

# International Silence on Genocide: Nagorno-Karabakh, A Case Study

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## I. INTRODUCTION

2023 marked a turning point in the contentious history of Armenian-Azeri relations in the South Caucasus, and more specifically, over the territory previously known as Nagorno-Karabakh.<sup>1</sup> The “peaceful resolution” of this historical tension between such parties has been supposedly achieved through the dissolution of the autonomous Republic of Nagorno-Karabakh.<sup>2</sup> Although the Republic “ended” through an issued decree, dissention against this act was evidenced through the Republic’s leaders retracting the dissolution while being safeguarded in exile.<sup>3</sup> Although genocide has been a widely acknowledged

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<sup>1</sup> See Christian Edwards, *Nagorno-Karabakh Will Cease to Exist from Next Year. How did This Happen?*, CNN (Sept. 28, 2023, 10:07 AM), <https://www.cnn.com/2023/09/28/europe/nagorno-karabakh-officially-dissolve-intl/index.html> [<https://perma.cc/78D4-C4PS>]. The name ‘Nagorno-Karabakh,’ upon dissolution and once Azeri rule was instituted, was changed to the Azeri name referring to the region: simply ‘Karabakh.’ Joshua Kucera, *Down with Nagorno-Karabakh – long live Karabakh*, EURASIANET (Apr. 2, 2021), <https://eurasianet.org/down-with-nagorno-karabakh-long-live-karabakh> (“‘There is now no territorial unit called Nagorno-Karabakh,’ Aliyev said this week, at a video summit of leaders of Turkic-speaking countries. ‘Azerbaijan solved this issue with its historic victory.’”).

<sup>2</sup> *Id.*

<sup>3</sup> Ivan Nechepurenko, *Nagorno-Karabakh Government Says It Will Disband*, N.Y. TIMES (Sept. 28, 2023), <https://www.nytimes.com/2023/09/28/world/europe/nagorno-karabakh-government.html> [<https://perma.cc/P2YW-QER7>] (“In a decree published by the official news service of the Republic of

concept since the phrase's inception after World War II,<sup>4</sup> the silence of those in the international community is deafening when regarding the recorded atrocities committed against the region's targeted ethnic Armenian community, especially in contrast to concurrent global outcry against Israeli acts similarly ignoring ICJ rulings for the prevention of genocide in disputed territories in the Gaza Strip.<sup>5</sup>

Part I of this Note outlines the history of contention between the Azeri and Armenian peoples of the region and then provides context on the international laws that are used to classify and condemn genocide. Part II then identifies why the international community ignored multiple red flags indicating Azeri genocidal intent, leading to the Azeri state's ultimate acts in recent years that constitute genocide under international law. Next, Part III offers a comparison in global outcry against humanitarian crimes occurring, when regarding an analogous example of conflict between Israeli and Palestinian forces. Finally, Part IV of this Note argues that because the specified *mens rea* element of genocide (*dolus specialis*) is largely ignored until intent is definitively shown through the substantial decimation of a population of people, earlier declarations by global actors against such destruction when intent is displayed can lead not only to earlier recognition, but also enjoinder or similar deterring practices employed by the world community.<sup>6</sup>

## II. BACKGROUND

Despite its complex and violent history, Western discourse has largely ignored the conflict between the sovereign state of Azerbaijan and the ethnic Armenian population, both in the State of Armenia and the Caucasus region as a whole.<sup>7</sup> The contentions between Armenia and Azerbaijan extend beyond mere disputes held over the existence of Armenians in the historiography of the region.

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Artsakh — the official Armenian name for Nagorno-Karabakh — the territory's leader, Samvel Shakhramanyan, said that all government entities there would be dissolved by the end of the year.”); The Editors of Encyclopaedia Britannica, *Nagorno-Karabakh*, ENCYCLOPAEDIA BRITANNICA (last updated Mar. 15, 2025), <https://www.britannica.com/place/Nagorno-Karabakh> (“The autonomous Republic of Nagorno-Karabakh came to a de facto end, even decreeing its own dissolution, although it later retracted the decree in exile.”); Center for Preventive Action, *Nagorno-Karabakh Conflict*, GLOB. CONFLICT TRACKER (last updated Mar. 20, 2025), <https://www.cfr.org/global-conflict-tracker/conflict/nagorno-karabakh-conflict> [<https://perma.cc/EX2U-M4RP>]

(“Following Azerbaijan’s lightning offensive and occupation of Nagorno-Karabakh on September 19, 2023, the ethnic Armenian enclave was officially dissolved on January 1, 2024.”).

<sup>4</sup> See Larra M. Diboyan & Jesse R. Goliath, *Publicly Underrepresented Genocides of the 20th and 21st Century: A Review*, 3 HUMANS 82, 82 (2023) (describing that Lemkin was a lawyer who wrote extensive literature on the subject and coined the term “genocide” in 1944).

<sup>5</sup> See generally Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (S. Afr. v. Isr.), Order, 2024 I.C.J. 192 (Jan. 26) [hereinafter I.C.J. 192]; see also *infra* Section IV.

<sup>6</sup> I.e., individual action by states against aggressors (e.g., sanctions) would be supported by the reassurance provided through collective condemnation against the bad actor.

<sup>7</sup> Emil Sanamyan, *On Origins of the ‘Caucasus Region’*, USC DORNSIFE INST. ARM. STUD. (Nov. 24, 2017), <https://armenian.usc.edu/on-origins-of-the-caucasus-region/> <https://perma.cc/2LWG-XUTS> [“(The Caucasus has become a fixed description for the region between the Black and Caspian Seas, including the Republic of Armenia.”)].

Rather, the conflict between the two groups is evident in the violence and destruction levied by the parties. By 2020, the conflict had “taken the lives of more than thirty-five thousand people.”<sup>8</sup> As the destruction of the Nagorno-Karabakh territory—or rather, the multilateral failure to prevent its ultimate elimination—has occurred, threats loom over the future of Armenian-Azeri relations due to what some fear as the increasingly expansionist goals of the Azeri government.<sup>9</sup> Ethnic Armenians have valid concerns given the alarming discourse by Azeri officials like President Aliyev, who voiced hatred in an official Azeri statement on the government website as early as April 2015: “If you do not want to die, then get out of Azeri lands.”<sup>10</sup>

#### A. *The History of Conflicting Claims for Control of Nagorno-Karabakh*

Although the history of attacks against the Armenian population in the Caucasus region can be traced back to the Ottoman Empire’s (present-day Turkey) sprawling and violent territorial invasion in 1915,<sup>11</sup> Azerbaijan’s interest in the Nagorno-Karabakh territory reached a turning point in 1921.<sup>12</sup>

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<sup>8</sup> Bedross Der Matossian, *Ambivalence to Things Armenian in Middle Eastern Studies and the War on Artsakh in 2020*, 54 INT’L J. MIDDLE E. STUD. 530, 531 (2022).

<sup>9</sup> See, e.g., European Parliament Resolution of 15 March 2023 on EU-Armenia Relations (2021/2230(INI)), EUR. PARL. DOC. P9\_TA(2023)0081, ¶ E (2023) (“[I]n September 2022, Azerbaijan attacked three Armenian provinces: Gegharkunik, Syunik, and Vayots Dzor; whereas Armenian authorities reported that the attack had resulted in the occupation of 220 km<sup>2</sup> of Armenian sovereign territory, that it had left 201 people, both military and civilian, dead and that 27 people remain missing.”) [hereinafter Res. 2230]; European Parliament Resolution of 5 October 2023 on the Situation in Nagorno Karabakh after Azerbaijan’s Attack and the Continuing Threats against Armenia (2023/2879(RSP)), EUR. PARL. DOC. P9\_TA(2023)0356, ¶ O (2023) (“[I]n recent years the Azerbaijani leadership has made irredentist statements on several occasions with reference to the sovereign territory of Armenia; whereas, on several occasions over the past two years, the Azerbaijani army has occupied various parts of the sovereign territory of Armenia and bombed civilian targets on the territory of Armenia...”) [hereinafter Res. 2879]; Nechepurenko, *supra* note 3 (“While the Azerbaijani authorities have allowed many ethnic Armenians to leave Nagorno-Karabakh, they have also arrested some of its leading figures. On Wednesday, the Azerbaijani security service detained Ruben Vardanyan, a former leader of the breakaway territory... His detention raised concerns in the territory that the Azerbaijani authorities would arrest other leaders of the breakaway government.”).

<sup>10</sup> Ilham Aliyev *Chaired the Meeting of the Cabinet of Ministers Dedicated to the Results of Socioeconomic Development in the First Quarter of 2015 and Objectives for the Future*, PRESIDENT OF THE REPUBLIC OF AZER. (Apr. 10, 2015, 1:50 PM), <https://president.az/en/articles/view/14805> [<https://perma.cc/57SV-DTJJ>]; Luis Moreno Ocampo, *The ICC Should Consider the New Armenian Genocide Petition*, POLITICO (May 10, 2024, 4:00 AM), <https://www.politico.eu/article/icc-armenian-genocide-nagorno-karabakh-azerbaijan-ilham-aliyev/> [<https://perma.cc/NES5-DAYV>].

<sup>11</sup> Ayda Erbal, *The Armenian Genocide, AKA the Elephant in the Room*, 47 INT’L J. MIDDLE E. STUD. 783, 784 (2015) (quoting historian Donald Quataert on the discussion surrounding Armenian-Ottoman relations studied during his career: “In the late 1960s (when I entered graduate studies), there was an elephant in the room of Ottoman studies—the slaughter of the Ottoman Armenians in 1915.”).

<sup>12</sup> George S. Yacoubian, *The Artsakh Conflict as a Violation of the Genocide Convention: Toward a Referral to the International Criminal Court*, 13 ADVANCES APPLIED SOCIO. 171, 171 (2023).

During this period, control of the “Autonomous Oblast”<sup>13</sup> of Nagorno-Karabakh was transferred from Russia to Azerbaijan as a semiautonomous region.<sup>14</sup> Although Armenians within the region voiced their discontent with this move, especially after the death of Stalin in 1953, efforts of self-determination both rose and were quelled well into the 1990s.<sup>15</sup> This was especially apparent in 1988, when “a national movement for self-determination began in Karabagh, expressing the clear will of the people to separate from the Azerbaijan SSR and to unite with the Armenian SSR.”<sup>16</sup> In response, this prompted Azeri-conducted pogroms against Armenians in Nagorno-Karabkh.<sup>17</sup>

Upon the brink of the USSR’s dissolution, the Soviet government attempted transferring authority over Nagorno-Karabakh from the Azerbaijan to the Armenian Republics of the Soviet Union.<sup>18</sup> Yet this transfer was unsuccessful as Azerbaijan rejected this Soviet proposal.<sup>19</sup> This ultimately led to the ethnic persecution of Armenians between 1988 and 1994 in both the territories of Nagorno-Karabakh and Azerbaijan, in what became known as the First Karabagh War.<sup>20</sup> Consequentially, around thirty thousand casualties and hundreds of thousands of refugees of both Armenian and Azeri ethnicity in the region resulted.<sup>21</sup> Between 1994 and 2020 came a period of relative peace in the region, albeit with sporadic bursts of conflict as both sides utilized shelling,

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<sup>13</sup> Der Matossian, *supra* note 7, at 531 (“[T]he Nagorno-Karabakh Autonomous Oblast (NKAO) was established within the Azerbaijan Soviet Socialist Republic in 1923.”); Cf. Jo Laycock, *At the Crossroads of What? Refugee Histories, the Middle East, and the South Caucasus*, 54 INT’L J. MIDDLE E. STUD. 583, 585 (2022) (asserting further that this fact supports various academics’ notions that “[s]ince the conflict between Armenia and Azerbaijan over Nagorno-Karabakh arose at the end of the 1980s, it has been framed largely as a ‘post-Soviet’ issue, one of several ‘frozen conflicts’ at the fringes of the former USSR.”) (emphasis added).

<sup>14</sup> Yacoubian, *supra* note 12, at 171 (establishing that control over Nagorno-Karabakh (“Artsakh”) was transferred to Azerbaijan [then the Azerbaijan Soviet Socialist Republic] in March of 1921, following a treaty established between Türkiye and the Soviet Union). This also demonstrates bandwagoning through Azerbaijan benefitting from Russian dominance in the region. See Laura Levick & Carsten-Andreas Schulz, *Soft Balancing, Binding or Bandwagoning? Understanding Institutional Responses to Power Disparities in the Americas*, 53 CAN. J. POL. SCI. 521, 524 (2020) (stating that “engagement with the hegemon, including participation in institutions it has created, represents the only way forward for secondary states after the collapse of the Soviet Union.”).

<sup>15</sup> E.g., Ara Sanjian, *Irredentism at the Crossroads of Nationalism, Communism and Diverging Interpretations of the Soviet Experience: The Armenian Diasporan Press on Mountainous Karabagh, 1923–1985*, ENTRIES SOC’Y ARM. STUD. (Jan. 6, 2021), <https://entriessas.com/articles/armenian-diaspora/> [<https://perma.cc/C8A3-JUQL>]; Der Matossian, *supra* note 7, at 531. This puppeteering of third-party actors in an Azerbaijani scheme to disrupt the sovereignty of Nagorno-Karabakh has repeated itself throughout history. See Yacoubian, *supra* note 12, at 174–75.

<sup>16</sup> Der Matossian, *supra* note 7, at 531.

<sup>17</sup> *Id.* (“[The population of Nagorno-Karabakh’s] demands were met by a series of pogroms that took place in Sumgait, Kirovabad, and Baku that the Azerbaijani government orchestrated.”).

<sup>18</sup> See Yacoubian, *supra* note 12, at 172–73.

<sup>19</sup> *Id.*

<sup>20</sup> Der Matossian, *supra* note 7, at 531; see also Yacoubian, *supra* note 12, at 172.

<sup>21</sup> Center for Preventive Action, *supra* note 3; *Azerbaijan Toddler Killed in Nagorno-Karabakh Shelling*, BBC (July 5, 2017), <https://www.bbc.com/news/world-europe-40504373> [<https://perma.cc/6E2H-GN8P>].

special operations activities, and attack drones to target the other.<sup>22</sup> These attempts at tranquility were due to the substantial, yet ultimately temporary, efforts for conflict resolution in that region by the Organization for Security and Co-operation in Europe (“OSCE”) Minsk Group.<sup>23</sup>

However, September 27, 2020, was a key moment in recent history surrounding the subject. Azerbaijan launched an offensive attack, conveniently occurring as fear over exponential rates of COVID-19,<sup>24</sup> and the rising tensions that would ultimately lead to the Russo-Ukrainian war,<sup>25</sup> dominated international media and politics. Despite the numerous death tolls occurring during this conflict<sup>26</sup> (now known as the “Second Nagorno-Karabakh War”), peace was once again attempted through a Russian-brokered truce between the parties in late November, 2020, after six weeks of Azeri-Armenian fighting.<sup>27</sup> Not even a full two years after the peace deal was finalized, in September 2022, there was a two-day conflict instigated by an Azeri attack “on several locations inside Armenian territory, which forced the evacuation of more than 2,700 civilians,” and left disputed estimates from one to three hundred killed.<sup>28</sup>

Yet again, Azerbaijan made its intentions clear, to take control of Nagorno-Karabakh and eliminate Armenians in the region, with the deployment of the

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<sup>22</sup> Center for Preventive Action, *supra* note 3 (adding that “[e]arly April 2016 [had] witnessed the most intense fighting since 1994, leading to hundreds of casualties along the line of separation.”).

<sup>23</sup> See Hungarian OSCE Chairmanship, *Mandate of the Co-Chairmen of the Conference on Nagorno Karabakh Under the Auspices of the OSCE (“Minsk Conference”)*, OSCE Doc. 525/95 (Mar. 23, 1995), <https://www.osce.org/files/f/documents/f/f/70125.pdf> [<https://perma.cc/YXJ5-VEE8>]; see also Der Matossian, *supra* note 7, at 532 (“The Minsk Group was created in 1992 with the aim of encouraging a peaceful, negotiated resolution to the conflict over Nagorno-Karabakh. However, in the course of the negotiations, it failed to produce a permanent solution to the conflict.”).

