Protecting Humanity's Cradle of Civilization: Advancing the Right to Self-Determination for Indigenous Peoples in the Middle East & South Caucasus

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PROTECTING HUMANITY’S CRADLE OF CIVILIZATION: ADVANCING THE RIGHT TO SELF-DETERMINATION FOR INDIGENOUS PEOPLES IN THE MIDDLE EAST & SOUTH CAUCASUS

Lisabelle Panossian

The author dedicates this piece to her great grandmothers, Takouhie Keshishian and Liza Jacob, who survived the 1915 Armenian, Assyrian, and Greek Genocide.

INTRODUCTION

During this paper’s drafting, an indigenous people’s independent government collapsed. For over thirty years, the Republic of Artsakh was a de facto independent region inside the internationally-recognized borders of Azerbaijan. The region comprised of an indigenous Armenian majority—until September 2023. In December 2022, Azerbaijani authorities blocked the only road that connected Nagorno-Karabakh to the outside world. This blockade resulted in shortages of food, medical supplies, and fuel, the severity of which was especially felt during a harsh winter.

After experiencing starvation and preventable medical complications under a nine month-long blockade, the Azerbaijani government launched a military incursion on the Republic of Artsakh—claiming it was an “anti-terrorist offensive.” By September 2023, under mounting pressure from the crippling blockade and a large-scale military offensive by Azerbaijan, the Republic of Artsakh’s government signed a decree announcing its

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2 See discussion infra Section IV(A).


5 Id.

dissolution by January 2024—officially transferring control over the Artsakh region to Azerbaijan.7 By October 2023, nearly the entire Armenian population of Artsakh fled their homes in a mass exodus.8 For the first time in the region’s history, the majority of Artsakh’s indigenous population no longer lived on their native land.9

How did we get here? Well, Nagorno-Karabakh—known to its indigenous Armenian population as Artsakh—was not always encompassed within Azerbaijan’s internationally-recognized borders. In fact, for the majority of the region’s history, it was an autonomous region that later fell under Azerbaijani authority after post-Soviet era colonization.10 On December 10, 1991, the Republic of Artsakh (formerly the Nagorno-Karabakh Republic) held a democratic referendum—where ninety-nine percent of Nagorno-Karabakh residents voted in favor of independence from Azerbaijan.11 That same year, the Republic of Azerbaijan’s Supreme Council abolished Nagorno-Karabakh from possessing autonomous status.12

For over thirty years, the Armenians of Nagorno-Karabakh witnessed the Republic of Azerbaijan deny their desire for independence—ultimately culminating in an ethnic cleansing of their native land.13 Further, the Armenians of Nagorno-Karabakh cannot directly fight for their interests themselves under international law, given that they have no international legal personality.14 When it came to advocating for their independence—and

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9 Compare discussion infra Section II(A), with Roy, supra note 8.
10 See discussion infra Sections II(A), IV(A).
13 Aliyev, supra note 12; Ebel, supra note 7; Roy, supra note 8.
attempting to avoid forcible displacement from their ancestral homes—the Armenians of Nagorno-Karabakh had nowhere to turn. Advancing the right to self-determination under international and domestic laws was their only hope for a sustainable and peaceful future.

Yet, the right to self-determination maintains a nebulous meaning under international law, despite being deeply rooted in key legal documents. The United Nations General Assembly explicitly declared that indigenous peoples have a right to self-determination in the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). However, there is no authoritative answer regarding what indigenous people’s right to self-determination precisely entails.

This article analyzes three distinct indigenous groups in the Middle East and South Caucasus to argue for the advancement of their right to self-determination under their respective regions’ domestic constitutional provisions and international law, namely: (a) Armenians in the autonomous Nagorno-Karabakh region of the internationally-recognized borders of western Azerbaijan; (b) Assyrians in the Nineveh Plains of northern Iraq; and (c) the Talysh in southern Azerbaijan (“the selected groups”). The selected groups do not encompass all indigenous groups in the Middle East and South Caucasus.

But analysis of these groups can provide an “indigenous peoples” lens to what a right to self-determination can look like in the Middle East and South Caucasus through a comparative analysis. Each

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16 UNDRIP, supra note 15.


selected indigenous group has undergone a shared history of seeking autonomy over their native lands—with such efforts met with violence ranging from outright dismissal to ethnic cleansing by their respective governments in power.

