PERSISTENT CONUNDRUMS: EXAMINING THE PROLONGED EXISTENCE OF NON-RECOGNISED ENTITIES IN THE POST-SOVIET LANDSCAPE AND BEYOND WITH SPECIAL REFERENCE TO NAGORNO-KARABAKH

ABSTRACT

This study delves into the complex dynamics of the Nagorno-Karabakh conflict by examining its historical roots, legal dimensions, and humanitarian consequences. This article scrutinises Nagorno-Karabakh's right to secession under national and international law, emphasising the 1990 Soviet Law on Secession and the intricate circumstances surrounding secession, including the *uti possidetis* principle of international law. The legal dispute between the Armenians and Azerbaijanis regarding self-determination and territorial integrity is explored, with a critical examination of the concept of remedial secession. Additionally, the present study addresses the role of external powers, including India, and their strategic interests and implications for global geopolitics. The article also explores ongoing humanitarian and displacement issues, invoking international humanitarian law and examining forced displacement in the context of the Fourth Geneva Convention. The article also scrutinises the efforts of international bodies such as the OSCE, the European Court of Human Rights, and the International Court of Justice to address the conflict. Further, the study examines the complexities of non-recognised entities aspiring to statehood, focusing on post-Soviet entities with special reference to Nagorno-Karabakh. It delves into recognition theories, particularly declaratory theory, and analyses historical case studies to understand the challenges arising from non-recognition. The 'gold standard' for recognition, including UN membership, is discussed, emphasising the role of the Unrepresented Nations and

Peoples Organization (UNPO). The criteria outlined in the 1933 Montevideo Convention including a permanent population, defined territory, government, and the capacity to engage with other states were scrutinized in this Article. This article raises questions about the consequences of non-recognition, particularly in the context of secession and the collision between the right to self-determination and opposition from existing states. This article discusses the Steinmeier formula and challenges to Nagorno-Karabakh's statehood and the relevance of territorial integrity in evaluating non-recognised entities.

This article attempts to draw insights from the post-Yugoslavia dissolution and Kosovo case. It highlights confusion in state practices, turf wars between declaratory and constitutive theories, and biases against secession. The roles of internal self-determination, diplomatic mediation, and the ' stabilised de facto regimes' phenomena are explored, emphasising the ongoing relevance of the principle of territorial integrity. This study explores extreme emergencies as a justification for secession and negotiated resolutions to avoid unilateral options by emphasising the collective non-recognition pattern based on normative reasons. Case studies are discussed to analyse entities which persist for decades in a frozen state by challenging the assumed transience associated with non-recognition. The "parade of sovereignties" in 1990-1992 for statehood is also examined by analysing the need for external patronage and projecting a democratic image. The research concludes by identifying the challenges to Nagorno-Karabakh's statehood, emphasising its dependence on Armenia by noting the persistence of entities such as Nagorno-Karabakh for three decades, prompting contemplation about their lasting impact on the complex international relations landscape.

Keywords: *Nagorno-Karabakh conflict, secession and international law, Remedial secession, Non-recognised entities, Territorial integrity and Recognition theories*

HISTORICAL ROOTS

The historical roots of the conflict in the Nagorno-Karabakh region date back to the pre-Soviet era which was influenced by Ottoman, Russian and Persian empires. In 1921, the Soviet Union granted Nagorno-Karabakh to Azerbaijan but allowed autonomy. In the 1980s, separatist sentiments arose, leading to conflict when Nagorno-Karabakh sought to join Armenia. Tensions escalated in 1988 when Nagorno-Karabakh's regional legislature expressed the intent to join Armenia, leading to a war between Armenia and Azerbaijan in 1991. By 1994, Armenia had captured Nagorno-Karabakh, marking the beginning of its de facto independence. In 2020, Azerbaijan and Armenia went to war again, resulting in Azerbaijan gaining control of the territory; however, Russia brokered a ceasefire. During the 44-day Second Karabakh War in 2020, the NKR's existence as a de facto state was jeopardised, surprising to many analysts who had deemed it irreversible. On 19 September 2023, Azerbaijan launched a military operation targeting separatist positions in the contested region of Nagorno-Karabakh, a breakaway territory of the Armenian majority located within Azerbaijan's internationally recognised borders. Azerbaijan blocked the sole road connecting Nagorno-Karabakh to Armenia, hindering the supply of food and essential goods. Furthermore, the failure of Russian peacekeeping forces to prevent the blockade raised suspicions about Moscow's motives and intentions.[1]

DISPUTE BETWEEN SELF-DETERMINATION AND TERRITORIAL INTEGRITY

[1] Shubhajit Roy, Nagorno-Karabakh Conflict: History, India's Response, Indian Express (last accessed Nov. 29, 2023), available at https://indianexpress.com/article/explained/nagorno-karabakh-conflict-history-indias-response-8970391/lite/.

The debate revolves around whether ethnic groups qualifying as minorities can also be considered 'peoples' with a right to self-determination, especially when self-determination is understood in terms of separate statehood. Minorities encompass groups with commonalities, such as language, culture, religion, or race, as long as they do not form the majority in a state and may or may not have clear territorial bases. Granting a 'right of self-determination' to every historically formed minority group, especially those without clear territorial roots, could lead to endless disputes on territory and political dominance. The sustainable granting of self-determination is linked to polities within a historically defined territory, where a majority can decide in a plebiscite upon the political status and clearly defined boundaries, aligning with the principle of uti possidetis. Twentieth-century state practice emphasises a close linkage between predetermined political entities and self-determination, advocating for self-determination to be granted to polities with a historically defined territory. Predetermined entities, such as established states, historical entities, or federations, enjoy a continuing right to self-determination and protection against foreign intervention, alien domination, or illegal occupation.[2]

Secession is perceived globally as a threat to the international order, leading to a strong bias against it in state practice. The non-recognition of secessionist entities remains prevalent until the territorial sovereign relinquishes its claim. The non-recognition of secessionist entities has historically been the 'iron rule' in recognition practice, reflecting a value judgment that emphasises territorial integrity. Bias against secession stems from the belief that territorial integrity is a fundamental value for peaceful coexistence in a system of nation-states. The rule against secessionist entities

