PUTTING REMEDIAL SECESSION BACK ON THE TABLE TO REVERSE THE ETHNIC CLEANSING OF NAGORNO-KARABAKH

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Abstract

In the wake of the forced dissolution of the de facto Republic of Nagorno-Karabakh and the ensuing ethnic cleansing of its Armenian population, international legal mechanisms have proven insufficient in addressing and reversing the egregious human rights violations committed. This article reevaluates the doctrine of remedial secession, arguing its necessity as a countermeasure to such violations, particularly in the context of unrecognized states like Nagorno-Karabakh. Through a detailed analysis of the blockade of the Lachin Corridor and the Armenian accession to the Rome Statute of the International Criminal Court, this article highlights the shortcomings of the international community's response and proposes remedial secession not only as a theoretical framework but as a practical necessity. Furthermore, this article discusses the implications of remedial secession in light of the Responsibility to Protect principle, emphasizing the need for a human rights-based approach to international conflicts that transcend traditional sovereignty and territorial integrity debates. This article draws on a comprehensive review of international law, human rights

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treaties, and recent judicial decisions to argue for a shift in the discourse towards prioritizing human security and dignity in conflict resolution.

I. INTRODUCTION

The *de facto* Republic of Nagorno-Karabakh was compelled to dissolve after twenty-four hours of heavy bombardment by Azerbaijan from September 19 to 20, 2023.[1] The entire region was immediately ethnically cleansed in a matter of days almost entirely of its indigenous population, with more than 100,000 ethnic Armenians pouring into neighboring Armenia.[2] According to the United Nations ("UN"), as few as fifty Armenians are left in Nagorno-Karabakh.[3] The dissolution of the Nagorno-Karabakh Republic, agreed to under duress, took effect on January 1, 2024.[4] The plight of ethnic Armenian refugees who suffered a myriad of severe human rights violations since 2020 remains in obscurity and largely unaddressed.[5]

Despite the efforts of international legal mechanisms, including the International Court of Justice ("ICJ") and the European Court of Human Rights ("ECHR"), Azerbaijan's ten-month blockade of the Lachin Corridor and forced displacement of Armenians from Nagorno-Karabakh have not

1. Sheila Paylan, *Forced Displacement of Armenians from Nagorno-Karabakh: A Response,* OPINION JURIS 2 (Nov. 6, 2023), https://opiniojuris.org/2023/11/06/forced-displacement-of-armenians-from-nagorno-karabakh-a-response/.

2. *See* United Nations, *UN Karabakh Mission told 'Sudden' Exodus Means as few as 50 Ethnic Armenians may Remain*, UN NEWS (Oct. 2, 2023), https://news.un.org/en/story/2023/10/1141782.

3. United Nations, *supra* note 2.

4. *See* European Parliament Resolution on Closer Ties Between the EU and Armenia and the Need for a Peace Agreement Between Azerbaijan and Armenia, EUR. PARL. DOC. B9-0168 (2024), ARTICLE L.

5. *See* Anthony Deutsch & Stephanie Van den Berg, *Nagorno-Karabakh Exodus Amounts to a War Crime, Legal Experts say*, REUTERS (Sept. 29, 2023), https://www.reuters.com/world/asia-pacific/nagorno-karabakh-exodus-amounts-war-crime-legal-experts-say-2023-09-29/.

been effectively prevented or punished.[6] Several international legal scholars have determined that the blockade and deportation amount to international crimes including genocide and crimes against humanity.[7] With Armenia's recent accession to the Rome Statute of the International Criminal Court ("ICC"), there is now a renewed opportunity for pursuing criminal accountability for the actions of Azerbaijani authorities. The doctrine of the Responsibility to Protect ("R2P") has also been long triggered and the international community's failure to take timely and decisive action under R2P's third pillar can arguably be identified as a problematic source of leading Azerbaijan's leadership to abide by the "might is right" principle, to which they expressly adhere.[8] If left unchecked, the unfortunate result will be the further strengthening of authoritarianism in international law as a whole.

In the wake of such a catastrophe, which lies in the shadow of a current global mega-crisis largely focused on Ukraine and the Middle East, shedding a light on the Nagorno-Karabakh crisis is now more important than ever. This paper will explain that there remains a concerning dearth in taking a human-rights based approach when discussing matters of international law concerning unrecognized States such as Nagorno-Karabakh. It will further explore how the concept of the right to self-determination has been unjustly relegated in importance compared to the principles of sovereignty and territorial integrity, significantly disadvantaging the inhabitants of regions like Nagorno-Karabakh. Additionally, this paper will argue that the latest phase of the ethnic cleansing of the Armenian population of Nagorno-Karabakh calls for putting the concept of remedial secession back on the table as a conceivable measure of R2P or the obligation to remedy and repair. Finally, measures that could align with the ICJ's latest provisional measures order against Azerbaijan to ensure the safe return of the Armenian refugees

6. JUAN ERNESTO MENDEZ, PRELIMINARY OPINION ON THE SITUATION IN NAGORNO-KARABAKH AND ON THE NEED FOR THE INTERNATIONAL COMMUNITY TO ADOPT MEASURES TO PREVENT ATROCITY CRIMES (2023), https://un.mfa.am/file_manager/un_mission/Preliminary%20Opinion%20-%2023.08.2023.pdf.

7. Luis Moreno Ocampo, *Starvation as a Means of Genocide: Azerbaijan's Blockade of the Lachin Corridor Between Armenia and Nagorno-Karabakh*, JUST SECURITY (Aug. 11, 2023), https://www.justsecurity.org/87574/starvation-as-a-means-of-genocide-azerbaijans-blockade-of-the-lachin-corridor-between-armenia-and-nagorno-karabakh; *see also* MENDEZ, *supra* note 6; Paylan, *supra* note 1; Deutsch & Van den Berg, *supra* note 5.

8. *President Ilham Aliyev: Today, 'Might is Right' Principle Prevails in the World*, MENAFN. (Feb. 15, 2015), https://menafn.com/1098123627/President-Ilham-Aliyev-Today-might-is-right-principle-prevails-in-the-world.

back to Nagorno-Karabakh,[9] which Azerbaijan has yet to comply with, will be suggested.

II. TAKING A HUMAN RIGHTS-BASED APPROACH

The international legal discourse surrounding conflicts in unrecognized States such as Nagorno-Karabakh often gravitates towards sovereignty and territorial integrity, overshadowing the essential human rights dimensions. For instance, in the aftermath of the 2020 Nagorno-Karabakh War, a spirited debate arose in the international legal space over whether Azerbaijan's use of armed force starting on September 27, 2020, and invoking the right of self-defense to "recover" Nagorno-Karabakh was legitimate.[10] On the one hand, some scholars conclude that Azerbaijan was well within its right, arguing that an occupation that is a direct consequence of an armed attack by another state is a "continuing armed attack," and that the attacked state therefore never loses its right to self-defense, regardless of how much time passes.[11] On the other hand, there are those who conclude that Azerbaijan's use of force was unjustified—arguing that the right of self-defense stops where there exists a territorial status quo, characterized by a prolonged absence of fighting and peaceful administration of the territory concerned.[12] What is striking is how little consideration of human rights is involved in this otherwise sophisticated discussion where human rights might have shed new light on the problematic character of the 2020 Nagorno-Karabakh War.

