

REMEDIAL SECESSION AS SOFT LAW
THE CASE STUDY OF ARTSAKH'S SELF-DETERMINATION

Master of Arts in Law and Diplomacy

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Notes

The terms “Artsakh” and “Nagorno-Karabakh” generally indicate the same territory. “Artsakh” is the Armenian word for the land, whereas “Nagorno-Karabakh” / “Karabakh” is the Russo (“Nagorno”)-Turkish (“Karabakh”) name. The Republic of Artsakh is the self-declared state of the Armenian population in the territory.¹ This paper uses the terms interchangeably.

The movement for Artsakh’s self-determination began in 1988 when the Armenian population of the Nagorno-Karabakh Autonomous Oblast called for separation from Soviet Azerbaijan, to unify with Soviet Armenia. Their pursuit of separation eventually led to war over Nagorno-Karabakh between the territory’s Armenian population and the Azerbaijani state. The war ended in 1994 through a Russian-mediated ceasefire that solidified the territorial gains of Armenian forces in Nagorno-Karabakh. The Republic of Nagorno-Karabakh (renamed the Republic of Artsakh in 2017)² was already declared prior to the ceasefire by the Armenian population in 1992.³

In September 2020, Azerbaijan launched a full-scale war against the Republic of Artsakh, which ended in November 2020 through another Russian-mediated ceasefire, having left the territories captured adjacent to Nagorno-Karabakh proper under Azerbaijan’s control.⁴ As per the ceasefire agreement, the uncaptured portion of Nagorno-Karabakh (where the remaining Artsakh Armenians reside) resulted in the stationing of Russian peacekeepers there. The status quo remains, with Russia’s five-year peacekeeping mandate being up for renewal in 2025 only if all

¹ BBC News. “Nagorno-Karabakh Profile.” 10 Apr. 2023, <https://www.bbc.com/news/world-europe-18270325>.

² President of the Artsakh Republic. “Constitution.” president.nkr.am/en/constitution/.

³ Office of the Nagorno-Karabakh Republic in Washington, DC. “Nagorno-Karabakh Conflict.” http://www.nkrusa.org/nk_conflict/declaration_independence.shtml.

⁴ Crisis Group. “The Nagorno-Karabakh Conflict: A Visual Explainer.” 28 Apr. 2023, <https://www.crisisgroup.org/content/nagorno-karabakh-conflict-visual-explainer>.

the parties to the ceasefire (Russia, Armenia and Azerbaijan) agree to its extension.⁵ Armenia has generally acted as the Artsakh Republic's representative in international fora.

⁵ RÁCZ, András. "IN RUSSIA'S HANDS: Nagorno-Karabakh after the Ceasefire Agreement." European Union Institute for Security Studies (EUISS), 2021. <http://www.jstor.org/stable/resrep30226>.

As the bedrock of international relations, the Westphalian principle of “sovereign equality of states” has the potential to pose as one of the greatest threats to the right to self-determination; a right that is arguably fundamental to the exercise of all human rights. Self-determination, when pursued within the state (i.e., internal self-determination), is a right under customary international law,⁶ where all peoples “by virtue of that right... freely determine their political status and freely pursue their economic, social and cultural development.”⁷ When states systematically violate this right, international law does not provide an alternative hard-law right to secession for persecuted groups.⁸ That is because the principle of territorial integrity⁹ is one derived from the sovereign equality of states;¹⁰ and remedial secession as a form of external self-determination¹¹ is in direct opposition to this principle. The only exception and difference has been with post-colonial states, whose right to external self-determination has acquired customary status, codified in the 1960 United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples, and reflected in the decisions of various national courts on

⁶ Saul, Matthew. “The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right?” *Human Rights Law Review*, 11:4, 2011, <https://corteidh.or.cr/tablas/r27634.pdf>.

⁷ International Covenant on Civil and Political Rights. *United Nations*. Article 1(1), 1976, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>; and International Covenant on Economic, Social and Cultural Rights, *United Nations*, Article 1(1), 1976, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

⁸ Vidmar, Jure. “Remedial Secession in International Law: Theory and (Lack of) Practice.” *St. Antony’s International Review*, vol. 6, no. 1, Secession, Sovereignty and the Question for Legitimacy, pp. 37-56, May 2010, https://www.jstor.org/stable/26227069#metadata_info_tab_contents.

⁹ United Nations Charter. Article 2, 1945; and Declaration on Principles of International Law concerning Friendly Relations and Cooperation among states in accordance with the Charter of the United Nations, *United Nations General Assembly*, 1970, <https://digitallibrary.un.org/record/202170?ln=en>.

¹⁰ Declaration on Principles of International Law concerning Friendly Relations and Cooperation among states in accordance with the Charter of the United Nations, *United Nations General Assembly*, resolution 2625 (XXV), 1970, <https://digitallibrary.un.org/record/202170?ln=en>.

¹¹ Vidmar, Jure. “Remedial Secession in International Law: Theory and (Lack of) Practice.” *St. Antony’s International Review*, vol. 6, no. 1, Secession, Sovereignty and the Question for Legitimacy, pp. 37-56, May 2010, https://www.jstor.org/stable/26227069#metadata_info_tab_contents.

questions related to external self-determination.¹² However, this paper argues that, in a non-colonial context, the concept of remedial secession has a soft law basis. Remedial secession is defined as a form of external self-determination, where secession is pursued as a last-resort remedy in response to severe oppression by the parent state.¹³ Remedial secession fundamentally assumes that a state's territorial integrity is conditioned upon its respect for the internal self-determination of particular groups within its borders. That said, this paper argues that the Nagorno-Karabakh self-determination movement can be classified as a case of remedial secession, satisfying criteria that include a severe and systematic violation of a group's right to internal self-determination, and the exhaustion of domestic remedies within the parent state.

Nagorno-Karabakh is a land-locked mountainous territory of 12,000 square kilometers, situated within the internationally recognized borders of Azerbaijan.¹⁴ For centuries, the entire South Caucasus region, including Nagorno-Karabakh, was under the dominion of the Persian Empire up until the 1813 Treaty of Gulistan that saw the region's administrative transfer to the Russian Empire.¹⁵ In 1917, when the Russian Empire collapsed, a power vacuum was created in the South Caucasus that led to declarations of independence by Armenia and Azerbaijan in May

¹² Declaration on the Granting of Independence to Colonial Countries and Peoples, *United Nations General Assembly*, resolution 1514 (XV), 1960, <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-granting-independence-colonial-countries-and-peoples>; and Reference re Secession of Quebec, *Supreme Court of Canada*, Supreme Court Judgments, 1998, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do>.

¹³ Vidmar, Jure. "Remedial Secession in International Law: Theory and (Lack of) Practice." *St. Antony's International Review*, vol. 6, no. 1, Secession, Sovereignty and the Question for Legitimacy, pp. 37-56, May 2010, https://www.jstor.org/stable/26227069#metadata_info_tab_contents.

¹⁴ Avakian, Shahen. "Nagorno-Karabakh Legal Aspects." *MIA Publishers*, 5th edition, Moscow, 2015. <https://efile.fara.gov/docs/5342-Informational-Materials-20200910-38.pdf>.

¹⁵ Avakian, Shahen. "Nagorno-Karabakh Legal Aspects." *MIA Publishers*, 5th edition, Moscow, 2015. <https://efile.fara.gov/docs/5342-Informational-Materials-20200910-38.pdf>.

