

When Genocide Goes Unpunished: An Armenian Perspective

Introduction

“Who, after all, speaks today of the annihilation of the Armenians?” Adolf Hitler posed this question in 1939 in an attempt to rationalize the Holocaust.¹ The brutal nature of genocide has linked scholars, authors, and historians to some of the most disturbing events in history. One community that has been the target of genocide numerous times throughout history is that of the Armenian peoples. Once members of the Ottoman Empire, Armenians now reside in Armenia and the Republic of Artsakh (Nagorno-Karabakh), a small piece of what was once a vast kingdom. Today, the Armenian diaspora extends to countries like the United States, Russia, France, and Lebanon. Armenians have been the target of ethnic cleansing since the late 1800s, and such events have resulted in the deaths of millions over time. Atrocities against the Armenian people is not isolated solely in history, as modern acts perpetrated in the present-day can be considered genocide. In this regard, there have been several well-documented massacres as recent as the 1990s, as well as other forms of ethnic cleansing that have been largely ignored by the international community, most recently in 2020.

Thesis and Guiding Areas of Research

To understand the correlation between the historical and modern acts of genocide perpetrated by Azerbaijan against the Armenian people, one must first analyze the background of the Armenian Genocide of 1915. To identify whether these present-day events in Nagorno-Karabakh constitute genocide, one must delve into the definition of genocide as espoused by the United Nations (the “UN”) Convention on the Prevention and Punishment of the Crime of

¹ “Remembering the Armenian Genocide.” n.d. Jewish World Watch. Accessed May 1, 2023. <https://jww.org/site/remembering-the-armenian-genocide/>.

Genocide. With the historical backdrop and the definition of genocide established, one may then argue that the ongoing actions by Azerbaijan against the ethnic Armenian population of Nagorno-Karabakh constitute genocide.

A Relevant History of Atrocities Against Armenians

Hamidian Massacres (1876 – 1909)

The Hamidian massacres took place within the Ottoman Empire between 1876 and 1909.² Such an extensive period is associated with the reign of Sultan Abdul Hamid II, who initiated the massacres of Armenians during this time. The massacres against the Armenians were first commenced when Hamid II attempted to shift certain populations in order to subvert the spread of Christianity throughout the region and replace it with the Islamic religion.³ Hamid II wished to avoid the conflict that would inevitably result when his armies moved into areas occupied by Armenians. As a result, the government justified violent action being taken against the Armenians through an effective propaganda campaign that would incite neighboring Turkish and Kurdish communities to resent Armenians residing within the Ottoman Empire.⁴ The strategy employed by Hamid II severed any previous ties that these communities once had. Consequently, Hamid II ordered that the local areas and communities within regions occupied by Armenians be overtaken. In the wake of the order, Armenian homes and businesses were demolished. Men, women, and children were murdered for the purpose of demoralizing the remainder of the Armenians, and to avoid potential conflict with Hamid II.

² “Hamidian (Armenian) Massacres.” Armenian National Institute, 2023. <https://www.armenian-genocide.org/hamidian.html>.

³ *Id.*

⁴ *Id.*

After this initial massacre of villages located in eastern Anatolia, similar instances of violence also contributed to the collective atrocities classified as the Hamidian massacres. Throughout the remaining years, similar brutalities were committed, especially against those who protested against the government and attempted to gain support from Western powers.⁵ As a result, an estimated 100,000 to 300,000 Armenians died, tens of thousands more fled the country, and countless others were forcibly converted to Islam.⁶ Even those that converted to Islam were still considered to be second-class citizens, and were treated by the government in ways that denied them equal protection and rights under the Ottoman Empire's laws.⁷ With these efforts, Hamid II was effective in accomplishing his goal of diminishing the influence that the Armenians had over his government, prevented the spread of Christianity, and eliminated the growth of Armenian nationalism.

The Armenian Genocide (1915-1923)

The only atrocity to be officially classified as genocide against the Armenians is the Armenian Genocide of 1915. While the events took place in the early 1900s, the term "genocide" itself was first created in 1944 by Polish lawyer Raphael Lemkin, and its use became official in 1946 when it was defined as a crime under international law by the UN.⁸ Ultimately, the Armenian Genocide was classified as such when the term was officially recognized as independent crimes against humanity as established by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.⁹

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ "Genocide." United Nations, n.d. <https://www.un.org/en/genocideprevention/genocide.shtml>