A human rights-based approach offers a lens through which it is possible to reevaluate such conflicts, arguing that the essence of international law

9. Press Release from the International Court of Justice, Application of the International Convention on the Elimination of All Forms of Racial Discrimination, (Arm. v. Az.), I.C.J. ¶ 69 (Nov. 13, 2023).

10. Tom Ruys & Felipe Rodriguez Silvestre, *Military Action to Recover Occupied Land: Lawful Self-Defense or Prohibited Use of Force*, GHENT UNIV., Jan. 2021, at 1, 1.

11. *See* Dapo Akande & Antonios Tzanakopoulos, *Legal: Use of Force in Self-Defence to Recover Occupied Territory*, 32 EUR. J. INT'L L. 1299, 1300 (2021); *see also* Dapo Akande & Antonios Tzanakopoulos, *Use of Force in Self-Defence to Recover Occupied Territory: When Is It Permissible?*, EJIL TALK (Nov. 18, 2020), https://www.ejiltalk.org/use-of-force-in-self-defence-to-recover-occupied-territory-when-is-it-permissible/.

12. *See* Tom Ruys & Felipe Rodríguez Silvestre, *Illegal: The Recourse to Force to Recover Occupied Territory and the Second Nagorno-Karabakh War*, 32 EUR. J. INT'L L. 1287, 1289 (2021); *see also* Tom Ruys & Felipe Rodríguez Silvestre, *The Nagorno-Karabakh Conflict and the Exercise of "Self-Defense" to Recover Occupied Land*, JUST SECURITY (Nov. 10, 2020), https://www.justsecurity.org/73310/the-nagorno-karabakh-conflict-and-the-exercise-of-self-defense-to-recover-occupied-land/; Bernhard Knoll-Tudor & Daniel Mueller, *At Daggers Drawn: International Legal Issues Surrounding the Conflict in and Around Nagorno-Karabakh*, EJIL TALK (Nov. 17, 2020), https://www.ejiltalk.org/at-daggers-drawn-international-legal-issues-surrounding-the-conflict-in-and-around-nagorno-karabakh/.

should not merely orbit around State-centric norms but should also prioritize the well-being and rights of individuals within these territories. This perspective is particularly relevant in situations like Nagorno-Karabakh, where the application of traditional international law paradigms fails to address or prevent the dire human consequences of prolonged conflicts.[13] The ten-month blockade of the Lachin Corridor, which started on December 12, 2022, and the subsequent humanitarian crisis, exemplify how a narrow focus on territorial disputes can lead to grave violations of human rights, including rights to life, health, and freedom of movement.[14]

Moreover, the international community's response, or lack thereof, to these crises through mechanisms such as the UN Security Council, demonstrates a stunted capacity to address these issues effectively. The entrenched reliance on diplomatic and sovereignty-centric dialogues often sidelines pressing human rights issues, leaving populations at risk without substantive international advocacy or protection. A shift towards a human rights-based approach in discussing and resolving conflicts in unrecognized States is therefore not merely necessary, but imperative. This approach would ensure that the fundamental rights and dignities of all affected populations are upheld, moving beyond the traditional paradigms that have hitherto dominated international responses to these crises.

III. SELF-DETERMINATION OF PEOPLES

Although marred with reports of serious war crimes,[15] the 2020 Nagorno-Karabakh War did little to move the international community beyond the usual rhetoric of calling the parties back to peaceful negotiations through the OSCE Minsk Group.[16] It also failed to inspire most international lawyers beyond merely recalling that the world—guided by the principle of territorial integrity as reflected in the doctrine of *uti possidetis juris*[17]—still

13. *See generally* Paylan, *supra* note 1.

14. Amnesty International, *Azerbaijan: Blockade of Lachin Corridor Putting Thousands of Lives in Peril Must be Immediately Lifted*, AMNESTY INT'L (Feb. 9, 2023), https://www.amnesty.org/en/latest/news/2023/02/azerbaijan-blockade-of-lachin-corridor-putting-thousands-of-lives-in-peril-must-be-immediately-lifted/.

15. Sheila Paylan, *Remedial Secession and the Responsibility to Protect: The Case of Nagorno-Karabakh,* OPINIO JURIS (Dec. 23, 2020), https://opiniojuris.org/2020/12/23/remedial-secession-and-the-responsibility-to-protect-the-case-of-nagorno-karabakh/.

16. *Id.*

17. *Id.*; *see generally* Case Concerning the Frontier Dispute (Burkina Faso v. Republic of Mali), Judgment, 1986 I.C.J. 565-66, ¶ 20, 23 (Dec. 22) ("[Uti possidetis juris is a] general principle, which is logically connected with the phenomenon of the obtaining of independence, wherever it occurs. Its obvious purpose is to prevent the independence and stability of new States being endangered by fratricidal struggles provoked by the challenging of frontiers following the

officially considers Nagorno-Karabakh to be part of Azerbaijan, and that, accordingly, any realistic hope for the former to exercise its right to self-determination lies squarely within the framework of the latter.

The Nagorno-Karabakh conflict underscores the clash between the right to self-determination of the Armenian population in the region and Azerbaijan's sovereignty claims. The Armenians' attempt to secede conflicted with Azerbaijan's insistence on maintaining its territorial integrity, a principle strongly supported internationally to uphold State borders and prevent external interference.[18] Internationally, there is a tendency to prioritize State sovereignty and territorial integrity over the aspirations of sub-national groups, which led to the non-recognition of Nagorno-Karabakh's independence, leaving it vulnerable.[19] This conservative stance on sovereignty often overshadows the human rights of the populations involved, treating them as secondary to State interests. Major international actors, including the UN Security Council, have placed a premium on respecting sovereignty and territorial integrity, typically addressing human rights abuses only subsequently.[20] This approach not only perpetuates conflicts like that in Nagorno-Karabakh by neglecting root causes such as the right to self-determination and human rights but also enables aggressive State actions under the guise of protecting territorial claims. This has been evident in Azerbaijan's military actions to reclaim territory, supported implicitly by international passivity towards a human rights-focused resolution.

Recognized as one of the cardinal principles of international law, the right to self-determination is believed to be "deficient,"[21] an "indeterminate, incoherent, and unprincipled" area of international law,[22] as well as full of "gaps, contradictions and incongruences."[23] To better understand the scope of its contemporary application, it is necessary to provide a brief sketch of

withdrawal of the administering power . . . . Its purpose, at the time of the achievement of independence by the former Spanish colonies of America, was to scotch any designs which non-American colonizing powers might have on regions which had been assigned by the former metropolitan State to one division or another, but which were still uninhabited or unexplored.").

