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Conflict in the Caucasus – Analysis of Nagorno-Karabakh's Right to Sucession Under National and International Law

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Conflict in the Caucasus – Analysis of Nagorno-Karabakh’s Right to Secession Under National and International Law

James N. Brennan†

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On a chilly November morning in late 2020, on the misty hills outside Kalbajar, Azerbaijan, Kanum and Volodya Grigoryan worked briskly with their friends and family to load up their truck.¹ After fitting everything they could (the family sofa, their wood-burning stove, and Kanum’s roses, dug up and placed in plastic water jugs), they had a quick lunch finished up with some homemade vodka.² “Let’s drink to our heroes,” Kanum said, as everyone raised their glasses.³ “They killed so many of our young people in the war. I just want peace.”⁴ As Volodya locked their front door for the last time, the family fled, not wanting to wait for the inevitable return of their home’s previous owners, who had likely made a similar exit two decades prior.⁵

The Grigoryan family left their home due to a Russian brokered peace agreement that brought a halt, for the time being, to several

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¹ Kristen Chick, *In Nagorno-Karabakh, People Grapple with War’s Aftermath and COVID-19*, NAT’L GEOGRAPHIC (Jan. 8, 2021), <https://www.nationalgeographic.com/history/article/nagorno-karabakh-people-grapple-war-aftermath-covid> [<https://perma.cc/U98U-QV7V>].

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *See id.*

weeks of deadly fighting between Armenian and Azerbaijani troops along the Armenia-Azerbaijan border.⁶ The deal required Armenia to hand certain areas over to Azerbaijan, including Kalbajar, the town where the Grigoryans had lived for the past twenty years.⁷ The outbreak of war in late 2020 marked the most serious period of conflict in the region since Armenia and Azerbaijan signed the 1994 Bishkek Protocol, a provisional ceasefire agreement.⁸ However, the period between the 1994 and 2020 ceasefires was marked by ongoing tensions that often boiled over into violence.⁹

The cause of this ongoing conflict is the roughly 4,000 square kilometer region of Nagorno-Karabakh, located in Azerbaijan but with a population that, at the beginning of the dispute, was over three-quarters Armenian.¹⁰ Throughout much of the twentieth century, Soviet rule muted ethnic tensions.¹¹ However, in 1988, as the policy of *perestroika* permitted a resurgence of open nationalism, the regional government of Armenia responded to a wave of public demonstrations by formally requesting that the central Soviet government, and the constituent Azerbaijan and Armenian SSRs, transfer the region to the latter.¹² While the Armenian SSR endorsed the proposal, this request was rejected by

⁶ See *Azerbaijani Army Enters Kalbajar, Region Returned by Armenia*, AL JAZEERA (Nov. 25, 2020), <https://www.aljazeera.com/news/2020/11/25/azerbaijani-army-enters-kalbajar-region-returned-by-armenia> [https://perma.cc/E2EL-C9FP].

⁷ See *id.*; Chick, *supra* note 1.

⁸ Thomas D. Grant, *Frozen Conflicts and International Law*, 50 CORNELL INT'L L.J. 361, 381 (2017); *Azerbaijani Army Enters Kalbajar, Region Returned by Armenia*, *supra* note 6.

⁹ See, e.g., *Fatal Armenian-Azeri Border Clash*, BBC (Mar. 5, 2008), <http://news.bbc.co.uk/2/hi/europe/7278483.stm> [https://perma.cc/4W3V-CL5W]; *Three Azerbaijani Soldiers Killed Near Nagorno-Karabakh*, RFE/RL (Feb. 18, 2010), https://www.rferl.org/a/Three_Azerbaijani_Soldiers_Killed_Near_NagornoKarabakh/1962175.html [https://perma.cc/4HDQ-U46F]; Sara Khojuyan & Zulfugar Agayev, *Azerbaijan-Armenia Border Skirmishes Turn Deadliest in 20 Years*, BLOOMBERG (Aug. 1, 2014), <https://www.bloomberg.com/news/articles/2014-08-01/azerbaijan-armenia-border-skirmishes-turn-deadliest-in-20-years> [https://perma.cc/FEB8-EWQA]; *Azerbaijan: Two Servicemen Killed in Clashes With Armenian Army*, RFE/RL (Mar. 28, 2016), <https://www.rferl.org/a/karabakh-azerbaijani-soldier-killed-armenia/27640267.html> [https://perma.cc/WGW9-ZLNH].

