

Juxtaposing the Territorial Integrity and Self-Determination Principles in Nagorno-Karabakh Dispute

I Gusti Ayu Khanaya Manohara^{1*}
I Made Budi Arsika²
I Made Sena Darmasetiyawan³

^{1*}Faculty of Law, Universitas Udayana, Indonesia. E-mail: aya.manoharaa@gmail.com

²Faculty of Law, Universitas Udayana, Indonesia. E-mail: budi_arsika@unud.ac.id

³University of Liverpool, United Kingdom. E-mail: i.made.sena.darmasetiyawan@liverpool.ac.uk
Universitas Udayana, Indonesia. E-mail: sena.darmasetiyawan@gmail.com

Article Info

Keywords:

Self-determination;
Territorial integrity;
Dispute;
International law.

How to cite [Chicago Manual of Style 17th edition (full note)]:

I Gusti Ayu Khanaya Manohara, I Made Budi Arsika, and I Made Sena Darmasetiyawan, "Juxtaposing the Territorial Integrity and Self-Determination Principles in Nagorno-Karabakh Dispute," *Jambura Law Review* 5, no. 1 (2023): 38-59.

Abstract

The separation of the former Soviet Union resulted in non-civic divorces; ethnic cleansing, massacres, a territorial dispute which the Nagorno-Karabakh dispute stands as an example of. This conflict has been going on for years and is constantly evolving and regularly flares up resulting in casualties. The differing accusation of Armenia and Azerbaijan regarding the issue of the Nagorno-Karabakh conflict create different dimensions of the parties. Armenia sees the settlement as in the framework of self-determination whereas Azerbaijan pertains to the principle of territorial integrity in which both are the basic principles of international law thus leading to confusion regarding the legal dimensions of the conflict. With the most recent aggression, it is paramount now more than ever to seek the best possible settlement to put an end to the dispute. Until recently, Armenia accepts a deal with Russia to surrender the disputed territory by withdrawing its army. The main objective of this article is to give a general assessment of the disputed principles in this case.

@2023 - I Gusti Ayu Khanaya Manohara, I Made Budi Arsika, and I Made Sena Darmasetiyawan
Under the license CC BY-SA 4.0

1. Introduction

In November 2020, the conflict between Armenia and Azerbaijan in Nagorno-Karabakh caused more than 1000 deaths of both civilians and troops. Following the political pressure by international society to cease the hostilities, the President of Azerbaijan, the Prime Minister of Armenia, and the President of Russia signed a treaty to end the war on 9 November 2020. The settlement includes for Armenia's army to pull out from the Nagorno-Karabakh region and they will be replaced by Russian peacekeepers.¹ As pointed out by analysts, the treaty does not determine the final and definitive status of the disputed area Nagorno-Karabakh, instead, a new *status quo* was established there.² Nevertheless, this settlement surely is a beacon light of hope to finally resolve the conflict in Nagorno-Karabakh.

The ongoing dispute between Armenia and Azerbaijan over Nagorno-Karabakh has been going on for decades since the disintegration of the Union of Soviet Socialist Republics (USSR). Both countries have since then claimed the statehood of Nagorno-Karabakh under different reasonings which creates confusion in the international community as to which principle of international law should prevail over the other to solve this dispute. The question that remains unanswered is should Azerbaijan's territorial integrity be respected or should the people of Nagorno-Karabakh be granted their right to exercise external self-determination that will lead to secession. Although international law does tolerate secession, it sure does not support and encourage a positive right of secession if it is not in the most extreme of cases. This perspective refers to the Friendly Relations Declaration³ that upholds the principle of territorial integrity. Those who see the principle of self-determination as only applicable in the decolonization setting and reject the idea of the right of external self-determination would argue that the framework of dispute settlement in cases like this lies in granting internal self-determination within the parent's state's territorial integrity.

¹ "Armenia, Azerbaijan and Russia Sign Nagorno-Karabakh Peace Deal," *BBC News*, November 9, 2020, sec. Europe, <https://www.bbc.com/news/world-europe-54882564>.

² Júlia Miklasová, "The Recent Ceasefire in Nagorno-Karabakh: Territorial Control, Peacekeepers and Question of Status," *EJIL: Talk!* (blog), December 4, 2020, <https://www.ejiltalk.org/the-recent-ceasefire-in-nagorno-karabakh-territorial-control-peacekeepers-and-unanswered-question-of-status/>.

³ Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, G. A. Res. 2625 (1970).

Those who take on the view that secession is merely tolerated would argue that the people of Nagorno-Karabakh cannot exercise their right of external self-determination through seceding from Azerbaijan because the international law firmly upholds the principle of territorial integrity and take the sovereignty of states very seriously while there is no international law that explicitly regulates secession. This means that Azerbaijan's claim over the territory of Nagorno-Karabakh based on this principle is valid, thus their territorial integrity should be preserved and can only be changed if an agreement takes place. Azerbaijan's claim is also supported by the principle of *uti possidetis* making their territory even more protected because, at the time when Azerbaijan received its independence, Nagorno-Karabakh was within a part of the Azeri state.

Armenia on the other hand has been challenging this argument in the Nagorno-Karabakh dispute under the reason that Nagorno-Karabakh was a part of them since before the Soviet Union era and their ancestors have been inhabiting the land for centuries. They also argue that Nagorno-Karabakh was put under Azerbaijan's territory without an agreement from its peoples and has continuously sought their right to exercise self-determination.⁴ Hence why Armenia believes that Nagorno-Karabakh belongs to them.

2. Problem Statement

This article is aimed to discuss two issues with regards to the disputed territory Nagorno-Karabakh between Armenia and Azerbaijan from an international law perspective. First, it analyses the applicability of the principles of territorial Integrity in Nagorno-Karabakh. Second, it assesses the willingness of Nagorno-Karabakh peoples to exercise the right of Self-Determination.

