

# The Politicization of Genocide: Is There a Genocide in Karabakh?

Written by M.Hakan Yavuz

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M.HAKAN YAVUZ, SEP 20 2023

Few terms are as readily exploited and strategically wielded as the label “genocide.” Within both international and domestic legal contexts, genocide stands as a heinous offense, the gravest of crimes, capable of igniting profound moral indignation upon its occurrence. As a consequence, virtually every ethnic, religious, or racial group harbors a desire to portray their tribulations as genocide, harnessing its potent implications. This transformation of genocide into a formidable instrument has enabled factions to disarm their adversaries while simultaneously galvanizing public sentiment in their favor. Notable instances, such as the Darfur crisis, the plight of Tibet, and the persecution of Uyghur Turks in China, have consistently been cast within the framework of genocide to mobilize support and arouse international outcry. Recently, in the case of Russia, Putin accused of Ukraine the crime of genocide in the Donbas region to justify its occupation of Ukraine. Thus, the term genocide is over and misused by different actors to rally public opinion.

Refusing to classify an event as genocide can be perceived as a rejection of the anguish endured by a particular community. Even if you agree with the facts of the persecuted community but disagree with the legal description of these events as genocide, you will be accused of denialist. To illustrate, consider the plight of the Armenians in Karabakh, who find themselves grappling with adversity in the aftermath of the 2020 War’s conclusion. The accusation of genocide started during the Second Karabakh War and it continued afterward. Recently, Luis Moreno Ocampo, concluded that the blockade of Lachin Corridor constituted a genocide. He argued that

There is an ongoing Genocide against 120,000 Armenians living in Nagorno-Karabakh, also known as Artsakh. The blockade of the Lachin Corridor by the Azerbaijani security forces impeding access to any food, medical supplies, and other essentials should be considered a Genocide under Article II, (c) of the Genocide Convention: “Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.”

Certainly, the establishment of Azerbaijani checkpoint on the Lachin Corridor, the route connecting Armenian-populated regions of Azerbaijan and Armenia, has led to challenging situations. These circumstances are unquestionably complex, as Azerbaijan claimed that the Lachin road was used for military buildup. However, it is crucial to recognize that while the humanitarian situation is severe, it does not correspond to the essential elements of genocide. The aim of the Azerbaijani government is not to eradicate the Armenian population, but rather to integrate the Armenian minority within Azerbaijan. Referring to the redirection of the Armenian community towards the alternate Aghdam road and their integration into Azerbaijan as genocide would be inaccurate. The government of Azerbaijan is seeking to close the Lachin Corridor and force Armenians to use the Aghdam Road which would force Armenians to recognize the sovereignty of Azerbaijan and work within the Azerbaijani legal system.

The United Nations agencies provide a much better understanding of the situation in Karabakh. For instance, the United Nations Office of the High Commissioner for Human Rights has issued an appeal to the Azerbaijani government, urging an immediate cessation of the “acute humanitarian catastrophe” in the Nagorno-Karabakh area. The organization underscores that this crisis has engendered critical scarcities in provisions such as sustenance, pharmaceuticals, and sanitary items. In response to this situation, Azerbaijan proposed to provide all the needs of the Karabakh population via Aghdam road. This proposal first has been rejected by the Karabakh Armenians and

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eventually, they agreed to receive Russian, not Azerbaijani, humanitarian aid from the Aghdam road.

In essence, the utilization of the term genocide is a delicate matter, as its unwarranted application not only diminishes the gravity of genuine instances but also distorts historical accuracy. It is crucial to acknowledge and address suffering and hardship without resorting to overused terminology that can inadvertently dilute the significance of the atrocities it represents.

## **The Brief History of the Conflict**

Over the course of its history, the Karabakh region had a diverse population consisting of both Armenians and Azerbaijanis. However, with the onset of Russian colonial occupation in the early 19th century, Armenians from Iran and the Ottoman Empire began to settle in Karabakh. The historical records of Azerbaijan affirm that Karabakh has always been an inseparable part of the state.

During the era of the Soviet Union, Karabakh assumed the role of an autonomous region within the Azerbaijani SSR. Nonetheless, as the foundations of the Soviet Union began to crumble, the Armenian minority embarked on a quest for reunification with Armenia. This pursuit catalyzed a consequential episode of ethnic displacement, notably the significant expulsion of Karabakh's Azerbaijani inhabitants in 1993, a joint undertaking by Armenia and Russia. The outcome was the prevailing triumph of Armenian forces over the Azerbaijani military, leading to the occupation of nearly 20% of Azerbaijani territories. This struggle witnessed Russia steadfastly aligning itself with Armenia. Despite protracted negotiations spanning a span of three decades, a definitive and enduring resolution for the complex Karabakh conflict remains beyond reach.