¹⁰ *Chiragov v. Armenia*, App. No. 13216/05, 2015-III Eur. Ct. H.R. 135, ¶¶ 12-13.

¹¹ See Heiko Krüger, *Nagorno-Karabakh*, in SELF-DETERMINATION AND SECESSION IN INTERNATIONAL LAW 214, 215 (Christian Walter et al. eds., 2014).

¹² *Id.*; *Chiragov*, 2015-III Eur. Ct. H.R. ¶ 14.

the Supreme Soviet of the USSR and the Azerbaijani government.¹³ Over the next few years, popular demonstrations by Armenians continued in favor of unification, now accompanied by armed clashes even after the deployment of Soviet troops to keep the peace.¹⁴ Once the USSR collapsed and Soviet forces withdrew from the area, “the conflict gradually escalated into a full-scale war.”¹⁵ This Note will consider the question at the heart of the Nagorno-Karabakh conflict: whether Nagorno-Karabakh has legally declared independence from Azerbaijan. This question is of critical importance for establishing a lasting peace, as its answer informs whether Nagorno-Karabakh’s ethnic-Armenian leadership should be considered a proper party to negotiations and whether that leadership has the legal right to decide on unification with Armenia. Part I will begin with a historical overview of the conflict, helping set the stage for the legal discussion to follow. Part II will consider Nagorno-Karabakh’s right to secede under Soviet law, as the territory may have still been under USSR rule when it initially declared independence, a distinction which has potential ramifications under an international law analysis. Part III will then examine Nagorno-Karabakh’s secession claims under international law, and whether Nagorno-Karabakh can properly be considered an independent state. Finally, Part IV will look at the future implications of these determinations, in particular the effects on international law if Nagorno-Karabakh becomes recognized as a state in violation of international law.

I. Historical Background

To achieve a proper understanding of the current conflict in Nagorno-Karabakh, the historical roots of the conflict must be considered.¹⁶ In the early sixteenth century, the area now governed by Armenia and Azerbaijan was conquered by the Persian Safavid Empire, which divided the region into four administrative districts, including Karabakh, ruled by Armenian nobility.¹⁷ By the mid-

¹³ *Chiragov*, 2015-III Eur. Ct. H.R. ¶ 14.

¹⁴ *Id.* ¶¶ 15-16.

¹⁵ *Id.* ¶¶ 17-18.

¹⁶ OHANNES GEUKJIAN, ETHNICITY, NATIONALISM AND CONFLICT IN THE SOUTH CAUCASUS: NAGORNO-KARABAKH AND THE LEGACY OF SOVIET NATIONALITIES POLICY 37 (2012).

¹⁷ *Id.*

eighteenth century, Persian power in the region declined enough that the Armenian nobility began engaging in power struggles amongst themselves, which enabled an outsider to come in and take control.¹⁸ In the early 1750s, Turk chieftain Panah Ali claimed control over the area of present-day Nagorno-Karabakh and created the khanate of Shushi-Karabagh.¹⁹ This development prompted the Armenian nobility to petition Catherine the Great of Russia “to liberate them from Persian domination.”²⁰

Though it probably took longer than the Armenians in Karabakh would have liked, Russia did eventually conquer and annex the khanate of Shushi-Karabagh at the turn of the nineteenth century, as part of broader imperial expansion in the Caucasus.²¹ At the time of Russia’s arrival in the area, Karabakh’s population was largely Armenian, and there were attempts by Armenian leaders to create an Armenian state by uniting Karabakh with other Armenian lands.²² This plan did not materialize, however, as the Russian administration opposed the creation of ethnically homogeneous units.²³

