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Self-Determination v Remedial Secession: The Status of Republic of Artsakh (Nagorno-Karabakh) under International Law

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Abstract

Nagorno-Karabakh is a region situated between Azerbaijan and Armenia, which has been the subject of a territorial dispute between the two neighbouring countries. The region declared independence as Republic of Artsakh and separated from Azerbaijan. Azerbaijan accused Armenia of unlawfully intervening in the formation of Artsakh, while Artsakh claimed its independence was legal under the Soviet's Law of Secession, asserting its right to self-determination. Artsakh also pointed to human rights abuses and systematic discrimination by Azerbaijan as reasons for its secession. This paper examines the legitimacy of Artsakh's secession and considers the role of alleged human rights violations by Azerbaijan for its legitimacy. International law demonstrated that practices of secession were somewhat accepted provided that a lawful ground has been adequately fulfilled as a mandatory part of divorcing a territory from its mainland. However, Artsakh's secession from Azerbaijan is not provided by a solid, reasonable measure as a "remedial" for all the casualties that had taken place. Also, on historic ground, Artsakh failed to provide sufficient records and proof to attest to its legitimacy as a separate entity utterly detached from Azerbaijan.

Keywords: Nagorno-Karabakh, Self-Determination, Remedial Secession.

A. INTRODUCTION

Self-determination started initially as an idea, but eventually, it found its staunch standing in various legal instruments, ranging from the international dimension to the national ones. The idea of self-determination strongly correlates with one of the essences of what makes for a democratic rule; as introduced by Woodrow Wilson, self-determination remains an

inseparable aspect in ensuring an effective implementation of democracy within a nation.³ A subsequent development of this idea divided self-determination into two main categories: internal and external.⁴ The former arranges for an adequate guarantee of an equal distribution of protection in virtue as an inalienable right of all peoples to determine their political status and pursue their economic, political, social, and cultural development freely within the

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³ David Raic, *Statehood and the Law of Self-Determination* (The Hague: Kluwer Law International, 2002), p. 178.

⁴ Supreme Court of Canada, *Reference re Secession of Quebec*, [1998] 2 S.C. R. 217, para. 126

responsibility of a State. The latter necessitates the requisite need to detach a part of a territory from the main territory, which acts as the central government or the "motherland," to accomplish the same objective.

The argument of the external right of self-determination, in this particular understanding, has been used faithfully by the separating entity known as the Republic of Artsakh in its attempt to separate from Azerbaijan. This entity, which laid claims on the entire region of Nagorno-Karabakh, otherwise known as a part of Azerbaijan's province, engaged as a central location of an armed conflict between Azerbaijan and Armenia. Occasional violent skirmishes have been reported to be a frequent event, with casualties often impacting civilians residing in the Nagorno-Karabakh region.⁵

The conflict itself finds its genesis dating far from during the reign of the Persian Empire in the Southern Caucasus region.⁶ After a period of war between the Russian and Persian Empires, a decision was called in virtue of the Treaty of Gulistan in 1813 to transfer the authority of Nagorno-Karabakh along with several provinces near the Armenia Province to be within the Russian Empire's control.⁷ In another effort to assert its influence in the Southern Caucasus region, the Russian Empire enacted a mass immigration policy for Armenian people,

where it was estimated that 57,000 to 200,000 Armenians were being made to relocate to the Nagorno-Karabakh region.⁸ This policy has also garnered a view to be most influential in commencing the interethnic tension between the Armenian and Azerbaijan people residing in Nagorno-Karabakh.⁹

The fall of the Russian Empire in 1917 caused a significant development to the ongoing tension in the region, marking the start of the first series of violent skirmishes in Nagorno-Karabakh. In the same period, the Ottoman Empire launched an invasion of the Southern Caucasus region—and in effect of Armenia, leading to the drafting of the Treaty of Batumi in 1918, which established Nagorno-Karabakh as part of Azerbaijan.¹⁰ However, the Ottoman Empire's hold of the region was impeded by the events of the First World War that resulted in its massive loss, precipitating a movement by an Armenian political party to attempt a claim over the territories in Georgia, Eastern Anatolia, and Azerbaijan, which includes Nagorno-Karabakh.¹¹

By 1918, the British Army entered the Southern Caucasus region, where it came to acknowledge Nagorno-Karabakh as part of Azerbaijan.¹² In the same vein, the Paris Peace Conference outcome regarded Nagorno-Karabakh as an agreed part of Azerbaijan.¹³

⁵ Human Rights Watch reported the use of cluster munitions by Azerbaijan military forces in a populated residential area in Nagorno-Karabakh in <https://www.hrw.org/news/2020/12/15/armenia-cluster-munitions-used-multiple-attacks-azerbaijan>. Al-Jazeera noted that from 27 September until 29 October 2020, around 20 civilians had been killed by Azeri forces with 70,000 people to have been internally displaced during the period of the escalation in <https://www.aljazeera.com/news/2020/10/12/the-human-cost-of-the-nagorno-karabakh-conflict>.

⁶ Shaheh Avakian, *Nagorno-Karabakh: Legal Aspects* (Moscow: MIA Publishers, 2015), p. 8.

⁷ *Ibid.*

⁸ Heiko Kruger, *The Nagorno-Karabakh Conflict: A Legal Analysis* (Berlin: Springer, 2010), p. 7.

⁹ *Ibid.*, p. 8.

¹⁰ According to the contents of Treaty of Batumi of 4 June 1918, the territory of Armenia only encapsulates the areas

surrounding the Basin of Sevan and the valley of Arrarat, in which Nagorno-Karabakh was excluded, *ibid.*, p. 12.

¹¹ Audrey L. Altstadt, *The Azerbaijani Turks: Power and Identity under Russian Rule* (Washington: Hoover Institution Press Publication, 1992), pp. 70-86.

¹² A.A. Gharibyan, *The Issue of Nagorno-Karabakh in 1918-1920 and Great Britain* (Yerevan: Yerevan State University Press, 104), p. 64-65.