[2] J Wright, 'Minority Groups, Autonomy, and Self-Determination' 19 OJLS 605, 612–29 (1999)

primarily addresses other states and not internal societal movements. The internal quarrel-over-state organisation is considered a matter of internal self-determination.[3] Distinct political entities formed over time result in a strong sense of collective identity, often transcending language, culture, or religion. The international community has recognised claims of self-determination in cases such as the former Soviet republics and the Socialist Federal Republic of Yugoslavia. Claims for self-determination for groups lacking predetermined political entities are typically in terms of 'internal self-determination.' This encompasses autonomy, federal structures, or political participation, along with arrangements for protecting minority rights. Federated states autonomous regions, and member states of federations integrate into a roof state while maintaining political and institutional autonomy. Territorial integrity protects federations, federal states and quasi-federal constructs. Territorial integrity, applied to federations and autonomy, assumes that self-determination is bound within these constructs unless exceptional grounds rebut this presumption. The doctrinal debate highlights the significance of 'internal self-determination' as an alternative to endless claims of independent statehood in smaller entities, providing a balanced approach to political participation and dominance.[4]

Federations and autonomy facilitate the balance of competing claims, with the central state ensuring complex arrangements that address the interests of regional majorities and minorities. 'Internal self-determination' allows majority populations in historical entities to enjoy a high degree of self-government, avoiding counterproductive disputes over statehood, territory, boundaries, and citizenship.

[3] MG Kohen, 'Introduction' in MG Kohen (ed), Secession: International Law Perspectives 1, 3-4 (Cambride University Press 2006)

[4] S. Wheatley, Democracy, Minorities and International Law 124–126 (Cambridge University Press 2005).

Diplomatic mediators prefer 'internal self-determination' solutions to contain secessionist conflicts as they offer a broad range of tools to address issues related to territory and self-government. For 'internal self-determination' solutions to succeed, they must guarantee a certain (limited) level of self-government. The modalities of federation and autonomy should remain flexible when adapting to changing circumstances. If federation autonomy is drastically altered or abolished without consent, the question of self-determination may resurface. Claims may seek the restoration of previous autonomy or, in cases of oppression, even convert into claims for independent statehood.[5] Since 1994, the OSCE Minsk Group, co-chaired by the USA, Russia, and France, has aimed to find a solution. Still, conflicting principles of territorial integrity and the right to self-determination have hindered progress. The conflict is more than ethno-territorial; there is a clash between these principles, with Azerbaijan favouring territorial integrity and Armenia supporting Nagorno-Karabakh's right to self-determination.[6] The right to self-determination, as per UN General Assembly Resolution 1514, was invoked by Armenia and Nagorno-Karabakh, arguing that Azerbaijan is using force to deprive the region of this right.[7]

In some instances, the argument is made that these entities represent a "people" with the right to self-determination. Notable examples include Catalonia, Abkhazia,

[5] TM Franck, 'Postmodern Tribalism and the Right to Secession' in C Brölmann et al. (eds), Peoples and Minorities in Int'l L. 3–27 (1993).

[6] Achal Malhotra, Nagorno-Karabakh Conflict: Where Does India Stand?, Wion (last accessed Nov. 29, 2023), available at https://www.wionews.com/opinions-blogs/nagorno-karabakh-conflict-where-does-india-stand-335253/amp.

[7] Siddharth Jain, The Nagorno-Karabakh Conflict Escalation - An Impact Analysis, Jindal Forum for Economic and International Laws (last accessed Nov. 28, 2023), available at https://jindalforinteconlaws.in/2020/10/08/the-nagorno-karabakh-conflict-escalation-impact-analysis-siddharth-jain/.

South Ossetia, and certain ethnic groups, such as the Tatar people in the Russian Federation.[8]

ROLE OF EXTERNAL POWERS, INCLUDING INDIA AND ITS STRATEGIC INTERESTS

India, understanding the pain of large-scale migrations, particularly during its partition with Pakistan, has been supportive of Armenia and its native population being affected by the Nagorno-Karabakh conflict. Historical, geographic, and ethnic factors contribute to the complexity of the Nagorno-Karabakh conflict, which predominantly involves Christian Armenians and primarily Muslim Azerbaijanis. Armenia's military strength is crucial, especially considering its size relative to that of Azerbaijan's defence forces. The reference to China's transgressions on the Line of Actual Control (LAC) and collusive threats from China and Pakistan underscores India's strategic considerations in offering assistance to Armenia.[9]

India, strategically backing Armenia, has played a role because of Azerbaijan's close ties with Pakistan, and the conflict involves major global players, such as Russia, NATO, Turkey, and Israel. India has supported Armenia through high-profile military equipment sales, including the Swathi radar system, anti-tank munitions, Pinaka rocket launchers, and ammunition, totalling USD 250 million in government-to-government deals. The subsequent USD 155 million deal between Armenia and a private Indian

[8] Bill Bowring. "International Law and Non-recognized Entities." In Unrecognized Entities, edited by Benedikt C. Harzl and Roman Petrov, 9–29 BRILL (2022).

