

Expert Opinion

Genocide against Armenians in 2023

Luis Moreno Ocampo

New York, August 7, 2023

There is an ongoing Genocide against 120,000 Armenians living in Nagorno-Karabakh, also known as Artsakh.

The blockade of the Lachin Corridor by the Azerbaijani security forces impeding access to any food, medical supplies, and other essentials should be considered a Genocide under Article II, (c) of the Genocide Convention: “Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.”

There are no crematories, and there are no machete attacks. Starvation is the invisible Genocide weapon. Without immediate dramatic change, this group of Armenians will be destroyed in a few weeks.

Starvation as a method to destroy people was neglected by the entire international community when it was used against Armenians in 1915, Jews and Poles in 1939, Russians in Leningrad (now Saint Petersburg) in 1941, and Cambodians in 1975/1976. Starvation was also neglected when used in Srebrenica in the winter of 1993/1994.

Analyzing the Srebrenica case, the International Court of Justice ruled that “deprivation of food, medical care, shelter or clothing” constitute Genocide within the meaning of Article II(c) of the Genocide Convention.

State parties of the Genocide Convention assumed the duty to prevent and punish Genocide. The International Court of Justice ruled that state parties should “not wait until the perpetration of Genocide commences,” and “The whole point of the obligation is to prevent or attempt to prevent the occurrence of the act.”

This report analyzes:

1. The existence of an ongoing Genocide in Nagorno-Karabakh.
2. How to investigate those responsible for Genocide?
3. How to prevent the final destruction of the Armenian group?

1. Genocide in Nagorno-Karabakh in 2023

There is a reasonable basis to believe that a Genocide is being committed against Armenians living in Nagorno-Karabakh in 2023.

The International Court of Justice, at the request of Armenia, has already analyzed the Lachin corridor's blockade. The Court focused on State liability for alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination rather than individual criminal responsibility for the commission of Genocide.

Though predicated on a different set of State obligations, the Court confirmed the occurrence of the material elements of Genocide that are set out in Article II, (c) of the Genocide Convention: "Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction."

The Court's preliminary findings considered "plausible" that the Lachin corridor blockade produced "a real and imminent risk" to the "health and life" of an ethnic group, "the Armenians living in Nagorno-Karabakh."

The intention, a subjective element required by the crime of Genocide, should be deduced from the facts and statements from President Aliyev, who has supreme authority in Azerbaijan.

President Aliyev, in a fair trial, would have the opportunity to provide a different interpretation of the indicia. In the meantime, there is reasonable basis to believe that President Aliyev has Genocidal intentions: he has knowingly, willingly and voluntarily blockaded the Lachin Corridor even after having been placed on notice regarding the consequences of his actions by the ICJ's provisional orders.

The facts are:

- A. President Aliyev deliberately blocked the provision of life's essentials to the Armenians living in Nagorno-Karabakh.
- B. He openly disobeyed the specific orders of the International Court of Justice, "to ensure unimpeded movement of persons, vehicles, and cargo along the Lachin Corridor in both directions."
- C. The ICJ order put him on notice about the "real and imminent risk" created by the blockade to an Armenian group "health and life."

President Aliyev's public statements affirming that the blockade was the consequence of people smuggling minerals and i-phones through the Lachin Corridor is a diversion.

Smuggling activities should be properly investigated but they are not an excuse to disobey a binding order of the International Court of Justice or a justification to commit a Genocide.

2. Could President Aliyev be investigated by the International Criminal Court?

Article IV of the Genocide Convention establishes that "[p]ersons committing genocide shall be punished," even if "they are constitutionally responsible rulers." But there is no independent criminal justice system ready to investigate the crime of Genocide allegedly committed by President Aliyev.

President Aliyev cannot be investigated by any foreign national authorities because he enjoys immunity as a head of state.

The International Criminal Court provides a jurisdiction where such immunity does not apply. There are three ways to start an ICC investigation for the commission of the crimes in Lachin Corridor and Nagorno-Karabakh:

- 1) Azerbaijan becomes a state party (Article 12(1) of the Rome Statute);
- 2) Azerbaijan accepts the jurisdiction of the Court on its territory (Article 12(3) of the Rome Statute); or

- 3) The UN Security Council refers the situation of the Lachin Corridor and Nagorno-Karabakh after December 2022 to the ICC (Article 13(b) of the Rome Statute).

But Azerbaijan is not a state party of the Rome Statute (Article 12(1)), the treaty creating the ICC and has not accepted the ICC's jurisdiction (Article 12(3)). As a result, immediate state action is required to adopt a UN Security Council Resolution referring the situation in the Lachin Corridor and Nagorno-Karabakh to the ICC.

There are precedents. In March 2005, the UN Security Council adopted Resolution 1395, referring the Darfur, Sudan situation to the ICC. Five years later, President Omar Al Bashir was indicted for Genocide.

In February 2011, the UN Security Council referred the situation in Libya to the Court. In June 2011 the ICC issued an arrest warrant for Muammar Gaddafi for war crimes and crimes against humanity.

Obtaining a UN Security Council Resolution to provide ICC jurisdiction should be feasible. Under the Genocide Convention, state parties have an obligation to prevent and punish Genocide, and 14 of the current 15 members of the UN Security Council are also parties of that Convention, providing an overwhelming majority.

France proposed, as early as in 2013, that the five permanent members of the Council voluntarily and collectively suspend the use of the veto in case of Genocide and other mass atrocities.

3. How to Prevent the Final Destruction of the Armenian Group?

President Aliyev as well as the international community has the rare opportunity to prevent further casualties and the "physical destruction" of a group in this Genocide. Timely prevention requires the adoption of urgent political decisions,

- a) to stop the blockade and reestablish the provision of essentials to Nagorno-Karabakh in one or two weeks, and

b) institutional solutions to the disputed territorial claims. It should be adopted before May 2025 because, at that moment, Azerbaijan can request the end of the Russian peacekeeper protection.

By design, there are no central authorities at the international level to adopt such urgent measures. A specific International Court of Justice ruling on Genocide, smart sanctions, and other classic diplomatic tools would not be quick and strong enough.

In the short term, which is crucial to stop the ongoing Genocide by starvation, the duty of prevention would be exclusively defined by the interest of the states involved in the conflict.