¹³ The Supreme Council of the Allied Powers *de facto* recognised the independence of the Republic of Azerbaijan, which encompasses its authority of Nagorno-Karabakh. The proposition which insinuates Nagorno-Karabakh to not fall under Azerbaijan's jurisdiction was met in contention through the decision by the Caucasian Bureau of the Central Committee of the Russian Communist Party at 5 July 1921. See Protocol of the Plenary Session of the Caucasian Bureau of the Central Committee of the Russian Communist Party (Bolsheviks), 5 July 1921 in Karol Nowak, Master Thesis:

The rise of the Soviet Union by 1920 with its expansion policy caused principal changes as it moved onto the Southern Caucasus region, annexing Azerbaijan and Armenia and consecutively altering their territorial statuses as the Soviet Socialist Republic.¹⁴ In addition, the central Soviet Union government assigned Nagorno-Karabakh to be a part of the Azerbaijan Soviet Republic and was granted the status of a particular autonomous for which it was then named Nagorno-Karabakh Autonomous Oblast (“NKAO”).¹⁵

This decision was responded to with immediate hostility by the Armenians residing in NKAO, who demanded incorporation into Armenia. Notwithstanding, the implementation of what had been believed by the Armenians to be a set of discriminatory policies — supported a system of marginalization directed at the Armenian population in NKAO.¹⁶ Following the rise of this augmented sentiment, a large portion of Armenians in Nagorno-Karabakh formed the “*National Council of Nagorno-Karabakh*,” which proclaimed Nagorno-Karabakh as an independent territory by 2 September 1991, with the right to choose its parliamentary members and considered itself to be having authority in the same manner to that vested on a state.¹⁷ As its neighboring state, Armenia was alleged to have interfered in the creation of this council and facilitated a subsequent referendum held in Nagorno-Karabakh shortly after Azerbaijan’s swift response of

revoking the special autonomous status as was enjoyed by NKAO.¹⁸ As to note, the populace that made the votes of said referendum lacked considerable participation from the ethnic Azerbaijani residing in Nagorno-Karabakh who believed that the Council had not considered their aspirations.

By 1991, as an effort to repress the increasingly congeal aim of the Armenians in NKAO that sought independence, Azerbaijan authorities coerced thousands of Armenians residing in NKAO to leave their homes. They were suspected of having conducted mass killings and enforced disappearances throughout these repressive acts. One of the particular examples brought forth of Operation Ring, which had been estimated to have involved numerous alleged human rights abuses, which include but are not limited to unlawful killings, arbitrary detentions, and torture committed by the Azeri forces.¹⁹

As the Soviet Union progressed toward dissolution by the 1990s, the climate of the conflict reached its crest as it matured into an armed conflict in Nagorno-Karabakh, with known belligerents involved to be Azerbaijan and Armenia, who had intervened directly in the territorial dispute.²⁰ Armenia has been considered to have supplied arms and conferred diplomatic assistance to the creation of the Nagorno-Karabakh entity, prompting another action of emphasizing the independence of the region by 6 June 1992

“Enforcement of International Law in the Nagorno-Karabakh Conflict” (Lund: Lund University, 2007), p. 18-19.

¹⁴ The decision to annex Armenia and Azerbaijan into Soviet Socialist Republics respectively was followed with a policy that combined Armenia, Azerbaijan and Georgia to form the Transcaucasian Soviet Federated Socialist Republic (“TSFSR”) until it was dissolved and each part were given republic statuses in 1936. See Glenn E. Curtis, *Armenia, Azerbaijan, and Georgia: Country Studies* (Washington: Library of Congress, 1995), p. 16.

¹⁵ Svante E. Cornell, “*The Nagorno-Karabakh Conflict*” in Report No. 46 Department of East European Studies (1999), p. 9.

¹⁶ Heiko Kruger, *The Nagorno-Karabakh Conflict: A Legal Analysis* (Berlin: Springer, 2010), p. 17. Erik Melander, “*The*

Nagorno-Karabakh Conflict Revisited” in *Journal of Cold War Studies* Vol. 3 No. 2, 2001, p. 51.

¹⁷ Heiko Kruger, *The Nagorno-Karabakh Conflict: A Legal Analysis* (Berlin: Springer, 2010), p. 20.

¹⁸ *Ibid.*, p. 20-39.

¹⁹ See Levon Chorbajian, *The Making of Nagorno-Karabakh – From Secession to Republic* (Hampshire: Palgrave, 2001), p. 16. Armenian Rehabilitation and Development Center for Torture Victims, “*Alternative Report to the UN Committee against Torture on Implementation of Article 14 of the Convention*”, October 2016, p. 3.

²⁰ Saeed Bagheri, “*Exploring the Legality of the Constitutional and Independence Referendums in Nagorno-Karabakh under International Law*” in *Nordic Journal of International Law* 90 (2021), p. 1-2.

by Nagorno-Karabakh, which maintains its separate status from Azerbaijan.²¹ On the other hand, the Nagorno-Karabakh entity argued that its formation as a state is *ipso facto* legitimate as it has satisfied the required conditions as stipulated in the Law on Procedure for Resolving Questions Connected with a Union Republic's Secession from the USSR of 3 April 1990 or commonly known as Law on Secession from the USSR.²²

During the period from 1992 to 1994, Armenia and Azerbaijan declared an official war concerning the territorial dispute of Nagorno-Karabakh.²³ The war eventually saw Armenia as the victor as it proceeded to occupy several of Azerbaijan's districts and forced Azeri military forces to leave Nagorno-Karabakh's borders. The war became a frozen conflict secured by a ceasefire agreement signed in May 1994, and Nagorno-Karabakh was left as *de facto* independent — nevertheless still heavily relying on Armenia for its survival.²⁴

Armenia's prolonged occupation over the districts came to a suspension on 27 September 2020 due to a military attack by Azerbaijan's forces, prompting the start of military clashes known as the Four Day War, which took place in the surrounding borders between Nagorno-Karabakh forces, backed by Armenian Armed Forces and Azerbaijan.²⁵ Supplemented with Turkey's military assistance, Azerbaijan successfully reclaimed most of Nagorno-Karabakh's

region to return under its dominion by 2020.

Despite this, the status of Nagorno-Karabakh still needs to be clarified. A Russian-brokered ceasefire agreement generated a stalemate between Armenia and Azerbaijan, and it resolved to assign peacekeeping officers to Lachin Corridors that link Nagorno-Karabakh and Armenia.²⁶ However, attempts to decide the eventual status of Nagorno-Karabakh are still in a protracted impasse, considering previous efforts that have been made to mediate parties to the conflict had all been rejected.²⁷

Notwithstanding this seemingly deadlocked circumstance, the entity Nagorno-Karabakh—which had named and declared itself since as Artsakh, continued to operate and behave in an act similar to that of an established state, even to the extent of having diplomatic relations with other states.²⁸ Despite several objections from international organs, Artsakh stated and preserved that the act of secession that it conducted is not deprived of its legality.

This, in turn, prompts a rather curious proposition as to what may successfully legitimize the urgency of a secession. Moreover, to what extent could exercising the right of external self-determination warrant an entity to separate itself from a territory? This paper will also examine the legal consequences arising from the formation of states that remained constrained by their disputed status and

²¹ Heiko Kruger, *The Nagorno-Karabakh Conflict: A Legal Analysis* (Berlin: Springer, 2010), p. 22.