[9] Ashok Kumar, India-Bangladesh 'Land Pact' Key Solution To Armenia-Azerbaijan Conflict In Nagorno-Karabakh: OPED, The Eurasian Times (last accessed Nov. 25, 2023), available at https://www.eurasiantimes.com/india-bangladesh-land-pact-key-solution-to-armenia-azerbaijan/.

firm for artillery systems further demonstrated India's backing of Armenia.[10] India's stance reflects asymmetry in relations, with a friendship treaty with Armenia and economic interests in Azerbaijan. Balancing the two, India faces challenges in a region on the periphery of its foreign policy focus. India's balanced and neutral stance advocates a political solution based on the Madrid Principles. The Madrid Principles, proposed in 2007, outline steps such as Nagorno-Karabakh demilitarisation and the gradual liberation of occupied Azerbaijani territory. India's position aligns with the Madrid Principles, emphasising the need for peacekeeping efforts and political solutions to address the longstanding Armenia-Azerbaijan conflict.[11] The Azerbaijani official asserted that such actions of providing arms to Armenia were not in line with India's foreign policy, which is based on international law norms and principles, including the historical 'Bandung principles' of the Non-Aligned Movement. [12] Furthermore, the South Caucasus region holds significance for India's ambitions, particularly the International North-South Transportation Corridor (INSTC), linking India to Europe through Iran. The potential impact on India's infrastructure plans, specifically the INSTC, focusing on the Zangezur corridor, is significant for rail links. India's choice of rail route via Armenia's Syunik province faces challenges due to recent developments in the Nagorno-Karabakh conflict.[13]

[10] Mint Explainer, Why India is affected by Azerbaijan's takeover of Nagorno-Karabakh, Mint (last accessed Nov. 28, 2023), available at https://www.livemint.com/news/world/mint-explainer-why-india-is-affected-by-azerbaijan-s-takeover-of-nagornokarabakh/amp-11695717733854.html.

[11] Achal Malhotra, Nagorno-Karabakh and India, Indian Express (last accessed Nov. 29, 2023), available at https://indianexpress.com/article/opinion/columns/armenia-azerbaijan-conflict-india-6722267/.

[12] ET Bureau, India sends arms to Armenia via Iran, Economic Times (last accessed Nov. 24, 2023), available at https://m.economictimes.com/news/india/india-sends-arms-to-armenia-via-iran/amp_articleshow/102181645.cms.

[13] Seamus Duffy, India's Stake in the Nagorno-Karabakh Conflict, The Diplomat (last accessed Nov. 30, 2023), available at https://thediplomat.com/2023/09/indias-stake-in-the-nagorno-karabakh-conflict/.

Forced displacement

Forced displacement, defined as the coerced removal or relocation of individuals from their homes or regions, encompasses two main categories: refugees and internally displaced people (IDPs). Refugees are unable or unwilling to return to their country of origin because of a well-founded fear of persecution. At the same time, IDPs are forced to flee their homes within their own country to avoid armed conflict, violence, human rights violations, or natural disasters.

International legal frameworks, including humanitarian, human rights, and customary international laws, offer protection against forced displacement. The Fourth Geneva Convention explicitly prohibits forcible transfers or deportations of protected persons from occupied territories, emphasising the rights of individuals in conflict zones. Various human rights treaties, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, establish obligations on states to safeguard freedom of movement and prevent involuntary displacement. The Rome Statute further strengthened protection against forced displacement by classifying it as a potential crime against humanity or war crimes. The International Criminal Court clarified that displacement can occur not only through physical coercion but also through threats or psychological pressure, ensuring a comprehensive understanding of forced displacement in the context of international law. Before the recent mass displacement from Nagorno-Karabakh, multiple instances of forced displacement occurred. Ethnic Armenians fled areas overtaken by Azerbaijani forces during the 44-Day War and were compelled to leave under the terms of the 9 November 2020 ceasefire agreement. Additionally, the Azerbaijani forces continued to intimidate residents of border communities post-war, leading to further forced

displacement within and out of Nagorno-Karabakh until Azerbaijan's decisive takeover of the region in September 2023.

The University Network for Human Rights (UNHR) identified six primary mechanisms of forced displacement employed by Azerbaijani state forces: physical attacks, intimidation, attacks on livelihood sources, lethal restrictions on freedom of movement, disruption of energy infrastructure, and endangerment of food security. These methods of displacement, along with their incrementality since the onset of the 2020 War, are delineated in detail through UNHR's fact-finding by shedding light on the systematic nature of forced displacement in the region.

The United Nations Guiding Principles on Internal Displacement serve as a valuable resource, offering guidance on protecting the rights of internally displaced persons. While not legally binding, these principles compile relevant human rights and humanitarian law provisions, emphasising the right of individuals to be protected against arbitrary displacement and highlighting the specific vulnerabilities of certain groups, such as indigenous peoples and minorities, who have a special attachment to their lands.[14]

EFFORTS OF INTERNATIONAL BODIES TO ADDRESS THE CONFLICT

Role of OSCE Minsk Group

The OSCE's involvement in the Nagorno-Karabakh conflict dates back to its early stages, even preceding the formal establishment of the organisation. This initial engagement marked the beginning of what would be known as the "Minsk Process," with efforts to convene a conference in Minsk, Belarus, aimed at facilitating

[14] International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 75 UNTS 287 Aug.12 1949, available at: https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.33_GC-IV-EN.pdf

negotiations for a peaceful settlement. The UN Secretary-General appointed the former US Secretary of State Cyrus Vance as a special envoy for the conflict, signalling a concerted international effort to address the dispute. However, Vance's role was intended to supplement existing peace facilitation efforts rather than replace them. Under the chairmanship of Italian diplomat Mario Raffaelli, the OSCE Minsk Conference initiated an informal "Minsk Group" to explore preparations for the desired peace conference. However, coordinating the efforts of designated states proved challenging, with discussions primarily occurring in formats such as 3+1 or 5+1.

One major hurdle was determining the inclusion and status of representatives of Nagorno-Karabakh within the negotiation process. Despite attempts to address this issue in meetings held in Rome, Geneva, and Stockholm, progress has been hindered by escalating fighting in the region and competing mediation efforts, particularly from Russia. In 1993, further experimentation with negotiating structures was attempted, including proposals for a 5+1 format involving Nagorno-Karabakh. However, this approach faced opposition, and diplomatic efforts shifted towards a "shuttle diplomacy" model led by Swedish diplomat Jan Eliasson. Despite these challenges, considerable diplomatic efforts, primarily led by Russia, brokered a ceasefire in May 1994. While attempts to deploy a multinational peacekeeping force were considered, the ceasefire ultimately stabilised the region without the need for armed intervention.The ceasefire underscored the importance of a consolidated approach to resolving the conflict, highlighting the limitations of independent mediation efforts. Moving forward, the OSCE Minsk Group continued its engagement, seeking to build on the ceasefire and facilitate further negotiations towards a lasting peace agreement.[15]

[15] Carey Cavanaugh "OSCE and the Nagorno-Karabakh Peace Process." Security and Human Rights 27 422-441 (2016)

Role of ECtHR

The European Court of Human Rights (ECHR), established under the European Convention on Human Rights and Fundamental Freedoms (ECHR), primarily manages individual cases of human rights violations. Over its almost six-decade history, the court has predominantly addressed appeals regarding violations of civil and political rights, providing remedies to the affected parties. Although not initially designed to address mass human rights violations during armed conflicts, the jurisdiction does encompass such instances. The court has examined cases stemming from conflicts such as the Srebrenica massacre and the international military operation in Iraq, extending its reach to events occurring during state parties' military activities outside their territories.

