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Luis Moreno Ocampo's Biased Opinion on Karabakh: Abusing the Genocide Convention for Political Ends

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Luis Moreno Ocampo’s Biased Opinion on Karabakh: Abusing the Genocide Convention for Political Ends

In the face of heightening tensions between Armenia and Azerbaijan, on 7 August 2023, Luis Moreno Ocampo, a former prosecutor of the International Criminal Court (ICC), produced the so-called [expert opinion](#) entitled “*Genocide against Armenians in 2023*” (“**Opinion**”). Some international media outlets referred to this opinion without carrying out their own fact-finding and creating a distorted picture of what is really happening on the ground.

In response, a prominent international law expert Rodney Dixon KC at the UK’s Temple Garden Chambers, produced his [preliminary legal opinion](#) on Mr. Ocampo’s opinion. Mr. Dixon’s opinion refutes Mr. Ocampo’s allegations as unsubstantiated and manifestly lacking any credibility and notes that the Opinion does not meet the exacting hallmarks of an impartial and rigorous expert analysis, which is essential for reporting of this kind, particularly when the circumstances are complex and sensitive. There is no basis for claiming that a genocide is currently being perpetrated in Nagorno-Karabakh.

This brief commentary touches on two major aspects of Mr. Ocampo’s opinion, namely, his credibility as a purported expert and his conspicuous omission of key facts in his analysis, which may have a significant impact on the use and conclusions of this opinion. It does not discuss all legal issues already covered by Rodney Dixon’s interim legal opinion. A full legal report will be produced by the Center of Analysis of International Relations in the near future.

I. Introduction

In this Opinion, Mr. Ocampo claims that the “blockade of the Lachin corridor by the Azerbaijani security forces impeding access to any food, medical supplies, and other essentials should be considered genocide under Article II (c.) of the Convention for the Prevention and Punishment of the Crime of Genocide (1949).” He specifically refers to Article 2: (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.

In context, it is not an expert legal opinion but the pro-Armenia political advocacy and consultancy of Mr. Ocampo. For instance, in addition to sketchy discussion of key legal issues, the Opinion uses historical analogies and discusses ‘Russia’s geopolitical interests,’ ‘Ukraine war,’ finding “institutional solutions to the disputed territorial claims before 2025,” and recommends how the EU and the US should use ‘classic diplomatic tools’ against Azerbaijan to influence its foreign policy and decisions (pages, 5, 12, 24), etc. It is not a usual practice in any reputable expert legal opinion to advise how to advance Armenia’s interest vis-à-vis Azerbaijan.

II. Factual Background

On 23 April 2023, Azerbaijan fully restored its border control with Armenia by building the border crossing post in Lachin and started checking persons and vehicles (via X-rays), including the Russian-peacekeeping force (see Figure 1). Armenia criticized it as a “blockade,” whereas Azerbaijan declared it as routine border control. Since then, Armenians enter and exit Karabakh – a part of Azerbaijani territory – and carry goods for personal use or business after undergoing the passport and cargo check.



Figure 1 Lachin Road

On 15 June 2023, Armenian army [opened fire](#) on Azerbaijani border guards in Lachin, [wounding](#) an Azerbaijani soldier. It interrupted the flow of people and goods through the Lachin crossing post for several days. Many states, including the US, expressed [concerns](#) over the shooting.

On 11 July 2023, the International Red Cross's (IRC) vehicles were caught carrying [undeclared goods](#) through the Lachin crossing post. The IRC issued a [statement](#) expressing "regret that without its knowledge four hired drivers tried to transport some commercial goods in their own vehicles, which were temporarily displaying the ICRC emblem." *Lachin border crossing post was temporarily closed due to a probe into smuggling by the IRC.*

On 15 July 2023, the sixth meeting between President Aliyev and Prime Minister Pashinyan by the invitation of the EU Council President Charles Michel ("Brussels format") happened. The parties also discussed alternative roads to the Lachin road for the transport of IRC's humanitarian aid, including the Aghdam road. The press release issued by President Charles Michel [noted](#) both aid transport options as important and encourage humanitarian deliveries from both sides to ensure the needs of the population are met (see Figure 2).

