

SELF-DETERMINATION DENIED: THE LEGAL CASE FOR ARTSAKH'S INDEPENDENCE AND THE ILLEGALITY OF AZERBAIJAN'S SOVEREIGNTY CLAIMS *

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The aim of this article is to examine the legal foundations of the Republic of Artsakh's claim to independence and to assess the competing assertion of sovereignty advanced by Azerbaijan. In particular, the article seeks to demonstrate that Artsakh presents one of the strongest contemporary cases for recognition of remedial secession under international law. The central issues addressed are, first, whether Artsakh's declaration of independence and subsequent exercise of statehood met the requirements of international and Soviet constitutional law, and second, whether Azerbaijan's invocation of territorial integrity has legal merit given the circumstances of ethnic cleansing, mass displacement, and the use of force to alter territorial control. Methodologically, the article employs a comparative analysis. It situates the Artsakh question alongside other contested cases of secession and self-determination, including Kosovo, South Sudan and Eritrea. By examining the jurisprudence of international courts and the practice of states in these analogous situations, the study identifies the legal standards applied to questions of independence, territorial integrity, and remedial secession, and measures the Artsakh case against those standards. The conclusions advanced are unambiguous. Artsakh is historically and legally an Armenian land whose people exercised their right to self-determination in accordance with constitutional and international norms. Azerbaijan's claim to sovereignty over Artsakh rests on political assertion rather than legal substance and has been maintained through force, ethnic cleansing, and demographic engineering. Properly interpreted, international law does not permit the acquisition of territory through aggression or atrocity crimes and recognizes the entitlement of the people of Artsakh to external self-determination.

Keywords: *Artsakh, international law, remedial secession, self-determination, territorial integrity, genocide, Armenia, Azerbaijan, sovereignty.*

Introduction

In September 2023, Azerbaijan once again initiated military aggression launching a large-scale military operation against the ethnically Armenian population of Artsakh. This

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act of aggression was preceded by a blockade that lasted for months and had deprived civilians of food, medicine and other vitally important things. As a result of this aggression a mass displacement of approximately 120,000 Armenians took place. In other words, an act of genocide was committed by effectively cleansing the region of its indigenous population. However, despite warnings by international legal scholars and genocide experts, including The Lemkin institute for Genocide Prevention (Lemkin Institute for Genocide Prevention, Report, Risk Factors and Indicators of the Crime of Genocide in the Republic of Artsakh: Applying the UN Framework of Analysis for Atrocity Crimes to the Nagorno-Karabakh Conflict, 2023), the global response was muted. Following the ethnic cleansing, Azerbaijan declared “full reintegration” of the territory and erased all institutional traces of Artsakh’s thirty-year-old self-governing republic.

This was not the beginning, but the culmination, of a long-standing strategy by Azerbaijan to eliminate the Armenian presence in Artsakh. From the Sumgait and Baku pogroms of the late 1980s and early 1990s, to the Maragha massacre (1992), the Talish atrocity (2016), and repeated violations during the 2020 war and 2023 blockade, the pattern is unmistakable: repression, and ethnonationalist violence against a population that has consistently demanded its right to self-determination.

Azerbaijan falsely claims that its sovereignty over Artsakh is internationally recognized and inviolable. We challenge that on legal, moral and every other possible grounds. Artsakh’s secession was lawful under Soviet constitutional law, it was confirmed through democratic means, and that subsequent Azerbaijani conduct, such as war crimes, ethnic cleansing, and genocidal intent simply does one thing: triggers the doctrine of remedial secession.

Furthermore, this article places the case of Artsakh in comparative perspective, drawing on international precedents such as Kosovo, Eritrea and South Sudan. This article argues that Artsakh’s claims whether legal, moral or historical, are in many ways stronger and superior than, those of other entities whose statehood has been recognized.

Ignoring such legal arguments bears the risk of normalizing territorial conquest by force as well as legitimizing ethnic cleansing as a tool of statecraft. In this article we call not only for recognition of Artsakh’s legal right to independence, but for the reaffirmation of core principles of international law—non-acquisition of territory by force, the right of peoples to self-determination and prohibition of genocide.

Azerbaijan’s Falsified Sovereignty Claims and Artsakh’s Legal Foundations for Secession.

1. The Soviet Origin of Azerbaijan’s Claim: Artificial and Illegitimate

Azerbaijan’s sovereignty over Artsakh is frequently invoked by international actors as legally settled and “territorially recognized”, whereas this so called “recognition” is rooted in Soviet administrative decisions, and clearly not in the exercise of democratic will or respect for self-determination. When the South Caucasus was Sovietized in early twentieth century, one of the most well-known leaders of the century Joseph Stalin (at the time he was People’s Commissar for Nationalities) arbitrarily assigned the Armenian-majority region of Nagorno-Karabakh to Soviet Azerbaijan in July 1921, despite an initial vote in favor of unification with Soviet Armenia by the Caucasian Bureau of the Communist Party.

This decision clearly lacks legality and was purely political, designed to appease Turkey and strengthen Azerbaijan’s loyalty to Moscow ignoring the will of the local population. The 1923 creation of the Nagorno-Karabakh Autonomous Oblast (NKAO) within the Azerbaijan SSR institutionalized the region’s separation from Armenia but also

recognized its distinct ethnic and political character. It was never fully integrated, administratively, culturally, or politically.