<sup>24</sup> See Kristen Chick, *In Nagorno-Karabakh, People Grapple with War’s Aftermath and COVID-19*, NAT’L GEOGRAPHIC (Jan. 8, 2021), <https://www.nationalgeographic.com/history/article/nagorno-karabakh-people-grapple-war-aftermath-covid> [<https://perma.cc/VJN8-YAFD>] (“When the conflict erupted again on September 27, 2020, the world was distracted and consumed with the COVID pandemic.”) (additionally recognizing the negative impact of the war on the struggle of Armenian people in the region who were also battling the transmission and symptoms of COVID-19).

<sup>25</sup> See Thomas Graham, *Top Conflicts to Watch in 2020: A Crisis Between Russia and Ukraine*, COUNCIL FOREIGN REL. (Jan. 8, 2020, 12:00 PM), <https://www.cfr.org/blog/top-conflicts-watch-2020-crisis-between-russia-and-ukraine> [<https://perma.cc/4XL5-UH6P>].

<sup>26</sup> Center for Preventive Action, *supra* note 3 (“More than seven thousand soldiers and civilians were killed, with hundreds more Armenian and Azerbaijani soldiers wounded.”).

<sup>27</sup> Allowing Russia—embroiled in their own personal conflict with Ukraine during this time—to facilitate these so-called “negotiations,” indicates further failure by the world community to take decisive action to ensure the safety of the Armenian people inhabiting the area. This is especially prevalent when assessing in tandem the long-standing history of Azerbaijani aggression against the ethnically Armenian population of the South Caucasus region, coupled with the previous Russian failure to contain said aggression. For details on the truce itself, see *Armenia, Azerbaijan and Russia Sign Nagorno-Karabakh Peace Deal*, BBC NEWS (Nov. 10, 2020, 5:31 PM), <https://www.bbc.com/news/world-europe-54882564> [<https://perma.cc/A54F-9GNP>].

<sup>28</sup> Center for Preventive Action, *supra* note 3.

2022 Lachin Corridor Blockade.<sup>29</sup> The below map depicts the Lachin Corridor in relation to Armenia and Azerbaijan, as well as Nagorno-Karabakh. Although Russian peacekeepers were deployed in the red shaded areas, their presence did not aid in keeping the corridor open for the people of Nagorno-Karabakh to access life-saving resources.<sup>30</sup>

### Armenia-Azerbaijan border



<sup>29</sup> Yacoubian, *supra* note 12, at 174–175 (explaining that the commencement itself of the blockade of the Lachin Corridor (i.e., the sole source of gas for the people of Nagorno-Karabakh), instituted in the harsh winter of December 2022, constitutes genocide under article II of the 1948 Genocide Convention).

<sup>30</sup> Nathaniel Hill, *Genocide Emergency: Azerbaijan's Blockade of Artsakh*, GENOCIDE WATCH (Feb. 24, 2023), <https://www.genocidewatch.com/single-post/genocide-emergency-azerbaijan-s-blockade-of-artsakh> [https://perma.cc/5CC5-ZTE7].

Azerbaijan, combined with the militaristic support of allied Turkish forces<sup>31</sup> and Syrian mercenaries,<sup>32</sup> “blocked the Corridor under a fake pretext of environmental concerns,”<sup>33</sup> with the use of staged environmental protests by seemingly unrelated third-party “activists.”<sup>34</sup> This thus enabled them to cut off any “access to food, medicine and baby formula [which] should never be held hostage.”<sup>35</sup> The blockade also shut off access to gas, a vital utility for the people of Nagorno-Karabakh against its harsh winters.<sup>36</sup> Furthermore, limited and eventually a complete lack of access to any resources to the Armenian population of Nagorno-Karabakh extended to banning Red Cross convoys from accessing the civilian population to provide humanitarian aid.<sup>37</sup> Azeri accusations of the Red Cross smuggling “unsanctioned” products,<sup>38</sup> and detainment by Azeri security forces of “an individual passing through a checkpoint for medical care in Armenia, leading to a suspension of medical evacuations for critically-ill patients,”<sup>39</sup> were provided as their justification of doing so. The “contraband” Azeri officials accused the Red Cross of smuggling (although the Red Cross has

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<sup>31</sup> See Res. 2879, *supra* note 8, ¶ N (concluding that in the region, “other states, such as Türkiye, have provided political, diplomatic and military support to Azerbaijan, further escalating the conflict.”).

<sup>32</sup> See Der Matossian, *supra* note 7, at 532 (noting that the working relationship between Turkish militant forces, northern Syrian mercenaries, and the Azerbaijani government was explicitly demonstrated during the Second Karabakh War in 2020).

<sup>33</sup> Press Release, Security Council, Lachin Corridor Must Be Reopened for Humanitarian Aid, Security Council Hears, as Speakers Urge Armenia, Azerbaijan to Normalize Relations, U.N. Press Release SC/15384 (Aug. 16, 2023).

<sup>34</sup> European Parliament Resolution of 19 January 2023 on the Humanitarian Consequences of the Blockade in Nagorno-Karabakh (2023/2504(RSP)), EUR. PARL. DOC. (2023/2504(RSP)), ¶ A (2023) (“[T]he only road connecting Nagorno-Karabakh with Armenia and the outside world, the Lachin corridor, has been blocked by self-proclaimed environmentalists from Azerbaijan since 12 December 2022...”) [hereinafter Res. 2504].

<sup>35</sup> *Id.*

<sup>36</sup> Amos Chapple, *Deaths, Mass Protests as Nagorno-Karabakh Blockade Tightens*, RADIO FREE EUR. (July 18, 2023, 3:54 PM), <https://www.rferl.org/a/nagorno-karabakh-blockade-azerbaijan-armenia-critical/32508788.html> [<https://perma.cc/HZ99-CH8S>].

<sup>37</sup> Center for Preventive Action, *supra* note 3.

<sup>38</sup> *Id.*; News Wires, *Azerbaijan Closes Only Road Linking Breakaway Nagorno-Karabakh Region to Armenia*, FRANCE 24 (July 11, 2023, 6:43 PM), <https://www.france24.com/en/europe/20230711-azerbaijan-closes-only-road-linking-breakaway-nagorno-karabakh-region-to-armenia>.

<sup>39</sup> Center for Preventive Action, *supra* note 3; see also, Gabriel Galvin, *Medical Convoys from Nagorno-Karabakh Suspended after Armenian Detained by Azerbaijan*, POLITICO (July 29, 2023, 4:50 PM), <https://www.politico.eu/article/medical-convoy-nagorno-karabakh-armenia-azerbaijan-conflict/> [<https://perma.cc/5F4D-CZMN>] (“The transfer of critically ill patients from Nagorno-Karabakh to Armenia has been halted, local Armenian leaders said, after a man traveling with the Red Cross to seek treatment was arrested by Azerbaijani forces on war crimes charges.”); cf. *Internationally Wanted Fugitive of Mesahli Massacre Detained*, AZERTAC (July 29, 2023, 5:55 PM), [https://azertag.az/en/xeber/internationally\\_wanted\\_fugitive\\_of\\_mesahli\\_massacre\\_detained-2713012](https://azertag.az/en/xeber/internationally_wanted_fugitive_of_mesahli_massacre_detained-2713012) [<https://perma.cc/S2JF-63SF>] (“As a result of the conducted search measures, on July 29, 2023, Vagif Khachatryan was detained by the military personnel of the State Border Service at the Lachin border crossing point of the Azerbaijan-Armenia state border while trying to go to the Republic of Armenia for treatment through the mediation of the International Committee of the Red Cross.”).

denied doing so)<sup>40</sup> included cigarettes, gasoline, and mobile phones.<sup>41</sup> An example of the morbid results of these desperate circumstances includes the death of two ethnically Armenian children of a family displaced during the 44-Day War. The children died by suffocation after seeking refuge in a locked, hot car which they had entered after searching for their mother, who had left her children at home to search for oil and sugar.<sup>42</sup>

Afterward, a territorial invasion by Azerbaijan of Nagorno-Karabakh resulted in a mass exodus of over 100,000 ethnic Armenians from within the territory to Armenia.<sup>43</sup> The international community's inaction after this invasion and Azerbaijan's systematic anti-Armenian rhetoric predating the invasion,<sup>44</sup> have led some to theorize that Azerbaijan's emboldened expansionist actions, paired with the State's promotion of destruction of Armenian culture and heritage,<sup>45</sup> also threaten invasion of the sovereign State of Armenia<sup>46</sup> rather than solely a disputed territory such as Nagorno-Karabakh.<sup>47</sup>

### B. What is Genocide in International Law?

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<sup>40</sup> ICRC Statement on Transport of Unauthorised Goods Across the Lachin Corridor, INT'L COMM. RED CROSS, (July 11, 2023), <https://www.icrc.org/en/document/icrc-statement-transport-unauthorised-goods-across-lachin-corridor> [https://perma.cc/SKR7-DRAD]; Galvin, *supra* note 35; Chapple, *supra* note 33.

<sup>41</sup> Chapple, *supra* note 33.

<sup>42</sup> *Id.*; see also, Susan Badalyan, "I Will Not Let My Child Go Hungry." *Mother of Children Who Died in Artsakh*, RADIO FREE EUR. (July 12, 2023), <https://www.azatutyun.am/a/32500830.html> [https://perma.cc/XAP7-73GT].

<sup>43</sup> See *Racing to Meet the Health Needs of Refugees Entering Armenia*, WHO (Oct. 1, 2023 12:01 PM), <https://www.who.int/europe/news/item/01-10-2023-racing-to-meet-the-health-needs-of-refugees-entering-armenia> [https://perma.cc/27GE-Z6YP] (describing the mental and emotional injuries of Armenian refugees witnessed by humanitarian workers during the exodus) ("Note: On 03 October 2023, the title of this piece was changed [from 'Racing to Meet the Health Needs of Ethnic Armenians Fleeing Nagorno-Karabakh'] to align with UN terminology").

<sup>44</sup> Alexandra Xanthaki (Special Rapporteur in the Field of Cultural Rights), Mandate of the Special Rapporteur in the Field of Cultural Rights, 1, 6 U.N. Doc. AL AZE 2/2023 (Sept. 22, 2023) ("In August 2022, the Committee on the Elimination of Racial Discrimination in its review of Azerbaijan's compliance with the obligations under the International Convention on the Elimination of All Forms of Racial Discrimination expressed concerns about reports that school textbooks promote prejudice and incite racial hatred, particularly against ethnic Armenians, and that ethnic minorities are marginalized in history education in the State party.").

<sup>45</sup> *Id.* at 2 ("On 30 March 2022, a video presented on an Azerbaijani media outlet showed Azerbaijani soldiers unearthing Armenian graves in the Armenian cemetery of Parukh/Farukh, dating back from the 9<sup>th</sup> century, and falsely claiming the area to be a mass graves of Azerbaijanis from the 1992 hostilities. According to specialists, the bones found near the village of Parukh/Farukh originate from the Medieval (9-13th centuries) Armenian cemetery. Similarly, on 21 April 2022, the Azerbaijani military destroyed an Armenian cemetery in Sighnag. Destruction of cemeteries is of particular significance, as tradition requires Armenians to visit the graves of their loved ones several times a year, including during Easter and Christmas.").

<sup>46</sup> Nechepurenko, *supra* note 3 ("Armenia was not necessarily the final destination either. Some refugees, fearing Azerbaijan might not stop at Karabakh and would move into Armenia proper, said they had relatives in Russia's south and were moving there.").

<sup>47</sup> See Serafim Seppälä, *The Struggle for Memory: The Khachkar Field of Julfa and Other Armenian Sacred Spaces in Azerbaijan*, 13 REV. ECUMENICAL STUD. SIBIU 185, 212 (2021).



### 1. The Need for Instruments Condemning Genocide Post-WWII

World War II and its aftermath ushered in a wave of universal acknowledgment of both the humanitarian atrocities against specific groups of victims as well as the need for legal mechanisms that would ensure that the elimination of a targeted population would “[n]ever again”<sup>48</sup> occur. Consequently, an impressive assembly of universal accord by sovereign global powers to prevent these atrocities drove tangible action in a sphere that arguably primarily contains “soft [i.e.—aspirational] law.”<sup>49</sup> After the United Nations (“U.N.”) superseded the League of Nations in 1946,<sup>50</sup> the budding organization drafted the first legal instrument to both explicitly document the existence of genocide and to establish individual—and collective—state responsibilities concerning its condemnation: The 1948 Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter known as “the Genocide Convention” or simply “the Convention”).<sup>51</sup>

### 2. Legal Classification of Genocide in International Law

The Genocide Convention is the foundation for subsequent interpretations of what constitutes genocide under international law. The relevance it holds to its signatories can be found in article I, which contains an obligation for Contracting States of the Convention to prevent and punish any acts of genocide, whether in times of peace or war.<sup>52</sup> Article II of the Convention in turn supplies the following definition of genocide:

[G]enocide 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;

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<sup>48</sup> *Ratification of the Genocide Convention*, U.N. OFF. GENOCIDE PREVENTION & RESP. PROTECT, <https://www.un.org/en/genocide-prevention/legal/ratification#:~:text=The%20Genocide%20Convention%20has%20been,Asia%20and%206%20from%20America> [https://perma.cc/HU4P-WV5H] (last visited Feb. 13, 2025).

<sup>49</sup> See generally Andrew T. Guzman & Timothy L. Meyer, *International Soft Law*, 2 J. LEGAL ANALYSIS 171 (2010) (analyzing the role of soft law in international practice—particularly international common law—and its institutions’ and tribunals’ “nonbinding gloss” upon binding legal rules and principles).

<sup>50</sup> *Predecessor: The League of Nations*, U.N., <https://www.un.org/en/about-us/history-of-the-un/predecessor> [https://perma.cc/FVV8-WLQA] (last visited Mar. 21, 2025).

<sup>51</sup> Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277 [hereinafter Genocide Convention].

<sup>52</sup> *Id.* art. I.

- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

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Furthermore, article III lists punishable acts that fall under the category of genocide: “(a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; (e) Complicity in genocide.”<sup>54</sup> It is essential to remember the dual purposes of the Convention as established under article I, acting as a legal instrument to: 1) punish perpetrators for any acts condemned under articles II and III; and 2) *prevent* these acts by identifying various forms of genocide as listed under article III.<sup>55</sup> A final important provision under the Convention is article IV, which embodies an essential milestone in international prosecutorial authority; it allows for the prosecution of any perpetrator of genocide or acts constituted as such under article III.<sup>56</sup> Therefore, private actors, public officials, and (most importantly) political leaders and state rulers are liable to the enforcement of this legal instrument,<sup>57</sup> even as the ICJ itself reinforced the principle of jurisdictional immunity of States under customary internal law.<sup>58</sup>

### III. ANALYSIS

#### A. *The Importance of Tribunals: Elaborations on Genocide and its Elements by Tribunals*

Genocide is sometimes conflated with other international humanitarian crimes, such as crimes against humanity<sup>59</sup> and war crimes.<sup>60</sup> Although these crimes share some characteristics with genocide, genocide is distinct in that “[i]t is the specific intention to destroy an identified group either ‘in whole or in part’ that distinguishes the crime of genocide from a crime against humanity [e.g.,

<sup>53</sup> *Id.* art. II; *see, e.g.*, Rome Statute of the International Criminal Court art. 6, July 17, 1998, 2187 U.N.T.S. 3 [hereinafter Rome Statute]; FRANÇOISE BOUCHET-SAULNIER, *THE PRACTICAL GUIDE TO HUMANITARIAN LAW* 1, 171 (Laura Brav and Camille Michel trans., 3d ed. 2014); *Defining the Four Mass Atrocity Crimes*, GLOB. CTR. RESP. PROTECT (Aug. 15, 2018), <https://www.globalr2p.org/publications/defining-the-four-mass-atrocity-crimes/> [https://perma.cc/UY6P-EDJ6].