⁹ *Id.*

The Armenian Genocide began on April 24, 1915, during which Christian Armenians living throughout the Ottoman Empire were targeted in attacks by Ottoman Turks and Kurds.¹⁰ During this period, the Ottoman government, which was controlled by the Committee of Union and Progress (the “CUP”), intended to exterminate the Armenians in the country in order to reduce the spread of their religion, force adherence to Islam, and promote Turkification of the entire population.¹¹ The Ottoman government feared that the Armenians would feel the pressure of the Ottoman Empire and be easily enticed to support enemy nations that moved into their territory during World War I, particularly the Russian Empire.¹² Thus, the CUP, and the nation now known as Turkey, intended to establish a region that could be declared an exclusively Turkish state.¹³ Consequently, the CUP intended to reduce the size of the seemingly “dangerous” Armenian population by method of death-marches into the Syrian Desert or outright massacre in the countryside.¹⁴ In addition to the direct means of eliminating the lives of Armenians, those who raided the regions also participated in the confiscation of both personal and real property, as well as the destruction, looting, and burning of businesses.¹⁵ Many Armenians were forcibly deported via the railway systems towards areas outside of Anatolia, often by cattle cars that were packed well beyond maximum capacity.¹⁶ In many instances, Armenian children were taken by Turkish militia members, forced to adopt the Islamic religion, and pushed to assimilate into Turkish culture.¹⁷

¹⁰ “The Armenian Genocide (1915-16): Overview”. United States Holocaust Memorial Museum, 2023. <https://encyclopedia.ushmm.org/content/en/article/the-armenian-genocide-1915-16-overview>.

¹¹ *Id.*

¹² *Id.*

¹³ “Armenian Genocide (1915-1923)” 2023.

¹⁴ “The Armenian Genocide (1915-16): Overview” 2023.

¹⁵ Adalian 1991.

¹⁶ *Id.*

¹⁷ *Id.*

As a result, it estimated that over 1.5 million Armenians died as a result of the Armenian Genocide.¹⁸ These slaughters continued against the Armenians throughout the remainder of World War I and finally ended in 1923.¹⁹ That year, Turkey was declared a republic and the nation received international recognition, after which it actively lobbied against international recognition of the Armenian Genocide, as well as any form of resettlement or reparations to the detrimentally impacted Armenians.²⁰ Countless individuals had become orphaned and displaced, and there were virtually no Armenians remaining in Anatolia, a land they called home for thousands of years.

Shushi Massacre (1920)

Beyond the Armenian Genocide of 1915, there are additional specific events during which violent atrocities were committed against Armenians, but which are not widely classified as genocide. The Shushi massacre of 1920 is an event for which specific recognition is given for its massive impact upon the Armenian population. The Shushi massacre is associated with the end of World War I, and was a direct result of the formation of the Soviet Union. Tensions between the Armenians, the majority occupants of the village, and the Azerbaijanis, who were the minority²¹ rose in part due to the decision of the Soviet Union to place Nagorno-Karabakh within the Azerbaijani SSR as the Nagorno-Karabakh Autonomous Oblast, rather than within the Armenian SSR.

At the end of World War I, both Armenia and Azerbaijan were established as independent republics, and the territory that was at the center of the largest dispute was Nagorno-Karabakh, which comprised significant populations of both nations' ethnic backgrounds, but which would

¹⁸ "Armenian Genocide (1915-1923)" 2023.

¹⁹ *Id.*

²⁰ *Id.*

²¹ "The Shushi Revival Fund". The Shushi Revival Fund, 2016.

<https://web.archive.org/web/20070915152735/http://www.shushi.org/en/kotoratcner.php>.

eventually become a region within the Azerbaijani SSR. In April of 1919, Azerbaijan officially claimed the region, after which the Armenians within Nagorno-Karabakh claimed that they did not recognize the authority of Azerbaijan or its leaders.²² In June of 1919, an armed attack took place in Shushi against the Armenians who were, as per the belief of the Azerbaijani government, considered to be outsiders that did not belong in the newly-declared country. One of the strategies of the Azerbaijanis was to blockade and isolate Shushi, which led the Armenians in the region to be unable to access food and other resources, leaving them starving, without weapons, and unable to receive any reinforcements. During these initial phases of what would become the backdrop of the Shushi massacre, between 600 to 700 Armenians were killed.²³ Although the Armenians were starved of essential supplies, they successfully repelled Azerbaijani aggression, leading to a temporary relief in the massacres. The short-lived peace led to the official declaration of the region of Nagorno-Karabakh to be paused until the Peace Conference in Paris in 1920, in which official terms of conflict settlement would be negotiated.

In March of 1920, however, the peace terms were broken by Azerbaijan, and attacks were mounted against the unexpected Armenians of Shushi. The Azerbaijani military tightened its blockade around the region, placed forces around the area, and initiated fire against the Armenians in the town.²⁴ The attacks were assisted by local Azerbaijanis that lived in and around Shushi, as well as guerrilla gangs that arrived from various regions of Azerbaijan. These efforts eradicated the Armenians that remained in Shushi, and eventually resulted in the looting and burning of Armenian homes and businesses. In the Shushi massacre, children were also taken from the homes

²² *Id.*

²³ *Id.*

²⁴ *Id.*

of the Armenians and forced into the lives of the Azerbaijanis. The Shushi massacre led to the death of more than 20,000 Armenians.²⁵

Sumgait Pogrom (1988)