In other words, Azerbaijan's contemporary claim rests on the internal borders of a no longer existing totalitarian regime. It fails to satisfy the requirements of *uti possidetis juris*, which applies only where internal borders reflect legitimate administrative or political reality. In *Frontier Dispute (Burkina Faso v. Mali)*, the ICJ held that *uti possidetis* aims to prevent chaos during decolonization—not to freeze unjust borders created by fiat. When a border or territorial claim lacks democratic or legal legitimacy at inception, the doctrine cannot validate it (Cour Internationale de Justice, *Receuil des arrêts, Avis Consultatifs et Ordonnances INTERNATIONALE DE JUSTICE RECUEIL DES ARRÊTS, AVIS CONSULTATIFS ET ORDONNANCES, Affaire du Differend Frontalier, (Burkina Faso/Republique de Mali)*, Arrêt du 22 December 1986. available at <https://www.icj-cij.org/sites/default/files/case-related/69/069-19861222-JUD-01-00-EN.pdf>).

2. Artsakh's Lawful Secession Under Soviet Constitutional Law

Azerbaijan continuously fueled the myth of unilateral secession, whereas in reality Artsakh's path to independence was perfectly in line with Soviet constitutional procedures. Article 78 of the 1977 USSR Constitution allowed a union republic to secede, and under Article 74 of the Azerbaijan SSR's Constitution, autonomous oblasts like the NKAO had institutional rights to express their will.

Faced with the rise of Azerbaijani nationalism, continuous and violent repression, ethnic violence at the sunset of the Soviet Union in the late 1980s, including the Sumgait pogrom in February 1988, the NKAO Regional Soviet voted to secede from Azerbaijan on 20 February 1988. On 10 December 1991, following the USSR's collapse, the region held a referendum on independence in which 99% of participating voters supported creating the Republic of Nagorno-Karabakh (later Artsakh).

This was not an isolated incident, as this process mirrors those recognized in other post-Soviet transitions (e.g. the Baltic states). The UN General Assembly (Resolution 2625) affirms that a people has the right to secede when denied meaningful autonomy or subjected to systemic oppression. Artsakh, which had faced pogroms, military blockade, and political exclusion by Baku since 1988, clearly met that threshold.

3. Azerbaijan's Claims Refuted by International Law and Atrocity Crimes

Even assuming Azerbaijan's *de jure* sovereignty under *uti possidetis juris*, its subsequent conduct voids any claim to legal title over Artsakh. Under international law, sovereignty is conditional on the respect for human rights, prohibition of force, and protection of minority populations. Azerbaijan's pattern of behavior since 1988 reflects intentional and repeated violations of these obligations:

- Sumgait and Baku Pogroms (1988–1990): Anti-Armenian riots tolerated or incited by Azerbaijani authorities resulted in torture, murder, and displacement of thousands (Council of Europe, Third Report on Azerbaijan, 1998, pp. 5-6). The Sumgait pogrom in particular was described by *Human Rights Watch* as “ethnic cleansing by design” (Human Rights Watch, Conflict in the Soviet Union, Black January in Azerbaijan, May 1991, available at <https://www.hrw.org/reports/pdfs/u/ussr/ussr915.pdf?utm>).
- Maragha Massacre (1992): Documented by Baroness Caroline Cox and others, Azerbaijani forces tortured and murdered dozens of Armenian civilians in the village of Maragha in a manner consistent with war crimes under the Geneva Conventions (Human Rights Watch, Conflict in the Soviet Union, Black January in

Azerbaijan, May 1991, available at <https://www.hrw.org/reports/pdfs/u/ussr/ussr915.pdf?utm>.

- Talish Atrocity (2016): During a four-day war, Azerbaijani soldiers filmed themselves mutilating elderly civilians, actions later praised by state media. This demonstrated an official culture of impunity and sadistic propaganda (Waters, Nick, An execution in Hadrut, Bellingcat, 15 October 2020 available at <https://www.bellingcat.com/news/rest-of-world/2020/10/15/an-execution-in-hadrut-karabakh/>).
- 2020 War and 2023 Siege: The use of banned cluster munitions, white phosphorus, and starvation tactics during the 2023 blockade violated Articles 54 and 55 of Additional Protocol I to the Geneva Conventions. Human rights expert Luis Moreno Ocampo and former ICC prosecutor Rod Rastan warned that the blockade and forced displacement in 2023 met the threshold of genocide under Article II(c) of the Genocide Convention (Ocampo, Luis Ocampo, Expert Opinion, Genocide against Armenians in 2023, 7 August 2023, available at <https://www.cftjustice.org/wp-content/uploads/2023/08/Moreno-Ocampo-Expert-Opinion.pdf>).

International law has consistently held that territory obtained through force or mass atrocity cannot be legally recognized. The ICJ's *Legal Consequences of the Construction of a Wall* advisory opinion reaffirmed that acquisition of territory by war, occupation, or population transfer is illegal (<https://www.icj-cij.org/sites/default/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>).