Utilizing a ‘divide and rule’ political strategy to consolidate their power in the region, Russia hoped to “neutralize national demands by mixing and opposing ethnic groups.”²⁴ As a result, Russia included the mountainous Karabakh region in an administrative division mainly comprising the “steppes and plains which would become the Soviet republic of Azerbaijan in the twentieth century,” rather than attaching Karabakh to the other mountainous, mainly ethnic-Armenian lands of which it would seem a more natural part.²⁵ The Russians’ political strategy, “which ignored the geographical and historical boundaries of the local ethnic communities . . . became a primary factor in ethnic confrontations in the second half of the nineteenth century.”²⁶

¹⁸ *Id.* at 38.

¹⁹ Patrick Donabedian et al., *THE CAUCASIAN KNOT, THE HISTORY & GEOPOLITICS OF NAGORNO-KARABAGH* 51, 74 (Levon Chorbajian et al. eds., 1994).

²⁰ GEUKJIAN, *supra* note 16, at 38.

²¹ *See* Donabedian, *supra* note 19, at 78.

²² *See* GEUKJIAN, *supra* note 16, at 38.

²³ Donabedian, *supra* note 19, at 78.

²⁴ *Id.*

²⁵ *Id.* at 78-79.

²⁶ GEUKJIAN, *supra* note 16, at 39.

Throughout the nineteenth and early twentieth centuries, Karabakh's *de jure* connection with Azerbaijani territories created real, *de facto* linkages that would later prove difficult to sever cleanly.²⁷ By linking the rugged terrain of Karabakh with flatter land to its east, economic and transportation ties between the previously geographically separated areas became stronger.²⁸ These important economic links would later be used to support arguments that Karabakh was economically dependent on Azerbaijan, and should therefore be included within Azerbaijan as part of the Soviet Union.²⁹ Additionally, these growing practical connections "gradually generated among the Azerbaijanis an emotional and nationalistic affinity for the region."³⁰

Although tensions remained throughout the nineteenth century due to the Armenians' rebuffed attempts to unite Karabakh with greater Armenia, events in the region related to the First World War would be a foreshadowing of more serious conflict to come.³¹ From 1915 until at least the end of the war in 1918, nearly one million Armenians were killed by the Ottoman Turkish empire.³² The tensions already present in the Karabakh region intensified as a result of the genocide because "the Azerbaijanis were Muslims and were viewed as Turks by the Armenians."³³ Into this morbid mix, the Russian revolution introduced a power vacuum as imperial Russia was no longer able to assert its power in the region.³⁴ Various groups attempted to fill this vacuum, with both Armenians and Azerbaijanis declaring control over Nagorno-Karabakh.³⁵ However, in 1920, "the Russian Red Army invaded the Southern Caucasus and expanded Bolshevik rule throughout the whole region," and the entire area quickly became part of the Soviet

²⁷ *See id.* at 40.

²⁸ *Id.*

²⁹ *See id.*

³⁰ *Id.*

³¹ *See id.* at 47.

³² *See* Vahakn N. Dadrian, *Genocide as a Problem of National and International Law: The World War I Armenian Case and Its Contemporary Legal Ramifications*, 14 *YALE J. INT'L L.* 221, 223-24 (1989).

³³ GEUKJIAN, *supra* note 16, at 47.

³⁴ *See id.* at 51.

³⁵ Krüger, *supra* note 11, at 215.

Union.³⁶

When the Communists took control in 1920, the government of the Soviet Republic of Azerbaijan “promised that Karabagh would be ceded to Soviet Armenia.”³⁷ Indeed, in July of 1921, the Caucasian Bureau of the Russian Communist Party (“Kavbiuro”), which Moscow had installed as overseer of the region, “resolved to attach Mountainous Karabagh to Soviet Armenia.”³⁸ However, the Kavbiuro changed course two days later, and, citing Karabakh’s important economic ties to Azerbaijan, decided that the territory would remain within Soviet Azerbaijan, although it would be given broad autonomy.³⁹ This reversal was no doubt a result of the Soviet leadership’s recognition of the benefits inherent in following Russia’s previous divide and rule strategy. By keeping the majority Armenian region within Soviet Azerbaijan, “it would forever remain a sore spot between the two republics that would ensure Moscow’s position as power broker.”⁴⁰