Legal instruments for indigenous groups to at least partially assert self-determination and autonomy over their ancestral lands generally exist. However, authoritative legal bodies have not interpreted or implemented these rights to their fullest potential. But even though the implementation of indigenous people’s rights under international law “is far from perfect,” recognition of the selected groups’ indigeneity under international law may introduce important rights recognized by the UN in the UNDRIP. It may open a door to international recognition of rights to autonomy, and it may play a meaningful role in the administration of natural resources on their historic lands.

Regional inter-governmental organizations also have their own human rights protection frameworks covering their respective geographic regions. Iraq is a member state of the Organisation for Islamic Cooperation (the “OIC”) and the Arab League. Azerbaijan is a member state of the Council of Europe, Organization for Security & Co-operation in Europe (the “OSCE”), and the OIC.

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19 See ICCPR, supra note 15; ICESCR, supra note 15; UNDRIP, supra note 15; The Friendly Declaration, supra note 15.

20 Laura M. Seelau & Ryan Seelau, Making Indigenous Self-Determination Work: What the Nation Building Principles and Three Case Studies from Chile Teach us about Implementing Indigenous Human Rights, 39 Am. Indian L. Rev. 137, 139 (2015) (“Although much has been written on what nation-states can and should do to implement the right of Indigenous self-determination, there has been far less discourse on what indigenous peoples and communities themselves can do to regain control over their own lives”).


22 UNDRIP, supra note 15.

governments.


The OIC is “a peripheral grouping and a marginal player” in the public international legal field and has a defunct judicial body. The Arab League has also received consistent criticism “for disunity and poor governance”—being more representative of states’ autocratic regimes than its citizens.

Although the OSCE organized the Minsk Group to facilitate diplomatic cooperation between Armenia and Azerbaijan with regards to the Nagorno-Karabakh conflict, it has been decried as meaningless and ineffective in resolving the conflict. Lastly, Heads of State and Government of the Council of Europe explicitly rejected a proposed protocol potentially granting national minorities a right to self-determination inside the Council’s member states. Moreover, protections for minorities in the European Court of Human Rights do not include an explicit right to self-determination.

Given the considerations above, this article does not review these regional legal mechanisms that may provide a right to self-determination. This article only articulates and addresses important legal and policy issues that arise when considering each group’s right to self-determination under domestic and international law.

Section I articulates an international legal framework that can be used to determine whether a group constitutes an “indigenous people” under international law. Section II applies this framework to determine whether each of the selected groups are indigenous to their respective regions and, in turn, accorded “indigenous peoples” status under international law.

Section III delineates and defines a right to self-determination for indigenous peoples. This section also derives legal tests for assessing the various forms of self-determination an indigenous group can express, including internal and external self-determination.

Section IV provides reasons why each group urgently requires a justiciable right to self-determination under international law and

defines each group’s present and historical circumstances inside their respective regions.

Section V articulates domestic constitutional provisions inside the selected groups’ respective regions that may provide for a right to internal self-determination. Section VI then applies the test for assessing a right to external self-determination articulated under Section III to the groups who may seek unilateral secession.

Section VII provides modes of relief that the selected groups can potentially take advantage of to properly assert their preferred right to self-determination. Finally, Section VIII proposes important international legal policy advancements that can appropriately empower and enable the selected groups to effectively exercise their available right to self-determination under international law.

I. DEFINING “INDIGENOUS PEOPLES” UNDER INTERNATIONAL LAW

There is no authoritative definition of what constitutes an “indigenous people” under international law.31 However, a culmination of conventions and studies can lead to reliable criteria a trier of fact—including judges of domestic or international courts—can use to assess whether a group is an “indigenous people” under international law.32

UN Special Rapporteur José Martinez Cobo provided a set of criteria to determine whether a group is an indigenous people (the “Cobo factors”).33 Numerous international organizations, including the UN, rely on the Cobo factors when classifying indigenous populations.34 Under these factors, an indigenous people possesses (1) “historical continuity with pre-invasion and/or pre-colonial societies that developed on their territories”, (2) cultural distinctiveness, (3) non-dominance, and (4) “a determination to preserve, develop, and transmit to future generations their ancestral territories and identity as people in accordance with their own cultural patterns, social institutions and legal system.”35

A group can achieve historical continuity through: (a) common ancestry with the lands’ original occupants, (b) continued occupation of those

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32 Id.
34 Id.
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ancestral lands, in whole or in part, (c) a general culture demonstrated through, for example, religious practice, lifestyle, dress, living under a tribal system, or membership to an indigenous community, (d) a shared language, whether used as the group’s only language or a habitual or preferred means of communication, or (e) established residence in a certain locality, such as certain regions of the host country.  