²² *Verbatim Record from the Permanent Mission of Armenia to the United Nations Office at Geneva and the UN High Commissioner for Human Rights*, 21 March 2005, p. 7.

²³ Levon Chorbajian, *The Making of Nagorno-Karabakh – From Secession to Republic* (New York: Palgrave, 2001) p. 72.

²⁴ International Crisis Group, "Getting from Ceasefire to Peace in Nagorno-Karabakh" <https://reliefweb.int/report/armenia/getting-ceasefire-peace-nagorno-karabakh> accessed in 17.17 26 September 2023.

²⁵ Agha Bayramov, "Silencing the Nagorno-Karabakh Conflict and Challenges of the Four-Day War" in *Security and Human Rights* 27 (2016), p. 118.

²⁶ Olesya Vartanyan, "A Risky Role for Russian Peacekeepers in Nagorno-Karabakh"

<https://www.crisisgroup.org/europe-central-asia/caucasus/nagorno-karabakh-conflict/risky-role-russian-peacekeepers-nagorno-karabakh>, accessed in 18.21, 26 September 2023.

²⁷ P. Terrence Hopmann, "Minsk Group Mediation of the Nagorno-Karabakh Conflict: Confronting an 'Intractable Conflict'" in *OSCE Yearbook* 2014, p. 172.

²⁸ Recognition for Artsakh as a state was bestowed by Transnistria, Abkhazia and South Ossetia. See *De Facto States*, "Will Armenia Recognize the Independence of Nagorno-Karabakh?" <https://defactostates.ut.ee/blog/will-armenia-recognize-independence-nagorno-karabakh> accessed in 18.52, 26 September 2023.

limited recognition under international customary law and existing cases and practices.

B. CONCEPTUALISATION OF SELF-DETERMINATION AND SECESSION IN INTERNATIONAL LAW

1. Right to Self-determination

Woodrow Wilson pioneered the inception of this concept. He conferred that self-determination is an inextricable part of a full realization of democracy that concerns the dogma of *vox populi vox dei*—the voice of the people is the voice of God.²⁹ Wilson also emphasizes that a democratic rule would serve as a system that guarantees freedom from alien subjugation and conflicts, as it allows liberty for the society to choose which model of governance suits them best, monitor the actions of their sovereign, and establish by their collective prerogative, that these actions would not infringe their rights.³⁰

The Treaty of Versailles served as the first international induction of this idea, where Wilson, in his “Fourteen Points and the Four Principles” speech, highlighted a point that features a notion of the right to self-government.³¹ In his view, an expansion of this principle would also contain a universal character regarding its consequent application in the colonies of Asian and African regions — in which supervision is required before any form of self-governance could be accorded.³² He also argued that in its thematic outline, the distribution of equal welfare to minority

groups and those bearing the same ethnicities becomes a conclusive aim of the proposition of self-determination.³³

On the other hand, Vladimir Lenin recognizes the concept of self-determination as a principle that applies collectively instead of *exclusively* to all individuals, as stated in *The Socialist Revolution*,³⁴

“This demand for political democracy implies complete freedom to agitate for secession and a referendum on secession by the seceding nation. This demand [...] is not equivalent to a demand for separation, fragmentation, and the formation of small states. It implies only a consistent expression of the struggle against all national oppression.”

Oppression results from “bourgeois nationalism,” a constituent aspect contributing to the right to self-determination. In this discourse, Lenin also stressed a distinction between a right to secession and the resort to secession. Whereas in a more specific understanding, Lenin believes that the resort to secession could only be conducted when there is an evident display of oppression and national friction which heavily impacted economic activities; wherein to achieve the interest of capital development best and freedom of class struggle calls for an act of secession.³⁵ In conjunction with this view, Lenin also posits his definition of self-determination — which he considers as a right to secession to attain a complete integration of other nations, that aligns with Karl Marx’s ideals for a “classless society.”³⁶

²⁹ *Ibid.*, p. 178.

³⁰ *Ibid.*

³¹ The given context to Wilson’s address was specifically restricted to the national groups in Europe, as the Fourteen points were delivered on the basis of a peace settlement and armistice to the First World War in 5 November 1918. Notwithstanding, this does not hinder the inflation of his own perspective in regards to self-determination.

³² Johan D. van der Vyver, “The Right to Self-Determination and Its Enforcement” in *ILSA Journal of International & Comparative Law* Vol. 10 (2004), p. 422.

³³ David Raic, *Statehood and the Law of Self-Determination* (The Hague: Kluwer Law International, 2002), p. 183.

³⁴ Vladimir Lenin, *The Socialist Revolution* in David Raic, *Statehood and the Law of Self-Determination* (The Hague: Kluwer Law International, 2002), p. 185.

³⁵ *Ibid.*

³⁶ See David Raic, *Statehood and the Law of Self-Determination*, p. 186. Moreover, Lenin asserts the view that the creations of separate States do not promulgate as the ultimate objective of the implementation of self-

During World War I, further restrictions were placed on the principle of self-determination. The common shared view was that a successful accomplishment of self-determination could only be achieved with broad support from the Allies and that it was to be regarded as a “reward” from other States that had acquired prior independence, where the Åland Islands case would serve as the best first applied example for this paragon in the scope of international level.

The Åland Islands Question, as brought before the League of Nations, concerned a proposed initiative from the people of Åland Islands to merge with Sweden and to reject the offer made by the Finland Government on the allotment of special autonomous status.³⁷ However, this received a stern rejection by the organ as it found there wasn’t an applicable legal instrumenting, and the decision relating to a measure prevalent to a territorial alteration is given at the discretion of the states directly involved in such action. However, the League of Nations also argued that if a State lacks an effective guarantee to protect its citizens, incorporating a minority into another State could be achieved only as an “exceptional solution” or as the last viable remedy.³⁸

The emergence of the United Nations after World War II marked a different perspective on the principle of self-determination. As enshrined in the Charter of the United Nations, self-determination is then

observed to be that of possessing a legal obligation, as follows in Article 1 para. (2):

*“to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples and to take other appropriate measures to strengthen universal peace.”*³⁹

The anatomy of the Charter also encompasses the regulation regarding the treatment of non-self-governing territories and trusteeships, which are to undergo a process of swift decolonization.⁴⁰ Suppose the mainland State still needs to grant the independence of colonized territories, in that case — by a dilated legal dimension of self-determination, they may declare themselves independent with or without the consent of the mainland State.⁴¹ Notwithstanding, a normative status that self-determination acquired in this development is that it is to be regarded as an *erga omnes* obligation as emphasized by the United Nations General Assembly.⁴²

A recent contemporary view offers a relaxed perspective compared to the initial restrictions as understood prior. James Crawford posits that in the modern development of international law, if a State is found to have not provided a practical guarantee of protection and an adequate means for its citizens to pursue their right of self-determination, such as in the case of a systematic denial of rights to the minorities residing in a State or in the event where a State is held as liable on the oppression of a

determination, rather posing as a transitional period for a classless society on a global basis.