Whatever the Soviets’ motives for keeping Karabakh part of Azerbaijan, the next several decades passed with comparative tranquility, despite repeated requests from Soviet Armenia that Karabakh be transferred to their Republic.⁴¹ However, by 1988, the USSR’s new policy of *perestroika* led to the resurgence of nationalist movements across the country.⁴² On 20 February 1988, the government of the Nagorno-Karabakh Autonomous Oblast (“NKAO”) adopted a resolution demanding “the transfer of the [NKAO] from [Soviet Azerbaijan] to [Soviet Armenia].”⁴³ In Armenia, this development was met with mass demonstrations to support the demand that Karabakh be transferred to Soviet Armenia.⁴⁴ Moscow immediately refused the Armenian request, and sent Soviet “peacekeeping forces” into Nagorno-Karabakh to

³⁶ *Id.*

³⁷ Ronald G. Suny, *Nationalism and Democracy in Gorbachev’s Soviet Union: The Case of Karabagh*, 28 MICH. Q. REV. 481, 483 (1989).

³⁸ *Id.*

³⁹ *See id.*

⁴⁰ PATRICIA CARLEY, U.S. INST. OF PEACE, NAGORNO-KARABAKH: SEARCHING FOR A SOLUTION 1 (1998).

⁴¹ Krüger, *supra* note 11, at 215.

⁴² *See id.*

⁴³ GEUKJIAN, *supra* note 16, at 141.

⁴⁴ *See id.*

ease the inter-ethnic tensions.⁴⁵ However, despite the military presence within Nagorno-Karabakh itself, anti-Armenian violence broke out across Azerbaijan, killing dozens and wounding hundreds.⁴⁶

Over the next several years, armed conflict would ebb and flow, with the Soviet troops in the region preventing an escalation to all-out war.⁴⁷ On 30 August 1991, Azerbaijan formally declared its independence from the Soviet Union, which was quickly followed by a similar declaration by the NKAO, which announced the establishment of the Republic of Nagorno-Karabakh (the “NKR”) and “declared that it was no longer under Azerbaijani jurisdiction.”⁴⁸ Several months later, in December 1991, the Soviet Union collapsed, which resulted in the Soviet peacekeeping troops withdrawing from the region, and military control of Nagorno-Karabakh being handed over to the ethnic-Armenians in the territory.⁴⁹ As Soviet troops pulled out, Azerbaijani forces “took control of Soviet rocket launchers, tanks and ammunition and started their attacks to besiege [Nagorno-Karabakh].”⁵⁰ By early 1992, the war in Nagorno-Karabakh “had already been transformed from an internal matter of the former USSR to a full-scale war between two independent sovereign states, Armenia and Azerbaijan.”⁵¹

After several years of conflict, with tens of thousands dead and hundreds of thousands displaced, a Russian brokered ceasefire agreement, the Bishkek Protocol, was signed by Armenia, Azerbaijan, and the NKR on 5 May 1994.⁵² The war saw the ethnic-Armenians of Nagorno-Karabakh gain the upper hand and increase their territorial holdings.⁵³ Despite the ceasefire, armed conflict has continued to break out over the years, perhaps most notably in 2020.⁵⁴ The Organization for Security and Co-operation in Europe

⁴⁵ *See id.* at 145.

⁴⁶ *See id.* at 147-48.

⁴⁷ *See Chiragov v. Armenia*, App. No. 13216/05, Eur. Ct. H.R. 1, 4 (2015).

⁴⁸ *Id.* at 4-5.

⁴⁹ *Id.* at 5.

⁵⁰ GEUKJIAN, *supra* note 16, at 189.

⁵¹ *Id.*

⁵² *See Chiragov*, App. No. 13216/05 at 6.

