

**University of Sao Paulo**

**Innovation on global order project**

**“Current genocides and the consistent international practice to deny them.”**

**Summary of the case of Nagorno-Karabakh**

**Luis Moreno Ocampo**

**Erney Plessman de Camargo Chair**

This paper by Luis Moreno Ocampo complements his previous August 7, 2023, expert opinion, focusing on the genocide committed in Nagorno-Karabakh and the reasons to deny it.

## Summary

December 2023 marks the 75<sup>th</sup> anniversary of the Genocide Convention's adoption, exposing the consistent state parties' position to deny the commission of genocide.

Just in the last months of 2023, the UN Special Adviser on the Prevention of Genocide, Alice Wairimu Nderitu, alerted about six different situations where there is a risk of genocide against ethnic groups, including the Rohingya,<sup>1</sup> the Nagorno-Karabakh people,<sup>2</sup> the Tigray in Ethiopia,<sup>3</sup> the Israelis and Palestinians,<sup>4</sup> and the Masalit in Darfur, Sudan.<sup>5</sup>

<sup>1</sup> Remarks by United Nations Under-Secretary-General and Special Adviser Nderitu Panel Discussion "Impact of Majoritarianism on Religious Minorities in South Asia" U.S. Capitol, Washington D.C. 7 June 2023. Available at:

[https://www.un.org/en/genocideprevention/documents/UN\\_SA\\_Nderitu\\_remarks\\_Impact\\_of%20Majoritarianism\\_on\\_Religious\\_Minorities\\_in\\_South%20Asia\\_7%20June2023.pdf](https://www.un.org/en/genocideprevention/documents/UN_SA_Nderitu_remarks_Impact_of%20Majoritarianism_on_Religious_Minorities_in_South%20Asia_7%20June2023.pdf).

See also Washington Post, How's Myanmar's unrelenting airstrikes chase families from camp to camp, by Rebecca Tan and Yan Naing (November 7th, 2023)

<https://www.washingtonpost.com/world/2023/11/07/myanmar-military-thailand-refugees-airstrikes/> and NY Times, Myanmar Military Bombs Refugee Camp, Killing 29, Rebels Say (October 10th, 2023)

<https://www.nytimes.com/2023/10/10/world/asia/myanmar-refugees-killed.html> confirmed by Washington Post, Myanmar's military said it bombed 'terrorists.' It Killed Children, by Rebecca Tan and Cape Diamond (August 4th, 2023)

<https://www.washingtonpost.com/world/2023/08/04/myanmar-military-attack-civilians-children/>

<sup>2</sup> Special Adviser Nderitu stated, "on September 22, 2023, Military action ...put the civilian population in the area at risk of violence, including risk of genocide and related atrocity crimes." UN Press Release, Statement by Ms. Alice Wairimu Nderitu, Special Adviser on the Prevention of Genocide, on the situation in Armenia and Azerbaijan (September 22nd, 2023)

[https://www.un.org/en/genocideprevention/documents/USG\\_Nderitu\\_Statement\\_Armenia\\_Azerbaijan\\_22092023.pdf](https://www.un.org/en/genocideprevention/documents/USG_Nderitu_Statement_Armenia_Azerbaijan_22092023.pdf)

<sup>3</sup> Special Adviser Nderitu stated to be "alarmed at the heightened risk of genocide and related atrocity crimes in Ethiopia." UN Press Release, New York, October 10<sup>th</sup>, 2023.

[https://www.un.org/en/genocideprevention/documents/UN\\_Special\\_Adviser\\_statement\\_Ethiopia\\_10\\_1023.pdf](https://www.un.org/en/genocideprevention/documents/UN_Special_Adviser_statement_Ethiopia_10_1023.pdf)

<sup>4</sup> Alice Wairimu Nderitu, *Statement of the Special Adviser on the Prevention of Genocide, Alice Wairimu Nderitu, on the situation in the Middle East*, (October 15<sup>th</sup>, 2023).

