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Abstract

Since hostilities revamped in September 2020 after a long latency period, the ethnic Armenian population in Nagorno-Karabakh has suffered from inhuman and degrading treatment by the Azeri forces trying to restate control over the contended province. Notwithstanding the presence of Russian peacekeepers and the conditions imposed by the ceasefire agreement reached after the Second Karabakh War, Baku restricted locals' freedom of movement with measures like the blockade on the Lachin Corridor, which represents the only road connection between Nagorno-Karabakh and Armenia. As a result, since December 2022, ethnic Armenians have been suffering from food and medical supply shortages, which has led, to little avail, the highest international courts to order Azerbaijan to reopen the corridor. In September 2023, after an apparent pledge in this direction for outbound flows, Baku forces reclaimed full control over the province, arrested local institutions' leading figures and caused an exodus of more than 100,000 ethnic Armenians towards the mainland.

This info flash aims at contextualising the Lachin Corridor blockade and its dire humanitarian consequences within the decades-long territorial controversy over Nagorno-Karabakh with a brief background on the recent key milestones of the Azeri-Armenian conflict and the circumstances in which the blockade came to life (section I). It then refers to the International Court of Justice's and the European Court of Human Rights rulings to delve into the interim measures ordered against Azerbaijan (section II). After elaborating on the potential grounds to hold Baku accountable under the Genocide Convention for the local population's starvation and medical ill-treatment (section III), the info flash concludes by hinting at Azerbaijan's recent pledge to reopen the corridor and the dire consequences ethnic Armenians are facing since Baku forces fully restated control over Nagorno-Karabakh (section IV).

I. Background: The latest developments on the frontline and the blockade's issuance

The Azeri-Armenian conflict over Nagorno-Karabakh remains the longest-running one since the Soviet Union dissolved in 1991 when a military confrontation erupted after the enclave declared independence unilaterally. Two years later, after displacing more than 600,000 Azeris and causing around 30,000 casualties, Yerevan seized Nagorno-Karabakh and seven bordering districts (Beehner, 2005; Center for Preventive Action, 2023; McGowan, 2023). In 1994, the enclave's de facto institutional independence vis-à-vis its economic, political and military reliance on Armenia was acknowledged by the Bishkek Protocol, which survived the breakout of intermittent clashes like the cross-border attacks in April 2016 (BBC News, 2016; Center for Preventive Action, 2023; International Crisis Group, 2020).

Matters came to a head with a reverse outcome in September-October 2020, when the Second Nagorno-Karabakh War witnessed Baku regaining most of the territories previously lost (Fults & Stronski, 2022; McGowan, 2023). Notwithstanding manifold attempts by France, Russia and the United States to negotiate a ceasefire agreement, Armenia and Azerbaijan waged intense cross-border shelling with long-range artillery and heavy weaponry (Center for Preventive Action, 2023; Kramer, 2020). Hostilities continued until 10 November 2020, when Moscow managed to broker a ceasefire to consolidate the statu quo and ensure, among other things, the free movement of goods and people to and from the enclave along the 5-kilometer Lachin Corridor (McGowan, 2023).

On 12 December 2022, a group of Azeri individuals without formal affiliation to Baku's regime blocked the mountainous Lachin Corridor by protesting alleged illegal mining projects of natural resources in Nagorno-Karabakh (Heintz, 2023; Ochab, 2023). Shortly afterwards, based on claims that Armenia was taking advantage of the route to smuggle weapons to local fighters, the Azerbaijani government formalised the blockade, thus restricting the supply of essential goods and services (especially food, medicines and fuel) to the 120,000 ethnic Armenians living in the enclave (McGowan, 2023; Moreno Ocampo, 2023b; Ochab, 2023). Such a move contravened the ceasefire agreement between Baku and Yerevan with Moscow's mediation, which guaranteed the unrestricted use of the road under Russian peacekeepers' supervision (Common Space, 2020; Gavin, 2023b).

From then on, the Red Cross and the local Russian peacekeeping mission struggled to deliver humanitarian aid, turning the matter into a humanitarian emergency, which Baku has been reluctant to address (Ochab, 2023). Among the most dreadful consequences that ethnic Armenians have been suffering, the limitation to one loaf of bread per family, the non-treatment of drinking water and the soaring trend of miscarriages are noteworthy (McGowan, 2023). Nonetheless, Russian and Western officials have not been unanimous on the need to lift the blockade, the modalities and the timing thereof, with the Kremlin trying to assuage fears of hostilities' escalation and expressing optimism about the corridor's swift reopening (Barseghyan, 2023; TASS, 2023).