After the initial Karabakh War and the peace negotiations that spanned from 1994 to 2018 (before Pashinyan assumed power in May 2018), Azerbaijan proposed granting special autonomy to Karabakh Armenians, under the condition that they recognize Azerbaijan's territorial integrity. However, Armenians turned down these offers and instead resorted to threats of further territorial expansion. This kind of rhetoric, including hints of advancing towards Baku, contributed to the conditions that eventually led to the outbreak of the Second Karabakh War in 2020.

On August 5, 2019, Armenian Prime Minister Nikol Pashinyan visited Karabakh and organized a large rally in Stepanakert (Khankendi), during which he strongly declared, "Artsakh [Karabakh] is Armenia, and there's no room for debate." Pashinyan led the crowd in chanting "Miatsum," a term symbolizing "unification with Armenia." This term gained significant significance during the height of Armenian nationalism in the late 1980s. The implications of "Miatsum" had a wide-reaching impact, including a heightened reliance of Armenia on Russia and a significant setback to its economy. Additionally, a substantial number of Armenians emigrated to Russia or the United States, while many young Armenians lost their lives, leaving a void in potential progress across generations.

The Second Karabakh War brought significant casualties for Azerbaijan, with more than 4,000 soldiers losing their lives and many more being wounded. Azerbaijan emerged victorious and, given the prevailing circumstances, has become cautious about making concessions. Moscow facilitated a trilateral cease-fire agreement signed by Armenia, Azerbaijan, and Russia in November 2020. This agreement allowed for the deployment of 1,960 Russian peacekeeping troops to Karabakh, tasked with safeguarding the "Lachin Corridor," which links Karabakh to Armenia. The agreement also stipulated that "The Republic of Azerbaijan shall guarantee the safe movement of citizens, vehicles, and cargo in both directions along the Lachin corridor." In return, Armenia committed to "ensure the safety" of transportation routes connecting mainland Azerbaijan and the Nakhchivan enclave.

President Aliyev's position became resolute on the day he signed the 2020 ceasefire agreement. He proclaimed, "The status quo? Went to hell. It failed; it was shattered to pieces. It is not and will not be there. As long as I am president, there will be no status quo." In response to Karabakh Armenians' reluctance to accept Azerbaijani sovereignty, he conveyed, "Karabakh Armenians should realize that by being part of Azerbaijani society with security guarantees and their rights intact, including educational, cultural, religious, and civic rights, they can lead a normal life." Following the conflict, Aliyev's primary goal was the full integration of the region into Azerbaijan and its economic development. He extended an invitation to Karabakh Armenians to embrace Azerbaijani citizenship,

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granting them the same rights as other minority groups in Azerbaijan. Unfortunately, this offer was met with firm rejection from the Armenian side.

The Armenian leadership breached crucial terms of the ceasefire by refusing to establish transport connections to Nakhchivan. Additionally, Karabakh Armenians rejected the offer of Azerbaijani citizenship, prompting President Aliyev to assert sovereign control over the Lachin Corridor, the sole passage linking Armenia and the Karabakh enclave. Importantly, Aliyev's intention is not to eradicate or forcibly displace Armenians, as some contend. Rather, his aim is to incorporate the Armenian community within the secessionist enclave, ideally through voluntary means, or if necessary, through coercive methods.

Aliyev put forth the Aghdam-Stepanakert (Khankendi) Road as a way to address the needs of Karabakh Armenians and officially acknowledge Baku as the capital encompassing all legitimate Azerbaijani territories. However, Armenian nationalists staunchly reject humanitarian aid from Baku and oppose the concept of living under Azerbaijani sovereignty.

Evidently, Armenians seem inclined to relinquish Karabakh altogether instead of peacefully coexisting under Azerbaijani rule. The concluding chapter of the Karabakh narrative presents two distinct paths. Armenians can opt for integration, enjoying equal rights and security as any other minority within Azerbaijan, or they can carve out their trajectory elsewhere. If they choose to spurn life within Azerbaijan, they might realize their interpretation of "Miatsum," even without gaining a single square meter of Karabakh territory.

As the Karabakh saga approaches its denouement, the Armenian strategy of rousing public sentiment by accusing Azerbaijan of genocide and ethnic cleansing, coupled with their insistence on an augmented Russian role, which could potentially lead to a Russian protectorate over Karabakh, finds itself on precarious footing. Both these strategies are poised to yield outcomes that run counter to their intended goals.