International organizations, including the UN, also rely on the definition set out in the International Labour Organization’s “Convention concerning Indigenous and Tribal Peoples in Independent Countries” (the “ILO Convention”). Although the ILO Convention provides less precise criteria than the Cobo factors, it importantly states that a group’s “self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining” which groups the convention applies to. A trier of fact can therefore use a hybrid of the Cobo factors and the ILO Convention’s self-identification requirement as a test to assess whether a group constitutes an “indigenous people” under international law.

II. APPLYING “INDIGENOUS PEOPLES” CRITERIA TO SELECTED GROUPS

This section applies the criteria set out in Section I to argue that each of the selected groups constitutes an indigenous people under international law. Part A of this section applies these criteria to the Armenians of Nagorno-Karabakh, Part B applies these criteria to the Talysh of southern Azerbaijan, and Part C applies these criteria to the Assyrians of northern Iraq. Although other scholars and journalists have classified each of the selected groups as indigenous peoples, none have done so using the Cobo factors.

36 Id.
37 Id.
38 See Hamilton, supra note 18 at 81 (stating that the definition created by the ILO Convention “does not create a bright-line rule of who is included in the definition of indigenous peoples”).
39 Id. (citing that the ILO Convention states that “self-identification as indigenous or tribal is fundamental” to determine whether a group constitutes an indigenous people and that the convention is nevertheless “persuasive evidence of a universal definition of indigenous peoples”).
A. Artsakh, or Nagorno-Karabakh, Armenians: An “Indigenous People?”

This article will examine the Nagorno-Karabakh (“NK”) Armenians as their own distinct ethnic group with indigenous ties to the NK region—unrelated to any claim the Republic of Armenia could assert over the region. The region’s history “is hotly contested between Armenians and Azerbaijanis.”41 According to Azerbaijani history, “Azerbaijani Turks are the Indigenous population of the Caucasus and, in particular Nagorno-Karabakh.”42 Nevertheless, various sources, removed from the Azerbaijani government’s influence, identify NK Armenians as the oldest surviving population indigenous to NK.43

NK’s earliest inhabitants were various ancient tribal populations, one known as the Kura-Araxes.44 Proto-Armenian tribes migrated to the region from Anatolia around the fifth century BCE, making NK Armenians today “a fusion between these incoming tribes—conventionally called ‘Armens’—and the diverse natives of the [region’s] plateau.”45 NK’s earliest inhabitants are now extinct.46 Their claims to the land therefore cannot logically materialize. After the extinction of these early tribes, Caucasian Albanians inhabited certain NK regions, later leading to fragmented ethnic groups whose respective lineages are traced to particular regions in the South


46 Nagorno-Karabakh, supra note 41.
Caucasus. Parts of the Caucasian Albanian population assimilated into the Armenian population in the Artsakh province during the 4th century CE.

Modern Azerbaijani lineage traces back to eastern Transcaucasia and northern Persia, bound by the Caspian Sea—and now encompassing present-day Azerbaijan. Persian populations absorbed this segment of the Caucasian Albanian population, which later fell under Turkic influence and created the modern Azerbaijani ethnic identity. The modern Udi lineage, on the other hand, traces back to present-day northern Azerbaijan and southern Dagestan. Modern Azerbaijanis and Udis therefore likely descend from Caucasian Albanian populations that settled outside the NK region. NK Armenians most likely possess a mixed ancestry of Armenian, NK's native tribes, and the assimilated Caucasian Albanians of the 4th century CE. This group therefore remains the only living descendants of the NK region's native populations.