3. Methods

It is legal research that uses statutory, historical, fact, and case approach. The statutory approach used in collecting international treaties and documents that cover the issue discussed while the historical approach is used to reveal the historical background of the conflicting situation between Armenia and Azerbaijan. The fact

⁴ Cqrcengage, "Self-Determination for Nagorno Karabakh," accessed May 16, 2021, <https://cqrcengage.com/anca/nkrfreedom>.

approach is utilized to discover the facts related to the Nagorno-Karabakh peoples, the political tensions, the armed conflict, and the changes of status of the disputed area. Lastly, the case approach is used to reflect legal issues in some relevant cases that may have a similar characteristic with all the legal matters discussed in this article.

4. Discussion

The clashes between maintaining and respecting the Territorial Integrity of States while also granting the peoples their right to self-determination in international law is one of the most debated false dichotomies that still lingers in today's society. Undeniably having more controversy than it does having clarity in its practice. The majority of the controversy arises when it comes to the two contradicting and mutually exclusive options; either the territorial integrity of the mother state is to be respected thus forbidding secession or a certain group that constitutes as "peoples" has a right to external self-determination. The confusion regarding the two principles causes secessionist conflicts to remain unsolved. The Nagorno-Karabakh conflict is a good depiction of what a lack of clarity regarding what seems to be contradicting principles does. This section will examine the territorial integrity of states and the principle of self-determination in order to assess the legal dimension of the dispute in Nagorno-Karabakh under the existing international law.

4.1. The Applicability of the Principle of Territorial Integrity in Nagorno-Karabakh

4.1.1. The Principle of Territorial Integrity under international law

The principle of territorial integrity in international law is there to serve the security of the territorial existence of sovereign states making it one of the primary elements of a sovereign state.⁵ Thus, maintaining the protection of states' territory is an embodiment of state sovereignty. The protection of territorial integrity specifically of the prohibition of the threat or use of force is established in the United Nations Charter.⁶ This ensures that no states could simply intervene in the internal affairs of

⁵ Simone F. van den Driest, "From Kosovo to Crimea and Beyond: On Territorial Integrity, Unilateral Secession and Legal Neutrality in International Law," *International Journal on Minority and Group Rights* 22, no. 4 (October 27, 2015): 467–85, <https://doi.org/10.1163/15718115-02204002>.

⁶ Charter of the United Nations Article 2(4)

another state and it also protects them from external interference, be it forceful or not. A major case that supports this statement is the Nicaragua v. United States of America case.⁷ In July 1979, The President of Nicaragua, Anastasio Somoza Debayle fell to a popular uprising and was replaced by a new government appointed by Frente Sandinista de Liberación Nacional (FSLN). The newly established government was opposed by the supporters of the former Somoza government and the former members of the National Guard. The United States also was not supportive of the new government because they were providing weapons and supplying logistical support to guerrillas in El Salvador. This caused the United States to stop its aid to Nicaragua and not only that, they decided to take things further by planning and undertaking activities pointed against Nicaragua. The United States military took it upon itself to carried out attacks against Nicaragua to topple down the new government. In 1983 the United States military mined Nicaraguan harbors and attacked other Nicaraguan facilities. Following the attacks, Nicaragua then filed a legal dispute to the ICJ against the United States for the violation of the Charter of the United Nations (UN Charter) and customary international law. The court ruled in favor of Nicaragua and declared that the attacks carried out by the United States constitute a breach of the non-use of force principle which is a part of customary international law. Hence why international law takes the territorial integrity of states very seriously and guarantees their protection.

The principle of territorial integrity also allows no derogation as it is a norm of customary law.⁸ The people of Nagorno-Karabakh however, have continuously claimed that they have the right to exercise external self-determination through seceding from Azerbaijan by means of protection of their people and their historical claims. While on the other side, Azerbaijan insisted that their territorial integrity should be respected and secession would be a violation of international law.

⁷ Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment. I.C.J. Reports 1986, p. 14

⁸ In Article 53 of the Vienna Convention on the Law of Treaties (1969), *jus cogens* is defined as a standard which is adopted and recognized by the international community as a principle from which no derogation is permitted and which may be amended only by a corresponding principle of general international law of the same character.

4.1.2. The Disputed Territory of Nagorno-Karabakh between Armenia and Azerbaijan

A long-time conflict: History and current situation

Looking back on the history of the Armenian-Azerbaijani conflict in Nagorno-Karabakh, it is a crisis that was caused and took place in the late 1980s after the collapse of the Union of Soviet Socialist Republics (USSR).⁹ In the early 1920s, the Soviet leader Joseph Stalin established Nagorno-Karabakh as a part of the Soviet Socialist Republic of Azerbaijan even when it was predominantly populated by ethnic Armenians and many believe that he is to blame for the dispute. Two years after that it got a turn into an autonomous region the situation never got extremely violent. However, it all changed when the enclaved Armenian or the People of Artsakh voted to be transferred to Soviet Armenia and demanded their right of self-determination in an internationally recognized territory of Azerbaijan but their request got denied and so the two countries began their fight over Nagorno-Karabakh. After 3 years of destructive war that caused thousands of deaths, Armenia had forced the Azerbaijan military out of Nagorno-Karabakh. Although the truce had taken place in 1994 when both countries signed the cease-fire treaty it only resulted in a no-peace-no-war situation. Even worst, it only sparks more tension between the two countries because it leaves room for false claims, ethnic hatred, negative stereotypes, and mistrust to fester. Both countries have ever since accused one another to escalate the conflict and the refusal to cooperate in restoring peace.¹⁰

For more than a quarter-century, the conflict subsequently reignites and flares up with the constant existence of military forces from both countries, but mainly from the Azerbaijan side which is backed by Turkey.¹¹ It progressively turned into more severe borders and ceasefire violations on Azerbaijan end resulting in more casualties and losses. Over the past two decades, peaceful and diplomatic negotiations conducted by specifically established Organisation for Security and

⁹ "The Nagorno-Karabakh Conflict: A Visual Explainer," October 27, 2020, <https://www.crisisgroup.org/content/nagorno-karabakh-conflict-visual-explainer>.