1918. As such, the year 1918 marked the beginning of Nagorno-Karabakh's territorial status as a legal issue.¹⁶

Demographics and geography have played a significant role in Armenia and Azerbaijan's dispute over the legal status of Nagorno-Karabakh. Multiple censuses, starting from the earliest known demographic survey of Nagorno-Karabakh by the Russian Empire in 1823,¹⁷ up until the last Soviet census in 1989,¹⁸ demonstrate that the Armenian inhabitants of Nagorno-Karabakh have consistently been the majority population in the territory. However, due to the geographic separation of Nagorno-Karabakh's Armenian population from the Republic of Armenia, administering the region from Armenia always proved difficult.¹⁹ As a result, in 1918 when the first armed conflict began between Armenia and Azerbaijan over Nagorno-Karabakh, the seventh Assembly of the Armenians of Nagorno-Karabakh concluded an agreement with the Azerbaijani government on August 22, 1919, accepting the provisional rule of Baku that outlined a division of powers between both parties.²⁰ The agreement marked Azerbaijan's first recognition of Nagorno-Karabakh's administrative autonomy, with the understanding that its autonomous status was to be further elaborated and developed. However, the agreement collapsed in February 1920 when Azerbaijan decided to terminate this autonomy by renewing armed conflict with the

¹⁶ Saparov, Arsene. "Why Autonomy? The Making of Nagorno-Karabakh Autonomous Region 1918-1925." *Taylor & Francis, Ltd.*, Europe-Asia Studies, vol. 64, no. 12, March 2012, pp. 281-323, <https://www.jstor.org/stable/41478346>.

¹⁷ Bournoutian, George. "The 1823 Russian Survey of the Karabakh Province." *Mazda Publishers, Inc.*, Costa Mesa, California, 2012.

¹⁸ Avakian, Shahen. "Nagorno-Karabakh Legal Aspects." *MIA Publishers*, 5th edition, Moscow, 2015. <https://efile.fara.gov/docs/5342-Informational-Materials-20200910-38.pdf>.

¹⁹ Saparov, Arsene. "Why Autonomy? The Making of Nagorno-Karabakh Autonomous Region 1918-1925." *Taylor & Francis, Ltd.*, Europe-Asia Studies, vol. 64, no. 12, March 2012, pp. 281-323, <https://www.jstor.org/stable/41478346>.

²⁰ Saparov, Arsene. "Why Autonomy? The Making of Nagorno-Karabakh Autonomous Region 1918-1925." *Taylor & Francis, Ltd.*, Europe-Asia Studies, vol. 64, no. 12, March 2012, pp. 281-323, <https://www.jstor.org/stable/41478346>.

Armenian population, in order to acquire full territorial administration.²¹ The violation of this legally binding agreement was Azerbaijan's first affront to Karabakh Armenians' internal self-determination.

In 1920, two years after independence, Azerbaijan and Armenia were absorbed into the Soviet Union, in April and November, respectively.²² On December 2, 1920, the Soviet Azerbaijani government issued a declaration entitled "The Establishment of the Soviet Power in Armenia," recognizing Nagorno-Karabakh's right to self-determination.²³ In affirming this declaration, on July 4, 1921, the members of the Caucasian Bureau of the Russian Communist Party-Bolsheviks (RCP-B) agreed to include Nagorno-Karabakh as part of Soviet Armenia, and to also allow Nagorno-Karabakh to conduct a plebiscite on its self-determination.²⁴ However, for a variety of (geo)political reasons that are not within the scope of this paper, the Azerbaijani representative to the Caucasian Bureau, Nariman Narimanov, expressed a sudden shift vis-à-vis Nagorno-Karabakh's territorial status, asking that the bureau place Nagorno-Karabakh under Soviet Azerbaijan. The request was rejected by the bureau's membership; yet, the following day on July 5, a new decision dictated by Moscow was released by the bureau, granting Nagorno-Karabakh to Soviet Azerbaijan, but with administrative autonomy.²⁵

²¹ Saparov, Arsene. "Why Autonomy? The Making of Nagorno-Karabakh Autonomous Region 1918-1925." *Taylor & Francis, Ltd.*, Europe-Asia Studies, vol. 64, no. 12, March 2012, pp. 281-323, <https://www.jstor.org/stable/41478346>.

²² Saparov, Arsene. "Why Autonomy? The Making of Nagorno-Karabakh Autonomous Region 1918-1925." *Taylor & Francis, Ltd.*, Europe-Asia Studies, vol. 64, no. 12, March 2012, pp. 281-323, <https://www.jstor.org/stable/41478346>.

²³ Avakian, Shahen. "Nagorno-Karabakh Legal Aspects." *MIA Publishers*, 5th edition, Moscow, 2015. <https://efile.fara.gov/docs/5342-Informational-Materials-20200910-38.pdf>.

²⁴ Avakian, Shahen. "Nagorno-Karabakh Legal Aspects." *MIA Publishers*, 5th edition, Moscow, 2015. <https://efile.fara.gov/docs/5342-Informational-Materials-20200910-38.pdf>.

²⁵ Avakian, Shahen. "Nagorno-Karabakh Legal Aspects." *MIA Publishers*, 5th edition, Moscow, 2015. <https://efile.fara.gov/docs/5342-Informational-Materials-20200910-38.pdf>.

With the Caucasian Bureau being forced to reverse its initial decision without conducting a formal vote, Nagorno-Karabakh experienced a second affront to its self-determination; this time by Soviet Russia, which overturned the democratic process of its own Caucasian Bureau. The decision to invalidate the bureau's vote on Nagorno-Karabakh's territorial status was led primarily by Commissar for Nationalities Joseph Stalin;²⁶ however, the issue should have gone through the appropriate legal procedure of receiving approval from the central legislative body of the Russian Socialist Federated Soviet Republic (RSFSR): the Central Committee of the RCP-B.²⁷ The overthrow of the bureau's vote was also in direct violation of Article 4 of the 1918 RSFSR constitution, which stated that "the Third Congress of Soviets fully agrees with the Soviet Government in its policy of...making all efforts to conclude a general democratic peace without annexations or indemnities, upon the basis of the free determination of peoples."²⁸ Even more notable is that the de facto decision by Moscow was in direct opposition to the December 1920 official declaration made by Soviet Azerbaijan, which recognized Nagorno-Karabakh's right to conduct a plebiscite on its self-determination.²⁹ In referring back to Article 4 of the RSFSR constitution, Nagorno-Karabakh's annexation from Soviet Armenia and its conferral of autonomy under Soviet Azerbaijan was a decision made without the consent of the population of Nagorno-Karabakh, and thus, was not based on the "free determination of peoples," nor was it in

²⁶ Weiss-Wendt, Anton. "Soviet-Turkish Relations and Socialist Armenia." *A Rhetorical Crime: Genocide in the Geopolitical Discourse of the Cold War*, Rutgers University Press, 2018, pp. 120–32. *JSTOR*, <https://doi.org/10.2307/j.ctt1t89jvc.13>. Accessed 15 May 2023.