The Sumgait pogrom took place in February of 1988, demonstrating that the violence that had been historically initiated against Armenians throughout the development of the modern world has continued to emerge within the relatively recent past. The events took place over a period of four days, and were initiated after rallies were held that perpetuated anti-Armenian rhetoric in response to the Armenians of Nagorno-Karabakh declaring independence from the Azerbaijani SSR.²⁶ The Sumgait pogrom took place in a region of Azerbaijan with a relatively high proportion of Armenian residents.²⁷ After demonstrations had been held in the town and in nearby areas, gangs of Azerbaijanis formed and moved into the neighborhoods containing Armenian residents.²⁸ The Azerbaijanis broke into apartment buildings that were known to house Armenian residents, which were methodically listed with the help of city officials. Members of the groups were recorded to have weapons like iron rods, hatchets, knives, bottles, and rocks, and estimates as to the number of Azerbaijanis that performed the attacks were as high as eighty individuals per apartment building.²⁹ The cruelties that were committed against the Armenians included direct slaughter, raping of women and children, looting, arson, and even torturously burning Armenians to death. Estimates of the number of Armenians that died as a result of these attacks ranges in the hundreds.³⁰

²⁵ *Id.*

²⁶ “A Genocide Gone Unpunished: Pogroms of Armenians in Sumgait (February 1988)”. Office of the Nagorno-Karabakh Republic, 1998. http://www.nkrusa.org/nk_conflict/sumgait_massacre.shtml.

²⁷ “Reflections on the Baku and Sumgait Pogroms: 30 Years Later”. The Armenian Weekly, 2020. <https://armenianweekly.com/2020/01/18/reflections-on-the-baku-and-sumgait-pogroms-30-years-later/>.

²⁸ “A Genocide Gone Unpunished: Pogroms of Armenians in Sumgait (February 1988)” 1998.

²⁹ *Id.*

³⁰ *Id.*

Kirovabad Pogrom (1988)

Another known atrocity is that of the Kirovabad pogrom of 1988. Its impact is unique as it resulted in the mass exodus of Armenians from the city. The Kirovabad pogrom took place in November of 1988, merely months after the Sumgait pogrom, and was initiated as a result of the desire of the Azerbaijanis to slaughter tens of thousands of Armenians “traitors.” Kirovabad, the second-largest city in Azerbaijan (present-day Ganja), had a high population of Armenians.³¹ During this time, many rallies were held in and around the city that promulgated anti-Armenian sentiment.³² As a result, local Armenians sought assistance from Moscow, who instructed them to flee the city and migrate to the Armenian SSR.³³ Over 40,000 Armenians were forced to leave their homes.³⁴ Azerbaijanis utilized the opportunity to attack the migrants, and opened fire against them.³⁵ Through these efforts, over 100 Armenians as well as several Soviet soldiers were killed, and dozens more were wounded.³⁶ The Kirovabad pogrom is not only significant due to its death toll, but also because of the fact that it facilitated the forced evacuation of Armenians from Kirovabad to escape the violence that was ever-present.

Baku Pogrom (1990)

One of the last of the major pogroms to have occurred in the 20th century was the Baku pogrom, which resulted in the deaths of nearly 100 Armenians and left around 700 wounded. The violence perpetrated against the Armenians was another that was initiated as the result of protests

³¹ “Miatsum (From 1987 to 1989)”. Hayastan, 2013.

<https://www.hayastan.com/armenia/history/armenia/index12.php>.

³² “Armenian-Azerbaijanis (Karabakh) Armed Conflict (1988-1994)”. RIN, 2003. <https://glory.rin.ru/cgi-bin/article.pl?id=405&page=2&lb=1>.

³³ Parks, Michael. “Soviet Tells of Blocking Slaughter of Armenians: General Reports His Soldiers Have Suppressed Dozens of Massacre Attempts by Azerbaijanis”. Los Angeles Times, 1988.

<https://www.latimes.com/archives/la-xpm-1988-11-27-mn-1060-story.html>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

by local Azerbaijanis, and was similar to that of Sumgait in that the attackers had information regarding the locations and identities of specific Armenians that lived in Baku ahead of time.³⁷ Additionally, the attacks in Baku were similar to those in Sumgait in that the attackers also utilized weapons like bottles, iron bars, knives, and pipes, as well as set homes and businesses on fire.³⁸ Furthermore, like in Sumgait, many of the Armenians were not only killed, but also beaten, raped, and burned alive.³⁹ This pogrom, like the others, was the result of Azerbaijan attacks against innocent Armenians that lived within their borders.

Official Definitions of Genocide

In order to determine whether the ongoing conflicts that exist within regions like Nagorno-Karabakh and Azerbaijan can be considered genocide against the Armenians, it is vital to review the ways in which the term genocide is defined and considered, and how those definitions may differ according to different organizations, groups, or legal organizations and their classifications.

The United Nations

International Human Rights Law is a body of regulations that is continually evolving, expanding, and further elaborating upon different rights and freedoms that are contained within documents like the International Bill of Human Rights.⁴⁰ The International Bill of Human Rights itself contains various other documents and guidelines, such as the Universal Declaration of Human Rights (the “UDHR”), which was adopted in December of 1948. Thus, the UDHR is generally considered to be the foundation of the overall International Human Rights Law and the

³⁷ Schrader, Esther and Marsha Hamilton. “Armenians Who Fled Baku Tell of Atrocities”. Los Angeles Times, 1990. <https://www.latimes.com/archives/la-xpm-1990-01-18-mn-305-story.html>.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ “The Foundation of International Human Rights Law”. United Nations, 2023. <https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law>.

various regulations that are contained within it.⁴¹ As such, the UDHR is that whose definition of genocide can be described and evaluated.