NK Armenians also have “cultural distinctiveness.” The group practices its own distinctive version of the Christian faith in their ancient churches and speaks an Artsakh or Karabakh dialect of the Eastern Armenian language. The NK Republic also has a series of modern cultural establishments. In turn, NK Armenians possess a culture distinct from Azerbaijan and the Republic of Armenia.

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48 Hewsen, supra note 45, at 33-34 (“In 387 A.D., the various people of Arc’ax and Utik’, whether Armenians, Armenianized aborigines, or both, passed under [Caucasian] Albanian rule . . . That these people were highly Armenianized and that many were actually Armenians see as cannot be doubted”).

49 See Azerbaijani, Britannica, https://www.britannica.com/topic/Azerbaijani-peoples (Feb. 7, 2024) (“The Azerbaijani are of mixed ethnic origin, the oldest element deriving from the indigenous population of eastern Transcaucasia and possible from the Medians of northern Persia); Solomon Illich Burk et al., Transcaucasia, Britannica, https://www.britannica.com/place/Transcaucasia (May 19, 2023) (noting that “Transcaucasia, also known as Southern Caucasus, is bounded . . . on the east by the Caspian Sea” and providing a map illustration showing present-day eastern Azerbaijan bound by the Caspian Sea).


Furthermore, NK has an ethnic Armenian majority.\footnote{\textit{Nagorno-Karabakh, MINORITY RTS. GRP., supra note 41.}} However, the region is still inside the internationally-recognized borders of Azerbaijan.\footnote{\textit{Nagorno-Karabakh, BRITANNICA} (last updated Sept. 15, 2022), https://www.britannica.com/place/Nagorno-Karabakh.} In this context, the NK Armenians have “non-dominance”—they comprise less than two percent of Azerbaijan’s total national population.\footnote{\textit{Compare Nagorno-Karabakh profile}, BBC NEWS (Feb. 22, 2023), https://www.bbc.com/news/world-europe-18270325 (stating the population of Nagorno-Karabakh is 120,000), \textit{with Population of Azerbaijan, STATE STAT. COMM. REPUBLIC AZER.} (last updated Aug. 29, 2022). https://www.stat.gov.az/source/demoqraphy/ap/?lang=en (stating the total population of Azerbaijan in 2022 was about 10,156,400).} On top of modern cultural establishments, NK Armenians have their own constitution, government, and educational system.\footnote{The Cultural and Spiritual Heritage of Nagorno-Karabakh, supra note 53.} They show a strong “determination to preserve, develop and transmit to future generations their ancestral territories and identity . . . in accordance with their own cultural patterns, social institutions and legal system.”\footnote{Indigenous Peoples and the United Nations Human Rights System, supra note 21.}

land—“unbreakable.” The Republic of Artsakh’s National Assembly has regularly proclaimed that NK Armenians are indigenous to Nagorno-Karabakh in statements commemorating atrocities committed against them by Azerbaijani authorities and celebrating the region’s declaration of independence. This group therefore fulfills the Cobo factors and successfully claims “indigenous peoples” status under the provided framework.

B. Talysh of Southern Azerbaijan: An “Indigenous People?”

Talysh ancestral lands extend from parts of northern Iran into southern Azerbaijan. Abū Jaʿfar Muḥammad ibn Jaʿr al-Ṭabarī, a historian of Arab descent, produced the first written source mentioning the Talysh people as “al-Tylasan.” Although the exact date al-Ṭabarī wrote this source is unclear, it can logically date back to a time during his lifespan between circa 839 CE and 923 CE. Al-Ṭabarī described that, “in the mountains surrounding Azerbaijan, there used to live such peoples as . . . the al-Tylasan, who did not obey the Arabs and mastered their freedom and independence.”

Historical Talysh lands have always been linked with the Gilan province in present-day northern Iran, stretching into the Mughan province in present-day southern Azerbaijan. This article will limit its analysis to the Talysh population in southern Azerbaijan. The Talysh currently inhabit and historically maintain a presence in various regions in southern Azerbaijan. Talysh culture specifically manifests through “folk art, folklore, dances and

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References:


68 Asatrian & Borjian, supra note 66, at 44-45.

69 Id.

70 Mamedov et al., supra note 65.
The culture also includes traditional clothing for men and women, folk music, cuisine, and special instruments used for celebrations. Lastly, the Talysh have their own language described as “a North Western Iranian dialect, yet different from Gilaki, which belongs to the same [linguistic] group.” These considerations can satisfy the factor for cultural distinctiveness.