18. Paylan, *supra* note 15.

19. *Id*.

20. *See* U.N. Security Council, Greater Acceptance, Participation in International Court of Justice's Compulsory Jurisdiction Key for Improving Global Dispute Settlement, Security Council Hears, U.N. Doc. SC/15171 (Jan. 12, 2023).

21. ALLEN BUCHANAN, JUSTICE, LEGITIMACY, AND SELF-DETERMINATION 343 (Will Kymlicka et al. eds., 1st ed. 2004).

22. Fernando R. Tesón, Introduction*, The Conundrum of Self-Determination*, *in* THE THEORY OF SELF-DETERMINATION 1, 1 (CAMBRIDGE UNIV. 2016).

23. Elizabeth Rodriguez-Santiago, *The Evolution of Self-Determination of Peoples in International Law, in* THE THEORY OF SELF-DETERMINATION, *supra* note 22, at 202.

how the legal meaning attached to the right has evolved throughout the twentieth century.

Referred to as the "golden age" of the principle,[24] the ongoing popularity of the right is primarily associated with the decades of decolonization that peaked between the 1960s through 1970s.[25] After first being recognized and ratified in the UN Charter as among the purposes of the UN, the right to self-determination is protected by Article 1 common to the two major international human rights treaties: the International Covenant on Civil and Political Rights ("ICCPR") and the International Covenant on Economic, Social and Cultural Rights.[26] The conundrum with the right begins with the very first words invoked in the covenants, since it is unclear what constitutes "peoples."[27] In fact, as the discussion of the literature on self-determination demonstrates, the definition of "peoples" has evolved over time. It is believed to be a key shortcoming of the existing accounts of self-determination which view the application of self-determination based on what "peoples" is instead of anchoring it on what "peoples" should do to earn it.[28] In line with the latter interpretation, self-determination is not inherent and those "worthy of self-determination emerge from the experience and struggle for self-determination."[29] In other words, a claim for sovereignty and statehood is a process and those aspiring for political existence must demonstrate that they deserve it and qualify for it.

The international practice that was developed during the Cold War period restricted the exercise of the right to indigenous populations that were conquered by the Europeans and subjected to unjust colonial domination between the fifteenth and the nineteenth centuries.[30] A key development for the expansion of the meaning of the principle was the adoption of the Declaration on the Granting of Independence to Colonial Countries and Peoples (1960), which elevated the status of self-determination to a right that "all peoples" have.[31] By recognizing that all those territories that have not yet gained independence, including Trust and Non-Self-Governing

24. Frédéric Mégret, *The Right to Self-Determination: Earned, Not Inherent, in* THE THEORY OF SELF-DETERMINATION, *supra* note 22, at 49.

25. *Id.*

26. Patrick Macklem*, Self-Determination in Three Movements, in* THE THEORY OF SELF-DETERMINATION, *supra* note 22, at 96 (article 1 says that "all peoples have the right of self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development").

27. *See* Tesón, *supra* note 22, at 2; Rodriguez-Santiago, *supra* note 23, at 201.

28. *See* Mégret, *supra* note 24, at 54.

29. *Id*. at 47.

30. *See* Macklem, *supra* note 26, at 109.

31. *Id.* at 99–100.

Territories, have a right to self-determination, the Declaration contributed to the inclusion of those that have historically been marginalized and excluded from international law. The incorporation of self-determination in the Declaration can be viewed as an effort aimed at addressing "international law's complicity with colonialism."[32] The discussion on the expansion of the meaning of self-determination would be incomplete without the Declaration on Friendly Relations (1970), which cemented the status of self-determination as a human right and the paradigm shift in the UN's treatment of the colonial legacy of international law.[33] The two declarations taken together treat the right to self-determination as a vehicle for acquiring sovereign statehood both within the colonial context as well as in the circumstances pertaining to alien subjugation. To capture the scope of the right's applicability, it is worth mentioning that between the enactment of the UN Charter and the 1970s, seventy territories gained independence.[34]

Although the applicability of the right to self-determination has become narrower with the formal end of the decolonization process, its legal understanding has evolved further. In the post-Cold War era, interpretation of the right has taken multiple forms, with some authors endorsing a nationalist view and arguing that its exercise should be restricted to comprehensive cultures only,[35] some others insisting that it is collective entities, such as States, that are entitled to it,[36] and some suggesting that self-determination should be viewed as a remedy for groups that have been victimized, subjected to unjust persecution and oppression by the parent State.[37] Arguing in favor of a comprehensive normative framework when assessing self-determination claims, Allen Buchanan further stipulates that secession is the most "dramatic form" that the right to self-determination can take,[38] only when there is ample evidence suggesting that internal self-determination is not a viable option for the seceding group.[39] It is this interpretation of self-determination, as a force against territorial integrity and a remedy for protecting vulnerable groups of people, that has gained particular traction and which this article will further elaborate on.

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32. *Id.* at 100.

33. *See id.* at 102–03.

34. *See* ANTONIO CASSESE, SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL 74–75 (1995).

35. Avishai Margalit & Joseph Raz, *National Self-Determination*, 87 J. PHIL. 439, 446–49 (1990).

36. CARA NINE, GLOBAL JUSTICE AND TERRITORY 45–67, (2012).

37. *See* BUCHANAN, *supra* note 21, at 331.

38. *Id*. at 332.

39. *See* CASSESE, *supra* note 34, at 17–23.

IV. THE RISE AND FALL OF REMEDIAL SECESSION

The concept of remedial secession for Nagorno-Karabakh has been a contentious issue within international law and politics, particularly leading up to and following the 2020 war.[40] Nagorno-Karabakh, a region predominantly inhabited by ethnic Armenians, has long sought independence from Azerbaijan.[41] The dissolution of the Soviet Union escalated these tensions, culminating in a violent conflict in the early 1990s, which ended with Nagorno-Karabakh establishing a *de facto* independent status, albeit unrecognized internationally.[42] The doctrine of remedial secession was intermittently considered a potential resolution to the conflict, predicated on the notion that secession might be justified as a last resort remedy for the serious and persistent violation of fundamental human rights.[43]

However, the resurgence of the conflict in 2020, which saw Azerbaijan reclaim significant territories, substantially altered the power dynamics in the region.[44] The international community's earlier flirtations with the concept of remedial secession as a potential solution for Nagorno-Karabakh quickly evaporated as geopolitical interests and alliances shifted. Following Azerbaijan's military success, supported by Turkey and bolstered by an influx of advanced military technology,[45] the international discourse pivoted towards stabilization and the reassertion of territorial integrity under Azerbaijani governance. This shift effectively sidelined discussions of Nagorno-Karabakh's independence or autonomy, leaving the region's ethnic Armenian population in a precarious position, vulnerable to the Armenophobic policies of the Azerbaijani government.[46]

The systemic discrimination against ethnic Armenians in Azerbaijan is well-documented in reports by the European Commission on Racism and

40. *See* Heiko Krüger, *Nagorno-Karabakh, in* SELF-DETERMINATION AND SECESSION IN INTERNATIONAL LAW 214, 220–21 (Christian Walter et al. eds., 2014).