"The United Nations Special Adviser on the Prevention of Genocide, Alice Wairimu Nderitu expresses her strong condemnation at the situation in and around the Gaza Strip, at the very serious risk of military escalation in the region, at the unacceptable withholding of Israeli hostages by Hamas in the area, as well as at the vulnerability of Palestinian and other civilians remaining in or fleeing their homes in light of ongoing and escalating risks of violence irreversibly affecting them". Available at:

<https://www.globalr2p.org/resources/statement-on-the-situation-in-the-middle-east/>

<sup>5</sup> UN Press Release, Statement by Ms. Alice Wairimu Nderitu, United Nations Special Adviser on the Prevention of Genocide, on the renewed escalation of violence in Darfur, Sudan (November 14<sup>th</sup>, 2023).

Available at:

[https://www.un.org/en/genocideprevention/documents/UN\\_Special\\_Adviser\\_statement\\_Sudan\\_14\\_Nov\\_2023.pdf](https://www.un.org/en/genocideprevention/documents/UN_Special_Adviser_statement_Sudan_14_Nov_2023.pdf)

The Genocide Convention's 75th anniversary provides an opportunity to move beyond empty "never again" promises. The University of Sao Paulo project "Innovation on Global Order" will conduct research and teach how to make operational the duties to prevent and punish genocide. This paper focuses on the Nagorno-Karabakh situation.

Since the blockade of the Lachin Corridor, state parties of the Genocide Convention involved in conversations with Azerbaijan, like the US, France, Germany, the UK, Israel, and Russia, ignored for different reasons the precise and available information about the serious risk of genocide for the Nagorno-Karabakh ethnic group. Instead, most wanted to facilitate an agreement between Armenia and Azerbaijan to avoid new hostilities and achieve particular economic and geopolitical national interests. Israel, for instance, benefited from substantial weapons sales to Azerbaijan. State parties of the Convention should not benefit from genocide.

Their obligation to prevent genocide requires to continue assessing President Aliyev's genocidal intention to attack Armenia, ensure reparations for those who have lost their lives and their property in Nagorno-Karabakh, guarantee the rights of the ethnic group to return to their ancestral land safely, and to release the "Armenian prisoners."

That is the most urgent aspect of genocide prevention, to end the risk of "serious bodily and mental harm" (Genocide Convention Article II b) to more than twenty victims of genocide, including three former Artsakh presidents and five other community leaders, incarcerated by Azerbaijan. Their captivity is part of the genocide and a message to their community: if you come back to Nagorno-Karabakh, you will be starved, incarcerated, or killed. They became hostages.

As a Nagorno-Karabakh's leader, Artak Beglaryan was hunted by Azerbaijan forces before and after the September 19th attack. Still, unlike most of the others, he was able to escape in challenging circumstances despite his visual impairment. His testimony,

attached,<sup>6</sup> is evidence of the serious mental harm suffered by the entire ethnic group as established by the Genocide Convention Article II b).

On December 12, 2023, more than 100 global figures, including former heads of state, Nobel Prize laureates, and business and humanitarian leaders, demanded the immediate and unconditional release of the "Armenian Prisoners."<sup>7</sup> A recognition that genocide was committed will trigger the state parties' obligations to prevent it and help to ensure their release.

**Luis Moreno Ocampo's paper analyzes:**

- a) the ethnic cleansing against a group of Armenians living for centuries in Nagorno Karabakh constituting genocide and deportation as a crime against humanity,
- b) regarding the prevention of genocide in Nagorno-Karabakh, the consistent state practice was to ignore the information about genocide against the targeted ethnic group.
- c) regarding the obligation to punish genocide, state parties like France or the UK could promote a UN Security Council referral of the Nagorno-Karabakh situation to the International Criminal Court.

In any case, on February 1, 2024, the International Criminal Court will obtain jurisdiction to investigate President Aliyev for crimes committed in Armenia since May 10, 2021.

In addition, the Prosecutor could invoke the Court precedent in the Bangladesh/Myanmar situation concerning the attacks against to open an investigation into the crime against humanity of deportation that started in Azerbaijan since the Lachin corridor blockade and continued in Armenia when more than 100,000 people crossed the international border.