²⁷ Armenian National Archives, legal analysis Nagorno-Karabakh's status under the RSFSR in light of Kukushkin Yu.S., Chistyakov O.I.'s "Essay on the History of the Soviet Constitution," 1987. Accessed September 2022; Armenian National Archives, telegram from the Chairman of the People's Commissar of the Azerbaijani SSR Narimanov to Tiflis appealing to the Kavburo to include Karabakh as part of the Azerbaijani SSR, June 27, 1921, Accessed September 2022.

²⁸ Constitution of the Russian Socialist Federated Soviet Republic, article 4, 1918, https://www.constituteproject.org/constitution/Russia_1918.pdf?lang=en.

²⁹ Armenian National Archives, legal analysis Nagorno-Karabakh's status under the RSFSR in light of Kukushkin Yu.S., Chistyakov O.I.'s "Essay on the History of the Soviet Constitution," 1987. Accessed September 2022; Armenian National Archives, recorded conversation between Huseynov and Hajiyevev with Shirvani and Narimanov, June 27, 1921, from the Armenian History Museum. Accessed September 2022.

line with a “democratic peace.” Yet, on July 7, 1923, under Stalin’s direction, the Nagorno-Karabakh Autonomous Oblast (NKAO) of Soviet Azerbaijan was established.

To sum up the aforementioned points, the short-lived autonomy agreement of August 1919 between the Nagorno-Karabakh Assembly and Azerbaijan, which ended via Azerbaijan’s renewal of force against the Armenian population, constituted a violation of a legally binding agreement. In addition, Moscow’s de facto reversal of the Caucasian Bureau’s vote in 1921 to allow for plebiscite in Nagorno-Karabakh signaled an exhaustion of domestic remedies for Karabakh Armenians within the Soviet system. The Soviet leadership in Moscow, without the required approval of the Central Committee of the RCP-B, unilaterally annexed Nagorno-Karabakh to Soviet Azerbaijan, despite a formal legal and democratic process having already been concluded that approved Nagorno-Karabakh’s placement under Soviet Armenia. Therefore, the Soviet leadership in Moscow and Azerbaijan were in violation of Article 4 of their own constitution,³⁰ including Soviet Azerbaijan’s December 1920 official declaration, which were supposed to act as legal bases for Nagorno-Karabakh to decide its political future.

Having gone through the political-legal history that led to Nagorno-Karabakh’s autonomous status within the Soviet system, an important question arises: what rights was the NKAO entitled to under the laws of the Soviet Union, and how were these rights treated by the Soviet parent state of Azerbaijan? In addition to the rights provided to union republics (such as Soviet Azerbaijan), per the 1936 and 1977 Soviet constitutions, autonomous oblasts had the right to direct their economic, social and cultural development; draw up their local budget; elect their

³⁰ Constitution of the Russian Socialist Federated Soviet Republic, article 4, 1918, https://www.constituteproject.org/constitution/Russia_1918.pdf?lang=en.

own judges; and elect their own representatives to manage the oblast's affairs vis-à-vis their union republic parent state.³¹ Both the 1936 and 1977 Soviet constitutions stated that the representatives of Soviet autonomous oblasts, referred to as People's Deputies, must address matters related to their local Soviet in line with the interests of the whole state (the union republic), and must also implement decisions of state authorities within their local Soviet (in the oblasts).³² The need for the union republic's general consent to implement certain programs within the oblasts had become increasingly difficult to achieve with the expansion of union republic powers during the decades of the Soviet Union.³³ This arguably led to the growing ability of union republics to marginalize autonomous oblasts; such as with Soviet Azerbaijan and the NKAO.

Throughout the existence of the NKAO, Soviet Azerbaijan deliberately hindered and prevented the development and exercise of Armenian cultural, social, economic and political rights in the oblast. The Azerbaijani SSR refused to designate the Armenian language as a native language of the NKAO; hindered Karabakh Armenians' access to higher education; denied employment to NKAO Armenians who attended university in Soviet Armenia upon return to any part of Soviet Azerbaijan; deliberately neglected infrastructure in the NKAO's Armenian communities while Azerbaijani districts in the NKAO were well-maintained; cut off the NKAO's radio, television

³¹ Constitution of the Union of Soviet Socialist Republics, articles 95, 97, 108 and 134, 1936, <https://soviethistory.msu.edu/1936-2/stalin-constitution/stalin-constitution-texts/the-stalin-constitution>; and articles 86, 88, 93, 95, 27 and 146, 1977, <https://www.marxists.org/history/ussr/government/constitution/1977/constitution-ussr-1977.pdf>.

³² Constitution of the Union of Soviet Socialist Republics, article 146, 1977, <https://www.marxists.org/history/ussr/government/constitution/1977/constitution-ussr-1977.pdf>; and articles 98 and 101, 1936, <https://soviethistory.msu.edu/1936-2/stalin-constitution/stalin-constitution-texts/the-stalin-constitution>.

³³ Osakwe, Christopher. "The Theories and Realities of Modern Soviet Constitutional Law: An Analysis of the 1977 USSR Constitution." *University of Pennsylvania Law Review*, vol. 127, no. 5, May 1979, pp. 1350-1437, <https://www.jstor.org/stable/3311636>.

and communication lines to Soviet Armenia; and encouraged with impunity the vandalism and destruction of Armenian cultural heritage sites. In the early 1960s, Armenian cultural heritage was nearly eradicated in Shushi, Nagorno-Karabakh, mostly through the use of bulldozers, despite the Soviet Azerbaijani government's promise to restore the Armenian part of the city. In the 1970s, explosives were used to erase the remaining Armenian churches in Shushi, including Meghretsots, Aguletsots, Kusanots Monastery, and Anapat. The stones from the remains of these churches were then used in the construction of a number of buildings in the Azerbaijani part of the city.³⁴ In essence, these blatant anti-Armenian policies were aimed at making life so difficult for Karabakh Armenians that it would create the deliberate consequence of depopulating Nagorno-Karabakh of its Armenian inhabitants, as a means toward delegitimizing the autonomy status of the NKAO.³⁵

As evident, in 1923, the NKAO's Armenian residents constituted 94.4% of the total population in the territory, having decreased to 76.9% in 1989.³⁶ In contrast, the Azerbaijani inhabitants of the NKAO constituted 3% of the total population in 1923, growing to 21.5% by 1989. Many Azerbaijanis were settling in the NKAO from other parts of Soviet Azerbaijan.³⁷ This reflected Soviet Azerbaijan's encouragement of Azerbaijani settlement in the NKAO while simultaneously driving the Armenian population out. In response to their inability to exercise their constitutionally guaranteed right to self-determination as an oblast, the People's Deputies of

³⁴ Armenian National Archives, "Data on the Critical State of NKAO Historical and Architectural Monuments," from the Armenian History Museum, 1988. Accessed September 2022.

³⁵ Avakian, Shahen. "Nagorno-Karabakh Legal Aspects." *MIA Publishers*, 5th edition, Moscow, 2015. <https://efile.fara.gov/docs/5342-Informational-Materials-20200910-38.pdf>.

³⁶ Avakian, Shahen. "Nagorno-Karabakh Legal Aspects." *MIA Publishers*, 5th edition, Moscow, 2015. <https://efile.fara.gov/docs/5342-Informational-Materials-20200910-38.pdf>.

