

DRAFT, NOT OFFICIAL FINAL TEXT

118th Congress
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H. R. 5686

To prevent ethnic cleansing and atrocities against ethnic Armenians, promote accountability for the same, protect and provide humanitarian assistance to Armenians in Armenia and Nagorno-Karabakh impacted by actions taken by the Government of Azerbaijan, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES
September 22, 2023

Mr. Smith of New Jersey (for himself, Mr. SHERMAN, Mr. BILIRAKIS, Mr. COSTA, Mr. HILL) introduced the following bill; which was referred to

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Preventing Ethnic Cleansing and Atrocities in Nagorno-Karabakh Act of 2023.”

SEC. 2. FINDINGS.

Congress makes the following findings:

- (1) In September 2020, Azerbaijan invaded Nagorno-Karabakh, resulting in conflict in which more than 6,500 people in Armenia, Azerbaijan, and Nagorno-Karabakh were killed.
- (2) According to the United Nations High Commissioner for Refugees (UNHCR), Azerbaijan’s 2020 invasion resulted in the displacement of more than 91,000 individuals from Nagorno-Karabakh, with the vast majority, primarily women and children, living in a “refugee-like” situation in the war’s aftermath.
- (3) People displaced by Azerbaijan’s invasion of Nagorno-Karabakh continue to have acute humanitarian needs, including access to drinking water and health care.
- (4) Human Rights Watch found that Azerbaijani forces indiscriminately used cluster munitions and artillery rockets against civilian targets and destroyed civilian infrastructure, including hospitals and schools during the 2020 war.
- (5) In September 2022, Azerbaijan unleashed another assault on Armenian territory, including the cities of Vardenis, Sotk, Artanish, Ishkhanasar, Goris, and Kapan, which killed almost 400 military personnel.

(6) Azerbaijani forces shelled Armenian communities in September 2022, killing at least 4 civilians, injuring 14, and displacing at least 7,600 people, including almost 1,500 children and 100 people with disabilities.

(7) In December 2022, Azerbaijan imposed a blockade of the Lachin Corridor, a road by which 90 percent of food consumed by residents of Nagorno-Karabakh previously entered the enclave.

(8) The International Court of Justice ordered Azerbaijan in February 2023 to “ensure unimpeded movement of persons, vehicles, and cargo along the Lachin Corridor in both directions,” a ruling with which Azerbaijan has failed to comply.

(9) Azerbaijan’s installation of a military checkpoint in the Lachin Corridor in April 2023 further threatened the supply of urgent humanitarian goods to Nagorno-Karabakh.

(10) On August 6, 2023, the Armenian Ombudsperson reported that no humanitarian aid had entered Nagorno-Karabakh since June 15, and that miscarriages had tripled.

(11) On August 7, 2023, a United Nations group of experts stated that Azerbaijan’s ongoing blockade of the Lachin Corridor “is a humanitarian emergency that has created severe shortages of essential food staples” and threatens medical reserves.

(12) On August 7, 2023, Luis Moreno Ocampo, former Prosecutor of the International Criminal Court (2003-2012), released an Expert Opinion that under the Genocide Convention the actions of the Azerbaijan government toward ethnic Armenians in Nagorno-Karabakh constituted the crime of genocide. He urged that members of the United Nations Security Council seek to refer the matter to the International Criminal Court for investigation and prosecution under the Genocide Convention.

(13) In certain instances, Azerbaijani authorities have detained residents of Nagorno-Karabakh traveling to Armenia through the Lachin Corridor. These ethnic Armenians who chose to depart for Armenia to avoid starvation are left wondering if they can evacuate safely.

(14) According to the International Committee of the Red Cross, residents of Nagorno-Karabakh are increasingly lacking life-saving medication, hygiene products, baby formula, and basic foodstuffs.

(15) The United States Commission on International Religious Freedom’s 2023 Annual Report noted the documented destruction of Armenian heritage sites in Nagorno-Karabakh, including St. Sargis Church; while in March 2023 the European Parliament condemned an Azerbaijani policy to “erase and deny Armenian cultural heritage in and around Nagorno-Karabakh”.

(16) In a September 2022 report, the United Nations Committee on the Elimination of Racial Discrimination expressed deep concern in Azerbaijan regarding “[i]ncitement to racial hatred and the propagation of racist stereotypes against persons of Armenian national or ethnic origin, including on the Internet and social media, as well as by public figures and government officials, and the lack of detailed information on investigations, prosecutions, convictions, and sanctions for such acts”.

(17) Any peace agreement between Armenia and Azerbaijan will only be sustainable if it includes protections for the Armenian population of Nagorno-Karabakh.

(18) On September 19, 2023, Azerbaijan launched an assault on Nagorno-Karabakh, within the first days of that attack more than 200 civilians were killed, including children, and 400 wounded.

SEC. 3. SENSE OF CONGRESS.