<sup>6</sup> <https://vimeo.com/891751054?share=copy>

<sup>7</sup> <https://apnews.com/press-release/pr-newswire/azerbaijan-azerbaijan-government-ireland-government-mexico-ireland-8a97a8083398d96c068755a695bf0c95>

## **The analysis**

### **a) Nagorno-Karabakh ethnic cleansing constituting genocide and deportation as a crime against humanity**

There is a reasonable basis to believe that Azerbaijan's blockade of the Lachin Corridor that started in December 2022 and Azerbaijan's military attack on September 19, 2023, constitute genocide under Article II c) and b) of the Convention. (Also, Article 6 c) and b) of the Rome Statute) and the crime against humanity of deportation under Article 7 d) of the Rome Statute

In a few days, more than 100,000 ethnic Armenians were forcibly deported from Nagorno-Karabakh, leaving their homes and belongings. On October 30, 2023, Juan Mendez, the first UN Special Adviser on the prevention of genocide, published a report concluding that: "The decision to leave – caused by the attack but also by the nine months of deprivation of food and medicine – exposed the serious mental harm produced in all ethnic Armenians by the official policy and practice of Azerbaijan, which fits the definition of the genocidal act contemplated in Article 2 (b) of the Convention: causing serious bodily or mental harm in members of the group."

The International Court of Justice confirmed Prof Mendez's factual analysis and the violation of the rights of the ethnic group protected. On November 17, the International Court of Justice analyzed that "...more than 100,000 persons of Armenian national or ethnic origin have found themselves compelled to leave their place of residence and reach the Armenian border since the operation commenced by Azerbaijan in Nagorno Karabakh on 19 September 2023."

What's the difference between crimes against humanity and genocide?" Philippe Sands answered the question, explaining that Hersch Lauterpacht developed the concept of crime against humanity in the Western tradition to protect individuals from massive attacks. Instead, Raphael Lemkin created the crime of genocide to protect national,

ethnic, racial, or religious groups.

The testimony of Artak Beglaryan details his experience as evidence of the serious mental harm suffered by the entire ethnic group as established by the Genocide Convention Article II b).

As a Nagorno-Karabakh leader, Artak Beglaryan was hunted by Azerbaijan forces before and after the September 19 attack. Still, unlike most of the others, he was able to escape in extremely difficult circumstances despite his visual impairment.

As mentioned, more than twenty victims of genocide, including three former Artsakh presidents and five other community leaders, were incarcerated by Azerbaijan. Their captivity is part of the genocide and a message to their community: if you come back to Nagorno-Karabakh, you will be starved, incarcerated, or killed.

As highlighted by Professor Mendez, “the arrest of the leadership of the community is also a factor that must be considered as one of the leading causes” for the mass deportation and genocide.

Philippe Sands asked: Does it matter whether the law seeks to protect you because you are an individual or because of the group you happen to be a member of?

It matters because, under the Genocide Convention, state parties have a specific obligation to prevent genocide.

A recognition that genocide was committed will trigger the state parties’ obligations to prevent and punish and would help to protect the rights of the victims, particularly the Armenian prisoners taken as hostages.

### **b) The legal obligation to prevent genocide in the Nagorno-Karabakh case.**

In a fragmented global order, nations pick the norms to follow.

The US, France, and Russia were very active in promoting a negotiation between

Armenia and Azerbaijan to avoid a new war and protect their own interests. However, as parties of the Genocide Convention, they have the legal obligation to prevent as soon they “should normally have learned of the existence of a serious risk that genocide will be committed.”<sup>8</sup>

In that case, *Bosnia and Herzegovina v. Serbia and Montenegro*, the International Court of Justice 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.”<sup>9</sup>

State parties to the Convention chose to neither acknowledge nor even mention the risk of genocide. Nothing improved from 1915.