In April 1994, most of the UN Security Council members refused to call "Genocide" what was happening in Rwanda. During the debate the Czech Ambassador challenged the intense focus on a negotiation to achieve a new ceasefire, which he likened to asking the Jews to reach a truce with Hitler.

In "*A Problem from Hell*," Samantha Power explains the crucial role of the citizen in transforming the national leaders' interests in a Genocide abroad. The voice of the Armenians in the diaspora could reduce the failure by design created by the international legal architecture. They should be mobilized worldwide to reach national leaders and promote a pragmatic solutions.

Russia, responsible for peacekeeping in Nagorno-Karabakh, and the US, promoting current negotiations between Armenia and Azerbaijan, are state parties of the Genocide Convention, as are all the European Union members. They have a privileged position to prevent this Genocide. Their intense confrontation due to the Ukrainian conflict should not transform the Armenians into collateral victims.

Is it possible to assist European, Russian, and USA leaders to reach a joint position to stop the ongoing Armenian Genocide? If they could agree, the food will reach the Armenians within one day.

The conflict in Nagorno-Karabakh is an opportunity for the international community to develop an innovative and harmonious solution to prevent Genocide.

Under Article 16 of the Rome Statute, a criminal investigation could eventually be suspended by the UN Security Council to find a final and fair solution.

President Aliyev asked: “Why Spain does not allow Catalunya to have a referendum? Why should we tolerate separatism?” The simple answer to complex issues of sovereignty involved in the question is that Spain is not committing genocide to control separatist efforts.

A. Background

1. History

Nagorno-Karabakh, known as Artsakh by Armenians, is predominantly inhabited by ethnic Armenians, living there for more than 20 Centuries.¹ It is in a landlocked mountainous area in the South Caucasus. Institutionally, it has *de facto* autonomy although it is part of the recognized territory of Azerbaijan.

After the 1917 Russian revolution, Armenia and Azerbaijan emerged as independent states, Azerbaijan for the first time. The first republics of Armenia and Azerbaijan both asserted claims over Nagorno-Karabakh. Both republics continued to assert jurisdictional claims over Nagorno-Karabakh while the indigenous Armenian population rejected Azerbaijan’s attempts at conquest. During the Soviet Union, Nagorno-Karabakh became an autonomous oblast, an administrative division or region, within Azerbaijan.

a. War in 1992/1994

In 1988 Nagorno-Karabash adopted a resolution requesting to be transferred to Armenia, triggering conflicts and violence. In early 1992, following the Soviet Union's collapse, the region descended into an outright war between Armenia and Azerbaijan.

¹ Felix Light and Guy Faulconbridge, ‘Explainer: What is Nagorno-Karabakh - and why are tensions rising?’ (*Reuters*, April 24, 2023), <https://www.reuters.com/world/asia-pacific/what-is-nagorno-karabakh-why-are-tensions-rising-2023-04-24/>.

A Russian-brokered ceasefire was signed in May 1994. As a result of a military victory, Armenia consolidated the autonomy of the Nagorno-Karabakh region and occupied the surrounding Azerbaijani territories. Peace negotiations were conducted but they were never conclusive. Nagorno-Karabakh became the Republic of Artsakh with its own government, but it has never been recognized by any member of the UN.

b. War in 2022 and the Trilateral Agreement

A second war started in 2020, it lasted for 44 days, and Azerbaijan recovered the territories lost in the first war surrounding Nagorno-Karabakh, including the Agdam, the Kalbajar, and the Lachin Districts.

On November 9, 2020, Azerbaijan, Armenia, and Russia signed the Trilateral Statement ending the war between the first two countries recognizing the new situation and established special agreements regarding Nagorno-Karabakh.²

The Nagorno-Karabakh factual autonomy was not mentioned, but Azerbaijan authorized the presence of Russian peacekeepers to protect the Armenians living in Nagorno-Karabakh and the role of the UN High Commissioner for Refugees to facilitate the return of internally displaced persons and refugees return to the territory of Nagorno-Karabakh.

“The Lachin corridor (5 km wide), which will ensure the communication between Nagorno-Karabakh and Armenia...shall remain under the control of the peacekeeping contingent of the Russian Federation” for five years.³ “The Republic of Azerbaijan shall guarantee the safe movement of citizens, vehicles, and cargo in both directions along the Lachin corridor.”⁴ A similar clause requested Armenia to guarantee the safety of transport communication between the western region of Azerbaijan and the Nakhchivan Autonomous Republic.⁵

² Statement by President of the Republic of Azerbaijan, Prime Minister of the Republic of Armenia and President of the Russian Federation (November 10, 2020) UN Doc. S/2020/1104.

³ *Ibid.*, para 6(1)

⁴ *Ibid.*, para 6(3).

⁵ *Ibid.*, para 9.

After decades of *de facto* autonomy, Armenians living in Nagorno-Karabakh risk discrimination by Azerbaijan. It is remarkable that the Russian Federation has accepted to play the role of peacekeepers in the region in order to “prevent the mass death of the civilian population of Nagorno-Karabakh.”⁶

2. Armenia v. Azerbaijan Case before the International Court of Justice

- i. On September 16, 2021, Armenia started proceedings against Azerbaijan before the International Court of Justice (ICJ). Armenia alleged that “[f]or decades, Azerbaijan has subjected Armenians to racial discrimination” in violation of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).⁷
- ii. On December 7, 2021, the Court considered that “propaganda promoting racial hatred and incitement to racial discrimination or to acts of violence against any group of persons based on their national or ethnic origin can generate a pervasive racially charged environment within society. This holds particularly true when rhetoric espousing racial discrimination is employed by high-ranking officials of the State. Such a situation may have serious damaging effects on individuals belonging to the protected group. Such damaging effects may include, but are not limited to, the risk of bodily harm or psychological harm and distress.”⁸
- iii. After reviewing the information placed before it, the International Court of Justice considered “plausible the rights allegedly violated through incitement and promotion of racial hatred and discrimination against persons of Armenian national or ethnic origin by high-ranking officials of Azerbaijan and through

⁶ ‘Decree of the Federation Council of the Federal Assembly of the Russian Federation on the use of a military unit of the Armed Forces of the Russian Federation in Nagorno-Karabakh’ (November 18, 2020), <http://council.gov.ru/activity/documents/121580/>.

