

The Artsakh Conflict as a Violation of the Genocide Convention: Toward a Referral to the International Criminal Court

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Abstract

The Artsakh War is an ethnic, religious, and territorial conflict between Armenia and Azerbaijan over the disputed region of Artsakh, an Armenian enclave within Azerbaijan. The modern conflict began in 1988 and escalated into a full-scale war in the early 1990s. A ceasefire signed in 1994 provided for two decades of relative stability, but escalations in April 2016, and most recently in October 2020, have renewed the antagonism. Actions by Azeri nationals within the past three months evidence an attempt to eradicate Artsakh Armenians from their homeland and are violative of the Genocide Convention. This essay evaluates this recent Azeri aggression as measured against the Genocide Convention. Implications for international criminal prosecutions are discussed.

Keywords

Artsakh, Genocide, Armenia, Azerbaijan, Genocide Convention

1. Artsakh

Artsakh is located within Azerbaijan proper, about 170 miles west of the Azeri capital of Baku. Of Artsakh's 145,000 inhabitants, 95% are Christian Armenians, and none are Azeri Muslims. Following the First World War and the establishment of the Soviet Union, three states in the South Caucasus region were formed: Armenia, Azerbaijan, and Georgia. While Azerbaijan claimed sovereignty over Artsakh, the Allies decided that the status of Artsakh should be determined at the Paris Peace Conference (Harutyunyan, 2009). In March 1921, however, a treaty between Türkiye and the Soviet Union established that Artsakh would be under the authority of the Azerbaijan Soviet Socialist Republic (SSR) (Harutyunyan, 2009). On February 20, 1988, the Soviet government passed a resolution request-

ing the transfer of Artsakh from Azerbaijan SSR to Armenia SSR (Payaslian, 2007; Tamzarian, 1994). Azerbaijan rejected this resolution, and ethnic violence against Armenians, in Artsakh and throughout Azerbaijan, began shortly thereafter and continued through 1990.

The latest escalation began on September 27, 2020¹, with an Azerbaijani offensive. The war was marked by the use of chemical agents, deployment of drones, sensors, long-range heavy artillery and missile strikes, state propaganda, the use of official social media to wage information warfare, and the attack of civilian populations, schools, and hospitals. A humanitarian ceasefire brokered by Russia, facilitated by the International Committee of the Red Cross, and agreed upon by both Armenia and Azerbaijan, came into effect on October 10, 2020. But this cease-fire and two subsequent agreements to halt hostilities were violated by Azerbaijan with additional killings. On November 9, 2020, Armenia's Prime Minister signed an agreement with the Presidents of Azerbaijan and Russia to end the war in Artsakh. Under this agreement, Azerbaijan retained control of land within Artsakh that it has already captured, and Armenia agreed to relinquish adjacent land in these now Azeri-occupied areas².

Protecting the rights of the people of Artsakh is a major concern for Armenia. The Armenian population of Azerbaijan has been subject to persecution throughout the twentieth century. If Artsakh falls into Azeri control, there is a strong likelihood that the Armenians of the region would be subjected to ethnic cleansing. The long history of discrimination against Armenians in Azerbaijan, coupled with the recent conflict and Azerbaijan's alliance with Türkiye, suggests that Azerbaijan is committing genocide, as defined by the Genocide Convention, against the Armenian population in Artsakh.

2. Genocide

Genocide is distinguishable from all other crimes by the motivation behind it. Toward the end of the Second World War, when the full horror of the Third Reich had been revealed, Winston Churchill stated that the world was being brought face to face with a "crime that has no name" (Destexhe, 1995). The term "genocide" was ultimately developed to characterize an organized attempt to eradicate an entire ethnic group. Lemkin (1944: p. 79) coined the term to denote, "a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves". Genocide has two phases: first, the desolation of the national example of the oppressed group, and second, the imposition of the national pattern of the oppressor (Lemkin, 1944). Lemkin's (1944) efforts culminated in the Convention on the Prevention and Punishment of the Crime of Genocide³ on December

¹See Joshua Kucera, *as Fighting Rages, What Is Azerbaijan's Goal?* EurasiaNet (Sept. 29, 2020), <https://eurasianet.org/as-fighting-rages-what-is-azerbajians-goal> (accessed April 7, 2022).

²See *Armenia, Azerbaijan and Russia Sign Artsakh Peace Deal*, BBC News (Nov. 10, 2020), <https://www.bbc.com/news/world-europe-54882564> (accessed April 7, 2022).

