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'RIGHT TO SELF DETERMINATION IN NAGORNO-KARABAKH'

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ABSTRACT

The Nagorno-Karabakh region has been historically under Armenian occupation. Numerous areas of public life are significantly impacted by geopolitical shifts. When significant regional realignments accompany ethno-political conflicts, their most notable expressions are seen in the context of those conflicts and the settlement processes that result from them. In this sense, the Nagorno-Karabakh conflict and its settlement process rank among the most common examples. Following Armenia's 2018 election of a new government, the typically evolving process of resolving the Nagorno-Karabakh conflict within the framework of fundamental international legal principles came to an abrupt halt, giving way to the logic of the intensely heated geopolitical battle between Russia and the West.

The Co-Chair states of the OSCE Minsk Group started to develop antagonistic relationships, which hampered their attempts at mediation. Unfortunately, this left the Nagorno-Karabakh people with only two possibilities for resolving the conflict: either the international community supports the realization of people's right to self-determination, or they would be exterminated. International law governs human rights law, which primarily deals with the idea of self-determination. Meanwhile, the cornerstone of the body of international law is said to be the principle of territorial integrity. The international community made an effort to treat both challenges equally, but in some situations it is quite challenging to avoid the principles' opposition. This is an extremely difficult conundrum for the political system as well as international law. It is important to note that although the law has advanced significantly, there are still prominent issues that the international community faces in this regard.

This paper seeks to provide insight into the Nagorno-Karabakh dispute, one of the so-called frozen conflicts that still exist on former Soviet territory. Following a summary of the conflict's factual background, the paper primarily focuses on two legal issues: the region's current legal status and the contested right of secession of the Armenian population residing in Nagorno-

Karabakh. Further, this paper examines the evidence filed before the European Court of Human Rights in order to assert how "the right of belligerent reprisal" developed as a defence for retaking and retaining the corridor to safeguard the civilian populace. An established legal precedent can be found in the "safe havens" created in Iraq for the Kurdish population. Building on the examples set by Kosovo and East Timor, Nagorno-Karabakh has a compelling case for self-determination. Additionally, it passes the statehood requirements outlined in the Montevideo Convention. It's likely that secession will be the only option left given its susceptibility to Azeri attack due to the ongoing unlawful blockade of the Lachin corridor. Finally, this paper concludes with a brief assessment of the potential role of law in the resolution of the conflict.

I. INTRODUCTION AND HISTORY OF THE CONFLICT

The region of Nagorno-Karabakh initially was under the control of the Azeri states from the beginning of the 9th century. Later, it was taken over by the Seljuk Turks during the beginning of the 12th century, and subsequently by the Mongols.¹ The region then became part of a separate state in the 15th century under the partial rule of the Persian empire. Further, under the terms of the Treaty of Kurak in 1822, it became a province governed by the Russian Empire's army. The Treaty of Turkmenchay in 1828 marked the beginning of the process of administrative and geopolitical integration with the Russian Empire, along with the Armenian population's settlement of its territories.² The conflict in the region began in 1917 when the tsarist regime collapsed. The Paris Conference endorsed a compromise in early 1920 that joined the Nagorno-Karabakh region to Azerbaijan as a settlement for geographical and national-cultural liberty (at this time, approximately 94% of the population was Armenian). However, this solution became quite restrictive as early as 1937, and this was majorly linked to the region's renaming to Nagorno Karabakh Autonomous Oblast (NKAO).³

Following 1945, Karabakh joined Azerbaijan because it was designated as an independent territory as per Article 87 of the USSR's 1977 Constitution. The NKAO carried out a survey in the second half of 1987 about the region's affiliation with the Armenian SSR. The survey was

¹ JOHANNES RAU, THE NAGORNO – KARABAKH CONFLICT BETWEEN ARMENIA AND AZERBAIJAN. A BRIEF HISTORICAL OUTLINE 9 (2008).

² *Id* at 16.

³ RAFAL CZACHOR, ABCHAZJA, OSETIA POŁUDNIOWA, GÓRSKI KARABACH: GENEZA I FUNKCJONOWANIE SYSTEMÓW POLITYCZNYCH 298 (2014).

supported by roughly 42% of the 189,000 residents.⁴ Due to ethnic tensions resulting from the Karabakh authorities' application on February 20, 1988, for the transfer of autonomy to the Armenian SSR, the entire region was declared under a state of emergency, and Moscow effectively usurped power.⁵ The Supreme Council of Armenia announced Nagorno-Karabakh's integration in the Armenian SSR on December 1, 1989, which coincided with the Soviet Union's dissolution and was gathering momentum. On September 2, 1991, Karabakh's officials established the Nagorno-Karabakh Republic.⁶ This, however, created significant unrest in Baku. The state of Baku abolished its sovereignty and autonomy.

Karabakh responded by holding an independence vote on December 10, 1991. 82.2% of eligible voters cast ballots in the vote, which the Azeris boycotted, and 99.9% of them chose independence, with just 0.02% voting against it.⁷ The newly elected legislature of the area declared the Nagorno-Karabakh Republic (NKR) independent on January 6, 1992. The announcement contained clauses announcing, among other things, the declaration of secession from Azerbaijan, the declaration of international legal subjectivity, and the introduction of Nagorno-Karabakh Republic citizenship. Rather than resolving the issue, the declaration of independence fueled it even more. The Azeris have attempted to retake the region through military operations of varying degrees of intensity over the last three decades, but their efforts have not been very effective. However, the conflict in 2020 was distinct and concluded with a significant win for Azerbaijan. It spanned across 44 days and was supported directly or indirectly by the main regional actors which are, Russia and Turkey, as well as by heavily upgraded military hardware. Nearly three-quarters of the area that Azerbaijan claimed as its occupied territory was returned, and it has also obtained some further territorial agreements in writing.⁸

One major consequence of the 2020 conflict was that it ended with the release of a statement by the President of the Republic of Azerbaijan, the Prime Minister of the Republic of Armenia, and President of the Russian Federation. The statement asserted that Armenia must return the Agdam, Lachin and the Kalbajar District to Azerbaijan. The Agreement's territorial

⁴ *Id* at 300.

⁵ *supra* note 1, at 32-33.

⁶ See CZACHOR, *supra* note 3, at 309.

⁷ See CZACHOR, *supra* note 3, at 311-312.