The German Ambassador in Constantinople reported to the Imperial Chancellor on July 7, 1915: “The government is indeed pursuing its purpose of eradicating the Armenian race from the Turkish Empire...”<sup>10</sup> “German diplomats and consuls were sending countless messages to Berlin with details about the massacres, but they received a clear command from the authorities: “not to interfere and keep the confidentiality”. The German Chancellor explained, “Our only aim is to keep Turkey on our side until the end of the war, no matter whether as a result Armenians do perish or not...”<sup>11</sup>

In those years, the US Ambassador “called on Washington to press the Turks to allow humanitarian aid deliveries to those Armenians already deported and in danger of starving to death in the desert. But because Americans were not endangered by the Turkish horrors and because American neutrality in World War I remained fixed, Washington did not act on Morgenthau’s recommendations.”<sup>12</sup>

<sup>8</sup> See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, para. 431.

<sup>9</sup> See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*

(*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment, I.C.J. Reports 2007,

<sup>10</sup> Wolfgang Gust, "The Armenian Genocide: Evidence from the German Foreign Office Archives, 1915-1916". p. 230, Berghahn Books, 2014

<sup>11</sup> Wolfgang Gust, "The Armenian Genocide: Evidence from the German Foreign Office Archives, 1915-1916". p. 492, Berghahn Books, 2014

<sup>12</sup> Power, Samantha. "A Problem From Hell" (p. 46). Basic Books. Kindle Edition.

In 2009, President Obama decided not to implement his campaign pledge to recognize the 1915 Armenian genocide. "I'm worried about the Armenians too. But I am worried about the living Armenians. Not the ones we can't bring back. I am living in the present, Samantha, trying to help the Armenians of today."<sup>13</sup>

In 2021, President Biden took a courageous step and became the first US President who labeled the 1915 events as 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."<sup>14</sup>

i) The ICJ ruling and state parties demands to President Aliyev

In its decision in Application of the International Convention on the Elimination of All Forms of Racial Discrimination (*Armenia v. Azerbaijan*), the International Court of Justice ruled that Azerbaijan has to "ensure unimpeded movement" along the Lachin Corridor. The Court noted 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." <sup>15</sup>

Between January and September 2023, Secretary of State Blinken and President Macron called at different times to President Aliyev, first asking to end the blockade and, since February, reminding him of his obligation to comply with the binding order of the International Court of Justice to "ensure unimpeded movement" along the Lachin Corridor. Still, neither the US nor France made a reference to a risk of genocide.

ii) The August 16, 2023, UN Security Council meeting.

<sup>13</sup>Power, Samantha. *The Education of an Idealist* (pp. 242-244). Dey Street Books. Kindle Edition. <sup>14</sup>  
'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/>.

<sup>15</sup>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.

In addition to the International Court of Justice ruling, different expert reports warned about the risk of genocide in Nagorno-Karabakh.

On February 1, 2023, the International Association of Genocide Scholars Executive and Advisory Boards stated that: "Significant genocide risk factors exist in the Nagorno Karabakh situation concerning the Armenian population."<sup>16</sup>

On February 24, 2023, Genocide Watch issued a Genocide Emergency for Azerbaijan's ongoing blockade against the Armenian populated region of Artsakh.<sup>17</sup>

On June 22, 2023, the Lemkin Institute for Genocide Prevention issued a Red Flag Alert for Genocide in Nagorno-Karabakh. <sup>18</sup>

On July 4, 2023, the UN Special Adviser on the Prevention of Genocide, Alice Wairimu Nderitu, requested free and safe movement through the Lachin corridor.<sup>19</sup>

On August 7, 2023, Luis Moreno Ocampo issued an expert opinion affirming that the blockade constituted Genocide under Art II c) of the convention. It was discussed in the media<sup>20</sup> and presented in specialized forums<sup>21</sup>.

<sup>16</sup> Available at: <https://genocidescholars.org/wp-content/uploads/2023/02/IAGS-EB-AB-Statement-on>

Azeri-Blockade-of-Artsakh.pdf (last visited on December 12<sup>th</sup>, 2023).