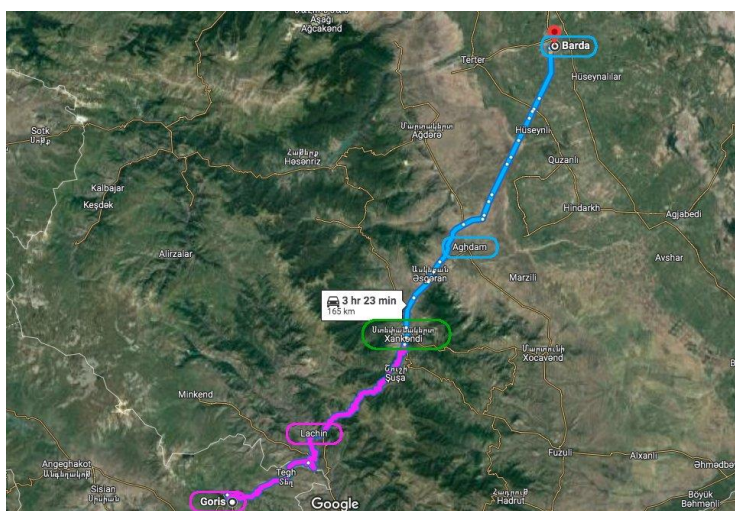


Figure 2 Aghdam-Askaran Road

Since this date, while there are no restrictions on Armenians' entry and exit to Karabakh through the Lachin crossing post (including carrying the goods for personal or business purposes), the parties cannot agree to use both roads for carrying aid to Karabakh. In particular, the Armenian side has physically [blocked](#) the Adgam road making it impassable for the IRC vehicles.

Requirements for Expert Opinion: Credibility and Absence of Bias

Unlike advocacy papers, in expert opinions, the credibility of an expert is the most fundamental principle in addition to expertise. The fact is that Mr. Ocampo's credibility has long been under question during his office at the International Criminal Court (ICC) and after he left the ICC. For instance, the [investigation](#) by the European Investigative Collaborations revealed that Mr. Ocampo managed numerous offshore companies based in some of the most notorious tax havens in the world while serving as chief prosecutor at the International Criminal Court in The Hague. It was clearly in breach of the requirements of the ICC Statute.

[Spiegel](#)'s investigation found Mr. Ocampo took undisclosed millions from alleged criminal billionaires in Libya through many offshore accounts. The investigation concluded that Mr. Ocampo's actions "betrayed the ideals and spirit of the ICC." The [Financial Times](#) investigation also found that "Luis Moreno Ocampo's dealings with Hassan Tatanaki, who has more recently been linked to a Libyan militia accused of extrajudicial killings and other rights violations, ICC employees also engaged in questionable dealings with Mr. Ocampo long after he left the organization to become a private consultant." The ICC said in a [statement](#) that Fatou Bensouda, its current prosecutor, had asked him to "refrain from any public pronouncement or activity that may — by virtue of his prior role as ICC prosecutor — interfere with the activities of the office or bring it into disrepute".

Mr. Ocampo has not disclosed his funding or other arrangements from the Armenian government and organization for this assignment, which is the best practice in expert consultancy in such international matters.

Impartiality and credibility are key requirements for writing an expert opinion, which is absent in this case. Considering such credibility issues relating to Mr. Ocampo and his current assignment, international organizations, journalist, and courts of law should not give any significant weight to his politically-charged opinion.