⁸ Interpretation and Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Republic of Azerbaijan v. Republic of Armenia), Application Instituting Proceedings, paras. 14 15 (Sep. 23, 2021) <https://www.icj-cij.org/public/files/case-related/181/181-20210923-APP-01-00-EN.pdf>.

requirements have so far been largely followed, but additional work is still required on humanitarian issues including detainees, missing persons, and the preservation of archaeological and artistic landmarks.⁹

II. 'UTI POSSIDETIS JURIS': VALID OR NOT?

The '*uti possidetis juris*' principle serves as the foundation for Azerbaijan's legal title, which is upheld by the treaty obligations and territorial integrity principles. Nagorno Karabakh, formerly a part of the Azerbaijani SSR, joined the Republic of Azerbaijan after gaining independence in 1991 in accordance with the '*uti possidetis juris*' principle. Since then, the territorial integrity principle has safeguarded the Azerbaijani title. Armenia disputes this assertion, arguing that the two states—the Republic of Azerbaijan and the "Republic of Nagorny Karabakh"—were founded on the Azerbaijani SSR's boundaries as part of the disintegrating USSR.¹⁰ The international legal system and arbitration procedures support the idea that territorial borders are passed down upon independence. While the Badinter Arbitration Committee came to the conclusion in its Opinion No. 2 that "the right to self-determination must not involve changes to existing frontiers at the time of independence (*uti possidetis juris*), except where the states concerned agree otherwise,"¹¹ the ICJ made this point very clear in the Frontier Dispute and Land, Island, and Maritime Frontier Dispute cases.¹²

As demonstrated by the dissolution of Yugoslavia and the Soviet Union,¹³ the '*uti possidetis juris*' principle, according to the prevailing view of commentators, applies to contemporary separation movements and basically safeguards the borders of the first level administration in accordance with constitutional law. In contrast to lower-ranking federal bodies like Autonomous Socialist Soviet Republics (like Abkhazia), Autonomous Provinces (like Nagorno Karabakh and South Ossetia), and Autonomous Areas (like Okrug); Azerbaijan, as the first-level organizational unit (Republic), possessed the power to secede under as per Article 72 of

⁹ Statement by the Co-Chairs of the OSCE Minsk Group (Oct. 11, 2021) https://www.osce.org/minsk_group/504007.

¹⁰ See Letter dated 23 March 2009 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General. UN Doc A/63/781-S/2009/156 (Mar. 24, 2009).

¹¹ Badinter Arbitration Commission, European Community Conference on Yugoslavia, Opinion No 2 (Nov. 20, 1991), reprinted in 92 I.L.R 167.

¹² Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening), 1992 I.C.J. 351, 386–387.

¹³ Anne Peters, The Principle of *Uti Possidetis Juris*. How Relevant is it for Issues of Secession?, in SELF-DETERMINATION AND SECESSION IN INTERNATIONAL LAW (C. Walter et al. eds., 2014).

the USSR's Constitution.¹⁴ The Azerbaijani claim to the contested territory is primarily protected by the territorial integrity principle. The letter written to the UN Secretary-General by the Azerbaijani envoy serves as proof of this. Articles 2(1) and 2(4) of the UN Charter, the Manila Declaration on the Peaceful Settlement of International Disputes, the Declaration on the Right to Development, the Declaration on Principles of International Law Concerning Friendly Relations, and regional international instruments (the Helsinki Final Act, the Charter of Paris for a New Europe, the European Charter for Regional or Minority Language, and the Charter of the Commonwealth of Independent States)¹⁵ are among the authorities listed in the letter dated July 22, 2020.

The letter goes on to say that other parties in the region, particularly Armenia as a signatory, should recognize the Azerbaijani title and that the Alma Ata Declaration further protects Azerbaijan's territorial integrity. "Recognizing and respecting each other's territorial integrity and the inviolability of existing borders" is a clear requirement of the Declaration.¹⁶ In support of its assertion, Azerbaijan likewise mainly depends on state and international organization practices. However, neither the territorial integrity principle, which upholds the source of the title, nor the *uti possidetis juris* principle, which forms its basis, are unchangeable. Given the coincidence of several circumstances, other competing sources of a territorial title, like the right to self-determination, may be granted precedence.¹⁷

III. SELF DETERMINATION IN THE ARMENIAN POPULACE

The right of the local Armenian community to self-determination, which implies the right to select their own political status, is the primary justification for contesting the recognized title of Azerbaijan.¹⁸ The notion of people's sovereignty and its various manifestations, such as earned sovereignty, serve as the foundation for the relationship between the right to self-

¹⁴ Heiko Krüger, *Nagorno Karabakh*, in SELF-DETERMINATION AND SECESSION IN INTERNATIONAL LAW 95-137 (C. Walter et al. eds., 2014); Malcolm Shaw, *Peoples, Territorialism and Boundaries*, 8 EUR. J. INT'L. L. 494ff (1997).

¹⁵ Annex to the letter dated 21 July 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General. Report on the fundamental norm of the territorial integrity of States and the right to self-determination in the light of Armenia's revisionist claims, UN Doc. A/74/961S/2020/729, at. 8-13 (Jul. 22, 2020).

¹⁶ 31 I.L.M., 1992, p. 148.

¹⁷ Malcolm Shaw, *The Heritage of States: The Principle of Uti Possidetis Juris Today* 67 BRIT. Y.B. INT'L. L. 154 (1996); Anne Peters, *The Principle of Uti Possidetis Juris: How Relevant Is It for Issues of Secession?* in SELF-DETERMINATION AND SECESSION IN INTERNATIONAL LAW 99- 103, 137 (Christian Walter, et al eds., 2014).

¹⁸ Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, UNGA Res 2625 (XXV), UN Doc A/Res/25/2625 (Oct. 24, 1970).

determination and territorial title. Therefore, the aforementioned right is crucial for long-lasting and successful political associations to support the title. The right to self-determination directly contradicts other concepts that safeguard the title by contesting the acknowledged title, including territoriality, border inviolability, and sovereignty that apply in the context of Nagorno-Karabakh.

Articles 1(2) and 55 of the UN Charter and Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights, respectively, both uphold the right to self-determination.¹⁹ With resolutions like UNGA Resolution 1514 (XV), “Declaration on the granting of independence to colonial countries and peoples” the UN General Assembly has affirmed and solidified the right. It possesses the quality of erga omnes.²⁰ However, there is currently very little use of the aforementioned privilege to choose one's own political position. Specifically, it is limited to the “salt-water doctrine” or the unfinished decolonization process. Otherwise, it adheres to the territorial integrity principle and asserts internal applicability. This interpretation of the right to self-determination led analysts to conclude that since the Armenian community is a minority group and does not meet the criteria to be granted the right to external self-determination, Azerbaijan's sovereignty over the Nagorno-Karabakh region should prevail.²¹

Given that the principle of self-determination is practically inapplicable to “all people” in everyday life, there have been proposals to give the right a meaning, at least in dire circumstances like when the mother state persecutes the local population and the symbiosis with it becomes intolerable. As a result, a theory of remedial secession has been developed that defends independence as the “last resort option” in controversial situations. The representatives of the Republic of Artsakh and Armenia have specifically mentioned this alternative in the Nagorno Karabakh conflict. In September 2020, Prime Minister Pashinyan announced that Armenia's administration would consider acknowledging Nagorno-Karabakh's de jure statehood in light of the conflict. As per Artsakh's international relations advisor, “the priority of the foreign policy of the Republic of Armenia and the Republic of Artsakh is to develop the

¹⁹ International Covenant on Civil and Political Rights art. 1, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights art. 1, Dec. 12, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

²⁰ East Timor (Portugal v. Australia), Judgment, 1995 I.C.J. para. 29; Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, 2019, I.C.J. para. 180.