<sup>17</sup> Nathaniel Hill, Genocide Emergency: Azerbaijan's Blockade of Artsakh, February 24<sup>th</sup>, 2023. Available at: <https://www.genocidewatch.com/single-post/genocide-emergency-azerbaijan-s-blockade-of-artsakh> <sup>18</sup> See Lemkin Institute for Genocide Prevention, Red Flag Alert for Genocide, 'Azerbaijan Update #8', June 22, 2023, available at:

[https://www.lemkininstitute.com/\\_files/ugd/391abe\\_2bdcf33e1e0d4acf95e82292efed03c8.pdf](https://www.lemkininstitute.com/_files/ugd/391abe_2bdcf33e1e0d4acf95e82292efed03c8.pdf) <sup>19</sup> 53rd Session of the Human Rights Council, Interactive dialogue with the Special Adviser on the Prevention of Genocide (as per HRC/RES/49/9, 2022) available at:

[https://www.un.org/en/genocideprevention/documents/Remarks\\_Alice%20Wairimu%20nderitu\\_Special%20Adviser\\_53rd\\_Session\\_HRC\\_Interactive\\_dialogue%20.pdf](https://www.un.org/en/genocideprevention/documents/Remarks_Alice%20Wairimu%20nderitu_Special%20Adviser_53rd_Session_HRC_Interactive_dialogue%20.pdf)

<sup>20</sup> AP News, "Armenia and Azerbaijan clash over plight of 120,000 people in Nagorno-Karabakh facing food crisis" by Edith M. Lederer (Updated 11:20 PM GMT-3, August 16, 2023) Available at:

<https://apnews.com/article/armenia-azerbaijan-nagornokarabakh-road-blockade-humanitarian-0d7cb5e2cbaf5ba907c98cf6e3ae58f6>

<sup>21</sup> Luis Moreno Ocampo, "Starvation as a Means of Genocide: Azerbaijan's Blockade of the Lachin Corridor Between Armenia and Nagorno-Karabakh", Just Security (August 11<sup>th</sup>, 2023)

Available at: <https://www.justsecurity.org/87574/starvation-as-a-means-of-genocide-azerbaijans-blockade-of-the-lachin-corridor-between-armenia-and-nagorno-karabakh/>

Despite those reports, the UN Security Council meeting on August 16, 2023, to discuss that situation ended without any dispositive decision, limiting to call for a negotiation between Armenia and Azerbaijan.

All the members of the UN Security Council, except Japan, were state parties of the Genocide Convention. Still, they did not mention the risk of genocide against the Nagorno-Karabakh ethnic group and did not take any action to prevent it.<sup>22</sup>

Similarly, thirty years before, 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.<sup>23</sup>

Professor Mendez concluded, "At the very least, the UN Security Council should have ordered Azerbaijan to comply with the International Court of Justice provisional measures."<sup>24</sup>

### iii) The Tom Lantos Human Rights Commission session

On September 6, Rep. Chris Smith chaired an urgent Tom Lantos Rights Commission

session on Nagorno-Karabakh.<sup>25</sup>

The following day, Rep. Chris Smith sent a letter to President Biden, urging him “to immediately clarify that the US does not tolerate, facilitate, or participate in negotiations over genocide.”<sup>26</sup>

<sup>22</sup> Edem Wosornu, Director of Operations and Advocacy, Office for the Coordination of Humanitarian Affairs, said: “The international humanitarian law is very clear. The parties to conflicts must allow and facilitate the rapid and unimpeded passage of humanitarian relief for all civilians in need. Russia stressed that Armenian-Azerbaijani reconciliation is unthinkable without reliable security guarantees and the observance of the rights of the inhabitants of Nagorno-Karabakh.” UN press release, 9397TH MEETING (PM), SC/15384, 16 AUGUST 2023, available at: <https://press.un.org/en/2023/sc15384.doc.htm>

<sup>23</sup> Power, Samantha. "A Problem From Hell" (p. 514). Basic Books. Kindle Edition.