¹⁰ "Nagorno-Karabakh: The Volatile Core of the South Caucasus," February 26, 2017, <https://geohistory.today/nagorno-karabakh/>.

¹¹ Patrick Keddie, "What's Turkey's Role in the Nagorno-Karabakh Conflict?," accessed January 14, 2023, <https://www.aljazeera.com/features/2020/10/30/whats-turkeys-role-in-the-nagorno-karabakh-conflict>.

Cooperation in Europe (OSCE) Minsk group co-chaired by the United States, Russia, and France have taken place but unfortunately have had no successful result in putting an end to the dispute. The lack of compromise among the ruling elites seems to become the main reasons why this conflict never ended. Hegemonic media also plays a huge role in the spreading of radicalization of mutual mistrust between Armenian and Azerbaijani regarding their beliefs, a cultural, and historical background which perpetuates the tension even further. The constant and continuous dehumanization from both sides caused the reluctance to compromise nor to acknowledge peaceful methods hinders the potential of finding a settlement for the dispute.¹²

Is The *Uti Possidetis* Principle Recognized in Settling the Territorial Dispute of Nagorno-Karabakh

The principle of *Uti Possidetis* is a classic international law principle that covers the issue of territorial integrity. If self-determination is a people's right to determine their own fate by governing themselves to choose its economic, social, and political status, *uti possidetis* champions the notion of the righteousness of borders that was inherited by the remnants of colonialization in hope that it can attain peace and security of border within states so it can hinder border conflicts from happening when a new sovereign state took place and starting to redefine and claim their territory.¹³ It also prevents claims of *terra nullius* (land/territory belongs to no state).¹⁴ All in all, the main purpose of this principle was to protect the territorial borders of newly independent states so that their independence can prevail in all fields. That being said, *uti possidetis* might protect borders that were acquired unjustly to prevent territorial disputes by newly independent states.¹⁵ Due to being so fixated on the idea of finding stability, however, the concerns of particular people live in the territory are

¹² "Digging out of Deadlock in Nagorno-Karabakh," December 20, 2019, <https://www.crisisgroup.org/europe-central-asia/caucasus/nagorno-karabakh-conflict/255-digging-out-deadlock-nagorno-karabakh>.

¹³ Anne Peters, "The Principle of 'Uti Possidetis Juris': How Relevant Is It for Issues of Secession?," in *Self-Determination and Secession in International Law* (Oxford University Press, 2014), 95–137.

¹⁴ Land Island and Maritime Frontier Dispute (Salvador v. Honduras), Judgement, I.C.J Reports 1992, p. 47

¹⁵ Arman Sarvarian, "Uti Possidetis Juris in the Twenty-First Century: Consensual or Customary?," *International Journal on Minority and Group Rights* 22, no. 4 (October 27, 2015): 511–32, <https://doi.org/10.1163/15718115-02204004>.

often overlooked and neglected because the territory was acquired unjustly in the first place.¹⁶

The international community should favor one more than the other between the right to self-determination and territorial integrity or *uti possidetis* in solving conflicts, the latter usually prevails. There are two reasons why territorial integrity is favored more. First, it is because the international community fears that separatist movements in newly independent states will use the right of self-determination to enforce their agenda by use of force to dominate certain territory. Secondly, the international community would not want to endorse or encourage the act of secession as it is more intrusive and controversial. Another way to look at these two principles is as coexisting principles that go hand in hand, that is not to say they are equal but one recedes the other which can happen by letting the peoples living in the borders from the remnant of the colonial rulers exercise their right to self-determination. By doing so, it is the only way that the international community believes to fulfill both interests of maintaining the security and the balance of newly emerging states while still granting the right of every people to decide their own fate.¹⁷

A question arises whether *uti possidetis* pertains only in the decolonization setting or if it can be used outside of that in cases of secessionist where newly independent states emerged. The ICJ then stated in the *Frontier Dispute Case* between Burkina Faso and the Republic of Mali¹⁸ that *uti possidetis* was relevant outside the decolonization setting but the court also stated that it is linked to the phenomenon of achieving independence.¹⁹ But even when the implementation of this principle outside the colonial setting remained uncertain, in the case of the disintegration of the former Yugoslavia, the Badinter Commission acknowledged *uti possidetis* as a general

¹⁶ Steven R. Ratner, "Drawing a Better Line: UTI Possidetis and the Borders of New States," *American Journal of International Law* 90, no. 4 (October 1996): 590–624, <https://doi.org/10.2307/2203988>.

¹⁷ Irfan Fadilah and Parusa Seno Adirespati, "Self-Determination and Territorial Integrity Revisited: Reflecting Chagos Advisory Opinion and Its Comparison with West Papua," *Indonesian J. Int'l L.* 17 (2019): 65.

¹⁸ *Frontier Dispute (Burkina Faso v Republic of Mali)*, Judgment, I.C.J. Reports 1986, p. 554

¹⁹ David B. Carter and H. E. Goemans, "The Making of the Territorial Order: New Borders and the Emergence of Interstate Conflict," *International Organization* 65, no. 2 (April 2011): 275–309, <https://doi.org/10.1017/S0020818311000051>.

principle and can be used to achieve independence anywhere it is relevant.²⁰ There have been mixed opinions about this statement. Some criticized it because they deem that it defies the international law, while others agree that the ICJ's vague statement regarding the principle would not have helped in settling the dispute.