⁷ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)* (Application Instituting Proceedings) September 16, 2021, para 3.

⁸ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)* (Order on Provisional Measures) [2021] ICJ Rep 361, para 83.

vandalism and desecration affecting Armenian cultural heritage” and added “that the alleged disregard of the rights deemed plausible by the Court ... may entail irreparable prejudice to those rights and that there is urgency, in the sense that there is a real and imminent risk that such prejudice will be caused before the Court makes a final decision in the case.”⁹

- iv. The Court adopted a unanimous decision ordering Azerbaijan to “[t]ake all necessary measures to prevent the incitement and promotion of racial hatred and discrimination, including by its officials and public institutions, targeted at persons of Armenian national or ethnic origin.”¹⁰

To reach such a conclusion the International Court of Justice took into consideration that “there is a real and imminent risk that irreparable prejudice will be caused to the rights claimed before the Court” validating Armenia claim of expressions of hate by Azerbaijan high ranking officers.¹¹

Armenia had affirmed the existence of “obsessive and continuing expressions of hatred for persons of Armenian national or ethnic origin emanating from Azerbaijani politicians and high-ranking government officials, including the President.” It alleges that this environment of hate may entail irreparable consequences, in particular by making the physical and mental abuse of all Armenians more likely, “including those living in Nagorno- Karabakh.”¹²

3. The UN Committee on the Elimination of Racial Discrimination Report

In its latest periodic review of Azerbaijan, the UN Committee on the Elimination of Racial Discrimination also expressed deep concern over the “[i]ncitement to racial hatred and the propagation of racist stereotypes against persons of Armenian national or ethnic origin, including on the Internet and social media, as well as by public figures

⁹ *Ibid.*, paras 61, 88.

¹⁰ *Ibid.*, para 91.

¹¹ *Ibid.*, para 88.

¹² *Ibid.*, para 74.

and government officials, and the lack of detailed information on investigations, prosecutions, convictions and sanctions for such acts.”¹³

4. The Blockade of the Lachin Corridor.

On the morning of December 12, 2022, President Aliyev allowed individuals without formal ties with the state apparatus to block the Lachin Corridor near the city of Shushi or Shusha, affecting the provision of food, medicines, oil, and all other essentials to Nagorno-Karabakh. President Aliyev denied the involvement of the State in the creation of the problem but justified the action to stop alleged illegal export of mineral resources.

5. The European Court of Human Rights and ICJ Provisional Measures

Armenia brought the problem to the attention of both the European Court of Human Rights and the International Court of Justice. It affirmed that “The 120,000 ethnic Armenians in Nagorno-Karabakh are now entirely encircled by Azerbaijan, completely cut off from access to the outside world.” They are now “effectively under siege.”

- i. On December 21, 2022, the European Court of Human Rights evaluated the State’s responsibility and instructed Azerbaijan to “take all measures that are within their jurisdiction to ensure safe passage through the ‘Lachin Corridor’ of seriously ill persons in need of medical treatment in Armenia and others who were stranded on the road without shelter or means of subsistence.”
- ii. On January 2023, Azerbaijan’s agents before the ICJ affirmed that Armenia has not demonstrated that “the protest is actually blocking the road or seriously obstructing the flow of traffic along it”; that “to the extent the traffic is obstructed, the intention or effect was racial discrimination”; and that “the

¹³ UN Committee on the Elimination of Racial Discrimination, ‘Concluding observations on the combined tenth to twelfth periodic reports of Azerbaijan’ (September 22, 2022) UN Doc. CERD/C/AZE/CO/10-12, para. 4(c).

consequences of the restrictions were such that there is now a real risk of irreparable prejudice.” “ Armenia tries to suppress the fact that for nearly 30 years, it has been illegally exploiting the resource-rich territories of Azerbaijan that it invaded and occupied in violation of international law.”

- iii. On February 22, 2023, the International Court of Justice ordered: “The Republic of Azerbaijan shall, pending the final decision in the case and accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, take all measures at its disposal to ensure unimpeded movement of persons, vehicles, and cargo along the Lachin Corridor in both directions.”¹⁴ The order was reaffirmed on July 6, 2023.

6. The Checkpoint on Hakari River Bridge

On April 23, Azerbaijan installed a checkpoint over the Hakari River bridge blocking the Lachin corridor, claiming that it was implementing the ruling of the Court. The demonstrators stopped their intervention.

On June 15, 2023, Azerbaijan escalated the situation, completely sealing off the Lachin Corridor, the lifeline of Nagorno-Karabakh. Since then, the International Committee of the Red Cross (ICRC) and Russian peacekeeping forces have been banned from delivering humanitarian relief.

The last attempt happened on July 26, 2023, when the Azerbaijan forces did not allow a convoy with humanitarian cargo to pass through the Lachin Corridor and enter Nagorno-Karabakh.

The International Committee of the Red Cross (ICRC) said that despite their “persistent efforts,” they are currently unable “to bring humanitarian assistance to the

¹⁴ See *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)* (Order on Provisional Measures) February 22, 2023, paras 62, 67. See also *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)* (Order on Request for Modification of Provisional Measures) July 6, 2023, para 30.

civilian population through the Lachin corridor or through any other routes, including Aghdam.”

B. Is there a reasonable basis to believe that the Lachin corridor blockade implemented since December 12, 2022, constitutes the crime of Genocide against Armenians in Nagorno-Karabakh?

Some specialized institutions have already claimed a Genocide is underway in Nagorno-Karabakh.¹⁵ As has happened in previous cases, Genocide, in particular, when committed by starvation, is neglected.