Under the doctrine of remedial secession, a people may lawfully secede when their state commits crimes against humanity and denies meaningful internal self-determination. As According to some scholars, remedial secession remains an exceptional but justifiable legal remedy in cases of oppression and atrocity (Cassese, Antonio, *Self-Determination of Peoples: A Legal Reappraisal*, Cambridge University Press, Grotius Publication, Cambridge, 1995, pg 120).

Artsakh therefore stands not only as a case of denied self-determination, but as a victim of systematic genocidal policy that extinguishes any Azerbaijani claim to legal sovereignty.

Remedial Secession, Atrocity Crimes, and the Case for Artsakh's Independence

1. Remedial Secession: Legal Basis in International Law

The concept of remedial secession vests in the idea that peoples who are systematically denied their rights, subjected to mass violence, and/or continuously oppressed in any other way, have the right to determine their own political status through secession, even in the absence of a formal referendum or constitutional provision permitting it. This is an important exception to the general prohibition of unilateral secession in international law, articulated in Article 2(4) of the UN Charter, which prohibits the use of force to alter national boundaries (United Nations Charter, Article 2 (4), available at https://legal.un.org/repertory/art2/english/rep_supp7_vol1_art2_4.pdf).

However, secession by force is generally prohibited unless a people faces a denial of meaningful internal self-determination—as when their ability to participate in their government or manage their affairs is effectively eradicated by external violence or oppression. As the International Court of Justice (ICJ) indicated in its advisory opinion on Kosovo's declaration of independence, secession is not illegal per se under international law (Cour Internationale de Justice, *Avis Consultatif*, 22 janvier 2010, available at <https://www.icj-cij.org/sites/default/files/case-related/141/141-20100722-ADV-01-00->

[FR.pdf](#)). In severe cases of repression—such as genocide, war crimes, and gross human rights violations—peoples may lawfully secede, particularly where no meaningful alternative exists to protect their identity and survival within the existing state.

Remedial secession is grounded in several principles, including:

- A. Right to Self-Determination: The UN Declaration on Principles of International Law (Resolution 2625) states that every people has the right to freely determine its political status and pursue its economic, social, and cultural development (UN General Assembly, 25th Session, The UN Declaration on Principles of International Law, Resolution No. 2625, 1970, pg. 121-124). The International Covenant on Civil and Political Rights (ICCPR, Article 1) and the International Covenant on Economic, Social and Cultural Rights (ICESCR, Article 1) reiterate this right.
- B. Right to Protect against Atrocities: Where a government engages in atrocity crimes, ethnic cleansing, or genocidal acts, international law recognizes a secondary right to secede as a means of preventing further harm. The right to life, protection from genocide, and protection from torture are fundamental jus cogens principles under customary international law.
- C. Humanitarian Intervention: In cases of extreme violation of human rights, international law recognizes the need for states or international bodies to intervene on behalf of peoples facing existential threats. The Responsibility to Protect (R2P) doctrine, endorsed by the UN in 2005, obliges states to act against crimes against humanity, including genocide, and offers a foundation for the recognition of remedial secession.

2. The Nexus between Atrocities and the Right to Secede: The Case of Artsakh

In Artsakh's case, the repeated and systematic atrocities perpetrated by Azerbaijan against its Armenian population—including the Sumgait pogroms, the Maragha massacre, and the Talish 2016 atrocity—demonstrate the denial of meaningful internal self-determination and justify the region's secession under international law.

- A. The Sumgait and Baku Pogroms (1988–1990): During the final years of the USSR, Azerbaijani nationalists, supported by the government, orchestrated mass violence against Armenians, beginning in Sumgait in February 1988. The pogroms spread to other Azerbaijani cities, including Baku, where Armenians were beaten, tortured, and killed. In total, over 300 Armenians were killed, and thousands were displaced. Human Rights Watch and Amnesty International reported that the Azerbaijani authorities did not intervene to protect the victims, thus failing their obligation to protect minorities under international human rights law.
- B. The Maragha Massacre (1992): Following Azerbaijani military incursions into Armenian-held territory during the Nagorno-Karabakh War, Azerbaijani forces attacked the Armenian village of Maragha, killing at least 50 civilians, including women and children. Survivors reported torture and mutilation of bodies, and the massacre was condemned by international observers as a war crime. This event added to the growing evidence that Azerbaijan's violence against ethnic Armenians was systematic and intended to erase the Armenian presence in the region (<https://switzerland.mfa.am/en/news/2014/04/10/MaraghaMassacre/2077>).
- C. The Talish Atrocity (2016): During a brief but brutal escalation of violence in April 2016, Azerbaijani forces captured the village of Talish in the Hadrut region of Artsakh. In addition to military casualties, Azerbaijani forces filmed themselves torturing and executing civilians, including the elderly. The use of violence against non-combatants and the subsequent exploitation of these images for propaganda highlighted the ethnic hatred underlying Azerbaijan's military tactics. These actions

are clear violations of the Geneva Conventions, which prohibit targeting civilians during conflict.