⁵³ *See Grant*, *supra* note 8, at 381.

⁵⁴ *See Nagorno-Karabakh Conflict*, COUNCIL ON FOREIGN RELATIONS,

(“OSCE”) continues to attempt negotiations on the matter.⁵⁵ As it currently stands, “Nagorno-Karabakh is not recognized as an independent and sovereign State by [Armenia, Azerbaijan, nor Russia], nor by any other country.”⁵⁶

At present, the “most contentious issue” in these negotiations between Armenia and Azerbaijan remains what is to become of Nagorno-Karabakh.⁵⁷ The broader global community has been unwilling to recognize the NKR because of a reluctance to condone the changing of inter-state borders because, “that might lead to irredentist claims elsewhere and add to conflict rather than [preserve] international order.”⁵⁸

In this context, the question of whether the NKR’s independence is legal under international law has particular salience. If the NKR’s independence is indeed proper, yet the international community nevertheless continues to withhold recognition in favor of political expediency, the situation raises serious questions regarding the very legitimacy of international law as a global institution. Conversely, if future political considerations lead states to recognize the NKR independence despite its violation of international law, the same difficult question arises.

II. Right to Secession under Soviet Law

The question of the NKR independence’s legitimacy begins with an analysis of the Soviet laws of secession. If the NKR had legally declared independence from the USSR in 1991, then subsequent Azerbaijani claims of control over the region should be unenforceable, as the NKR would have been its own sovereign and thus not within Azerbaijan’s jurisdiction. However, if the NKR had not properly secured its independence under the Soviet constitution prior to Azerbaijan declaring its own independence from the USSR, then Nagorno-Karabakh would have become a constituent part of the Republic of Azerbaijan and would thus need to follow

<https://www.cfr.org/global-conflict-tracker/conflict/nagorno-karabakh-conflict> [https://perma.cc/4NKC-HQA2] (last visited Oct. 25, 2021); *OSCE Minsk Group ready to organize meeting of Azerbaijani, Armenian leaders*, TASS, <https://tass.com/world/1347449> [https://perma.cc/5MRM-LA2P] (last visited Nov. 6, 2021).

⁵⁵ *See id.*

⁵⁶ *See id.* at 383.

⁵⁷ GEUKJIAN, *supra* note 16, at 207.

⁵⁸ *Id.* at 208.

Azerbaijani constitutional procedures in order to achieve independence.

On 2 September 1991, the NKAO began its attempt at independence with the adoption of the “Declaration of Independence of the Republic of Nagorno-Karabagh.”⁵⁹ NKAO officials based the legitimacy of this action on the Soviet Law of 3 April 1990, “[o]n the Procedures of Resolution of Problems on the Secession of a Union Republic from the USSR,” which arguably provided that “the secession of a Soviet Republic from the body of the USSR allows an autonomous region within the territory of the same republic to trigger its own process of independence.”⁶⁰

Over the next several months, the NKAO prepared a referendum on independence, which was finally held on 10 December 1991 under the approval of international observers, as the Soviet Law on secession required that a “[r]eferendum on independence in a Union Republic that includes autonomous republics, autonomous regions or autonomous oblasts should be organized separately for each autonomous entity.”⁶¹ Although this referendum showed almost unanimous support for secession, the Azerbaijanis, who remained in the NKAO, boycotted the vote.⁶² Aware of the impending boycott, NKAO officials adopted an Act on Referendum the same day as the vote, “which confirmed the fact that 22,747 persons of Azerbaijani origin who did not participate in the referendum were previously notified and given the appropriate documents on the referendum.”⁶³ In light of this referendum, on 6 January 1992, the leadership of the self-proclaimed republic adopted the “Declaration on State Independence of the Republic of Nagorny Karabakh,” a declaration which would “form the basis for the elaboration of the Constitution and Legislation of Nagorny Karabakh.”⁶⁴

To determine the effectiveness of the NKR’s independence process, it is necessary to consult the Soviet laws as they existed in late 1991. Article 72 of the Constitution of the Soviet Union stated

⁵⁹ U.N. ESCOR, THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION, at 7, U.N. Doc. E/CN.4/2005/G/23 (2005).