In establishing their goal, territorial integrity and *uti possidetis* should be examined together. According to the ICJ, the essence and aim of *uti possidetis* are to maintain peace and stability in newly independent states and prevent any threats coming after the removal of the past regime regarding the strenuous border conflicts by sticking to what was inherited from the colonial times.²¹ If we were to apply the principle of *uti possidetis* in the case of Nagorno-Karabakh, the answer to the ongoing secession conflict would be to adhere to existing borders that were defined by the former administration. The principle of territorial integrity refers, by means of the use of *uti possidetis*, to newly independent states whose borders constitute prior administrative boundaries within another larger state. Therefore, the sovereignty of newly independent states is protected from other territorial intrusions, and its boundaries are secured by both *uti possidetis* and territorial integrity.²² Within that logic, Azerbaijan has full right over Nagorno-Karabakh because it was a part of the Soviet Republic of Azerbaijan during the USSR era and because, when independence was achieved, the principle of *uti possidetis* applied to Azerbaijan, thus it secured the established Soviet borders and raised them to the status of international borders. That being said, the settlement in the Nagorno-Karabakh conflict depends on how one views which one should prevail between the right to self-determination or respecting the territorial integrity of Azerbaijan by yielding to *uti possidetis* principle.

4.2. Can Nagorno-Karabakh peoples exercise the right of Self-Determination?

The notion of self-determination refers to the right of the people to pursue their social, economic, and determine their political status. It stems way back to the American and French revolutions at the end of the 18th century, and it was considered as a principle that would guarantee democratic consent within an emerging state

²⁰ Conference of Yugoslavia Arbitration Commission Opinion No.3, 31 I.L.M 1488 (1922)

²¹ Driest, "From Kosovo to Crimea and Beyond," *Op.Cit.*, p. 467.

²² Balraj Puri, "Sovereignty, Territorial Integrity and Right of Self-Determination," *Economic and Political Weekly*, 2001, 263-64.

entity.²³ It was then more popularized and subsequently used after World War I when the President of the United States, Woodrow Wilson championed the notion of self-determination to minorities so that they're granted their right to be capable of determining their own fate in the future. Before the United Nations was established, self-determination was merely an ideology rather than it is a legal norm. It was not mentioned in any of the international treaties, not even The Covenant of the League of Nations touched upon self-determination. That was until the United Nations was established in 1945 then, self-determination was recognized as a writ for prevailing decolonization when the very first article of the United Nations Charter states that one of the main purposes of the United Nations is "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."²⁴ It opened the gate of freedom for colonized people to be free from the oppression of their colonizers through the forming of a new state.

From a mere political ideology, self-determination continued to revolutionize into a legal norm following the International Covenant on Civil and Political Rights (ICCPR) in 1966 as well as through a few General Assembly resolutions. Article 1 of the ICCPR states that "all peoples have the right of self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social, and cultural development."²⁵ In 1970, the Friendly Relations Declarations attempted to set out the legal norm of self-determination in the United Nations system, by stating that states have a responsibility to abstain from forceable actions which would strip people from their right to self-determination, and that colonized peoples have the right to self-determination under the United Nations Charter.²⁶ That in itself put an end to the notion that self-determination can only be applied for the purpose of decolonialization and therefore, it was no longer a "temporary right". It embodied self-determination as the core of basic human rights which is universally accepted

²³ Thomas M. Franck, "The Emerging Right to Democratic Governance," *American Journal of International Law* 86, no. 1 (January 1992): 46–91, <https://doi.org/10.2307/2203138>.

²⁴ Article 1 point 2 Charter of the United Nations

²⁵ International Covenant on Civil and Political Rights, (1966), Art. 1.

²⁶ Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625 (1970), p. 8

thus it is applicable in international law.²⁷ It has become a right that can be exercised both externally and internally.²⁸

In the post decolonization term, the jurisdiction of the principle of self-determination itself becomes more uncertain. It is unclear whether non-colonial peoples have purely the right to internal self-determination within their mother state or can non-colonial peoples solely based their claims on external self-determination to justify their independence through secession. Making it a very controversial topic in the international law realm. Self-determination may not always clash with territorial integrity because it does not always entail a territorial detachment from its mother state but even in cases where it does lead towards secession, self-determination applies before independence whereas territorial integrity applies after independence.²⁹ The aspect regarding self-determination may be understood through three connected fundamental questions. First, to whom does self-determination apply? How to define “peoples”? Second, whether the right extends beyond the decolonization setting. Which leads us to the last question on to what extent does the right to self-determination entail?

4.2.1. To Whom Does the Right to Self-Determination Apply?

The discussion of this matter is paramount since it is generally accepted that the right to self-determination belongs to the peoples and not the minorities. Until today, that there is no linear and concrete definition for minorities and peoples. There is however a distinct difference between the two and it lies in the fact that peoples are usually interpreted as “whole peoples” or an entire group with a specific state. Whereas minorities may not have a specific territorial autonomy claim and lives within a larger mother state with a representative government. Moreover, minorities may constitute a smaller subgroup of a whole people.³⁰ However, the distinction between peoples and minorities may be tremendously challenging to draw in its

²⁷ Hurst Hannum, “The Right of Self-Determination in the Twenty-First Century,” *Wash. & Lee L. Rev.* 55 (1998): 773.

²⁸ David Raic, *Statehood and the Law of Self-Determination* (Brill, 2002), 226.

²⁹ Zoilo A. Velasco, “Self-Determination and Secession: Human Rights-Based Conflict Resolution,” *International Community Law Review* 16, no. 1 (February 3, 2014): 75–105, <https://doi.org/10.1163/18719732-12341271>.

