

IN ARTSAKH (NAGORNO-KARABAKH), THE ANSWER IS SELF-DETERMINATION NOT SUBJUGATION

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By Karnig Kerkonian Esq. [Countercurrents](#), 1 February 2023

Artsakh (Nagorno-Karabakh), a self-governing enclave in the South Caucasus, remains under total blockade by Azerbaijan. Over 120,000 Armenians—including 30,000 children—are on the brink of an unspeakable humanitarian catastrophe as food runs scarce, medicine cabinets fall bare, and children now suffer malnutrition.

A single mountain road connects Artsakh to Armenia; it is the sole lifeline for the indigenous Armenians who live there. Pursuant to the November 9, 2020 Trilateral Statement, Azerbaijan is under strict legal obligation to keep its hands off the Berdzor (Lachin) Corridor through which that road passes. But Azerbaijan has not heeded demands from the UN, US, or Europe to end its blockade.

Azerbaijani agents have blocked the mountain road for more than 44 days—at one point, even causing 270 children to be left stranded on the road for days in Arctic conditions and, more recently, storming a bus and terrorizing 19 Armenian children trying to reunite with their families. In fact, Azerbaijan has orchestrated ruthless measures to render living conditions unbearable for the Armenians. It has cut Artsakh's heating gas connections, severed its electricity lines, blocked humanitarian aid, and sabotaged its internet link to the outside world. Some have already died, and more will, as starvation and scarcity now grip the population.

Numerous international watch groups have already red-flagged Azerbaijan's conduct. Genocide Watch has raised the genocide threat level facing Artsakh Armenians beyond the "dehumanization" and "preparation" stages into the "persecution" and "denial" stages. The International Association of Genocide Scholars has proclaimed that "significant genocide risk factors exist in the Nagorno-Karabakh situation concerning the Armenian population." The Lemkin Institute for Genocide Prevention has warned that Azerbaijan's "actions are part of a larger genocidal pattern, demonstrating Azerbaijan's Armenophobia and genocidal intent the eradication of Armenia, Artsakh, and the Armenians."

While Azerbaijan openly ratchets up this man-made humanitarian disaster, some policymakers and think tanks in Europe and Washington still suggest that the most feasible outcome for Nagorno-Karabakh would be some sort of "protected status" within Azerbaijan. This suggestion is carelessly imprudent and patently misguided. It reflects an appalling disassociation from the realities on the ground and an utter blindness to the extent of institutionalized, rampant Armenophobia and ethnic cleansing Azerbaijan has already engineered. Any recommendation of a "protected status within Azerbaijan" is a patent nonstarter."

First, the suggestion is politically antithetical for the West. Every Artsakh government since the 1991 referendum on independence has been democratically elected in fair and free elections—elections actually monitored by international observers. It would be quite the about-face for the West to condone the forceful subjugation of a democracy, even an unrecognized one, to the whims of an

authoritarian, hereditary dictatorship that has openly called for—and is currently engaged in—a campaign of ethnic cleansing.

Further, the idea of a “protected status within Azerbaijan” is morally and legally bankrupt. Given the extent of ethnic cleansing and the now widely recognized risk of genocide, it's blatantly oxymoronic. Just imagine the outcry if the solution suggested during a blockade of Jews by a government espousing institutionalized, state-sponsored antisemitism was, quite literally, the forceful subjugation of Jews to that Nazi state. It would be abhorrent, even criminal. The same is true here.

International law has clear mandates on these sorts of things. Self-determination today comes in two accepted variants: internal self-determination (legalese for a protected status within a state) and external self-determination (legalese for an independent status outside a state). The rule as to whether internal or external self-determination applies has become well established in the three decades since Artsakh's referendum on independence. It would be rather prudent, one would think, to understand the rule properly before postulating “solutions” impacting the lives of actual human beings.

Internal self-determination is best exemplified by the case of Quebec. When Quebec exercised its right to self-determination and sought to secede from Canada in the mid-1990s, the Canadian Army was not assembled at the gates of Montreal clamoring to exterminate the Quebecois or force them into the Atlantic. This, it turns out, was critically important. The Canadian Supreme Court specifically held that the need to protect Quebec's cultural, linguistic, or religious character (the basis of Quebec's claim for secession) could be realized through internal self-determination—a protected status within Canada. The reasoning was clear: internal self-determination in the Canadian context would not open the door to the ethnic cleansing of the Quebecois.

The context here, of course, is profoundly different. Azerbaijan has engaged—and is actively engaged right now—in the ethnic cleansing of the Artsakh Armenians. The blockade itself is evidence of that sadistic campaign. The Azerbaijani president, parliamentarians, and many cultural figures openly espouse hatred, dehumanization, removal, and extermination of the Artsakh Armenians. Armenophobia has been intentionally, and strategically, institutionalized throughout Azerbaijani society.