²¹ Milena Sterio, *Self-Determination and Secession Under International Law: Nagorno-Karabakh*, 59 GERMAN Y.B. INT'L L. 81-114 (2016). Similarly, Tahmina Salayeva, *Self-determination v. territorial Integrity over the Nagorno Karabakh Region*, POLITICON (Feb. 24, 2021).

process of international recognition, which is carried out by assessing geopolitical realities and positions.”²² She went on to say that political-diplomatic containment caused a delay in Armenia's recognition process, but it was believed “that it can be implemented in case of threats to the security of the Artsakh Republic.”²³ This is similar to President Medvedev's argument that “this is not an easy choice to make, but it represents the only possibility to save human lives” when Russia fought for the recognition of South Ossetia and Abkhazia.²⁴

By formally recognizing the Republic of Artsakh on the basis of remedial secession, Armenia continues to lag behind Russia in formalizing its position. Because of this, the Armenian point of view is ambiguous but possibly still politically advantageous. However, it is important to note that not everyone agrees with remedial secession, which is a radical interpretation of the right to self-determination. It is still unclear whether aspects of the right to self-determination are required to be violated by the mother state, how severely and persistently, and whether other human rights also have to be violated. Furthermore, the fictitious right to secede must be supported by compelling arguments, typically based on a gross violation of human rights. However, it is still unclear exactly what constitutes a “violation,” and it was even less evident in 1992 when Nagorno Karabakh declared its independence. In its Kosovo-Opinion,²⁵ the International Court of Justice (ICJ) essentially left the matter up to future organizational and state policies, failing to take a hard stance. The expulsion of the Armenians from Nagorno Karabakh to produce the effects of remedial secession is referred to as cynical by Azerbaijan and its scholars who confront that fact with earlier persecution and forceful removal of the Azerbaijani population from Nagorno Karabakh.²⁶ In light of the recent military conflict, both Armenia and Azerbaijan brought cases before the ICJ pertaining to expulsion and racial discrimination.

In actuality, neither during the declaration of independence nor in light of the most recent military war have states legally recognized the territorial sovereignty of Armenians in Nagorno Karabakh on the grounds of violations of the right to self-determination and other human

²² <https://armenpress.am/eng/news/1030905.html>.

²³ Id.

²⁴ Decrees of President of the Russian Federation Dmitry Medvedev on the recognition of South Ossetia and Abkhazia (Aug. 26, 2008) No 1260 and 1261.

²⁵ 22 Jul 2010, ICJ 403, paras. 403, 437.

²⁶ Kamal Makili-Aliyev, *Will International Law Help Resolve the Karabakh Conflict?* (Oct. 04, 2021) <http://www.makili-aliyev.com/>.

rights.²⁷ Long-standing oppression, the denial of substantive human rights, and violations of the law of armed conflict have not produced the anticipated outcomes, confirming that the idea of remedial secession is still a young political concept that was first proposed in the case of Kosovo and subsequently denounced.

IV. AZERBAIJAN'S ALLEGED CLAIM OVER NAGORNO-KARABAKH

There are three exceptions to the UN Charter that may justify the use of force. Article 51 states that “nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.”²⁸

Azerbaijan proposed the latter exception in order to reclaim Nagorno Karabakh and its seven occupied regions. Even so, the question remains whether this exception applies to long-running latent conflicts, and does it not eventually infringe upon a reality that has been constructed in light of Nagorno-Karabakh's alleged statehood and thus violate its right to independence. Other articles include Articles 53(1), 77, and 107, which permit the use of force against prior enemy states from World War II, and Articles 39 and 42, which provide the Security Council the authority to either recommend or command an enforcement action.

According to some analysts, Azerbaijan has had the right to self-defense since the end of the conflict in 1988–1994 and may use it at any time to retake its occupied territory.²⁹ The UN General Assembly Resolution on the Definition of Aggression, Article 3(a), states that “military occupation resulting from an invasion or attack or any annexation by the use of force of the territory of another State or part thereof” constitutes aggression. Scholars use this clause to bolster their claims. Accordingly, Article 2 of the Geneva Convention states that an international armed conflict (IAC) would always continue when there is occupation.³⁰ The self-defense right would therefore continue to exist as long as there is occupation brought on by an armed attack because this would constitute an ongoing act of aggression or armed attack. It

²⁷ 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/>.

²⁸ Nico Schrijver, *Ban on the Use of Force in the UN Charter*, in THE OXFORD HANDBOOK OF THE USE OF FORCE IN INTERNATIONAL LAW 472-475 (M. Weller et al. eds., 2015).

²⁹ 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/>>; YORAM DINSTEIN, WAR, AGGRESSION AND SELF-DEFENCE 61-64 (6th edn., 2017).

³⁰ International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 U.N.T.S. 287.

would be much more appropriate and satisfy the necessity condition to resort to violence to put an end to such ongoing aggression if all other attempts to resolve it failed. The only countries that backed Azerbaijan's claim to use force as permitted by law were Pakistan and Turkey, two of its longstanding allies. They maintain that Azerbaijan has the right to defend itself, that the fighting is only occurring on its own sovereign territory, that Armenia initiated the attack, and that Azerbaijan set up a reactionary offensive to reestablish its right to sovereignty.

However, those who disagree with the necessity and appropriateness of Azerbaijan's use of force in self-defense in Nagorno Karabakh have distinct opinions. As the status quo has persisted for more than 25 years, some scholars contend that Azerbaijan has forfeited any rights it may have had to defend itself. Asserting that “continued occupation cannot be equated with “continuing aggression,” Knoll-Tudor and Mueller share this opinion, allowing for the use of self-defense in accordance with Article 51 of the UN Charter.³¹ In reality, allowing the use of force in Nagorno-Karabakh after an extended amount of time in the ostensible interest of self-defense would go against numerous UN resolutions, peace treaty agreements, and the notion of peaceful dispute resolution. It would also serve as a justification for the reprise of several frozen conflicts such as the conflict in Kosovo and Northern Cyprus.³² In its Partial Award, the Ethiopia-Eritrea Claims Commission raised this issue, refusing to uphold Eritrea's *jus ad bellum* on the grounds that it had a legitimate claim to the territory it was attempting to reclaim. It further asserted that

“self-defense cannot be invoked to settle territorial disputes (...) border disputes between States are so frequent that any exception to the prohibition of the threat or use of force for territory that is allegedly occupied unlawfully would create a large and dangerous hole in a fundamental rule of international law”.³³

Therefore, it is maintained that Azerbaijan's use of armed action under the guise of the right to self-defense is insufficient since it does not satisfy the requirements of necessity and immediacy, especially when the OSCE has been leading peace talks. Although Azerbaijan is indeed in a very precarious situation, disputes like this one should be settled amicably in accordance with the commitments of the UN Charter, and there are legal ways to punish the offender, such as through economic sanctions. The stances of the United States, France, and

³¹ Self-Determination of the People of Nagorno-Karabakh, EUROPEAN CENTRE FOR ARTSAKH (Sept. 20, 2016).