<sup>24</sup> Juan Mendez, *Ethnic Armenians in Nagorno-Karabakh: report on prevention of genocide*, October 30<sup>th</sup>, 2023, annexed to a letter dated November 1st, 2023, from the Permanent Representative of Armenia to the United Nations addressed to the President of the Security Council (S/2023/826),

<sup>25</sup> <https://humanrightscommission.house.gov/events/hearings/nagorno-karabakh-update><sup>26</sup>  
<https://www.foxnews.com/politics/biden-white-house-must-act-genocide-threatens-destroy-120000-people-gop-rep-urges>

#### iv) US Senate Foreign Relations Committee.

On September 14, 2023, during the Senate Foreign Relations Committee, Moreno Ocampo’s, August 7<sup>th</sup>, 2023, expert opinion was quoted: “Starvation is the invisible genocide weapon. Without immediate dramatic change, this group of Armenians will be destroyed in a few weeks.”<sup>27</sup>

Ambassador Yuri Kim, Acting Assistant Secretary of State for European Affairs, was asked what the Biden Administration was doing “to avert this atrocity from being carried out before our own eyes.”<sup>28</sup>

Ambassador Kim responded, “I want to be clear about a critical issue: the United States will not countenance any action or effort—short-term or long-term—to ethnically cleanse or commit other atrocities against the Armenian population of Nagorno Karabakh.”<sup>29</sup>

#### v) Washington Post and New York Times

On September 18, 2023, the Armenia Project published an entire page in the Washington Post paper edition saying: President Biden, Stop Genocide on your watch. There are 120.000 reasons why.

It quoted Moreno Ocampo's report and added: the blockad of the Lachin Corridor by the Azerbaijan securities forces impeding access to any food, medical supplies, and other essentials, and preventing free movement of 120,000 people, began in December 2022. Will the US be complicit in another Armenian genocide?

The following day, September 19, 2023, a similar text in an entire page was published by the New York Times.

<sup>27</sup> US Senate Foreign Relations Committee, Chairman's Press, *Chairman Menendez Opening Remarks at Committee Hearing Assessing the Crisis in Nagorno-Karabakh* (September 14<sup>th</sup>, 2023) <https://www.foreign.senate.gov/press/dem/release/chairman-menendez-opening-remarks-at-committee-hearing-assessing-the-crisis-in-nagorno-karabakh> .

<sup>28</sup> Id.

<sup>29</sup> Statement of Yuri Kim, Acting Assistant Secretary of State for European Affairs Before the Senate Foreign Relations Committee September 14, 2023. Available at: [https://www.foreign.senate.gov/imo/media/doc/6667fb89-a975-4fab-d8b8-e8875312e37e/091423\\_Kim\\_Testimony.pdf](https://www.foreign.senate.gov/imo/media/doc/6667fb89-a975-4fab-d8b8-e8875312e37e/091423_Kim_Testimony.pdf)

vi) The September 19<sup>th</sup> attack, the UN General Assembly, and the UN Security Council meeting on September 21

On September 19<sup>th</sup>, Azerbaijan used military forces to complete the genocide, removing the entire ethnic group from its ancestral land. The same day, President Lula and President Biden opened the UN General Assembly without mentioning the Nagorno Karabakh situation.

A UN Security Council meeting was organized on September 21.<sup>30</sup> Exposing the importance of the meeting for Europe, the Ministers of Foreign Affairs from France, Malta, and Albania were present. Germany was not a member of the Council, but its Minister, Annalena Baerbock, was also in attendance with Joseph Borrell, High Representative of the European Union for Foreign Affairs.

France's Minister for Europe and Foreign Affairs, Ms. Catherine Colonna, opened the

discussion. She was unequivocal: “It is not the territorial integrity of Azerbaijan that is at stake here. Nobody disputes it, and nobody is threatening it. What is at stake is the possibility for the Armenian population of Nagorno-Karabakh to be able to continue to live there with respect for their rights, their history, and their culture. Such a guarantee cannot exist when the strongest exercise deliberate coercion on the weakest.” She also asked Azerbaijan to “ensure amnesty for the forces that accepted the ceasefire.” The US Permanent Representative made a short statement, “reiterating the importance of an international mission that could provide reassurance and confidence to the residents of Nagorno-Karabakh that their rights and security will be protected, consistent with Azerbaijan’s public statements.”