41. *Id.* at 215–16.

42. *Id.*

43. *Id.* at 220–21.

44. *See* Hula Kinik & Senem Celik, *The Role of Turkish Drones in Azerbaijan's Increasing Military Effectiveness: An Assessment of the Second Nagorno-Karabakh War*, 23 INSIGHT TURK. (2014), https://www.rferl.org/a/technology-tactics-and-turkish-advice-lead-azerbaijan-to-victory-in-nagorno-karabakh/30949158.html.

45. *See id.*; *see also* Ron Synovitz, *Technology, Tactics, And Turkish Advice Lead Azerbaijan To Victory In Nagorno-Karabakh*, RADIO FREE EUROPE/RADIO LIBERTY (Nov. 13, 2020), https://www.rferl.org/a/technology-tactics-and-turkish-advice-lead-azerbaijan-to-victory-in-nagorno-karabakh/30949158.html.

46. *See* Synovitz, *supra* note 45.

Intolerance ("ECRI")[47] and decisions by the ECHR.[48] These sources highlight a deep-rooted policy of animosity, where Armenians face physical and psychological abuse, employment discrimination, and denial of public services.[49] ECRI reports from 2002 through 2023 consistently describe Armenians as the most vulnerable group in terms of racial discrimination in Azerbaijan, subject to a persistent negative climate that includes hate speech perpetuated by State institutions and media.[50] Such discriminatory practices are not only deeply entrenched but also routinely overlooked by Azerbaijani authorities, who show little initiative to change the status quo, further exacerbating the ethnic tensions rooted in the Nagorno-Karabakh conflict.

The abandonment of remedial secession as a viable solution thus coincided with a marked increase in hostilities and human rights abuses, culminating in the ethnic cleansing of Nagorno-Karabakh's Armenian population following the 2020 war.[51] The cessation of serious consideration for Nagorno-Karabakh's independence removed a significant leverage point against Azerbaijan, emboldening its position and actions in the region.[52] This historical and political context points to the need to revisit the concept of remedial secession not merely as a theoretical framework but as a practical necessity to address the ongoing humanitarian crisis and reverse the ethnic cleansing. Reintroducing this option into the international legal and policy discourse could provide a pathway to justice and security for the displaced and persecuted population of Nagorno-Karabakh.

However, challenges currently exist with respect to advocacy for remedial secession for Nagorno-Karabakh. With the *de jure* dissolution of Nagorno-Karabakh's existence as an entity, the traditional channels for pushing such an agenda are significantly constrained. In this context, the

47. *See* EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE, REPORT ON AZERBAIJAN 14 (2002); *see also* EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE, SECOND REPORT ON AZERBAIJAN 6 (2011); EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE, REPORT ON AZERBAIJAN 10, 16, 20–21 (2023).

48. *See e.g.,* Petrosyan v. Azerbaijan, App. No. 32427/16, ¶¶ 51-61, 70–71 (Feb. 28, 2022), https://hudoc.echr.coe.int/eng?i=001-212965; Saribekyan and Balyan v. Azerbaijan, App. No. 35746/11, ¶¶ 71–74, 85–88 (Sept. 7, 2020), https://hudoc.echr.coe.int/eng?i=001-200439; Badalyan v. Azerbaijan, App. No. 51295/11, ¶¶ 39–48 (Oct. 22, 2021), https://hudoc.echr.coe.int/eng?i=001-211103; Khojoyan and Vardazaryan v. Azerbaijan. App. No. 62161/14, ¶¶ 52–54 (Feb. 28, 2022), https://hudoc.echr.coe.int/eng?i=001-212964; Makuchyan and Minasyan v. Azerbaijan and Hungary, App. No. 17247/13, ¶¶ 109–20 (Oct. 12, 2020), https://hudoc.echr.coe.int/eng?i=001-202524.

49. Petrosyan, *supra* note 48.

50. *Id.*

51. *See* Nerses Kopalyan, *The Limitations of Remedial Secession and the Need for Remedial Sovereignty*, EVN REP. (Dec. 2, 2021), https://evnreport.com/politics/resolving-the-problem-of-nagorno-karabagh-s-sovereignty/.

52. *Id.*

primary responsibility for advocating remedial secession could logically fall back to the Armenian government, which would then revert to assuming the role of a protector or guarantor for the rights of the Nagorno-Karabakh Armenians. However, such a scenario is unforeseeable, in the light of ongoing peace negotiations with Azerbaijan.

Alternatively, the establishment of a government in exile could serve as a symbolic and practical platform to continue the pursuit of self-determination and remedial secession on the international stage. Such a government in exile could work to maintain the identity and political aspirations of the Armenians of Nagorno-Karabakh, mobilizing international support and potentially coordinating with global human rights organizations to advocate for their cause. This approach would help maintain the issue on the international agenda, ensuring that the rights and voices of the displaced population are represented in diplomatic discussions and international forums.

V. THE PROMISE OF REMEDIAL SECESSION

Over the past several decades, only a handful of secessionist movements including Bangladesh, South Sudan, Eritrea, East Timor, and Kosovo have been successful in garnering international support, while the predominant majority have been doomed to failure. Simply put, although the international community does not seem to be reluctant to recognize successful secessionist movements, it remains cautious to recognize a right to it.[53]

International law has a rather neutral position regarding the question of secession, and although it is not explicitly prohibited, it is not endorsed as well.[54] International legal scholars are in consensus that international law does not recognize a general right to secede unless it is aimed at overthrowing colonial subjugation or repudiating an unjust military occupation.[55] In fact, an exhaustive survey of State practices demonstrates that, since the end of the Second World War, States that were created through unilateral secession

53. Mégret, *supra* note 24, at 52–53.

54. *See* Alain Pellet, *Kosovo - The Questions Not Asked: Self-Determination, Secession, and Recognition, in* THE LAW AND POLITICS OF THE KOSOVO ADVISORY OPINION 268, 273 (Marko Milanović & Michael Wood eds., 2015); *see also* James Crawford, *Kosovo and the Criteria of Statehood in International Law, in* THE LAW AND POLITICS OF THE KOSOVO ADVISORY OPINION, *supra* note 54, at 280–90; Katherine D. Mar, *The Myth of Remedial Secession, in* STATEHOOD AND SELF-DETERMINATION: RECONCILING TRADITION AND MODERNITY IN INTERNATIONAL LAW 79, 79–108 (Duncan French ed., 2013).