³⁷ Avakian, Shahen. "Nagorno-Karabakh Legal Aspects." *MIA Publishers*, 5th edition, Moscow, 2015. <https://efile.fara.gov/docs/5342-Informational-Materials-20200910-38.pdf>.

the NKAO petitioned the Supreme Soviet in Moscow in 1945, 1965, 1967, and 1977 for the NKAO's administrative transfer to Soviet Armenia. The petitions were denied each time by Moscow. In 1988, in accordance with the 1977 Soviet Constitution, the People's Deputies of the NKAO requested from Soviet Armenia, Soviet Azerbaijan, and the Supreme Soviet in Moscow for NKAO's transfer to Soviet Armenia; which was approved by Soviet Armenia, but denied by both Moscow and Soviet Azerbaijan.³⁸ Therefore, on five different occasions during the Soviet Union's existence, the will of the people of the NKAO was neglected amid Soviet Azerbaijan's discriminatory policies, that deprived the NKAO Armenians of their constitutionally-guaranteed right to internal self-determination. As such, the Supreme Soviet in Moscow and Soviet Azerbaijan failed to uphold Article 39 of the 1977 Soviet Constitution, which guaranteed the social, economic, political and personal rights and freedoms of USSR citizens, as well as the enlargement and continuous improvement of these rights.³⁹ Yet, these rights were neither enlarging nor improving for Karabakh Armenians, as the exact opposite was occurring.

The systematic, continuous, and widespread violation of these rights made it nearly impossible for NKAO Armenians to achieve domestic remedies through the Soviet administration in Moscow, let alone through the Soviet Azerbaijani government. This led to what NKAO Armenians felt was their last resort: secession and independence. The following questions that this paper will address are: from whom did the NKAO secede and declare independence? Furthermore, was secession legal, and if so, how?

³⁸ Sargsyan, Lusine. "Azerbaijan's Anti-Armenian Policies Before the Artsakh War." *EVN Report*, December 22, 2020, <https://evnreport.com/magazine-issues/azerbaijan-s-anti-armenian-policies-before-the-artsakh-war/>.

³⁹ Constitution of the Union of Soviet Social Republics, article 39, 1977, <https://www.marxists.org/history/ussr/government/constitution/1977/constitution-ussr-1977.pdf>.

This paper argues that the NKAO's secession, via an independence referendum on December 10, 1991,⁴⁰ was initiated while still part of the Soviet Union; yet did not result in a declaration of independence until January 6, 1992,⁴¹ which was after Soviet collapse. However, the NKAO's secession process was technically hindered under the "Law on Secession From the USSR" (enacted April 3, 1990) due to Soviet Azerbaijan's declaration of independence (on August 30, 1991)⁴² being illegal according to the same law.⁴³ The "Law on Secession From the USSR" stipulated that if a union republic wanted to secede from the Soviet Union, an independence referendum was required.⁴⁴ Soviet Azerbaijan's August 1991 declaration of independence did not suffice because it did not hold an independence referendum until December 29, 1991, which was three days after the Soviet Union had collapsed.⁴⁵ According to the same law, since Azerbaijan, at the time, illegally declared independence from the Soviet Union, then oblasts such as the NKAO could not undergo the additional steps required under Soviet law to pursue their secession. These steps included (1) the union republic's cooperation with the oblast on the examination of the oblast's referendum process and results, as well as (2) the union republic's submission of the results to the USSR Supreme Soviet.⁴⁶ With Azerbaijan having already declared its independence from the Soviet Union, the NKAO was no longer able work within the framework of the "Law on Secession from the USSR" to facilitate its secession. Under these

⁴⁰ Ministry of Foreign Affairs, Republic of Artsakh. "The Referendum on Independence of the Nagorno-Karabakh Republic." 11 May 2023, <http://www.nkr.am/en/independence-referendum-in-karabakh>.

⁴¹ Office of the Nagorno-Karabakh Republic in Washington, DC. "Nagorno-Karabakh Conflict." http://www.nkrusa.org/nk_conflict/declaration_independence.shtml.

⁴² Howe, Melvyn. "Azerbaijan." *Britannica*, last updated: November 30, 2022, <https://www.britannica.com/place/Azerbaijan>.

⁴³ Law on Secession From The USSR, April 3, 1990, <https://soviethistory.msu.edu/1991-2/shevarnadze-resigns/shevarnadze-resigns-texts/law-on-secession-from-the-ussr/>.

⁴⁴ Law on Secession From The USSR, article 2, April 3, 1990, <https://soviethistory.msu.edu/1991-2/shevarnadze-resigns/shevarnadze-resigns-texts/law-on-secession-from-the-ussr/>.

⁴⁵ Radio Free Europe/Radio Liberty. "Azerbaijan Marks 20th Anniversary of Independence." 18 Oct. 2011. https://www.rferl.org/a/azerbaijan_marks_20th_anniversary_of_independence/24363665.html.

⁴⁶ Law on Secession From The USSR, article 6 and 7, April 3, 1990, <https://soviethistory.msu.edu/1991-2/shevarnadze-resigns/shevarnadze-resigns-texts/law-on-secession-from-the-ussr/>.

circumstances, the NKAO Armenians were robbed of their opportunity to use the law on secession to pursue their independence, having been forced instead to hold a de facto referendum during the final days of the Soviet Union.

After Azerbaijan declared independence, it illegally abolished the NKAO on November 26, 1991. By attempting to unilaterally decide Nagorno-Karabakh's territorial status, the Armenian population's right to self-determination was again violated under what was declared as an independent Azerbaijan. Furthermore, just several years prior, the NKAO's 1988 petition for administrative transfer to Soviet Armenia sparked retaliatory responses from Soviet Azerbaijani society, with the complicity of Azerbaijani authorities, that took the form of fatal ethnic pogroms against Armenians in the capital city of Baku (January 1990)⁴⁷, Sumgait (February 1988)⁴⁸ and Kirovabad (November 1988)⁴⁹, all of which were cities in Soviet Azerbaijan outside of the NKAO.⁵⁰ Consequently, pursuing domestic remedies within an independent Azerbaijan began to evaporate at the onset of the pogroms and the subsequent abolition of the NKAO. Motivated by those events, plus decades of both Moscow and Soviet Azerbaijan's deprivation of their NKAO citizens' rights, the Armenian population was ultimately forced to defend itself and fight for statehood as a means toward exercising their self-determination. Despite the success of Karabakh Armenians securing statehood after the first Karabakh war (1991 – 1994), Azerbaijan's

⁴⁷ Los Angeles Times. "Soviet Riots Kill 25 Armenians: Azerbaijan: Russians in the Capital of Baku Tell of Atrocities against Minority Group. Moscow Flies in a Division of Troops." 15 Jan. 1990, <https://www.latimes.com/archives/la-xpm-1990-01-15-mn-191-story.html>.

⁴⁸ The Washington Post. "Soviet Tells of 'pogroms' by Rioters in Azerbaijan." 16 Mar. 1988, <https://www.washingtonpost.com/archive/politics/1988/03/16/soviet-tells-of-pogroms-by-rioters-in-azerbaijan/56dc16e1-9aeb-40cd-9ffd-0f176a55a223/>.

⁴⁹ Los Angeles Times. "Soviet Tells of Blocking Slaughter of Armenians: General Reports His Soldiers Have Suppressed Dozens of Massacre Attempts by Azerbaijanis." 27 Nov. 1988, <https://www.latimes.com/archives/la-xpm-1988-11-27-mn-1060-story.html>.