- D. The 2023 Ethnic Cleansing and Blockade: In 2023, Azerbaijan imposed a blockade on Artsakh that severely restricted the movement of goods and people, effectively depriving the population of food, medicine, and basic services. After Azerbaijan's military operation in September 2023, over 120,000 Armenians were forcibly displaced from their homes. The International Crisis Group and various human rights organizations condemned the operation as a form of ethnic cleansing, confirming that it met the criteria of genocide under the Genocide Convention due to its intent to destroy the Armenian identity of Artsakh (Lemkin Institute for Genocide Prevention, Risk Factors and Indicators of the Crime of Genocide in the Republic of Artsakh: Applying the UN Framework of Analysis for Atrocity Crimes to the Nagorno-Karabakh Conflict, REPORT 5 September 2023 available at <https://www.armenian-genocide.org/uploads/Karabakh/299.pdf>).

Given this ongoing pattern of atrocities, Artsakh's secession can be justified under international law, particularly the principle of remedial secession. Artsakh's people were faced with the reality of genocide and ethnic cleansing, and their unilateral secession was not only their right but also their duty to preserve their lives and cultural identity.

3. International Precedents of Remedial Secession

International precedents of remedial secession support the recognition of Artsakh's independence, given its people's legitimate claims under the principles of self-determination and protection from atrocities. Notable cases include:

- A. Kosovo (2008): In its advisory opinion, the ICJ ruled that Kosovo's declaration of independence did not violate international law, despite Serbia's claim over the territory. Kosovo's secession was seen as a remedial response to the atrocities committed by Serbia during the 1990s, particularly the ethnic cleansing of Albanians. The Court noted that Kosovo's population had been subjected to extreme violence and that their declaration of independence was an attempt to safeguard their survival (ICJ Advisory opinion of 22 July 2010, p. 403, paras 82-84).
- B. South Sudan (2011): South Sudan's independence from Sudan was a result of decades of civil war, during which the Sudanese government was responsible for atrocities, including genocide in Darfur. The secession was supported by the African Union and the United Nations, recognizing the region's right to self-determination following extensive human rights abuses.
- C. Eritrea (1993): Eritrea's independence from Ethiopia came after decades of brutal oppression, including atrocities committed by Ethiopian forces during the Eritrean War of Independence. The UN and African Union supported Eritrea's secession as a remedial response to the destruction of its people's basic rights and survival (The United Nations and the Independence of Eritrea, With an introduction by Boutros Boutros-Ghali, Secretary-General of the United Nations, The United Nations Blue Books Series, Volume XII, Department of Public Information United Nations, New York, pp. 36-37).

These cases all illustrate the legitimacy of remedial secession when a people face systemic violations of their human rights, ethnic cleansing, and genocidal intent. Artsakh, too, deserves the international community's recognition, as its secession fulfills all the criteria for this exceptional legal right.

Azerbaijan's Sovereignty Claim Under the Non-Recognition Principle and Jus Cogens Norms

1. The Non-Recognition Principle and Azerbaijan's Sovereignty Claim

The principle of non-recognition is a well-established norm in international law, stipulating that states and international organizations are obligated not to recognize a regime or territorial claim that arises from grave breaches of international law, particularly those involving the use of force, genocide, or other atrocity crimes. This principle, articulated in Article 2(4) of the UN Charter, applies to situations where sovereignty is asserted in violation of the right to self-determination, human rights, or territorial integrity.

Azerbaijan's claim to the territory of Artsakh is founded on the outdated and illegitimate borders drawn by the Soviet Union and the subsequent violent suppression of the Armenian population of Artsakh. The non-recognition principle requires that no state should recognize territorial claims derived from violations of human rights and international humanitarian law, including genocide and ethnic cleansing.

2. Violations of Jus Cogens Norms and the Illegitimacy of Azerbaijan's Claim

Jus cogens norms are peremptory principles of international law from which no derogation is permitted. These include norms prohibiting genocide, war crimes, crimes against humanity, torture, and aggression. The prohibition of genocide is perhaps the most prominent jus cogens norm, enshrined in Article 1 of the Genocide Convention.

Azerbaijan's treatment of the ethnic Armenian population of Artsakh can be understood as a direct violation of jus cogens norms. The historical and ongoing atrocities perpetrated against Armenians—specifically, the Sumgait pogroms, the Maragha massacre, the Talish atrocity, and the 2023 genocide against Armenians—constitute systematic actions aimed at the destruction of a particular ethnic group. These acts meet the definition of genocide under Article II of the Genocide Convention, as they include acts of killing, causing serious bodily or mental harm, and deliberately inflicting conditions designed to destroy the Armenian population of Artsakh.

A. Sumgait and Baku Pogroms (1988–1990):

As noted earlier, the Sumgait pogroms of 1988 were characterized by widespread, state-sanctioned violence against ethnic Armenians, which left hundreds dead and thousands displaced. While Azerbaijan denies its role in the pogroms, numerous human rights organizations, including Amnesty International and Human Rights Watch, reported that the Azerbaijani government either directly instigated or failed to prevent the violence. Such conduct, combined with subsequent incidents of violence in Baku, establishes a consistent pattern of ethnic violence against Armenians, aimed at terrorizing and displacing the civilian population.