An estimated 1 million Armenians were murdered or died of disease and starvation in 1915 and the world did not stop it.¹⁶ Starving children in the Warsaw ghetto produced no reaction.¹⁷ Leningrad (now Saint Petersburg) became a “prison of starvation.”¹⁸ “A factor that blunted understanding of the evil of Khmer rouge’s regime was that many Cambodians died of starvation and malnutrition, which outsiders associated with “natural” economic and climatic forces.”¹⁹ “Photos of emaciated prisoners and refugee accounts of torture, starvation, and executions,” promoted false promises of change in Srebrenica by the Milosevic regime.²⁰

¹⁵ On February 1, 2023, the International Association of Genocide Scholars Executive and Advisory Boards stated: “Significant genocide risk factors exist in the Nagorno-Karabakh situation concerning the Armenian population.” Available at: <https://genocidescholars.org/wp-content/uploads/2023/02/IAGS-EB-AB-Statement-on-Azeri-Blockade-of-Artsakh.pdf>. On June 22, 2023, the Lemkin Institute for Genocide prevention issued a Red Flag Alert for Genocide, see Lemkin Institute for Genocide, ‘Azerbaijan Update #8’ (June 22, 2023), https://www.lemkininstitute.com/_files/ugd/391abe_2bdcf33e1e0d4acf95e82292efed03c8.pdf.

¹⁶ See Samantha Power, *“A Problem From Hell”: America and the Age of Genocide* (Basic Books 2002) 27; Taner Akçam, ‘The Armenian Genocide’ in Ben Kiernan et al. (eds), *The Cambridge World History of Genocide*, vol. III (Cambridge University Press 2023) 67, 83.

¹⁷ Power (n 16) 74. An official Nazi order commanded that “the basic provisioning of the Jewish Residential District must be less than the minimum necessary for preserving life, regardless of the consequences.” Economic Sector of Jewish Residential District in Warsaw, Order, 7 BFG 65 (April 19, 1941).

¹⁸ Ales Adamovich and Daniil Granin, *Leningrad Under Siege: First-Hand Accounts of the Ordeal* (Pen & Sword Books 2007) 190.

¹⁹ See Power (n 16) 179–80; Adam Jones, *Genocide: A Comprehensive Introduction* (Routledge 2006) 198; Ben Kiernan, ‘The Genocides in Cambodia, 1975–1979’ in Kiernan et al. (n 17) 518, 534.

²⁰ Power (n 16) 580. See also Markéta Slavková, ‘Starving Srebrenica and the Recipes for Survival in the Bosnian War (1992–1995)’ (2019) 106 *Český Lid* 297.

**1. Material elements of Article II (c) of the Genocide Convention:
“Deliberately inflicting on the group conditions of life calculated to
bring about its physical destruction in whole or in part.”**

a. Historical Background

When debating the parameters of Article II(c) during the early-stage drafting of the Convention by the UN Economic and Social Council’s *Ad Hoc* Committee on Genocide, France observed that “[i]f any group were placed on rations so short as to make its extinction inevitable, merely because it belonged to a certain nationality, race or religion, the fact would also come under the category of genocidal crime.”²¹

The proposal on which France was affirmatively commenting was accepted by the other members of the *Ad Hoc* Committee,²² eventually manifesting in the final text in the form of Article II(c).²³

i. Jurisprudence on the elements of the crime

The demarcation between genocide by the imposition of conditions of life and by killing or serious injury was captured by the District Court of Jerusalem in its *Eichmann* case, where it opined that, “there were two separate actions: first, subjection to living conditions calculated to bring about their physical destruction, and later the physical destruction itself.”²⁴

The jurisprudence of the International Tribunals for the former Yugoslavia and Rwanda describes this form genocide as “the denial to members of a certain group of the elementary means of existence enjoyed by other sections of the population.”²⁵ This

²¹ UN ESCOR, 7th Session, *Ad Hoc* Committee on Genocide, 4th meeting (April 7, 1948) UN Doc. E/AC.25/SR.4, at 14 (Mr. Ordonne, France).

²² *Ibid.*, 15 (Mr. Rudzinski, Poland), 16 (Mr. Maktos, United States).

²³ William A. Schabas, *Genocide in International Law: The Crime of Crimes* (2nd edn, Cambridge University Press 2009) 189–90.

²⁴ Cr.C. (Jerusalem) 40/61 *Attorney General v. Eichmann* (1961) 45 PM 3, (1968) 36 ILR 5, para 196.

²⁵ *Prosecutor v. Stakić* (Decision on Rule 98 bis Motion for Judgment of Acquittal) IT-97-24-T (31 October 2002) para 25.

process occurs through methods “by which the perpetrator does not immediately kill the members of the group, but which, ultimately, seek their physical destruction.”²⁶

Notably, genocide through such underlying acts *does not* require the acts in question actually result in any physical or mental harm to members of the protected group.²⁷ In fact, when such results do occur, the ICTY Appeals Chamber has found that paragraphs (a) or (b) of Article II of the Genocide Convention relating to killing members of the group or causing serious harm to them, respectively,²⁸ are more fitting than those under Article II(c).²⁹

The *travaux préparatoires* of the Genocide Convention demonstrate an explicit rejection of a causal element in the form of the UN General Assembly’s Sixth Committee’s rejection of a proposed amendment by Uruguay and the United Kingdom that suggested the phrase “likely to cause,”³⁰ which was instead attenuated to the phrase “calculated to bring about.”³¹

A similar conclusion on the war crime of ‘starvation’ under Article 54(1) of Additional Protocol I to the Geneva Conventions was reached in 2020, by the UN Commission on Human Rights in South Sudan:

²⁶ *Prosecutor v. Akayesu* (Trial Judgment) ICTR-96-4-T (September 2, 1998) para 505. See also *Prosecutor v. Tolimir* (Trial Judgment) IT-05-88-2-T (December 12, 2012) para 740; *Prosecutor v. Brđanin* (Trial Judgment) IT-99-36-T (1 September 2004) para 691; *Prosecutor v. Stakić* (Trial Judgment) IT-97-24-T (July 31, 2003) para paras 517–18; *Prosecutor v. Musema* (Trial Judgment) ICTR-96-13-T (January 27, 2000) para 157; *Prosecutor v. Rutaganda* (Trial Judgment) ICTR-96-3-T (December 6, 1999) para 52; *Prosecutor v. Popović et al.* (Trial Judgment) IT-05-88-T (June 10, 2010) para 814; *Prosecutor v. Karadžić* (Trial Judgment) IT-95-5/18-T (March 24, 2016) para 2586; *Prosecutor v. Mladić* (Trial Judgment) IT-09-92-T (November 22, 2017) para 3453.

