. *Id.*

101. See Barry, *supra* note 92; *Hungary Red-Faced after Azerbaijan Frees Murderer*, *supra* note 16.

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.¹⁰² The Ministry further condemned these actions by Azerbaijan.¹⁰³ The Hungarian people followed suit by protesting against the decision, demanding an explanation from Hungarian Prime Minister Viktor Orban.¹⁰⁴ 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.¹⁰⁵

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.¹⁰⁶ 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,¹⁰⁷ 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.¹⁰⁸ In addition, further protests by Armenians outside of Armenia, such as those in Rostov-on-Don in Russia, took place at other Hungarian missions.¹⁰⁹

102. *Press Release*, EMBASSY OF HUNGARY IN OSLO, NORWAY (Sept. 2, 2012), http://www.mfa.gov.hu/kulkepviselet/NO/en/en_Hirek/20120903Pressrelease.htm.

103. *Id.*

104. Marton Dunai, *Hungarians Protest Against Release of Azeri Officer*, REUTERS (Sept. 4, 2012), <http://www.reuters.com/article/2012/09/04/us-hungary-azerbaijan-protest-idUSBRE8830ZR20120904>.

105. Rác, *supra* note 91.

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

107. Комментарий Генерального секретаря Организации Договора о коллективной безопасности Н.Бордюжи о ситуации вокруг решения властей Азербайджана помиловать убийцу армянского офицера [Comment from the Secretary General of the Collective Security Treaty Bordyuzha about the situation surrounding the decision of the Azerbaijani authorities to pardon the murderer of Armenian officer], *available at* http://www.odkb-csto.org/news/detail.php?ELEMENT_ID=1101.

108. Press Statement, U.S. Dept. of State, *Pardon of Azerbaijani Soldier* (Aug. 31, 2012), <http://www.state.gov/r/pa/prs/ps/2012/08/197250.htm>; France Diplomatie, *Azerbaijan – Pardon granted to M.Safarov – Statement by the Ministry of Foreign Affairs Spokesman* (Sept. 3, 2012), <http://www.diplomatie.gouv.fr/en/country-files/azerbaijan/france-and-azerbaijan/political-relations-6890/article/azerbaijan-pardon-granted-to-m>; *Texts Adopted*, *supra* note 14.

109. *Армяне Ростова-на-Дону провели акцию у представительства Венгрии* [Armenians in Rostov-on-Don Held a Rally at the Mission of Hungary], БЛОКНОТ (Sept. 3, 2012), <http://www.bloknott-rostov.ru/news/more/armyanerostovanadonuproveliakiujuupredstavitelstvavengrii.html>.

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, 1983¹¹⁰ 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

110. Convention on the Transfer of Sentenced Prisoners, Explanatory Report, Mar. 21, 1983, E.T.S. No. 112, available at <http://conventions.coe.int/Treaty/en/Reports/Html/112.htm> [hereinafter Council Explanatory Report].

111. Ekkehart Muller-Rappard, *The Transfer Of Sentenced Persons—Comments On The Relevant Council Of Europe Legal Instruments*, PACE Y.B. INT'L L. 155, 155 (1991).

112. Council Explanatory Report, *supra* note 110, ¶ 1 (under *Introduction*).

113. *Id.*

114. *Id.*

relating to the treatment of foreign prisoners in domestic prisons.¹¹⁵ The result of the Committee's findings and studies led to the drafting and eventual adoption of the Convention.¹¹⁶

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.¹¹⁷ 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.¹¹⁸ Although this previous treaty allowed for the transfer of foreign prisoners to their home countries, the procedure was not efficient.¹¹⁹ In fact, not many states even ratified this previous convention.¹²⁰

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.¹²¹ Another argument is that the process of rehabilitation would speed up if the sentenced person served their sentence in their home country.¹²² 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.¹²³

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.¹²⁴ 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.¹²⁵ The preamble lists rehabilitation of the sentenced person as a primary purpose that the Convention aims to address;¹²⁶ 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.

126. Convention on the Transfer of Sentenced Persons, Preamble, Mar. 21, 1983, E.T.S. No.

process.¹²⁷ A sentenced person may request a transfer from either the sentencing state or from the administering state.¹²⁸ 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."¹²⁹ Both the sentencing state and the administering state must inform the sentenced person of any decision they have made.¹³⁰

A second characteristic of the Convention is that both the sentencing state and the administering state must agree to the transfer.¹³¹ "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.¹³² 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.¹³³

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."¹³⁴ 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.¹³⁵ 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.¹³⁶ 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.¹³⁷

127. Council Explanatory Report, *supra* note 110, ¶ 23.

128. Muller-Rappard, *supra* note 111, at 161.

129. *Id.*

130. *Id.*

131. *Id.* at 162.

132. *Id.*

133. *Id.* at 162-63.

134. *Id.* at 163-64.

