

THE HORRIFIC WAR

The current war in Artsakh (also known as Nagorno-Karabakh) has two international aspects: Geopolitical and Legal. Both of these aspects are very important. It is a mistake to ignore the legal part of the conflict.

In terms of International Law, the war in Artsakh highlights, once again, the tension between two competing principles: **a people's right to self-determination** and **territorial integrity of states**.

Is a people's right to self-determination more important than the principle of territorial integrity of states? In case of Artsakh, this is the most important question in terms of international law.

Having reviewed lots of documents and having talked to several experts, we have decided to share a few ideas, which hopefully would be helpful to many people interested in and impacted by this horrific war.

The principle of *territorial integrity* is a very important part of the international legal system. It prohibits territorial conquests through use of force. This principle condemns the partial or total disruption of the national unity and the territorial integrity of any country.

However, this principle is not set in stone. Several countries have disintegrated – Yugoslavia, Czechoslovakia, the USSR – and created new internationally accepted borders.

Moreover, the principle of *territorial integrity* is often in conflict with another principle of international law, that of self-determination of “peoples”.

The **International Court of Justice** defined the principle of self-determination as *the need to pay regard to the freely expressed will of peoples*. The principle of self-determination of peoples is enshrined in the United Nations (UN) Charter and many other international declarations, conventions and General Assembly resolutions.

However, many large states, which have a lot of political influence within the UN, do not want to recognize the right of self-determination as an *absolute* entitlement. Consequently, international law still does not automatically confer the right to secede within already independent states.

The UN Declaration on Friendly Relations also states that the principle of self-determination does not authorize or encourage dismemberment of a State's territorial or political unity *provided* the concerned State conducts itself in compliance with the principle of equal rights and self-determination of peoples.

In a famous legal case¹, which gained persuasive value in international law, the Supreme Court of Canada (one of the most competent and independent supreme courts in the world) declared that *“the right to secession only arises under the principle of self-determination where “a people” is subject to alien subjugation, domination or exploitation; and possibly where “a people” is denied any meaningful exercise of its right to self-determination within the state of which it forms a part.”*

¹ Reference re Secession of Quebec, [1998] 2 SCR 217



In the situation of ethnic Armenians from Artsakh (Nagorno-Karabakh), there are three major issues:

1. The Government of Azerbaijan has always instituted policies of cultural assimilation and discrimination against the Armenian minority. The government of Azerbaijan has always tried to institute aggressive government policies, which would turn the majority of Armenians (more than 70%) into a minority.
2. The government of Azerbaijan is among the most corrupt and authoritarian governments in the world with a completely dysfunctional legal system. This is very easy to prove. In 2017 the President of Azerbaijan amended the constitution to appoint his wife as vice-president and second in command. (see the article in the Global Legal Monitor [here](#))
3. The government of Azerbaijan is now in bed with the government of Turkey, and the Armenian Genocide of 1915 (by Turkey) is a well-established historical fact. Over the last week, the governments of Azerbaijan and Turkey have relocated thousands of ISIS terrorists from Syria into Artsakh, to fight against Armenians. Governments of Russia, France, America and many other countries have confirmed this fact and have expressed their concern. This means the government of Azerbaijan is not only in bed with Turkey, but it is also in bed with terrorists (a sort of a ménage à trois).

The question, therefore, is how can ethnic Armenians of Artsakh negotiate anything with the government of Azerbaijan? The International Court of Justice will undoubtedly take these facts into account.

The Armenian government in power has made tremendous progress in promoting democracy and rule of law in its internal legal order. Therefore, Armenia should not be afraid to show to the world that it is a country founded on the principle of rule of law and peaceful resolution of conflicts.

The main dispute resolution forum in public international law is the International Court of Justice, also known as the World Court.

Neither Armenia nor Azerbaijan have thus far recognized the compulsory jurisdiction of the International Court of Justice. This, however, does not prevent them from submitting a specific dispute to the Court for adjudication.

Conclusion:

The notion of "Territorial Integrity of States" (let's call it **TIS**) in international law, constantly evoked by Azerbaijan, was established to protect States from other aggressive States (annexation, territorial wars, interference by force and so on). In other words, the main goal and purpose is "external" rather than "internal."

But "**TIS**" does not say anything about people living within States. This means no State can ever use the notion of "TIS" against any part of its own population, regardless of that population's minority status, religious beliefs or orientations.

All of the above means that the principle of "*Unilateral Declarations of Independence*" or "people's right to self-determination" by a group of people within a State is not in conflict with the principle of "**TIS**."

The key argument in Artsakh should be the following: If we are talking about corrupt, authoritarian and abusive States, which are in bed with terrorists, then the principle of "*Unilateral Declaration of Independence*" should become more important than the principle of "TIS".

The international legal system could use the case of Artsakh as a precedent, to show that for corrupt, abusive and authoritarian states, the principle of “*people's right to self-determination*” becomes more important.

If states want to remain intact, then they should not be corrupt, abusive and authoritarian. Maybe the best case is for these states to disintegrate into smaller law-abiding states? They would become a much safer place.

If there is any evidence of human rights abuse, discrimination and ethnic cleansing, then it should be the moral obligation of all international organizations to support the minority group of people seeking its independence from tyranny and extermination.

Armenians should tackle the independence of Artsakh on two fronts – international law as well as geopolitics.

With best regards,

David Tavadian, CFA
Founding Partner

Terms and Conditions

© "Armenia 2041" Charity Foundation

All rights reserved.

"Armenia 2041" Charity Foundation (the "Foundation") has exclusive property rights to the report.

You may not modify, edit, copy, reproduce, publish, create derivative works of the report. All unauthorized reproduction or other use of material from the Foundation shall be deemed violation of the Foundation intellectual property rights. The Foundation may pursue remedies for the violation of its rights.

The Foundation is not responsible for the accuracy or completeness of the information contained in this report. The report is current only for the date stated on the report.

The report is provided for informational purposes and does not contain advice on any matter. The Foundation does not warrant the accuracy of information/analysis contained in the report. The Foundation or inaccuracies shall not be liable what is written in this report and/or for the use of any information/analysis contained in this report and/or for any errors or omissions or inaccuracies in the report and/or or for any actions taken or not taken based on the report. Your use of this report is at your own risk.

When you open or download the report from the Foundation web page, the Foundation does not guarantee against any virus or malware of your computer.