The backstory is unavoidable too. Azerbaijan has already ethnically cleansed Armenians from every city that has fallen under its authority and control. There are no more Armenians in Baku, Sumgait, Kirovabad, Nakhichevan—and, since 2020, there are none in Shushi and Hadrut either. The pogroms, massacres, and/or war crimes committed by Azerbaijan against Armenians in those areas are a well-documented and dark chapter of Azerbaijan's treatment of Armenians—a chapter that simply will not end.

Azerbaijan's ethnic cleansing campaign, moreover, is achingly comprehensive: it even labors to cleanse the land itself of any evidence of Armenians—destroying Armenian churches, unearthing

Armenian cemeteries, scraping away ancient Armenian biblical inscriptions, and claiming that Armenian churches are actually “Albanian.” In fact, just weeks ago, the Azerbaijani Ambassador told the UN Security Council that even the word “Nagorno-Karabakh” does not exist anymore.

Imagine, for a moment, a Canadian Ambassador telling the U.N. Security Council that the word “Quebec” does not exist anymore. The Quebec model—protected status within another state—may work in the Great White North, but it simply does not fit the bill here.

Right now, Azerbaijan holds Artsakh Armenians—including women, children, the disabled, and the elderly—hostage in a total blockade that is starving and freezing actual human beings in the dead of winter, in complete isolation and in utter darkness. What comes next has played out like clockwork from the Armenian Genocide to the Holocaust, from the Rohingyas to Darfur, and from Cambodia to, well, Kosovo.

And this is where international law gets interesting. In the face of ethnic cleansing and the risk of genocide, it is external self-determination that is legally required. This is the material, indeed the deciding, marker in determining which form of self-determination—internal or external—applies in a given context.

External self-determination in the face of ethnic cleansing or genocide is the Kosovo variant. In a decision which underpinned recognition of Kosovo's independent statehood outside of Serbia, the International Court of Justice specifically identified this very marker as the trigger of external self-determination: “the international law of self-determination developed in such a way as to create a right of independence for . . . peoples subject to alien subjugation, domination, and exploitation.” By its declaration in 2010, the ICJ recognized that in the face of possible ethnic cleansing, genocide and/or subjugation it is external self-determination that is the operative component of the law of self-determination today.

Fast forward to Azerbaijan's strategically-engineered blockade of that distant mountain road. There is no question that the Artsakh Armenians stand before the cliff of death or displacement. Under international law, this is precisely where external self-determination is triggered. International law provides external self-determination as a final stop-gap measure to prevent ethnic cleansing and genocide—to prevent mass death and displacement.

External self-determination is the legally prescribed path here. Anything else is empty think tank semantics, uninformed naivety or, for the spineless and the vile, an actual greenlighting of Azerbaijan's plan to ethnically cleanse the indigenous Armenian population from its native homeland.

The international community should recognize Artsakh's right to external self-determination. It should provide an international mandate to the peacekeeping mission in Artsakh—or internationalize it outright. And it should jump-start the diplomatic pathway toward a final status for Nagorno-Karabakh that recognizes it internationally as existing outside of Azerbaijan. Given the Armenophobia

and genocidal intent that Azerbaijan itself has so carefully curated—and the ethnic cleansing it has itself already conducted on the ground—no other approach is legally permissible, morally tolerable, or politically sustainable.

The world is not powerless when it comes to Nagorno-Karabakh, just gutless. As the blockade suffocates and starves the Artsakh Armenians in the darkness and cold of remote mountain passes, there is a moment here for actual statesmanship in Europe, Washington, and the UN. Looking away is foolish cowardice when international law provides a pathway for diplomatic bravery—and political cover.

When dreaming up policy in Western think tanks and capitals, it's important to get the international law right. Getting it wrong only opens the door to policies that will exacerbate the conflict inhumanely and, quite literally, lead human beings to slaughter. This is Kosovo, not Quebec. Understanding this crucial point may be just enough—and just in time—to stem another ungodly and gruesome chapter in our recent human history.

About the author:

Karnig Kerkonian Esq. is a distinguished international lawyer who leads the international and federal practice groups at Kerkonian Dajani LLP. His work focuses on suits involving foreign entities in U.S. courts, international sanctions regime matters, federal appeals, and cross-border transactions. He regularly advises states and international institutions on issues of public international law, state sovereignty and human rights. Mr. Kerkonian holds an A.B. magna cum laude in Government from Harvard University and two law degrees—a J.D. from the University of Chicago, where he served on the Law Review, as well as a post-graduate Diploma in Public International Law from Cambridge University, England, where he studied under James R. Crawford, Judge on the International Court of Justice. Mr. Kerkonian also holds an Honorary Doctorate from Artsakh State University.

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