

# افغانستان آزاد – آزاد افغانستان

AA-AA

چو کشور نباشد تن من مباد بدین بوم و بر زنده یک تن مباد  
همه سر به سر تن به کشتن دهیم از آن به که کشور به دشمن دهیم

[www.afgazad.com](http://www.afgazad.com)

[afgazad@gmail.com](mailto:afgazad@gmail.com)

European Languages

زبانهای اروپایی

BY ALFRED DE ZAYAS

30.09.2023

## *Responsibility to Protect the Armenian population of Nagorno Karabakh*



A view of the forested mountains of Nagorno-Karabakh. Photograph Source: Sonashen –  
[CC BY-SA 3.0](https://creativecommons.org/licenses/by-sa/3.0/)

If the “doctrine” of Responsibility to Protect (R2P) means anything[1], then it applies to the tragedy unfolding since 2020 in the Armenian Republic of Artsakh, better known as Nagorno Karabakh. The illegal aggression by Azerbaijan in 2020, accompanied by war crimes and crimes against humanity, as documented among others by Human Rights Watch[2], constituted a continuation of the Ottoman genocide against the Armenians[3]. It should be duly investigated by the International Criminal Court in the Hague pursuant to

articles 5, 6, 7 and 8 of the Rome Statute.[4] The President of Azerbaijan, Ilham Aliyev should be indicted and prosecuted. There must not be impunity for these crimes.

As former UN Independent Expert, and because of the gravity of the Azeri offensive of September 2023, I have proposed to the President of the UN Human Rights Council, Ambassador Vaclav Balek, and to the UN High Commissioner for Human Rights Volker Turk to convene a Special Session of the Human Rights Council to stop the egregious violations of human rights committed by Azerbaijan and provide immediate humanitarian assistance to the Armenian population, victim, among other things of an illegal siege and blockade which have caused deaths by hunger and a massive exodus toward Armenia.

This mountainous region adjacent to Armenia is what is left of 3000-year-old settlements of the Armenian ethnic group, already known to the Persians and Greeks as Alarodioi, mentioned by Darius I and Herodotus. The Armenian kingdom flourished in Roman times with its capital, Artashat (Artaxata) on the Aras River near modern Yerevan. King Tiridates III was converted to Christianity by St. Gregory the Illuminator (Krikor) in 314 and established Christianity as the state religion. Byzantine emperor Justinian I reorganized Armenia into four provinces and completed the task of Hellenizing the country by the year 536.

In the 8th century, Armenia came under increasing Arab influence but retained its distinct Christian identity and traditions. In the 11th century, Byzantine Emperor Basil II extinguished Armenian independence and soon after the Seljuq Turks conquered the territory. In the 13th century the whole of Armenia fell into Mongol hands, but Armenian life and learning, continued to be centered around the church and preserved in the monasteries and village communities. Following the capture of Constantinople and the killing of the last Byzantine Emperor, the Ottomans established their rule over the Armenians but respected the prerogatives of the Armenian patriarch of Constantinople. The Russian Empire conquered part of Armenia and Nagorno-Karabakh in 1813, the rest remaining under the yoke of the Ottoman Empire. With the outbreak of World War I, the Ottoman genocide against the Armenians and other Christian minorities began. It is estimated that approximately a million and a half Armenians and nearly a million Greeks from Pontos, Smyrna[5] as well as other Christians of the Ottoman empire were exterminated, the first genocide of the 20th century.

The suffering of the Armenians and in particular of the population of Nagorno Karabakh did not end with the demise of the Ottoman Empire, because the revolutionary Soviet Union incorporated Nagorno Karabakh into the new Soviet Republic of Azerbaijan, in

spite of the legitimate protests of the Armenians. Repeated requests for the implementation of their right of self-determination to be part of the rest of Armenia were dismissed by the Soviet hierarchy. Only following the collapse of the Soviet Union in 1991 did Armenia become independent and Nagorno Karabakh similarly declared independence.

Here would have been the moment for the United Nations to step in and organize self-determination referenda and facilitate the reunification of all Armenians. But no, the international community and the United Nations again failed the Armenians by not ensuring that the successor states of the Soviet Union would have rational, sustainable frontiers conducive to peace and security for all. Indeed, by the same logic as Azerbaijan invoked self-determination and became independent from the Soviet Union, the Armenian population living unhappily under Azeri rule had a right to independence from Azerbaijan. Indeed, if the principle of self-determination applies to the whole, it must also apply to the parts. But the people of Nagorno Karabakh were denied this right, and no one in the world seemed to care.