<sup>54</sup> Genocide Convention, *supra* note 47, art. III; *see also* Rome Statute, *supra* note 49, art. 6; BOUCHET-SAULNIER, *supra* note 49, 171.

<sup>55</sup> This is especially true for §(b)-(d) of article III, whereas §(a) and §(e) would both require retroactive introspection after humanitarian violations have already been committed.

<sup>56</sup> Genocide Convention, *supra* note 51, art. III, IV.

<sup>57</sup> *Id.*

<sup>58</sup> BOUCHET-SAULNIER, *supra* note 49, at 227–35.

<sup>59</sup> *See* Rome Statute, *supra* note 49, art. 5(b), art. 7.

<sup>60</sup> *Id.* art. 5(c), art. 8.

ethnic cleansing; war crimes].”<sup>61</sup> To further clarify the confusion caused by overlapping themes shared by multiple atrocity crimes in international law, the elements of genocide have been elaborated upon in decisions by the *ad hoc* tribunals created in response to mass atrocities committed historically, the most notable being from the International Criminal Tribunal for Rwanda (“ICTR”) and the International Criminal Tribunal of Yugoslavia (“ICTY”).<sup>62</sup>

### 1. Specific Intent (“*dolus specialis*”) of Genocide<sup>63</sup>

The specific intent element of genocide is of utmost importance when distinguishing genocide from international humanitarian crimes committed in the form of mass killings during territorial disputes between nations;<sup>64</sup> Ethnic cleansing is not an adequate indicator of genocide solely.<sup>65</sup> To prove *dolus specialis*, two elements must be shown: “[1] the act or acts must target a national, *ethnic*, racial or religious group; [2] the act or acts must seek to destroy all or part of that group.”<sup>66</sup> When assessing *dolus specialis*, a case’s facts and

<sup>61</sup> U.N. Office High Comm’r of Hum. Rights, Info Note 2: Democratic Republic of the Congo 1993-2003 UN Mapping Report, 1, 2 (Aug. 2010), [https://www.ohchr.org/sites/default/files/Documents/Countries/CD/FS-2\\_Crimes\\_Final.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/CD/FS-2_Crimes_Final.pdf) [<https://perma.cc/QR7-2XSP>] [hereinafter Info Note 2: War Crimes, Crimes against Humanity and Genocide] (emphasis added).

<sup>62</sup> For more general information on the importance of *ad hoc* tribunals, see *Ad Hoc Tribunals*, INT’L COMM. RED CROSS (Oct. 29, 2010), <https://www.icrc.org/en/document/ad-hoc-tribunals>. (“[T]he first international criminal tribunals were established in the 1990’s, to respond to atrocities committed during the conflict in the former Yugoslavia and the mass-killings in Rwanda. The International Criminal Tribunal for the former Yugoslavia (ICTY) and its sister court for Rwanda (ICTR) were both created by the UN Security Council.”).

<sup>63</sup> See *Prosecutor v. Kayishema et al.*, Case No. ICTR-95-1, Judgment, ¶¶ 89–91, Int’l Crim. Trib. for Rwanda (May 21, 1999), <https://www.refworld.org/jurisprudence/caselaw/ict/1999/en/62079> [<https://perma.cc/L9UG-C5YD>]; see also *Prosecutor v. Bagilishema*, Case No. ICTR-95-1A-T, Judgment, ¶ 55, Int’l Crim. Trib. for Rwanda (June 7, 2001), <https://www.refworld.org/jurisprudence/caselaw/ict/2001/en/91988> [<https://perma.cc/JW94-4KVW>] (discussing that prohibited underlying acts and the specific genocidal intent—“*dolus specialis*”—are utilized when addressing allegations of genocide).

<sup>64</sup> There are multiple conflicting definitions of ethnic cleansing by international regulatory bodies of persuasive authority. *Definitions of Genocide and Related Crimes*, U.N. OFF. ON GENOCIDE PREVENTION RESP. PROTECT, <https://www.un.org/en/genocide-prevention/definition> [<https://perma.cc/7CWK-ME56>] (“As ethnic cleansing has not been recognized as an independent crime under international law, there is no precise definition of this concept or the exact acts to be qualified as ethnic cleansing.”) [hereinafter *Definitions: Genocide*]; Cf. *Ethnic Cleansing*, EUR. COMM’N, [https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/ethnic-cleansing\\_en](https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/ethnic-cleansing_en) [<https://perma.cc/QAS3-X73K>] (listing solely one definition of ethnic cleansing, as “[r]endering an area ethnically homogeneous by using force or intimidation to remove from a given area persons of another ethnic or religious group, which is contrary to international law.”).

<sup>65</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro)*, Judgment, 2007 I.C.J. 43, ¶ 190 (Feb. 26) (explaining that ethnic cleansing is not an element of a genocidal plan when intended to force displacement of a group of people, rather than for the physical destruction of a group as a whole or in part) [hereinafter I.C.J. 43].

<sup>66</sup> *E.g.*, *Prosecutor v. Krstić*, Case No. IT-98-33-T, Judgment, ¶ 550, Int’l Crim. Trib. for the Former Yugoslavia (Aug. 2, 2001); *Prosecutor v. Jelisić*, Case No. IT-95-10-T, Judgment, ¶ 66, Int’l Crim. Trib. for the Former Yugoslavia (Dec. 14, 1999) (emphasis added).

circumstances can prove intent through inference.<sup>67</sup> In the conflict over Nagorno-Karabakh, references to factors such as cultural destruction to eradicate Armenian historiography<sup>68</sup> act as a patterned reflection of the *dolus specialis* required to distinguish genocide from other atrocities. Furthermore, actions like forced displacement may be a powerful mechanism to demonstrate intent to physically and even mentally destroy a group of people because patterned behavior to commit specified eradication or displacement against a group may be sufficient when specific occurrences of mass killings are lacking.<sup>69</sup>

## 2. Destruction of Cultural Heritage

Methods in which specified intent to commit genocide are not perceived are important to consider. The U.N. has listed examples of insufficient proof of intent to commit genocide, such as intention to disperse a group and cultural destruction.<sup>70</sup> Yet “international criminal law has played an important role in documenting and holding to account those most responsible for cultural heritage destruction. The resulting jurisprudence has led to the progressive development of the law,”<sup>71</sup> including cases where allegations of genocide commissioned by a state are assessed.

For example, the ICTY strongly emphasized the use of heritage destruction when analyzing the humanitarian atrocities committed by Bosnian Serbs and Serbs in the Balkans for the removal of Bosnian Muslims.<sup>72</sup> The Trial Chamber demonstrated, as a universal theme in a series of cases, that the required *dolus specialis* element of genocide was a motivator for the destruction of cultural

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<sup>67</sup> Prosecutor v. Seromba, Case No. ICTR-2001-66-A, Appeals Judgement, ¶ 176, Int'l Crim. Trib. for Rwanda (Mar. 12, 2008).

<sup>68</sup> See, e.g., Ruth Portes, *CIAMS Director Presents on the Destruction of Armenian Cultural Heritage by Azerbaijan*, CORNELL INST. OF ARCHAEOLOGY & MATERIAL STUD. (Oct. 15, 2024), <https://archaeology.cornell.edu/news/ciams-director-presents-destruction-armenian-cultural-heritage-azerbaijan> [<https://perma.cc/SMV5-5VKJ>] (“[Distinguished Professor Adam T.] Smith stated, ‘at issue...is not only the fate of the region’s centuries old art and architecture but the cultural traditions of the Armenians of Nagorno-Karabakh and their connections to this land.’ He discussed the evidence of wide-scale eradication of Armenian cultural sites in Azerbaijan, citing CHW’s [Caucasus Heritage Watch] exhaustive investigation ‘Silent Erasure.’”); Nichita Gurcov & Stella Tangiyan, *Destruction of Armenian Heritage in Nagorno-Karabakh*, ACLED (Sept. 20, 2024), <https://acleddata.com/2024/09/20/destruction-of-armenian-heritage/> [<https://perma.cc/Z59J-8GAF>] (“Azerbaijan appears to have embarked on a campaign targeting traces of ethnic Armenian presence since it regained control of the areas surrounding the former mountainous separatist enclave of Nagorno-Karabakh, also known by its Armenian name of Artsakh, in 2020. Since 2021, ACLED [Armed Conflict Location & Event Data] records nearly 80 instances of the destruction of ethnic Armenian historical, religious, political, and residential sites in and around the enclave.”) (footnote omitted).

<sup>69</sup> *Bosn. & Herz. v. Serb. & Montenegro*, 2007 I.C.J. at ¶ 373.

<sup>70</sup> See *Definitions: Genocide*, *supra* note 59.

<sup>71</sup> Joseph Powderly, *Prosecuting Heritage Destruction*, in CULTURAL HERITAGE AND MASS ATROCITIES 430, 444 (James Cuno and Thomas G. Weiss, eds. 2022), [https://www.getty.edu/publications/cultural-heritage-mass-atrocities/downloads/pages/CunoWeiss\\_CHMA\\_part-4-25-powderly.pdf](https://www.getty.edu/publications/cultural-heritage-mass-atrocities/downloads/pages/CunoWeiss_CHMA_part-4-25-powderly.pdf) [<https://perma.cc/S9JT-SJ2X>].

<sup>72</sup> *Id.* at 436.

heritage in the “pursuit of ethnic homogeneity and the complete elimination of the ‘other.’”<sup>73</sup> As noted by the Tribunal, this is especially apparent and is given further deference when there is spiritual importance between the building or property physically decimated and the peoples that its destruction impacts.<sup>74</sup>

Azerbaijan has already defied orders of the International Court of Justice (“ICJ”) to cease further destruction of these spiritually important monuments,<sup>75</sup> based upon their concerns “in the light of past destruction, about the future of the many Armenian churches, monasteries, including the monastery in Khutavank/Dadivank, cross-stones (*khachkars*) and other forms of cultural heritage which have been returned under Azerbaijan control.”<sup>76</sup> Yet post-sanctions, the Azeri government’s plans to destroy Armenian culture and history are still undeterred. To provide one of many contemporary examples, the Minister of Culture announced plans of the establishment of a working group to remove “Armenian forgery” from churches in the Caucasus (which Azeri officials have labeled “‘Albanian’ religious buildings”),<sup>77</sup> thus “putting into practice a pseudoscientific theory [of a “Caucasian Albanian” heritage<sup>78</sup>] that denies the churches’ Armenian origin.”<sup>79</sup>

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<sup>73</sup> *Id.* (“The complex interethnic character of the various conflicts that raged on the territory of the former Yugoslavia demanded that prosecutions reflect the underlying motivations and specific intent that drove perpetrators to systematically destroy cultural heritage”). This description of the conflicts occurring in the territory previously known as Yugoslavia reflects exactly the same interethnic framework as Azerbaijan’s campaign to erase the history of Armenians—both their population and culture—in the South Caucasus).

<sup>74</sup> Prosecutor v. Hadžihasanović, Case No. IT-01-47-T, Judgment, ¶ 63, Int’l Crim. Trib. for the Former Yugoslavia (Mar. 15, 2006), <https://ucr.irmct.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/IT-01-47/JUD152R2000224478.pdf> [<https://perma.cc/6CVF-QQFS>].

<sup>75</sup> See Application of International Convention on Elimination of All Forms of Racial Discrimination (Arm. v. Azer.), Order, 2021 I.C.J. 361, ¶ 92 (Dec. 7) (ordering Azerbaijan to “take all necessary measures to prevent and punish acts of vandalism and desecration affecting Armenian cultural heritage, including but not limited to churches and other places of worship, monuments, landmarks, cemeteries and artefacts.”) [hereinafter Dec. 2021 ICJ Order].

<sup>76</sup> Humanitarian Consequences of the Conflict Between Armenia and Azerbaijan/Nagorno-Karabakh Conflict, EUR. PARL. DOC. RES. 2391 (Sept. 27, 2021), ¶ 18.3 [hereinafter Res. 2391].

<sup>77</sup> Xanthaki, *supra* note 40, at 3.

<sup>78</sup> See *id.* at 4 (“[‘Caucasian Albanian heritage’ is] referred to as the ‘Albanization’ of Armenian monuments and history and is promoted by Azerbaijani leadership. Over the years, it has been challenged by international research as implying a falsification of history, a revisionism theory applied to the region. The International Court of Justice, the European Parliament and the Council of Europe have all expressed concerns about a developing narrative in Azerbaijan promoting a ‘Caucasian Albanian’ heritage to replace ‘Armenian’ cultural heritage and the revisionist tendency negating Armenian cultural heritage and presence. The vast majority of experts in the region’s art, architecture, and archaeology have all rejected the revisionist claims as false.”).

<sup>79</sup> Heydar Isayev, *Azerbaijan Announces Plans to Erase Armenian Traces From Churches*, EURASIANET (Feb. 4, 2022), <https://eurasianet.org/azerbaijan-announces-plans-to-erase-armenian-traces-from-churches> [<https://perma.cc/J3N4-367G>]; accord, European Parliament Resolution of 10 March 2022 on the Destruction of Cultural Heritage in Nagorno-Karabakh (2022/2582(RSP)), EUR. PARL. DOC. 2022/2582(RSP), ¶ O (2022) (“[Azerbaijan’s] elimination of the traces of Armenian cultural heritage in the Nagorno-Karabakh region is being achieved not only by damaging and destroying it, but also through the falsification of history and attempts to present it as so-called Caucasian Albanian.”) [hereinafter Res. 2582]; Xanthaki, *supra* note 40, at 3–5.

Beyond the more recent connections between the destruction of cultural heritage and the intent for genocide, are historical foundations of such notions. For example, Raphael Lemkin,<sup>80</sup> in a significant piece of *travaux préparatoires*<sup>81</sup> in advance of the Genocide Convention, described the interconnected nature between genocide and cultural destruction:

Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is *intended rather to signify 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. The objectives of such a plan would be disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups.*<sup>82</sup>

Notably, Lemkin's work spurring the identification and condemnation of genocide was driven by his dismay upon learning about the Armenian Genocide committed in the early 20th Century.<sup>83</sup> Statistics on the Armenian Genocide committed during the Ottoman Empire's reign "convey not only the mass killing and forced deportations, but also the government and its local collaborators' destruction or silencing specifically of 1) cultural property; 2) cultural producers (e.g., intellectuals and artists); 3) belief and value systems; and 4) historical lands and corresponding identifications with them."<sup>84</sup> Every factor conveyed here is reflected in the statistics on modern destruction brought by the Azeri

<sup>80</sup> See Diboyan & Goliath, *supra* note 4, at 82. Of interest and to further the thesis contained within this paper is how—despite listing other current genocides occurring with less media and academic attention such as “Herero and Namaqua, Sayfo, Armenian, Holodomor, Nanking (Nanjing), Romani, Palestinian, Bangladesh, Ethiopia, Sikh, and Rohingya genocides”—the occurrence of genocide against Armenians in Nagorno-Karabakh are notably still absent from this literature.

<sup>81</sup> Literally meaning, “preparatory works,” these sources are “[b]ackground documents showing the drafting history of treaties”. *Researching Treaties and International Agreements—Travaux Préparatoires*, LIBRARY OF CONGRESS, <https://guides.loc.gov/researching-treaties-and-international-agreements/travaux-preparatoires> [<https://perma.cc/Z4QN-5T7K>]. These documents evidence the negotiations, discussions, and preparations undertaken to reach the final treaty text. *What Are Travaux Préparatoires and How Can I Find Them?*, U.N. DAG HAMMARSKJÖLD LIBRARY, <https://ask.un.org/faq/14541> [<https://perma.cc/ZC5F-2G8A>] (last visited April 3, 2025). When interpretation on a treaty is ambiguous, *travaux préparatoires* are employed to provide clarity. See Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980) [hereinafter Vienna Convention].

<sup>82</sup> RAPHAEL LEMKIN, *AXIS RULE IN OCCUPIED EUROPE: LAWS OF OCCUPATION, ANALYSIS OF GOVERNMENT, PROPOSALS FOR REDRESS* 79 (1944) (emphasis added).