³² The Goa Incident 56(3) AM. J. INT. L. 617-632 (1962).

³³ Eritrea-Ethiopia Claims Commission - Partial Award: *Jus Ad Bellum - Ethiopia's Claims 1-8*, 19 December 2005, 26 RIAA 465, paras. 10-11.

Russia are generally consistent with this viewpoint. In particular, these nations “strongly condemned the recent escalation of violence along the Line of Contact,” and the UN Secretary-General urged the parties to “immediately stop fighting, de-escalate tensions, and return to meaningful negotiations without delay.”³⁴ With its war on Nagorno Karabakh, Azerbaijan is implied to have breached the UN Charter's Article 2(4) ban on the use of force.

The aforementioned study makes the assumption that Armenia, which does not possess the claim to the Nagorno-Karabakh territory, was attacked in self-defense. However, the weight of the violation of the non-use of force principle appears to be much greater and the list of related violations is much wider if it is assumed that force was used against a separate state, in this case the Republic of Artsakh. Most importantly, self-defense could not be activated because Nagorno-Karabakh did not start the war, but international norms pertaining to territorial integrity, the immutability of boundaries, and the duties to resolve conflicts peacefully would apply.³⁵ It may be argued that even though the Nagorno-Karabakh region is not recognized, it would still be safe from attack. The phrase “State” is to be interpreted without affecting acceptance or membership in the UN, according to UNGA Res 3314 “Definition of Aggression” in Article 1.³⁶ Furthermore, given the tenet that “no territorial acquisition resulting from the threat or use of force shall be recognized as legal,”³⁷ Nagorno-Karabakh may eventually recapture portions of the lands that Azerbaijan won during the 2020 conflict. Although not formally stated, it is possible to infer from some assertions that Nagorno-Karabakh exists as a distinct subject. Judge Ziemele, for instance, argued in the Chiragov ruling that Armenia needed to be distinguished from Nagorno Karabakh. The ruling did not clearly assign State responsibility to the parties involved in accordance with the guidelines set forth by the ILC or by the ICJ's jurisprudence in the cases of Nicaragua and the Bosnian Genocide.³⁸

Let us now look at another factor pointing towards internal disturbance within the region. Since Azerbaijan is allowed to use force within its own borders, it could not be charged with violating Article 2(4) of the UN Charter if the conflict existed between the central government and the local Armenian separatist groups. Additionally, the self-defense claim would be void because, as the ICJ emphasized in the Wall Advisory Opinion, self-defense cannot be used against non-

³⁴ Statement of the Presidents of the Russian Federation, the United States of America and the French Republic on Nagorno-Karabakh, UN NEWS (Sept. 27, 2020) <https://news.un.org/en/story/2020/09/1073992>.

³⁵ *supra* note 25.

³⁶ UNGA Res 3314 (XXIX), UN Doc. A/RES/3314(XXIX) (Dec. 14, 1974).

³⁷ Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, UNGA Res 2625 (XXV), UN Doc A/Res/25/2625 (Oct. 24, 1970).

³⁸ Chiragov and Others v. Armenia, App. No. 13216/05, ECtHR (Grand Chamber, Jun. 16, 2015).

State actors. Therefore, the conflict is dependent on how each of the parties involved views it, but it would seem reasonable to argue that there were external influences at play. It should be determined if the Azerbaijani use of force in Nagorno-Karabakh, whether justified or illegal, violated its recognized title. Although it would be an exaggeration to say that Azerbaijan gave up its title in this manner, it might become progressively less sound, especially in light of the actions taken during the conflict. This holds true for both employing sovereign rights within the state and using force in self-defense against an outsider. Since the title is predicated on the adoption of statehood status, it is irrelevant to establish a violation of the ban on the use of force in the instance of Nagorno-Karabakh's assumption of statehood.

V. JUS IN BELLO AND AZERBAIJAN

Violating international humanitarian law (IHL) or international human rights law (IHRL) may make it quite difficult for one to obtain title to a territory or render the existing title invalid. Concerning the issue of forfeiting geographical title, some states contended before the ICJ that Serbia merely lost its claim to Kosovo as a result of a flagrant violation of the local population's human rights. State practice and *opinio juris* that violations of IHL and IHRL do not validate territorial sovereignty, particularly in relation to acquisition, are reflected in the regional and global institutional approach.³⁹ Further, the UN General Assembly urged “all States and international organizations not to recognize the consequences of the acquisition of territory by force and of the abhorrent practice of ethnic cleansing” in 1992 in reference to the situation in Bosnia.⁴⁰ With respect to Nagorno-Karabakh, the Parliamentary Assembly of the Council of Europe reaffirmed this point in 2005,⁴¹ stating that a local territory's autonomy and secession from a state may only be accomplished through a legal and nonviolent process founded on the representative support of its citizens and not following an uprising that results in removal of ethnic population. The territorial title has not been questioned on the grounds of IHL and IHRL violations by those who defend Azerbaijan's use of force in the conflict. In other words, the reason for war were fair, but the tactics used during a conflict have no bearing on its outcomes, like its title.⁴² However, the case's axiomatic stance of “territorial legality” over life runs

³⁹ Marko Milanović, *Arguing the Kosovo Case*, in *THE LAW AND POLITICS OF THE KOSOVO ADVISORY OPINION* 27-38 (Marko Milanović & Michael Wood eds., 2015).

⁴⁰ UNGA Res 46/242, UN Doc A/RES/46/242 (Aug. 25 1992).

⁴¹ PACE Res 1416 ‘The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference’ (Jan. 25, 2005).

⁴² Cf. Christopher Greenwood, *The Relationship Between Ius Ad Bellum and Ius In Bello*, 9(4) REV. INT’L STUD. 223, 227-229, 331-333 (1983).

counter to the UN Human Rights Committee's General Comment No. 36 on the right to life,⁴³ which states that people are a state's fundamental constituent and that preserving territorial integrity also protects human life.