B. Maragha Massacre (1992):

The Maragha massacre in 1992 remains one of the clearest examples of the intentional destruction of the Armenian population. Azerbaijani forces targeted the village of Maragha, killing dozens of civilians and destroying homes. Survivors reported gruesome acts of torture, including beheadings and mutilations of the dead. These actions, which targeted the civilian population of Maragha and violated international humanitarian law, constitute war crimes under the Geneva Conventions. The Maragha

massacre exemplifies Azerbaijan's intent to wipe out ethnic Armenians from the region and should be viewed in the context of genocidal actions.

C. Talish Atrocity (2016):

The 2016 Talish massacre further evidences Azerbaijan's systemic violation of international law. Azerbaijani forces, after capturing the village of Talish, engaged in extrajudicial killings and torture of civilians. Video footage documenting the torture of elderly Armenians was later circulated by Azerbaijani media outlets, serving as a form of state-sponsored propaganda to glorify the dehumanization of Armenians. These actions are indicative of genocidal intent, with Azerbaijan's policies deliberately designed to terrorize, subjugate, and erase the Armenian identity in Artsakh.

D. The 2023 Genocide and Blockade:

The most recent escalation of Azerbaijani aggression culminated in the 2023 military operation and the subsequent blockade of Artsakh, which the UN and other international bodies have condemned as ethnic cleansing. The forced displacement of over 120,000 Armenians from Artsakh, combined with Azerbaijan's military attacks on civilians and infrastructure, demonstrates an ongoing intent to eradicate the Armenian presence in the region. The blockade, which restricted essential goods like food and medicine, contributed to the dehumanization and suffering of the population—actions that fall under the legal definition of genocide.

3. Non-Recognition of Azerbaijan's Sovereignty over Artsakh Under International Law

The non-recognition principle extends to cases where territory has been acquired through violence, war crimes, ethnic cleansing, or genocide. Azerbaijan's assertion of sovereignty over Artsakh, accompanied by its widespread violations of international law, is legally unsustainable. In 2017, the International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts affirmed that states are under a legal duty not to recognize territorial acquisitions made through gross violations of human rights.

In the case of Artsakh, Azerbaijan's sovereignty claim is tainted by its systematic violations of the right to self-determination, ethnic cleansing, and genocidal practices. International recognition of Azerbaijan's sovereignty over Artsakh—especially after its continued use of force and war crimes—would represent a failure of the international community to uphold its obligations under jus cogens norms and the Genocide Convention.

As noted by International Court of Justice (ICJ) judges in various opinions, recognition of such claims not only violates the rights of the affected peoples but also undermines the credibility of the international legal system in promoting peace and justice. The ICJ has consistently held that states cannot invoke the principle of territorial integrity to justify violations of fundamental human rights. In cases such as Kosovo and South Sudan, the international community chose to recognize secessionist entities after they were subjected to atrocities and violence, establishing legal precedents for remedial secession.

Thus, the non-recognition of Azerbaijan's sovereignty claim over Artsakh is both a legal obligation and a moral imperative under international law, especially given the documented atrocities committed by Azerbaijan against the Armenian population of the region.

4. Conclusion: The Legal Path Forward for Artsakh's Independence

The legal foundation for Artsakh's independence is grounded not only in the right of peoples to self-determination but also in the international community's obligation to protect vulnerable populations from genocide and atrocity crimes. Given Azerbaijan's consistent pattern of violence, it is clear that remedial secession is a justified response to these violations. The international legal system must move beyond mere rhetoric and recognize Artsakh's right to self-determination as a matter of justice, human dignity, and respect for international law.

International Responses, Legal Precedents, and the Case for Artsakh's Recognition

1. International Recognition of Secessionist Entities: Key Precedents

The recognition of secessionist territories has occurred in various contexts, particularly where such territories have been subjected to extensive violence, human rights abuses, or ethnic cleansing by the controlling state. International recognition is often viewed as a political decision influenced by geopolitical factors; however, several international legal precedents have emerged where secession has been recognized based on the principles of self-determination and protection from atrocities.

A. Kosovo (2008)

One of the most notable precedents for secession and recognition is the case of Kosovo, which declared its independence from Serbia in 2008. Despite Serbia's objections, the International Court of Justice (ICJ) issued an advisory opinion affirming that Kosovo's declaration of independence did not violate international law, primarily because Kosovo's people had been subjected to systematic violence, ethnic cleansing, and genocidal acts by the Serbian government during the 1990s Balkan Wars.

The ICJ recognized that Kosovo's independence was a remedial response to the atrocities committed against ethnic Albanians by the Serbian authorities, and therefore, Kosovo had a legitimate right to secession in the face of violent oppression. Although the ICJ's ruling did not explicitly validate Kosovo's sovereignty, the international community, led by the European Union, United States, and several other states, ultimately recognized Kosovo as an independent state. This legal precedent establishes that remedial secession, especially when linked to human rights violations, may justify the creation of a new state, even without the agreement of the parent state (ICJ Advisory opinion, 22 July 2010).

B. South Sudan (2011)

Another important precedent is the secession of South Sudan from Sudan in 2011. After decades of civil war and genocide against the Southern Sudanese population by the Sudanese government, the international community, particularly the United Nations and the African Union, supported South Sudan's right to independence.