²⁷ See *Tolimir* Trial Judgment (n 28) para 741; *Karadžić* Trial Judgment (n 28) para 546; *Brđanin* Trial Judgment (n 28) para 691; *Stakić* Trial Judgment (n 28) para 517.

²⁸ See Statute of the International Criminal Tribunal for the former Yugoslavia (adopted May 25, 1993) 32 ILM 1170 (ICTY Statute) art 4(2)(a), (b); Rome Statute of the International Criminal Court (adopted July 17, 1998) 2187 UNTS 3 (Rome Statute) art 6(a), (b).

²⁹ See ICTY Statute (n 31) art 4(2)(c); Rome Statute (n 31) art 6(c).

³⁰ See ‘Uruguay: Amendments to the Draft Convention on Genocide’ (October 1, 1948) UN Doc. A/C.6/209; ‘United Kingdom of Great Britain and Northern Ireland: Amendments to Articles II and III of the Draft Convention on Genocide’ (October 7, 1948) UN Doc. A/C.6/222.

³¹ UN GAOR, 3rd Session, 6th Committee, 82nd meeting (October 23, 1948) UN Doc. A/C.6/SR.82, at 183; UNGA Sixth Committee, ‘Genocide – Draft Convention and Report of the Economic and Social Council’ (October 23, 1948) UN Doc. A/C.6/245. See also Lars Berster, ‘Article II’ in Christian J. Tams, Lars Berster, and Björn Schiffbaur (eds), *Convention on the Prevention and Punishment of the Crime of Genocide: A Commentary* (C.H. Beck/Hart/Nomos 2014) 79, para 75.

The term “starvation” should be understood to encompass deprivation not just of food and water but also of other goods essential for survival in a particular context. The crime of starvation does not require that victims die from starvation, only that they should intentionally be deprived of objects indispensable to their survival.³²

ii. The Findings of the International Court of Justice in the Armenia v. Azerbaijan Case.

The ICJ has already analyzed the Lachin corridor’ blockade. The Court focused on State liability for alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination rather than individual criminal responsibility for the commission of Genocide.

Though predicated on a different set of State obligations, the Court confirmed the occurrence of the material elements of Genocide that are set out in Article II, (c) of the Genocide Convention: “Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.”³³

The ICJ’s preliminary decision indicates the plausible concurrence of the material elements of the crime of Genocide required by Article II of the Genocide Convention: (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part.

The Court issued provisional measures considering “plausible” that the rights of a part of an ethnic group, the “Armenians in Nagorno-Karabakh,” are affected by the blockade of the Lachin Corridor established in December 2022.³⁴ Therefore, the

³² UN Commission on Human Rights in South Sudan, “‘There is Nothing Left for Us’: Starvation as a Method of Warfare in South Sudan’ (October 5, 2020) UN Doc. A/HRC/45/CRP.3, para 26.

³³ Convention on the Prevention and Punishment of the Crime of Genocide (adopted December 9, 1948) 78 UNTS 277 (Genocide Convention) art II(c).

³⁴ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)* (Provisional Measures) February 22, 2023, para 39 [*Armenia v. Azerbaijan* Order of February 22, 2023].

International Court of Justice assessed that the “persons affected belonged to a particular ethnical group” as required by the Genocide Convention.

According to the “Elements of the Crimes” adopted by the International Criminal Court, the term “conditions of life” calculated to bring about the physical destruction of that group “may include, but is not necessarily restricted to, deliberate deprivation of resources indispensable for survival, such as food or medical services, or systematic expulsion from homes.”³⁵

In its February order, the ICJ accepted the request related to food and medicines, affirming “[a] prejudice can be considered as irreparable when the persons concerned are exposed to danger to health and life. The Court has further noted that restrictions on the importation and purchase of goods required for humanitarian needs, such as foodstuffs and medicines, including lifesaving medicines, treatment for chronic disease or preventive care, and medical equipment, may have a serious detrimental impact on the health and lives of individuals.”³⁶

The International Court of Justice concluded that the blockade “may entail irreparable consequences to those rights and that there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused before the Court makes a final decision in the case.”³⁷

Such a conclusion is an indication of the concurrence of the infliction of “certain conditions of life calculated to bring about the physical destruction of that group.” The requirement of a plan or a manifest pattern of similar conduct directed against that group is evident, but it will be further analyzed below.

b. Subjective Element of the Crime of Genocide

³⁵ ICC Elements of Crimes (2013) art 6(c)(4), fn 4.

³⁶ *Armenia v. Azerbaijan* Order of February 22, 2023 (n 37) para 55, citing *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America) (Provisional Measures)* [2018] ICJ Rep 623, para 91.

³⁷ *Armenia v. Azerbaijan* Order of February 22, 2023 (n 37) para 59.

The crime of Genocide requires intention: “The perpetrator intended to destroy, in whole or in part, that ethnical group, as such.”³⁸ A blank confession is not the only way to prove intention. Voluntary actions, even in silence, express intentions to “[d]eliberately [inflict] on the group conditions of life calculated to bring about its physical destruction.”

President Aliyev’s Genocidal intentions can be deduced from the following:

- 1) He knowingly took systematic steps to stop the transit and transport of people and goods through the Lachin Corridor and ultimately blockaded it by placing a checkpoint with cement blocks;
- 2) Having been placed on notice by the International Court of Justice regarding the “impending” dangers of blockading the Lachin Corridor, he continued with the blockade; and
- 3) In addition to having the specific knowledge of the consequences of his deliberate acts, President Aliyev has willingly refused to execute the International Court of Justice’s orders.

i. Jurisprudence on intention

The ICTR Appeals Chamber in *Kayishema and Ruzindana* observed that “explicit manifestations of criminal intent are ... often rare in the context of criminal trials.”³⁹

The ICTY Appeals Chamber similarly noted in *Karadžić* that “by its nature, genocidal intent is not usually susceptible to direct proof,”⁴⁰ with the ICTR Appeals Chamber adding in *Gacumbitsi* that “[o]nly the accused himself has first-hand knowledge of his own mental state, and he is unlikely to testify to his own genocidal intent. Intent thus must usually be inferred.”⁴¹

³⁸ Genocide Convention (n 36) art II.