The territorial title itself may be called into doubt by those who argue that use of force by Azerbaijan amounts to indiscriminate and extreme aggression. According to Human Rights Watch, Azerbaijan appears to have violated the laws of war by employing artillery rockets and cluster munitions, which are inherently indiscriminate and fail to differentiate between military targets and civilian objects. Given that over two hundred civilians and prisoners of war (POW) have been forcibly imprisoned and subjected to torture and other cruel, inhuman, or degrading treatment, which is a violation of the European Convention on Human Rights and the International Covenant on Civil and Political Rights (ICCPR), Armenia's Representative Office at the European Court of Human Rights (ECtHR) requested that the court intervene.⁴⁴ Can it be said, then, that Azerbaijan's negative actions toward the local Armenian people have caused it to lose its rights to the region? This is unlikely because talks are still going on and no state has formally approved the plan. However, the recognition of the Republic of Artsakh by state subunits like the state of South Australia may indicate that Azerbaijani authority over the region has lost substantial credibility. It is important to note, however, that the international media also reported on the war-related violations on Armenia's side, which was charged of employing inaccurate weaponry, such as cluster ammo and explosives, in addition to unguided multiple launch rocket systems (MLRS).

VI. THE 2020 TRIPARTITE ARMISTICE AGREEMENT

The Tripartite Armistice Agreement, which was reached on November 9, 2020, by Russian President Vladimir Putin, Prime Minister Nikol Pashinyan, and President Ilham Aliyev, is the last mode pertinent to the current violence in and around Nagorno-Karabakh that may affect Azerbaijan's claim to NK. The Vienna Convention of the Law of Treaties (VCLT) and the customary law of treaties presume that the Armistice Agreement is eligible as a global agreement. However, it may be disputed whether it is recognized as a proper peace agreement because it neither established enduring peace nor reinstated existing ties between conflicting states. In addition to putting an end to hostilities, the Armistice Agreement includes territorial

⁴³ General comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the right to life UN Doc. CCPR/C/GC/36.

⁴⁴ See Article 5 of the ECHR and Article 9 of the ICCPR, respectively.

provisions. In the follow-up statement dated January 11, 2021, a tripartite working group was formed to oversee the enforcement of the agreement's provisions pertaining to unblocking regional transportation and economic links.⁴⁵

Since the Armistice Agreement was properly crafted, contains mandatory wording and legal responsibilities, and involves mediators, it undoubtedly satisfies Abbott's definition of legality. Specifically, the word “shall,” which is typically regarded as producing legal responsibilities, appears frequently throughout the language of the nine-point Armistice Agreement. Second, Russia shows up as a mediator in the text. In the preamble, Vladimir Putin, along with President Ilham Aliyev of the Republic of Azerbaijan and Prime Minister Nikol Pashinyan of the Republic of Armenia, declares a total ceasefire in the Nagorno-Karabakh conflict zone starting on November 10, 2020, at 0:00 Moscow time.⁴⁶ Additionally, by deploying its peacekeeping troops along the contact line, Russia appears to have assumed the position of the protector of peace. Additionally, a peacekeeping facility will be set up to supervise the truce, ostensibly with Russian leadership.⁴⁷ The 2020 Tripartite Armistice Agreement's “legalization” which emphasizes Russia's role as the peacekeeper, has significant factual implications for the Nagorno Karabakh region's territorial perspective. Point 1 of the agreement states that Azerbaijan will keep the area it has recaptured, while Points 2 and 6 require Armenia to relinquish additional lands (the districts of Agdam, Kalbajar, and Lachin).

However, how does this agreed-upon substantive territorial shift impact Azerbaijan's title to land from an international legal perspective? There are no sovereignty elements in the Agreement by itself, which would alter the current state of international law. Given this, international organizations may view the agreement as declarative because, in their estimation, the restored lands were already a part of Azerbaijan. Despite this, the Agreement undermines the Nagorno-Karabakh Region's territorial claim. It can hardly be understood as an autonomous and functional entity because it is not a party to the Agreement as an individual entity and signatory, indicating that other players have power over its destiny.⁴⁸ By subsuming it under Russian patronage and restricting its reach to the currently occupied territory, the agreement reduces the likelihood that the local populace will use their right to self-determination. The

⁴⁵ The joint trilateral statement issued in Moscow on 11 January 2021

<https://en.armradio.am/2021/01/11/armenian-azerbaijani-russian-leaders-sign-statement-on-unblocking-of-all-economic-and-transport-links-in-the-region/>.

⁴⁶ Preamble of the 2020 Armistice Agreement.

⁴⁷ See Anton Trojanovski & Carlotta Gall, *In Nagorno-Karabakh Peace Deal, Putin Applied a Deft New Touch*, N. Y. TIMES, Apr. 24, 2021.

⁴⁸ Cf. PACE Resolution 1047 (1994) Conflict in Nagorno-Karabakh, point. 5.

international world and the Agreement's signatories are unlikely to acknowledge a claim to more territory than the NKR now occupies, especially in the context of continuing discussions. After all, its president, Arayik Harutyunyan, accepted the terms of the agreement, realizing that more resistance would only result in more defeat. As a result, the Nagorno-Karabakh Region will probably be prevented from asserting a larger area by this compliance.

VII. PROLONGED OCCUPATION OF THE REGION

The NKR is currently *de facto* independent of Azerbaijan, despite the fact that states still believe it to be *de jure* their territory. Its position is best described as *non liquet* because talks about its future are still ongoing. If statehood is thought simply as a fact (without any legal principles connected to it) and without taking into account the aspect of recognition as per Article 3 of the Montevideo Convention,⁴⁹ then the Nagorno-Karabakh region would be a legitimate state and ought to be entitled to international legal protections. It has been asserted by several scholars like Amit Chhabra that according to Article 1 of the Montevideo Convention, NKR satisfies the requirements for statehood, which include having a defined territory, a populace, a government, and the capacity to engage in international relations. He believes that the major powers have “an independent responsibility to keep up the pressure by overseeing the transition unilaterally” and that the present strategy regarding the NKR and the OSCE negotiations is inadequate.⁵⁰

On the other hand, some are against the Region becoming a state because of its lack of autonomy and continued military participation by the Armenian nationals. It has been asserted that the Armenian Dram remains Karabakh's legitimate currency and that the Armenian Finance Ministry has provided crucial budgetary support to the Region.⁵¹ Additionally, Armenian passports are held by NKR citizens, and Armenian trainees were recruited to protect the occupied border area.⁵² The Armenian financial sector, broadcasting frequencies, and energy sources, are all beneficial to the Nagorno-Karabakh Region. The reliance on Armenia was made evident in the Chiragov case, where the European Court of Human Rights declared that “the ‘NKR’ and its government survive by virtue of the military, political, financial, and

⁴⁹ Montevideo Convention on the Rights and Duties of States (signed 26 December 1933, entered into force 26 December 1934) 165 LNTS 19.

⁵⁰ Amit K. Chhabra, *Superpower Responsibility for State Recognition: Charting a Course for Nagorno-Karabakh*, 31 B. U. INT'L L. J. 132.

⁵¹ *supra* note 27.