A legal analysis of the ECHR's judgments highlights the Court's authority to address violations during armed conflicts, hold states accountable, and recognize instances of aggression. In a notable case concerning the Nagorno-Karabakh conflict between Armenia and Azerbaijan, Azerbaijani internally displaced persons (IDPs) filed a complaint against Armenia before the ECtHR, alleging they were prevented from returning to their occupied district of Lachin, leading to violations of their property and privacy rights. The Court's Grand Chamber ruled in favour of the applicants, holding Armenia responsible for breaches of the applicants' rights and recognising a policy of ethnic cleansing against Azerbaijanis.[16] The court's assessment of "effective control" and "belligerent occupation" offers legal clarity, particularly regarding military aggression. The judgment establishes Armenia's effective control over the occupied

[16] ECHR, Case of "Chiragov and others v. Armenia", Application no. 13216/05, Strasbourg, 16 June, 2015

Azerbaijani territories and its significant involvement in the conflict. This case also identifies Armenia as an aggressive state that legally binds its occupation of the Azerbaijani territories.[17]

Role of ICJ

The following series of ICJ orders from December 2021 to November 2023 provides a comprehensive view of the legal proceedings and measures taken concerning the Armenia-Azerbaijan conflict, particularly focusing on issues related to racial discrimination, the protection of human rights, and the preservation of cultural heritage. In the ICJ Judgement of December 2021, Armenia initiated legal action against Azerbaijan, citing violations of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). The application included a request for provisional measures, emphasising the release of Armenian prisoners of war and the protection of their rights, as well as the preservation of Armenian heritage. Armenia alleged the ethnic cleansing and destruction of Armenian heritage by Azerbaijan, grounding its claims in CERD provisions. The court, in its judgement, highlighted the obligations of State Parties under CERD to eliminate racial discrimination and outlined specific articles addressing various aspects of racial equality and protection against discrimination. It recognised the plausibility of some of the rights claimed by Armenia under the CERD and emphasised the potential for irreparable harm to these rights. Subsequent ICJ orders, including those dated February 2023 and July 2023, addressed specific requests related to the Lachin Corridor, a vital passage between Nagorno-Karabakh and Armenia. The court examined the link between Armenia's claimed rights

[17] Najiba Mustafayeva "The European Court of Human Rights and the Armed Conflict: The Case of Nagorno-Karabakh." CESRAN. Last accessed Nov. 29, 2023. Available at https://cesran.org/the-european-court-of-human-rights-and-the-armed-conflict-the-case-of-nagorno-karabakh.html.

under the CERD and requested provisional measures concerning the Lachin Corridor. It highlights disruptions along the corridor and expresses concerns about the potential for irreparable harm, particularly endangering the health and lives of individuals. The ICJ orders also noted assurances by Azerbaijan regarding safety and security along the Lachin Corridor but deemed them insufficient to eliminate the imminent risk of irreparable prejudice. Consequently, the court indicated provisional measures directing Azerbaijan to ensure unimpeded movement along the corridor, aligning with its obligations under the CERD.

In the latest ICJ order of November 2023, the court reaffirmed the link between Armenia's plausible rights under the CERD and the specific requested provisional measures. It acknowledged the forced displacement of Armenians from Nagorno-Karabakh. It highlighted the vulnerability of those remaining, emphasising the potential for irreparable prejudice concerning the right to equality, freedom of movement, and residence. The court specified measures for Azerbaijan, emphasising its obligations under the CERD, including ensuring safe return and departure for individuals in Nagorno-Karabakh and protection from force or intimidation.

Role of the Unrepresented Nations and Peoples Organization (UNPO).

The 'gold standard' for recognition involves the admission of states to the United Nations. The role of the Unrepresented Nations and Peoples Organization (UNPO) is to advocate for people without states. In the post-WWII era, admission to and membership of the United Nations (UN) has become the primary benchmark for statehood. The number of UN member states is 193, with South Sudan being the latest addition in 2011. This route to recognition surpasses theories of recognition and empirical studies, providing a contemporary "gold standard." UN membership, now

comprising 193 states, serves as a crucial indicator of statehood by overshadowing other recognition criteria. All these member states meet the Montevideo criteria, emphasising the prominence of UN admission in the contemporary world. Entities that have yet to secure UN membership face ambiguity in their statehood claims. The Unrepresented Nations and Peoples Organization (UNPO), founded in 1991, serves as a platform for movements representing various people worldwide who lack "true representation" in domestic and international forums. UNPO's covenant outlines principles such as the equal right to self-determination, adherence to human rights standards, democratic pluralism, rejection of intolerance, promotion of non-violence, and protection of the natural environment. Its members, who lack representation, work to achieve their goals through non-violent means.[18] Since its inception, the UNPO's membership has grown from its founders, representing 43 people globally, encompassing over 300 million individuals. Former members who achieve their goals and secure representation leave the organisation. Several former UNPO members, including Armenia, East Timor, Estonia, Georgia, Latvia, and Palau, have gained full independence and UN admission. UNPO's membership, spanning continents, and diverse constitutional demands create an unlikely alliance. From the demands for statehood to protect cultural rights, the UNPO provides a level playing field for communities of varying sizes, resources, and political influence. Nationalism, as a common thread, is tempered by collective pan-community solidarity. UNPO membership often marks a trajectory from a non-recognised status to, in very few cases, admission to and membership in the United Nations. The organisation's role in supporting communities striving for recognition underscores its significance in the complex landscape of international relations.[19]

[18] About unpo, available at https://unpo.org/section/2

[19] Vinay K. Gidwani "Subaltern Cosmopolitanism as Politics", 38(1) Antipode (2006), 7–21.