The referendum that led to South Sudan's secession was largely recognized as a remedial secession in response to the atrocities committed by the Sudanese government, including the Darfur genocide and widespread violence in the south.

South Sudan's independence was facilitated by international mediation and was recognized by the UN and the African Union, establishing the principle that a people subjected to genocide or mass atrocities may justifiably seek independence through secession (Hazvinei Vhumunu, Clayton and Rudigi, Joseph Rukema "Sustainability and Implications of the Sudan-South Sudan Secession: Perspectives from the Ground", *Journal of African Foreign Affairs (JoAFA)*,

Volume 6, Number 3, December 2019, pp. 23–42). The case further supports the idea that Artsakh, whose population has faced repeated ethnic violence and genocidal intent by Azerbaijan, has a strong legal argument for its independence under the same principle.

C. Eritrea (1993)

Eritrea's independence from Ethiopia in 1993 followed a brutal war of independence, during which the Ethiopian government engaged in massacres and human rights violations against the Eritrean population. Following a long struggle for self-determination, Eritrea held a referendum, which resulted in a landslide vote for independence. The UN and international community recognized Eritrea's independence, despite Ethiopia's opposition. The recognition was based on the right to self-determination and the historic oppression of Eritreans by the Ethiopian government (United Nations and the independence of Eritrea 1996)

This case mirrors Artsakh's situation in that Eritrea's people had suffered under a repressive regime for decades, much like the Armenians in Artsakh. The international recognition of Eritrea's secession provided a precedent that underscores the legitimacy of self-determination for peoples suffering from state-sponsored repression and atrocities.

2. The Case for Artsakh's Recognition: Drawing Parallels

In light of the precedents set by Kosovo, South Sudan and Eritrea the case for recognizing Artsakh's independence becomes increasingly compelling. Like these regions, Artsakh has endured a prolonged history of violence, ethnic cleansing, and war crimes, all of which meet the conditions for remedial secession under international law.

Key parallels between Artsakh and these historical precedents include:

- A. Systematic Violence: Just as Kosovo experienced ethnic cleansing and genocide, Artsakh has been subjected to pogroms (e.g., Sumgait and Baku), massacres (e.g., Maragha), and continuous war crimes by Azerbaijan, including the Talish atrocity and the 2023 ethnic cleansing of Armenians.
- B. Self-Determination: Like South Sudan, which was granted the right to self-determination after years of oppression, Artsakh's right to self-determination should be respected in light of its history of being denied the freedom to govern itself by Azerbaijan.
- C. International Legal Precedent: Similar to the international recognition of Eritrea's independence after decades of struggle, Artsakh's case for independence is legally supported by the principle of remedial secession based on its suffering under Azerbaijan's state-sponsored violence.

3. Obstacles to Artsakh's Recognition: Geopolitical and Political Challenges

While Artsakh's legal right to secede is grounded in international law, including the principle of remedial secession, the political challenges to its recognition are significant.

- A. Azerbaijan's Geopolitical Influence: Azerbaijan enjoys strong diplomatic relations with powerful states, including Turkey and several Western countries, which complicates the international community's willingness to recognize Artsakh's independence. The strategic interests of these countries—particularly in energy politics—often overshadow humanitarian concerns.
- B. Russia's Position: While Russia has allegedly maintained a close relationship with Armenia, its position on Artsakh's independence remains nuanced. Russia's interests in maintaining influence over the Caucasus and balancing its relations with Azerbaijan deter it from fully supporting Artsakh's recognition.
- C. Legal and Political Resistance: Many states remain hesitant to set a precedent for recognizing secessionist entities due to fears of destabilizing international borders.

As a result, while Kosovo has been recognized by more than 100 countries, its status remains contested, and other territories, such as Artsakh, struggle for recognition.

4. Conclusion: The Need for International Legal Recognition of Artsakh

The case for recognizing Artsakh's independence is rooted in international law, historical precedents, and the right to self-determination for peoples subjected to genocide and systematic violence. The international community must step forward to recognize Artsakh, not only because of its right to self-determination but also as a moral and legal obligation to protect vulnerable populations from atrocities and genocidal acts. Recognition would represent a commitment to human rights, justice, and the rule of law in the face of ongoing state-sponsored violence.

Conclusion – The Legal, Ethical, and Political Imperatives for Artsakh's Recognition

1. Summary of Legal Arguments

The legal case for Artsakh's independence is firmly grounded in principles of international law, particularly the right to self-determination, the non-recognition principle, and the protection of peoples from genocide and other atrocity crimes. As demonstrated through various historical precedents—most notably Kosovo, South Sudan, Eritrea,—secession has been recognized as a legal remedy for peoples subjected to systematic violence, ethnic cleansing, and genocide by the parent state.

The atrocities committed by Azerbaijan against the ethnic Armenian population of Artsakh—including the Sumgait pogroms, the Maragha massacre, the Talish atrocities, and the 2023 ethnic cleansing—represent clear violations of jus cogens norms, including the prohibition of genocide, war crimes, and crimes against humanity. These crimes provide a legal justification for Artsakh's remedial secession and the international recognition of its sovereignty.

