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Starvation as Genocide, The Artsakh Blockade, and the Failure of International Criminal Law

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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. Escalations in April 2016, and most recently in October 2020, have renewed the antagonism. Since December 2022, Azerbaijan has blocked the Lachin corridor, the only route that connects Artsakh to Armenia proper. This blockade has prevented Artsakh from obtaining food, water, medicine, and humanitarian aid. Under any reasonable interpretation of the Genocide Convention, this blockade evidences a genocidal intent that has led directly to the deaths of Artsakh Armenians by starvation. Like the 1.5 million Armenians who were

slaughtered in Ottoman Turkey in 1915, history is repeating itself as the international community fails to recognize the need for immediate action.

Artsakh

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. Artsakh is located within Azerbaijan proper, about 170 miles west of the Azeri capital of Baku. Of Artsakh's 120,000 inhabitants, 95% are Christian Armenians. Of these inhabitants, nearly 50% are children, the elderly, or disabled.² 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 Turkey 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 transferring 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.

The latest escalation began on September 27, 2020.³ 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 ceasefire, 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 areas.⁴ Protecting the rights of the people of Artsakh is a major concern for Armenia and Armenians in the diaspora. Previous scholarly works (Yacoubian, 2023; 2022) predicted that if Artsakh fell into Azeri control, there was a strong likelihood that the Armenians of the region would be subjected to ethnic cleansing. The evidence suggests overwhelmingly that Artsakh Armenians are victims of genocidal intent at the hands of Azerbaijan.

² See <https://ancawr.org/saveartsakh/> (accessed August 21, 2023).

³ See Joshua Kucera, *As Fighting Rages, What is Azerbaijan's Goal?* EURASIANET (Sept. 29, 2020), <https://eurasianet.org/as-fighting-rages-what-is-azerbajjans-goal> (accessed August 21, 2023).

⁴ See *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).

Genocide

The term 'genocide' was developed to characterize an organized attempt to eradicate an entire ethnic group. Lemkin (1944: 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." Lemkin's (1944) efforts culminated in the Convention on the Prevention and Punishment of the Crime of Genocide⁵ on December 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 and Jonassohn, 1990; Kuper, 1981); 150,000 Hutu in Burundi in 1972 (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; Barron and Paul, 1977); hundred 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).

⁵ Convention on the Prevention and Punishment of the Crime of Genocide. (UN GAOR Res, 260A (III) 9 December 1948).

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 at Nuremberg (IMT) in 1945,⁶ generally considered the first modern paradigm of international criminal law in action (Bassiouni, 1987), the International Military Tribunal for the Far East at Tokyo (IMTFE) in 1946,⁷ the International Criminal Tribunal for the Former Yugoslavia at The Hague (ICTY) in 1992,⁸ and the International Criminal Tribunal for Rwanda.

It was widely expected that the successes of the IMT and the IMTFE would 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.

⁶ The 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.

⁷ International Military Tribunal for the Far East, Special Proclamation by the Supreme Commander for the Allied Powers at Tokyo, 19 January 1946.

⁸ S.C. Res. 808, U.N. SCOR, 48th Sess., 3217th mtg., U.N. Doc. S/RES/808 (1992).

The ICC is an intergovernmental organization and international tribunal located in The Hague, Netherlands. It is the only permanent international court with jurisdiction to prosecute individuals for the crime 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 Statute,⁹ a multilateral treaty that serves as the Court's governing document. States party to the Rome Statute become members of the ICC. As of August 2023, there were 123 ICC member states.¹⁰ 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 Venezuela.¹¹

Artsakh Aggression as Genocide

The Lachin corridor is the only road connecting Artsakh with Armenia proper. Since early December 2022, Azerbaijan has imposed a blockade on Artsakh, closing the only route connecting Stepanakert, Artsakh's capital, with Yerevan, and preventing the flow of gas during winter.¹² On the morning of December 12, 2022, Azeri "environmentalists" blocked the Corridor and placed tents in the middle of the road.¹³ On the evening of December 13, 2022, Azerbaijan moved internal troops and police forces to the closed section of the road.¹⁴ The blockade of Artsakh and the cutting off of gas supplies are intended to force Armenians to leave Artsakh.