⁶⁰ *Id.*

⁶¹ *Id.* at 8.

⁶² See Grant, *supra* note 8, at 381.

⁶³ U.N. ESCOR, *supra* note 59, at 8.

⁶⁴ *Id.*

that “[e]ach Union Republic shall retain the right freely to secede from the USSR.”⁶⁵ Although this provision would seem to immediately quash the NKAO’s right to freely secede as they existed at a lower administrative level than a Union Republic, NKAO officials had relied on Article 3 of the Law of Secession passed by the Soviet government in April 1990, which stated, “[t]he people of autonomous republics and autonomous formations retain the right to decide independently the question of remaining with the USSR or within the seceding Union republic, and also to raise the question of their own state-legal status.”⁶⁶

Thus, the question arises as to whether the Law of Secession was truly meant to augment Article 72 of the constitution, or whether Article 3 of the Law of Secession was at odds with the constitution. If the two authorities were in conflict, the constitution would have supremacy as Article 173 of the Soviet constitution states, “The Constitution of the USSR shall have supreme legal force. All laws and other acts of state bodies shall be promulgated on the basis of and in conformity with it.”⁶⁷ Ultimately, even if the Law of Secession would have eventually been declared unconstitutional, it would still retain its legal force, as unconstitutional union laws did not become invalid *per se*, but rather “had to be revoked by the Congress of People’s Deputies.”⁶⁸

In the end, the NKAO simply violated too many of the Law on Secession’s requirements to consider their declaration of independence valid under Soviet Law.⁶⁹ For example, Article 2 of the Law on Secession states that the “referendum [must be] held by secret ballot no sooner than six and no later than nine months after the adoption of the decision to raise the question of the republic’s secession from the USSR.”⁷⁰ For the NKAO, the question was raised in September 1991 and the referendum was held in December 1991, far short of the six month preparatory period. Even without

⁶⁵ KONSTITUTSIIA SSSR (1977) [KONST. SSSR] [USSR CONSTITUTION] art. 72 (Russ.).

⁶⁶ *Law on Secession from the USSR*, SEVENTEEN MOMENTS IN SOVIET HISTORY (Apr. 3, 1990) at art. 3, <http://soviethistory.msu.edu/1991-2/shevardnadze-resigns/shevardnadze-resigns-texts/law-on-secession-from-the-ussr/> [<https://perma.cc/7DEG-JM5V>].

⁶⁷ KONSTITUTSIIA SSSR (1977) [KONST. SSSR] [USSR CONSTITUTION] art. 173 (Russ.).

⁶⁸ Krüger, *supra* note 11, at 218.

⁶⁹ *See id.* at 219.

⁷⁰ *Law on Secession from the USSR*, *supra* note 66, at art. 2.

the other issues at play, this violation of Article 2 would have been enough to undermine the NKAO's bid for independence under the Soviet Union.

III. Right to Secession under International Law

Although Nagorno-Karabakh's claims to independence clearly fall short under an analysis of Soviet law, they may yet have a successful claim of independence from Azerbaijan under international law. One source of international law concerning a nation's claim for independence is the Charter of the United Nations.⁷¹ Article 1 of the U.N. Charter states that one of the purposes of the United Nations is "[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples"⁷² Article 55 also mentions respect for the principle of self-determination of peoples.⁷³

Although this language of support for self-determination in the United Nations Charter may seem to imply that the United Nations supports independence for any who seek it, the concept of self-determination has been "plagued by difficulties as to scope and application," in part because "the drafters of the Charter did not define self-determination or identify who the 'peoples' were."⁷⁴ As commentators such as Antonio Cassese note, "[t]o explore self-determination . . . is also a way of opening a veritable Pandora's box [because] [i]n every corner of the globe peoples are claiming the right to self-determination."⁷⁵ For both practical and ideological reasons, the United Nations does not recognize every group seeking self-determination.⁷⁶ However, if certain conditions are met, a preference could develop towards respecting self-determination that accords with the language of the Charter.