³⁷ Susann Simolin, *“The Åland Example in Use 1990-2019 – Where, When, How, Why, and by Whom?”* in Report from the Åland Islands Peace Institute No. 1 (2020), p. 12.

³⁸ “[...] *The separation of a minority from the State of which it forms part and its incorporation in another State can only be considered an altogether exceptional solution, a last resort when the State lacks either the will or the power to enact and apply just and effective guarantees.*” See Report of the Commission of the Rapporteurs, LN Doc. B7/.21/68/106, 1921.

³⁹ Article 1 para. (2) UN Charter, 1945.

⁴⁰ Chapter I of “Purposes and Principle” on Article 1 para. (2), Chapter XI of “Declaration regarding Non-Self-Governing

Territories” on Articles 73 and 74, Chapter XII of “International Trusteeship System” on Articles 75 and 85, Chapter XII of “Trusteeship Council” on Articles 86-91 of the UN Charter, 1945.

⁴¹ A practice known as decolonisation, in this particular context to be construed as an inherent right belonging to territories constituting as self-determination units. See James Crawford, *The Creation of States in International Law* (Oxford: Oxford University Press, 2006), p. 127.

⁴² *Legal Consequences of the Separation of the Chagos Archipelagos from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019, para. 180.

particular group of minorities — whereas by that virtue, international law could accept this act of unilateral separation of territory as an act of remedy that contains an absence of illegality.⁴³

This view is also recognized by subsequent instruments whose clauses contained the premises regarding the perception of the principle of self-determination in modern international law, which includes but is not limited to the Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States by the Charter of the United Nations (“**Declaration on Friendly Relations**”)⁴⁴ and Vienna Declaration and Programme of Action.⁴⁵ Most notably known as safeguard clauses, these consider that a State which in the body of its governance had represented the entirety of its population without distinction as to race, ethnics or other basis of a particular discriminatory aspect is deemed to have obliged with the principle of self-determination and thus is accorded the protection from any injury to its territorial integrity — as it has allowed a full access of participation thereby constituting as an existing consummated practice of its

obligation to the implementation of self-determination.⁴⁶

The Quebec case concerning secession referred to a subsequent significant development in the principle of self-determination. In the judgment as awarded, the Supreme Court of Canada observed the divergence of self-determination, which proceeded to recognize and establish the internal and external self-determination principle.⁴⁷ As mentioned, internal self-determination examines the *pursuit of an existing state's political, economic, social, and cultural development*, while external self-determination is mainly concerned with establishing a *sovereign and independent State* to implement the right of self-determination by the people.⁴⁸

Notwithstanding this formulation, it was primarily understood with a specific note that the subject concerned and protected by international law is composed of self-determination units that circumscribe non-self-governing territories, former mandates, trusteeships, or territories having been placed under the sovereignty of an existing State by an international organization.⁴⁹ Henceforth, these units

⁴³ James Crawford, *The Creation of States in International Law* (Oxford: Oxford University Press, 2006), p. 118.

⁴⁴ Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations, 24 October 1970, See Principle 5 para. (7):

“Nothing in the foregoing paragraphs shall be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed, or colour.”

⁴⁵ Vienna Declaration and Programme of Action, 25 June 1993, See Principle 1, para. (2):

“In accordance with the Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations, this [right of self-determination] shall not be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves in compliance with the principle of equal rights and determination of peoples and

thus possessed of a government representing the whole people belonging to the territory without distinction of any kind.”

⁴⁶ Antonio Cassese also puts forth the formula stemming from both of these instruments that “the people of such a State exercise the right of self-determination through their participation in the government of the State on a basis of equality” where Crawford points that they, however even indirectly, refer to a permission of remedial secession on a State that does not conduct itself in compliance with the principle of self-determination. See James Crawford, *The Creation of States in International Law* (Oxford: Oxford University Press, 2006), p. 118-119.

⁴⁷ Supreme Court of Canada, “*Reference re Secession of Quebec*”, [1998] 2 S.C. R. 217, para. 126.

⁴⁸ As stipulated by *Declaration on Friendly Relations*, 24 October 1970, p. 124 as:

“[...] the establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.”

⁴⁹ Marcelo G. Kohen, *Secession: International Law Perspectives* (Cambridge: Cambridge University Press, 2006), p. 5.

protect the lawful character of situations regarding statehood practices.

1. Secession

Secession is construed as a part of the state creation process where a section of a territory from an already existing State forms an entirely new State or assimilates itself onto another State, where accordingly the territory concerned is under the effective control of a particular entity that had taken the role as the administering power and held a significant level of control in regards to the stability in the region that it asserted its dominance over, and arbitrarily rendered the authority to that of the motherland state to be null, in pursuance to the ultimate objective of no longer possessing sovereignty over the said territory.⁵⁰ On the other hand, the use of force is a cumulative part that underlies a secession procedure.⁵¹

Although recent developments suggest introducing the theory on the legal permissibility of secession, the concept is far from that of a newborn. Hugo Grotius indicates an idea of “balance” between rights and obligations that arises from secessionist activities, resulting instead as a defensive means against the oppression committed by a sovereign. However, he emphasizes that both the seceding entity and the sovereign in question must take the appropriate measures to prevent a disproportionate use of force. In contrast, both parties could be equally held liable for the consequences arising in the aftermath.⁵²

Emmerich de Vattel, on the other hand, argued that secession is not to be parsed merely in the prospect to be of against tyrannical governance but rather the consent of both sides, which gave rise to a secessionist activity to occur — would prove to be able to strengthen the legitimacy of secession by any means and reasons.⁵³

As mentioned before, the circumstances of a secessionist act are primarily given to the discretion of the involved parties, with international law maintaining a neutral stance. Consequently, States often refer to their national laws and judicial decisions regarding a demand for secession by a particular entity or region. This is a practice that could be observed in the case of Scotland’s attempt at secession, where it seeks to part through a referendum and inescapably obtain the consent of the parent state following the constitutional requirements set by the United Kingdom.⁵⁴

An intimate observation of the behavioral pattern of secession reveals that several seceding entities follow a similar order to conclude with an absolute separation of a territory.

In its prelude, there seems to be, most noticeably, an elementary sentiment of a systematic discriminatory practice as harbored by a particular population residing within a territory of a State — whom they collectively believed that there is a divide intentionally made mainly to be of an aversion against their ethnic, race, or an aspect that which underlies a differentiation on their identity to that of

⁵⁰ Milena Sterio, *Secession in International Law Perspectives* (Cheltenham: Edward Elgar Publishing Limited, 2018), p. 34-35.