LESSONS FROM THE POST-YUGOSLAVIA DISSOLUTION AND KOSOVO CASE.

The word 'After Kosovo' raises the question of whether the Kosovo precedent, particularly the unilateral Declaration of Independence (UDI) in 2010, has truly altered the international landscape. Despite the significant recognition of Kosovo's independence, tensions persist, challenging the traditional approach to recognition in cases of disputed territorial sovereignty. The Kosovo precedent intensified the debate on recognition in secession cases, contributing to principled disputes over its feasibility. While some states recognised Kosovo, others resisted, resulting in a divided international community. In 2010, the International Court of Justice's Advisory Opinion avoided addressing the crucial issues of recognition and non-recognition. The statement that international law lacks a prohibition on declarations of independence adds confusion rather than clarity, leaving unresolved questions regarding the legality of recognising secessionist entities. The Advisory Opinion leaves unanswered whether the declared state of 'Republika Kosova' meets international criteria for statehood. This omission raised concerns about conflicting sovereignty claims, further complicating the landscape of recognition policies.[20]

To evaluate statehood and recognition in secessionist entities, traditional theories and state practices, particularly post-Yugoslavia dissolution, must be scrutinised.[21] The Kosovo case prompted a careful examination of state practices over

[20] S Tierney, 'The Long Intervention in Kosovo—A Self-Determination Imperative?' in J Summers (ed), Kosovo: A Precedent? (Nijhoff 2011) 249–78

[21] J Vidmar, 'Territorial Integrity and the Law of Statehood' George Washington ILR 697, 700 (2012)

the past two decades, and the dissolution of Yugoslavia has led to confusion in state practices related to recognition.[22]

TURF WARS BETWEEN DECLARATORY AND CONSTITUTIVE THEORIES

The 'declaratory' and 'constitutive' theories have long contested the landscape of recognition doctrine, with the 'declaratory theory' often considered dominant in state practice. The characteristics of Declaratory Theory are as follows:

a. Sovereign statehood is an empirical fact assessed based on the effectiveness of state authority.

b. statehood requires exclusive sovereignty over distinct territories and peoples.

c. A recognised state must be independent and not subject to hierarchical authority from another state.

The 'declaratory' approach appears appealing as it avoids normative judgments on the political quality of a regime. However, challenges arise in recognising governments and raising questions regarding the criteria that guide such recognition. Recognition of governments and secessionist entities prompts normative questions, challenges the focus on the effectiveness of authority, and raises concerns about constitutional legitimacy. While most states stopped recognising governments during the 1970s and the 1980s, recent developments indicate a resurgence due to the emerging right to democratic governance and the condemnation of coups.[23] The traditional rule of non-recognition of secession attempts without the acceptance of the former territorial

[22] P Radan, The Break-Up of Yugoslavia and International Law 160–243 (Routledge 2002) .

[23] I Brownlie, 'Recognition in Theory and Practice' in R St. J MacDonald and DM Johnston (eds), The Structure and Process of International Law. Essays in Legal Philosophy Doctrine and Theory 628–9 (Nijhoff 1983).

sovereign has a strong rationale. There is a moral presumption favouring territorial sovereignty, and legitimate secessions should be determined through negotiations. Recognition, in cases of secession, becomes 'constitutive' when it is a result of concerted recognition by the international community.[24] This collective recognition, guided by negotiated agreements, grants the secessionist entity full statehood and membership in a community of states. Recognition, constitutive in nature, becomes more apparent as it aligns with the specific constitutional and political criteria. This structural homogeneity ensures that recognised entities adhere to the normative standards defined by the international community.[25]

The 'Stabilised de facto regimes'

The "independence" anniversaries were celebrated in Tiraspol, Tskhinvali, Stepanakert, and Sukhumi, marking the aftermath of civil wars in the early 1990s. Describing these conflicts as "frozen", de facto states exhibit features of statehood despite lacking de jure recognition. Aspiring to international recognition, they invoke the principle of self-determination and emphasise internal legitimacy through security provision, welfare, and shared identity building. Despite their lack of international recognition, the mechanisms in these de facto states align with those of other post-Soviet states. De facto states, characterised by organised political leadership, indigenous capacity, and effective control, are deemed illegitimate internationally. Initially viewed as "black holes" in the post-Soviet space, they evolved into cases of state and national formation. Internal legitimacy, crucial for survival, encompasses state, regime, and institutional legitimacy, with output and identity legitimacy playing key

[24] S Talmon, 'The Constitutive versus the Declaratory Theory of Recognition' 75 BYIL 101–181 (2004)

[25] D Raić, Statehood and the Law of Self-Determination 50–82 (Kluwer 2002)

roles. This internal legitimation strategy was systematically employed in each case examined, with variations across Transnistria, Abkhazia, Nagorno-Karabakh, and South Ossetia.[26] In Transnistria, a "supra-ethnic people" is constructed, distinguishing Transnistrian Moldovans from Bessarabian/Romanian Moldovans. Abkhazia solidifies the boundaries of the titular nation while incorporating minorities into a broader collective political identity category. In Nagorno-Karabakh, ambiguity persists regarding the separatist/irredentist cause, with signs of boundary-making within the multilocal nation of Armenians. South Ossetia, awaiting reunification with North Ossetia, has not actively pursued separate identity legitimation efforts. These dynamics reveal the intricate and context-dependent nature of nation-building in Eurasian de facto states.[27]

Extreme emergencies as a justification for secession

In situations where a state violently suppresses internal self-determination, leading to crimes against humanity or genocide, a 'right to secession' may be argued as an emergency tool founded on natural law or general principles of law. A legal claim for separate statehood may be justified when a state obstructs internal self-determination, erodes existing autonomy arrangements, and resorts to brutal forms of violent oppression that threaten the survival of distinct groups. While some cases argue for the right to secession in exceptional circumstances, state practice is generally reluctant to accept it because of the fear of escalating conflicts. Secessions tend to