<sup>83</sup> Peter Balakian, *Raphael Lemkin, Cultural Destruction, and the Armenian Genocide*, 27 HOLOCAUST & GENOCIDE STUD., 57, 58 (2013) (“Not only had the war [i.e., World War I (‘the Great War’ by Lemkin)] made its inevitable impact on his home region, but Lemkin clearly notes that the fate of the Armenians led him to think about the fate of ‘national, religious, or racial groups.’ And although the Ottoman government had eradicated almost all of the Greeks and the Assyrians—the other major Christian groups within the Empire’s borders during this period it was the Armenian case on which Lemkin focused most intensely...”).

<sup>84</sup> *Id.* at 63.

government upon Armenians in Nagorno-Karabakh. There have not been solely mass detainment,<sup>85</sup> deportations,<sup>86</sup> and killings<sup>87</sup> (including of cultural producers such as “leading political figures”<sup>88</sup>), but also the destruction of cultural heritage sites and property connected to the Armenian historiography in the region.<sup>89</sup> The purpose of commissioning destruction against Armenian cultural property by Ottoman forces clearly demonstrates the *dolus specialis* element of genocide, as “[e]radicating the Armenian identity of Turkey demanded not only the elimination of the Armenian population, but also the eradication of its intellectual and cultural identity along with its cultural process of symbolization and its continuous history.”<sup>90</sup> The cultural destruction committed by Azeri forces similarly corroborates this existence of *dolus specialis*: “[T]he erasure of Armenian cultural heritage in the region is part of a wider pattern of a systematic, state-level policy of ‘Armenophobia’, historical revisionism and hatred towards Armenians promoted by the Azeri authorities.”<sup>91</sup>

Therefore, even as the U.N. lists cultural destruction alone as an insufficient form of demonstrated intent to commit genocide,<sup>92</sup> there are strong arguments to progress beyond the literal interpretation of this notion to find cultural destruction as a manifest means to the end goal of genocide. This is supported by historical analysis of the persecution of genocide,<sup>93</sup> as well as the utilization

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<sup>85</sup> See Res. 2230, *supra* note 8, ¶ J (“[T]here are credible reports, including video footage, that Armenian POWs and other detainees have been subjected to extrajudicial killings, enforced disappearances and the desecration of the dead.”).

<sup>86</sup> See Res. 2391, *supra* note 72, ¶ 6.3 (describing how the Parliamentary Assembly of the European Council “is deeply concerned about the fate of around 30 Armenians, allegedly seen, filmed or photographed in captivity, with no indication as to their current whereabouts. The Assembly is alarmed at allegations made by Armenia that these persons have been subjected to enforced disappearance and possibly killed.”).

<sup>87</sup> See *Nagorno-Karabakh conflict: ‘Execution’ Video Prompts War Crime Probe*, BBC NEWS (Oct. 23, 2020), <https://www.bbc.com/news/world-europe-54645254> [<https://perma.cc/KR4B-DNX9>] (detailing the analysis of reporters in verifying video demonstrating the execution of two Armenian combatants by Azerbaijani soldiers in the city of in Nagorno-Karabakh).

<sup>88</sup> Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Arm. V. Azer.), Order, 2023 I.C.J. ¶ 33 (Nov. 17).

<sup>89</sup> See *Arm. v. Azer.*, 2021 I.C.J., ¶ 75; accord Res. 2230, *supra* note 8, ¶ S (“[I]n the ICJ order of 7 December 2021, which ordered Azerbaijan to prevent and punish acts of vandalism and desecration affecting Armenian cultural heritage, serious allegations were made regarding the involvement of the Azerbaijani authorities in the destruction of cemeteries, churches and historical monuments in Nagorno Karabakh.”).

<sup>90</sup> Balakian, *supra* note 79, at 65.

<sup>91</sup> Res. 2582, *supra* note 75, ¶ 2. The Azerbaijani government has instilled ‘Armenophobia,’ in tandem with ‘Caucasian Albanian,’ heritage theory to foster dehumanized hatred towards Armenia. See Xanthaki, *supra* note 40, at 4.

<sup>92</sup> See *Definitions: Genocide*, *supra* note 59.

<sup>93</sup> See Info Note 2: War Crimes, Crimes against Humanity and Genocide, *supra* note 57.

of such evidence as proof of genocidal intent by a U.N. judicial body itself.<sup>94</sup> As such, cultural destruction has been an important warning for the intent of Azerbaijan to commit genocide against the Armenian people. There is ample evidence of such:

[T]he long-running conflict has had a catastrophic impact on the cultural heritage of Nagorno-Karabakh and the region; whereas over the last 30 years, the irreversible destruction of religious and cultural heritage has been carried out by Azerbaijan . . . where 89 Armenian churches, 20,000 graves and more than 5,000 headstones have been destroyed.<sup>95</sup>

Another example includes the following additional quantitative data on the destruction committed:

1[,]456 monuments, mainly Armenian, came under Azerbaijan's control after the ceasefire of 9 November 2020; whereas considerable deliberate damage was caused by Azerbaijan to Armenian cultural heritage during the 2020 war, particularly during the shelling of the Gazanchi Church, the Holy Saviour/Ghazanchetsots Cathedral in Shusha/Shushi, as well as the destruction, changing of the function of, or damage to other churches and cemeteries during and after the conflict, such as Zoravor Surb Astvatsatsin Church near the town of Mekhakavan and St Yeghishe in Mataghis village in NagornoKarabakh; whereas during his visit to the 12th century Armenian Church in Tsakuri, President Aliyev vowed to remove its Armenian inscriptions.<sup>96</sup>

Although not persuasive when used alone to argue the case of committed genocide, the destruction of Armenian cultural heritage represents a pattern of Azerbaijan's specified intent to erase the history of Armenians in the region,<sup>97</sup> while concurrently erasing their population through various tactics of intentional infliction to the conditions of life.

### 3. Forced Displacement

Deportation and forcible transfer can serve as a demonstration of genocide under sections (b) and (c) of article II of the Geneva Convention, and are

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<sup>94</sup> See *About the ICTY*, U.N. INT'L CRIM. TRIBUNAL FOR FORMER YUGOSLAVIA, <https://www.icty.org/en/about#:~:text=The%20Tribunal%20irreversibly%20changed%20the,the%20Balkans%20in%20the%201990's> [https://perma.cc/4JLA-8PGJ] (last visited Feb. 13, 2025) ("The International Criminal Tribunal for the former Yugoslavia (ICTY) is a United Nations court of law").

<sup>95</sup> Res. 2582, *supra* note 75, ¶ M.

<sup>96</sup> *Id.* ¶ B.

<sup>97</sup> For empirical analysis of the historical progression of Azerbaijani destruction to Armenian heritage, cultural, and religious sites in Nagorno-Karabakh, see *Silent Erasure: A Satellite Investigation of the Destruction of Armenian Cultural Heritage in Nakhchivan, Azerbaijan, CAUCASUS HERITAGE WATCH* (Oct. 2, 2024), <https://storymaps.arcgis.com/stories/48703f664f2f467b8f4f42008d8c75da> [https://perma.cc/2YC5-N7A4] [hereinafter *Silent Erasure*].



established when, by either expulsion or coercion, there is an “absence of genuine choice by the victim in his or her displacement.”<sup>98</sup> While Azerbaijan claims that post-reacquisition of Nagorno-Karabakh in 2023, Armenians were free to accept the Azeri rule or leave,<sup>99</sup> this “choice” propelled estimated figures of up to 120,000 Armenians (almost the entirety of the Armenian population of Nagorno-Karabakh)<sup>100</sup> to leave,<sup>101</sup> due to the belief of this promise as unreliable.<sup>102</sup> This forced displacement has weakened an already impoverished Armenian state. They not only have grappled with the mass-influx of around 100,000 Russians due to the Russo-Ukraine war, but now must deal with allocations necessary for over 100,000 refugees of Nagorno-Karabakh.<sup>103</sup> Practices known to propel forced displacement—a factor that “often takes place during the early stages of genocide”<sup>104</sup>—include the following violent, coercive conduct:

[M]urder, torture, arbitrary arrest and detention, extrajudicial executions, rape and sexual assaults, severe physical injury to

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<sup>98</sup> Int’l Comm’n Jurists, Questions and Answers on the Crime of Genocide - Legal Briefing Note, at 34 (Aug. 2018), <https://www.icj.org/wp-content/uploads/2018/08/Universal-Genocide-Q-A-FINAL-Advocacy-analysis-brief-2018-ENG.pdf> [<https://perma.cc/2QC9-J2VW>] [hereinafter *Questions and Answers*].

<sup>99</sup> See Edwards, *supra* note 1.

<sup>100</sup> Comm’r for Hum. Rts., *Memorandum on the Humanitarian and Human Rights Consequences Following the 2020 Outbreak of Hostilities Between Armenia and Azerbaijan over Nagorno-Karabakh*, COUNCIL OF EUROPE ¶ 14 (Nov. 8, 2021), <https://rm.coe.int/commdh-2021-29-memorandum-on-the-humanitarian-and-human-rights-consequ/1680a46e1c> [<https://perma.cc/2HDN-78NH>] (noting that during the time of the report in 2021, “[d]ue to the armed conflict [in 2020], around 91,000 persons (out of the total estimated population of 145,000) were forced to leave their homes in Nagorno-Karabakh and adjacent areas.”).

<sup>101</sup> *Id.*

<sup>102</sup> See Res. 2879, *supra* note 8, ¶ C (“[O]ver 100 000 Armenians from Nagorno-Karabakh have been forced to flee to Armenia since the Azerbaijani offensive on 19 September 2023; whereas as a result, Nagorno-Karabakh has been almost entirely deprived of its Armenian population, who have been living there for centuries; whereas the Azerbaijani Government stated that it would guarantee the rights of the civilian population, including educational, cultural, religious, and municipal electoral rights; whereas Azerbaijan’s promises to respect the rights of the local population were not considered credible by Nagorno-Karabakh’s Armenian inhabitants, who fear reprisals or the loss of the freedom to use their language and practise their religion and customs; whereas there have been credible reports of looting, destruction, violence and arrests committed by Azerbaijani troops since the beginning of the offensive; whereas several officials and former officials from Nagorno Karabakh have been arrested by Azerbaijan since 19 September 2023.”); see also, Felix Light, *Karabakh Refugees in Armenia Face Uncertainty and Poverty in Exile*, REUTERS (Dec. 4, 2023, 11:57 AM), <https://www.reuters.com/world/asia-pacific/karabakh-refugees-armenia-face-uncertainty-poverty-exile-2023-12-04/> [<https://perma.cc/6QS7-BBGP>] (“She [54 year old refugee Elada Sargsyan], like the rest of the territory’s 120,000 ethnic Armenians, had suffered a nine-month Azerbaijani blockade of vital supplies from Armenia and refused to believe Baku’s insistence that her rights would be preserved as a citizen of Azerbaijan.”).

<sup>103</sup> Anl Chkhikvadze, *Armenians Wonder Who to Trust After Lost Wars*, FOREIGN POL’Y (Mar. 16, 2024, 6:00 AM), <https://foreignpolicy.com/2024/03/16/armenia-nagorno-karabakh-russia-alliances-war/> [<https://perma.cc/8Y25-X4FB>].

<sup>104</sup> Maya González, *Experiencing Forced Displacement: Cambodia*, U.S. HOLOCAUST MEM’L MUSEUM (Mar. 28, 2022), <https://www.ushmm.org/genocide-prevention/blog/experiencing-forced-displacement-cambodia> [<https://perma.cc/CRS5-RR4B>] (using Cambodia as a case example to show that “[i]f the movement of persons is enforced deliberately ‘with intent to destroy, in whole or in part, a national, ethnic, racial or religious group’ it can constitute genocide.”).

civilians, confinement of civilian population in ghetto areas, *forcible removal, displacement and deportation of civilian population*, deliberate military attacks or threats of attacks on civilians and civilian areas, use of civilians as human shields, destruction of property, robbery of personal property, attacks on hospitals, medical personnel, and locations with the Red Cross/Red Crescent emblem, among others.<sup>105</sup>

The Azeri destruction of Armenian property, at least cultural, is massive.<sup>106</sup> For example, the Caucasus Heritage Watch “examined 159 Armenian monasteries, churches, chapels, and cemeteries” in the region, using geolocation methodology and high-resolution satellite imagery to locate and assess their condition.<sup>107</sup> Overall, they found an estimated ninety-eight percent destruction rate in the region they drew data from.<sup>108</sup> Additionally, allegations of displacement<sup>109</sup> and violence<sup>110</sup> have been verified—after Nagorno-Karabakh had already fallen to Azerbaijan, however—by the European Parliament themselves. The ICJ utilized these findings, in addition to “credible reports, including video footage, [to conclude] that Armenian POWs and other detainees have been subjected to extrajudicial killings, enforced disappearances and the desecration of the dead.”<sup>111</sup>

Even if it is not the “numerous reports of human rights violations against civilians and military captives, and of desecration of the dead”<sup>112</sup> that would dispel the population, some measures taken by Azeri forces have warranted Armenian diaspora, “of whom 88% were women and children”<sup>113</sup> from Nagorno-Karabakh as of December 2020. For instance, the mental and physical harm during the Lachin Corridor Blockade are examples of coercive measures to evacuate involuntarily.<sup>114</sup> These harms also serve as an example of measures

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<sup>105</sup> *Definitions: Genocide*, *supra* note 59 (emphasis added).

<sup>106</sup> *See infra* pp. 12–16.

<sup>107</sup> *See Silent Erasure*, *supra* note 93.

<sup>108</sup> *Id.*

<sup>109</sup> Res. 2230, *supra* note 8, ¶ B (“[I]t is estimated that there are still around 4,500 Azerbaijani and Armenian missing persons and hundreds of thousands of internally displaced people from the first Nagorno-Karabakh conflict in the 1990s...”).

<sup>110</sup> *Id.* ¶ A (“[T]he Nagorno-Karabakh conflict as well as the recent incursion by Azerbaijan into Armenian sovereign territory have resulted in tens of thousands of casualties, immense destruction and the displacement of hundreds of thousands of people...”).

<sup>111</sup> *Id.* ¶ J.

<sup>112</sup> Press Release, U.N. Office High Comm’r for Hum. Rts., Nagorno-Karabakh: Captives Must Be Released—UN Experts (Feb. 1, 2021) <https://www.ohchr.org/en/press-releases/2021/02/nagorno-karabakh-captives-must-be-released-un-experts> [https://perma.cc/MSY2-S78M].

<sup>113</sup> U.N. High Comm’r for Refugees, *Protection Monitoring Armenia January-June 2021 Mid-Year Report*, 1, 3 (July 2021), <https://data.unhcr.org/en/documents/details/88299> [https://perma.cc/CE2N-ZU9A].

<sup>114</sup> *See* Res. 2879, *supra* note 8, ¶ F (“[Azerbaijan’s latest] military aggression was preceded by Azerbaijan’s nine-month blockade, in place since 12 December 2022, of the Lachin corridor, the only

taken by Azerbaijan to commit genocide as defined under article II (c) of the Geneva Convention, as the calculated methods in which “conditions of life” are severely impaired. This includes but is not limited to the “deliberate deprivation of resources indispensable for survival, such as food or medical services, or systematic expulsion from homes.”<sup>115</sup> As a result of such measures by Azeri forces, Armenian refugees of Nagorno-Karabakh—some who have been displaced for up to the third time during this ongoing Armenian-Azeri conflict<sup>116</sup>—have settled for living in disused libraries, kindergarten centers, and municipal buildings, with only two beds and child-size tables and chairs as furnishings, a one-off \$250 payment allotted by the Armenian government, and no utilities to protect them from the harsh weather that sweeps the Caucasus region.<sup>117</sup>

This mirrors the same genocidal intent held by the Ottoman Empire perpetrating the Armenian Genocide of 1915, where “[t]he victims of the Armenian genocide include people killed in local massacres that began in spring 1915; others who died during deportations, under conditions of starvation, dehydration, exposure, and disease.”<sup>118</sup> The perpetrators of the Holocaust in the 1930s and 1940s, as well as the Cambodian Genocide in 1975–1976, employed these methods, sufficient to meet article II (c).<sup>119</sup> Thus, a historical trend of utilizing a restriction of the targeted group’s access to life-saving resources rather than violence to disseminate said population (especially apparent in cases of deliberate starvation)<sup>120</sup> is reflected. Furthermore, “[t]he humanitarian crisis has worsened starting June 15, 2023, when the Red Cross, the sole humanitarian organization with permission to access Artsakh, has been denied entry to deliver food and medical supplies.”<sup>121</sup>

By creating and maintaining an ensured lack of access to medicine, food, or forms of energy for heat, Azerbaijan, as “the perpetrator[,] does not immediately kill the members of the group, but . . . ultimately, seek[s] their physical

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land corridor linking the mostly Armenian-populated Nagorno-Karabakh region with Armenia, depriving more than 100 000 Nagorno-Karabakh Armenians of freedom of movement and access to food, medication, hygiene products and other goods, as well as by the establishment of a check point on the same corridor in April 2023 in violation of the November 2020 trilateral statement, by a military build-up around Nagorno-Karabakh and along the border with Armenia, and by aggressive and inflammatory rhetoric by Azerbaijan’s leadership.”).