⁵¹ Jing Lu, *On State Secession from International Law Perspectives* (Switzerland: Springer Nature Switzerland AG, 2018), p. 159-169.

⁵² *Ibid.*, p. 56.

⁵³ Emmerich de Vattel, mainly in defense of an “unperturbed” sovereignty, also went on as to state that: “It is a further essential and a necessary condition of civil society that subjects remain united to their sovereign as long as it is

in their power to do so [...] When, therefore, a city or a province is threatened or is actually attacked, it may not, in order to escape danger, separate from the State of which it forms a part, or abandon its legitimate sovereign, even when they are unable to give it effective help at the moment.” Furthering his view that dissolution—that contains the required consent, would result in a much more desired outcome of secession. See Jing Lu, *Ibid.*, p. 57.

⁵⁴ Benjamin Levites, “The Scottish Independence Referendum and the Principles of Democratic Secession” in *Brooklyn Journal of International Law* Vol. 41 Issue 1, (2015), p. 395-396.

the majority of the State. This sentiment is often jointly combined with perception regarding the presence of an outward denial to this particular population of their rights to pursue political, social, and economic development within the scope of the State. Henceforth, this resulted in the rise of an aspiration that seeks separation as the only alternative for this population to regain their rights. On the other hand, a differing exegesis of historical claims may also constitute a base that commences a mass will for separation.

Secondly, the formation of an institution with a focus as a designated channel for this aspiration often follows as the range of these sentiments increases. This institution possesses an adequate level of organization that progresses to be tantamount to a representative government instead of the “former authority” of the motherland state. This institution would also claim and isolate the territories it believed shared the sentiments or considered as integral parts for various aims and motives. Effective control is subsequently maintained for an elongated period, leading to the practice of a declaration of independence.

In the context of secession, a declaration of independence is construed as an inclination for complete freedom and detachment from a State. Despite this reading, a declaration of independence is, in its *bona fide* identity, a permissible measure in international law—essentially, a declaration of independence could contain a concerted endeavor for a territory to demand a special autonomous status.⁵⁵ Should the demand be ungranted, this specific discourse will receive better clarity in the section on *Remedial Secession*.

At this phase, the motherland State often takes a restrictive address. Oppressive measures that lead to extensive use of force against this entity are often-opted recourses against what is seen as a threat to the territorial integrity of the motherland state. An example of the Chechnya case would also strike as the phenomenon where the motherland State regards this secessionist attempt as a terrorist activity—mainly as an attempt to “mitigate”.⁵⁶ Additionally, the intensity of this armed tension has a strong possibility of expanding to the level of a civil war between the seceding entity and the motherland State.

a. An Agreement to Secede

While the construct of what creates the terminology of secession implies a unilateral character regardless of the support or recognition it received, cases of a post-colonial period of secession are demonstrably upon its generous rate. A few successful ones received vast support from the international community and were uncontested in their participation as members of the United Nations.

For instance, the case of Singapore’s separation from Malaysia, which then received immediate recognition by Malaysia, was expended through an agreement procedure.⁵⁷ Similarly, the dissolution of the successor States of the former Soviet Union could pose another example, albeit of a collective attribute.⁵⁸ The breakaway and— shortly after, the independence of these eleven States received an expressed acceptance from the newly constructed Russian Federation and support for their applications to the United Nations membership.

Although there is an abundant example of note to secession with the facilitation of a

⁵⁵ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, para. 118.

⁵⁶ James Hughes, “Chechnya: The Causes of a Protracted Post-Soviet Conflict” in *Civil Wars* Vol. 4 No. 4, (2001), p. 11.

⁵⁷ James Crawford, *The Creation of States in International Law* (Oxford: Oxford University Press, 2006), p.392.

⁵⁸ *Ibid.*, p. 395.

preceding agreement, this paper would focus on an exceptional case where an agreement is set both as a means of a dispute resolution and a mechanism that allows for a “lawful” secession, as observed in the following case of South Sudan.

Establishing the British colony in Sudan caused overwhelming discrimination between the northern and southern parts of the Sudan region, particularly due to discriminatory policies in both areas.⁵⁹ The outcome of this practice resulted in a marginalized and disadvantaged community in Southern Sudan. Conversely, Northern Sudan achieved political and economic domination. While there was indeed momentum for the declaration of independence, the development following the establishment of Sudan as a state pivoted on what was considered as heavy systematic discriminatory practices centralized on a nationwide forcible “Islamisation” of the entire Sudan, which compelled a spike of tension that culminated in a civil war between both parts of Sudan.⁶⁰

Attempts of peaceful settlements were arranged, leading eventually to the drafting of the Declaration of Principles by the Intergovernmental Authority on Development (“IGAD”) on 20 July 1994, an instrument widely recognized as vital in securing southern Sudan’s independence in virtue of its pursuance of external right of self-determination, which was seen to be of most effective alternative to cease the civil war.⁶¹

The African Commission on Human and People’s Rights concurred that, in terms of

the events in Southern Sudan, independence is a lawful recourse of action based on the past gross violations of human rights in Southern Sudan, for which the government of Sudan was largely inferred to be culpable.⁶²

b. Remedial Secession

The idea of a legally permissible act of secession arises from the abstraction that a sovereign could be liable for the gross injury and systematic discrimination of a particular group of people under their reign and that an attempt of reparation would connote with a separation of this group—rather to be regarded as an act of remedy of the previous premediated suffering at a large scale. This view is adopted and, like this, developed in international law, where the right as infringed is self-determination.

An earlier concept prescribed that only an occasion of a gross violation of human rights could amount to the feasibility of secession. However, the view as held today prospected that only in the matter of alien subjugation, foreign military oppression, and/or a deliberate, systematic denial against a particular group of population with a distinct characteristic in terms of their pursuit of political, economic, social, and cultural development would secession come to receive its legality.⁶³

The crux of this writing rests on the essence of what shaped the territorial integrity paradigm. Reinold Schmucker posits that an objective as strived from conceiving the principle of territorial integrity would include ensuring a successful implementation of human rights law and an

⁵⁹ Solomon Dersso, “*International Law and the Self-Determination of South Sudan*” in Institute for Security Studies Paper 231 (2021), p. 6.

⁶⁰ *Ibid.*, p. 6-7.