A 2009 Azerbaijani census identified 112,000 people of Talysh descent in the country. However, the Talysh Public Council of Azerbaijan claim the number “is at least 10 times higher,” while other unofficial estimates place their number at between 200,000 and 300,000. Nevertheless, the Talysh still constitute a non-dominant population in Azerbaijan even under a generous estimate of 300,000 inside a total population of over ten million inside Azerbaijan.

The Talysh also have “a determination to preserve, develop and transmit to future generations their ancestral territories . . . in accordance with their own cultural patterns.” The Talysh Public Council and the Talysh Voice are organizations determined to advocate for the Talysh perspective by sharing news and statements surrounding advocacy of Talysh people’s rights inside Azerbaijan—even though the Azerbaijani government blocked access to the Talysh Voice inside its territory. And although the Talysh Public Council is not a governmentally-recognized organization, it has continued operating in Azerbaijan since 2019 with the goal of preventing the

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73 Ismayilova, supra note 71; Talysh, OMNIGLOT (last updated Apr. 23, 2021), https://omniglot.com/writing/talysh.htm; Asatryan & Borjian, supra note 66 at 51-53.
74 Population of Azerbaijan, supra note 56.
76 Population of Azerbaijan, supra note 56.
ongoing assimilation of the Talysh people into Azerbaijan by working within the existing state’s constitutional framework.\textsuperscript{79}

Further, “some Talysh activists have sought to protect their language and culture by pushing for land independence, in the form of an autonomous state.”\textsuperscript{80} However, “pushes for autonomy have struggled because of a nebulous sense of Talysh identity”—alongside violent suppression by the Azerbaijani government.\textsuperscript{81} The Talysh people’s lukewarm response to increased autonomy inside Azerbaijan may simply reflect the forced assimilation that Talysh people continuously endure in Azerbaijan.\textsuperscript{82}

Finally, the Talysh of southern Azerbaijan self-identify as indigenous to the regions they currently inhabit.\textsuperscript{83} A statement released by the Talysh Public Council of Azerbaijan explicitly asserts that “Talysh is the native language of the Talyshes who are one of the indigenous peoples of the Republic of Azerbaijan.”\textsuperscript{84} The Talysh therefore fulfill the Cobo factors and successfully claim “indigenous peoples” status under the provided framework.

C. Assyrians of Northern Iraq: An “Indigenous People?”

The Assyrian people “trace their ancestry to ancient Mesopotamia,” modern-day Iraq, as early as the 23rd century BCE.\textsuperscript{85} The region of northern Iraq therefore encompasses the Assyrian people’s ancestral lands. Some Assyrian populations are native to regions outside Iraq, but “Iraq is considered the heart of the Assyrian homeland.”\textsuperscript{86} An estimated 300,000 Assyrians remain in northern Iraq today, representing the largest concentration of Assyrians who remain on their ancestral land.\textsuperscript{87} Further, Assyrians share direct common ancestry with northern Iraq’s earliest inhabitants. A genetic study revealed that Assyrians “have a distinct genetic
profile that distinguishes their population from any other population."\textsuperscript{88} Moreover, Assyrians have "remained in Iraq for the past two thousand five hundred years" since the ancient Assyrian Empire’s fall.\textsuperscript{89}

Assyrians of northern Iraq also have a distinct culture manifested by their own Christian denominations, language, cultural dress, holidays, dance, ancient historical monuments, cuisine, and music.\textsuperscript{90} The Iraqi Constitution affirms its Assyrian population’s cultural distinction from its population.\textsuperscript{91} Assyrians of northern Iraq speak their own language—"commonly known as Assyrian, neo-Aramaic, or Syriac."\textsuperscript{92} Assyrians are also non-dominant in Iraq. Iraq’s population is about forty-four million—with about 300,000 Assyrians reported.\textsuperscript{93} Assyrians of northern Iraq also have schools, cultural organizations, and churches that “preserve, develop and transmit to future generations their ancestral territories and identity as people.”\textsuperscript{94}