Additionally, the non-recognition principle compels the international community not to accept the illegal territorial claims made by Azerbaijan, as they are founded on violence, oppression, and grave breaches of international law. The international community has no obligation to recognize Azerbaijan's sovereignty over Artsakh, particularly when it continues to violate international norms and perpetrate genocidal actions against Armenians.

2. Ethical Imperatives

Beyond the legal justification, there are profound ethical imperatives for recognizing Artsakh's independence. The Armenian people of Artsakh have faced centuries of persecution, culminating in the genocidal violence of the 20th and 21st centuries. This includes not only the events of the Armenian Genocide in 1915 but also the systematic targeting of Armenians in Sumgait, Baku, Maragha, and Talish, as well as the recent atrocities committed in 2023. These events represent an unbroken pattern of ethnic violence, dispossession, and subjugation at the hands of Azerbaijan.

Ethically, the international community has a moral responsibility to protect peoples from genocide and ensure the right to live free from oppression. The failure to recognize Artsakh's right to self-determination effectively ignores the human suffering endured by its people. It sends the message that states may engage in genocide and ethnic cleansing with impunity and that the basic rights of vulnerable populations can be disregarded in favor of geopolitical expediency.

Recognizing Artsakh's independence would be a moral statement in favor of justice and human rights, acknowledging the right of peoples to exist and to govern themselves without being subjected to ethnic violence, discrimination, and genocide. It would demonstrate the international community's commitment to preventing the recurrence of atrocities and holding accountable those who commit war crimes.

3. Political and Geopolitical Considerations

While legal and ethical arguments strongly support the recognition of Artsakh's independence, the political and geopolitical considerations cannot be ignored. Azerbaijan, with its strategic alliances, particularly with Turkey and Israel, holds significant geopolitical importance, which has led to its backing by major global powers such as the United States and European Union in certain contexts. These powers have sometimes prioritized regional stability and energy security over human rights concerns, creating barriers to recognition for Artsakh.

The geopolitical context must be balanced with the ethical and legal imperatives of recognition. Supporting Artsakh's independence does not necessarily mean disregarding Azerbaijan's right to exist as a sovereign state but rather acknowledging the historical injustice faced by the people of Artsakh and the violation of their basic rights. Recognition is not an attack on Azerbaijan but a vindication of the right of Artsakh's people to self-determination in response to the unrelenting violence and persecution they have endured.

However, recognition of Artsakh is essential to preventing further instability in the region. The failure to act and recognize Artsakh risks perpetuating a cycle of violence, including ethnic cleansing and genocide, and undermines the credibility of international human rights law. The continuing oppression of the people of Artsakh under Azerbaijani control will destabilize the Caucasus region and may lead to further humanitarian disasters, unless the international community recognizes the legitimate sovereignty of the region.

4. The Path Forward: A Call for International Action

The recognition of Artsakh's independence must be viewed not only as a legal obligation but also as a necessary step toward peace, stability, and justice in the South Caucasus region. The international community must rise above political considerations and prioritize the protection of human rights, the prevention of genocide, and the right of peoples to determine their own future.

In the face of ongoing atrocities against the Armenian people in Artsakh and the refusal of Azerbaijan to respect the basic rights of its population, it is imperative that states and international organizations take concrete action toward recognizing Artsakh as an independent state. This recognition is not just a political act, but a moral and legal necessity in the context of the atrocities faced by the people of Artsakh.

The international legal system must uphold its own standards of human rights protection, self-determination, and prevention of genocide by recognizing Artsakh's sovereignty and ensuring that the Armenian people can live free from fear, violence, and oppression.

5. Conclusion

In conclusion, the case for recognizing Artsakh's independence is built upon a strong legal framework, established international precedents, and a moral imperative to prevent further atrocities and safeguard the fundamental rights of the Armenian people.

Azerbaijan's claim to Artsakh is based on violence, genocide, and the violation of human rights, and the international community has a responsibility to ensure that such claims are not legitimized.

The recognition of Artsakh as an independent state would not only be a legal act but also an ethical victory for human rights and self-determination, offering the people of Artsakh the opportunity to live in peace and dignity, free from the threat of genocide and oppression. It is time for the international community to acknowledge the injustices of the past and take the necessary steps to secure a just future for the people of Artsakh.

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ՄԵՐԺԱԾ ԻՆՔՆՈՐՈՇՈՒՄ. ԱՐՑԱԼՈՒ ԱՆԿԱՆՈՒԹՅԱՆ ԻՐԱԿԱԿԱՆ ՀԻՄՆԱՎՈՐՈՒՄԸ ԵՎ ԱՂԻՔԵԶԱՆԻ ԻՆՔՆԻՇՆԱՆՈՒԹՅԱՆ ՊԱՅԱՆՋՆԵՐԻ ԱՆՕՐԻՆԱԿԱՆՈՒԹՅՈՒՆԸ

ԱԼԵՔՍԱՆԴՐ ՀԱՐՈՒԹՅՈՒՆՅԱՆ

Հայաստանում ֆրանսիական համալսարանի և

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ք. Երևան, Հայաստանի Հանրապետություն