³⁹ *Prosecutor v. Kayishema and Ruzindana* (Appeal Judgement) ICTR-95-1-A (May 21, 1999) para 159.

⁴⁰ *Prosecutor v. Karadžić* (Rule 98 bis Appeal Judgment) IT-95-5/18-AR98bis.1 (July 11, 2013) para 80.

⁴¹ *Prosecutor v. Gacumbitsi* (Appeal Judgment) ICTR-2001-64-A (July 7, 2006) para 40.

The ICTR trial Chamber accordingly had held in *Rutaganda* that “[i]n the absence of explicit, direct proof, the *dolus specialis* may ... be inferred from relevant facts and circumstances” and that “[s]uch an approach prevents perpetrators from escaping convictions simply because such manifestations are absent.”⁴²

Similarly, the ICTY Appeals Chamber held in *Krstić* that “[w]here direct evidence of genocidal intent is absent, the intent may still be inferred from the factual circumstances of the crime.”⁴³

ii. Analysis of President Aliyev’s Intentions.

The President of Azerbaijan, Ilham Aliyev, is *de jure* and *de facto* Supreme Commander of the security forces in Azerbaijan. Under his command the security border personnel have been placed in control of the checkpoint on the Lachin Corridor and blocked transit of all goods and people.

President Aliyev’s intention to destroy the “Armenians in Nagorno-Karabakh” should be deduced from his informed, voluntary and antagonistic decisions with full disregard of the International Court of Justice orders.

In 2020, when President Aliyev accepted the Russian peacekeepers and agreed to guarantee a free corridor between Armenia and Nagorno-Karabakh, he implicitly recognized the Nagorno-Karabakh’s *de facto* autonomy.

Then, a few months later, when Russia became engaged with Ukraine, President Aliyev reversed direction and decided that the region has no autonomy. Instead of negotiating the autonomy of the people of Nagorno-Karabakh, he systematically took steps through a series of decisions to eliminate the Armenians living in Nagorno-Karabakh.

⁴² *Prosecutor v. Rutaganda* (Trial Judgment) ICTR-97-20-T (December 6, 1999) para 525.

⁴³ *Prosecutor v. Krstić* (Appeal Judgment) IT-98-33-A (April 19, 2004) para 34, citing *Prosecutor v. Jelisić* (Appeal Judgment) IT-95-10-A (July 5, 2001) paras 47. See also *Prosecutor v. Blagojević and Jokić* (Appeal Judgment) IT-02-60-A (May 9, 2007) para 123; *Prosecutor v. Hategkimana* (Appeal Judgment) ICTR-00-55B-0272/1-A (May 8, 2012) para 133; *Prosecutor v. Tolmir* (Appeal Judgment) IT-05-88/2-A (8 April 2015) paras 246–47.

First, he allowed a group of civilians to block the Lachin Corridor.

Second, one year after the beginning of the Ukrainian war, he established a checkpoint on the border with Armenia, obstructing free transit through the Lachin Corridor. He imposed the Lachin Corridor blockade knowing the consequences described by the International Court of Justice's order.

Third, he completely sealed the Lachin Corridor and refused to obey the Court's order.

It is possible to deduce that President Aliyev's instructions to establish a full blockade of the Lachin Corridor was adopted voluntarily with the intention to 'deliberately inflict on the group conditions of life calculated to bring about its physical destruction.'

The inference is confirmed that President Aliyev had knowledge that the International Court of Justice reached the conclusion that the blockade created "real and imminent risk" to the "health and life" of the people of Nagorno-Karabakh. Furthermore, President Aliyev's genocidal intention is so strong that he openly challenges a binding order of the International Court of Justice.

iii. President Aliyev's Statement on August 1, 2023.

To safeguard my accuracy and impartiality, before producing this report, I wrote to President Aliyev explaining the consequences of the blockade and offering him an opportunity to clarify his position. My letter put President Aliyev on notice of the commission of Genocide. He could be responsible for Genocide. I received no answer, and the blockade continues.

President Aliyev discussed the matter during a *Euronews* interview aired two days after my letter. He indirectly recognized that the blockade was his official policy and pretended to justify the starvation of 120,000 Armenians to avoid the alleged smuggling of minerals, cigarettes, iPhones, and gasoline.

He justified the December blockade produced by the “representatives of civil society of Azerbaijan” because of the “illegal excavation of natural resources in Karabakh.”

He said that an Azerbaijan checkpoint was established to implement the International Court of Justice decision. “And as soon as we established a border checkpoint on our border with Armenia, which is our legitimate right...we communicated through my representative here in Shusha with NGOs’ representatives for them to stop, and they stopped. They left. So now, freedom of movement is not blocked.”

Then he explained that “On June 15, Armenia made another military provocation and wounded one of our border security guards, and temporarily the road was closed for investigation.”

“But then it was reopened. Red Cross restarted again to transport medications and evacuate patients who need treatment in Armenia. But unfortunately, Red Cross trucks, when checked, we found smuggling goods like cigarettes, iPhones, and gasoline. Red Cross admitted that. So, that is how, again, it was blocked.” The ICRC clarified the incident. This statement confirms that President Aliyev is in command of the situation, providing misleading arguments to divert attention from his commission of Genocide.

He pretends that he is disobeying an ICJ decision and starving 120,000 persons to control the smuggling of some iPhones or minerals. The smuggling cases should be properly investigated but they should not distract from the genocidal impact of his decisions.

In the interview, President Aliyev stated his motive, which is to “put an end to separatism.” He said he is “not organizing ethnic cleansing,” but he proposes that Armenians in Karabakh could live as a minority in Azerbaijan, ignoring the discrimination and the Genocide, or they have to leave.

Perpetrators of genocide attempt to conceal their genocidal intent. Combating such concealment is the *raison d'être* of the explicit distinction between motive and intent with respect to genocide.⁴⁴

Intent refers to the actual goal the perpetrator strives to achieve, while motive refers to the specific reason of the perpetrator in the commission of criminal acts. Accordingly, the ICTY Appeals Chamber conclusively declared in *Stakić* that “the reason why the accused sought to destroy the victim group has no bearing on guilt.”⁴⁵

Thus the existence of a “personal motive,” such as the acquisition of territory or integration of a separatist entity, “must be distinguished from intent and does not preclude a finding of genocidal intent.”⁴⁶

President Aliyev rightly said that Azerbaijan recovered in the 2020 war a territory occupied by Armenia, but now, he threatens Armenia with a new war to end the special status of Nagorno-Karabakh.