[26] JA Frowein, 'De Facto Regime' in Max Planck Encyclopedia of Public International Law (OUP online 2012)

[27] N Caspersen and GR Stansfield (eds), Unrecognized States in the International System (Routledge 2011); E Berg and R Toomla, 'Forms of Normalisation in the Quest for De Facto Statehood' 44 International Spectator 27–45 (2009)

produce counterclaims, leading to endless disputes over territory and boundaries. It is crucial to distinguish that, legally and factually, it is not ethnic groups but certain territories that secede.[28] The preference for a 'nationalist', group-based construction of self-determination over a territorial understanding stems from practical challenges, including heterogeneous populations in a given territory. Territorial understanding raises questions about decision-making regarding the fate of territories with diverse ethnic, linguistic, and religious groups. This requires consensus or a referendum with an overwhelming majority for secession, which complicates the process. Claims of self-determination should focus on predetermined political entities with historical roots rather than ethnic groups. Uti possidetis, ensuring territorial boundaries based on historical entities, comes into play and limits territorial claims. In exceptional cases of brute oppression, ongoing genocide, or consistent crimes against humanity, there may be reasonable grounds for political entities to seek secession. Determining a clear 'right' to secession in exceptional circumstances remains open to doubt, and the international community must judge the legitimacy of such attempts. Rather than a clear-cut collective right, situations of (exceptional) legitimacy for secession should be seen in broader terms, allowing for international moderation and judgment. Despite extreme circumstances, international actors might still prefer solutions of 'internal self-determination', such as autonomy, to avoid obstacles to mediation and accommodate the overriding concerns of international policy.[29]

CASE STUDIES

[28] EM Brewer, 'To Break Free from Tyranny and Aggression: Proposing a Model for a Remedial Right to Secession in the Wake of the Kosovo Advisory Opinion' 45 VJTL 245–92 (2012)

[29] JR Ablan, 'Signals and Affirm: How the United Nations Should Articulate the Right to Remedial Secession' 45 VJTL 211–43 (2012);

Nagorno-Karabakh[30]

The Nagorno-Karabakh conflict remains one of the most enduring and contentious territorial disputes in the Caucasus region, posing significant challenges to regional stability and international efforts toward resolution. The historical and legal complexities surrounding the conflict make it difficult to achieve a lasting solution acceptable to all parties involved. From a historical perspective, Nagorno-Karabakh has been a site of ethnic diversity and contention for centuries, with the Armenians and Azerbaijanis claiming historical and cultural ties to the region. The collapse of the Soviet Union exacerbated existing tensions, leading to violent conflicts in the late 1980s and the early 1990s. The legal analysis of conflict is multifaceted, focusing on questions of territorial sovereignty, self-determination, and secession rights. The Armenian side argues for Nagorno-Karabakh's right to secede from Azerbaijan based on Soviet and international law, citing historical grievances and alleged discrimination. However, Azerbaijan maintains its claim to Nagorno-Karabakh, emphasising the principles of territorial integrity and rejecting the notion of unilateral secession. Under international law, the concept of remedial secession, where ethnic groups may have the right to secede in response to severe human rights violations, is highly contested. While some legal scholars and states support this principle, they lack a clear consensus and are not universally recognised. The Nagorno-Karabakh case raises questions about the applicability of remedial secession in situations of protracted conflict and competing territorial claims. During the era of perestroika, nationalist movements gained momentum across the Soviet Union, with the Armenian side strategically planning to transfer Nagorno-Karabakh to the Armenian SSR as early as 1986. Armenians

[30] Heiko Krüger, "Nagorno-Karabakh", in Christian Walter, Antje von Ungern-Sternberg and Kavus Abushov (eds.) Self-Determination and Secession in International Law, 214, 215 (Oxford University Press, 2014).

mobilised during the early stages of perestroika in 1988, demanding Nagorno-Karabakh's transfer to Armenia. This led to mass demonstrations and increased anti-Azerbaijani sentiments, triggering violence and exodus. The conflict escalated into a cycle of violence and counterviolence, resulting in numerous casualties, displacements, and atrocities committed by both sides. The Khojaly massacre of 1992 stands as one of the tragic events, further intensifying the conflict. The principle of uti possidetis establishes Nagorno-Karabakh as the initial component of the Republic of Azerbaijan. The principle of uti possidetis applied to Nagorno-Karabakh reaffirms its initial affiliation with Azerbaijan within its former administrative boundaries.

Abkhazia[31]

The conflict in Abkhazia emerged after Georgia declared independence in 1990 when Abkhazians voted to maintain the Soviet state. Georgia's nationalist forces, led by Zviyad Gamsakhurdia, came to power and declared independence, which Abkhazia opposed due to fear of losing its autonomous status. In 1992, Abkhazia declared independence from Georgia, citing violations of its autonomous rights. This declaration led to violent clashes between the Abkhazian forces and Georgian troops, resulting in the exodus of ethnic Georgians from Abkhazia. Abkhazia received external support and engaged in armed conflict with Georgia, resulting in a ceasefire brokered by the UN and Russia. Despite the negotiations, the conflict remained unresolved, leading to a frozen status quo. The legality of Abkhazia's external self-determination under international law has been contested. Russia's recognition of Abkhazia and South Ossetia, along with recognition from a few other states, remains an exception. Abkhazia

[31] Farhad Mirzayev, "Abkhazia", in Christian Walter, Antje von Ungern-Sternberg and Kavus Abushov (eds.) Self-Determination and Secession in International Law, 191, 212 (Oxford University Press, 2014).