³⁰ J. Castellino, *International Law and Self-Determination: Peoples, Indigenous Peoples, and Minorities, Self-Determination and Secession in International Law* (OUP Oxford, 2014).

application and until today which constitutes which is still very much unclear in international law.

In attempting to precisely define the term “people”, former President of the International Court of Justice Rosalyn Higgins defined it as “entire people of a state”.³¹ Assuredly, “entire people of a state” will in all likelihood mean the whole population of a certain state. Nonetheless, it is important to remember that the majority of states are not made up of ethnically homogeneous society and within all of them there are numerous sub-population who are different than the others. And if indeed people are defined as the entire people of state, then it would diminish the efficacy of Article 1 of the UN Charter. Therefore, in defining these groups it is most likely depends on the objective and subjective elements thus, it differs in every case. With respect to minorities, it is generally accepted in the international community that minority groups are not the recipient of this right because it is often that they generally depend on the right to self-determination to break-away from their mother state. Thus, it will secure that they will not be benefitted from this right and won’t undermine the territorial integrity of their mother state.³² This will be discussed further below.

4.2.2. Self-Determination in the Post-Decolonization Setting

According to scholars, states in the beginning indicates an utmost hesitance to recognize self-determination as a norm of international law outside of the colonial context because it is within their concern that it would impact their existing state boundaries. Because they strongly believed that once colonial peoples were free from their colonizers, said right no longer exist.³³ Outside the post-decolonization setting, however, in the vast majority of instances states who try to limit the extent of self-determination strictly to colonial context only narrowly accentuate external self-determination and failed to consider the internal outlook. Nonetheless, the right to self-determination prevails and has ever since the late 20th century been used in a

³¹ Corinne de Keuning, *Problems & Process-International Law and How We Use It* (HeinOnline, 1995), 124.

³² Hurst Hannum, “The Concept and Definition of Minorities,” *Universal Minority Rights*, 2007, 49.

³³ James Summers, “Self-Determination, Resources and Borders: Introduction to the Special Issue,” *International Journal on Minority and Group Rights* 22, no. 4 (October 27, 2015): 459–66, <https://doi.org/10.1163/15718115-02204001>.

post-decolonization context given that it has been embraced by international law.³⁴ Precisely on a general analysis of the Friendly Relations Declaration and International Human Rights Covenants that distinctly declare that the right is not confined to decolonization setting only and in fact should be extended to peoples who have been failed by their government in representing their interests.

The idea that all peoples should have a right to self-government through democratic processes and genuine choice certainly means that it applies to both decolonization and non-decolonization setting as well, which was also backed by doctrine, State practice and other international instruments that stated it is an 'ongoing or continuing right'. These are some self-determination claims outside the decolonization settings:

The Unification of the German state

After the fall of the Berlin Wall, it led to the West and East Germany reunification. In March of 1990 free elections were held in East Germany where 80% of the populations exercising their right of self-determination voted in favour of the reunification with West Germany.³⁵ Soon after that, both states signed a unification treaty, the prelude of which mentioned the unification as an implementation of the right to self-determination.³⁶ This act obviously happened in a non-colonial context and is recognized by the international community.

The Disintegration of the USSR

Fifteen sovereign states have merged after the breakup of the Soviet Union. Although there were some concerns from the international community regarding international peace, those newly established states emphasized the need to uphold the territorial integrity of the Soviet Union but, parallel to this concern, there is a need for a consensual secession by implementing their right to self-determination. Eventually, the international community recognized these new states and acknowledged them as the United Nations member States. In the process of doing so, the European

³⁴ Rodriguez-Santiago Elizabeth and Fernando Teson, "The Evolution of Self-Determination of Peoples in International Law," in *The Theory of Self-Determination* (Cambridge University Press, 2016), 201–40.

³⁵ Jochen Abr Frowein, "The Reunification of Germany," *American Journal of International Law* 86, no. 1 (January 1992): 152–63, <https://doi.org/10.2307/2203146>.

³⁶ The Unification Treaty between the FRG and the GDR (Berlin, 31 August 1990), Art. 4(1)

Community made acknowledgment contingent on whether certain prerequisites were fulfilled. Based on the Declaration on the 'Guidelines on the Recognition of New States in Eastern Europe and the Soviet Union',³⁷ respect for the rule of law, democracy, and human rights is the necessity for attaining independence. This was revolutionary progress because it affirmed the tight connection between external and internal self-determination.

The Independence of Kosovo

On 17 February 2008, the Kosovo Self-Government Assembly declared independence from Serbia that brought clarity on the status of the state after years of uncertainty. Followed by that, many states in the international community including the United States and French recognized Kosovo as a sovereign state right away. Nonetheless, despite the recognition from the international community Serbia did not accept the notion of independent Kosovo and it called for the International Court of Justice to release an advisory opinion on whether the Declaration of Independence by Kosovo disregard international law. It was concluded by the court that the Declaration of Independence by Kosovo did not disregard international law and was pursuant to general international law.³⁸ Although the court ruled out that it did not, it has been well known that the court refused to discuss the right of self-determination nor to elaborate on whether Kosovar Albanians had a positive entitlement to secession and instead remain vague about it.³⁹

Not only states but separatist groups have also leaned on this right as their legal basis to justify their claims. Some scholars have aimed to differentiate lawful self-determination claims from false ones by stating that the right holder should only be the peoples that put a territorial claim to a pre-recognized territorial area.⁴⁰ But needless to say, it is easier said than done because, in its practice, it is hard to

³⁷ Aleksei Filitov, "The End of the Cold War and the Dissolution of the USSR," *Journal of Modern European History* 9, no. 3 (November 1, 2011): 298-307, https://doi.org/10.17104/1611-8944_2011_3_298.