It is the sense of Congress that—

- (1) Long-standing U.S. policy not to recognize changes to borders or political status that a party to a conflict attempts to make by force or aggression should be applied in relation to Azerbaijan, Nagorno-Karabakh, and Armenia;
- (2) Long-standing U.S. policy has been and should remain to facilitate a negotiated settlement of Nagorno-Karabakh's political status, neither recognizing Azerbaijan's claim to sovereign authority over Nagorno-Karabakh, nor Nagorno-Karabakh's claim to independence, but to promote resolution of the question of its status through negotiation within the OSCE Minsk Group;
- (3) The U.S. should not recognize any settlement of Nagorno-Karabakh's political status that is achieved as a consequence of Azerbaijan's military invasion of Nagorno-Karabakh in 2020, its blockade of Nagorno-Karabakh since December 12, 2022, the invasion that began on September 19, 2023, or its threats and coercion of Armenian leaders in Nagorno-Karabakh, including by creating an atmosphere of terror;
- (4) Numerous documented reports and evidence of atrocities, war crimes, crimes against humanity, and genocide committed by Azerbaijan in and around Nagorno-Karabakh should be investigated, those responsible should be held accountable, and the U.S. should play a leading role in promoting this process;
- (5) Due to credible reports of ongoing atrocities against ethnic Armenians following the Azerbaijani invasion of Artsakh that began on September 19, 2023, the U.S. should press for immediate access by international observers, including U.S. diplomats, to promote verification of these reports;
- (6) The United States should direct the United States Representative to the United Nations to use the voice, vote, and influence of the United States to refer the actions of the government of Azerbaijan toward ethnic Armenians in Nagorno-Karabakh to the International Criminal Court for investigation and prosecution under the Genocide Convention;
- (7) Azerbaijan is conducting a campaign of ethnic cleansing against Armenians living in Nagorno-Karabakh and the United States and the international community have a responsibility to provide immediate humanitarian support;
- (8) The Government of Azerbaijan must immediately cease actions that undermine the mission of the International Committee of the Red Cross and restore unfettered humanitarian access to the region, including by facilitating the transfer of food, fuel, medicine, and hygiene products; and
- (9) The Government of Azerbaijan should immediately release all Armenian prisoners of war.

SEC. 4. HUMANITARIAN ASSISTANCE FOR ARMENIANS IN ARMENIA AND NAGORNO-KARABAKH.

There is authorized to be appropriated to the United States Agency for International Development, for fiscal year 2024, \$30,000,000 to provide humanitarian assistance to groups in Armenia and Nagorno-Karabakh impacted by the 2020 Nagorno-Karabakh War, Azerbaijan's September 2022 attack on Armenia, and Azerbaijan's blockade of the Lachin Corridor.

SEC. 5. FREEDOM SUPPORT ACT SECTION 907 WAIVER REPEAL.

Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107-115) (22 U.S.C. 5812 note) is amended, under the heading "ASSISTANCE FOR THE

INDEPENDENT STATES OF THE FORMER SOVIET UNION”, by striking paragraphs (2) through (6) of subsection (g).

SEC. 6. FOREIGN MILITARY FINANCING.

(a) AUTHORIZATION.—There is authorized to be appropriated \$12,000,000 for the Department of State for fiscal year 2024 for Foreign Military Financing program assistance for the Republic of Armenia.

(b) PURPOSES.—The Foreign Military Financing program assistance authorized by subsection (a) shall be used to—

- (1) support Armenia’s sovereign independence;
- (2) support joint training and exercises with the United States;
- (3) enhance United States-Armenia interoperability; and
- (4) train Armenian forces for future international peacekeeping operations.

SEC. 7. STRATEGY TO PROTECT THE RIGHTS OF PEOPLE IN NAGORNO-KARABAKH.

(a) STRATEGY REQUIRED.—Not later than 45 days after the date of the enactment of this Act, the Secretary of State shall submit to the appropriate congressional committees a detailed strategy to ensure the durable security for the people of Nagorno-Karabakh.

(b) ELEMENTS.—The strategy required by subsection (a) shall include—

(1) incorporating the rights and security of the people in Nagorno-Karabakh into any and all efforts to facilitate peace talks between Armenia and Azerbaijan, including the right of the ethnic Armenians to live safely in Nagorno-Karabakh; and

(2) a plan to work with leaders of Nagorno-Karabakh and the international community to ensure—

(A) the establishment of accountability measures to ensure the rights and security of the population of Nagorno-Karabakh in the event that the governments of Armenia and Azerbaijan reach a peace agreement;

(B) the stationing of U.S. diplomats in Nagorno-Karabakh in order that they can observe, interact with and receive reports from inhabitants;

(C) support for the protection of Armenian cultural heritage sites in Nagorno-Karabakh, including the 24-hour video monitoring of those sites;

(D) Armenians in Nagorno-Karabakh are able maintain their right to study according to a curriculum designed by local representatives, worship according to their chosen religious beliefs, and speak their preferred language; and

(E) The survival of Armenian cultural heritage in Nagorno-Karabakh, including monasteries, churches, and cemeteries.