⁶¹ See IGAD Declaration of Principles, The 1993 Abuja 2 Sudanese Peace Conference, 20 May 1994, p. 347. In addendum, the principle also stipulates that the population whom resided in Southern Sudan is in a possession of a right of self-determination provided that there is an existing referendum to decide if the majority of its population agreed to be a completely separate and independent territory. See

also Intergovernmental Authority on Development, *Agreement on Cessation of Hostilities Between the Government of the Republic of South Sudan (GRSS) and the Sudan People’s Liberation Movement/Army (In Opposition) (SPLM/A In Opposition)*, 23 January 2014, Addis Ababa, Ethiopia.

⁶² Solomon Dersso, “*International Law and the Self-Determination of South Sudan*” in Institute for Security Studies Paper 231 (2012), p. 7.

⁶³ Supreme Court of Canada, “*Reference re Secession of Quebec*”, [1998] 2 S.C. R. 217, para. 138.

equal opportunity to participate in political decision-making.⁶⁴ It can be inferred that under this understanding, territorial integrity concedes both rights and obligations. It warrants conditional ownership of a territory, which also beckons an obligation for states to act to ensure the equal enjoyment of human rights for their citizens. Therefore, it is essential to earn an acceptance that a right of self-determination is already realized if the people residing in a state have been accorded their rights to participate in its governance, each of equivalent value.⁶⁵

(i) Bangladesh

Regarded as an antecedent to the discourse of remedial secession, the events of Bangladesh demonstrated an accomplished process of declaration of independence followed closely by a unilateral secession of a territory. The now-established State of Bangladesh, known before East Pakistan, was a dominion under the Great Britain colony, composed of East Pakistan and West Pakistan.⁶⁶ The ruling to the divide resulted in the growing sentiment prevalent to records of mass oppression and exploitation as administered by West Pakistan to East Pakistan.

The sentiment of oppression and exploitation was further amplified when the central government decided to deny the request for a special autonomous status as filed by East Pakistan to West Pakistan, leading to a demand for independence.⁶⁷ This demand was subsequently “officialized” by the Awami League political party,

prompting a period of prolonged armed conflict between East Pakistan and West Pakistan.

Notwithstanding the emergence of reports that stated the involvement of excessive use of force during the period of the conflict committed by both sides, the dominant perception was that of a purported genocide that the central government of Pakistan carried out against the people residing in East Pakistan.⁶⁸

During this conflict, a spike in refugee influx occurred, estimated to be near millions, with India — as a neighboring State, being a primary designated place of interest. To reduce the influx, India intervened initially through indirect means by distributing military instruments to East Pakistan; thereafter, it gradually turned to direct military intervention as it stationed its troops in East Pakistan. During this period, India also affirmed and supported the existence of Bangladesh as a State entity.⁶⁹

The General Assembly ordered a demand for a ceasefire per Resolution 2793 (XXVI).⁷⁰ However, the document did not consider an ample topic regarding self-determination— not until the next occasion held by the UN on 24 November 1971, where Chad, Guinea, Saudia Arabia, Sri Lanka, and Togo rejected the proposal for the right of East Pakistan to secede.⁷¹ A point of contention was raised by India and the Soviet Union, both of whom shared the belief that a massive scale of oppression as enacted by the Pakistani government could amount to legality to East Pakistan for an act of secession.⁷²

⁶⁴ Reinold Schmucker in *The Ashgate Research Companion to Secession* by Aleksandar Pavkovic and Peter Radan (New York: Routledge, 2016), p. 400-401.

⁶⁵ James Crawford, *The Creation of States in International Law* (Oxford: Oxford University Press, 2006), p. 119-120.

⁶⁶ Jure Vidmar, Sarah McGibbon and Lea Raible, *Research Handbook on Secession (Research Handbooks in International Law Series)* (Cheltenham: Edward Elgar Publishing Limited, 2022), p. 5

⁶⁷ Ibid., p. 6.

⁶⁸ Yasmin Saikia, *Women War and the Making of Bangladesh: Remembering 1971* (Oxford: Oxford University Press, 2011), p. 48-51.

⁶⁹ J. Castellino, “*The Secession of Bangladesh in International Law: Setting New Standards?*” in *Asian Yearbook of International Law* Vol. 7 (1997), p. 95-98.

⁷⁰ United Nations General Assembly, Resolution 2793 (XXVI) “*Question considered by the Security Council at its 1606th, 1607th and 1608th meetings on 4, 5 and 6 December 1971*”, A/RES/2793 (XXVI), 1972, p. 3.

⁷¹ United Nations General Assembly Third Committee Summary Record, UN Doc. A/C.3/SR. 1882 (24 November 1971).

⁷² Iftekhar Ahmed Chowdhury, “*Dhaka-Moscow Relations: Old Ties Renewed*” in ISAS Working Paper No. 167, (2013), p. 8-9.

Moreover, India holds that East Pakistan *supposedly* is qualified to attain a status as a non-self-governing territory.⁷³ Consequently, furthering the argument that it possessed an inherent right to divorce by expressing self-determination.

However, before a consensus between States could be achieved on the future of East Pakistan, the Government of Pakistan announced an unconditional surrender to India. Thusly, yielding a complete control of East Pakistan to India, which eased the establishment of Bangladesh and its eventual entry into the United Nations.

(ii) Kosovo

Kosovo was considered a constituent part of Serbia, where it obtained a special autonomous status at the end of World War II. However, in the 1980s, tension between Kosovo and the Serbian government increased exponentially when Slobodan Milošević had the overall power in Yugoslavia. The environment intensified when Serbia unilaterally removed Kosovo's autonomous status in 1989, intermittently coincidentally with the breakaway of Yugoslavia.⁷⁴

In the course of this stage, Kosovo declared itself independent. However, this declaration received an absence of support from the international community, and at the behest of the Serbian government, Kosovo decidedly merged with Serbia and Montenegro.⁷⁵ In the following period of the 1990s, the majority of the population in Kosovo, particularly the Albanians, had received a continuous denial of meaningful

participation within the Serbian government.⁷⁶ An attribute that factors in as an integral background to the unrest that led to an armed conflict in the territories of Kosovo and Serbia.

Attempts to settle the conflict became a subject of particular concern from the international community, prompting the drafting of Resolution 1244 by the United Nations Security Council (“UNSC”). This resolution initiated the formation of a substantial autonomy interim administration with direct involvement from the UN, recognized forthwith as the United Nations Interim Administration Mission in Kosovo (“UNMIK”).⁷⁷

Marti Ahtisaari, acting as a Special Envoy from the UN for the Future Status Process for Kosovo, proposed the distribution of a “supervised independence” to Kosovo and emphasized it as the only means to end the conflict,⁷⁸ leading to Kosovo's declaration of independence on 17 February 2008, followed by a unilateral secession. Diverging responses were encountered in the penultimate of this event, with some States in staunch support and several others still recognizing Kosovo as a part of Serbia.