55. *See* BUCHANAN, *supra* note 21, at 333.

did not gain UN membership without the explicit endorsement of the parent State.[56]

Remedial secession was developed in the wake of ethnic conflicts in the 1990s that were notorious for their disturbing track record of human rights abuses.[57] It extended the parameters of external self-determination, the application of which was restricted to contexts of decolonization and alien domination and justified the exercise of the right as a remedy of last resort to egregious human rights violations.[58] Authors who put forward a justice-based conception of self-determination argue that, although a putative right to self-determination of peoples is dangerous, international law should recognize a right to secede as a last resort and as a remedy to injustices endured by the victim population.[59] Some of the underlying conditions that can facilitate remedial secession include systemic human rights abuses, persistence of discriminatory practices, arbitrary arrests, exhaustion of negotiations, and support from influential states, as well as commitment of the seceding territory to human rights.[60]

The doctrine of remedial secession gained momentum in the post-Cold War period with several judicial decisions in both international and domestic legal settings engaging with it. The case of Kosovo is particularly illuminating for uncovering the unique conditions and circumstances that warrant the applicability of remedial secession. The ICJ's Advisory Opinion is significant both for the question that it was asked,[61] and those it was not explicitly asked to elaborate on, namely the extent of the right to self-determination, the legal foundation for remedial secession as well as the recognition of Kosovo's independence by other States.[62] While the ICJ only focused on the interpretation of the specific question posed by the UN General Assembly, parties to the proceedings, who made written and oral interventions before the ICJ, addressed the contested terrain of international legal concepts and principles that are worth scrutinizing.[63] It is particularly

56. *See* JAMES R. CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW 417–18 (Oxford, 2nd ed. 2007).

57. *See* Daniel H. Meester, *The International Court of Justice's Kosovo Case: Assessing the Current State of International Legal Opinion on Remedial Secession*, 48 CAN. Y.B. INT'L L. 215, 218 (2010).

58. *Id*.

59. *See* BUCHANAN, *supra* note 21, at 342.

60. *See id*.; *see* generally MARC WELLER, CONTESTED STATEHOOD: KOSOVO'S STRUGGLE FOR INDEPENDENCE (2009).

61. Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 2010 I.C.J. 49 (July 22, 2010).

62. *See* Pellet, *supra* note 54, at 271–79.

63. *See* Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 2010 I.C.J. 49.

illuminating to view the courtroom as a place of public contestations about international legal norms such as the right to self-determination and remedial secession, which can be viewed as valuable indications of *opinio juris*. Besides Kosovo and Serbia, forty-two other States made submissions before the ICJ, eleven of which provided an explicit endorsement of the doctrine of remedial secession in their submissions;[64] fourteen states maintained that the right exists in principle, while twenty-five states remained neutral.[65]

The concept of remedial secession was also addressed by two of the judges in their separate opinions. When speaking about the exceptional circumstances that would warrant external self-determination, Judge Yusuf mentioned "the existence of discrimination, persecution, and the denial of autonomous political structures"[66] against ethnically or racially distinct groups. Judge Cançado Trindade, although not providing explicit endorsement of remedial secession, employed the language associated with the principle and similarly underlined that "the principle of self-determination applies in new situations of systematic oppression, subjugation and tyranny"[67] and should take priority over the principle of territorial integrity as well as State sovereignty. His position resonates with the principle of R2P, which, as will be discussed below, capitalizes on the responsibility aspect of sovereignty, while failed fulfillment of that responsibility amounts to an abdication of the right to rule over the victim population. Simply put, the government's commission of systemic and egregious human rights violations amounts to an abdication of the right to represent the subjugated population.

In its landmark decision concerning the legality of Quebec's push for secession, the Supreme Court of Canada confirmed that the right to self-determination may ground a right to unilateral secession in circumstances when the exercise of meaningful internal self-determination is not a viable option.[68] Authors like Alain Pellet apply the reasoning adopted by the Supreme Court of Canada, according to which the lack of meaningful internal self-determination is what triggers the application of remedial secession, to argue that Kosovar people qualify for it.[69]

64. *See* Meester, *supra* note 57, at 223.

65. Marko Milanović, *Arguing the Kosovo Case, in* THE LAW AND POLITICS OF THE KOSOVO ADVISORY OPINION, *supra* note 54, at 43.

66. G.A. Dec. 64/881, U.N. Doc, A/64/881 (Vol. 1), at 126 (Jan. 13, 2011).

67. *Id.* ¶ 175.

68. *See* Reference re Secession of Quebec, (1998) 2 S.C.R. 217 (Can.).

69. *See* Pellet, *supra* note 54, at 272.

VI. SOVEREIGNTY AS RESPONSIBILITY

It was in response to and against the backdrop of genocide in Rwanda and the massacres in the former Yugoslavia that the principle of R2P was developed. Coined by the International Commission on Intervention and State Sovereignty in 2001, the doctrine of R2P "colonized the international agenda,"[70] previously dominated by the concept of humanitarian intervention. It was largely aimed at finding a balance between the traditional claims of States to immunity from external intervention and the imperative to prevent the occurrence of human rights catastrophes. The idea behind R2P is that sovereign States bear a responsibility to protect their population from being subjected to mass atrocity crimes, especially the following four: genocide, ethnic cleansing, war crimes, and crimes against humanity.[71] If the sovereign State is unable to fulfill its responsibility because it lacks the necessary resources and capabilities for it, the doctrine of R2P requires UN Member States to assist one another to protect vulnerable peoples.[72] It is only when the host State fails to protect its population because of unwillingness or inability that the international community is assumed to have a responsibility to take collective action in compliance with the UN Charter and, if necessary, through the authorization of the UN Security Council to prevent the commission of the atrocity crimes that fall within the purview of the doctrine.[73] In this manner, international recognition of remedial secession functions analogously to R2P, where sovereignty and territorial integrity are not assured when a State abuses the rights of its inhabitants, especially when it commits atrocity crimes against them.

In other words, R2P grounds "the legitimacy of authority—both of states and of the international community—on the capacity to provide effective protection to populations at risk."[74] The scope of actions can vary from diplomatic and humanitarian efforts to more drastic measures, such as the use of military force. The institutionalization of the principle of R2P began with the adoption of the 2005 World Summit Outcome Document, which was embraced unanimously by heads of States at the UN General Assembly,[75] and has been reaffirmed by several UN Security Council resolutions across

70. Anne Orford, *Lawful Authority and the Responsibility to Protect, in* LEGALITY AND LEGITIMACY IN GLOBAL AFFAIRS 248 (Richard Falk ed., 2012).

71. *See id.* at 298.

72. *Id.* at 248.