⁵² *Id.*

other support given to it by Armenia which, consequently, exercises effective control over Nagorno-Karabakh.”⁵³ Although not officially declared, it may be assumed from some sources that the Nagorno-Karabakh Region's assertion of statehood may be nullified by the use of force by a third state, ergo Armenia.⁵⁴

However, I argue that the Region's inability to operate within international law is the largest obstacle to recognizing it as a state. Such dysfunction primarily results from a global lack of recognition and has significant ramifications for Nagorno Karabakh's ability to take action on the global stage to put a halt to this conflict in the future. An entity loses the rights associated with statehood under international law when it is not regarded as a State by other States and international organizations. This will restrict its ability to associate with international bodies, hinder its accessibility to relevant international judicial mechanisms, deny it privileges, and limit its potential to sustain political and economic relationships with other states. For example, the NKR is not allowed to join the Rome Statute and requesting the ICC to look into crimes that have been committed within its region. It is unable to join the UN and use the General Assembly or the International Court of Justice to settle conflicts amicably with other nations. It will be unable to officially set up an embassy in order to govern commerce, build partnerships with other nations, or safeguard its property and individuals. Officials from Nagorno Karabakh may be searched or detained in a foreign nation while traveling overseas because they do not have either private or organizational immunity.

Institutions involved in establishing an effective democratic judiciary, upholding international law, or impeding the fight against corruption are also impacted by Nagorno Karabakh's isolated status. The structure of sovereignty is then impacted by these elements. As a result, the Nagorno-Karabakh Region can be linked to other statehood-seeking entities like Kurdistan that has very restricted and minimal international footing in terms of application and defense by international law. Given the aforementioned, the Region's assertion towards statehood is rather insufficient when viewed through the lens of international norms. Its independence is in doubt, but more importantly, so is its ability to operate as a state within the framework of international law. The Nagorno-Karabakh Region would rather be included in the category of non-state actors; nonetheless, this presumption of status has significantly less bearing on the titular issue

⁵³ *supra* note 38, para. 186.

⁵⁴ Human Rights Watch, *Azerbaijan: Seven Years of Conflict in Nagorno-Karabakh* (1994). THOMAS DE WAAL, *BLACK GARDEN: ARMENIA AND AZERBAIJAN THROUGH PEACE AND WAR* 210 (2013).

at hand.

VIII. INTERNATIONAL RESISTANCE TO DELEGITIMIZATION OF THE REPUBLIC OF ARTSAKH

Practically speaking, derecognition is the only way to relativize an acknowledged property title. Though this is extremely uncommon, once recognition is given, it may wane to the point that delegitimization ensues. The refusal to delegalize the Republic of Artsakh, a process of ongoing discussions headed by the OSCE Minsk Group since 1994, as well as the statements made by states and their actions within global groups, are said to have an impact on the recognition of Azerbaijan's sovereignty over Nagorno-Karabakh, even though it is still stable. States and international organizations do not necessarily hold this position inflexibly, even though they now support Azerbaijan's sovereignty over Nagorno Karabakh by refusing to recognize the Republic of Artsakh. States have been cautious not to deny the Republic of Artsakh the opportunity to become a state in the future by accusing a third state, Armenia, of being responsible for its founding and continued existence through military invasion.⁵⁵ As was the case when the UN Security Council declared the declarations of independence made by the governments of Northern Cyprus or Southern Rhodesia to be illegitimate, a similar incursion could ipso jure nullify the legal entitlement of the people of Nagorno Karabakh to self-determination.⁵⁶

On a global scale, the UN Security Council has not passed any resolution calling for the departure from Nagorno Karabakh or explicitly referring to it as an occupied territory. In a similar vein, no UN Security Council resolution condemned the proclamation of independence or acknowledged the Armenian invasion as a contributing factor to the self-proclaimed NKR's sovereignty. In contrast, the 1993 UN Security Council Resolutions 822, 853, 874, and 884⁵⁷ clearly emphasized that using force to seize territory is unacceptable and called for the immediate evacuation of local Armenian forces from the areas outside of the region that would later be known as the Armenian-occupied territories surrounding Nagorno-Karabakh. In fact, Azerbaijan's "continued respect and support for the sovereignty and territorial integrity" was

⁵⁵ See Sava Jankovic, *Four Streams of Democracy and the Recognition of States: The EU Perspective*, 22 SPANISH Y.B. INT'L. L. 55-76 (2018).

⁵⁶ Security Council resolutions 216 (1965) and 217 (1965), concerning Southern Rhodesia; Security Council resolution 541 (1983), concerning Northern Cyprus.

⁵⁷ UNSC Res 822, UN Doc. S/RES/822 (Apr. 30, 1993); UNSC Res 853, UN Doc. S/RES/853 (Jul 29, 1993); UNSC Res 874, UN Doc. S/RES/874 (Oct. 14, 1993); UNSC Res 884, UN Doc. S/RES/884 (Nov. 12, 1993).

reiterated in UN General Assembly Resolution 62/243 of 2008, which also called for the “immediate, complete, and unconditional withdrawal of all Armenian forces from all the occupied territories of Azerbaijan.”⁵⁸ However, it made no clear reference to Nagorno Karabakh, where Armenia is the “occupying power.” More importantly, the resolution was only approved by 39 votes.

In its Resolution 1416 of 2005, the Parliamentary Assembly of the Council of Europe declared that “Separatist forces continue to control the Nagorno-Karabakh region, and significant portions of the territory of Azerbaijan are still occupied by Armenian forces.” Comparably, the ECtHR Grand Chamber's ruling in *Chiragov and Others v. Armenia* upheld Azerbaijan's territorial integrity by using the extraterritorial authority process and established that Armenia had violated Article 1 of Protocol No. 1, Article 8, and Article 13 of the ECHR by effectively controlling Nagorno Karabakh physically, politically, and economically. However, the ruling did not rule on the legitimacy of the occupation of Nagorno-Karabakh or identify Armenia as the resident.⁵⁹ In conclusion, states in world bodies and institutions were hesitant to delegitimize the Nagorno-Karabakh Region by directly blaming it for its formation through an armed assault of a third state. Essentially, there have been no demands for the Region to not be recognized.

Mediation attempts are a further option that immediately stems from the absence of official condemnation of the NKR, which also casts doubt on Azerbaijan's claim to Nagorno Karabakh. The OSCE Minsk Group can be particularly useful in this situation as a facilitator. Without the participation of all parties, it can't in and of itself promote status change or maintenance; rather, it promotes a negotiated, thorough, and long-lasting resolution of the outstanding fundamental substantive issues of the conflict.⁶⁰ For example, the three Co-Chairs of the Group—France, Russia, and the United States of America—presented a set of Basic Principles for a solution to Azerbaijan and Armenia in Madrid in 2007. A legally enforceable vote was required to determine Nagorno-Karabakh's ultimate legal standing in the future, while another point called for the return of the areas around the region to Azerbaijani rule.⁶¹ Support has been provided to the OSCE platform solution almost by every state, including Armenia and Azerbaijan. In December 2020, the UN Secretary-General called on Armenia and Azerbaijan “to resume

⁵⁸ UNGA Res 62/243, UN Doc. A/RES 62/243 (Mar. 14, 2008).