claims a right to external self-determination based on alleged human rights violations and repression by Georgia. However, this claim lacks broad support from the international community and the parent state of Georgia. Abkhazia's effective control and stability are questioned, with a significant dependence on Russia for security and governance. Recognising Abkhazia as an independent entity presents several challenges, particularly those concerning territorial integrity and international law. Georgia maintains that Abkhazia is an integral part of its territory, rooted in the principle of uti possidetis, which asserts that the administrative borders of the former Georgian SSR, including Abkhazia, became internationally recognised boundaries of independent Georgia. International agreements within the Commonwealth of Independent States (CIS) affirmed respect for existing boundaries, reinforcing the principle of uti possidetis and opposing external self-determination for autonomous regions. Russia recognised Abkhazia after the 2008 conflict with Georgia. The recognition of Abkhazia as an independent entity faces legal and diplomatic challenges, particularly those concerning territorial integrity and international law. Russia, as a permanent member of the UN Security Council, recognised Georgia's territorial integrity within the framework of international law, including the boundaries of the Georgian SSR, which encompassed Abkhazia. Russia granted citizenship to Abkhazia residents, even during times of conflict, which has been a point of contention. Russia has given economic support to Abkhazia, including the use of the Russian currency and providing military, economic, and political support, as confirmed by organisations such as the OSCE. Georgia has pursued legal avenues, including proceedings in the International Court of Justice (ICJ) and the European Court of Human Rights (ECHR), to address alleged acts of racial discrimination and violations of human rights against Georgians in Abkhazia and South Ossetia. The ICJ ruled that it lacked the jurisdiction

to hear Georgia's case against Russia concerning Abkhazia. The court emphasised the importance of exhausting diplomatic means before resorting to legal action. The conflict in Abkhazia is seen as a geopolitical issue, with Russia's actions perceived as a response to Western recognition of Kosovo's independence rather than a genuine exercise of the right to self-determination.

Abkhazia and South Ossetia, former parts of Georgia, have been non-recognised entities since the 2008 Russia-Georgia War. Russia, Venezuela, Nicaragua, Nauru, and Syria have recognised them as independent states. Balancing the right to self-determination with the principles of territorial integrity remains a central theme. Scholars such as Farhad Mirzayev and Christopher Waters have examined how this delicate balance shapes the recognition and status of entities such as Abkhazia and South Ossetia.

Transnistria[32]

Transnistria, also known as the Pridnestrovian Moldavian Republic (PMR), is an unrecognised state located primarily on the left bank of the Dniester River. It declared independence from Moldova in 1990 but was not recognised as an independent state by any UN member. The region has a complex history, including periods of Ottoman and Russian rule. It was part of the Moldavian SSR within the Soviet Union, and it declared independence during the dissolution of the USSR. Transnistria has a diverse population with significant Moldovan, Russian, Ukrainian, and other ethnic groups. The region's ethnic makeup differs from that of Moldova, which contributes to

[32] Bill Bowring, "Transnistria", in Christian Walter, Antje von Ungern-Sternberg and Kavus Abushov (eds.) Self-Determination and Secession in International Law , 157 157 (Oxford University Press, Oxford, 2014).

its distinct identity. Violent clashes occurred between the Transnistrian separatists and Moldovan forces in the early 1990s, resulting in hundreds of casualties. Several peace agreements and proposals, including the Moscow Memorandum and the Kozak Memorandum, aimed to resolve the conflict but were not fully implemented. The Organization for Security and Co-operation in Europe (OSCE) has been actively involved in peace efforts in Transnistria since the early 1990s. However, the region's status remains unresolved, with Russia having significant influence. Despite its unrecognised status, Transnistria has its government institutions, including the constitution, parliament, and judiciary. Transnistria's economy relies heavily on industrial production, with key sectors including textiles, manufacturing, and steel production. Transnistria is acknowledged by Abkhazia, the Republic of Artsakh, and South Ossetia. Despite its constitution claiming sovereignty, independence, and democracy, Russia, a key player, has consistently advocated for its special status within Moldova. Nevertheless, in its 2004 judgment in *Ilaşcu,* the Strasbourg Court held that All of the above proves that the 'mrt', set up in 1991–92 with the support of the Russian Federation, vested with organs of power and its administration, remains under the effective authority, or at the very least under the decisive influence, of the Russian Federation, and in any event that it survives by virtue of the military, economic, financial and political support given to it by the Russian Federation. The finding is that the PMR "remains under the effective authority, or at the very least under the decisive influence" of Russia.[33]

[33] Ilaşcu and Others v Moldova and Russia, App. no. 48787/99, Judgment of 8 July 2004

South Ossetia[34]

South Ossetia, nestled within the South Caucasus, has been a focal point of regional tensions, particularly in the wake of the 2008 Georgia-Russia conflict. This conflict showcases the complex interplay between international law, self-determination, and secessionist aspirations. Despite efforts by international organisations to mitigate violence and establish legal frameworks, the situation remains unresolved. The roots of this conflict are intertwined with historical narratives and competing claims of territory and identity.Friendly relations between Georgians and Ossetians existed historically, but ethno-political entrepreneurs escalated tensions in the late 1980s, leading to violent conflicts. The collapse of the Soviet Union and the rise of nationalism exacerbated these tensions, culminating in the 1991 conflict that displaced tens of thousands of people. Ceasefire agreements and peacekeeping efforts provided temporary stability, but underlying issues persisted. Despite Georgia's efforts to integrate South Ossetia peacefully, the region has evolved into a de facto independent entity with its institutions. The 2008 conflict involved violations of international humanitarian law and accusations of ethnic cleansing on both sides. Russia's recognition of South Ossetia's independence further complicated the situation, driven by geopolitical interests and the desire to assert influence in the region. However, the international community largely maintains support for Georgia's territorial integrity, emphasising the importance of respecting existing borders. South Ossetia's claim to secession rests on the principle of self-determination, but legal complexities arise because of its historical inclusion within Georgia and the Soviet Union. While South Ossetia declared independence following the USSR's dissolution, its status as an autonomous region within Georgia complicated

[34] Christopher Waters, "South Ossetia", in Christian Walter, Antje von Ungern-Sternberg and Kavus Abushov (eds.) Self-Determination and Secession in International Law , 175-191 (Oxford University Press, 2014)

the legality of unilateral secession. The application of the uti possidetis principle reinforces Georgia's territorial integrity, although South Ossetians argue against its legitimacy based on historical grievances. The Georgian SSR's constitution also prohibited alterations to Georgia's territory without consent. Thus, South Ossetia's attempts at independence through referendums lacked a legal force under Georgian law, a stance supported by the international community. However, international law recognises the right to self-determination, particularly in colonial or oppressed contexts, although the application is debated. Some argue that the Kosovo precedent expands the space for secession, while others criticise or distinguish it. Negotiations between Georgia and Russia regarding South Ossetia's status have been limited, with no significant progress made since the Rose Revolution. South Ossetian authorities have rejected the efforts for regional autonomy proposed by Georgia.