## **Risk or Crime of Genocide?**

Ocampo, the former prosecutor of the International Criminal Court, has asserted that there exists a "plausible foundation for the belief that genocide is underway against Armenians" within the disputed territory of Nagorno-Karabakh. By blocking the Lachin Corridor by the Azerbaijani security forces, Ocampo argues that this impedes access to any food, medical supplies, and other essentials and thus should be considered genocide under Article II, (c) of the Genocide Convention. The Convention states that "Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction." He stresses starvation as "the concealed weapon of this genocide." After reading Ocampo's report, I concluded that the report is hastily put together with very little respect for his profession or the Genocide Convention. This is the later example of how the genocide has been weaponized to score points in international public opinion. This is a report not for the court of law but for the court of public opinion.

Ocampo's knowledge about the history of the region is elementary level and mostly wrong. His legal argument is very thin. Yet, the report did make the headlines in some major news outlets. Before I examine the report further, it is important to clarify what are the defining features of the crime of genocide.

The Armenian government went on to urge the convening of the UN Security Council to deliberate and address the matter of the "humanitarian catastrophe" in Karabakh. However, in the absence of substantiating evidence to support the genocide assertion, the Security Council refrained from issuing any official statements concerning the events in Karabakh. Armenian Foreign Minister by referring to Ocampo's report accused Azerbaijan of genocide. Subsequently, faced with the inability to achieve the desired outcome through the Security Council, the Armenian side enlisted the services of Professor Juan E. Mendez from the American University to produce a preliminary report. Mendez's report primarily focused on highlighting the potential risk of genocide facing the Karabakh population, in contrast to Ocampo's earlier claim that "the crime of genocide is taking place."

## **What is Genocide?**

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Genocide is an intent to kill a group of people due to their ethnic, racial, religious, or national identity. The crime of genocide “contains two constituent elements: the physical element, namely the act perpetrated or *actus reus*, and the mental element, or *mens rea*’ (or *dolus specialis*). One of the acts capable of amounting to the *actus reus* of genocide is ‘[d]eliberately inflicting on [a] group conditions of life calculated to bring about its physical destruction in whole or in part’. The physical elements include: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life, calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; and forcibly transferring children of the group to another group. These guilty acts must be carried out with the special intent (*dolus specialis*) for the crime of genocide to exist. These acts must be carried out with the intent to “destroy” the protected group as such. The guilty act itself is necessary but not sufficient qualification for the crime to be genocide. The Convention stresses the “*dolus specialis*” as the critical defining criteria for the definition of crime as genocide. In fact, the number of decisions by the International Court of Justice on the cases of Serbia, Croatia, and Bosnia stressed that the existence of one or more guilty acts enumerated in Article II of the Convention are not sufficient to legally qualify the crime as genocide. The existence of special intent would have to be proven. This is why the keywords “intent to destroy as such” have been added to Article II of the Genocide Convention. Closing roads and encouraging groups to use alternative roads could not be considered an act to bring “about physical destruction in whole or in part.”

In his report, Ocampo characterizes the obstruction of the Lachin corridor as a deliberate endeavor to induce starvation among the Armenian population. Paradoxically, this assertion is made devoid of any firsthand exploration of the region or substantive investigative effort to discern the underlying motivations behind the corridor’s closure. Within this premature labeling of the act as “genocide,” a glaring absurdity emerges.

The assessment fails to acknowledge the multifaceted nature of Karabakh’s sustenance infrastructure, which encompasses food flows extending beyond Armenian borders. Moreover, it is noteworthy that President Aliyev has advocated for the alternative route of the Aghdam road, thereby indicating a distinct intention that centers on the assimilation of Armenians into the Azerbaijani framework, rather than a malevolent scheme aimed at their deprivation or expulsion.

Regrettably, Ocampo’s analysis falls short in its failure to illuminate the authentic intentions underpinning Azerbaijan’s policies. By prematurely aligning these actions with the genocide convention, Ocampo inadvertently not only diminishes the profound gravity associated with the crime of genocide but also imparts a misleading sense of optimism to the afflicted Armenians of Karabakh. This approach, rather than serving as a clarifying beacon, obscures the nuanced reality and implications of the situation at hand.

Instead of actively engaging in sincere dialogue aimed at enhancing the living conditions of Karabakh Armenians, it appears that the Armenian political leadership is expending valuable time and further alienating the Azerbaijani government. The population in Karabakh is grappling with significant infrastructure challenges, including consistent access to vital resources like electricity, oil, gas, and water. Addressing these immediate concerns necessitates cooperative efforts with the central government in Baku. However, certain Armenians seem to prioritize issues of independence over the more pressing economic, comfort, and well-being matters. The secessionist stance adopted by some Karabakh Armenians seems to lack rationality or pragmatism when viewed through a socio-political lens. Beyond their focus on the concept of genocide, Armenian nationalists have articulated two principal objectives: either converting Karabakh into a Russian protectorate or seeking territorial autonomy. Nevertheless, neither of these options appears to be realistically attainable.

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