At the time of its initial creation, the UDHR was able to define the term genocide, its concept, and a definition by which the actions of all nations would be held and evaluated to determine whether their atrocities against certain and specific groups could be considered genocide. The inclusion of the concept of genocide in the UDHR was made possible through the Convention on the Prevention and Punishment of the Crime of Genocide (the “Genocide Convention”), which also took place in December of 1948.⁴² The outcomes of the Genocide Convention provided some steps towards defining and determining genocide as it may occur within various nations and against various groups. For instance, the Genocide Convention determined that the act of genocide need not be defined relative to wartime; it determined that genocide could take place both during times of war, as well during times of peace.⁴³ Additionally, the Genocide Convention worked to establish regulations that would apply to states even outside of those that have ratified the Genocide Convention. Specifically, Article IV of the Genocide Convention asserts that states that are members of the convention are responsible for preventing and punishing the crime of genocide “whether they are constitutionally responsible rulers, public officials, or private individuals.”⁴⁴ These statements, therefore, indicate that states can be held responsible for genocide that has occurred within their borders, even if the states themselves have not ratified the Genocide Convention.⁴⁵

⁴¹ *Id.*

⁴² “The Genocide Convention”. United Nations, 2022. <https://www.un.org/en/genocideprevention/genocide-convention.shtml>.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

Article II of the Genocide Convention, which is a definition adopted by the UDHR and the UN as a whole describes a specific definition for such acts. As Article II states:

- “In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, 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;
 - e. Forcibly transferring children of the group to another group.”⁴⁶

With this definition in mind, the Genocide Convention indicates that there is both a physical and a mental element to the definition of genocide; not only does the physical harm of the individuals have to occur, but the individuals that commit those acts must have performed the actions with the intent to destroy, whether in whole or in part, the targeted groups.⁴⁷ The UN notes that the necessity to prove intent by those violent groups is often the more difficult aspect of the narrow definition of genocide, leading to the lack of recognition of genocide. Overall, the main requirement of genocide is not just that such violence is perpetrated, but that it is specifically enacted against those groups as a result of a desire to eliminate those individuals due to their belonging to a certain group with identifying features or qualities.⁴⁸

⁴⁶ “Convention on the Prevention and Punishment of the Crime of Genocide.” The United Nations, December 1948. https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf.

⁴⁷ “Genocide” n.d.

⁴⁸ *Id.*

International Criminal Court

While the International Criminal Court (the “ICC”) and the UN are two separate entities, the ICC has actually adopted the definition of genocide that has been published in the Genocide Convention; it utilizes the same terms as the Genocide Convention, and applies them in the same terminology that aims to regulate and prosecute the behaviors of individuals or nations.⁴⁹ In the ICC’s *Elements of Crime* document, which explicitly defines the different terms and definitions of certain crimes, the definitions for genocide are listed in Article 6, which contain five parts, each of which has between four and seven separate elements.⁵⁰ The five different parts determine the different forms of genocide: “by killing; genocide by causing serious bodily or mental harm; genocide by deliberately inflicting conditions of life calculated to bring about physical destruction; genocide by imposing measures intended to prevent births; and genocide by forcibly transferring children.”⁵¹ The different elements of each of these parts are further described within the document, which often contain examples of specific ways in which that form of genocide can be performed. As just one example, for instance, and which is similar to many of the other elements listed under the other five definitions of genocide, are the elements related to forcibly transferring children:

“Elements:

1. The perpetrator forcibly transferred one or more persons.
2. Such person or persons belonged to a particular national, ethnical, racial, or religious group.

⁴⁹ *Id.*

⁵⁰ “Elements of Crime.” International Criminal Court, 2010. <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf>.

⁵¹ *Id.*

3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial, or religious group, as such.
4. The transfer was from that group to another group.
5. The person or persons were under the age of 18 years.
6. The perpetrator knew, or should have known, that the person or persons were under the age of 18 years.
7. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.”⁵²

These different definitions, therefore, demonstrate that the definitions provided by the ICC have adopted the same terminology as the Genocide Convention, as well as indicate potential ways in which the intent that is required of a determination of genocide can be claimed; statements such as “the conduct took place in the context of a manifest pattern of similar conduct directed against that group,”⁵³ for instance, indicates that intent may be able to be established if the individual, group, or nation that performed such activity was in alignment with similar activity that was also performed against those same groups. Such specific definitions of the ICC, therefore, potentially make it easier for certain cases to identify intent than the definitions of the Genocide Convention may make possible.