Throughout 2023, the blockade has continued.¹⁵ The residents of Artsakh have experienced severe shortages of food, water, and medicine.¹⁶ Humanitarian organizations, like the Society for Orphaned Armenian Relief (SOAR),¹⁷ are blocked from entering Artsakh or sending humanitarian relief. Vehicles with the International Committee of the Red Cross are

⁹ <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf> (accessed August 21, 2023).

¹⁰ <https://asp.icc-cpi.int/> (accessed January 30, 2023).

¹¹ <https://www.icc-cpi.int/situations-under-investigations> (accessed August 21, 2023).

¹² <https://oc-media.org/nagorno-karabakh-reports-gas-cut-for-second-time-since-start-of-blockade/> (accessed August 21, 2023); <https://armenianweekly.com/2022/12/14/artsakh-under-blockade-by-azerbaijan-facing-humanitarian-crisis/> (accessed August 21, 2023).

¹³ https://en.wikipedia.org/wiki/2022_blockade_of_the_Republic_of_Artsakh (accessed August 21, 2023).

¹⁴ *Id.*

¹⁵ [https://en.wikipedia.org/wiki/Blockade_of_the_Republic_of_Artsakh_\(2022%E2%80%93present\)](https://en.wikipedia.org/wiki/Blockade_of_the_Republic_of_Artsakh_(2022%E2%80%93present)) (accessed August 21, 2023).

¹⁶ <https://www.intellinews.com/hopelessness-grows-as-azerbaijan-s-blockade-of-nagorno-karabakh-enters-third-month-270518/> (accessed August 21, 2023); <https://www.politico.eu/article/azerbaijan-installs-checkpoint-on-road-to-nagorno-karabakh-amid-fatal-clashes/> (accessed August 21, 2023);

<https://www.opendemocracy.net/en/odr/nagorno-karabakh-blockade-200-days-azerbaijan-armenia/> (accessed August 21, 2023).

¹⁷ www.soar-us.org (accessed August 21, 2023).

also prohibited from entering the corridor, under the guise of smuggling allegations.¹⁸ Under any reasonable analysis of Article II of the Genocide Convention, Azerbaijan's actions – a blockage of the Lachin corridor, cutting off energy in winter, and preventing the transport of food, water, medicine, and other humanitarian aid – are intended to impose conditions that will “bring about the physical destruction” of Artsakh Armenians. This is the very definition of genocide.

Conclusion

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 reluctance is problematic on two levels. First, the mechanisms in place to detect and remedy genocidal intent are inadequate for the task. The passage of nine months (as of this writing) with no direct action or involvement from the international community suggests that, without massive human casualties, the global community will not intervene. Instead, addressing humanitarian concerns falls primarily to the media and scholars, not practitioners who can intervene politically and militarily. Second, that Armenians are being victimized again, more than a century after the 1915 genocide, suggests a complicity in attempts at extermination of Armenians that no other ethnic groups have experienced in modern history. The universal failure to take effective action against Armenian victimization *again* has made a mockery of the international human rights regime.

There can be no dispute that consistent enforcement of the Genocide 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 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 spirit and aims of the United Nations.”¹⁹

¹⁸ <https://www.aljazeera.com/news/2023/7/11/azerbaijan-accuses-red-cross-of-smuggling-shuts-road-to-karabakh> (accessed August 21, 2023).

¹⁹ G.A. Res. 96, U.N. Doc. A/64/Add.1. at 188 (1946).

Today, genocide is recognized universally as the penultimate crime – an affront to the entire world community. Enforcement of the Genocide Convention should be the responsibility of all that value a 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 an *overt act* that signifies genocidal intent. The world has witnessed that act with Azerbaijan’s actions in Artsakh between December 2022 and the present. The responsibility now falls to those who are charged with enforcing the Convention.

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