Russia’s representative provided clarity on his country’s position. He informed that the Russian peacekeepers were killed as a result of the Azerbaijan shelling. In any case, he explained, Russia promoted a ceasefire and negotiations between the representatives of the Armenian population of Nagorno-Karabakh and the central authorities of Azerbaijan.

Russia pointed out that “in October 2022 and May 2023 when, at summits held under the auspices of the European Union,” Yerevan “recognized that Karabakh was a part of Azerbaijan. In the concluding declarations of these summits, to which Yerevan agreed, the topic of the need to properly ensure the rights and security of the Armenian population of Karabakh was unfortunately simply omitted.”

Russia proposed “to develop a gradual road map to integrate the population of Nagorno-Karabakh into the constitutional order of Azerbaijan, with clear guarantees for their rights and security.”

<sup>30</sup> 9422nd meeting, Thursday, 21 September 2023, 3 p.m. New York.  
<https://documents-dds-ny.un.org/doc/UNDOC/PRO/N23/274/50/PDF/N2327450.pdf?OpenElement>

On November 15<sup>th</sup>, 2023, Ambassador James O'Brien, the new Assistant Secretary of State for European and Eurasian Affairs, appeared before the House Foreign Affairs Committee and redefined Ambassador Kim's promise not to "countenance" the "ethnic cleansing."<sup>31</sup>

Ambassador O'Brien recognized that Nagorno-Karabakh "people were uprooted." He considered that "People have to receive adequate information so they can make a real choice about their future, to know they have a viable opportunity to return and live in Nagorno Karabakh if that is what they choose."

He implicitly recognized the previous denial and pledged to produce "at the Secretary's orders, a comprehensive, transparent record of what happened, including the months before the attack." He promised that the investigation would collect information from different sources.

Ambassador O'Brien recognized that Azerbaijan was stronger because of the oil and gas revenues and its relationships. He presented the challenge as: when is it time to cash the options?"<sup>32</sup>

<sup>31</sup> US House Foreign Affairs Committee, *The Future of Nagorno-Karabakh*, Subcommittee Hearing, November 15<sup>th</sup>, 2023. Available at: <https://foreignaffairs.house.gov/hearing/the-future-of-nagorno-karabakh/>

<sup>32</sup> Statement of James C. O'Brien, Assistant Secretary of State for European and Eurasian Affairs, Before the House Foreign Affairs Committee November 15, 2023. Available at: <https://docs.house.gov/meetings/FA/FA14/20231115/116574/HHRG-118-FA14-Wstate-OBrienJ20231115.pdf>

v) December 7<sup>th</sup> agreement between Armenia and Azerbaijan.

Armenia and Azerbaijan announced on December 7<sup>th</sup>, 2023, that they would work towards signing a full peace treaty based on mutual respect for each other's territorial integrity.<sup>33</sup> They declared that Baku would release 32 Armenian military servicemen and Yerevan two military servicemen as a "gesture of goodwill."

In addition, "as part of a series of mutual goodwill gestures intended to promote reconciliation, Armenia agreed not to block Azerbaijan's candidacy to host next year's COP29 UN climate conference."<sup>34</sup>

<sup>33</sup> BBC, "Armenia and Azerbaijan to work towards a peace deal," by Barbara Tasch (December 8<sup>th</sup>, 2023) <https://www.bbc.com/news/world-europe-67655940>