73. *Id.*

74. *Id.*

75. *See* ALEX J. BELLAMY, THE RESPONSIBILITY TO PROTECT: A DEFENSE 1–2 (2015).

various contexts, including country-specific situations and thematic issues.[76] The adoption of these resolutions should not only be viewed as an endorsement of the doctrine but also as an acknowledgment that the UN Security Council's role is not limited to countering threats to international peace and security but also prevention and termination of mass atrocity crimes.[77]

The overwhelming reluctance to embrace the doctrine of R2P, especially by developing countries, stems from the assumed challenge it poses to State sovereignty.[78] States that have endured colonial subjugation tend to view the concept of R2P as an "imperialist doctrine"[79] that can pose an imminent threat to national sovereignty. In fact, the potential of R2P to undermine national sovereignty was among the concerns raised by countries like Algeria ahead of the World Summit, which viewed sovereignty as the "last defense against the rules of an unequal world"[80] and was reluctant to embrace a principle that would potentially pose a challenge to it. It appears that the commitment of the UN Charter to national sovereignty coupled with the cardinal rule of non-intervention in domestic affairs of any State are incompatible with the principle that prioritizes the protection of fundamental human rights above all. In fact, Article 2(4) of the UN Charter stipulates that all members shall "refrain from the threat or use of force against the territorial integrity or political independence of any state."[81]

The only two exceptions to the general prohibition against the use of force can be observed in Article 51 of the UN Charter, which stipulates the inherent right of every State to individual or collective self-defense, and in Chapter VII, which authorizes the use of force by the UN Security Council in pursuit of maintaining and restoring international peace and security.[82] In other words, the UN Charter does not explicitly endorse the application of R2P.[83] But instead of viewing R2P as a threat to State sovereignty, the

76. *See* U.S. Security Council, U.N. Security Council Resolutions and Presidential Statements Referencing R2P, (May 30, 2024), https://www.globalr2p.org/resources/un-security-council-resolutions-and-presidential-statements-referencing-r2p/.

77. *See* Spencer Zifcak, *The Responsibility to Protect, in* INTERNATIONAL LAW 484, 495 (Malcolm D. Evans ed., 5th ed. 2018).

78. *See* Edward C. Luck, *Sovereignty, Choice and the Responsibility to Protect, in* THE RESPONSIBILITY TO PROTECT AND INTERNATIONAL LAW 13, 14 (Alex J. Bellamy & Sara E. Davies eds. et al., 2011).

79. *Id.*

80. Zifcak, *supra* note 77, at 493.

81. U.N. Charter art. 2, ¶ 4.

82. U.N. Charter art. 51, ch. VII, https://www.un.org/en/about-us/un-charter/chapter-7 (last visited Sept. 9, 2024).

83. *See* Christine Gray, *The Use of Force and the International Legal Order, in* INTERNATIONAL LAW 601 (Malcolm D. Evans ed., 5th ed. 2018).

principle of State responsibility should be viewed as an inalienable part of statehood and sovereignty.[84] Although, in its contemporary application, justifications for R2P are found in international humanitarian and human rights law, the doctrine also has its deep roots in the notion of sovereignty.[85] According to the classical canon, the exercise of sovereignty is contingent upon the protection of those under the rule of the sovereign.[86] In other words, responsibility is the essence of sovereignty and lawfulness of authority is contingent upon the protection provided to the populations under a government's control.[87]

The fulfillment of the commitment to the promise of "Never Again" to the commission of mass atrocities is contingent upon the willingness of the international community to abandon its inaction that had disastrous implications for the people in Rwanda and the former Yugoslavia in the 1990s, and in Nagorno-Karabakh until 2023.[88] The fact that the exercise of the doctrine of R2P is narrow in scope and will be triggered only when specific types of crimes are being committed can be viewed as evidence of concessions that have been made during the negotiations, which although have made the doctrine less ambitious, ensured its unanimous endorsement.[89] In addition, the doctrine of R2P is reflective of well-established principles of international law, with the atrocity crimes that fall within its scope prohibited by major international legal documents.[90] Thus, it would be highly controversial for States to invoke sovereignty as a justification for the commission of those crimes. Although it is unlikely that R2P will put an end to atrocities in the foreseeable future and it is not an ideal solution for the prevention of persistent injustices and human rights abuses, the principle may be defended by arguing that it is equipped to build an international community that is "less tolerant to mass atrocities and more predisposed to preventing them."[91]

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84. *See* Luck, *supra* note 78, at 17.

85. *See* Luck, *supra* note 78, at 16; *see* Orford, *supra* note 70.

86. Orford, *supra* note 70.

87. *See* FRANCIS M. DENG ET AL., SOVEREIGNTY AS RESPONSIBILITY: CONFLICT MANAGEMENT IN AFRICA (The Brookings Inst., 1996).

88. *See* Makau W. Mutua, *Never Again: Questioning the Yugoslav and Rwanda* TEMP. INT'L COMPAR. L. J. 167, 168 (1997); Hayk Kotanijan, *Never Again*, ARM. WKLY. (Aug. 1, 2020), https://armenianweekly.com/2020/08/01/never-again/.

89. *See* Zifcak, *supra* note 77, at 494; *see* Luck, *supra* note 78, at 14.

90. *See* Alex J. Bellamy et al., *Introduction, in* THE RESPONSIBILITY TO PROTECT AND INTERNATIONAL LAW 1 (Alex J. Bellamy & Sara E. Davies eds. et al., 2011).

91. BELLAMY, *supra* note 75, at 1.

VII. RIGHT OF RETURN

Since Armenia and Azerbaijan have instituted proceedings before the ICJ back in September 2021 on alleged violations of the International Convention on the Elimination of All Forms Racial Discrimination ("CERD"), the ICJ has indicated three sets of provisional measures.[92] Despite the noticeable occurrence of some States' non- or partial compliance with interim measures indicated by the ICJ over the recent years, as stipulated in the *LaGrand* judgement, the indicated measures are of a binding nature.[93]

In its latest provisional measures, indicated after the forced displacement of over 100,000 Armenians from Nagorno-Karabakh, the ICJ ordered Azerbaijan to, *inter alia*, "ensure that persons who have left Nagorno-Karabakh after September 19, 2023 and who wish to return to Nagorno-Karabakh are able to do so in a safe, unimpeded and expeditious manner."[94] The possibility to voluntarily exercise their right to return in "safety and dignity" was emphasized by the Council of Europe Commissioner for Human Rights as well, even if "it seems hypothetical for most at the moment."[95] Before conditions are in place for a possible return, the Commissioner has also emphasized that security guarantees should be established "for Karabakh Armenians to temporarily access their homes or places of habitual residence and visit graveyards where loved ones are buried."[96] The Azerbaijani government, which is yet to comply with the interim measures ordered by the ICJ, including the one on return, has already started repopulating the territories it has gained control of in 2023.[97] This section is an exploration of the conditions and guarantees that need to be in place for Armenian refugees to meaningfully exercise their internationally guaranteed right to return.

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92. *See* Davit Khachatryan, *World Court Slaps Azerbaijan with New Measures*, EVN Report (Nov. 29, 2023), https://evnreport.com/politics/world-court-slaps-azerbaijan/.