In conclusion, South Ossetia's legal status remains unresolved, with conflicting internal and external principles of self-determination. Effective conflict management and genuine negotiations are essential for reconciling self-determination aspirations with territorial integrity, although achieving this remains challenging amid entrenched positions and geopolitical complexities.

THE "PARADE OF SOVEREIGNTIES" IN 1990-1992 FOR STATEHOOD

The period between 1990 and March 1992, known as the "parade of sovereignties", witnessed a transformative process as ethnic autonomous republics within the Soviet Russian Federation sought to shed their autonomous status and embrace sovereign statehood through declarations. Even before the USSR collapsed in December 1991, 23 Soviet Russian Federation subjects declared state sovereignty.Certain territories, such as Chukotka, successfully transitioned from

autonomous okrugs to the subjects of the Russian Federation. The fear of Russia transforming into a confederation prompted the drafting of a Federative Treaty signed on 31 March 1992 outlining the power division. By December 1992, this treaty was incorporated into the 1978 Constitution of the Russian Federation, leading to Russia's shift from a unitary to a quasi-federal state. Irina Umnova, in 1998, observed that Russia evolved into a quasi-federal state, with the Federative Treaty providing regions other than ethnic republics with autonomy akin to decentralised regions in unitary states like Italy and Spain. The key to this autonomy was the principle that territorial changes required agreement from regions, emphasising regional sovereignty. The Federative Treaty of 1992 was a crucial turning point, marking a shift in Russia's constitutional structure. The emphasis on regional autonomy and the requirement for regional agreements in territorial matters reflects an attempt to balance centralisation and regional sovereignty.[35]

CHALLENGES TO NAGORNO-KARABAKH'S STATEHOOD

Scholars working on the issue largely accept the use of the term *state* in addressing such entities, as they *prima facie* satisfy the Montevideo criteria of statehood under international law and, in many ways, they act like typical states, ultimately aspiring to confirm their *status* through widespread recognition. The study of these entities is part of a larger literature on "sovereign anomalies" that exemplifies how subjectivity in the international system is more diversified than conventionally assumed, reinforcing how "widespread exceptions to the rules of absolute, indivisible

[35] Bill Bowring, "The Russian Constitutional System: Complexity and Asymmetry", in Marc Weller and Katherine Nobbs (eds.), Asymmetric Autonomy and the Settlement of Ethnic Conflicts 48–74 (University of Pennsylvania Press, 2010).

sovereignty, exercised equally by all states, can be”. [36] A 2011 collection, "Unrecognised States in the International System”, by political scientists, including Nina Caspersen and Gareth Stansfield, forms the basis for the discussion of entities seeking recognition. The collection defines "unrecognised states" as territories that have attained de facto independence, often through warfare, yet lack international recognition as independent states. Alternative terms such as "de facto states”, "separatist states”, and "unrecognised quasi-states" are also used to describe these entities. Three criteria are outlined for inclusion in the collection: achieving de facto independence for at least two years, lacking full international recognition, and demonstrating an aspiration for full de jure independence. Notably, these entities exhibit a degree of "stateness", marked by de facto domestic sovereignty. Nina Caspersen argues that the aspiration for international recognition is integral to unrecognised states' identity. These entities aim to distance themselves from their negative perceptions, projecting an image of democratic and effective governance.[37] Caspersen questions why these entities, while imitating democratic statehood, struggle to achieve the "real deal." She identifies the need for external patronage and the tension between maintaining a strong defence of popular legitimacy and projecting a democratic and inclusive image. Despite inherent tensions, Caspersen acknowledges the resilience of unrecognised states capable of surviving for several decades. Their statehood may face challenges, but with external support and no viable alternatives, these entities exhibit considerable power. Their existence, shaped by geopolitical

[36] Victor S. Mariottini de Oliveira, "Where De Facto States Come to Rest: The Approaching Demise of the So-called Republic of Artsakh," OpinioJuris, Last accessed Dec. 1, 2023, Available at-https://opiniojuris.org/2023/10/18/where-de-facto-states-come-to-rest-the-approaching-demise-of-the-so-called-republic-of-artsakh/.

[37] Nina Caspersen and Gareth Stansfield (eds.), Unrecognised States in the International System (Routledge, London, 2011).

factors and external support, challenges the assumption that non-recognition inevitably leads to transience.

Applying the Steinmeier formula to the Nagorno-Karabakh conflict offers a framework based on compromise, inclusivity, and autonomy. A consensus-based solution can be achieved by engaging all stakeholders, including Armenia, Azerbaijan, and Nagorno-Karabakh representatives, and granting a region with a high degree of autonomy within Azerbaijan's territorial integrity. This approach paves the way for lasting peace and stability within the region.

CONCLUSION

Caspersen's observations in 2010 are still relevant. A decade later, the four entities, primarily Abkhazia, Nagorno Karabakh, South Ossetia, and Transnistria, persisted despite non-recognition. Even a decade later, these entities continued to endure, suggesting that non-recognition has not hindered their existence, and they have weathered the complexities of their geopolitical status. Despite legal ambiguities, entities such as Nagorno-Karabakh have persisted for three decades. This endurance prompts contemplation about the lasting impact and future trajectory of non-recognised entities in the complex landscape of international relations. Despite ongoing conflicts, all four post-Soviet entities were likely to continue to exist in a frozen state, navigating complex geopolitical realities without significant adverse consequences.