³Convention on the Prevention and Punishment of the Crime of Genocide (UN GAOR Res, 260A (III) 9 December 1948).

9, 1948. This Resolution officially came into effect as a binding piece of international law on January 12, 1951. Article II of the Genocide Convention declares genocide to mean,

the commitment of any of the following acts with intent to destroy, in whole or in part, a national, ethnic, racial, or religious group, as such:

- a) Killing members of the group;
- b) Causing serious bodily or mental harm to members of the group;
- c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d) Imposing measures intended to prevent births within the group; and
- e) Forcibly transferring children of the group to another group.

No state has ever advocated that genocide is not a crime, and the definition contained in Article II is considered to be binding international law.

Despite this affirmation, genocide has been perpetrated repeatedly in the last seven decades, costing the lives of more than one million Bengali in Bangladesh in 1971 (Chalk & Jonassohn, 1990; Kuper, 1981); 150,000 Hutu in Burundi in 1972 (Chalk & Jonassohn, 1990; Kuper, 1977); 400,000 civilians in the Vietnam War from 1965-1974 (Lewy, 1978; Sartre, 1968); 1.5 million Cambodians from 1975-1979 (Kiernan, 1994; Becker, 1986); hundreds of thousands of Bosnian Muslims and Croats in the Former Yugoslavia in 1992 (Bassiouni, 1996; Bekker, 1993); and 800,000 Tutsi in Rwanda in 1994 (Destexhe, 1995; Prunier, 1995).

Genocide Enforcement

Article VI of the Genocide Convention states that, “persons charged with genocide...shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction”. As such, two options exist to prosecute accused genocidal perpetrators. Domestic officials can prosecute internally individuals accused of genocidal behavior, or the United Nations may convene a criminal tribunal to prosecute violations of the Convention. To date, four *ad hoc* tribunals have been convened: the International Military Tribunal (IMT) at Nuremberg in 1945⁴, generally considered the first modern paradigm of international criminal law in action (Bassiouni, 1987), the International Military Tribunal for the Far East (IMTFE) at Tokyo in 1946⁵, the International Criminal Tribunal for the Former Yugoslavia (ICTY) at The Hague in 1992⁶, and the International Criminal Tribunal for Rwanda.

⁴The International Military Tribunal at Nuremberg Was Established Pursuant to Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, August 8, 1945, 82 U.N.T.S. 279.

⁵International Military Tribunal for the Far East, Special Proclamation by the Supreme Commander for the Allied Powers at Tokyo, 19 January 1946.

⁶S.C. Res. 808, U.N. SCOR, 48th Sess., 3217th mtg., U.N. Doc. S/RES/808 (1992).

It was widely expected that the successes of the IMT and the IMTFE would quickly lead to the establishment of a permanent international criminal court (Bassiouni, 1995; Ferencz, 1992; Bridge, 1964). The International Law Commission (ILC) studied the question of a permanent international criminal court at its 1949 and 1950 sessions and concluded that such institutions were “desirable” and “possible” (Bassiouni, 1995; Ferencz, 1992). In 1989, the General Assembly (GA) requested that the ILC resume work on an international criminal court with jurisdiction over the crime of drug trafficking (Bassiouni, 1995). At its 44th Session in 1992, the ILC established a working group, which laid down basic parameters for a Draft Statute of an International Criminal Tribunal (Akhavan, 1995; Bassiouni, 1995). At its 45th Session in 1993, the Commission received the report of a working group containing the Draft Statute, and, without formally adopting the text, referred it to the Assembly (Akhavan, 1995; Bassiouni, 1995). At its 46th Session in 1994, the Commission proceeded to adopt a Draft Statute for an International Criminal Court (Akhavan, 1995; Bassiouni, 1995). On December 17, 1996, the GA adopted the resolution on the establishment of an international criminal court by consensus (Wisskirchen, 1997). The resolution called for the convening of an international treaty conference to establish the court in 1998.