III. Consultancy Assignment and Prejudgment

Notably, Mr. Ocampo claims to have taken an assignment from Mr. Arayik Haratyunyan, the so-called president of the "Nagorno-Karabakh." It deserves mentioning that Mr. Haratyunyan is an alleged international war criminal, and there are criminal charges against him by Azerbaijan. In addition to leading an illegal regime in Karabakh, in 2020, Mr. Harutyunyan has publically [taken responsibility](#) for ordering a ballistic missile strike on the second major Azerbaijani city of Ganja. The ballistic strike [killed](#) 21 and injured 70 Azerbaijani civilians - the largest civilian casualty in a single day during the whole war. Mr. Ocampo's taking an assignment from a *prima facie* war criminal is not in line with any ethical rules of expert engagement. It would be akin to taking an assignment from [Ratko Mladić](#), the main culprit in the Srebrenica massacre, whether his actions were justified under international criminal law. These facts overshadow his overall credibility.

On a technical note, having taken an assignment from Mr. Harutyunyan on 29 July 2023, he publically [declared](#) on 3rd of August 2023 - after a mere three days of his assignment - that there was an act of genocide with *hashtags* supporting Armenia. It indicates a lack of proper fact-finding and rushed opinions.

Mr. Ocampo's connections to the Armenian government is beyond any doubt. In 2010, he [met](#) with Armenia's President Serj Sarkysyan, who was one of the masterminds of the [Khojali massacre](#) in 1992.

Mr. Ocampo's possible prejudgment against Azerbaijan is also evident from his early writing on [Just Security](#), where he calls Azerbaijan's effort to liberate its occupied territories under Armenia's control "aggression". As an international lawyer, he must be well aware of the states' right to [self-defense](#) to liberate their occupied territories under Article 51 of the UN Charter. Instead, he chose the term 'aggression' to describe Azerbaijan's right to self-defense under international law and did not mention Armenia's occupation, which indicates bias and prejudgment against Azerbaijan.

IV. Missing Substantial Facts

In addition to misinterpreting the facts on the ground, Mr. Ocampo's selective approach to facts and conspicuous omission of several fundamental facts overshadows his overall Opinion. For instance, the Opinion completely is silent on the following substantial facts that:

- (i) At present, Armenians can freely enter and exit Karabakh and carry any supplies through the Lachin border crossing post. It is one of the reasons why there is no lack of food provisions, let alone any "starvation";
- (ii) At present, Azerbaijan allows the constant flow of electricity and gas shipment from Armenia proper to Karabakh;
- (iii) Azerbaijan has [offered](#) to supply ethnic Armenians in Karabakh with food and medicine;
- (iv) Azerbaijan has several times invited the representatives of the ethnic Armenian population in Karabakh for negotiations;
- (v) Armenia and forces under its control in Karabakh do not allow the humanitarian aid provisions by the International Red Cross (IRC) through the Agdam road by building [concrete blocks](#) on the road; it indicates that [politics](#) instead of humanitarian need is the driving force for Armenia's unwillingness to allow the IRC provisions;
- (vi) There is more than [12,000 Armenian army units](#) still illegally stationed in Karabakh which could have a significant impact on diverting the food and provisions at the expense of the civilian population. In addition, the presence of this illegal force causes a serious security threat to Azerbaijan;
- (vii) Azerbaijan does not yet control the entire Karabakh region as the Russian peace-keeping forces illegally prevent access of the Azerbaijani authorities to the local Armenian population;
- (viii) The de-facto Armenian administration of the Russian-controlled Karabakh, which is still composed of separatist leaders who are prima facie war criminals, rejects any proposal to negotiate and co-operate with the Azerbaijani authorities, including on humanitarian issues. These forces have taken the local Armenian population hostage for their political plans;

- (ix) Armenia’s military occupation of a significant part of Azerbaijan’s territories and displacement of a million Azerbaijanis from such occupied territories. These international crimes include war crimes, humanitarian law and the laws of armed conflict and genocide with regard to the [Khojali massacre](#) in 1992;
- (x) The UN Security Council’s [resolutions](#) in 1993 on the Armenia-Azerbaijan conflict and the UN General Assembly [resolution](#) in 2008, which required the withdrawal of Armenian forces from the occupied territories;
- (xi) Armenia’s [total destruction](#) of Azerbaijan’s cities, towns, and villages and their cultural heritage, which constitutes an international war crime;
- (xii) Decisions of the leadership of the de-facto regime in Karabakh regarding refusing humanitarian aid and blocking the alternative routes to Karabakh;