ICC Cases as Precedent for Identifying Intent

Due to the difficulty in determining whether certain acts can be classified as genocide, cases that have been heard within the International Criminal Court are often means of establishing precedent that function as guidelines for the ways in which the intent of an individual, group, or

⁵² *Id.*

⁵³ *Id.*

nation can be established in order to rule certain actions as genocide. While the ICC has only indicted around forty individuals and has only convicted ten of crimes, some of the cases that it has initiated are still able to establish precedent for which crimes like genocide can be charged.⁵⁴

The ICC case against Omar Hassan Ahmad Al Bashir, for instance, is one case that involved the crime of genocide. Al Bashir's crimes include genocide by killing (Article 6-a), genocide by causing serious bodily or mental harm (Article 6-b), and genocide by deliberately inflicting on each target group conditions of life calculated to bring about the group's physical destruction (Article 6-c). The inclusion of Article 6-c as a form of genocide of which Al Bashir is accused inherently includes the concept of intent, so its observation can reveal how intent can be determined. The ICC determined that Al Bashir was guilty of genocide due to the fact that he committed crimes like subjecting civilians to acts of rape, torture, murder, extermination, and of forcible transfer, and that the victims of those acts were primarily members of Fur, Masalit, and Zaghawa groups, while members of other groups were not treated in similar manners.⁵⁵ This case reiterated that such acts can be determined as genocide if "such person or persons belonged to a particular national, ethnical, racial, or religious group."⁵⁶ In comparison with the Genocide Convention's definition, the ICC's definition is written in a way that indicates that this stipulation itself can be indicative of intent.

The Genocide Convention states that intent against these groups has to be accompanied by the physical harm, but the ICC's inclusion of this statement as an element of genocide indicates that if physical harm is perpetrated against individuals of these particular groups, then the act can

⁵⁴ Klobucista, Claire. "The Role of the International Court". Council on Foreign Relations, 202. <https://www.cfr.org/backgrounder/role-international-criminal-court>.

⁵⁵ "Case Information Sheet – The Prosecutor v. Omar Hassan Ahmad Al Bashir." International Criminal Court, 2021. <https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/AlBashirEng.pdf>.

⁵⁶ "Elements of Crimes" 2010.

be seen as having directed intent against those individuals, and, as such, was a form of genocide. The Al Bashir case does not only reflect that the ICC's definition of genocide differs in such a way that provides it an easier means of proving the intent of perpetrators of crimes, but the case also acts as a way in which any case that were evaluated according to only the Genocide Convention and its definition of genocide could utilize the same line of reasoning and logic. One can argue that, because of ICC precedent, the Genocide Convention's definition is applicable and sufficient for convicting individuals or determining individual cases as those related to the international crime of genocide.

European Court of Human Rights

The European Court of Human Rights (the "ECHR") is responsible for overseeing cases that relate to the European Convention on Human Rights, which contains the various articles, regulations, laws, and protocols related to the protection of human rights and fundamental freedoms.⁵⁷ In this official documentation, the ECHR does not dictate any specific definitions of genocide, and does not denote the punishments that can be applied to those who are found guilty of having committed crimes of genocide. Although the ECHR has not defined genocide, it has established several rights that can be related to genocide. Section I of the European Convention on Human Rights includes a description of the rights and freedoms that are afforded to all individuals, and Section II describes the court system that is established for reviewing any actions that are in potential violation of any of the rights in Section I, and how punishments may be applied to those who are found guilty of violations against those rights.⁵⁸

⁵⁷ "European Convention on Human Rights". European Court of Human Rights, 2021. https://www.echr.coe.int/documents/convention_eng.pdf.

⁵⁸ *Id.*

In consideration of the definitions that are provided by both the UN and the ICC, the European Convention on Human Rights, while not explicitly describing any definition of genocide, does include restrictions on certain behaviors that may be classified as genocide by its international definition, or the rights of individuals to freedoms that should prevent their victimization of genocidal actions. For instance, genocide is defined by these international definitions as actions that may cause physical harm to individuals, actions that restrict their religious or ethnic freedoms, and actions that may prevent individuals from seeking safety through not being forced to assimilate into any group other than their own. These rights and freedoms are seen in the European Convention on Human Rights in many of the previously referenced articles; therefore, they may imply a definition for genocide. Such articles include the right to life, prohibition of torture, rights to security, freedoms of religion, and especially punishment without law, which is often seen as relevant to genocide in that those often perpetrating such genocidal actions feel as if they are “prosecuting” individuals as a result of “crimes” they have committed against those outside of their own ethnic, racial, or religious groups. Thus, though the ECHR does not directly describe genocide, many of its articles do contain regulations that are similar to those that attempt to prevent actions that international law considers to be genocide.