135. Convention on the Transfer of Sentenced Persons, *supra* note 126, art. 9.

136. *Id.*

137. Mark Andrew Sherman, *Book Review - Transfer Of Prisoners Under International Instruments And Domestic Legislation: A Comparative Study*, By Michael Plachta. Frieberg,

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

Germany: Max-Planck-Institut, 1993 Pp. 565. Dm 58 (Softcover), 28 GEO. WASH. J. INT’L L. & ECON 495, 513 (1995) (quoting MICHAEL PLACHTA, TRANSFER OF PRISONERS UNDER INTERNATIONAL INSTRUMENTS AND DOMESTIC LEGISLATION: A COMPARATIVE STUDY 229 (1993)).

138. Council Explanatory Report, *supra* note 110, ¶9.

139. Muller-Rappard, *supra* note 111, at 155-56.

140. *Id.*

141. *Id.*

142. *Id.*

143. Convention on the Transfer of Sentenced Persons, *supra* note 126, art. 2, § 1.

144. *Id.* art. 2, § 2.

sentenced person to be transferred back to his home country.¹⁴⁵ 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.¹⁴⁶

Article IX addresses the effect of the transfer for the administering state.¹⁴⁷ Section 1 gives the administering state the option to either continue the enforcement of the current sentence or convert the sentence.¹⁴⁸ 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.¹⁴⁹ 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.¹⁵⁰

Article X covers the situation in which the administering state decides to continue the sentencing state’s sentence.¹⁵¹ 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.”¹⁵² 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.”¹⁵³ “As to its nature, the punishment or measure shall, as far as possible, correspond with that imposed by the sentence to be enforced.”¹⁵⁴

Finally, article XII addresses the subject of pardon, amnesty, and commutation.¹⁵⁵ 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.”¹⁵⁶

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,¹⁵⁷ 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

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. Rác, *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.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.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.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.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."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.¹⁶³ Additionally, Azerbaijan supplemented this promise by informing Hungary of Article 57.3 of Azerbaijan's Criminal Code, which states

158. *Azeri Jailed for Life in Hungary for Killing Armenian*, *supra* note 90.

159. *Top official: Safarov's pardon fully complies with European Convention on Transfer of Sentenced Persons*, TREND (Sept. 1, 2012), <http://en.trend.az/news/society/2060884.html>.

160. CRIM. CODE OF AZERBAIJAN REPUBLIC, art. 120, available at <http://www.legislationline.org/documents/section/criminal-codes/country/43>.

161. Zoltan S. Novak, *Did Azerbaijan breach its international obligation by pardoning Safarov?*, PARIKA POLITIK (Sept. 6, 2012), <http://www.paprikapolitik.com/2012/09/did-azerbaijan-breach-its-international-obligation-by-pardoning-safarov>.

162. Convention on the Transfer of Sentenced Persons, *supra* note 126, art. 2, § 1.

163. *A Possible Chronology of the Azeri-Hungarian Negotiations*, HUNGARIAN SPECTRUM (Sept. 2, 2012), <http://hungarianspectrum.wordpress.com/2012/09/02/a-possible-chronology-of-the-azeri-hungarian-negotiations>.

that a convict serving a life sentence in prison may only be granted parole after serving at least twenty-five years.¹⁶⁴ Azerbaijan immediately broke this promise to Hungary, however, by pardoning Safarov upon his return to Azerbaijan.¹⁶⁵ Azerbaijan blatantly violated its duty to Hungary to provide “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.¹⁶⁶

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.”¹⁶⁷ Most importantly, this means that the Convention prohibits the transfer of a prisoner “in order to evade the sentence imposed on him.”¹⁶⁸ 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.”¹⁶⁹ While citing Article XII as its primary reason for pardoning Safarov,¹⁷⁰ Azerbaijan ignored and violated Article II, section 2 by immediately pardoning Safarov without reason instead of continuing to enforce his sentence as previously promised.¹⁷¹ 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.”¹⁷² 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.”¹⁷³

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

164. *Id.*

165. *Id.*

166. Novak, *supra* note 161.

167. Convention on the Transfer of Sentenced Persons, *supra* note 126, art. 2, § 2.

168. Mark Movsesian, *Ax Murderers, Values, and International Law*, CENTER FOR LAW AND RELIGION FORUM AT ST. JOHN’S UNIVERSITY SCHOOL OF LAW (Sept. 9, 2012), <http://clrforum.org/2012/09/09/ax-murderers-values-and-international-law/>.

169. *Id.*

170. See Top official: *Safarov’s pardon fully complies with European Convention on Transfer of Sentenced Persons*, *supra* note 159.