The systematic bombardment of Stepanakert and other civilian centers in Nagorno Karabakh during the 2020 war caused very high casualties and enormous damage to infrastructures. The authorities of Nagorno Karabakh had to capitulate. Less than three years later their hopes for self-determination have vanished.

The Azerbaijani aggressions against the population of Nagorno Karabakh constitute egregious violations of Article 2(4) of the UN Charter, which prohibits the use of force. Moreover, there were grave breaches of the 1949 Geneva Red Cross Conventions and 1977 Protocols. Again, no one has been prosecuted for these crimes, and it does not seem that anyone will be, unless the international community raises its voice in outrage.

The blockade of foods and supplies by Azerbaijan, and the cutting of the Lachin corridor certainly fall within the scope of the 1948 Genocide Convention, which prohibits in its article II c “Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.”<sup>[6]</sup> Accordingly, any state party can refer the matter to the International Court of Justice pursuant to article IX of the Convention, which stipulates “Disputes between the Contracting Parties relating to the interpretation, application or fulfillment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.”

Simultaneously, the matter should be referred to the International Criminal Court because of the flagrant commission of the “Crime of aggression” under the Statute of Rome and Kampala definition. The International Criminal Court should investigate the facts and indict not only Azerbaijani President Ilham Aliyev but also his accomplices in Baku, and, of course, Turkish President Recep Erdogan.

Nagorno Karabakh is a classical case of unjust denial of the right of self-determination, which is solidly anchored in the UN Charter (articles, 1, 55, Chapter XI, Chapter XII) and in the International Covenant on Civil and Political Rights, article 1 of which stipulates:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations. [7]

The situation in Nagorno Karabakh is not unlike the situation of the Albanian Kosovars under Slobodan Milosevic.[8] What takes priority? Territorial integrity or the right of self-determination? Paragraph 80 of the Advisory Opinion of the International Court of Justice in the Kosovo ruling of 22 July 2010 clearly gave priority to the right of self-determination[9].

It is the *ultima irratio*, the ultimate irrationality and criminal irresponsibility to wage war against the exercise of the right of self-determination by the Armenian population of Nagorno Karabakh. As I argued in my 2014 report to the General Assembly[10], it is not the right of self-determination that causes wars but the unjust denial thereof. Hence, it is time to recognize that the realization of the right of self-determination is a conflict-prevention strategy and that the suppression of self-determination constitutes a threat to international peace and security for purposes of Article 39 of the UN Charter. In February 2018, I spoke before the European Parliament on this very subject, in the presence of many dignitaries from the Republic of Artsakh.

The international community cannot condone the aggression of Azerbaijan against the people of Nagorno Karabakh, because that would establish a precedent that territorial integrity could be established by State terror and force of arms against the will of the populations concerned. Imagine if Serbia were to attempt to reestablish its rule over Kosovo by invading and bombarding Kosovo. What would the world's reaction be?

Of course, we are witnessing a similar outrage, when Ukraine tries to “recover” the Donbas or Crimea, although these territories are populated overwhelmingly by Russians, who not only speak Russian, but *feel* Russian and intend to preserve their identity and their traditions. It is preposterous to think that after waging war against the Russian population of Donbas since the Maidan coup d'état in 2014, there would be any possibility of incorporating these territories into Ukraine. Too much blood has been shed since 2014, and the principle of “remedial secession” would certainly apply. I was in Crimea and Donbas in 2004 as a representative of the UN for the parliamentary and presidential elections. Without a shadow of a doubt, a very large majority of these people are Russians, who, in principle, would have remained Ukrainian citizens but for the unconstitutional Maidan *coup d'état* and the egregious official incitement to hatred against everything Russian that followed the overthrow of the democratically elected President of Ukraine, Victor Yanukovich. The Ukrainian government breached Article 20 of the International Covenant on Civil and Political Rights when it persecuted the Russian-speaker in Ukraine. The Azeri government has also violated Article 20 ICCPR because of its incitement of hatred toward the Armenians — for decades.