⁵⁹ *supra* note 38, paras. 168, 186.

⁶⁰ Press Release, Joint Statement by the Heads of Delegation of the OSCE Minsk Group Co-Chair Countries (Dec. 3, 2020).

⁶¹ Statement by the OSCE Minsk Group Co-Chair countries (Jul. 10, 2009).

negotiations under the auspices of the OSCE's Minsk Group Co-Chairs to reach a lasting peaceful settlement” while promising humanitarian assistance to the two countries.⁶²

The prospective function of the UN Security Council is an intriguing addition to this multilateral and procedural strategy. Although there is no precedent, the transfer of title may fall under the definition of a threat to international security and the Council's authority under Article 43 of the UN Charter.⁶³ Given its prior resolutions, particularly those pertaining to Palestine or awarding independence to former colonial nations and their citizens, which may be interpreted as title-conferring to some degree, the UN General Assembly may also be involved.⁶⁴ However, it should be noted that the OSCE has “jurisdiction” over the issue, as confirmed by the UN, EU, and other international institutions and organizations. If the OSCE ever finds a solution, it will likely be recognized for its title. Lastly, the ambiguous and possibly evolving practices of states and their institutions with relation to this sovereignty conflict should be mentioned. The spokesperson for the German Federal Foreign Office during the recent conflict avoided answering directly whether Germany believed that Nagorno-Karabakh was legally a part of Azerbaijan. Instead, she said that “it is now up to the OSCE Minsk Group and the parties to settle the status of Nagorno-Karabakh in negotiations” and that the “conflict over the region of Nagorno-Karabakh can only be solved in negotiations.”⁶⁵ Also, the government has not complied with the French National Assembly's and Senate's calls for protection of Nagorno-Karabakh's citizens and recognition of the region's independence.

However, it would seem a little over the top to deny Azerbaijan its legal title to Nagorno Karabakh due to the agreements' still uncertain outcome, the lack of an agreement between the parties or any other pertinent worldwide document, and the lack of derecognition.

IX. RUSSIA’S MILITARY AND DIPLOMATIC PRESENCE

It is impossible to undervalue Russia's involvement in NK. The 2020 Tripartite Armistice Agreement was signed, and hostilities were halted mostly because of Russia's intervention. Furthermore, the Russian military contingent's deployment signifies comparatively stable,

⁶² UN News, UN pledges humanitarian support as Armenia and Azerbaijan negotiate ‘lasting, peaceful settlement’ over Nagorno-Karabakh (Dec. 4, 2020) <https://news.un.org/en/story/2020/12/1079302>.

⁶³ UNSC Res 1244, UN Doc S/RES/1244 (Jun. 10, 1999).

⁶⁴ UNGA Res 181(II) (29 November 1947) UN Doc A/RES/181(II) (Future Government of Palestine); UNGA Res 1514(XV) (14 December 1960) UN Doc A/RES/1514(XV).

⁶⁵ Stefan Talmon, *Germany Goes Back on Earlier Statements on the International Legal Status of Nagorno Karabakh*, GERMAN PRACTICE IN INT’L L. (Oct. 12, 2020)

sustainable, and peaceful conditions. Naturally, the unresolved political situation may lead to tensions, but the Russians will successfully manage them. The eventual resolution process and the current geographical arrangement, however, are heavily influenced by Russia's political interests.⁶⁶ In this case, there is no question about Azerbaijan's territorial inefficiency, which raises questions about how a title might actually be used in practice. Although the title is officially held by Azerbaijan, from a practical standpoint, Russia will determine the destiny of the region and has the contractual authority to do so at least until 2025 (point 4 of the Armistice Agreement). Though it is unrealistic to expect given Russia's shrewd strategy in comparable conflicts, which cast doubt on a practical manifestation of a title, Point 4 actually grants the parties to the Agreement the right to end the military presence with six months' notice (if not, the period will be extended by default for another five years).⁶⁷

Russia essentially gained control over the management of the conflict by leaving out the UN and OSCE from the settlement and based on the policies of its peacekeeping operations in Abkhazia or Transnistria, it is unlikely to find a political resolution to the conflict—which is typically the tenet of UN peacekeeping.⁶⁸ Two subsequent trilateral statements from January 2021 and November 2021, in which the signatories (Russia, Armenia, and Azerbaijan) commend Russia's efforts, make this clear. The final sentence of the latter declaration which asserts that the Russian Federation is going to keep providing the required support for restoring relations between Armenia and Azerbaijan, maintaining positive relations in the region, and fostering a spirit of faith between the two States, specifically demonstrates Russia's “entrenchment.”⁶⁹ The Russian military delegation, which some sources claim exceeded nearly thrice the allowed allocation is another obvious indication of Russia's anticipated continued presence in Nagorno-Karabakh.

The precise mission's mandate, duties, and rules of engagement are among the most unanswered questions surrounding Russia's military participation on the front lines of fighting that are not covered by the Agreement. The Agreement doesn't specify how to guarantee the

⁶⁶ András Rácz, *In Russia's Hands Nagorno-Karabakh After the Ceasefire Agreement*, INSTITUTE FOR SECURITY STUDIES (Apr. 8, 2021) https://www.iss.europa.eu/content/russias-hands#_introduction.

⁶⁷ Margarete Klein, *Russlands Militärpolitik im postsowjetischen Raum* STIFTUNG WISSENSCHAFT UND POLITIK (Sept. 29, 2019) <https://www.swp-berlin.org/publikation/russlands-militaerpolitik-im-postsowjetischen-raum>.

⁶⁸ United Nations Peacekeeping, ‘Principles of Peacekeeping’ (<https://peacekeeping.un.org/en/principles-of-peacekeeping>).

⁶⁹ *supra* note 61.

mission's transparency, including adherence to the neutrality required by the peacekeeping forces, or how infringement will be dealt with. Only two parties to the Agreement—Russia and Azerbaijan—have approved the Joint Russian-Turkish Centre for Monitoring the Ceasefire in the Nagorno-Karabakh Conflict Zone, which has been in operation since January 30, 2021, and does not provide the answers to these queries. Despite the uncertainty surrounding the political and administrative structure in the region, it is clear that Russia intends to maintain its control over the area, which will impede Azerbaijan's sovereignty over Nagorno-Karabakh in a way similar to that which the region has done thus far. However, this does not equate to the title being legally lost or transferred.