The validity of Kosovo's independence was questioned shortly after, whereas, under Serbia's initiation — the General Assembly requested for the International Court of Justice to examine the integrity of the Declaration of Independence as held in 2008 and assess if it were to concur or incur with international law. The Court found that the declaration was not in violation of the previous resolutions by the UNSC regarding

⁷³ United Nations Security Council Verbatim Record, UN Doc S/PV.1606 (4 December 1971) para. 185.

⁷⁴ *Ibid.*

⁷⁵ Paul R. Williams, “*Earned Sovereignty: The Road to Resolving the Conflict over Kosovo's Final Status*” in *Denver Journal of International Law and Policy* No. 31 No. 3 (2002), p. 395-397.

⁷⁶ Tamara Jaber, “*A Case for Kosovo? Self-Determination and Secession in the 21st Century*” in *The International Journal of Human Rights* Vol. 15 No. 6 (2011), p. 927.

⁷⁷ United Nations Security Council, Resolution 1244, S/RES/1244, 10 June 1999, p. 6.

⁷⁸ “*Independence is the only option for a politically stable and economically viable Kosovo. [...] This will be crucial to ensure the respect for the rule of law and the effective protection of minorities. With continued political ambiguity, the peace and stability of Kosovo and the region remains at risk. Independence is the best safeguard against this risk.*” See Report of the Special Envoy of the Secretary-General on Kosovo's Future Status in Letter dated 26 March 2007 from the Secretary-General addressed to the President of the Security Council, S/2007/168, 26 March 2007, para. 10.

the situation in Kosovo, nor does any of it contain a prohibition on the conduct of the Declaration of Independence.⁷⁹

2. LEGALITY ON THE ESTABLISHMENT OF THE REPUBLIC OF ARTSAKH

The first argument that the entity Nagorno-Karabakh had utilized to reinforce its legitimacy to secede is that it had been faithful to act in conformity with the Law on Secession from the USSR 1990 concerning its secessionist activities. The second argument, however, supposes a right to secede due to its claim of massive and systematic discrimination along with a gross violation of human rights, which instigates a “legality” for this entity to secede rather as a manifestation of a reparative due course of action—from the injuries that it had sustained from Azerbaijan.

1. Legitimacy by Soviet Union Laws

The Law on Procedure for Resolving Questions Connected with a Union Republic’s Secession from the USSR, also known as the Law on Secession from the USSR, is notably of note, a series of regulations by the Soviet Union government intended to respond to the threats of mass secessionist activities and an absolute dissolution for the entire territory of the Soviet Union. This regulation is regarded as more of a procedural nature. It is composed of an abundance of complex requirements for a territory (mainly that of having acquired the status as an autonomous republic) plotting to secede from the Soviet Union. The law bears a mandate in

furtherance to Article 72 of the Soviet Union Constitution.⁸⁰

However, the secession process of the entity of Nagorno-Karabakh is not considered valid, nor has it been found to adhere to the required conditions. One of the few is the decided call for a referendum, which was done first during the Soviet Union regime and second during the progressive period leading to the dissolution of the Soviet Union.

Article 2 of the Law on Secession from the USSR sets that an official referendum with the intent of secession must only be preceded by a request for a referendum to the government of the Soviet Union. Whereas it must, in conjunction, deliver approval before a proceeding measure may be taken by the representative entity.⁸¹ However, an exception to this rule declares that the government of the Soviet Union could not be involved directly in the circumstance that there is a collective aspiration for secession from at least 10% of the total population residing in the territory.

Looking at Nagorno-Karabakh, while there is indeed a request for a referendum by the representing entity of the National Council of Nagorno-Karabakh, the request as delivered still needs to be met in an approval. On the other hand, the view remained that Nagorno-Karabakh is still firmly considered an autonomous part of Azerbaijan, entailing an obligatory requirement based on the evidence of the Azerbaijani vote.⁸² A procedure that is yet satisfied with the decision made by the National Council of Nagorno-Karabakh to

⁷⁹ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, para. 118.

⁸⁰ Article 72 from the Constitution of the Union of Soviet Socialist Republics, which as follows:

“Each union republic shall retain the right to freely secede from the USSR.”

⁸¹ Article 2 of Law on Procedure for Resolving Questions Connected with a Union Republic’s Secession From the USSR, 3 April 1990:

“The decision on a Union republic’s secession from the USSR is made by a free expression of the will of the Union republic’s

people by means of a referendum (popular vote). The decision on holding a referendum is made by the Union republic’s Supreme Soviet on its own initiative or at the demand of a petition signed by one-tenth of the USSR citizens permanent resident on the republic’s territory and possessing the right to vote under USSR legislation. [...] USSR citizens permanent resident on the republic’s territory at the moment when the question of secession from the USSR is raised and possessing the right to vote according to USSR legislation to take part in the referendum. [...]”

⁸² Shahan Avakian, *Nagorno Karabakh: Legal Aspects* (Moscow: MIA Publishers, 2015), p. 14-15.

execute a unilateral referendum is limited in the stringency of only Nagorno-Karabakh's "strategic territories."

The entity of Nagorno-Karabakh also postulates on Article 3 of the Law on Secession from the USSR to underlie its right to secede in virtue of its special autonomous status. The content of Article 3 of the Law on Secession is as follows:⁸³

"In a Union republic which includes autonomous republics, autonomous oblasts, or autonomous okrugs within its structure, the referendum is held separately for each autonomous formation. The people of autonomous republics and formations retain the right to independently decide whether to remain within the USSR or the seceding Union republic and raise the question of their state-legal status."

There is, as observed, a conflict between the substance of this article and Article 78 of the Soviet Union Constitution of 1977 which stated that a territory of the Soviet Union with the status of a union republic could not be subjected to a process of territorial status alteration without a direct consent from the central government in possession of the union republic territory.⁸⁴ Notwithstanding the lack of clarity arising from these opposing regulations, they suggest that this obscurity has resulted in the rise of several *de facto* States, formerly under the domination of the Soviet Union, to declare themselves as independent based on this rule, *inter alia*, the cases of Abkhazia and South Ossetia.

2. Conformity with Existing Practices in International Law

This paper observed several established practices in cases where secessionist acts have acquired successful recognition for

accomplishing unilateral secessions to the degree of statehood to examine the legal presence that oversees the conduct of secession.

With due consideration of prior practices, consent is placed as a primacy for what impels a successful secession because of its influence as a contributing element to the practice of recognition. The cases of Bangladesh and South Sudan demonstrated that the consent of motherland is a cardinal element but with an emphasis on not being construed as completely obstructing a secession procedure, as in Kosovo.