⁵⁰ Rieff, David. "Case Study in Ethnic Strife." *Foreign Affairs*, vol. 76, no. 2, 1997, pp. 118–32. *JSTOR*, <https://doi.org/10.2307/20047941>. Accessed 14 May 2023.

declaration of independence and its obstruction of the NKAO's ability to exercise the Soviet law on secession, ultimately resulted in the international community defaulting to recognize Nagorno-Karabakh as part of the Republic of Azerbaijan; even though international negotiations persist on Nagorno-Karabakh's territorial status and the rights of the Armenian population. With Nagorno-Karabakh being internationally-recognized as part of Azerbaijan, including the fact that Nagorno-Karabakh's independence was declared after Soviet collapse, the Artsakh self-determination movement can be understood as having pursued its remedial secession from the Republic of Azerbaijan.

As this paper argues, the concept of remedial secession had, and has, continued to develop a soft law basis during and after the Cold War. Abbot and Snidal define soft law as being "frequent and dynamic...in the sense that it initiates a process and a discourse that may involve learning and other changes over time."⁵¹ Similarly, Guzman and Meyer describe soft law as "a continuum, or spectrum, running between fully binding treaties and fully political positions."⁵² It can therefore be inferred that soft law can continue to harden as long as its path is reinforced by international law-making processes of state practice and *opinio juris*. In further understanding remedial secession as a soft law concept, it is important to highlight the 1970 Declaration on Principles of International Law, which states that,

"Nothing...shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and

⁵¹ Abbot, Kenneth W. and Duncan Snidal. "Hard and Soft Law in International Governance." *The MIT Press*, Summer 2000, pp. 39.

⁵² Guzman, Andrew T. and Timothy L. Meyer. "International Soft Law." *Journal of Legal Analysis*, Vol. 2 Iss. 1, Spring 2010, pp. 173.

independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.”⁵³

The particular phrase, “possessed of a government representing the whole people belonging to the territory,” implies that if a government does not represent the “whole people” and conduct itself in “compliance with the principle of equal rights and self-determination of peoples,” then those people who are unrepresented have a right to “dismember or impair, totally or in part” the state’s territorial integrity. The passage makes a state’s territorial integrity and sovereignty contingent upon the government’s ability and/or willingness to represent a people on its territory, setting the foundation for the concept of remedial secession as soft law.

Although the Declaration on Principles of International Law arguably set the soft law basis for remedial secession, subsequent international and domestic court decisions have also developed additional criteria on the right to external self-determination in a non-post-colonial context.

These included the Supreme Court of Canada’s 1998 decision regarding the secession of Quebec, the International Court of Justice’s (ICJ) Kosovo Advisory Opinion in 2010, and the November 2022 United Kingdom Supreme Court Judgment on the holding of a Scottish independence referendum.

⁵³ Declaration on Principles of International Law concerning Friendly Relations and Cooperation among states in accordance with the Charter of the United Nations, *United Nations General Assembly*, resolution 2625 (XXV), 1970, <https://digitallibrary.un.org/record/202170?ln=en>.

In 1998, the Supreme Court of Canada issued a judgment concerning certain questions related to Quebec's secession from Canada. The court ruled that under international law, there is no right to secession, but there is also no prohibition of it either. Similar to the legal implications of the aforementioned passage in the Declaration on Principles of International Law, the Court ruled that "A state whose government represents the whole of the people or peoples resident within its territory...and respects the principles of self-determination in its internal arrangements, is entitled to maintain its territorial integrity under international law."⁵⁴ This reaffirms the legal interpretation of a state's territorial integrity being contingent upon the government's representation of its people and respect for their self-determination. Even more profound are the three conditions under which the Court states that a right to external self-determination exists; they are: (1) "former colonies where a people is oppressed;"; (2) "foreign military occupation;"; and (3) "where a definable group is denied meaningful access to government to pursue their political, economic, social and cultural development."⁵⁵ It is the third condition that is most applicable to Nagorno-Karabakh's secession from the USSR, and continues to be reinforced as a result of the existential threat facing Artsakh Armenians and the current lack of domestic remedies within Azerbaijan. As the Court mentioned, "a right to external self-determination (...the assertion of a right to unilateral secession) arises in only the most extreme of cases."⁵⁶ The Supreme Court of the United Kingdom's November 2022 judgment on the issue of holding a Scottish independence referendum also referenced the Supreme Court of Canada's judgment on questions of Quebec's secession, having referenced what this paper argues to be the soft law

⁵⁴ Reference re Secession of Quebec, *Supreme Court of Canada*, Supreme Court Judgments, 1998, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do>.

⁵⁵ Reference re Secession of Quebec, *Supreme Court of Canada*, Supreme Court Judgments, 1998, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do>.

⁵⁶ Reference re Secession of Quebec, *Supreme Court of Canada*, Supreme Court Judgments, 1998, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do>.

basis for remedial secession: “representing the whole people belonging to a territory without distinction...on the basis of equality and without discrimination, and respects the principles of self-determination in its internal arrangements...is entitled to maintain its territory integrity.”

The UK Supreme Court also echoed Canada’s Supreme Court judgment of a right to external self-determination in cases of oppression, occupation, or where a group is denied access to their political, economic, social and cultural development. The UK Supreme Court said that the aforementioned conditions, as derived from Canada’s Supreme Court decision, “apply with equal force to the position of Scotland and the people of Scotland within the United Kingdom.”⁵⁷

Regarding the ICJ’s 2010 advisory opinion on the question of the legality of Kosovo’s unilateral declaration of independence, the Court echoes the Supreme Court of Canada’s judgment as well, having stated that “general international law contains no applicable prohibition of declarations of independence.”⁵⁸ Yet, the ICJ advisory opinion said that a right to remedial secession is beyond the scope of the question posed by the U.N. General Assembly. However, Kosovo’s independence and the ICJ advisory opinion generated a nascent state practice and *opinio juris* that arguably advanced remedial secession, in a non-colonial context, along its soft law path. For example, at one time or another, 119 U.N. member states (out of 193) recognized Kosovo’s independence, with roughly 100 recognitions at present.⁵⁹ Despite the politics of recognition, this arguably signifies a state practice of recognizing cases of independence via remedial secession,

⁵⁷ United Kingdom Supreme Court. “Reference by the Lord Advocate of devolution issues under paragraph 34 of Schedule 6 to the Scotland Act 1998.” *Judgment*, November 23, 2022. <https://www.supremecourt.uk/cases/docs/uksc-2022-0098-judgment.pdf>.

⁵⁸ International Court of Justice. “Accordance with international law of the unilateral declaration of independence in respect of Kosovo.” *Summary of the Advisory Opinion*, July 22, 2010, <https://www.icj-cij.org/public/files/case-related/141/16010.pdf>.

⁵⁹ World Population Review. “Countries that Recognize Kosovo 2022.” <https://worldpopulationreview.com/country-rankings/countries-that-recognize-kosovo>.

like Kosovo. Regarding *opinio juris*, statements submitted by the United States,⁶⁰ France,⁶¹ Russia,⁶² and Germany⁶³ to the ICJ ahead of its advisory opinion, only advanced remedial secession along the law-hardening spectrum, having presented certain criteria that defines remedial secession as a possible right under international law.