<sup>34</sup> EURACTIV, "Armenia, Azerbaijan agree to take steps towards normalization" (December 8<sup>th</sup>, 2023) <https://www.euractiv.com/section/azerbaijan/news/armenia-azerbaijan-agree-to-take-steps-towards-normalisation/> See also Azertag, "Azerbaijan to host COP29 in 2024", December 11<sup>th</sup>, 2023. [https://azertag.az/en/xeber/azerbaijan\\_to\\_host\\_cop29\\_in\\_2024-2847259](https://azertag.az/en/xeber/azerbaijan_to_host_cop29_in_2024-2847259)

### **c) The International Criminal Court's jurisdiction to investigate President Aliyev.**

The parties of the Convention undertook the obligation "to prevent and to punish" genocide (Art I). Article VI indicates that the persons charged with genocide shall be tried by a competent tribunal of the State in the territory of which the act was committed or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction. The national courts' immunity for heads of state excludes their ability to investigate President Aliyev. However, such immunity does not affect the International Criminal Court's ability to investigate him.

Following the Principles adopted at Nuremberg, Article 27 (1) of the Rome Statute establishes: "This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government... shall in no case exempt a person from criminal responsibility under this Statute."

On November 14, 2023, Armenia formally deposited the instrument of ratification of the Rome Statute. Even though the Statute will enter into force for Armenia on 1 February 2024, once applicable, the jurisdiction will apply retroactively since May 10, 2021.

Azerbaijan is not a state party to the Rome Statute and does not accept the ICC's jurisdiction. In consequence, war crimes committed exclusively in Azerbaijan, could not be investigated by the ICC.

However, the crime of deportation, as a crime against humanity, and genocide under Article II b) and Article 6 b) were also committed in Armenia.

The International Criminal Court (ICC) in the Bangladesh/Myanmar precedent affirmed its jurisdiction to the crimes of an ongoing nature, such as deportation, persecution, and other inhumane acts that have started on the territory of an ICC non state party and that continued on the territory of any ICC state party or in states where the ICC has jurisdiction as a result of a UN Security Council Resolution. This precedent is directly relevant to the situation in Nagorno-Karabakh since, similarly to the ethnic Armenian victims, more than 1 million Rohingya people were forcibly displaced from a non-ICC state party - Myanmar's Rakhine State to neighboring ICC state party Bangladesh as a result of an attack against civilians.

Following such a precedent, the International Criminal Court will have jurisdiction to investigate President Aliyev's involvement in crimes of an ongoing nature, such as deportation, persecution, and other inhumane acts that have started on the territory of Azerbaijan, a non-state party, and continued on the territory of Armenia. Victims have the right to submit information to the ICC's Office of the Prosecutor.

### **Summary of Artak Beglaryan's statement**

Artak Beglaryan was born in 1988 in Nagorno-Karabakh. When he was four and a half years old, his father was killed in a battle with Azerbaijani forces. At six years old, he lost his eyesight as a result of a landmine explosion. His mother sent him to a special school in Yerevan to prepare Artak to serve his people. She died when Artak was 16, but he continued studying in the best universities in Armenia, Greece, the UK, and the US to fulfill his and his mother's vision.

Since 2012, he has dedicated his life to public service in Nagorno-Karabakh in different positions, including Human Rights Ombudsman, which he also held during the 2020 44-day war.

Since August 2023, Artak Beglaryan and his wife discussed how much suffering their family should accept. They decided to remain in Nagorno-Karabakh despite the blockade, the starvation, and the lack of energy and gasoline.

But Artak Beglaryan felt conflicting responsibilities as a father and public figure. He asked himself: What is the limit? He and his wife defined their red line: their two young daughters could be hungry but could not be exposed to bombing or Azerbaijani security forces.

After the September 19th, 2023 attack, Artak Beglaryan finally realized that neither the Russian peacekeepers, the UN Security Council, nor any member of the international community would help. "Almost everyone decided to flee because there was no hope and no trust in Azerbaijani and international guarantees for our security. With that coercive environment and history of violations and threats, we felt that it was impossible to have rights, security, and dignity under Azerbaijani control."

Artak Beglaryan explains, "I had to leave everything there, to leave my memory, my values, my struggle, my past, the graves of my parents, my identity, everything, including material properties."