He explained that the last year’s geopolitical changes were in his favor and posed the question: “Who will protect Armenia?” This is akin to Hitler’s statement that he made in August of 1939, when he said, “who remembers now the extermination of the Armenians?”⁴⁷

President Aliyev ended his interview with a threatening message to the Armenians: “They should understand that the situation where they are today would not change in their favor if they continue to ignore us if they continue to behave that we do not exist.”

⁴⁴ See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* (Merits) [2007] ICJ Rep 43 (*Bosnian Genocide Judgment*) para 189.

⁴⁵ *Prosecutor v. Stakić* (Appeal Judgment) IT-97-24-A (March 22, 2006) para 45, citing *Jelisić Appeal Judgment* (n 45) para 49; *Prosecutor v. Tadić* (Appeal Judgment) IT-94-1-A (July 15, 1999) para 269.

⁴⁶ *Popović et al.* (n 28) para 825.

⁴⁷ Louis P. Lochner, *What About Germany?* (Dodd, Mead & Co 1943) 12. See also Office of United States Chief of Counsel for the Prosecution of Axis Criminality (ed), *Nazi Conspiracy and Aggression*, vol. VII (US Government Printing Office 1946) 753.

D. Who Could be Personally Responsible?

President Aliyev should be investigated for Genocide because he is at the top of the state apparatus and controls decisions politically, militarily and diplomatically. He's the mastermind behind the operations of the Genocide.

There are reports that identify other perpetrators involved in the blockade, but there is no indicia against them about their genocidal intention. They should still be investigated for their eventual participation in Genocide and in the blockade as crimes against humanity.

There are confidential reports alleging that the following individuals should be investigated. The list includes, but is not limited to the following:

- 1) Zakir Asker Oghlu Hasanov (Azerbaijani: Zakir Əsgər oğlu Həsənov) - Minister of Defense
- 2) Elchin Guliyev (Azerbaijani: Elçin İsa oğlu Quliyev) - Chief of State Border Service of Azerbaijan
- 3) Akshin Maherramov - Chief of Staff of the Border Detachment for State Border Protection
- 4) Misir Aliyev - Rapid Response Brigade of the Rapid Response Forces of the State Border Guard Service
- 5) Farid Shafiyev - Center of Analysis of International Relations

E. Could President Aliyev be Investigated by the International Criminal Court?

Article IV of the Genocide Convention establishes that "Persons committing genocide shall be punished," even if "they are constitutionally responsible rulers."⁴⁸ But there is no independent criminal justice system to investigate the crime of Genocide.

President Aliyev cannot be investigated by any national authorities because he enjoys immunity as a head-of-state.⁴⁹

⁴⁸ Genocide Convention (n 36) art IV.

⁴⁹ See *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)* [2002] ICJ Rep 3, para 51.

Such immunity does not apply at the International Criminal Court.⁵⁰ There are three ways to start an ICC investigation for the commission of the crimes in the Lachin Corridor and Nagorno-Karabakh:

- 1) Azerbaijan becomes a state party (Article 12.1 of the Rome Statute);
- 2) Azerbaijan accepts intervention of the Court on its territory (Article 12.3 of the Rome Statute); and
- 3) The UN Security Council refers the situation of the Lachin Corridor and Nagorno-Karabakh after December 2022 to the ICC (Article 13.b of the Rome Statute).

But Azerbaijan is not a state party of the Rome Statute, and, did not accept an ICC intervention. As a result, immediate state action is required to adopt a UN Security Council Resolution referring the situation in the Lachin Corridor and Nagorno-Karabakh to the ICC.

There are precedents. In March 2005, the UN Security Council adopted Resolution 1395, referring the Darfur situation to the ICC. Five years later, President Omar Al Bashir was indicted for Genocide.⁵¹

Obtaining a UN Security Council Resolution to provide ICC jurisdiction should be feasible. Under the Genocide Convention, state parties have an obligation to prevent and punish Genocide, and 14 of the current 15 members of the UN Security Council are also parties of that Convention, providing an overwhelming majority.

France proposed, as early as in 2013, that the five permanent members of the Council voluntarily and collectively suspend the use of the veto in case of Genocide and other mass atrocities.

F. How to Prevent the Final Destruction of the Armenian Group?

⁵⁰ *Prosecutor v. Al Bashir* (Judgment in the Jordan Referral re Al-Bashir Appeal) ICC-02/05-01/09-397 (May 6, 2019) paras 113–17.

⁵¹ See *Prosecutor v. Al Bashir* (Second Warrant of Arrest for Omar Hassan Ahmad Al Bashir) ICC-02/05-01/09-95 (July 12, 2010).

Determining that Genocide against Armenians is being committed in 2023 would transform the understanding of the conflict in Nagorno-Karabakh.

President Aliyev asked: “Why Spain does not allow Catalunya to have a referendum? Why should we tolerate separatism?” The simple answer to complex issues of sovereignty involved in the question is that Spain is not committing genocide to control separatist efforts.

One hundred and fifty-three nations, including Azerbaijan, Russia, the United States, and members of the European Union are contracting parties of the Genocide Convention. Under the Convention, the Parties confirm that Genocide is a crime under international law which they undertake to prevent and punish. Timely prevention requires the adoption of urgent political decisions.

- a) to stop the blockade and reestablish the provision of essential goods to Nagorno-Karabakh in one or two weeks, and
- b) institutional solutions to the disputed territorial claims. This should be adopted before May 2025 because at that time, Azerbaijan can request that Russia ends its peacekeeper role.

1. A failure by design

By design, there are no central authorities at the international level to adopt such urgent measures. A ruling by the International Court of Justice on Genocide, smart sanctions, and other classic diplomatic tools are slow and inadequate measures to respond and prevent the current dire situation.

In the short term, which is crucial to stop the damages caused by the ongoing Genocide by starvation, the duty of prevention is exclusively defined by the interests of the states involved in the conflict.