In the Bangladesh case, Pakistan consented to secede from the East Pakistan entity after a decisive victory courtesy of India's intervention. In the same vein, the case of South Sudan presented an element of consent during the signing of a peace treaty by both the then-entity of South Sudan and the Sudanese government brokered by a third party, leading to an "accepted" secession of South Sudan and its subsequent statehood.

This element is observed as non-existent in the case of Nagorno-Karabakh's attempts at secession. In contrast, neither Azerbaijan nor the Soviet Union were found to be in any judgment to grant consent concerning its declarations of independence and its demands to secede. On the other hand, the secession for which the entity committed was more arbitrary, as were its actions to declare itself the Republic of Artsakh.

Furthermore, Armenia's copious intervention in the formation of the Republic of Artsakh, which included a main interference in the construction of its governance and military forces, eliminated the aspect of infallible independence as

⁸³ Article 3 of the Law on Procedure on Resolving Questions Connected with a Union Republic's Secession from the USSR, 3 April 1990.

⁸⁴ Article 78 of the Constitution of the Union of Soviet Socialist Republics, which prescribes that:

"The territory of a Union Republic may not be altered without its consent. The boundaries between Union Republics may be altered by a mutual agreement of the Republics concerned, subject to ratification by the Union of Soviet Socialist Republics."

required for an entity to be deemed “characteristically independent.”

Moreover, the entity of Nagorno-Karabakh claimed that there is a permissibility for it to secede based on its exhausting the right of external self-determination due to Azerbaijan’s systematic discriminatory practices and gross human rights abuses that the entity is of the staunch opinion was perpetrated by Azerbaijan during before and in the course of the Nagorno-Karabakh War.

This argument offered quite a perplexing complexity, as violations were committed on all sides of the parties, which includes Azerbaijan, Armenia with its interventionist military acts, and paramilitary units of Nagorno-Karabakh.

One of the instances believed to be of solid evidence to support the entity of Nagorno-Karabakh’s claim is a report of the military operation conducted by the Azerbaijani forces referred to as Operation Ring in 1991, which consisted of arbitrary attacks on the Armenian civilians.⁸⁵ Moreover, Azerbaijan was also suspected of having conducted mass transfer of population during the period of the armed conflict.⁸⁶ Additionally, there is also a strong sentiment prevalent systematic conduct of discrimination against the Armenian population in Nagorno-Karabakh, which was regarded as severely impeding the economic and political development and viewed as a violation of their inherent rights.

While it is true that the case of South Sudan sees discriminatory practices to augment a

critical need for secession, it does so with presented evidence and reports by a contribution from a third party. The lack of official data or an accurate finding to detail the reports as claimed to be part of the entity’s argument enervates the necessity of an act of secession as the only resort available to the conflict. If we were to scrutinize the case of East Timor, it possessed a stage of such. In contrast, there were, as deployed by the United Nations, fact-finding missions to thoroughly investigate allegations of a gross violation of human rights and verify the claim’s credibility. This similar rudimentary endeavor could also be observed in the case of Kosovo.⁸⁷ The lack of official data from an impartial body is regarded, as practices evidenced it—to be of a necessary component, on deciding if the discriminatory practices and gross violation of human rights as alleged by the entity of Nagorno-Karabakh could be of severe circumstances.⁸⁸

Moreover, it is worth noting that a reparation that demands a procedure of secession is of pre-emptive value as other alternatives are yet to be exhausted as a remedy for Operation Ring or other forms of violation which the military forces of Azerbaijan are found and/or deemed to be culpable. Efforts of remedy such as the enforcement of criminal law, international human rights law, and international humanitarian law have neither all been entertained in the case of Nagorno-Karabakh.

As this paper believes, an unequivocal statement would affirm that the presented

⁸⁵ Human Rights Watch, Azerbaijan, *Seven Years of Conflict in Nagorno-Karabakh 1994*, p. 3 in Heiko Kruger, *The Nagorno-Karabakh Conflict: A Legal Analysis* (Berlin: Springer, 2010), p. 79.

⁸⁶ Heiko Kruger, *The Nagorno-Karabakh Conflict: A Legal Analysis* (Berlin: Springer, 2010), p. 79.

⁸⁷ ReliefWeb, “UN Authorizes Kosovo Fact-Finding Mission” <https://reliefweb.int/report/serbia/un-authorizes-kosovo-fact-finding-mission>, accessed in 16.25 10 October 2023

⁸⁸ Notwithstanding the absence of an international uniformed definition of gross violation of human rights, there is a categorical approach as delivered by a legal

framework which this paper adopts from the Vienna Declaration and Program of Action in 1993 by the United Nations on *para. 30*, which includes:

“[...] torture and cruel inhuman and degrading treatment or punishment, summary and arbitrary executions, forced disappearances, arbitrary detentions, all forms of racism, racial discrimination and apartheid, foreign occupation and alien domination, xenophobia, poverty, hunger and other denial of economic, social and cultural rights, religious intolerance, terrorism, discrimination against women and lack of the rule of law. [...]”

exigencies could not amount to accomplishing a “lawful” secession. Notwithstanding that the fact remains of the presence of the Republic of Artsakh as a State, it retains significance merely as an invalid product without merit for statehood and, therefore, a semi-state or *de facto* State. In contrast, recognizing this entity is considered an act of violation of international law as stipulated.

3. CONCLUSION

In summary, international law permits unilateral secession provided that a lawful ground has been adequately fulfilled as a mandatory part of divorcing a territory from its “mainland.” The custom as provided necessitated a great urgency that predicates “massive, widespread and extreme violations of human rights” must serve as the main motive to represent an entity’s wish to secede.

However, practices of unilateral secessions with questionable grounds stemming from the presence of an urgency necessitating a separation continue to exist instead as a legal anomaly from these newly established “quasi-states”. Those “quasi-states” then declared themselves independent and had been known to have conducted—even under a dubious status — foreign relations with other States or entities. Traversing into the conclusion of the decision to confirm its legality or illegality ultimately falls to the pending choice of the UNGA or the political decision of several existing States.

In the case of Artsakh, the act of secession or dismemberment of Azerbaijan could not prove to be a solid, reasonable measure as a “compensation” for all the casualties that had taken place — as other measures or enforcement of international law, be it international human rights law or international humanitarian law, has yet to duly observed in the current stalemate. The entity had failed before to participate nor express a wish to participate in the political process to decide its status through the peace processes provided by the OSCE Minsk Group.

Furthermore, on historic ground, it had also failed to provide sufficient records and proof to attest to its legitimacy as a separate entity utterly detached from Azerbaijan — prompting a drawn conclusion on the behest of these findings that Artsakh is not to be considered legally as a state and to remain as territory to be incorporated to Azerbaijan in terms of deciding its legal status in accordance with international law.

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