The omission of these substantial facts is not accidental but deliberate, considering that the totality of these omitted facts would refute a false theory advanced by Mr. Ocampo about the *actus reus* (act or omission) and the existence of the *mens rea* (intent). An unbiased expert should have considered the totality of all facts on the ground to assess the allegations and provide a reasonable basis for disregarding these facts. Mr. Ocampo failed to do so.

V. Misinterpreting the ICJ’s Orders on Provisional Measures

Mr. Ocampo also grossly misinterprets the ICJ’s and the ECtHR’s orders on provisional measures on the Armenia-Azerbaijan conflict issued in the context of the UN Convention on Elimination of All Forms of Racial Discrimination (CERD).

The Opinion’s key argument that the ICJ’s [orders](#) on provisional measures confirmed the occurrence of the “material elements” of genocide that are set in Article II (c.) of the Genocide Convention (p. 15). In particular, the Opinion argues that:

“the ICJ’s order considered plausible that the rights a part of an ethnic group, the Armenians in Nagorno-Karabakh, are affected by the blockade of the Lachin Corridor. Therefore, the ICJ assessed that the “persons affected belonged to a particular ethnic group” as required by the Genocide Convention.” (p. 16)

According to Mr. Ocampo, since the ICJ found that “at least some of the rights” (e.g., “right to freedom of movement,” the “right to public health, medical care, social security and social services”) under CERD’s Articles 2 and 5 to be plausible (see the ICJ Order § 39) and there could be irreparable harm to such rights:

“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.” (p. 16)

First, contrary to the false narrative advanced in the Opinion, the ICJ did not use the word “[blockade](#)” and instead chose “interruption of movement” along the Lachin Corridor as the basis of its analysis. It did not attribute such “interruption of movement” to Azerbaijan.

Second, Mr. Ocampo does not recognize that in the ICJ’s practice the ‘[plausibility test](#)’ in interim measure decisions is applied to establish that the *rights* asserted by applicant states *might* exist under

international law. In no way it means the ICJ's conclusive factual findings on a legal violation e.g., "blockade," let alone finding a violation of alleged rights under international law. The fact is that the ICJ, in its order in the Armenia-Azerbaijan case, did not make any factual findings about the "blockade" and CERD's violations. Considering the urgency to protect such plausible rights, the ICJ ordered "unimpeded movement" in the Lachin corridor to protect such plausible rights as a provisional measure pending the final decision.

Notably, Mr. Ocampo tries to build a close connection between CERD and the Genocide Convention for all the wrong reasons. The Opinion does not recognize that the ICJ's order on the provisional measure under CERD does not automatically mean a violation of the Genocide Convention or vice versa. These conventions have different material and temporal scopes.

VI. Conclusion

Mr. Ocampo's "kitchen sink" approach to facts and law did not advance Armenia's cause at all. On the contrary, it revealed that this politically-charged Opinion was designed to galvanize the support of a number of key states for an emergency meeting of the UN Security Council scheduled on 16 August, 2023.

Armenia has the right to bring a claim against Azerbaijan before the ICJ under the Genocide Convention; however, the fact that it did not bring such a claim indicates the lack of any evidence to support such serious allegations and the confidence in its own case. Unlike political bodies, the ICJ has serious evidentiary standards for proving the *actus reus* (act or omission) and the existence of the *mens rea* (intent) of the crime of genocide. Neither the Opinion nor the Armenian government did provide such evidence because it does not exist.

In addition to Mr. Ocampo's "dubious reputation" and prejudgment against Azerbaijan, the Opinion's defects on legal and factual points calls on exercising strict scrutiny when utilized by international organizations, media outlets and judicial bodies.