Genocide According to Human Rights Editorials

In addition to the official organizations and courts that are tasked with charging individuals with crimes like genocide, the concept of genocide can also be defined by other organizations that often describe many of the same issues, such as the Human Rights Watch (HRW) or the Coalition for the International Criminal Court, which is a partnership of various small and large groups

across 150 countries that work towards achieving justice in relation to certain cases, instances, actions, or current events.⁵⁹

Human Rights Watch

Like the UN and the ICC, the Human Rights Watch (“HRW”) establishes a definition of genocide within the articles of its organization. Article 2 of the HRW Case Law defines genocide in the exact same terminology and definition that is described by the Genocide Convention.⁶⁰ Beyond this statute with the same terminology, however, HRW often dictates additional elements in relation to the definition, such as elements that help to determine the meaning of intent in relation to acts that are committed against certain groups. For instance, they state: “the *mens rea* must be formed prior to the commission of the genocidal acts.” The individual acts themselves, however, do not require premeditation; the only consideration is that the act should be done in furtherance of the genocidal intent. It is this specific intent that distinguishes the crime of genocide from the ordinary crime of murder.”⁶¹ Such a stipulation reveals that HRW defines intent according to a mindset of the individual that is in alignment with the desire to exterminate or specifically harm individuals of a particular nation, race, ethnicity, or religion, even if the specific acts cannot be directly linked with a desire to perform that act with the sole intention of contributing to their overall extermination.

Furthermore, HRW also notes that intent can be inferred, stating that: “intent can be, on a case-by-case basis, inferred from the material evidence submitted to the Chamber, including the evidence which demonstrates a consistent pattern of conduct by the Accused.”⁶² This statement

⁵⁹ “Coalition for the International Criminal Court”. Coalition for the International Criminal Court, 2023. <https://www.coalitionfortheicc.org/>.

⁶⁰ “Case Law of the International Criminal Tribunal for Rwanda”. Human Rights Watch, 2004. <https://archive.hrw.org/reports/2004/ij/icttr/3.htm>.

⁶¹ *Id.*

⁶² *Id.*

indicates that intent does not need to be directly associated with those specific crimes; rather, they only need to be associated with the beliefs of the individual and that individual's tendency to exhibit genocidal thoughts, beliefs, or motivations. The definitions of HRW, therefore, are somewhat more lenient than those of the ICC or the UN, and permit for a wider range and variety of crimes or events to be considered genocide.

Coalition for the International Criminal Court

One final human rights group whose definition of genocide can be examined is that of the Coalition for the International Criminal Court (the "CICC"). Like most other official and unofficial courts and organizations, and as a group that specifically relates to the ICC itself, the CICC defines genocide according to the definition provided by the Genocide Convention and the ICC.⁶³ As an organization that does not itself create regulations, statues, or evaluate the behaviors of others, however, it does not provide individual interpretation of the ways in which the actions of individuals may be perceived as genocide, or may be evaluated as those with or without intent. As such, the definitions of genocide as provided by the CICC are not as informative as may be necessary to determine whether certain events can be considered genocide.

A Classification of the Situation in Nagorno-Karabakh

A Background to the Current Conflicts

The majority of the background to the conflict within Nagorno-Karabakh has been indirectly referenced in the history of atrocities and genocide against Armenians, particularly in relation to the Armenian Genocide of 1915. A more direct discussion of these historical events, however, helps to both contextualize the current events within the region, and to evaluate whether

⁶³ "ICC Crimes". Coalition for the International Criminal Court, 2023. <https://www.icc-cpi.int/about/how-the-court-works>.

those events can be realistically defined as genocide. The background to the current conflicts originates after the end of World War I, during which the Soviet Union, as a global power that controlled many of the regions in the area and which oversaw the distribution of other regions following the end of the Ottoman Empire, established the region of Nagorno-Karabakh as a region that would lie within Azerbaijan.⁶⁴ The issue with such a decision by the Soviet Union was that there was an extensive (95%) Armenian population within Nagorno-Karabakh.⁶⁵ Despite this conflict, the region was relatively peaceful during its time under Soviet rule, generally due to the power of the Soviet Union and its military. As the Soviet Union began to collapse, however, the ethnic tensions between the Armenians and the Azerbaijanis began to increase, and the Azerbaijanis were better able to exhibit violence against the Armenians in Nagorno-Karabakh.

During the 1980s, when the Soviet Union began to decline in power, atrocities against the Armenians began to increase once again. Between the late 1980s and the early 1990s, violence erupted between Armenia and Azerbaijan, which resulted in tens of thousands of casualties and hundreds of thousands of refugees.⁶⁶ In 1994, however, the new country of Russia was able to establish a ceasefire, the Bishkek Protocol, which also established Nagorno-Karabakh as an independent region with a self-proclaimed government, and which was reliant upon economic, political, and military ties with Armenia.⁶⁷ The ceasefire remained active until 2016, during which fighting once again erupted between Armenia and the Azerbaijanis; hundreds of casualties appeared on both sides, and the two regions experienced the most intense fighting between the two

⁶⁴ “Nagorno-Karabakh Conflict”. Council on Foreign Relations, 2023. <https://www.cfr.org/global-conflict-tracker/conflict/nagorno-karabakh-conflict>.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

since 1994. The two sides once again agreed to a ceasefire after four days of fighting, but the truce was eventually broken in September of 2020, during which the current conflicts began to emerge.