SEC. 8. ACCOUNTABILITY FOR ALLEGED AZERBAIJANI ATROCITIES DURING SEPTEMBER 2022 ATTACK ON ARMENIA.

(a) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of State shall submit to the appropriate congressional committees a detailed report regarding evidence that Azerbaijan and its proxies violated international humanitarian law and committed atrocities and war crimes during its attacks on Armenia in September 2022 and on Nagorno-Karabakh in September 2023.

(b) ELEMENTS.—The report required under subsection (a) shall include the following elements:

(1) A description of the status of efforts to investigate, verify, and promote accountability for alleged atrocities, including war crimes and crimes against humanity that Azerbaijani forces committed during the course of Azerbaijan’s attacks on Armenia in September 2022, on Nagorno-Karabakh in September 2023, and a description of any documented atrocities to date.

(2) A description of United States support for efforts to investigate, verify, and promote accountability for alleged atrocities, including war crimes and crimes against humanity that Azerbaijani forces committed during the course of attacks on Armenia in September 2022 and on Nagorno-Karabakh in September 2023.

(3) A description of efforts to promote justice for victims of alleged atrocities, including statements by civilians who were victimized.

(4) A strategy for diplomatic engagement to build support multilaterally for widespread accountability for these atrocities, including multilateral engagements, economic sanctions, visa restrictions, and freezing of foreign assets by the perpetrators and their family members.

(5) Plans to deter future Azerbaijani attacks against Armenia by expanding US-Armenia joint exercises and other forms of security cooperation.

SEC. 9. ENHANCED REPORTING RE INCITEMENT TO ETHNIC HATRED AND VIOLENCE, HUMAN RIGHTS VIOLATIONS, ATROCITIES, WAR CRIMES, CRIMES AGAINST HUMANITY AND GENOCIDE.

(a) The State Department shall assess incitement of ethnic hatred and violence, human rights violations, atrocities, war crimes, violations of international humanitarian law, crimes against humanity, and genocide, including elements of these crimes committed in Nagorno-Karabakh and surrounding areas of Azerbaijan in relation to the conflict over Nagorno-Karabakh since January 1, 2020. Such enhanced reporting shall include gathering and evaluating evidence, including that which is publicly available on Columbia University’s Artsakh Atrocities website, and including a description of documented atrocities, and should also include information on perpetrators in Azerbaijan’s armed forces, as well as militias including Islamist armed groups engaged on the ground.

(b) Such enhanced reporting shall be made available on the website of the State Department.

(c) Evidence gathered pursuant to subsection (a) shall be available to appropriate law enforcement or judicial authorities, including appropriate national, regional or international justice mechanisms for use as evidence to support the indictment and trial of any persons responsible for human rights abuses including incitement to hatred, violence, atrocities, ethnic cleansing, war crimes, crimes against humanity and genocide.

SEC. 10. IMPOSITION OF SANCTIONS WITH RESPECT TO OFFICIALS OF THE GOVERNMENT OF AZERBAIJAN RELATED TO ETHNIC CLEANSING IN NAGORNO-KARABAKH.

(a) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act, and after making the determination required by subsection (c), the President shall impose sanctions described in subsection (d) with respect to each official of the Government of Azerbaijan—

(1) specified in subsection (b); or

(2) determined by the President under subsection (c) to have directed an attack or the blockade described in that subsection.

(b) OFFICIALS SPECIFIED.—The officials specified in this subsection are the following:

(1) The President of Azerbaijan.

(2) The Minister of Defense of Azerbaijan.

(3) The Minister of Defense Industry of Azerbaijan.

(4) The Chief of the State Border Service of Azerbaijan.

(5) The Chief of the State Security Service of Azerbaijan.

(6) The Chief of the Foreign Intelligence Service of Azerbaijan.

(c) IDENTIFICATION OF ADDITIONAL OFFICIALS.—

Not later than 30 days after the date of the enactment of this Act, the President shall determine whether any officials of the Government of Azerbaijan, in addition to the officials specified in subsection (b), directed—

(1) operations that instigated the 2020 Nagorno-Karabakh War;

(2) attacks on Armenia in September 2022;

(3) the blockade of the Lachin Corridor beginning in December 2022; or

(4) attacks on Nagorno-Karabakh in September 2023.

(d) SANCTIONS DESCRIBED.—The sanctions to be imposed under subsection (a) with respect to an official described in that subsection include any of the sanctions authorized under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), the Global Magnitsky Human Rights Accountability Act (22 U.S.C. 2656), or any other provision of law.

(e) NATIONAL SECURITY WAIVER.—The President may waive the imposition of sanctions under this section with respect to an official described in subsection (a) if the President—

(1) determines that such a waiver is in the national security interests of the United States; and

(2) submits to the appropriate congressional committees a notification of the waiver and the reasons for the waiver.

SEC. 11. APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.

In this Act, the term “appropriate congressional committees” means—

- (1) the Committee on Foreign Relations and the Committee on Appropriations of the Senate; and
- (2) the Committee on Foreign Affairs and the Committee on Appropriations of the House of Representatives.