Azerbaijan's decision to open a checkpoint on the corridor on 23 April 2023 to detect and deter military supply from Armenia to Nagorno-Karabakh aroused condemnation by Yerevan and the enclave's Armenian leadership, who argued that Baku's real aim would be to consolidate its control over the province (Center for Preventive Action, 2023). More alarming still, the Azeri government barred Red Cross convoys from crossing the corridor over alleged smuggling of unsanctioned medical goods and suspended medical evacuations for critical patients after an individual crossed a checkpoint to access medical care in Armenia (France 24, 2023; Gavin, 2023a). These events further undermined Russia's credibility as a security guarantor, given the largely passive approach of its peacekeeping forces (Zolyan, 2022).

II. International courts take the floor: provisional measures issued against the government in Baku

On 14 December 2022, i.e. two days after the presumed 'environmental activists' first blocked the traffic on the Lachin Corridor, the Armenian government sent a request for interim measures to the European Court of Human Rights (ECHR) within the context of the inter-state Armenia v. Azerbaijan (no. 4) case involving allegations of violations of, among others, the prohibition of torture (art. 3 ECHR), the right to a fair trial (art. 6 ECHR) and the right to respect for private and family life (art. 8 ECHR) (Council of Europe, 1950; ECHR, 2022). On 21 December, the Strasbourg Court found Baku in violation of its pledge to ensure freedom of movement along the Corridor under the November 2020 Trilateral Statement agreed with Yerevan and Moscow (ECHR, 2022). Hence, it ordered the restoration of safe passage of seriously ill persons requiring urgent medical treatment in Armenia, as well as of those stranded on the road without subsistence means (ECHR, 2022).

In parallel, Armenia forwarded a similar request to the International Court of Justice (ICJ) within its 2020 application, alleging Azerbaijan's violation of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (ICJ, n.d.-a). Azerbaijan reciprocated on the ground that Yerevan denied its land mining maps and promoted the settlement of ethnic Armenians in disputed territory (Baghdassarian, 2023; ICJ, n.d.-b). On 22 February 2023, the Court ordered Baku to 'take all measures at its disposal to ensure unimpeded movement of persons, vehicles, and cargo along the Lachin Corridor in both directions' (ICJ, 2023a). Hence, pending the ICJ's final ruling, the Azerbaijani government is bound to comply with its CERD obligations and lift the blockade to restore the status quo (Ochab, 2023).

Conversely, two months later, Azeri security forces installed a checkpoint (which remains in place) upon claims that they were implementing the Court's interim measures (Moreno Ocampo, 2023b). In June, however, Baku displayed its unwillingness to comply with the ICJ's order since not only did it completely seal off the Corridor but also prevented Russian peacekeepers and the International Committee of the Red Cross from delivering humanitarian aid (ICRC, 2023; Vincent, 2023). While Azerbaijan justified its actions by interpreting the November 2020 armistice as entrusting it with the safeguard of individuals, vehicles and cargo crossing the corridor, Armenia and Russia counter-argued that the agreement conferred such competencies upon the Moscow-led peacekeeping mission (Ignatov et al., 2023).

Such skirmishes led the judges in The Hague to reiterate their order on 6 July (ICJ, 2023b), which tries to add some legal certainty to the matter and to obviate the Court's long deliberation timing, with litigation on the merits of the case expected to formally get underway only in 2024 (Baghdassarian, 2023).

III. Ethnic Armenians' starvation and medical ill-treatment: Potential grounds for violating the Genocide Convention?

In early August, Luis Moreno-Ocampo, former chief prosecutor of the International Criminal Court (ICC), issued a report finding that the 120,000 Armenians living in Nagorno-Karabakh would suffer from genocide (Moreno-Ocampo, 2023b). The latter would result from the shortage of food, oil, medicine and other essential goods caused by Azerbaijan's blockade of the Lachin Corridor (Moreno-Ocampo, 2023b). According to the report, Baku should be held accountable for violating art. II (c) of the UN Convention on the Prevention and Punishment of the Crime of Genocide, which defines 'genocide' as any act deliberately inflicting living conditions on a national, ethnical, racial or religious group to fully or partly destroy it (United Nations, 1948). The measure at issue is the blockade, which would have been calculated to bring about Karabakh Armenians' physical destruction (Moreno Ocampo, 2023a). To hold such a claim, the former ICC Chief Prosecutor relied on the 2020 conclusions by the UN Commission on Human Rights in South Sudan, which, tasked with facilitating transitional justice in the country, identified the weaponisation of starvation put in place by government and opposition parties to the conflict as a method of warfare (Dannenbaum, 2020; UN HRC, 2020).