<sup>115</sup> Int’l Crim. Ct., *ICC Elements of Crimes*, art. 6(c)(4) n.4 (2013), <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf> [<https://perma.cc/L9BN-D3S8>].

<sup>116</sup> Light, *supra* note 98.

<sup>117</sup> *Id.*

<sup>118</sup> *The Armenian Genocide (1915-1916): Overview*, U.S. HOLOCAUST MEM’L MUSEUM, <https://encyclopedia.ushmm.org/content/en/article/the-armenian-genocide-1915-16-overview> [<https://perma.cc/B58S-2YWJ>] (last visited Mar. 24, 2025).

<sup>119</sup> See Luis Moreno Ocampo, *Expert Opinion: Genocide Against Armenians in 2023*, 57 VAND. J. TRANSNAT’L L., 1595, 1596 (2024).

<sup>120</sup> See *id.* at 1608.

<sup>121</sup> *Nagorno-Karabakh: Update, Hearing Before the Tom Lantos Human Rights Comm’n of the H. Comm. on Foreign Affairs*, 118th Cong. 14 (2023) (testimony of David L. Phillips, Adjunct Professor, Georgetown University, School of Foreign Service).

destruction”<sup>122</sup> through the Lachin Corridor Blockade. The long-lasting mental and physical suffering of refugees caused by their displacement continually results in impoverishment: They struggle to find work, risk physical detriment as the lack of utilities subjects them to the cold, and the children have asked for replacements of traditional Christmas gifts like sweets or toys with practical items (for example a microwave, winter boots, and coat) abandoned during the forty-eight-hour window of refuge to Armenia.<sup>123</sup> Although the official window for refuge was forty-eight hours, “[s]ome only had minutes to pack”).<sup>124</sup>

While forced displacement alone would not indicate genocide, this act of forcible transfer could be classified as having a sufficiently serious nature “as to amount to other inhumane acts.”<sup>125</sup> Specific acts of forced displacement have been found to be of similar seriousness to that of other enumerated crimes against humanity,<sup>126</sup> such as deportation.<sup>127</sup> For example, forced displacement as a method of genocide was interpreted under the legal authority of article 5(i)

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<sup>122</sup> Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment, ¶ 505, Int’l Crim. Trib. for Rwanda (Sept. 2, 1998). See also Prosecutor v. Tolimir, Case No. IT-05-88-2-T, Judgment, ¶ 740, Int’l Crim. Trib. for the Former Yugoslavia (Dec. 12, 2012); Prosecutor v. Brđanin, Case No. IT-99-36-T, Judgment, ¶ 691, Int’l Crim. Trib. for the Former Yugoslavia (Sept. 1, 2004); Prosecutor v. Stakić, Case No. IT-97-24-T, Judgment, ¶¶ 517–18, Int’l Crim. Trib. for the Former Yugoslavia (July 31, 2003); Prosecutor v. Musema, Case No. ICTR-96-13-T, Judgment, ¶ 157, Int’l Crim. Trib. for Rwanda (Jan. 27, 2000); Prosecutor v. Rutaganda, Case No. ICTR-96-3-T, Judgment, ¶ 52, Int’l Crim. Trib. for Rwanda (Dec. 6, 1999); Prosecutor v. Mladić, Case No. IT-09-92-T, Judgment, ¶ 3453 Int’l Crim. Trib. for the Former Yugoslavia (Nov. 22, 2017).

<sup>123</sup> Light, *supra* note 99.

<sup>124</sup> Nechepurenko, *supra* note 3.

<sup>125</sup> Prosecutor v. Stakić, Case No. IT-97-24-A, Appeal Judgement, ¶ 317, Int’l Crim. Trib. for the Former Yugoslavia (Mar. 22, 2006).

<sup>126</sup> Prosecutor v. Blagojević & Jokić, Case No. IT-02-60-T, Judgement, ¶ 626, Int’l Crim. Trib. for the Former Yugoslavia (Jan. 17, 2005); Prosecutor v. Vasiljević, Case No. IT-98-32-T, Judgement, ¶ 234, Int’l Crim. Trib. for the Former Yugoslavia (Nov. 29, 2002); Prosecutor v. Galić, Case No. IT-98-29-T, Judgement & Opinion, ¶ 152, Int’l Crim. Trib. for the Former Yugoslavia (Dec. 5, 2003); Prosecutor v. Krnojelac, Case No. IT-97-25-T, Judgement, ¶ 130, Int’l Crim. Trib. for the Former Yugoslavia (Mar. 15, 2002).

<sup>127</sup> Prosecutor v. Mladić, *supra* note 119, at ¶¶ 479–502 (discussing forcible transfer and deportation in the Banja Luka Municipality), ¶¶ 590–602 (discussing forcible transfer and deportation in the Bijeljina Municipality), ¶¶ 419 (discussing forcible transfer and deportation in the Bijeljina Municipality), ¶¶ 713–25 (discussing forcible transfer and deportation in the Foča Municipality), ¶¶ 745–49 (discussing forcible transfer and deportation in the Ilidža Municipality), ¶¶ 797–99 (discussing forcible transfer and deportation in the Kalinovik Municipality), ¶¶ 869–86 (discussing forcible transfer and deportation in the Ključ Municipality), ¶¶ 905–19 (discussing unlawful detention and cruel or inhumane treatment in detention facilities in the Kotor Varoš Municipality in association with forcible transfer and deportation), ¶¶ 947–60 (discussing forcible transfer and deportation in the Kotor Varoš Municipality), ¶¶ 986–90 (discussing forcible transfer and deportation in the Novi Grad Municipality), ¶¶ 1003–16 (discussing forcible transfer and deportation in the Pale Municipality), ¶¶ 1430–50 (discussing forcible transfer and deportation in the Prijedor Municipality), ¶¶ 1553–88 (discussing forcible transfer and deportation in the Rogatica Municipality), ¶¶ 1689–738 (discussing forcible transfer and deportation in the Sanski Municipality), ¶¶ 1752–57 (discussing forcible transfer and deportation in the Sokolac Municipality), ¶¶ 1823–49 (discussing forcible transfer and deportation in the Vlasenica Municipality), ¶¶ 2224–53 (discussing the detention of United Nations Military Officers (“UNMOs”) stationed in Pale and in the Sarajevo area, analyzed in association with forcible transfer and deportation), ¶¶ 2964–88 (discussing forcible transfer and deportation in the town of Srebrenica), & ¶¶ 3117–183 (presenting the applicable law and the Court’s findings all forcible transfer and deportation allegations in the case).

of the Rome Statute by the Trial Chamber of the ICTY, “as they involved a forced departure *from the residence and the community, without guarantees concerning the possibility to return in the future, with the victims* of such forced transfers *invariably suffering serious mental harm*.”<sup>128</sup>

Additionally, international jurisprudence has established parallels to the circumstances in Nagorno-Karabakh that demonstrate the *actus reus* which cause serious bodily or mental harm. For example, in a similarly restrictive effect to that of the refusal of Lachin Corridor, Athanase Seromba—a Hutu priest convicted of genocide and extermination as a crime against humanity<sup>129</sup>—refused to allow Tutsi refugees to get food from a banana plantation of their place of refuge.<sup>130</sup> This refusal led to findings of serious mental and physical harm by the ICTR.<sup>131</sup> The Chamber reasoned that because the “refugees lacked food and had very limited access to basic foodstuffs from the outside” due to measures employed by Seromba and his followers, this deprivation of food contributed to the substantial physical weakening of the Tutsis there.<sup>132</sup>

As for mental harm, the effects on the targeted Tutsi population in the Rwandan genocide, giving way to the Chamber’s findings, mirror those experienced by the Armenian refugees of Nagorno-Karabakh. The threat of starvation added to the already tumultuous environment of being surrounded by militiamen and constant attacks in the region where the Tutsis “lived in a constant state of anxiety, inasmuch as they knew that their lives, and those of relatives were under constant threat.”<sup>133</sup> These threats substantially contributed to the “commission of acts causing serious mental harm to Tutsi refugees.”<sup>134</sup>

The requisite *mens rea* to prosecute for genocide of a peoples is deliberate and specific intent. Using the same jurisprudential example as before, the Chamber found the following:

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<sup>128</sup> *Case Law Database Notions List: Forcible Transfer*, U.N. INT’L RESIDUAL MECHANISM FOR CRIM. TRIBUNALS, <https://cld.irmct.org/notions/show/370/forcible-transfer#> [<https://perma.cc/39EP-B8T9>] (last visited Mar. 24, 2025) (emphasis added); *see also*, Prosecutor v. Krstić, Case No. IT-98-33-T, Judgment, ¶ 523, Int’l Crim. Trib. for the Former Yugoslavia (Aug. 2, 2001); Prosecutor v. Kupreškić et al., Case No. IT-95-16-T, Judgment, ¶ 566 Int’l Crim. Trib. for the Former Yugoslavia (Jan. 14, 2000); Prosecutor v. Blagojević & Jokić, Case No. IT-02-60-T, ¶ 629.

<sup>129</sup> *UN Tribunal Increases Sentence for Rwandan Priest to Life in Prison*, U.N. NEWS, (Mar. 12, 2008), <https://news.un.org/en/story/2008/03/252322> [<https://perma.cc/H2JT-7E27>]; U.N. Int’l Residual Mechanism for Crim. Tribunals, Appeals Chamber Increases Athanase Seromba Sentence to Life Imprisonment (Mar. 12, 2008), <https://unictr.irmct.org/en/news/appeals-chamber-increases-athanase-seromba-sentence-life-imprisonment> [<https://perma.cc/KQW9-SBFV>].

<sup>130</sup> Prosecutor v. Seromba, Case No. ICTR-2001-66-1, Judgment, ¶ 326, Int’l Crim. Trib. for Rwanda (Dec. 13, 2006), <https://www.refworld.org/jurisprudence/caselaw/ictr/2006/en/61974> [<https://perma.cc/AH93-3HUT>]; *comp.* Prosecutor v. Seromba, Case No. ICTR-2001-66-A, Appeals Judgment, Int’l Crim. Trib. for Rwanda (Mar. 12, 2008) (overturning Seromba’s initial conviction of the crime of a lower evidentiary threshold—aiding and abetting of the commission of genocide—for that of genocide itself).

<sup>131</sup> *See generally id.*

<sup>132</sup> Prosecutor v. Seromba, Case No. ICTR-2001-66-1, ¶ 327.

<sup>133</sup> *Id.* ¶ 326.

<sup>134</sup> *Id.*

Seromba could not have been unaware that his prohibition of refugees from getting food from the banana plantation . . . would certainly have a negative impact on the morale of the refugees who were faced with an extremely difficult situation related to the persecutions which they had been suffering.<sup>135</sup>

Therefore, specific intent is demonstrated beyond a reasonable doubt. The standard of proof for the *mens rea* prong of culpability was met.<sup>136</sup> Similarly, the deliberate ignorance of the binding ICJ rulings to unblock the Lachin Corridor as a preventative measure to genocide is enough to prove that Azerbaijan and Azeri leaders could not be unaware.<sup>137</sup> Consequently, this expression of control over the peoples of Nagorno-Karabakh through their forced and rushed displacement effectuating the physical *and* mental suffering of those exiled, with no *viable* possibility of return out of fear of Azeri rule, aids to demonstrate the seriousness of the Nagorno-Karabakh conflict insofar as to amount to other inhumane acts that infer material elements of genocide.

### B. The Benefits of Bandwagoning<sup>138</sup>

In contextual considerations of a larger scale, sovereign states that bandwagon in international hostilities benefit from the spoils of conquest by hanging on the coattails of the bad actor.<sup>139</sup> In the context of Nagorno-Karabakh, there is multilateral oversight occurring by those who benefit in their amicable relations with Azerbaijan, which would obviously be disturbed if amicable entities to Azerbaijan proceed in the condemnation of Azeri actions in the South Caucasus. For example, Member States of the European Union (“EU”) placed sanctions on Russian energy exports following Russia’s instigation of conflict and crimes against humanity in Ukraine; these sanctions have led to the EU’s increased dependency on continuing relations with Azerbaijan.<sup>140</sup> Post-Russian

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<sup>135</sup> *Id.* ¶ 329.

<sup>136</sup> *Id.* ¶ 331.

<sup>137</sup> See Press Release, Security Council, Lachin Corridor Must Be Reopened for Humanitarian Aid, Security Council Hears, as Speakers Urge Armenia, Azerbaijan to Normalize Relations, U.N. Press Release SC/15384 (Aug. 16, 2023).

<sup>138</sup> In international relations, traditionally “bandwagoning” (as defined by political scientist Stephen M. Walt) classifies when sovereign states align themselves with a state acting as a “source of danger” in either bilateral or multilateral conflicts, with a goal of obtaining coveted values, termed “self-extension.” See Randall L. Schweller, *Bandwagoning for Profit: Bringing the Revisionist State Back In*, 19 INT’L SEC. 72, 74 (1994).

<sup>139</sup> See Levick & Schulz, *supra* note 12, at 522 (defining bandwagoning through the lens of its use by “secondary states,” i.e., those that are not “great powers and hegemons”). However, this theory can be applied equally to all nation-states, as it focuses on the specified intent of these states when taking action (or not). Thus, the definition of bandwagoning should be expanded past solely applying its analysis when there is a secondary state relying on hegemons. Rather, it should be utilized to analyze the use of the strategy itself by *any* state, as long as the key element of bandwagoning—lack of comparatively balanced power between states—is still prevalent.

<sup>140</sup> See Michael Rubin, *Tolerating Azerbaijan “Gas” Shows Europe Still Isn’t Serious About Russia*, AM. ENTER. INST. (Feb. 3, 2023) <https://www.aei.org/op-eds/tolerating-azerbaijan-gas-shows-europe-still-isnt-serious-about-russia/> [https://perma.cc/EET8-H3SD] (discussing the “illusion” of EU efforts to sanction war criminals (namely, Russian oligarchical and militant officials) through increased oil purchases by Azerbaijan).

sanctions, Azerbaijan has entered contracts to acquire oil from Russia and then sell it to the European Union, thus acting as an agent of Russia.<sup>141</sup> Therefore, buying oil from Azerbaijan allows the EU to continue the façade of condemnation of atrocity crimes against one bad actor, while they benefit through transactional relations with another.<sup>142</sup>

The EU Member States are not alone in enjoying the benefits of this transactional framework. The facilitation of trade between Russia and Azerbaijan enables the Russian economy to survive.<sup>143</sup> Moreover, Russia is—and has been historically—the facilitator of faux “negotiations”<sup>144</sup> between Azerbaijan and the Armenian people of Nagorno-Karabakh,<sup>145</sup> in which Azerbaijan is allowed to dominate the Armenian people,<sup>146</sup> culture,<sup>147</sup> religious

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<sup>141</sup> Priority Question for Written Answer to the Commission, on Increased Gas Exports from Russia to Azerbaijan, EUR. PARL. DOC. (003854/2022) (2022) (“There are reports that Gazprom in Russia has recently concluded a new contract with SOCAR in Azerbaijan for the delivery of one billion cubic metres of gas between November 2022 and March 2023. The gas is said to be intended for the domestic market in Azerbaijan, given its own gas needs, including for increased exports to the EU, as agreed in the Memorandum of Understanding (MoU) signed by President Aliyev and Commission President von der Leyen on 18 July 2022.”).