³⁸ Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010, p. 403

³⁹ Tamara Jaber, "A Case for Kosovo? Self-Determination and Secession in the 21st Century," *The International Journal of Human Rights* 15, no. 6 (August 1, 2011): 926-47, <https://doi.org/10.1080/13642981003666268>.

⁴⁰ M. Ya'kub Aiyub Kadir, "Application of the Law of Self-Determination in a Postcolonial Context: A Guideline," *Journal of East Asia and International Law* 9 (2016): 7.

distinctively determine the rightfulness of clashing territorial claims. Although the cases mentioned above supports the very subsistence of the right to self-determination in a non-colonial setting, it is still uncertain what its parameters may be.

4.2.3. The Contours of the Right of Self-Determination

In cases of non-colonial setting, self-determination can occur in one of two ways; first, it can happen internally that is to say a group practicing self-government and autonomy over its own people and/or territory and not resorting to complete independence from its mother state. Second, it can happen externally in the instance of people voting for or refusing complete independence through secession.⁴¹ These two options allow states to examine suitably before resorting and settling with secession and for other actors to recognize it. There are no international treaties that regulate the right to self-determination that elaborate on how to discern between external and internal self-determination. However, most scholars would agree that external self-determination can be justified only in the most extreme instances where the state failed to protect and fulfill the right of its people including the right to internal self-determination, or for those peoples whose mother states lack legitimacy also known as state failure.⁴² State failure can also refer to losing a monopoly over its territory. In those instances, territorial integrity can be undermined for the sake of self-defense.⁴³

Even when the sovereignty of a state is compromised in its practice, that does not rule out the very existence of the state in question and it is still recognized in international law. Although external sovereignty where recognition of a state from other states is there, there is also internal sovereignty that refers to the capability of states to serve the best interests of their people and provide them with basic rights. Both should co-exist side by side. The loss of internal sovereignty is one of the most contributing

⁴¹ Peter Hilpold, "Self-Determination and Autonomy: Between Secession and Internal Self-Determination," *International Journal on Minority and Group Rights* 24, no. 3 (August 8, 2017): 302–35, <https://doi.org/10.1163/15718115-02403002>.

⁴² Puri, "Sovereignty, Territorial Integrity and Right of Self-Determination.," *Op.Cit.*

⁴³ Theresa Reinold, "State Weakness, Irregular Warfare, and the Right to Self-Defense Post-9/11," *American Journal of International Law* 105, no. 2 (April 2011): 244–86, <https://doi.org/10.5305/amerjintelaw.105.2.0244>.

factors that can be used to justify secession claims to the United Nations. Again, that is not to say we exclude the existence of the parent state despite the sovereignty of said state has been compromised.⁴⁴

States are most likely to be hesitant to acknowledge the existence of the right to external self-determination in the non-colonial paradigm because it is more challenging to evaluate legally since it is usually clashing with the principle of territorial integrity as supposed to internal self-determination where it is less controversial and invasive making it more applicable in most cases. External self-determination through secession is an act of resisting the rule of the mother state by excluding the jurisdiction of the mother state from the claimed territory of the secessionist, instead of having a structural reform. This contradicts the principle of territorial integrity that allows no derogations as a *jus cogens* norm in international law.⁴⁵ Thus it is understandable why many claims to exercise external self-determination through secession have been rejected the status of statehood by the international community. With the examples of Republika Srpska that claimed independence from Bosnia after committing an atrocious act of ethnic cleansing⁴⁶ and in the case of Northern Cyprus that used illegitimate force to separate from Cyprus.⁴⁷ In the instances of illicit secession, the parent state from which this secessionist tried to separate from has the right to forcibly reinstate the territory.⁴⁸

It may be fair to state that international law does not embolden the notion of secession however, in extreme cases where the seceding people are constantly being oppressed and their right to internal self-determination had been undermined by their mother state then secession by means of exercising external self-determination is tolerated and can be justified. The Quebec case is the best case to illustrate the

⁴⁴ Ed Brown, "The United Nations, Self-Determination, State Failure and Secession," *E-International Relations* (blog), May 29, 2020, <https://www.e-ir.info/2020/05/29/the-united-nations-self-determination-state-failure-and-secession/>.

⁴⁵ Article 53 Vienna Convention on the Law of Treaties

⁴⁶ Peter Radan, "Republika Srpska Krajina and the Right of Peoples to Self-Determination," *Istorija 20. Veka*, no. 1 (2018): 9–34.

⁴⁷ Andreas Yfantidis, "The Limits of Self-Determination and the Cases of Forced Separatism: The Example of Northern Cyprus," *Open Journal of Political Science* 06, no. 02 (2016): 161, <https://doi.org/10.4236/ojps.2016.62015>.

⁴⁸ Castellino, *International Law and Self-Determination: Peoples, Indigenous Peoples, and Minorities*, *Op.Cit.*, 33.

contrast between internal and external self-determination.⁴⁹ The Quebecois people of Canada fought for their most sought-after independence in the 1960s. But when asked to vote to go on with the secession and form a sovereign state of Quebec in a 1995 referendum, the majority of the people with a very tight margin voted to still remain as a part of Canada. To shed a light on the clarity of the referendum results, the Canadian Supreme Court was asked by the Canadian Parliament to put out an opinion on whether the Quebecois have a positive right to secede and if the proposal of Quebecois secession violates any law. The Court then stated when a people's right to self-determination is not being respected internally then they are entitled to exercise their right to external self-determination through secession. Anyhow, the Supreme Court also deliberately examine the right to self-determination in a grand scheme of the territorial integrity of states. The Court stated that the implementation of any self-determination should be somewhat restricted to prevent the risk of disregarding an existing state's territorial integrity. Along with that, the Court concluded that the right of internal self-determination should be upheld while at the same time also respecting the territorial integrity of the mother state and the external right of self-determination can only be exercised in the most extreme cases and instances. Followed by that, the Canadian Supreme Court ruled that the Quebecois people in Canada could exercise their right to internal self-determination thus the Court did not continue to elaborate on the notion of external self-determination through secession because it is deemed unnecessary. This case encapsulates the distinction between internal and external self-determination and reasserts the hegemony of territorial integrity.