93. LaGrand Case (Germany v. United States), Judgment, 2001 I.C.J. ¶ 109 (June 27).

94. Application of the International Convention of the Elimination of all Forms of Racial Discrimination (Arm. v. Azer.), Order, 180 I.C.J. ¶ 69 (Nov. 17, 2023). For a list of provisional measures indicated by the Court, *see supra* note 9.

95. Sasbourg, *Armenia and Azerbaijan: Effective Human Rights Protection of All Persons Affected by the Conflict Over the Karabakh Region is Key to the Success of the Peace Process*, COUNS. OF EUR. (Dec. 1, 2024), https://www.coe.int/en/web/commissioner/-/armenia-and-azerbaijan-effective-human-rights-protection-of-all-persons-affected-by-the-conflict-over-the-karabakh-region-is-key-to-the-success-of-the-peace-process.

96. *Id.*

97. *See also* Hannah Lucinda Smith, *The Land That Was Once Nagorno-Karabakh*, FOREIGN POL'Y (Feb. 27, 2024), https://foreignpolicy.com/2024/02/27/nagorno-karabakh-azerbaijan-armenia-environment-climate/.

Although there is no "standard mould for just return," the process should be designed to ensure that returnees are put on an equal footing with their co-nationals.[98] In line with the doctrine of R2P, discussed above, the legitimacy of an authority is conditioned on its ability and willingness to provide protection for its citizens and ensuring that conditions for just return are in place is a demonstration of a State's responsibility towards its citizens.[99] After first being enshrined in the Universal Declaration of Human Rights,[100] the right to return has been codified in binding international human rights instruments, including the ICCPR and CERD. Despite return having the status of a right, the nuances and specifics of its exercise vary depending on the context and will need to be ironed out for Nagorno-Karabakh Armenians. Considering that the return of refugees and internally displaced persons ("IDPs") usually takes place in politically volatile circumstances, conditions of just return capitalize on a set of basic guarantees that can realistically be achieved and replicated across diverse contexts. The core conditions that must be in place for it to happen, including basic conditions of security, respect for human rights and accountability when those rights are violated, and prospects for viable economic integration, lie at the core of States' duties towards its citizens. In other words, these can hardly be viewed as an additional burden for States since they already are under the obligation to ensure their proper fulfillment. The norms and guidelines developed by the UN High Commissioner for Refugees on repatriation and reintegration are also reflective of these conditions.[101]

When addressing the quality aspect of returns, it is widely acknowledged that the process needs to take place in conditions of safety and dignity. The Organization of African Unity Convention and the Cartagena Declaration were the first major international instruments to elaborate on the quality of return. The Cartagena Declaration, in particular, states that repatriation must "be carried out under conditions of absolute safety, preferably to the place of residence of the refugee in his country of origin."[102] The International Conference on Central American Refugees Declaration and Concerted Plan of Action in favor of Central American Refugees, Returnees and Displaced Persons ("CIREFCA Declaration"), similarly touches on the quality aspect

98. Megan Bradley, *Back to Basics: The Conditions of Just Refugee Returns*, J. OF REFUGEE STUD. 285, 286 (2008).

99. *See* Deng, *supra* note 87, at 32–33.

100. *See* G.A. Res. 217A, art. 13(2) (Dec. 10, 1948) (the right to return is protected under Article 13(2), which says that "everyone has the right to leave any country, including his own, and to return to his country").

101. *See* United Nations High Commissioner for Refugees (UNHCR), Handbook for Repatriation and Reintegration Activities (May 2004).

102. The Cartagena Declaration, art. III, ¶ 12, Nov. 22, 1984, I.L.M. 4.

of return, pledging to ensure that refugees could repatriate "under conditions of personal security and dignity that would allow them to resume a normal life."[103] Since the signing of the CIREFCA Declaration, provisions on safe and dignified return were incorporated in national laws, international agreements, peace treaties, UN Security Council resolutions, and UN General Assembly resolutions.

Deployment of an internationally mandated robust UN peacekeeping mission is viewed among the factors that can alleviate the insecurities that have enabled the displacement in the first place and facilitate the return of refugees in a manner that is just, safe and ultimately dignified.[104] The presence of peacekeepers is by no means the only factor with the potential to shape resettlement dynamics, and literature identifies signing of a peace agreement among the factors that can contribute to refugees' intention to return.[105]

Despite its major failures, the UN peacekeepers can be effective even in the most complex contexts,[106] and can positively shape the intention of refugees to return by improving their perceptions of safety.[107] Forced displacement is often the result of direct victimization or credible fear, and threat of being victimized.[108] There is strong evidence suggesting that the security umbrella that the presence of peacekeepers provides, by restoring and maintaining a sufficiently safe environment, can favorably impact the quality and magnitude of return,[109] as well as act as a deterrent for further instability.[110] Research also shows that the additional layer of security that

103. International Conference Central American Refugees, *Declaration and Concerted Plan of Action in Favor of Central American Refugees, Returnees and Displaced Persons*, CIREFCA (May 30, 1989).

104. Vincenzo Bove et al., *What it Takes to Return: UN Peacekeeping and the Safe Return of Displaced People,* WORLD BANK GRP., June 2022, at 2, 25.

105. *See* Komila Zakirova & Bilol Buzurukov, *The Road Back Home is Never Long: Refugee Return Migration,* 34 J. REFUGEE STUD. 4456, 4459 (2021); *see generally* Mashura Akilova et al., *Durable Solutions: Return and Reintegration of Displaced Populations and Reconstruction in Post-Conflict Societies, in* INTEGRATIVE SOCIAL WORK PRACTICE WITH REFUGEES, ASYLUM SEEKERS, AND OTHER FORCIBLY DISPLACED PERSONS 199 (Nancy J. Murakami & Mashura Akilova eds., 2022).

106. *See* Lisa Haltman et al., *United Nations Peacekeeping and Civilian Protection in Civil War,* 57 AM. J. POL. SCI. 875, 875–76 (2013); *see also* Andrea Ruggeri et al., *Winning the Peace Locally: UN Peacekeeping and Local Conflict,* 71 INT'L ORG. 163 (2017); Vincenzo Bove & Andrea Ruggeri, *Peacekeeping Effectiveness and Blue Helmets' Distance from Locals,* 63 J. CONFLICT RESOL. 1630, 1634, 1636 (2019).

107. Haltman et al., *supra* note 106, at 2, 11.

108. Nancy Lozano-Garcia et al., *The Journey to Safety: Conflict-Driven Migration Flows in Columbia,* 33 INT'L REG'L SCI. REV. 157, 162 (2010).