Another hypothesis that no one has hitherto dared to raise: Imagine, just as an intellectual exercise, that a future German government, relying on 700 years of German history and settlement in East-Central Europe, were to reclaim by force the old German provinces of East Prussia, Pomerania, Silesia, East Brandenburg, which were taken by Poland at the end of WWII<sup>[11]</sup>. After all, Germans had settled in and cultivated these territories in the early Middle Ages, founded cities like Königsberg (Kaliningrad), Stettin, Danzig, Breslau, etc. We remember that at the end of the Potsdam Conference of July-August 1945, pursuant to articles 9 and 13 of the Potsdam communiqué (it was not a treaty), it was announced that Poland would get “compensation” in land and that the local population would be simply expelled — ten million Germans who lived in these provinces, a brutal expulsion<sup>[12]</sup> that resulted in the death of approximately one million lives<sup>[13]</sup>. The collective expulsion of ethnic Germans by Poland 1945-48, exclusively because they were German, was a criminal racist act, a crime against humanity. It was accompanied by the

expulsion of ethnic Germans from Bohemia, Moravia, Hungary, Yugoslavia, entailing five more million expellees and an additional million deaths. By far and away this mass expulsion and spoliation of mostly innocent Germans from their homelands constituted the worst ethnic cleansing in European history.[14] But, really, would the world tolerate any attempt by Germany to “recover” its lost provinces? Would it not violate article 2(4) of the UN Charter in the same way that the Azeri onslaught on Nagorno Karabakh has violated the prohibition of the use of force contained in the UN Charter and thereby endangered international peace and security?

It is a sad commentary on the state of our morals, on the non-respect of our humanitarian values, that many of us are accomplices in the crime of silence and indifference toward the Armenian victims of Azerbaijan[15].

We see a classical case where the international Responsibility to Protect principle must apply. But who will invoke it in the UN General Assembly? Who will demand accountability from Azerbaijan?

#### **Notes.**

[1] Paragraphs 138 and 139 of General Assembly Resolution 60/1 of 24 October 2005.  
<https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F60%2F1&Language=E&DeviceType=Desktop&LangRequested=False>

[2]<https://www.hrw.org/news/2020/12/11/azerbaijan-unlawful-strikes-nagorno-karabakh>  
<https://www.hrw.org/news/2021/03/19/azerbaijan-armenian-pows-abused-custody>  
<https://www.theguardian.com/world/2020/dec/10/human-rights-groups-detail-war-crimes-in-nagorno-karabakh>

[3] Alfred de Zayas, *The Genocide against the Armenians and the Relevance of the 1948 Genocide Convention*, Haigazian University Press, Beirut, 2010

Tribunal Permanent des Peuples, *Le Crime de Silence. Le Genocide des Arméniens*, Flammarion, Paris 1984.

[4] <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

[5] Tessa Hofmann (ed.), *The Genocide of the Ottoman Greeks*, Aristide Caratzas, New York, 2011.

[6] [https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1\\_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf)

[7] <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

[8] A. de Zayas « The Right to the Homeland, Ethnic Cleansing and the International Criminal Tribunal for the Former Yugoslavia » *Criminal Law Forum*, Vol.6, pp. 257-314.

[9] <https://www.icj-cij.org/case/141>

[10] A/69/272

[11] Alfred de Zayas, *Nemesis at Potsdam*, Routledge 1977. De Zayas, *A Terrible Revenge*, Macmillan, 1994.

De Zayas “International Law and Mass Population Transfers”, *Harvard International Law Journal*, vol. 16, pp. 207-259.

[12] Victor Gollancz, *Our Threatened Values*, London 1946, Gollancz, *In Darkest Germany*, London 1947.

[13] Statistisches Bundesamt, *Die deutschen Vertreibungsverluste*, Wiesbaden, 1957.

Kurt Böhme, *Gesucht Wird, Deutsches Rotes Kreuz*, Munich, 1965.

Report of the Joint Relief Commission of the International Red Cross, 1941-46, Geneva, 1948.

Bundesministerium für Vertriebene, *Dokumentation der Vertreibung*, Bonn, 1953 (8 volumes).

*Das Schweizerische Rote Kreuz – Eine Sondernummer des deutschen Flüchtlingsproblems*, Nr. 11/12, Bern, 1949.

[14] A. de Zayas, *50 Theses on the Expulsion of the Germans*, Inspiration, London 2012.

[15] See my BBC interview on Nagorno Karabakh, 28 September 2023, beginning on minute 8:50. <https://www.bbc.co.uk/programmes/w172z0758gyvzw4>

*Alfred de Zayas is a law professor at the Geneva School of Diplomacy and served as a UN Independent Expert on International Order 2012-18. He is the author of twelve books including “[Building a Just World Order](#)” (2021) “[Countering Mainstream Narratives](#)” 2022, and “[The Human Rights Industry](#)” (Clarity Press, 2021).*

CounterPunch 29.09.2023