One such set of conditions might provide the NKAO with a

⁷¹ See U.N. Charter art. 1.

⁷² *Id.* at art. 1, ¶2.

⁷³ See *id.* at art. 55.

⁷⁴ Marija Batistich, *The Right to Self-Determination and International Law*, 7 AUCKLAND U. L. REV. 1013, 1018 (1995).

⁷⁵ MILENA STERIO, *THE RIGHT TO SELF-DETERMINATION UNDER INTERNATIONAL LAW: SELFISTANS, SECESSION, AND THE RULE OF THE GREAT POWERS* 2 (2013) (quoting ANTONIO CASSESE, *SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL* 1 (1995)).

⁷⁶ For example: the Basque separatist movement, Catalonia, Eastern Ukraine, Kurdistan, and countless others.

legitimate claim to independence through remedial secession: Remedial secession. Remedial secession is a doctrine in which “international law may recognize a continuum of remedies ranging from the protection of individual rights, to minority rights ending with secession as the ultimate remedy.”⁷⁷ The magnitude of the remedy is in direct proportion to “the varying degrees of oppression inflicted upon a particular group by its governing State.”⁷⁸ In other words, the more serious the oppression, the more powerful the remedy.⁷⁹

One argument repeatedly made in favor of this principle is “that the saving clause contained in principle 5, paragraph 7, of the Declaration on Friendly Relations constitutes the legal basis of remedial secession.”⁸⁰ This “saving clause” states that:

Nothing in the foregoing paragraphs shall be construed as authorizing 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.⁸¹

Some scholars interpret this clause to mean that where a particular country does not truly represent all of its constituent members, “[the government] is illegitimate and thus in violation of the principle of self-determination, and this illegitimate character serves in turn to [legitimize] ‘action which would dismember or impair, totally or in part, the territorial integrity or political unity’ of the sovereign and independent State.”⁸²

However, such a reading of the Declaration on Friendly Relations goes beyond its intended meaning, as the language

⁷⁷ Grace Bolton & Gezim Visoka, *Recognizing Kosovo's Independence: Remedial Secession or Earned Sovereignty?* 1, 3 (South East European Studies at Oxford, Occasional Paper No. 11/10, 2010).

⁷⁸ *Id.*

⁷⁹ *See id.*

⁸⁰ Katherine Del Mar, STATEHOOD AND SELF-DETERMINATION 79, 93 (Duncan French ed., 2013) (listing commentators who argue that this provision serves as the legal basis for remedial secession under international law).

⁸¹ G.A. Res. 2625 (XXV), annex (Oct. 24, 1970).

⁸² Del Mar, *supra* note 80, at 93-4 (citing LEE C. BUCHHEIT, SECESSION: THE LEGITIMACY OF SELF-DETERMINATION 93 (1978)).

regarding “[n]othing in the foregoing paragraphs . . . demonstrates that ‘the purpose of the provision is to ensure that no preceding provision should be construed as authorizing the secession of territory, and not the opposite meaning.’”⁸³ In other words, the ‘saving clause’ in the Declaration on Friendly Relations is only meant to clarify the preceding language in the document itself, rather than grant some new form of secession rights to unhappy residents of a particular state. Although there is no concept of remedial secession that might grant a right of independence to Nagorno-Karabakh vis-à-vis their relationship with Azerbaijan, the principle of *uti possidetis* may provide another route to legitimized independence.

Uti possidetis, originally recognized in the context of decolonization, but considered more broadly today, is the principle that, “in the event of dissolution of a state, the units of that state come to independence within their former administrative boundaries.”⁸⁴ This principle is relevant to the question of Nagorno-Karabakh. If Karabakh automatically acquired sovereignty upon the collapse of the Soviet Union, then Azerbaijan’s claims over the territory would be void.