A Description of the Current Conflict

In September of 2020, along the Azerbaijan and Nagorno-Karabakh border, heavy fighting began between the two nations, and attacks with drones, shelling, and special operations forces began to increase. In September of 2020 alone, over 7,000 soldiers and civilians were killed, and thousands more wounded on both sides.⁶⁸ The battles eventually developed, shifting from close-range weapons to more longer-range artillery and heavy weaponry, which led to further casualties and tensions between the Armenians and Azerbaijanis.⁶⁹ This period, which is now referred to as the Second Nagorno-Karabakh War, is often understood as a continuation of the Armenian Genocide. These ongoing events, even if not yet so defined according to the international definitions of genocide, resulted in the deaths of over 5,000 Armenians and the displacement of over 91,000 Armenians.⁷⁰

Many of these deaths have been through direct battle, but also through exposing the Armenians in the region to illegal white phosphorus, burning crops in nearby areas causing ecological damage that led to the starvation and dehydration of local Armenians. Additional measures taken were that of the bombing of personal protective equipment (PPE) factories in the area, which provided protection for individuals during the COVID-19 pandemic, and the bombing of hospitals, maternity wards, preschools, churches, and individual homes.⁷¹ The Azerbaijani military often deployed internationally-banned cluster munitions, which are weapons that release

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ “Armenian Armed Forces Lost About 5,000 People Killed During Hostilities in Karabakh – President of Azerbaijan”. Interfax, 2020. <http://interfax.az/view/817779>.

⁷¹ *Id.*

multiple explosive submunitions or bomblets over a wide area.⁷² The use of cluster munitions has been widely condemned by the international community, including the United Nations and the International Committee of the Red Cross. Cluster munitions can cause harm long after the conflict has ended, as unexploded submunitions can remain in the environment and pose a threat to civilians for years or even decades. The use of cluster munitions has been prohibited by the Convention on Cluster Munitions.

The attacks continued for six weeks, after which Russia was eventually successful in establishing a ceasefire between the two countries.⁷³ As a result of the deal, however, Azerbaijan was able to reclaim the majority of the Nagorno-Karabakh territory, with the Armenians now living in an area that was mostly occupied by the people that had, at least historically, been an oppressive force.⁷⁴ Such a division only put the remaining Armenians in further danger and at risk of being additionally affected by the remaining ecological and environmental damage that the Azerbaijanis created, on top of the direct threats to the lives of the Armenians otherwise associated with proximity to Azerbaijanis. The current ceasefire between the two nations, established in 2020, was temporarily violated when violence broke out for a period of two days in September of 2022, which resulted in over three-hundred deaths between both countries, as well as the forced evacuation of almost 3,000 Armenian civilians.⁷⁵ The temporary two-day period of violation was followed by a three-day violation resulting in violence and turmoil, all of which occurred in September of 2022.⁷⁶

⁷² “Azerbaijan: Cluster Munitions Used in Nagorno-Karabakh.” 2020. Human Rights Watch. October 23, 2020. <https://www.hrw.org/news/2020/10/23/azerbaijan-cluster-munitions-used-nagorno-karabakh>.

⁷³ “Nagorno-Karabakh Conflict” 2023.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

Human Rights Violations Committed by Azerbaijan

Crimes Against Humanity

The ICC defines crimes against humanity as crimes in which various actions taken against any civilian population are committed, while having specific knowledge of the attack that is made.⁷⁷ The list of crimes that can be categorized as crimes against humanity include murder, enslavement, extermination, deportation or forcible transfer, torture, rape, persecution based upon political, racial, national, ethnic, cultural, religious, or gender bases, and other inhumane acts.⁷⁸ The current events within Nagorno-Karabakh include actions against the Armenians like murder, beheadings, forced deportation, torture, rape, and persecution based upon nationality and ethnicity, These actions are systemic and target a specific civilian population.

Additionally, Azerbaijan recently imposed a blockade on Nagorno-Karabakh.⁷⁹ The blockade has severely restricted the movement of goods, services, and people to and from the region. Azerbaijan has also cut off the gas supply in the region, leaving Armenians to choose between fleeing their homes or freezing in the winter. The international community has expressed concern over the blockade and called for it to be lifted. The UN has urged Azerbaijan to allow unhindered humanitarian access to the region and to ensure the protection of civilians. The European Union has also called for the lifting of the blockade and for the resumption of dialogue between Azerbaijan and Artsakh.⁸⁰

⁷⁷ “Crimes Against Humanity”. United Nations, n.d. <https://www.un.org/en/genocideprevention/crimes-against-humanity.shtml>.

⁷⁸ *Id.*

⁷⁹ Amnesty International. 2023. “Azerbaijan: Blockade of Lachin Corridor Putting Thousands of Lives in Peril Must Be Immediately Lifted.” Amnesty International. February 9, 2023. <https://www.amnesty.org/en/latest/news/2023/02/azerbaijan-blockade-of-lachin-corridor-putting-thousands-of-lives-in-peril-must-be-immediately-lifted/>.