109. Bove et al., *supra* note 104, at 26.

110. *See* Jessica Di Salvatore, *Peacekeepers Against Criminal Violence – Unintended Effects of Peacekeeping Operations,* 63 AM. J. POL. SCI. 840 (2019); Haltman et al., *supra* note 106.

peace missions provide, by acting as security guarantors, also reduces violence and the risk of conflict recurrence.[111] A survey conducted in South Sudan illustrates that security was the single most important factor mentioned by respondents for return, followed by access to services, including education and healthcare, food availability and economic opportunities.[112]

In recent years, the scope of the mandate of peacekeeping missions has expanded beyond providing security to refugees and IDPs and oftentimes includes mitigating the negative perceptions towards them,[113] supporting the government's reintegration agenda, resilience-building efforts as well as the engagement of development and humanitarian actors.[114] In fact, since the 1990s the mandates of many of the UN peacekeeping operations included explicit authorization from the UN Security Council to support refugees, returnees and IDPs.[115] However, even in the absence of such an authorization, "the civil affairs section of a UN operation is often involved in activities such as negotiating that returnees can move back into their occupied houses."[116]

The circumstances and conditions that have led to the ethnic cleansing of Nagorno-Karabakh, taken collectively, establish the presence of credible fear of further victimization and support the argument that meaningful return and reintegration of Armenians can realistically be achieved only when proper security guarantees are in place. The mass exodus of almost the entire population of Nagorno-Karabakh, followed after Azerbaijan held the region under blockade for nearly ten months, despite an ICJ order requiring it to "take all measures at its disposal to ensure unimpeded movement of persons, vehicles and cargo along the Lachin Corridor in both directions."[117] It has been established that the blockade led to "acute shortages of food staples, medication, and hygiene products, impacted the functioning of medical and educational institutions, and placed the lives of the residents—especially children, persons with disabilities, older persons, pregnant women, and the

111. *See* Barbara F. Walter, *The Critical Barrier to Civil War Settlement,* 51 INT'L ORG. 335 (1997); *see also* BARBARA F. WALTER, COMMITTING TO PEACE: THE SUCCESSFUL SETTLEMENT OF CIVIL WARS (2008); VIRGINIA P. FORTNA, DOES PEACEKEEPING WORK? SHAPING BELLIGERENT'S CHOICES AFTER CIVIL WAR (2008).

112. *See* Bove et al., *supra* note 104, at 10.

113. *See id.* at 3.

114. JAIR VAN DERLIN, MULTILATERAL PEACE OPERATIONS AND THE CHALLENGES OF IRREGULAR MIGRATION AND HUMAN TRAFFICKING 6 (2019).

115. *See id.* at 4.

116. *Id*. at 12.

117. Provisional Measures Order from the International Court of Justice, Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Arm. v. Az.), I.C.J. ¶ 62 (Feb. 22, 2023).

sick—at significant risk."[118] This was followed by warnings by the former Prosecutor of the ICC and former UN Special Advisor on the Prevention of Genocide about having reasonable basis to believe that the blockade constituted an act of genocide.[119]

It is worth noting that, based on the provisional measures that Armenia requested as part of its initial application to the ICJ, the Court required Azerbaijani authorities, *inter alia,* to prevent the "incitement and promotion of racial hatred and discrimination" against ethnic Armenians.[120] Although one of the only two provisional measures instituted against Armenia also includes prevention of "incitement and promotion of racial hatred and discrimination" against people of Azerbaijani origin or nationality, the language used by the ICJ warrants a closer look.[121] Whereas the provisional measure imposed on Armenia singles out the promotion of discriminatory and racially motivated acts "by organizations and private persons," the one issued against Azerbaijan mentions the promotion of such acts "by officials and public institutions."[122] While no comprehensive study has been conducted capturing the sentiments of Armenian refugees regarding the return to Nagorno-Karabakh, considering the institutionalized character of racial discrimination against ethnic Armenians, it seems fair to conclude that proper guarantees would have to be in place for refugees to entertain the idea of return.

VIII. CONCLUSION

The enduring conflict over Nagorno-Karabakh, framed by international law yet deeply rooted in human suffering, compels a reevaluation of traditional legal approaches towards unrecognized States. The escalation in 2020 and the subsequent ethnic cleansing of the Armenian population from their ancestral lands exemplify the limitations of international responses anchored merely in sovereignty and territorial claims. This reality calls for a more vigorous application of the doctrine of R2P and argues for the acceptance of remedial secession as a viable measure thereof, even if one of

118. UN Office of the High Commissioner for Human Rights, *UN Experts Urge Azerbaijan to Lift Lachin Corridor Blockade and End Humanitarian Crisis in Nagorno-Karabakh*, 7 (Aug. 7, 2023), https://www.ohchr.org/en/press-releases/2023/08/un-experts-urge-azerbaijan-lift-lachin-corridor-blockade-and-end.

119. *See* Ocampo, *supra* note 7, at 1; MENDEZ, *supra* note 6, at 2.

120. Application of the International Convention on the Elimination of All Forms of Racial Discrimination, (Arm. v. Az.), Order, 2021 I.C.J. Rep. 2021, ¶ 92 (Dec. 7, 2022).

121. *Id.* at ¶ 98.

122. *Id.*; G.A. Res. A78/4, ¶ 162.

last resort, not just to address the symptoms but to remedy the core injustices that can lead to such dire human consequences.

The global solidarity disparity between the struggles of the Nagorno-Karabakh Armenians and other peoples such as the Palestinians can be attributed to several factors that influence international recognition and support. While both Nagorno-Karabakh Armenians and Palestinians seek statehood and self-determination, the Palestinians have benefitted from extensive media coverage and the longstanding involvement of major international actors in the Middle East, contributing to widespread public and governmental support. In contrast, the struggle of the Armenians of Nagorno-Karabakh has remained relatively under the global radar, partly due to the complex geopolitical dynamics of the South Caucasus region and the lack of a similarly sustained international advocacy campaign. Additionally, the Armenian issue in Nagorno-Karabakh is often perceived through the lens of a territorial dispute between Armenia and Azerbaijan rather than a broader struggle for self-determination, further diluting potential international solidarity.

As this paper has argued, reintroducing the doctrine of remedial secession for Nagorno-Karabakh could serve as a meaningful lever in reasserting the right to self-determination under conditions where traditional diplomatic and legal avenues have faltered or altogether failed. The international community must recognize that the protection of human rights and the preservation of human dignity should transcend geopolitical interests and *realpolitik*. In Nagorno-Karabakh, the feasibility of a peaceful and equitable pending resolution hinges on the willingness of global actors to prioritize human security over State sovereignty, ensuring that past failures do not dictate future possibilities.

In conclusion, the plight of Nagorno-Karabakh exemplifies the urgent need for international law to evolve and adapt to the realities of modern conflicts. The principles of State sovereignty and territorial integrity need not be at odds, but should rather be harmonized, with the promotion of human rights. By embracing a human rights-based approach and reconsidering the applicability of remedial secession, the international legal community can cultivate a more equitable world where the rights of all peoples, especially those marginalized and disenfranchised, are upheld and protected.