Germany's written submission was substantially in support of a "remedial right of secession," forming part of the nascent *opinio juris*. It stated that "the right to self-determination prevails, and turns into a right of external self-determination," having identified two conditions in order to exercise such a right: (1) "the first condition is an exceptionally severe and long-lasting refusal of internal self-determination by the State in which the group is living...with severe violations of human rights," and (2) "that no other avenue exists for resolving the resulting conflict...this means in practice that other possible ways of remedying the situation must be exhausted."⁶⁴ Referring to the Declaration of Principles on International Law, if a right to remedial secession exists, Russia purported that "what remains to be analyzed is whether there exists a possibility of secession where the State concerned does not 'conduct itself in compliance with the principle of

⁶⁰ United States of America. "Question put by Judge Koroma: Answer of the United States of America." *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo: Other Documents*, International Court of Justice, Dec. 2009, <https://www.icj-cij.org/public/files/case-related/141/17900.pdf>.

⁶¹ French Republic. "Reply of the French Republic to questions posed by Judges Koroma and Cançado Trindade at the close of the oral proceedings." *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo: Other Documents*, International Court of Justice, Dec. 2009, <https://www.icj-cij.org/public/files/case-related/141/17910.pdf>.

⁶² Ambassador of the Russian Federation in the Kingdom of the Netherlands. "Accordance with International Law on the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo," Written Statement by the Russian Federation, International Court of Justice, April 16, 2009, <https://www.icj-cij.org/public/files/case-related/141/15628.pdf>.

⁶³ Federal Republic of Germany. "Accordance With International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo." *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo: Written Proceedings*, International Court of Justice, Apr. 2009, <https://www.icj-cij.org/public/files/case-related/141/15624.pdf>.

⁶⁴ Federal Republic of Germany. "Accordance With International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo." *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo: Written Proceedings*, International Court of Justice, Apr. 2009, <https://www.icj-cij.org/public/files/case-related/141/15624.pdf>.

equal rights and self-determination of peoples’ and thus does not possess a ‘government representing the whole population.’” Russia subsequently highlighted its position on the territorial integrity safeguard clause of the Declaration of Principles on International Law, mentioning that “the Russian Federation is of the view that...the clause may be construed as authorizing secession under certain conditions. However, those conditions should be limited to truly extreme circumstances, such as an outright armed attack by the parent State, threatening the very existence of the people in question.”⁶⁵ Though Germany and Russia are just two examples, their responses to the ICJ Kosovo Advisory Opinion includes phrases that acknowledge remedial secession as a right under certain circumstances. Such conditions ranged from an exhaustion of domestic remedies to the threat of genocide, and that those circumstances may authorize secession. In sum, the legal precedents set by the aforementioned national and international bodies demonstrates a progression and reinforcement of the idea of remedial secession as a soft law right.

In post-Soviet Azerbaijan, access to domestic remedies and internal self-determination remains nearly impossible for Armenians. Aside from being one of the most authoritarian states in the world,⁶⁶ the Republic of Azerbaijan has a consistent history of promoting hate speech, and inciting, glorifying and rewarding hate crimes against Armenians. The pivotal event that kickstarted the public glorification and rewarding of hate crimes was the 2004 axe murder of Armenian soldier Guren Margaryan by Azerbaijani soldier Ramil Safarov at a NATO training

⁶⁵ Ambassador of the Russian Federation in the Kingdom of the Netherlands. “*Accordance with International Law on the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo*,” Written Statement by the Russian Federation, International Court of Justice, April 16, 2009, <https://www.icj-cij.org/public/files/case-related/141/15628.pdf>.

⁶⁶ Freedom House. “Azerbaijan.” *Freedom in the World 2022*. <https://freedomhouse.org/country/azerbaijan/freedom-world/2022>.

program in Budapest. Safarov, having stated that he was motivated by his hatred for Armenia and Armenians, was charged and sentenced to prison in Hungary for murdering Margaryan in his sleep before subsequently being extradited back to Azerbaijan in 2012 to serve out the rest of his sentence. Upon arrival back in Azerbaijan, he was instead pardoned by President Ilham Aliyev, given a promotion in rank, a free apartment, back pay for the eight years spent in a Hungarian prison, and declared a national hero.⁶⁷ The United Nations Committee on the Elimination of Racial Discrimination (CERD) observation report of 2016 expressed its concern, having stated that “by welcoming a citizen of the State party convicted of murdering an Armenian as a national hero and by pardoning and releasing that person upon transfer, the State party condones racial hatred and hate crimes and denies redress to victims.”⁶⁸ On this same issue, the European Court of Human Rights’ judgement in the case of *Makuchyan and Minasyan vs. Azerbaijan and Hungary* ruled that Azerbaijan violated article 2(1) of the right to life in its “unjustified failure to enforce the prison sentence for an ethnic hate crime, imposed abroad on its officer, who was pardoned, promoted and awarded benefits upon return.”⁶⁹

With Azerbaijan having set a precedent of impunity and reward for hate crimes as in the case of Ramil Safarov, the Nagorno-Karabakh War in September 2020 saw captured Armenian civilians and prisoners of war being systematically subject to acts of humiliation, often followed by extrajudicial killings by the Azerbaijani armed forces.⁷⁰ Subsequent to the 2020 war, the

⁶⁷ The Guardian. “Relatives of Armenian Axed to Death by Azeri Officer Call for Justice.” Guardian News and Media, 25 May 2020, <https://www.theguardian.com/law/2020/may/25/relatives-armenian-axed-death-by-azeri-officer-call-justice-ramil-safarov>.

⁶⁸ CERD Committee. “Concluding observations on the combined seventh to ninth periodic reports of Azerbaijan.” June 10, 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/117/70/PDF/G1611770.pdf?OpenElement>.

⁶⁹ European Court of Human Rights. “Makuchyan and Minasyan v. Azerbaijan and Hungary.” HUDOC, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22002-12833%22%5D%7D>.

⁷⁰ Human Rights Watch. “World Report 2022: Rights Trends in Azerbaijan.” 13 Jan. 2022, <https://www.hrw.org/world-report/2022/country-chapters/azerbaijan>; *and* Amnesty International; *and* The Guardian.

Azerbaijani government established a public military trophy park to commemorate their victory, displaying hundreds of helmets worn by killed Armenian soldiers, as well as mannequins of Armenian soldiers depicted in dehumanizing and degrading positions.⁷¹ More disturbing were photographs published of Azerbaijani children pretending to harm and choke the mannequins for fun.⁷² This type of behavior can be explained by the U.N. CERD's 2022 observation report, which expressed concern on the issue of Azerbaijani school textbooks promoting prejudice and inciting racial hatred against Armenians; having issued a recommendation to adopt measures to strengthen school textbooks to fight against racial hatred and discrimination at all levels of education without ethnic hierarchizing.⁷³ In essence, the highly enthusiastic response from Azerbaijani society on the establishment of the military trophy park reflects the decades-long intergenerational impact of anti-Armenian propaganda on Azerbaijani society, which continues to perpetually worsen public sentiment, perception, and treatment toward Armenians.