X. MISCONDUCT, ACCOUNTABILITY AND ACKNOWLEDGEMENT OF AZERBAIJAN'S INEFFICIENCY IN NAGORNO-KARABAKH

Azerbaijan's stance toward NK as its territory, adopting positive commitments, due diligence, and accountability for activities committed there, is another interesting way to evaluate the issue. The acknowledged titleholder's territorial title may likewise be contested on these grounds. Firstly, Azerbaijan has consistently disputed its accountability for human rights issues in Nagorno Karabakh and seven surrounding areas, which were not under its actual jurisdiction.⁷⁰ Nonetheless, a state's objective incapacity to exert control does not equate to a rejection of accountability. As a result, Azerbaijan cannot refer to Nagorno-Karabakh as a "grey zone," a term commonly used by international organizations (like PACE) to characterize regions where surveillance systems are unable to operate independently or efficiently. On the other hand, Azerbaijan must observe all relevant standards and norms and treat Nagorno-Karabakh as its own land both legally and politically. Because Israel is not a party to the UN Convention on Cluster Munitions,⁷¹ it should not employ cluster ammunition in the fight in Nagorno-Karabakh and expect to get away with it. Similarly, since Azerbaijan has not ratified the ICC's Rome Statute, it is prohibited from committing war crimes in NK, including willful death, hostage-taking, torture, and inhuman treatment.⁷²

To put it briefly, Azerbaijan has both positive and negative obligations for ensuring the

⁷⁰ See, inter alia, Human Rights Council, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21*, A/HRC/WG.6/16/AZE/1 (Feb. 7, 2013).

⁷¹ Convention on Cluster Munitions (30 May 2008) 2688 UNTS 39.

⁷² See UN News 'UN rights chief warns of possible war crimes in Nagorno-Karabakh conflict' <https://news.un.org/en/story/2020/11/1076672>.

protection of human rights on the territory it claims.⁷³ If not, the actions could suggest that Nagorno-Karabakh is treated differently than the rest of the region, implying discriminatory treatment, which would affect the impression that the title is being extended to the entire claimed territory. Additionally, Azerbaijan must refrain from using its territory to undermine international law. States have been required to exercise reasonable diligence against detrimental uses of their land ever since the Corfu Channel case.⁷⁴ This duty is supported by basic humanitarian concerns. This due diligence aids in risk control by covering risks and threats to global security in their broadest sense. By bringing in mercenaries and using them in the Nagorno-Karabakh conflict, Azerbaijan may potentially be charged with violating international law and security. The Permanent Representative of Armenia to the UN issued a warning in October 2020 that Azerbaijan, with Turkey's help, has permitted several foreign terrorist combatants to enter its territory.⁷⁵ They allegedly participated in war crimes and were members of various rebel groups. The UN Working Group on the use of mercenaries has pointed out that, in light of the recent Nagorno Karabakh conflict, using mercenaries presents serious transparency issues.⁷⁶

Azerbaijan's improper and reckless usage of its own land shows that it intended to treat Nagorno-Karabakh differently than any other territory, which undermines its claim to the region. Regardless of the real incapacity or improper actions of non-state entities managing the territory of other States, such as Armenia, an acknowledged titleholder ought to ensure the application of international obligations as well as regional (ECHR) legal norms across the region.⁷⁷ Azerbaijan weakened its titular claim by violating its safeguarding duties and taking part in illegal acts in the Nagorno-Karabakh region. This, however, is not equivalent to surrender of title.

XI. CONCLUSION

Nagorno Karabakh is a prime example of a frozen conflict zone, where there is territorial

⁷³ *Armenia/Azerbaijan: Decapitation and War Crimes in Gruesome Videos Must be Urgently Investigated* AMNESTY INTERNATIONAL (Dec. 10, 2020).

⁷⁴ *Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania)* I.C.J. Rep. 1949, 22.

⁷⁵ Letter dated 31 October 2020 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General, UN Doc. A/75/566-S/2020/1073 (Nov.3, 2020).

⁷⁶ Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination, *Mercenaries in and Around the Nagorno-Karabakh Conflict Zone Must be Withdrawn – UN experts* (Nov. 11, 2020) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26494&LangID=E>.

⁷⁷ See Andrew Forte, *Nagorno Karabakh – A Stark Reminder of the Council of Europe's Operational 'Grey Zones'* OPINIOJURIS (Feb. 11, 2021).

dispute between opposing factions and the recognized claim is still valid in spite of the actual circumstances. It is assumed that Azerbaijan's title to Nagorno Karabakh is legitimate due to its ongoing international acknowledgement, its absence of legally binding condemnation of authority over the area, lack of significant academic criticism, and, perhaps most significantly, its unwillingness to relinquish claim over the said land. However, the pretense of legitimacy of local Armenians to Nagorno Karabakh has not been decriminalized by the international community in any way. States can decide to retain Azerbaijani acknowledgment owing to the present-day mediation process or because they currently do not consider Armenia to be an acceptable subject for the title. This could indicate that even though Azerbaijan's claim is favored at the moment, it still can be overturned.

Consequently, the actual circumstances in Nagorno Karabakh, the international community's conflicted responses to it including negotiations, Azerbaijan's illegal actions against the region, and the obvious presence of third-party states like Russia, all have an impact on the territorial title of the region. These factors, however, do not equate to the surrender of Azerbaijan's globally acknowledged title. The only option to alter the existing scenario would be for governments and global bodies to make decisions through formal measures and statements. However, given that the Nagorno-Karabakh Region's title is also ambiguous and that designating it an unclaimed region eliminate it from the international realm, it is more likely that the Azerbaijani claim will continue to exist despite its questionable legitimacy.

The trilateral declaration of November 9, 2020, was significant in terms of putting an end to war, but its standing and its contents are insufficient for resolving the conflict and establishing and preserving lasting peace. The Azerbaijani claim to the region is unaffected by the local Armenians' right to self-determination and their successful, persistent authority over the region. Additionally, the 2020 Tripartite Armistice Agreement does not contest the title because it only recognizes the newly established situation and directs Armenia to vacate some occupied areas, thus rendering the majority of NK regions outside of its jurisdiction. It also lacks sovereignty provisions that might call for a diminution of the accepted Azerbaijani land. Since the right to self-defense cannot be regarded as legitimate, Azerbaijan's claim to Nagorno-Karabakh could also not be challenged in light of its use of force to “liberate the occupied territories,” even though it was illegal in nature. Furthermore, it is powerless to stop catastrophic events that are growing more imminent and frightening. Additionally, Western actions are ineffectual and restricted to meaningless comments, which may incite attempts to use violence to address the

issue.

The international community needs to pick between promoting genocide or implementing and acknowledging the right to self-determination which is one of the core tenets of international law. In doing so, they would be giving the people of Nagorno-Karabakh the protections to defend themselves against genocide with the aim to stop disastrous events, end the war, and achieve a peaceful resolution. It is important to reiterate at the moment that powerful governments can temporarily put aside their foreign policy goals when the subject of crimes against humanity is on the forefront in order to stop the genocide in Nagorno-Karabakh. Meanwhile, attempts towards carrying out the genocide are fueled by the prolonged delay in determining Nagorno Karabakh's status. The quick implementation of the right to self-determination by granting the people of Nagorno-Karabakh the appropriate means of self-defense under international law is the only viable way of preventing this genocide.