⁸⁰ *Id.*

Crimes of Aggression

The crime of aggression is defined by the International Criminal Court as, “the planning, preparation, initiation, or execution of an act of aggression by a State against the sovereignty, territorial integrity, or political independence of another State.”⁸¹ It is considered a serious violation of international law. Armed forces played the central role in the actions that were taken against the territory of Nagorno-Karabakh, especially in relation to the fact that they were often still considered to be politically independent from either Armenia or Azerbaijan.⁸² Considering this, the US Office of the Director of National Intelligence (the “DNI”) stated, “In the South Caucasus region, Azerbaijan is the country most likely to renew large-scale conflict in an effort to consolidate and expand the gains it won in its 2020 military action against Armenia over the disputed territory of Nagorno Karabakh.”⁸³ This finding by the DNI validates what the Armenian community has been saying for decades: Armenians seek to live in peace in their historical homelands, but it is impossible due to Azerbaijani aggression.

Crimes of Siege Warfare

The ICC has received attention for an amendment to the Rome Statute that recognizes the warfare tactic of starvation and siege of civilian populations as a war crime.⁸⁴ This is relevant when considering that Azerbaijani nationals continue to block the Lachin Corridor, which is the lifeline of Nagorno-Karabakh. They set up tents in the middle of the road on the morning of December 12,

⁸¹ “Crimes of Aggression”. Coalition of the International Criminal Court, 2023. <https://www.coalitionfortheicc.org/explore/icc-crimes/crime-aggression>.

⁸² Mark, Nicole. “The Armenian Genocide of 2020: The Fight for Indigenous Armenian Land”. The Observer, 2020. <https://fordhamobserver.com/52231/opinions/the-armenian-genocide-of-2020-the-fight-for-indigenous-armenian-land/>.

⁸³ “U.S. Intelligence Community Confirms Azerbaijan as South Caucasus Aggressor.” n.d. Armenian National Committee of America. Accessed May 1, 2023. <https://anca.org/press-release/u-s-intelligence-community-confirms-azerbaijan-as-south-caucasus-aggressor/>.

⁸⁴ “Siege Starvation: A War Crime of Societal Torture | Chicago Journal of International Law.” n.d. Cjil.uchicago.edu. Accessed May 12, 2023. <https://cjil.uchicago.edu/print-archive/siege-starvation-war-crime-societal-torture>.

2022 and, on the evening of December 13, 2022, troops and police forces were sent by the Azerbaijani government to the closed section of the road to reinforce the siege. The reason for the blockade and the cutting off of gas supplies is to compel Armenians to leave Nagorno-Karabakh. As of December 2022, Genocide Watch has placed Nagorno-Karabakh under a Genocide Emergency Alert due to the blockade imposed by Azerbaijan.⁸⁵ The organization has raised concerns about the denial of basic necessities to the population of Artsakh. Additionally, the Raphael Lemkin Institute, named after the scholar who coined the term "genocide," has been actively monitoring and documenting the blockade of Artsakh by Azerbaijan since December 2022. The institute has characterized the blockade as an act of genocide and a violation of international law, particularly the Genocide Convention.

Implications

Considering the actions that have been taken in the current Nagorno-Karabakh conflict, the ability to categorize those actions as crimes against humanity and crimes of aggression, and the contextualization of those actions in the history of genocide and atrocities against Armenians, it is possible to support the argument that the situation in Nagorno-Karabakh meets the threshold of genocide against the ethnic Armenian population. The atrocities that have during and immediately following the Second Nagorno-Karabakh War can be seen as a continuation of ongoing atrocities genocide of Armenians. For instance, the only massacre of the Armenians that is currently officially considered a genocide, the Armenian Genocide of 1915, is considered as such due to the fact that it forced Armenians to relocate from their homes and become displaced, that the Armenians were killed in mass quantities, and that they were killed as a result of their ethnic

⁸⁵ Hill, Nathaniel. 2023. "Genocide Emergency: Azerbaijan's Blockade of Artsakh." Genocide Watch. February 24, 2023. <https://www.genocidewatch.com/single-post/genocide-emergency-azerbaijan-s-blockade-of-artsakh>.

background. Each of these factors indicate adherence to the physical requirements related to the definitions of genocide according to both the UN and the ICC, as well as the groups whose definitions of genocide reflect the official terminology of the UN's Genocide Convention. Additionally, the other definitions that are often utilized by other groups or organizations to determine intent also help to clarify that the actions meet the threshold of genocide against the Armenian population.

The actions of Azerbaijan were aligned with the beliefs of their Turkish forefathers who, throughout history, have performed many of the same genocidal actions and violent atrocities against the Armenians. In accordance to the HRW's suggestion that intent can be inferred, here, intent could be carried from the initial Armenian Genocide to that of the present-day ethnic cleansing of Armenians in Nagorno-Karabakh. The intent was held among the Azerbaijanis throughout the majority of the 1900s, despite the fact that their rule by the Soviet Union prevented them from acting upon that genocidal intent, and that the intent re-emerged as early as the 1980s. From the 1980s onward, continuous aggression towards Armenians have occurred, suggesting that the anti-Armenian sentiments have not changed in the past hundred years. Through the notion that genocidal intent can be inferred according to previous intent, it is evident that the current actions, conflict, and deaths of Armenians are sufficient to officially categorize the current conflicts as acts of genocide.

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