Under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in the ICJ case of *Armenia vs. Azerbaijan*, Armenia requested provisional measures from the Court against Azerbaijan's military trophy park. The Court issued provisional measures on December 7, 2021, having recognized Azerbaijan's (timely) removal of the mannequins

"Two Men Beheaded in Videos from Nagorno-Karabakh War Identified." 15 Dec. 2020, <https://www.theguardian.com/world/2020/dec/15/two-men-beheaded-in-videos-from-nagorno-karabakh-war-identified>; and Eurasianet. "Evidence Emerges of Azerbaijani Executions of Armenian Captives." <https://eurasianet.org/evidence-emerges-of-azerbaijani-executions-of-armenian-captives>. "Armenia/Azerbaijan: Nagorno-Karabakh Conflict Caused Decades of Misery for Older People – New Report." 22 Feb. 2023, <https://www.amnesty.org/en/latest/news/2022/05/armenia-azerbaijan-nagorno-karabakh-conflict-caused-decades-of-misery-for-older-people-new-reports/>.

⁷¹ Hauer, Neil. "Azerbaijan's 'Ethnic Hatred' Theme Park Draws Ire, Imperils Reconciliation."

RadioFreeEurope/RadioLiberty, 25 Apr. 2021, <https://www.rferl.org/a/azerbaijan-karabakh-theme-park-armenia-ethnic-hatred-aliyev/31217971.html>.

⁷² Asbarez. "Azeri Children Play at Baku's Macabre 'Military Trophies Park'." 18 Feb. 2022, <https://asbarez.com/azeri-children-play-at-bakus-macabre-military-trophies-park/>.

⁷³ CERD Committee. "Concluding observations on the combined tenth to twelfth periodic reports of Azerbaijan." September 22, 2022, <https://digitallibrary.un.org/record/3988182?ln=en>.

“depicting Armenian soldiers and displays of helmets allegedly worn by Armenian soldiers during the 2020 conflict [that] have been permanently removed from the park and will not be shown in the future.”⁷⁴ The Court’s same provisional measures against Azerbaijan stated that Azerbaijan must “take all necessary measures to prevent the incitement and promotion of racial hatred and discrimination, including by its officials and public institutions, targeted at persons of Armenian national or ethnic origin.”⁷⁵

Yet, in obvious defiance to this measure, on December 12, 2022, Azerbaijan instituted a humanitarian blockade of Nagorno-Karabakh through the backing and use of Azerbaijani protesters on the Lachin Corridor.⁷⁶ The blockade has since prevented the free flow of movement and commercial goods as required to ensure per the 2020 Nagorno-Karabakh ceasefire agreement.⁷⁷ As a result, 120,000 Armenians have been living on the brink of starvation while Azerbaijan continues to deny the existence of a blockade. Despite the government’s denial,

⁷⁴ International Court of Justice. “Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)” *Request for the Indication of Provisional Measures*, December 7, 2021. <https://www.icj-cij.org/sites/default/files/case-related/180/180-20211207-SUM-01-00-EN.pdf>.

⁷⁵ International Court of Justice. “Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)” *Request for the Indication of Provisional Measures*, December 7, 2021. <https://www.icj-cij.org/sites/default/files/case-related/180/180-20211207-SUM-01-00-EN.pdf>.

⁷⁶ Amnesty International. “Azerbaijan: Blockade of Lachin Corridor Putting Thousands of Lives in Peril Must Be Immediately Lifted.” *Amnesty International*, 6 Mar. 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/>.

⁷⁷ “Statement By President Of the Republic Of Azerbaijan, Prime Minister Of the Republic Of Armenia And President Of the Russian Federation,” President Of Russia, November 10, 2020, <http://en.kremlin.ru/events/president/news/64384>

Amnesty International,⁷⁸ Human Rights Watch⁷⁹ and Freedom House⁸⁰ have all called on Azerbaijan to lift the blockade, noting issues related to growing food and fuel shortages, as well as dwindling medical resources. Hospitals in the region have witnessed more patient deaths, with those who are critically ill having to be transported out of Nagorno-Karabakh by the Red Cross.⁸¹ Artsakh authorities have also issued a rationing system on various food items in shortage.⁸²

In response to the blockade, the ICJ issued provisional measures against Azerbaijan on February 22, 2023, having stated that “the Republic of Azerbaijan shall, pending the final decision in the case and in accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, take all measures at its disposal to ensure unimpeded movement of persons, vehicles and cargo along the Lachin Corridor in both directions.”⁸³ Azerbaijan argues that because it allows five to six trucks per day of the Red Cross⁸⁴ and Russian peacekeeping contingent to bring in humanitarian aid to Nagorno-Karabakh

⁷⁸ Amnesty International. “Azerbaijan: Blockade of Lachin Corridor Putting Thousands of Lives in Peril Must Be Immediately Lifted.” *Amnesty International*, 6 Mar. 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/>.

⁷⁹ Human Rights Watch. “Azerbaijan: Nagorno-Karabakh Lifeline Road Blocked.” 24, Jan. 2023, <https://www.hrw.org/news/2022/12/21/azerbaijan-nagorno-karabakh-lifeline-road-blocked>.

⁸⁰ Freedom House. “Azerbaijan’s Month-Long Blockade of the Lachin Corridor Is Creating a Humanitarian Crisis within Nagorno-Karabakh as Vital Supplies Dwindle. We Call Again for Azerbaijan to Immediately End the Blockage. *Twitter*, 13 Jan. 2023, <https://twitter.com/freedomhouse/status/1614004984214966301>.

⁸¹ Amnesty International. “Azerbaijan: Blockade of Lachin Corridor Putting Thousands of Lives in Peril Must Be Immediately Lifted.” *Amnesty International*, 6 Mar. 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/>.

⁸² Amnesty International. “Azerbaijan: Blockade of Lachin Corridor Putting Thousands of Lives in Peril Must Be Immediately Lifted.” *Amnesty International*, 6 Mar. 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/>.

⁸³ International Court of Justice. “Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)” The Court indicates a provisional measure to ensure unimpeded movement of persons, vehicles and cargo along the Lachin Corridor, February 22, 2023. <https://www.icj-cij.org/sites/default/files/case-related/180/180-20230222-PRE-01-00-EN.pdf>.

⁸⁴ Amnesty International. “Azerbaijan: Blockade of Lachin Corridor Putting Thousands of Lives in Peril Must Be Immediately Lifted.” *Amnesty International*, 6 Mar. 2023,

(a population of 120,000), that is evidence enough that there is no blockade. On March 15, 2023, the European Parliament passed a resolution on EU-Azerbaijan relations, which criticized Azerbaijan's human rights record and urged the government to abide by the ICJ's provisional measures of unblocking the Lachin Corridor.⁸⁵ The Committee on International and Inter-Parliamentary Relations of the Azerbaijani parliament responded with a statement condemning the resolution and attributing its passage to the influence of Armenia and the Armenian diaspora, referring to Armenians as the "cancerous tumor of Europe."⁸⁶ In an effort to metaphorically rid themselves of this "cancerous tumor," President Ilham Aliyev stated himself that, "the [Lachin] road is not closed, it is open. They [Armenians] can leave whenever they want; no one would stop them."⁸⁷ With the road apparently being open only if Armenians want to leave, this statement exemplifies the very nature of the blockade: to depopulate Nagorno-Karabakh of its Armenian inhabitants, or experience death via starvation and resource scarcity. Armenians are therefore being left the choice to suffer ethnic cleansing or genocide by attrition.