Unfortunately for the NKAO, however, *uti possidetis* does not appear applicable here, because “[b]efore the break-up of the Soviet Union, Nagorno-Karabakh lay within the administrative borders of the Azerbaijan SSR.”⁸⁵ Due to the fact that Azerbaijan held a higher administrative level within the Soviet Union than Nagorno-Karabakh, when the Azerbaijan SSR seceded from the Soviet Union, its “borders were converted, pursuant to the *uti possidetis* principle, into the international borders of the Republic of Azerbaijan, including Nagorno-Karabakh.”⁸⁶

As a result, pro-independence arguments based on the international law principle of *uti possidetis* dovetail closely with the analysis of independence under Soviet law above. Nagorno-Karabakh would have a much stronger *uti possidetis* claim if they were able to show that their attempts to gain independence from Azerbaijan under the Soviet Union were successful. Because the NKAO did not meet the Soviet constitutional requirements for state

⁸³ *Id.*

⁸⁴ Krüger, *supra* note 11, at 225.

⁸⁵ *Id.*

⁸⁶ *Id.* at 226.

secession and were consequently still part of Azerbaijan when the Soviet Union broke up, they cannot fulfill the requirements for a legitimate *uti possidetis* claim.

Although Nagorno-Karabakh has sought to achieve recognition as a state independent from Azerbaijan, its ineligibility for independence under both Soviet law and international law seriously undermines the legitimacy and possible effectiveness of such claims. Instead, the reality for residents facing day-to-day life in the contested territory is that whoever commands the most military power in the region will have the upper hand in the conflict, which at the moment and for the foreseeable future appears to be Russia.⁸⁷ Russia benefits from the conflict by providing military aid to both Armenia and Azerbaijan, conditioned on the potential recipient acquiescing to strategically important Russian foreign policy requests, such as the signing of a Commonwealth of Independent States security pact.⁸⁸

IV. Future Implications

An important future implication of the Nagorno-Karabakh conflict lies in the fact that the region may very well become an independent state at some point in the future, despite not meeting the requirements for sovereignty under Soviet law or international law. If such a result were to occur on the basis of international law and self-determination, it could undermine international law's legitimacy as a neutral arbiter of state conflict because the NKAO's claims to independence contravene several principles of international law.

Certainly, such an outcome could be the result of Azerbaijan freely deciding to grant independence to Nagorno-Karabakh, though this seems unlikely given the resources and military lives Azerbaijan has given in their efforts to hold onto the territory. If Nagorno-Karabakh were to become independent, it would likely be the result of a highly successful Armenian military offensive finally wresting control away from Azerbaijan. However, Armenian

⁸⁷ See Neil Hauer, *Bitter Military Losses Lead to Power Struggle in Nagorno-Karabakh*, RADIOFREEEUROPE/RADIOLIBERTY (Apr. 10, 2021, 8:19 AM), <https://www.rferl.org/a/karabakh-power-struggle-haratiunian-balasanian-russia-armenia-azerbaijan/31196526.html> [<https://perma.cc/G3FQ-RR3W>].

⁸⁸ See Andrew Sprague, *Russian Meddling in Its Near Abroad: The Use of Frozen Conflicts as a Foreign Policy Tool*, 28 INSTITUT BARCELONA ESTUDIS INTERNACIONALS STUDENT PAPER SERIES 12 (2016), https://www.ibei.org/ibei_studentpaper28_71440.pdf.

conquest seems as unlikely as Azerbaijani consent, as recent conflict has only strengthened Azerbaijan's hold on the region.⁸⁹

V. Conclusion

If one were to ask Kanum and Volodya Grigoryan their opinions on Nagorno-Karabakh independence following the forced expulsion from their house of twenty years, they would probably be more concerned with being able to live a peaceful, fulfilling life than exactly which flag flies over the land they called home. Unfortunately, because the NKAO's bids for independence under both the Soviet Union and the current state of Azerbaijan do not seem legitimate through either Soviet law or international law, it appears the violent tug-of-war over the territory will continue until a peaceful settlement can be reached, or one party obtains enough of a military advantage to end the question of Nagorno-Karabakh once and for all.

⁸⁹ Hauer, *supra* note 87.