171. See Movsesian, *supra* note 168.

172. Novak, *supra* note 161.

173. Movsesian, *supra* note 168, at 2.

enforcing the sentence that Hungary, the sentencing state, gave Safarov or to convert the sentence.¹⁷⁴ As shown in the August 15, 2012 letter to Hungary, Azerbaijan clearly chose to continue enforcing Safarov's life sentence.¹⁷⁵ Thus, Article X of the Convention, which covers situations in which the administering state continues enforcement, binded Azerbaijan.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."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.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.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.

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.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 1985.¹⁸¹ 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.¹⁸² The United Kingdom, like Azerbaijan, promised to continue the enforcement of Read's sentence, and therefore had to abide by article X

174. Convention on the Transfer of Sentenced Persons, *supra* note 126, art. 9.

175. *A Possible Chronology of the Azeri-Hungarian Negotiations*, *supra* note 163.

176. *See* Novak, *supra* note 161.

177. Convention on the Transfer of Sentenced Persons, *supra* note 126, art. 10, § 1.

178. *See* Novak, *supra* note 161.

179. Convention on the Transfer of Sentenced Persons, *supra* note 126, art. 10, § 2.

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.).

181. *Id.* at 236.

182. *Id.*

of the Convention.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.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.¹⁸⁵

The *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.¹⁸⁶ First, if a foreign sentence is less than the maximum domestic sentence, then the prisoner serves the foreign sentence in full.¹⁸⁷ Second, if the foreign sentence is greater than the maximum domestic sentence, then it shall be reduced.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."¹⁸⁹ The court subsequently ordered a reduction of Read's sentence in line with British law.¹⁹⁰

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.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).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.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.¹⁹⁴ Thus, the goal for the *Gilbey* court, like the

183. *Id.* at 240.

184. *Id.* at 241.

185. *Id.*

186. *Id.* at 242.

187. *Id.*

188. *Id.*

189. *Id.*

190. *See id.* at 248.

191. *Gilbey (Julian) v. H.M. Advocate*, (2010) H.C.J. 4 [1] (Scot.).

192. *Id.*

193. *Id.*

194. Patrick Winn, *Thailand: Executing drug dealers within 15 days?* GLOBALPOST (Mar. 23, 2012), <http://www.globalpost.com/globalpost-blogs/southeast-asia/thailand-drug-laws>.

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.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.”¹⁹⁶ The court also took into account the severity of *Gilbey*’s crime, noting the amount of heroin he attempted to smuggle.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.”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.¹⁹⁹ As demonstrated by Azerbaijan’s pardon despite their August 15, 2012 letter to Hungary, the sentence was unacceptable and inconsistent pursuant to Azerbaijan law.²⁰⁰ Whereas Azerbaijan allows for conditional parole after at least twenty-five years of incarceration, Hungarian law requires thirty years.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.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.²⁰³ Azerbaijan selected the option of

195. *Gilbey (Julian) v. H.M. Advocate*, (2010) H.C.J. 4 [1] (Scot.).

196. *Id.* at 1065.

197. *Id.* at 1064.

198. *Id.* at 1063.

199. See Convention on the Transfer of Sentenced Persons, *supra* note 126, art. 10, § 2; see generally Read (Gary John), 2 W.L.R. at 242; *Gilbey (Julian) v. H.M. Advocate*, (2010) H.C.J. 4 [1] (Scot.).

200. *Armenia Breaks Ties with Hungary over Clemency*, *supra* note 19.

201. *Id.*

202. 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.).

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.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.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.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.²¹⁸ Authorities later arrested

215. Movsesian, *supra* note 168.

216. *Regina (on the application of Michael Shields) v. Sec’y of State for Justice*, [2008] EWHC (Admin) 3102, [2010] Q.B. 150 [152-53] (Eng.).

217. *Id.* at 153.

218. *Id.* at 152.

Shields for being involved.²¹⁹ Another one of the arrested men signed a confession after Shields' trial that stated that Shields was not the assailant.²²⁰ Despite this confession absolving Shields of any wrongdoing, the Bulgarian court still denied Shields' multiple appeals.²²¹ 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.²²² In the United Kingdom, there had been much public support for Shields to be pardoned, calling his sentence a miscarriage of justice.²²³

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.²²⁴ The court concluded that pardons are "intended in very rare cases to secure justice which the concluded court process cannot achieve."²²⁵ 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.²²⁶ 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.²²⁷

Azerbaijan's reasoning that it had the right to grant Safarov a full pardon thus fails on two counts.²²⁸ 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."²²⁹ 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.²³⁰ 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.²³¹

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.²³² 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.²³³

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.²³⁴ 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.²³⁵ 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."²³⁶ 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.²³⁷ While the fact that Azerbaijan's pardon of Safarov is illegal is already

230. See *A Possible Chronology of the Azeri-Hungarian Negotiations*, *supra* note 163.

231. *Azeri Killer Ramil Safarov: Concern Over Armenian Anger*, BBC (Sept. 3, 2012), <http://www.bbc.co.uk/news/world-europe-1946398>.