Սույն հոդվածի նպատակն է ուսումնասիրել Արցախի Հանրապետության անկախության պահանջի իրավական հիմքերը և գնահատել Ադրբեջանի կողմից առաջ քաշվող՝ սուվերենության վերաբերյալ պնդումները: Հոդվածը մասնավորապես ձգտում է ցույց տալ, որ Արցախը միջազգային իրավունքում ժամանակակից ամենահաստատուն օրինակներից մեկն է՝ ռեմեդիալ սեցեսսիայի միջոցով ճանաչման համար: Հիմնական հարցադրումները հետևյալն են. առաջին՝ արդյո՞ք Արցախի անկախության հռչակագիրը և դրան հաջորդած պետականության իրականացումը համապատասխանում էին միջազգային և խորհրդային սահմանադրական իրավունքի պահանջներին, և երկրորդ՝ Ադրբեջանի հողում տարածքային ամբողջականության սկզբունքին ունի՞ արդյոք իրավական հիմք՝ հաշվի առնելով Էթնիկ գտումները, զանգվածային տեղահանությունները և ուժի կիրառումը՝ տարածքային վերահսկողությունը փոխելու նպատակով: Մեթոդաբանորեն հոդվածը հիմնված է համեմատական վերլուծության վրա: Այն Արցախի հարցը դիտարկում է այլ վիճահարույց անջատումների և ինքնորոշման դեպքերի համատեքստում՝ ներառյալ Կոսովոն, Հարավային Սուդանը և Երիտրեան: Միջազգային դատարանների դատական պրակտիկայի և նմանատիպ իրավիճակներում պետությունների գործելակերպի ուսումնասիրության միջոցով հոդվածում բացահայտվում են անկախության, տարածքային ամբողջականության և ռեմեդիալ սեցեսսիայի վերաբերյալ կիրառվող իրավական չափանիշները և դրանք համեմատվում Արցախի հետ: Հոդվածի եզրակացությունները հստակ են. Արցախը պատմականորեն և իրավականորեն հայկական հող է, որի ժողովուրդը իրացրել է ինքնորոշման իր իրավունքը՝ համաձայն սահմանադրական և միջազգային նորմերի: Ադրբեջանի սուվերենության վերաբերյալ պնդումները հիմնված են ոչ թե իրավական, այլ քաղաքական մոտեցումների վրա և պահպանվել են ուժի ու Էթնիկ գտումների միջոցով: Միջազգային իրավունքի պատշաճ մեկնաբանությունը չի թույլատրում տարածքի ձեռքբերումը ագրեսիայի կամ զանգվածային հանցագործությունների միջոցով և ճանաչում է Արցախի ժողովրդի ինքնորոշման իրավունքը:

Հիմնաբաներ՝ Արցախի, միջազգային իրավունք, ռեմիդիալ սեցեսիա, ինքնորոշում, տարածքային ավերողականություն, ցեղասպանություն, Հայաստան, Ադրբեջան, ինքնիշխանություն:

ОТКАЗ В ПРАВЕ НА САМООПРЕДЕЛЕНИИ: ПРАВОВОЕ ОБОСНОВАНИЕ НЕЗАВИСИМОСТИ АРЦАХА И НЕЗАКОННОСТЬ ПРИТЯЗАНИЙ АЗЕРБАЙДЖАНА НА СУВЕРЕНИТЕТ

АЛЕКСАНДР АРУТЮНЯН

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Цель данной статьи – исследовать правовые основания притязаний Республики Арцах на независимость и оценить конкурирующее заявление о своем суверенитете, выдвигаемое Азербайджаном. В частности, в статье показано, что Арцах представляет собой один из наиболее убедительных современных примеров признания ремедиальной сецессии в международном праве. Основные рассматриваемые в статье вопросы следующие: во-первых, соответствовали ли декларация независимости Арцаха и последующее осуществление государственности требованиям международного права и советского конституционного права; во-вторых, имеет ли юридическую силу ссылка Азербайджана на принцип территориальной целостности в условиях этнических чисток, массового вытеснения и применения силы для изменения территориального контроля. Методологически статья опирается на сравнительный анализ и рассматривает вопрос Арцаха в контексте других спорных случаев сецессии и самоопределения, включая Косово, Южный Судан и Эритрею. Путём изучения юриспруденции международных судов и практики государств в таких аналогичных ситуациях исследование выявляет правовые стандарты, применяемые к вопросам независимости, территориальной целостности и ремедиальной сецессии и сопоставляет с ними прецедент Арцаха. Выводы статьи однозначны: Арцах является исторически и юридически армянской землёй, народ которой реализовал своё право на самоопределение в соответствии с конституционными и международными нормами. Притязания Азербайджана на суверенитет над Арцахом основаны на политических утверждениях, а не на правовой аргументации и поддерживались посредством силы, этнических чисток и демографической инженерии. Международное право в его правильном толковании не допускает приобретения территории путём агрессии или преступлений против человечности и признаёт право народа Арцаха на внешнее самоопределение.

Ключевые слова: Арцах, международное право, ремедиальная сецессии, самоопределение, территориальная целостность, геноцид, Армения, Азербайджан, суверенитет.