4.2.4. The Right to Self-Determination and Nagorno-Karabakh Peoples

Amidst the terminological confusion, do the people of Nagorno-Karabakh constitute a people? If the international society recognizes Kurds, Tibetans, Palestinians as peoples then shouldn't the same status be applied to the Chechens, Basque, and Kashmiris?⁵⁰ If one contrives a people as the entire population of a particular state, one may have a stern doubt regarding the status of the inhabitants in Nagorno-

⁴⁹ Supreme Court of Canada Reference re Secession of Quebec, (1998) 2 S.C.R. 217

⁵⁰ Milena Sterio, "Secession: A Proposal for a New Legal Framework," SSRN Scholarly Paper (Rochester, NY, October 21, 2016), <https://papers.ssrn.com/abstract=2857209>.

Karabakh, do they constitute a people? Supposing they are, what type of right to self-determination do they have?

In the case of Nagorno-Karabakh, if one were to believe that the right of self-determination should only be confined to colonial context then the people of Nagorno-Karabakh may not be the beneficiaries of the right. However, if one embraces the view that the right of self-determination extends beyond the post decolonization setting then it is undoubtedly that the people of Nagorno-Karabakh are entitled to this right.

As mentioned above in the discussion of the contours of self-determination, one can argue that in order to justify their claim to exercise their right to external self-determination, the people of Nagorno-Karabakh would have to prove that their right to exercise internal self-determination were entirely being disrupted by the government of Azerbaijan since human rights violation have undoubtedly taken place in Nagorno-Karabakh. Therefore, exercising their right to external self-determination through secession is the last resort to protect the people of the Nagorno-Karabakh and solve the ongoing dispute.

5. Conclusion

Due to the lack of clear-cut legal guidelines on respect for the territorial integrity of states and allowing people to exercise their right to self-determination, it is difficult for the international community to find a one-size-fits-all solution to secessionist disputes. The case of Nagorno-Karabakh is one of the many examples. The confusion stems from the absence of mutual understanding that is universally accepted of which principle should come before the other.

Bearing in mind the preceding evaluation of the right to self-determination within the international law, if we were to assume that the Nagorno-Karabakh's citizen constitutes a people just like the Tibetans and the Kurds, then they would be entitled to exercise their right of internal self-determination. But does the right apply outside the decolonization setting? Once again, there is no definite answer to this question. Until today it remains uncertain whether the right persists in the post-colonial setting or whether the right merely serves as means of ending colonialism. If one takes the

view that the right is not limited to the setting of decolonization, the citizens of Nagorno-Karabakh may be the beneficiaries of that right. But if one embraces the view that only in the setting of decolonization can the right exist, the citizens of Nagorno-Karabakh could not claim the right. It may be argued that external self-determination through secession can only be justified if the people's right to exercise internal self-determination were being frustrated by their mother state and violent oppression consistently takes place. That is to say that in order for the people of Nagorno-Karabakh to justify their claim of secession, they would have to prove that their right to exercise internal self-determination was being entirely disrupted by the government of Azerbaijan.

That being said, the principles of territorial integrity and *uti possidetis* will not allow secession to take place unless there is a mutual agreement from all parties involved. These principles ensure the protection of Azerbaijan's territory. If we were to look at this case on the basis of the principle of *uti possidetis*, the Nagorno-Karabakh is undoubtedly within Azerbaijan's jurisdiction, because when Azerbaijan achieved its independence, Nagorno-Karabakh was part of Azerbaijan. However, both Nagorno-Karabakh and Armenia refuse this premise. In order to prove their disagreement, they would have to prove that Nagorno-Karabakh belonged to Armenia prior to the Soviet Union regime and that it was given to Azerbaijan during the Soviet Union era without the consent of the people of Nagorno-Karabakh. That being said, the dispute in Nagorno-Karabakh is less likely to be resolved unless an agreement is reached between parties. Due to the uncertainty of distinguishing between these principles, they certainly cannot rely solely on one principle and at the end of the day, one principle should prevail over the other to which the other party has to succumb.

References

- BBC News. "Armenia, Azerbaijan and Russia Sign Nagorno-Karabakh Peace Deal," November 9, 2020, sec. Europe. <https://www.bbc.com/news/world-europe-54882564>.
- Brown, Ed. "The United Nations, Self-Determination, State Failure and Secession." *E-International Relations* (blog), May 29, 2020. <https://www.e-ir.info/2020/05/29/the-united-nations-self-determination-state-failure-and-secession/>.