Samantha Power affirmed that U.S. policymakers did almost nothing to deter genocides, because America’s “vital national interests” were not considered imperiled.⁵²

⁵² Power (n 16) 708.

She described magnificently in *"The Problem from Hell"* how politicians avoid efforts to control genocides. They appease, bribe, seduce or manipulate their constituencies that demand action.⁵³

The reluctance, described by Samantha Power to act before a Genocide, was exposed in April 1994, when most of the UN Security Council members refused to call what was happening in Rwanda a "Genocide." During the debate members of the Council requested negotiations to achieve a ceasefire. The Czech Ambassador challenged them and likened it to asking the Jews to reach a truce with Hitler.⁵⁴

In *"A Problem from Hell,"* Samantha Power also explains the crucial role of the citizen in transforming the national leaders' interests in a Genocide abroad. The voice of the Armenians in the diaspora could reduce the failure by design created by the international legal architecture. They should be mobilized worldwide to reach national leaders and promote a collective and pragmatic solution.

2. The role of Russia, the U.S. and European Union

As mentioned, Russia, responsible for peacekeeping in Nagorno-Karabakh, and the U.S., promoting current negotiations between Armenia and Azerbaijan, are state parties of the Genocide Convention as all the European Union members. They have a privileged position to prevent the Genocide. Their intense confrontation due to the Ukrainian conflict should not transform the Armenians into collateral victims.

Is it possible to assist European, Russian, and U.S. leaders to reach a joint position to stop the ongoing Armenian Genocide? If they agree, the food will reach the Armenians within one day.

⁵³ The reluctance of states to "[t]hey advance politically only as they placate, appease, bribe, seduce, bamboozle, or otherwise manage to manipulate the demanding threatening elements in their constituencies. The decisive consideration is not whether the proposition is good but whether . . . the active-talking constituents like it immediately." Power (n 16) 335.

⁵⁴ Cable from the Czech Republic Mission to the United Nations to the Czech Foreign Ministry, Prague (April 25, 1999), <https://nsarchive2.gwu.edu/NSAEBB/NSAEBB472/docs/Document%2010.pdf>.

Secretary of State Antony J. Blinken spoke with Azerbaijan's President Ilham Aliyev a few days after the full blockade was imposed, rightly requesting to open the Corridor. But, at the time, there was no clarity on the genocidal circumstances surrounding the event. Secretary Blinken limited the conversation to stressing "the need for all parties to keep up positive momentum on peace negotiations."⁵⁵

President Aliyev's actions show that he is under the perception that his method of committing Genocide to force his victims to accept his demands, is tolerated by the international community.

The U.S., Russia and the European Union involved in the negotiations between Azerbaijan and Armenia must make publicly clear that they do not allow, and will not allow, explicitly or implicitly, President Aliyev to commit a genocide.

3. The time to prevent is now

As the International Court of Justice established, accepting genocide as a method to procure an agreement is complicity.

In its 2007 *Bosnia v. Serbia* judgment, the International Court of Justice established the principle that the states' "obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed."⁵⁶

The Court added: "This obviously does not mean that the obligation to prevent Genocide only comes into being when the perpetration of Genocide commences; that would be absurd since the whole point of the obligation is to prevent or attempt to prevent the occurrence of the act."⁵⁷ From the moment when a State has information that leads it to believe that a Genocide is afoot, it establishes its obligation to take all

⁵⁵ 'Secretary Blinken's Call with Azerbaijani President Aliyev' (*U.S. Department of State*, July 30, 2023), <https://www.state.gov/secretary-blinkens-call-with-azerbaijani-president-aliyev-14/>.

⁵⁶ *Bosnian Genocide* Judgment (n 46) para 431.

⁵⁷ *Ibid.*

measures possible to prevent and stop the further “physical destruction” of a group of people.

Secretary of State Blinken explained in the Holocaust Museum that one of his responsibilities “is determining, on behalf of the United States, whether atrocities have been committed. It’s an immense responsibility that I take very seriously, particularly given my family’s history.”⁵⁸ He identified intent to destroy a group and hate speech as a path in the Rohingya situation, “mirroring in so many ways the path to the Holocaust and other genocides.”⁵⁹

President Biden took a courageous step and became the first U.S. President that labeled the 1915 events as the Armenian Genocide. “The American people honor all those Armenians who perished in the genocide that began 106 years ago today. Let us renew our shared resolve to prevent future atrocities from occurring anywhere in the world.”⁶⁰

Now that the path of Genocide against an Armenian group in Nagorno-Karabakh is exposed, it is time for the U.S. to put words into action.

The U.S., Russia, members of the European Union, all state parties of the Genocide Convention, and UN members have a rare historic opportunity to stop Genocide against an Armenian group in 2023.

In many respects, the starvation of the ethnic Armenians of Nagorno-Karabakh, represents the archetype of genocide through the imposition of conditions of life designed to bring about a group’s destruction.⁶¹ It closes a tragic circle because “[t]he

⁵⁸ ‘Secretary Antony J. Blinken on the Genocide and Crimes Against Humanity in Burma’ (*U.S. Department of State*, March 21, 2022), <https://www.state.gov/secretary-antony-j-blinken-at-the-united-states-holocaust-memorial-museum/>.

⁵⁹ *Ibid.*

⁶⁰ ‘Statement by President Joe Biden on Armenian Remembrance Day’ (*White House*, April 24, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/24/statement-by-president-joe-biden-on-armenian-remembrance-day/>.

⁶¹ Guénaél Mettraux, *International Crimes and the Ad Hoc Tribunals* (Oxford University Press 2006) 239–40.

treatment of the Armenians by the Turkish rulers in 1915 provides the paradigm for the Genocide provision dealing with imposition of conditions of life.”⁶²

As an individual with some experience in the field, I was honored to make my contribution providing an impartial report and I am ready to assist any party committed to prevent the destruction of the Armenian group in Nagorno-Karabakh.

⁶² Schabas (n 24) 19. “These crimes have often been described as ‘deportations.’ But they went far beyond mere expulsion or transfer, because the deportation itself involved *deprivation of fundamental human needs with the result that large numbers died of disease, malnutrition and exhaustion.*” *Ibid.* (emphasis added).