<sup>142</sup> For criticisms on the decision to increase petroleum trade between the EU and Azerbaijan, see *‘By Choosing Azerbaijan as a Gas Supplier, Ursula von der Leyen Weakens the European Union’*, LE MONDE (July 29, 2022, 3:32 PM), [https://www.lemonde.fr/en/opinion/article/2022/07/29/by-choosing-azerbaijan-as-a-gas-supplier-ursula-von-der-leyen-weakens-the-european-union\\_5991891\\_23.html](https://www.lemonde.fr/en/opinion/article/2022/07/29/by-choosing-azerbaijan-as-a-gas-supplier-ursula-von-der-leyen-weakens-the-european-union_5991891_23.html) [<https://perma.cc/Z4XC-QAYS>] (noting that critics of this decision include “[m]ore than 50 French politicians [that] sign[ed] a transpartisan letter to argue that an agreement with Baku would simply substitute Europe’s dependence on Russian gas and reinforce Ilham Aliyev’s dictatorship.”).

<sup>143</sup> A large portion of Russia’s economic survival despite sanctions is due to Azerbaijan buying Russian oil to then re-sell to Russia’s old consumers, i.e., European countries. See David O’Byrne, *Azerbaijan’s Russian Gas Deal Raises Uncomfortable Questions for Europe*, EURASIANET (Nov. 22, 2022), <https://eurasianet.org/azerbaijans-russian-gas-deal-raises-uncomfortable-questions-for-europe> [<https://perma.cc/UUC4-KVEE>].

<sup>144</sup> *The Silent Siege of Nagorno-Karabakh Echoes in the European Parliament*, ARM. GEN. BENEVOLENT UNION [AGBU] (June 7, 2023), <https://agbu.org/press-release/silent-siege-nagorno-karabakh-echoes-european-parliament> [<https://perma.cc/SF2W-FN9N>] (“François-Xavier Bellamy spoke of the ‘false peace negotiations’ underway, [asking]. . . ‘How can we consider that Armenia is negotiating freely and sovereignly with Azerbaijan when it is today experiencing directly the blackmail of blocking the Lachin corridor?’”).

<sup>145</sup> See *Armenia, Azerbaijan and Russia Sign Nagorno-Karabakh Peace Deal*, *supra* note 25 (explaining how, following the “truce” brokered by Russia in 2020, part of the role of the Russian troops deployed into the region post-2020 conflict “will be to guard the ‘Lachin corridor,’ which links the Karabakh capital, Stepanakert, to Armenia.”). This *ex-ante* resolution ultimately proved unsuccessful. See generally, Yacoubian, *supra* note 12, at 174–175 (providing examples of the destruction associated with later conflicts that followed after the truce’s failure).

<sup>146</sup> See Res. 2230, *supra* note 8, ¶ AH (“Russia’s alleged readiness to guarantee the security of Armenia has proven to be non-existent, as demonstrated by its lack of response to Azerbaijan’s continuous attacks even in the light of Armenia’s attempt to resort to the Collective Security Treaty Organization (CSTO); . . . whereas Russian peacekeepers deployed in the region were unwilling and unable to prevent further attacks from Azerbaijan and their presence has been decreasing steadily, especially after the start of Russia’s illegal war of aggression against Ukraine.”).

<sup>147</sup> See Res. 2582, *supra* note 75, at ¶ 2 (showing that the European Parliament “[a]cknowledges that the erasure of the Armenian cultural heritage is part of a wider pattern of a systematic, state-level policy of Armenophobia, historical revisionism and hatred towards Armenians promoted by the Azerbaijani authorities, including dehumanisation, the glorification of violence and territorial claims against the Republic of Armenia which threaten peace and security in the South Caucasus”).

sites,<sup>148</sup> and territory.<sup>149</sup> The illegitimacy of the Armenian-Azeri negotiations on Nagorno-Karabakh is additionally supported by the exclusion of Turkish and European powers in the brokerage of said negotiations and by including Russian “peacekeepers” as the only third-party broker.<sup>150</sup> Russia has historically held an interest in prolonging the conflict in the South Caucasus between Azerbaijan and ethnic Armenians to weaken their power as sovereign states and further promote instability in the region—consequently, these faux negotiations ensure Russian leverage over two of its neighboring states.<sup>151</sup>

Additional motivation for Russia to facilitate these “negotiations” between the warring factions of Azerbaijan and ethnic Armenians is its invasion of Ukraine, but on a diplomatic level. After Russia’s invasion of Ukraine spurred condemnation from world powers and resulted in their “isolation on the international scene,”<sup>152</sup> the Kremlin has felt augmenting pressure to retain its status as a dominant force in diplomatic brokerage to legitimize their constructed mirage of self-proclaimed democracy.<sup>153</sup> Acting in the capacity of a “security guarantor,”<sup>154</sup> Russia looks to reduce Western European influence in

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<sup>148</sup> See Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Arm. v. Azer.), Application Instituting Proceedings Containing a Request for Provisional Measures, 2021 I.C.J. 1, ¶ 97 (Sept. 16) (ordering Azerbaijan to make reparations by “restoring or returning any Armenian cultural and religious buildings and sites, artefacts or objects” that Azerbaijani forces destroyed).

<sup>149</sup> See Edwards, *supra* note 1.

<sup>150</sup> See Anna Ohanyan, *The Forty-Day War and the “Russian Peace” in Nagorno-Karabakh*, GEO. J. INT’L AFFS. (June 16, 2021), <https://gjia.georgetown.edu/2021/06/16/the-forty-day-war-and-the-russian-peace-in-nagorno-karabakh/> [<https://perma.cc/8WWZ-GEWE>].

<sup>151</sup> See Laurence Broers, *Russia Concedes Karabakh for Stake in New Regional Order*, CHATHAM HOUSE <https://www.chathamhouse.org/2023/09/russia-concedes-karabakh-stake-new-regional-order> [<https://perma.cc/3CH2-SN2G>] (last updated Oct. 9, 2023) (describing that Russia would avoid “choosing sides” by taking on various, complex roles such as “mediator, ally, arms supplier, deterrent” in efforts to sustain the conflict, and the resulting benefits arisen from said hostilities).

<sup>152</sup> Euronews with Agence-France Presse, *Russia Insists There is ‘No Alternative’ to its Diplomacy in Nagorno-Karabakh*, EURONEWS (May 2, 2023, 6:45 PM), <https://www.euronews.com/2023/05/02/russia-insists-there-is-no-alternative-to-its-diplomacy-in-nagorno-karabakh> [<https://perma.cc/FA28-WYPJ>].

<sup>153</sup> See Timothy Snyder, *Ukraine Holds the Future*, FOREIGN AFF. (Sept. 6, 2022), [https://www.foreignaffairs.com/ukraine/ukraine-war-democracy-nihilism-timothy-snyder?utm\\_medium=social](https://www.foreignaffairs.com/ukraine/ukraine-war-democracy-nihilism-timothy-snyder?utm_medium=social) [<https://perma.cc/33QX-MHTN>] (“The war in Ukraine is a test of whether a tyranny that claims to be a democracy can triumph.”); see also, *Iran Hosts Armenia-Azerbaijan Talks, Russia Says Main Issue Resolved in Nagorno-Karabakh*, REUTERS (Oct. 23, 2023 2:54 PM), <https://www.reuters.com/world/russias-lavrov-visit-tehran-monday-ria-2023-10-22/> [<https://perma.cc/7H44-FKL4>] (citing “the demands and distractions of [Russia’s] war in Ukraine” as the source of weakening Russian influence in the South Caucasus, rather than as an effect of sanctions by other global actors).

<sup>154</sup> *Iran Hosts Armenia-Azerbaijan Talks*, *supra* note 149; Soso Dzamukashvili, *What Threat Does the 3+3 Regional Cooperation Pose for Georgia?*, FORBES GEORGIA (Apr. 3, 2022, 11:14 PM), <https://forbes.ge/en/ra-saphrthkhes-sheitsavs-regionuli-thanamshromlobis-3-3-phormati-saqarthvelosthvis/> [<https://perma.cc/2K5P-SFXU>] (“The Kremlin’s leverage has been substantially bolstered through the deployment of 2,000 peacekeepers in Nagorno-Karabakh aimed to ‘control the ceasefire and the cessation of military actions’ in the conflict zone.”).



the region<sup>155</sup> and in effect, to block the realization of Western European desires for “political, social and economic reform efforts in these [post-Soviet] countries with the aim of increasing democratisation and good governance, energy security, environmental protection, and economic and social development.”<sup>156</sup> By utilizing claims that their leaders, alongside the leaders of Azerbaijan and Armenia, advanced peace and subsequent stability in the region, Russia looks to bolster support of their goals of a “3+3 format” for the Caucasus (a partnership between the Caucasian states of Armenia, Azerbaijan, and Georgia, and their larger neighbors Iran, Russia, and Turkey),<sup>157</sup> which would “address the issues of security, unblocking economic and transport ties.”<sup>158</sup> The effect of this emphasis on Russia’s “3+3 format” proposal is dual-fold, as “[t]his latest proposal will enhance Russian and Iranian influence, [and] gradually freeze out Euro-Atlantic influence,”<sup>159</sup> while also working to “undermine the independence and sovereignty of the three smaller countries in the region.”<sup>160</sup>

It should be no surprise, then, that the same nations that have provided support to Azerbaijan during the Nagorno-Karabakh conflict, also stand to benefit from the “3+3 format.” For example, Iran, although historically a close ally of Armenia, stood to gain through its backing of Azerbaijan as the rightful sovereign of the Nagorno-Karabakh territory. Both Iran’s Chief of State,

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<sup>155</sup> Dzamukashvili, *supra* note 148 (“Russia’s enthusiasm toward the project came as no surprise as the Kremlin has long sought to boost its leverage and undermine the ‘Western encroachment’ in the region of its ‘special interests.’ Moscow has been interested in isolating its neighbourhood from Western influence and making it difficult for the US and NATO to strengthen cooperation with the region, especially with its strategic partner, Georgia.”).

<sup>156</sup> Florian Carmona & Michal Jiráček, *Three Eastern Partnership Neighbours in the South Caucasus*, EUR. PARL. 1, 1 (Oct. 2023), [https://www.europarl.europa.eu/erpl-app-public/factsheets/pdf/en/FTU\\_5.5.7.pdf](https://www.europarl.europa.eu/erpl-app-public/factsheets/pdf/en/FTU_5.5.7.pdf) [<https://perma.cc/WJE2-KZNA>] (discussing the goals of the 2009 Eastern Partnership Policy, established by the EU for partnership programs in the region).

<sup>157</sup> See Elena Teslova, *Russia Suggests 3+3 Format with Turkey, Iran, Azerbaijan, Armenia, Georgia in Caucasus*, ANADOLU AJANSI (Oct. 7, 2021), <https://www.aa.com.tr/en/politics/russia-suggests-3-3-format-with-turkey-iran-azerbaijan-armenia-georgia-in-caucasus/2384679#> [<https://perma.cc/R7ZU-XHWU>]. Azerbaijani media has been vocal about the “great potential” of the “3+3 format” since its inception. See *3+3 Format Foreshadows Great Potential for Region*, AZERNEWS (Oct. 23, 2023, 9:45 PM), <https://www.azernews.az/analysis/216459.html> [<https://perma.cc/3UXH-V3FW>]; cf., e.g., *Georgia Won’t Attend 3+3 Format Meeting in Tehran, Foreign Office*, AZERTAC (Oct. 23, 2023, 1:40 PM), [https://azertag.az/en/xeber/georgia\\_wont\\_attend\\_33\\_format\\_meeting\\_in\\_tehran\\_foreign\\_office-2797672](https://azertag.az/en/xeber/georgia_wont_attend_33_format_meeting_in_tehran_foreign_office-2797672) [<https://perma.cc/P29M-5ASU>]; *In the Absence of Georgia, the 3 + 3 Meeting in Tehran was Again Incomplete*, COMMONSPACE.EU (Oct. 24, 2023), <https://www.commonspace.eu/news/absence-georgia-3-3-meeting-tehran-was-again-incomplete> [<https://perma.cc/8Q2U-RBX6>] (demonstrating resistance by Georgia to proceed with discussions on the format, despite Russian claims that the nation would stand to benefit from the plan).

<sup>158</sup> Teslova, *supra* note 151.

<sup>159</sup> Luke Coffey, *The 3+3 Format in the South Caucasus Doesn’t Add Up*, MIDDLE E. INST. (Nov. 9, 2021), <https://www.mei.edu/publications/33-format-south-caucasus-doesnt-add> [<https://perma.cc/AG7D-6R2D>]; see also *Iran Hosts Armenia-Azerbaijan Talks*, *supra* note 149 (elaborating on Iranian Foreign Minister Hossein Amir Abdollahian’s statement that the presence of outsiders in the region will complicate rather than solve the situation in Nagorno-Karabakh: “That was an implicit reference to the United States and the European Union, whose involvement in the search for a peace agreement has particularly annoyed Russia.”) (emphasis added).

<sup>160</sup> Coffey, *supra* note 153.

Supreme Leader Ayatollah Ali Khamenei, and Head of Government, President Hassan Rohani, have expressed support for Azeri control of Nagorno-Karabakh.<sup>161</sup> As reconciliatory efforts between Iran and Azerbaijan prove fruitful, Iran strengthens support from the ethnic Azeris who constitute a large minority of their population, and who erupted in protests in support of Azerbaijan during the period of conflict.<sup>162</sup> In doing so, Iran also strengthens ties with its immediate geopolitical neighbors, a mechanism employed to meet a primary goal of incumbent President Ebrahim Raisi's administration—to “boost [Iran's] currently limited influence in the South Caucasus,”<sup>163</sup> as “[t]he 2020 Nagorno-Karabakh war and its aftermath prompted Iranian fears of its regional interests being overshadowed.”<sup>164</sup>

Of these diplomatic goals, a secure relationship with Azerbaijan would stand to be one of the most beneficial.<sup>165</sup> “Relations between Baku and Tehran have been traditionally sour, as Turkic-speaking Azerbaijan is a close ally of Iran's

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<sup>161</sup> See *Protests Erupt in Iran Backing Azerbaijan in Nagorno-Karabakh Conflict*, RFE/RL'S RADIO FARDA (Oct. 2, 2020), <https://www.rferl.org/a/protests-erupt-in-iran-backing-azerbaijan-in-nagorno-karabakh-conflict/30870217.html> [<https://perma.cc/EV9Y-LZNW>] (“On October 1, four representatives of Iranian Supreme Leader Ayatollah Ali Khamenei in four of the country's provinces with a large ethnic Azeri population released a joint statement in support of Azerbaijan. The statement by Khamenei's representatives in the provinces of West and East Azerbaijan, Ardebil, and Zanjan said that ‘there is no doubt’ that the breakaway region belongs to Azerbaijan. . . . President Hassan Rohani's chief of staff told Azerbaijan that Tehran recognized its territorial integrity.”).

<sup>162</sup> Ethnic Azeris, the largest non-Persian minority in Iran, constitutes an estimated sixteen to twenty-four percent of the Iranian population. See *id.* For a quantified representation of the dwarfing value of Armenian interests compared to its Azerbaijani counterpart in Iran, see also, Agence France-Presse, *Iran Says It Opposes ‘Geopolitical Changes’ in Caucasus*, VOICE OF AM. (“VOA”) (Oct. 2, 2023 3:28 PM), <https://www.voanews.com/a/iran-says-it-opposes-geopolitical-changes-in-caucasus/7293664.html> [<https://perma.cc/9XZH-KK5R>] (comparing the 10 million Azeri-speaking people in Iran to the Armenian community of just under 100,000 in Iran) [hereinafter Agence France-Presse]; Brenda Shaffer, *President Aliyev: ‘Relations Between Azerbaijan and Iran are at the Lowest Level Ever’*, FOUND. DEF. DEMOCRACIES (May 8, 2023), <https://www.fdd.org/analysis/2023/05/08/azerbaijan-iran-lowest-level-ever/> [<https://perma.cc/BF6Z-T8JG>] (stating that “up to a third of the population of Iran is comprised of ethnic Azerbaijanis.”).