The case of Ramil Safarov, the military trophy park, and the blockade of Nagorno-Karabakh are all but a few of the state-sanctioned attempts to further the cause of cleansing Nagorno-Karabakh of its Armenian population. As for seeking domestic remedies for racial discrimination experienced by Armenians vis-à-vis Azerbaijan, the U.N. CERD's 2022 observation report indicated the following:

<https://www.amnesty.org/en/latest/news/2023/02/azerbaijan-blockade-of-lachin-corridor-putting-thousands-of-lives-in-peril-must-be-immediately-lifted/>.

⁸⁵ European Parliament. "Texts Adopted – EU-Azerbaijan Relations – Wednesday, 15 March 2023."

https://www.europarl.europa.eu/doceo/document/TA-9-2023-0082_EN.html.

⁸⁶ Apa.Az. "Azerbaijani Parliament Issues Protest Statement Regarding European Parliament's Resolution."

<https://apa.az/en/domestic-policy/azerbaijani-parliament-issues-protest-statement-regarding-european-parliaments-resolution-398952>.

⁸⁷ Aliyev, Ilham. "Ilham Aliyev Was Interviewed by Local TV Channels." Official Website of President of Azerbaijan Republic, 19 Apr. 2023, <https://president.az/en/articles/view/58555>.

“The Committee regrets the information that the Convention has not been invoked or applied in [Azerbaijani] domestic courts (art. 2). Recalling its previous recommendation, the Committee recommends that the State party conduct training programs and awareness-raising campaigns for judges, prosecutors, lawyers and law enforcement officials, as well as for the general population, to ensure that the provisions of the Convention are invoked by and before domestic courts.” The committee also noted the “low number of complaints of racial discrimination, with only seven crimes related to racial discrimination having been investigated since 2020 and only one person having been convicted between 2016 and 2021 under article 283 of the Criminal Code for incitement to ethnic, racial, social or religious hatred or enmity; (b) The lack of detailed information on complaints of racial discrimination filed with the national courts and other relevant institutions, as well as on investigations, prosecutions, convictions, sanctions and the reparations provided to victims; (c) The absence of measures adopted to undertake studies to address the low level of complaints of racial discrimination, recommended by the Committee in its previous concluding observations.”⁸⁸

That said, in reference to the ICCPR’s article 2(3) on providing remedies, including judicial remedies for human rights violations,⁸⁹ the Human Rights Committee’s General Comment No. 33 stated that the parties to the optional protocol (which includes Azerbaijan) are “required to

⁸⁸ CERD Committee. “Concluding observations on the combined tenth to twelfth periodic reports of Azerbaijan.” September 22, 2022, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2FAZE%2FCO%2F10-12&Lang=en.

⁸⁹ ⁸⁹ International Covenant on Civil and Political Rights. *United Nations*. Article 2(3), 1976, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

provide...an effective remedy.”⁹⁰ General Comment No. 31 adds that “cessation of an ongoing violation is an essential element of the right to an effective remedy.”⁹¹ Yet the U.N. CERD’s 2022 observation report shows that these violations have only continued, and have become more severe.⁹² As a result, domestic remedies are virtually non-existent for the Armenians of Nagorno-Karabakh, all of whom President Ilham Aliyev declares are Azerbaijani citizens who will be afforded the same rights and security as supposedly provided to all Azerbaijani citizens.⁹³ That said, the fundamental question is: what rights and security? Thus far, and by the very nature of the Azerbaijani state, Azerbaijani citizens are afforded little to no political freedom; and asking 120,000 Karabakh Armenians to accept such a proposal is, at the very least, tantamount to dooming them to harsh authoritarian rule.

The case of Artsakh’s independence exemplifies the very tension between the principle of territorial integrity and human rights. On the one hand, Nagorno-Karabakh is internationally recognized as part of Azerbaijan; but on the other hand, it is highly unlikely that Artsakh Armenians will be able to exercise their right to self-determination within Azerbaijan, despite

⁹⁰ General Comment No. 33, International Covenant on Civil and Political Rights. “Obligations of States parties under the Optional Protocol to the International Covenant on Civil and Political Rights.” *Human Rights Committee*, Ninety-fourth Session, May 26, 2004, <https://www.refworld.org/docid/478b26ae2.html>.

⁹¹ General Comment No. 31, International Covenant on Civil and Political Rights. “The Nature of the General Legal Obligation Imposed on States Parties to the Covenant.” *Human Rights Committee*, Eighth Session, June 25, 2009, <https://www.refworld.org/docid/478b26ae2.html>.

⁹² CERD Committee. “Concluding observations on the combined tenth to twelfth periodic reports of Azerbaijan.” September 22, 2022, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2FAZE%2FCO%2F10-12&Lang=en.

⁹³ Aliyev, Ilham. “Ilham Aliyev Was Interviewed by Local TV Channels.” Official Website of President of Azerbaijan Republic, 19 Apr. 2023, <https://president.az/en/articles/view/58555>.

being legally guaranteed by conventions such as the ICERD,⁹⁴ and Azerbaijan's own constitution which explicitly claims to be a democracy.⁹⁵

As this paper argues, the concept of remedial secession has a soft law basis, providing a legal avenue for groups to declare independence if they experience a severe and systematic violation of their right to internal self-determination, and an exhaustion of domestic remedies within the parent state. But to note, states are not legally bound to recognize the independence of remedial secessionist states. As expressed in Canada's Supreme Court judgment regarding the secession of Quebec, "The ultimate success of such a secession would be dependent on recognition by the international community, which is likely to consider the legality and legitimacy of secession having regard to, amongst other facts, the conduct of Quebec and Canada, in determining whether to grant or withhold recognition. Even if granted, such recognition would not, however, provide any retroactive justification for the act of secession, either under the Constitution of Canada or international law."⁹⁶ What the Court essentially implied was that gaining international recognition for statehood is not necessarily required for secession to be legally permissible. International recognition is more so relevant to the degree of political support that secessionist states receive. But because states are the authors of international law, their collective political behavior regarding certain issues, if consistent enough, can set precedents that transform politics into law. That said, the doctrine of remedial secession lies closer to the political end of the politics-to-law spectrum, having acquired the status of a soft law right via state practice and

⁹⁴ OHCHR. "International Convention on the Elimination of All Forms of Racial Discrimination." www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial.

⁹⁵ Official Web-Site of President of Azerbaijan Republic. "Constitution." <https://president.az/en/pages/view/azerbaijan/constitution>.

⁹⁶ Reference re Secession of Quebec, *Supreme Court of Canada*, Supreme Court Judgments, 1998, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do>.

opinio juris. However, if states continue to sanctify territorial integrity to the extent that it knowingly dooms an entire group to persecution under the parent state, then the international community itself could be preventing the exercise of a group's right to remedial secession. As such, sovereignty must, over time, harden as responsibility rather than something that states are unequivocally entitled to. Whether international law and institutions can play a role in the transition from sovereignty as entitlement to responsibility, depends heavily on the political will of states, and even more importantly, on those groups whose existential struggle for self-determination continues to challenge the traditional view of territorial integrity. With NKAO Armenians having been subjected to 70 years of persecution under Soviet Azerbaijan, and 30 years of post-Soviet Azerbaijan's public incitement of racial hatred against Armenians, no viable option besides secession and independence was, and is, on the table for the Armenian population of Nagorno-Karabakh. As soft law, remedial secession seeks to address the legal gap that arises within the right to self-determination, providing an alternative course of action for groups that are systematically persecuted by the parent state.