- Carter, David B., and H. E. Goemans. "The Making of the Territorial Order: New Borders and the Emergence of Interstate Conflict." *International Organization* 65, no. 2 (April 2011): 275–309. <https://doi.org/10.1017/S0020818311000051>.
- Castellino, J. *International Law and Self-Determination: Peoples, Indigenous Peoples, and Minorities. Self-Determination and Secession in International Law*. OUP Oxford, 2014.
- Cqrcengage. "Self-Determination for Nagorno Karabakh." Accessed May 16, 2021. <https://cqrcengage.com/anca/nkrfreedom>.
- "Digging out of Deadlock in Nagorno-Karabakh," December 20, 2019. <https://www.crisisgroup.org/europe-central-asia/caucasus/nagorno-karabakh-conflict/255-digging-out-deadlock-nagorno-karabakh>.
- Driest, Simone F. van den. "From Kosovo to Crimea and Beyond: On Territorial Integrity, Unilateral Secession and Legal Neutrality in International Law." *International Journal on Minority and Group Rights* 22, no. 4 (October 27, 2015): 467–85. <https://doi.org/10.1163/15718115-02204002>.
- Elizabeth, Rodriguez-Santiago, and Fernando Teson. "The Evolution of Self-Determination of Peoples in International Law." In *The Theory of Self-Determination*, 201–40. Cambridge University Press, 2016.
- Fadilah, Irfan, and Parusa Seno Adirespati. "Self-Determination and Territorial Integrity Revisited: Reflecting Chagos Advisory Opinion and Its Comparison with West Papua." *Indonesian J. Int'l L.* 17 (2019): 65.
- Filitov, Aleksei. "The End of the Cold War and the Dissolution of the USSR." *Journal of Modern European History* 9, no. 3 (November 1, 2011): 298–307. https://doi.org/10.17104/1611-8944_2011_3_298.
- Franck, Thomas M. "The Emerging Right to Democratic Governance." *American Journal of International Law* 86, no. 1 (January 1992): 46–91. <https://doi.org/10.2307/2203138>.
- Frowein, Jochen Abr. "The Reunification of Germany." *American Journal of International Law* 86, no. 1 (January 1992): 152–63. <https://doi.org/10.2307/2203146>.
- Hannum, Hurst. "The Concept and Definition of Minorities." *Universal Minority Rights*, 2007, 49.
- . "The Right of Self-Determination in the Twenty-First Century." *Wash. & Lee L. Rev.* 55 (1998): 773.
- Hilpold, Peter. "Self-Determination and Autonomy: Between Secession and Internal Self-Determination." *International Journal on Minority and Group Rights* 24, no. 3 (August 8, 2017): 302–35. <https://doi.org/10.1163/15718115-02403002>.

- Jaber, Tamara. "A Case for Kosovo? Self-Determination and Secession in the 21st Century." *The International Journal of Human Rights* 15, no. 6 (August 1, 2011): 926–47. <https://doi.org/10.1080/13642981003666268>.
- Kadir, M. Ya'kub Aiyub. "Application of the Law of Self-Determination in a Postcolonial Context: A Guideline." *Journal of East Asia and International Law* 9 (2016): 7.
- Keddie, Patrick. "What's Turkey's Role in the Nagorno-Karabakh Conflict?" Accessed January 14, 2023. <https://www.aljazeera.com/features/2020/10/30/whats-turkeys-role-in-the-nagorno-karabakh-conflict>.
- Keuning, Corinne de. *Problems & Process-International Law and How We Use It*. HeinOnline, 1995.
- Miklasová, Júlia. "The Recent Ceasefire in Nagorno-Karabakh: Territorial Control, Peacekeepers and Question of Status." *EJIL: Talk!* (blog), December 4, 2020. <https://www.ejiltalk.org/the-recent-ceasefire-in-nagorno-karabakh-territorial-control-peacekeepers-and-unanswered-question-of-status/>.
- "Nagorno-Karabakh: The Volatile Core of the South Caucasus," February 26, 2017. <https://geohistory.today/nagorno-karabakh/>.
- Peters, Anne. "The Principle of 'Uti Possidetis Juris': How Relevant Is It for Issues of Secession?" In *Self-Determination and Secession in International Law*, 95–137. Oxford University Press, 2014.
- Puri, Balraj. "Sovereignty, Territorial Integrity and Right of Self-Determination." *Economic and Political Weekly*, 2001, 263–64.
- Radan, Peter. "Republika Srpska Krajina and the Right of Peoples to Self-Determination." *Istorija 20. Veka*, no. 1 (2018): 9–34.
- Raic, David. *Statehood and the Law of Self-Determination*. Brill, 2002.
- Ratner, Steven R. "Drawing a Better Line: UTI Possidetis and the Borders of New States." *American Journal of International Law* 90, no. 4 (October 1996): 590–624. <https://doi.org/10.2307/2203988>.
- Reinold, Theresa. "State Weakness, Irregular Warfare, and the Right to Self-Defense Post-9/11." *American Journal of International Law* 105, no. 2 (April 2011): 244–86. <https://doi.org/10.5305/amerjintelaw.105.2.0244>.
- Sarvarian, Arman. "Uti Possidetis Iuris in the Twenty-First Century: Consensual or Customary?" *International Journal on Minority and Group Rights* 22, no. 4 (October 27, 2015): 511–32. <https://doi.org/10.1163/15718115-02204004>.
- Sterio, Milena. "Secession: A Proposal for a New Legal Framework." SSRN Scholarly Paper. Rochester, NY, October 21, 2016. <https://papers.ssrn.com/abstract=2857209>.

- Summers, James. "Self-Determination, Resources and Borders: Introduction to the Special Issue." *International Journal on Minority and Group Rights* 22, no. 4 (October 27, 2015): 459–66. <https://doi.org/10.1163/15718115-02204001>.
- "The Nagorno-Karabakh Conflict: A Visual Explainer," October 27, 2020. <https://www.crisisgroup.org/content/nagorno-karabakh-conflict-visual-explainer>.
- Velasco, Zoilo A. "Self-Determination and Secession: Human Rights-Based Conflict Resolution." *International Community Law Review* 16, no. 1 (February 3, 2014): 75–105. <https://doi.org/10.1163/18719732-12341271>.
- Yfantidis, Andreas. "The Limits of Self-Determination and the Cases of Forced Separatism: The Example of Northern Cyprus." *Open Journal of Political Science* 06, no. 02 (2016): 161. <https://doi.org/10.4236/ojps.2016.62015>.