232. See *Shields*, [2010] Q.B. 150 at 153.

233. *Id.*

234. *Id.*

235. See *Movsesian*, *supra* note 168.

236. See *Shields*, [2010] Q.B. 150 at 153.

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.²³⁸ Clashes have continued since the end of large-scale warfare, increasing in intensity up until the present day.²³⁹ 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.²⁴⁰ Spearheading the original 1992 mediation process was the Organization for Security and Co-operation in Europe [*hereinafter* OSCE] Minsk Group,²⁴¹ whom has dominated the peace process ever since.²⁴² The Minsk Group, co-chaired by France, Russia, and the United States, is responsible for finding a solution to the Nagorno-Karabakh conflict.²⁴³ Since these original 1992 negotiations, there have been a number of various proposals and summits between Armenia, Azerbaijan, and Nagorno-Karabakh.²⁴⁴

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.

241. Huseynov, *supra* note 12, at 14.

242. Ajemian, *supra* note 6, at 389.

243. *Minsk Group*, ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, <http://www.osce.org/mg> (last visited Oct. 22, 2014).

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.²⁴⁵ 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.²⁴⁶ Although Armenia and Azerbaijan agreed to both of these plans, Nagorno-Karabakh authorities rejected both, citing the importance of Nagorno-Karabakh's independence.²⁴⁷

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.²⁴⁸ Azerbaijan rejected this proposal as “defeatist.”²⁴⁹ 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.²⁵⁰ 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.²⁵¹

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 2005.²⁵² In 2006, the Minsk co-chairman “partially revealed the basic principles” in order to pressure the parties to agree to them.²⁵³ 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.”²⁵⁴

In 2007, the Minsk Group presented these same principles to Armenia and Azerbaijan in Madrid, reaffirming the principles as a basis

245. Huseynov, *supra* note 12, at 14.

246. *Id.*

247. *Id.* at 14-15.

248. *Id.* at 15.

249. *Id.*

250. *Id.*

251. *Id.*

252. *Id.* at 15-16.

253. *Id.* at 16.

254. *Id.*

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 Dimitry 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.*

257. Huseynov, *supra* note 12, at 16.

258. *Id.*

259. *Id.*

260. Turgut, *supra* note 9, at 342.

261. *Id.*

262. *Id.*

263. Barry, *supra* note 92.

264. *Azeri Killer Ramil Safarov: Concern Over Armenian Anger*, *supra* note 231.

Armenia's anger over Azerbaijan's actions in a speech at the United Nations on October 1, 2012.²⁶⁵ 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.²⁶⁶ Nalbandian also accused Azerbaijan of ruining the Nagorno-Karabakh peace process, "war-mongering," "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."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."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."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."²⁷⁰ Such fears that another war between Armenia and Azerbaijan may begin due to Safarov's pardon is not just mere speculation either.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

265. *Armenian FM Slams Azerbaijan over Safarov Affair at UN*, ARMENIANOW (Oct. 2, 2012),

http://armenianow.com/karabakh/40191/armenia_united_nations_azerbaijan_safarov_foreign_minister_nalbandian.

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 Štefan 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.”²⁷² 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.”²⁷³ At the moment, international efforts to prevent immediate conflict have worked, “but more by luck than judgment.”²⁷⁴ 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.”²⁷⁵

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.”²⁷⁶ 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.²⁷⁷ These historic injustices “culminated in the Armenian Genocide of 1915 in Ottoman Turkey.”²⁷⁸ “Though the Azerbaijanis were never a part of the Ottoman Empire,”²⁷⁹ 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.”²⁸⁰

Likewise, Azerbaijanis see Armenians as a destructive force as well.²⁸¹ 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.”²⁸² In addition, Azerbaijanis remember “examples of [the] 1918 Russian

272. Letter from Congressman Howard L. Berman for Former Secretary of State Hillary Clinton (Sept. 27, 2012), http://democrats.foreignaffairs.house.gov/press_display.asp?id=1003.

273. *Security in the South Caucasus: the Nagorno-Karabakh Conflict and the Frontline Communities*, EUROPEAN POLICY CENTER (Oct. 3, 2012), http://www.epc.eu/events_rep_details.php?cat_id=6&pub_id=2989.

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 Azerbaijanis that Armenians participated in.”²⁸³ As a result, Azerbaijanis view Armenians “as opportunistic aggressors that used their good relationship with Russia to expand into Azerbaijani territories in the east.”²⁸⁴

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.²⁸⁵ 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.²⁸⁶ 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.²⁸⁷ 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.²⁸⁸

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.²⁸⁹ 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.”²⁹⁰ 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.”²⁹¹

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.²⁹² 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

292. Convention on the Transfer of Sentenced Persons, *supra* note 126, art 2, ¶ 1 (under General Principles).

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.