The presence of material elements of genocide was confirmed by the ICJ, which, in its aforementioned ruling on 22 February 2023, acknowledged the plausibility for the blockade to generate 'a real and imminent risk' to Karabakh Armenians' 'health and life' (ICJ, 2023a). In the meantime, art. II (c) of the Genocide Convention would also be applicable because the living conditions would be sufficient to bring about the destruction of part of the group without necessarily affecting the whole ethnic Armenian community (United Nations, 1948; Moreno Ocampo, 2023b). Equally relevant considerations concern the duty for states parties to the 1948 Convention to prevent genocide without waiting until its perpetration, which the ICJ highlighted in the *Bosnia and Herzegovina v. Serbia and Montenegro* ruling (ICJ, 2007). In the case at issue, it would require Azerbaijan to restore the provision of essential goods and services to Nagorno-Karabakh by lifting a blockade potentially leading to or constituting genocide (Moreno Ocampo, 2023b).

Notwithstanding the issuance of credible reports decrying Karabakh Armenians' starvation and medical ill-treatment due to food and medical supply shortages, the issue has largely been dealt with as a 'humanitarian issue' at political and diplomatic levels, as it has recently been the case in bilateral talks between US Secretary of State Anthony Blinken and Azerbaijani president Ilham Aliyev (HART, 2023; Moreno Ocampo, 2023b; US Department of State, 2023). Furthermore, allegations concerning the crime of genocide fall within the competence of the ICC, whose jurisdiction, however, does not encapsulate Azerbaijan which, unlike Armenia, still has not ratified the 1998 Rome Statute establishing the Court (ICC, n.d.).

As a plausible alternative, the ICC Prosecutor could start a preliminary investigation on his initiative (*proprio motu*); however, he would need Baku to consent to the ICC's jurisdiction as a non-state party (ABA-ICC Project, n.d.). In light of the Azerbaijani government's reluctance to comply with the ICJ's and ECtHR's interim measures, such consent is highly unlikely.

IV. Outlooks: a precarious pledge to reopen the Corridor and Nagorno-Karabakh's return under Azeri sovereignty

On 9 September 2023, some promising developments were witnessed as Baku, through a compromise with Yerevan, pledged to reopen the Lachin Corridor (McGowan, 2023). The fundamental condition was Karabakh authorities' announcement that they would accept to receive humanitarian shipments from the Russian Red Cross again, the latter first reaching the enclave via the alternative Aghdam road on 12 September (Armenpress, 2023; Center for Preventive Action, 2023). On 19 September, however, Baku waged a 24-hour 'anti-terrorist' operation which, while claiming to neutralise Armenian military forces, ultimately led to the total recapture of the enclave's territory (Kirby, 2023; Lederer, 2023). Nagorno-Karabakh's capitulation was soon formalised as Samvel Shahramanyan, the president of the self-declared republic, signed a decree providing, on the one hand, that local institutions would be dissolved by 1 January 2024 (Sauer, 2023).

Baku's lightning military operation, followed by the separatist government's decision to disband itself by the end of the year, triggered a gruelling exodus of more than 100,000 ethnic Armenians out of the approximately 120,000 residents (AP News, 2023). Considering the casualties that occurred during the painfully slow journey along the mountainous Lachin Corridor, Armenian Prime Minister Pashinyan stated that the exodus would amount to 'a direct act of ethnic cleansing and depriving people of their motherland' (AP News, 2023; Roth & Sauer, 2023). Still, whether this episode can provide relevant evidence to convict Baku in the long-pending cases before the ICJ and the ECtHR remains to be seen.

Meanwhile, Yerevan is highly likely to struggle to house the Karabakh refugees, thus exacerbating the country's political turmoil to the detriment of Pashinyan's legitimacy (Krivosheev, 2023). Conversely, the fewer ethnic Armenians deciding to remain in the province, the smoother it will be for President Aliyev to reintegrate it under his government's influence (Solovyov, 2023). Lastly, with Baku and Karabakh Armenians close to settling the most protracted territorial dispute in the post-Soviet space, questions arise over the role of the Russian peacekeeping mission: the lack of a clear mandate and its reluctance to intervene amidst armed confrontation will make its presence hardly justifiable by Moscow, whose power projection ambitions in Southern Caucasus will inevitably be downsized (Solovyov, 2023).

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