The ICC is an intergovernmental organization and international tribunal seated in The Hague, Netherlands. It is the first and only permanent international court with jurisdiction to prosecute individuals for the international crimes of genocide, crimes against humanity, war crimes, and the crime of aggression. The ICC began operations in July 2002, upon the entry into force of the Rome Statute⁷, a multilateral treaty that serves as the Court’s governing document. States which become party to the Rome Statute become members of the ICC, serving on the Assembly of States Parties, which administers the court. As of December 2022, there were 123 ICC member states; 42 states have neither signed nor become parties to the Rome Statute⁸. To date, the ICC has opened investigations in 14 situations: Afghanistan; Burundi; two in the Central African Republic; Côte d’Ivoire; Darfur, Sudan; the Democratic Republic of the Congo; Georgia; Kenya; Libya; Mali; Uganda; Bangladesh/Myanmar, Palestine and Venezuela⁹.

Artsakh Aggression as Genocide

The Lachin Corridor is the only road connecting Artsakh with Armenia. Since early December 2022, Azerbaijan has imposed a blockade on Artsakh, closing the only highway connecting Stepanakert, Artsakh’s capital, with Yerevan, and preventing the flow of gas during winter¹⁰. On the morning of December 12, 2022,

⁷<https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf> (accessed January 30, 2023).

⁸<https://asp.icc-cpi.int/> (accessed January 30, 2023).

⁹<https://www.icc-cpi.int/situations-under-investigations> (accessed January 30, 2023).

¹⁰<https://oc-media.org/nagorno-karabakh-reports-gas-cut-for-second-time-since-start-of-blockade/> (accessed January 3, 2023);

<https://armenianweekly.com/2022/12/14/artsakh-under-blockade-by-azerbaijan-facing-humanitarian-crisis/> (accessed January 30, 2023).

Azeri “environmentalists” blocked the Corridor and placed tents in the middle of the road¹¹. On the evening of December 13, 2022, Azerbaijan moved internal troops and police forces to the closed section of the road¹². The blockade of Artsakh and the cutting off of gas supplies are intended to force Armenians to leave Artsakh. Under any reasonable analysis of Article II of the Genocide Convention, Azerbaijan’s recent actions—a blockage of the Lachin Corridor and cutting off gas (the heating supply) in winter is an act against Artsakh Armenians that is intended to *at least* cause serious bodily injury or impose conditions that will “bring about the physical destruction” of Artsakh Armenians. This is the very definition of genocide.

3. Conclusion

Social control is predicated on the assumption that law-abiding citizens will be protected from law violators via [successful] criminal prosecution and eventual punishment. The importance of social control is no less meaningful when discussing the enforcement of international criminal law. Indeed, the obligation to develop adequate enforcement mechanisms is perhaps more essential internationally because of the comprehensive and threatening nature of the crimes. The consequences of genocide, for example, are more ominous than any single violation of domestic statutory law.

Despite the recognition that the crime of genocide is prohibited by international criminal law, genocidal events continue to be committed before the passive eyes of the international community. This is no more evident than in the crisis in Artsakh. No one should have to perish for genocidal actions to trigger intervention from the global community. The universal failure to take effective action against genocide has made a mockery of the most sacred values of civilization. International criminal law enforcement, an inconstant apotheosis of human progress, must be the means by which fundamental human rights are protected and preserved. The core problems of genocide transcend considerations of the fate of individual victim groups. Until all that violate the law are brought before, the international community must face the realization that global victimization cannot elicit commensurate universal jurisprudence.

There can be no dispute that consistent enforcement of the Convention is imperative to the deliverance of international criminal justice. The preservation of a peaceful global existence, if not international law itself, requires the prosecution of those accused of genocidal behavior. The Convention requires that accused genocidal perpetrators be prosecuted either before domestic courts or before an international tribunal. In 1946, the GA recognized that the denial of the right to the existence of entire human groups “shocks the conscience of mankind, results in great losses to humanity in the form of cultural and other contributions represented by these human groups, and is contrary to moral law and to the spi-

¹¹https://en.wikipedia.org/wiki/2022_blockade_of_the_Republic_of_Artsakh (accessed January 30, 2023).

¹²*Id.*

rit and aims of the United Nations¹³”.

Today, genocide is recognized universally as a penultimate crime—an affront to the entire world community. Enforcement of the Genocide Convention should be the responsibility of all that value peaceful coexistence. Indeed, international law stipulates that there are certain offenses, of which genocide is one, for which any nation may assert jurisdiction. All genocidal acts begin with some *overt act* that signifies genocidal intent. The world has witnessed that act with Azerbaijan’s recent actions in Artsakh. The responsibility now falls to those who are charged with enforcing the Convention.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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¹³G.A. Res. 96, U.N. Doc. A/64/Add.1. at 188 (1946).

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