<sup>163</sup> Fuad Shahbazov, *Despite Nagorno-Karabakh Flareup, Azerbaijan-Iran Set to Pursue Thaw*, AMWAJ.MEDIA (Sept. 20, 2023), <https://amwaj.media/article/despite-nagorno-karabakh-flareup-azerbaijan-iran-set-to-pursue-thaw> [<https://perma.cc/PTC3-YJNM>].

<sup>164</sup> *Id.*

<sup>165</sup> See Faramarz Kuhpayeh, *Another Chance for Baku*, TEHRAN TIMES (July 5, 2023, 9:46 PM), <https://www.tehrantimes.com/news/486538/Another-chance-for-Baku> [<https://perma.cc/QEB6-2BPF>] (discussing how a ministerial meeting for the Non-Aligned Movement (NAM) in the Republic of Azerbaijan “presented Iran with an opportunity to advance its active foreign policy and cement the neighborliness policy pursued by the Raisi administration.”). Iran's position as a NAM member further incentivizes Azerbaijani support for positive relations between the two nations, as although Iran offered to mediate Armenian-Azerbaijani discussions, the delegation of peace-brokering responsibilities to Russia still progresses the goals of the NAM (of which Azerbaijan is also a prominent Member State) through the reduction of Western states' influence diplomatically and politically. See *Non-Aligned Movement*, MINISTRY OF FOREIGN AFF. REP. BELR., <https://mfa.gov.by/en/multilateral/organization/list/bc1f7d8446a445ed.html> [<https://perma.cc/P6CJ-9HRU>] (last visited Feb. 13, 2025) (“The Non-Aligned Movement aspires to occupy a niche of a political gathering that seeks to oppose West's unilateral approaches and actions on the global stage.”).

historical rival Turkey.”<sup>166</sup> Not only would this aid in Iranian-Azeri efforts to mend these relations, but Iran also stands to gain as increased Azeri support to Iran draws Azeri attention away from Israel, long-time “archrival” of Iran and major weapons supplier to Azerbaijan.<sup>167</sup> Furthermore, friendly relations between Azerbaijan and Iran aids in the legitimacy of claims by Azerbaijan, of denying Israeli use of Azeri territory for an offensive against Iran.<sup>168</sup>

Beyond the potential security and economic benefits forecast with the implementation of the “3+3 format,” concrete economic gain has already been realized through the strengthening of Iranian-Azeri relations. As trade relations had recently been surprisingly stable between these countries (despite previous diplomatic conflicts),<sup>169</sup> economic ties and the benefits derived therein would only strengthen following improved relations between the two states. Iran especially stands to gain as Azerbaijan’s economic prowess in the region has augmented in recent years. Such growth in economic relations following strengthened diplomatic ties has already been reported: “Azerbaijan’s Deputy Prime Minister Shahin Mustafayev says that the volume of international trade between his country and Iran has grown by 58 percent.”<sup>170</sup> Up to 2,425 Iranian companies have also been registered in Azerbaijan—of which a majority were already active—as of July 17, 2023.<sup>171</sup>

Concerning bilateral exchanges, there was a nine-percent year-on-year increase posted in the first five months of 2023.<sup>172</sup> Officials of both nations cite transport as the backbone of economic growth both in the region and for their respective countries. Indeed, “1.5 million tons of goods were exchanged between

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<sup>166</sup> Agence France-Presse, *supra* note 158; see also Heydar Isayev, *Azerbaijan-Iran Normalization on the Horizon*, EURASIANET (Oct. 10, 2023), <https://eurasianet.org/azerbaijan-iran-normalization-on-the-horizon> [<https://perma.cc/NNG9-8Q57>] (“Azerbaijan has long accused Iran of favoring Armenia in the decades-long conflict over Nagorno-Karabakh, especially after the 2020 war, when Azerbaijan established control over its entire frontier with Iran.”).

<sup>167</sup> Agence-France Presse, *supra* note 158; accord, e.g., Isayev, *supra* note 162 (“[Iran] is also worried about Azerbaijan’s strong and growing friendship with Tehran’s archrival, Israel, which helped arm Baku ahead of its Karabakh offensive last month.”); Kuhpayeh, *supra* note 161 (“Aliyev also said that Azerbaijan will never allow a threat to the region and the Islamic Republic of Iran from its soil.”).

<sup>168</sup> Gabe Fisher, *Azerbaijan Won’t Let Western Powers Launch Attack on Iran From Its Territory, FM Insists*, THE TIMES OF ISR. (Dec. 31, 2012 9:21 AM), <https://www.timesofisrael.com/azerbaijan-wont-allow-western-powers-to-launch-attack-on-iran-from-its-territory-fm-says/#:~:text=Times%20of%20Israel,Azerbaijan%20won%27t%20let%20Western%20powers%20launch%20attack%20on,from%20its%20territory%2C%20FM%20insists> [<https://perma.cc/732Z-KZWE>]; see also ARMENIA NEWS, *IRGC: Fearing Iran’s Response, Azerbaijan Denies Presence of Israeli Military in its Territory*, (Aug. 13, 2024 6:51 PM) [https://news.am/eng/news/838014.html#google\\_vignette](https://news.am/eng/news/838014.html#google_vignette).

<sup>169</sup> Shahbazov, *supra* note 159 (“Bilateral trade grew from 608M USD to 688M USD in the period March 2022-March 2023.”).

<sup>170</sup> *Iran, Azerbaijan Transit up 58%: Mustafayev*, ISLAMIC REP. NEWS AGENCY (“IRNA”) (July 17, 2023, 6:45 PM), <https://en.irna.ir/news/85172892/Iran-Azerbaijan-transit-up-58-Mustafayev> [<https://perma.cc/YEU4-NZW8>].

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

the two countries in 2023 in the form of import, export, and transit.”<sup>173</sup> Following improved diplomatic relations, there have been significant strides in boosting bilateral trade volume, including the completion of “a newly built road bridge and pedestrian crossing over the Astara River on the border of Azerbaijan with Iran (281 kilometers south of Baku)”<sup>174</sup> opened on December 30, 2023 and funded by Azerbaijan.<sup>175</sup>

As a result of these bandwagoning considerations, no states neighboring the Caucasus region—i.e., Russia, Turkey, and Iran—have condemned Azerbaijan’s actions after Azerbaijan completely disregarded all provisions and terms of the negotiations that ended the Second Nagorno-Karabakh War in 2020.<sup>176</sup> While the trilateral agreement instituted provisions ensuring the safe return of

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<sup>173</sup> Amin Mohammadzadegan Khoei, *Iran, Azerbaijan Have ‘Unique Opportunity’ to Expand Trade: Minister*, ISLAMIC REP. NEWS AGENCY (IRNA) (Dec. 30, 2023, 7:40 PM), <https://en.irna.ir/news/85338293/Iran-Azerbaijan-have-unique-opportunity-to-expand-trade-Minister> [https://perma.cc/7VJS-CCW7].

<sup>174</sup> *Azerbaijan and Iran Inaugurate New Bridge to Boost Bilateral Trade*, CAUCASUS WATCH (Jan. 3, 2024), <https://caucasuswatch.de/en/news/azerbaijan-and-iran-inaugurate-new-bridge-to-boost-bilateral-trade.html> [https://perma.cc/4ER6-UHVX]. For additional information on the increased focus on transport infrastructure as a mechanism for enhanced bilateral trade, see, e.g., Nigar Bayramli, *Azerbaijan-Iran Trade Exchange Via Railway Up by Over 30%*, CASPIAN NEWS (Jan. 12, 2024), <https://caspiannews.com/news-detail/azerbaijan-iran-trade-exchange-via-railway-up-by-over-30-2024-1-12-0/> [https://perma.cc/922N-6KZ9] (“It is noteworthy that in 2023, rail transit between Iran and Azerbaijan recorded a 47% growth with the transit of 700,000 tons of freight.”); Nigar Bayramli, *Foreign Ministers of Azerbaijan & Iran Discuss Bilateral Relations, South Caucasus*, CASPIAN NEWS (Dec. 29, 2023), <https://caspiannews.com/news-detail/foreign-ministers-of-azerbaijan-iran-discuss-bilateral-relations-south-caucasus-2023-12-29-0/> [https://perma.cc/A444-4DG3] (“Azerbaijan and Iran have agreed to establish new transport and electricity supply links connecting mainland Azerbaijan to its exclave of Nakhchivan via Iran.”).

<sup>175</sup> *Iran Exports Commodities Worth \$303m to Azerbaijan in 7 Months*, TEHRAN TIMES (Nov. 14, 2023, 5:33 PM), <https://www.tehrantimes.com/news/491349/Iran-exports-commodities-worth-303m-to-Azerbaijan-in-7-months> [https://perma.cc/L83G-HNVJ].

<sup>176</sup> See *Statement by President of the Republic of Azerbaijan, Prime Minister of the Republic of Armenia and President of the Russian Federation*, PRESIDENT OF RUSSIA (Nov. 10, 2020, 11:45 AM), <http://en.kremlin.ru/events/president/news/64384> [https://perma.cc/UZJ9-E8V8] [hereinafter President of Russia]. Nor had Western counterparts in Europe condemned Azeri defiance of the 2020 negotiations, beyond soft law affirmations reaffirming general international legal principles on peace and security. See, e.g., Press and Information Team of EUMA, *Azerbaijan: Statement by the High Representative on Developments in Nagorno-Karabakh*, EU MISSION IN ARMENIA (21 Sept. 2023) [https://www.eeas.europa.eu/euma/azerbaijan-statement-high-representative-developments-nagorno-karabakh\\_en?s=410283](https://www.eeas.europa.eu/euma/azerbaijan-statement-high-representative-developments-nagorno-karabakh_en?s=410283) [https://perma.cc/DJ4A-QK5G] (“The EU calls on Azerbaijan to allow immediate and unimpeded humanitarian access to the population in need, including through a full re-opening of the Lachin corridor in line with the ICJ Orders of February and July 2023. The humanitarian actors should be able to operate freely. The EU and its Member States stand ready to provide urgent humanitarian assistance.”); Barbara Wesel, *EU Fails to Act on Nagorno-Karabakh Conflict*, DEUTSCHE WELLE (Oct. 8, 2020), <https://www.dw.com/en/eu-fails-to-act-on-nagorno-karabakh-conflict-between-armenia-and-azerbaijan/a-55208668> [https://perma.cc/Q5JH-QA95] (“[T]he EU as a whole had to give a more robust answer to Turkey’s strategic ambitions [in Nagorno-Karabakh] which would not be satisfied by Azerbaijan’s advance in Nagorno-Karabakh. [...] the EU had been ‘slow and ponderous’ in its reactions and [experts expressed that they] regretted that the bloc had not risen to the political and diplomatic challenges posed by the worsening security situation and the US’s absence on the global stage.”).

confined individuals on both sides,<sup>177</sup> Azeri officials faced accusations of continuing to detain both Armenian prisoners of war and civilians.<sup>178</sup> These accusations began on September 28, 2020, with Armenia's request<sup>179</sup> for interim measures<sup>180</sup> at the European Court of Human Rights ("ECtHR").<sup>181</sup> The numbers of captured Armenians are disputed: Whereas Armenia alleged there were 249 Armenians captured,<sup>182</sup> the subsequent institution of interim measures by the ECtHR called for the repatriation of 188 individuals.<sup>183</sup>

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<sup>177</sup> See President of Russia, *supra* note 172, at ¶¶7–8 ("Internally displaced persons and refugees shall return to the territory of Nagorno-Karabakh and adjacent areas under the supervision of the United Nations High Commissioner for Refugees; The Parties shall exchange prisoners of war, hostages and other detained persons, and dead bodies.").

<sup>178</sup> See Press Release, Freedom House, Azerbaijan: Allow Human Rights Court to Investigate Reports of Detainee Torture (May 11, 2021), <https://freedomhouse.org/article/azerbaijan-allow-human-rights-court-investigate-reports-detainee-torture?fbclid=IwAR2oq6qRgcx08YLLA9aY3icPddrcPZFtwbyJlJn1t6p-TMJiijkC8Sh4GA> [<https://perma.cc/78W3-2HKP>].

<sup>179</sup> See Isabella Risini, *Armenia v. Azerbaijan Before the European Court of Human Rights*, EJIL: TALK! (Oct. 1, 2020), <https://www.ejiltalk.org/armenia-v-azerbaijan-before-the-european-court-of-human-rights/> [<https://perma.cc/79GH-AHKB>]; see also Press Release, Eur. Ct. Hum. Rts., Request for Interim Measures Lodged by Armenia Against Azerbaijan, App. No. 42521/20 (28 Sept. 2020), <https://hudoc.echr.coe.int/eng-press#%22itemid%22:%22003-6807941-9105368%22>] [<https://perma.cc/4ZYT-SCN9>] [hereinafter ECHR App. No. 42521/20] (noting document is only available in downloadable PDF format on website and permalink should be used for access).

<sup>180</sup> See *Interim Measures Factsheet*, EUR. CT. HUM. RTS. (June 2023), [https://www.echr.coe.int/documents/d/echr/FS\\_Interim\\_measures\\_ENG](https://www.echr.coe.int/documents/d/echr/FS_Interim_measures_ENG) [<https://perma.cc/7TQ5-SF7B>] ("Interim measures are urgent measures which, according to the Court's well-established practice, apply *only where there is an imminent risk of irreparable harm*." (emphasis added)).

<sup>181</sup> See Press Release, Eur. Ct. of Hum. Rts., The Court Grants an Interim Measure in the Case of Armenia v. Azerbaijan (30 Sept. 2020), <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-6809725-9108584&filename=Court%27s+decision+on+the+request+for+interim+measure+lodged+by+Armenia+against+Azerbaijan.pdf> [<https://perma.cc/2XG6-NWCT>] ("On 29 September 2020, taking the view that the current situation gives rise to a risk of serious violations of the Convention, the European Court of Human Rights (sitting as a Chamber of seven judges) decided to apply Rule 39 of the Rules of Court [thereby triggering the institution of interim measures].").

<sup>182</sup> Resolution on Prisoners of War in the Aftermath of the Most Recent Conflict Between Armenia and Azerbaijan, EUR. PARL. DOC. 2021/2693(RSP) (20 May 2021) ¶ I, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021IP0251> [<https://perma.cc/H7GT-DGN6>] ("[W]hereas according to worrying reports, approximately 200 Armenians are being held in Azerbaijani captivity; whereas the European Court of Human Rights (ECtHR) stated that it has received complaints regarding 249 Armenians captured by Azerbaijan; whereas the ECtHR has applied interim measures with regard to the 229 Armenians, and 183 still remain in force; whereas the ECtHR concluded on 9 March 2021 that Azerbaijan had failed to comply with the measures, judging the information provided as too general and limited; whereas the Azerbaijani authorities acknowledged that 72 Armenians are in their captivity; whereas with regard to a further 112 individuals, no information has been submitted by Azerbaijan to the ECtHR; whereas the fate of the other Armenian POWs is unknown; whereas since the cessation of hostilities, 73 Armenian POWs and civilians have been repatriated to Armenia...") [hereinafter Res. 2693].

<sup>183</sup> See, e.g., Joshua Kucera, *Prisoners of the Caucasus: Post-War Report*, EURASIANET (Apr. 23, 2021), <https://eurasianet.org/prisoners-of-the-caucasus-post-war-report> [<https://perma.cc/ST9D-3XAY>]; Freedom House, *supra* note 174; Res. 2693, *supra* note 178, at ¶ I.

Regardless, Azerbaijan admitted to its disregard of this repatriation provision, and the Azeri Government acknowledged its detainment of these Armenians.<sup>184</sup>

As for the determination of the ECtHR to implement these interim measures for the remaining 188 instead of 249 individuals, this was decided after Azerbaijan subsequently buckled under the pressures of the Court's active denunciation; Azerbaijan had, in multiple stages, returned a total of 20 Armenians—whittling the existing number down to 220—before returning 40 more (and the *remains* of one).<sup>185</sup> Even before this, however, Azerbaijan's actions spelled trouble after signing the agreement. Despite the provision of open access for transportation routes and borders between Armenia and Azerbaijan,<sup>186</sup> the dismissal of the assurances provided—by both Azerbaijan and Russia<sup>187</sup>—are evidenced majorly with the installation of the Lachin Corridor blockade, initiated in 2022.<sup>188</sup>

#### IV. SOUTH AFRICA V. ISRAEL

Despite challenges in the current international system, states are still willing to punish Parties that violate the Genocide Convention and *jus cogens*. The biggest challenge in genocide convictions are the burdens of proof associated with the specific *mens rea* condition of *dolus specialis*. This burden is already readily apparent for the conviction of individuals within the ICC,<sup>189</sup> yet perhaps is even more challenging for prosecuting a state within the ICJ, as their

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<sup>184</sup> See Press Release, Eur. Ct. Hum. Rts., Armenia v. Azerbaijan and Alleged Captives: Notification to the Committee of Ministers of Interim Measures Indicated, ECHR Press Release 086 (Mar. 16, 2021) (recounting that between the time of initial allegations and the commencement of repatriating captives, “[o]f the 249 Armenians, 72 are still in Azerbaijan, their captivity and detention having been acknowledged by the Azerbaijani Government”).

<sup>185</sup> See *id.*

<sup>186</sup> See President of Russia, *supra* note 172, at ¶ 6 (“The Republic of Azerbaijan shall guarantee the security of persons, vehicles and cargo moving along the Lachin Corridor in both directions.”).

<sup>187</sup> See *id.* at ¶ 9 (“All economic and transport connections in the region shall be unblocked . . . . The Border Guard Service of the Russian Federal Security Service shall be responsible for overseeing the transport connections.”).

<sup>188</sup> See, e.g., Yacoubian, *supra* note 12, at 174–75; *Nagorno-Karabakh: Update*, *supra* note 117.

<sup>189</sup> See generally Corman Kenny & Travis Farr, *The International Criminal Court's Opportunity to Correct the Erroneous Interpretation of the Mens Rea for Genocide*, 46 HUM. RTS. Q. 25 (2024); For other challenges surrounding convictions in the ICC, see also H.E. Judge Dr. jur. h. c. Hans-Peter Kaul, ICC, Keynote Address at the Salzburg Law School on International Criminal Law: The International Criminal Court—Current Challenges and Perspectives, ICC, 9 (Aug. 8, 2011), <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/289B449A-347D-4360-A854-3B7D0A4B9F06/283740/010911SalzburgLawSchool.pdf> [https://perma.cc/8V9Y-F5ZF] (“Genocide, crimes against humanity and war crimes are usually committed during armed conflict as a result of orders ‘from the top’ issued by all kinds of rulers, who at the same time make every effort to cover up their responsibility for the crimes. In pursuing its task, therefore, the Court will almost inevitably be caught between the poles of brutal power politics on the one hand and law and human rights on the other. Consequently, the work of the Court will often continue to be hampered by adverse political winds or indeed political reproach of every colour”).

evidentiary criteria required for *dolus specialis* is to be “fully conclusive.”<sup>190</sup> Due to this standard, one might predict a higher possibility of complications during evidentiary collection on, and affording actual liability to, a fully realized perpetrating state rather than an individual or group of individuals. In fact, “in the only judgments handed down in genocide cases by the ICJ to date, the ICJ held this standard has not been satisfied.”<sup>191</sup> On the other hand, the lack of necessity to identify a personal perpetrator within the ICJ may not be a dispositive challenge for genocide cases before it, as other factors—e.g., the ICJ’s broad subject matter jurisdiction (jurisdiction *ratione merita*)<sup>192</sup> and ability to prosecute states not only for the commission of, but also the failure to punish and prevent genocide—may aid in its genocide convictions.<sup>193</sup>

Even after increasing frustration critiquing this barrier—i.e., heightened *mens rea* criteria in international courts generally—on the prosecution of perpetrators of genocide has been expressed,<sup>194</sup> the conflict between Israel and the (substantially) recognized State of Palestine<sup>195</sup> serves as a parallel case example as to how there can at least be partial justice served for any international crime committed—it begins with international organizations’ and

<sup>190</sup> I.C.J. 43, *supra* note 60, at ¶ 209; Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croat. v. Serb.), Judgment, 2015 I.C.J. 3, ¶ 178 (Feb. 3); *accord*, Brishna Gehani, *Is the ICJ’s Standard of Proof for Genocide Unattainable?*, RSCH. SOC’Y INT’L L.: CONFLICT L. CTR. (CLC) BLOG (Feb. 16, 2024), <https://rsilpak.org/2024/is-the-icjs-standard-of-proof-for-genocide-unattainable/> [<https://perma.cc/7UF4-83KX>].

<sup>191</sup> Gehani, *supra* note 186.

<sup>192</sup> KAREN SOKOL, CONG. RSCH. SERV., R48004, THE INTERNATIONAL COURT OF JUSTICE AND THE INTERNATIONAL CRIMINAL COURT: A PRIMER 1, 6 (2004); *cf.*, Marko Milanovic, *ICJ Indicates Provisional Measures in South Africa v. Israel*, EJIL: TALK! (Jan. 26, 2024), <https://www.ejiltalk.org/icj-indicates-provisional-measures-in-south-africa-v-israel/> [<https://perma.cc/WR4J-93D4>] (inferring that the jurisdiction on international crimes within the ICJ is more restricted than the broad scope that others claim: “Recall that the Court’s jurisdiction in this case is based solely on the compromissory clause in Article IX of the Genocide Convention”).

<sup>193</sup> For example, the ICJ has previously used the longstanding principle in international law of “duality of responsibility” to find that states have violated their responsibilities under the 1949 Genocide Convention for failure to prevent and/or punish genocide, even as there was no conviction for alleged commission of genocide by the State itself. ICJ 43, *supra* note 61, at ¶¶ 169, 173, 430–460.

<sup>194</sup> *See generally, e.g.*, Katherine Goldsmith, *The Issue of Intent in the Genocide Convention and Its Effect on the Prevention and Punishment of the Crime of Genocide: Toward a Knowledge-Based Approach*, 5 GENOCIDE STUD. & PREVENTION: AN INT’L J. 238 (2010); Nicholas Owens, Comment, *An Issue of Intent: The Struggles of Proving Genocide*, SETON HALL L. 1 (2024); *cf.*, Rana Moustafa Essawy, *The Attainability of the Evidentiary Standard for Genocidal Intent in Gaza*, EJIL: TALK! (May 3, 2024), <https://www.ejiltalk.org/the-attainability-of-the-evidentiary-standard-for-genocidal-intent-in-gaza/> [<https://perma.cc/J5LB-QPL4>] (“[A] n affirmative finding from the Court regarding the commission of genocide in Gaza has been described by many as certainly unlikely. The main reason put forward by proponents of that opinion is the very high threshold that the ICJ requires for proving ‘genocidal intent’, as it requires proof that the intent is ‘the only reasonable inference’ drawn from the evidence.”).

<sup>195</sup> *UN Experts Urge All States to Recognise State of Palestine*, OFF. HIGH COMM’R HUM. RIGHTS (June 3, 2024), <https://www.ohchr.org/en/press-releases/2024/06/un-experts-urge-all-states-recognise-state-palestine> [<https://perma.cc/2RMX-QGDU>] (“All States must follow the example of 146 United Nations Member States and recognise the State of Palestine and use all political and diplomatic resources at their disposal to bring about an immediate ceasefire in Gaza, UN experts\* [*sic*] said today.”)

states' proactive acknowledgement of, and mobilization against, international crimes being committed. The charges against Israel reflect every substantial factual analysis of the international crimes commissioned in Nagorno-Karabakh. For example, the ICJ analyzed the following forms of *actus reus* as potential indicators of genocide commissioned against the Palestinian peoples of Gaza: forcible displacement on a massive scale, a vulnerable population in the targeted territory with "no access to the most basic foodstuffs, potable water, electricity, essential medicines or heating," and "tens of thousands of deaths and injuries and the destruction of homes, schools, medical facilities and other vital infrastructure."<sup>196</sup>

As a result, and "[i]n view of the fundamental values sought to be protected by the Genocide Convention,"<sup>197</sup> the ICJ ordered provisional measures for Israeli compliance with the State's obligations under the Geneva Convention,<sup>198</sup> upon consideration that

the plausible rights in question in these proceedings, namely the right of Palestinians in the Gaza Strip to be protected from acts of genocide and related prohibited acts identified in Article III of the Genocide Convention and the right of South Africa to seek Israel's compliance with the latter's obligations under the Convention, are of such a nature that prejudice to them is capable of causing irreparable harm.<sup>199</sup>

Thus, the demonstrated efforts of the international legal community toward an actualized condemnation by the ICJ to the Israeli State should be applied evenly so that there can be consistent practice of at *least* condemnation of underlying violations against *jus cogens* norms, regardless of any coexistent political or economic concerns a State may face.<sup>200</sup> After all, if targeting the ethnically Palestinian population in *all* of the disputed territory of Gaza—and thus persecuting a protected group "in part" under the definition of genocide—has spurred large efforts of mobility by multiple state parties and invoked a sense of urgency within the ICJ to combat what holds potential for genocide, then how does this legal reasoning not equally apply to targeting ethnic Armenians in *all* of Nagorno Karabakh under similar Azeri State policies as to that of Israel?

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<sup>196</sup> I.C.J. 192, *supra* note 4, at ¶ 46, 70.

<sup>197</sup> *Id.* at ¶ 66.

<sup>198</sup> *Id.* at ¶¶ 75-86.

<sup>199</sup> *Id.* at ¶ 66; *see also, id.* at ¶ 72 ("In these circumstances, the Court considers that the catastrophic humanitarian situation in the Gaza Strip is at serious risk of deteriorating further before the Court renders its final judgment."); *id.* at ¶ 74 ("In light of the considerations set out above, the Court considers that there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights found by the Court to be plausible, before it gives its final decision.").

<sup>200</sup> Int'l L. Comm'n, Rep. on the Work of its Seventy-First Session, U.N. Doc. A/74/10, at 203 (2019) ("One area in which the issue of legal consequences for specific peremptory norms has been raised concerns the consequences of crimes the commission of which are prohibited by peremptory norms of general international law (*jus cogens*), such as the prohibition of genocide, war crimes and crimes against humanity").



Not only this, but states have taken *tangible* action following the initial application of proceedings. As of January 31, 2025, Belize has become the thirteenth state to apply for ICJ permission to defy the customary international principle of non-intervention<sup>201</sup> as applied to this case.<sup>202</sup> Pursuant to Articles 62 and 63 of the Statute of the International Court of Justice, these States argue that their status as States party to the Genocide Convention substantiate their legal interests in, for example, “the prevention, suppression and punishment of genocide.”<sup>203</sup>

As state referral is an established form of jurisdictional authority afforded to an international court to prosecute states for international crimes,<sup>204</sup> the concurrent case example of South Africa accusing Israel of genocide before the ICJ serves as action initiated by one, and later joined in by multiple states, to ditch the diplomatic concerns of bandwagoning for the humanitarian concerns of the prevention and punishment of what was “never again”<sup>205</sup> supposed to occur.<sup>206</sup> Further, the proactive measures of intervention taken by States to prevent and punish the *actus reus* committed by Israel,<sup>207</sup> analogous to that of Azerbaijan in Nagorno Karabakh, reinforces the willingness of states to take tangible action under the commitments they hold as parties to the Genocide Convention, yet also under *jus cogens* principles in general.

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<sup>201</sup> G.A. Res. 2625 (XXV), Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States in Accordance with the Charter of the United Nations (Oct. 24, 1970) (“No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law.”).

<sup>202</sup> Press Release, Int’l Ct. of J., Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel) - Belize Files a Document Containing an Application for Permission to Intervene and a Declaration of Intervention in the Proceedings, No. 2025/6 (Jan. 31, 2025), <https://www.icj-cij.org/sites/default/files/case-related/192/192-20250131-pre-01-00-en.pdf> [<https://perma.cc/PQ99-RG6J>] (“To date, the following States have filed an application for permission to intervene under Article 62 of the Statute or a declaration of intervention under Article 63 of the Statute: Nicaragua (under Article 62 of the Statute, on 23 January 2024); Colombia (under Article 63 of the Statute, on 5 April 2024); Libya (under Article 63 of the Statute, on 10 May 2024); Mexico (under Article 63 of the Statute, on 24 May 2024); Palestine (under Articles 62 and 63 of the Statute, on 31 May 2024); Spain (under Article 63 of the Statute, on 28 June 2024); Türkiye (under Article 63 of the Statute, on 7 August 2024); Chile (under Article 63 of the Statute, on 12 September 2024); the Maldives (under Article 63 of the Statute, on 1 October 2024); Bolivia (under Article 63 of the Statute, on 8 October 2024); Ireland (under Article 63 of the Statute, on 6 January 2025); and Cuba (under Article 63 of the Statute, on 13 January 2025).”) [hereinafter Belize Intervention Application].

<sup>203</sup> *Id.*

<sup>204</sup> *Basis of the Court’s Jurisdiction*, ICJ, <https://www.icj-cij.org/basis-of-jurisdiction> [<https://perma.cc/W8LE-2ZN5>] (last visited Mar. 24, 2025).

<sup>205</sup> *Ratification of the Genocide Convention*, *supra* note 44.

<sup>206</sup> *South Africa Delivers Evidence of Israel Genocide to ICJ*, DEPT INT’L RELATIONS & COOP. REPUB. S. AFR. (Oct. 28, 2024), <https://dirco.gov.za/south-africa-delivers-evidence-of-israel-genocide-to-icj/> [<https://perma.cc/TL7Z-6M9V>]; *South Africa vs Israel: 14 Other Countries Intend to Join the ICJ Case*, U.N. REG’L INFO. CTR. FOR W. EUR. (Oct. 30, 2024), <https://unric.org/en/south-africa-vs-israel-14-other-countries-intend-to-join-the-icj-case/> [<https://perma.cc/Y2HA-G2EU>].

<sup>207</sup> Belize Intervention Application, *supra* note 197.

## V. CONCLUSION

States' continued silence sends a signal that global actors can commit genocide and various other crimes against humanity without any consequences—establishing a baseline of “getting away with it”<sup>208</sup>—and that future instigators of genocidal conflicts are less likely to endanger themselves or face consequences for their actions. Preventing possible genocide by alerting the global community as soon as specific intent is demonstrated instead encourages other international actors to follow suit. Verbal support from multiple states can lead to actual enforcement action, as all those states can combine efforts to prevent genocide and therefore supply an actual enforcement mechanism to further legitimize international law through utilization of provisions within the Genocide Convention against acts constituting genocide. Any possible bandwagoning moves of bad actors' potential allies must be subverted by removing the opportunity to join these anti-humanitarian efforts early, creating a consequence through condemnation as soon as genocidal intent is shown. The contemporary and contrasting case example of *South Africa v. Israel* before the ICJ acts as a positive indication that States are willing to take such steps against genocide in the modern world. Now the only true solution is a universal application of this case precedent in the future, to avoid the silence received—in contrast to the outcry surrounding Israel's actions in the West Gaza—around the same crimes committed in Nagorno Karabakh.

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<sup>208</sup> Seppälä, *supra* note 43, at 213 (“In Artsakh, the first total destruction of Armenian churches after the 2020 war has already taken place in Mekhakavan. The policy seems unchanged: first some less-known objects in remote places, and during the years, as the world does not react, the operations will grow in scale.”).