Lastly, Assyrians of northern Iraq identify as a group indigenous to northern Iraq.\textsuperscript{95} Assyrian author and journalist Fred Aprim stated that “many scholars and more importantly the Assyrian community, acknowledge

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\textsuperscript{89} See, e.g., Isaac, supra note 17, at 210-12; Assyrian Traditional Khomala, TLETHAYOTHA, https://tlethayotha.com/collections/assyrian-khomala-accessories#:~:text=Assyrian%20Traditional%20Khomala%20Clothing,creations%20with%20a%20vivid%20audience (last visited Apr. 3, 2024); Kha b’Nissan—the Assyrian New Year, ASSYRIAN CULTURAL FOUND., https://www.aufa.us/blog/kaa-bnissas-the-assyrian-new-year-2/ (last visited Apr. 3, 2024); Nadia Younan, Stateless Rhythms, Transnational Steps: Embodying the Assyrian Nation through Sheikhan Song and Dance, 35 DANSES, MUSIQUES ET (TRANS)NATIONALISMES 41, 41 (2019); Department of Ancient Near Eastern Art, Early Excavations in Assyria, METRO. MUSEUM ART (last updated Aug. 2021), https://www.metmuseum.org/toah/hd/rdas/hd_rdas.htm; ASSYRIAN KITCHEN, https://www.assyriankitchen.com/ (last visited Apr. 3, 2024); Isho Tkhuma, Three Hours of Assyrian Folk Music, YOUTUBE (Mar. 8, 2022), https://youtu.be/boIY4NQxGk0?si=0yKb0Iy7gB-88CD-.

\textsuperscript{90} Id.

\textsuperscript{91} See CONSTITUTION OF IRAQ Oct. 15, 2005, art. 4, § 1.

\textsuperscript{92} Isaac, supra note 17, at 212.

\textsuperscript{93} Population, total – Iraq, WORLD BANK https://data.worldbank.org/indicator/SP.POP.TOTL?locations=IQ (last visited Dec. 8, 2022); Iraq, ASSYRIAN POL’Y INST., supra note 86.

\textsuperscript{94} Indigenous Peoples and the United Nations Human Rights System, supra note 21; see also Iraq, ASSYRIAN POL’Y INST., supra note 86; Assyrian Aid Society - Iraq, ASSYRIAN AID SOC’Y, https://assyrianaid.org/who-we-are/ (last visited Dec. 8, 2022); St. John the Baptist Cathedral-Ankawa, FACEBOOK https://www.facebook.com/mar.youkhanna/ (last visited Dec. 8, 2022); The Immaculate Church, FACEBOOK, https://www.facebook.com/people/The-Immaculate-Church-%D9%83%D9%86%D9%8A%D8%B3%D9%87-%D8%A7%D9%84%D8%B7%D8%A7%D9%87%D8%B1%D8%A9-%D8%A7%D9%84%D9%83%D8%A8%B1%D9%89/100064783566552/ (last visited Dec. 8, 2022).

\textsuperscript{95} About Assyrians: An ancient people fighting for survival, ASSYRIAN POL’Y INST., https://www.assyrianpolicy.org/assyrians (last visited Dec. 8, 2022).
Assyrians as one of the indigenous populations of Iraq. In turn, the Assyrians of northern Iraq fulfill the Cobo factors and successfully claim “indigenous peoples” status under the provided framework.

III. SELF-DETERMINATION UNDER INTERNATIONAL LAW

Self-determination is “at the core of the democratic entitlement”—a right that “[a]l]l peoples have . . . [to] freely determine their political status and freely pursue their economic, social and cultural development.” This section delineates the right to self-determination under international law in Part A. Part B defines the “self” in self-determination as applied to indigenous peoples. Part C defines the modes of self-determination while distinguishing its forms.

A. Delineating the Right to Self-determination Under International Law

The principle of self-determination received authoritative recognition under the UN Charter, which states that the UN Charter’s purpose is “[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.” Numerous major international treaties have since upheld the right to self-determination under international law. Article 1(1) in the International Covenant of Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR)—both adopted by the UNGA in 1966—state that “[a]l]l peoples have the right of self-determination . . . By virtue of that right, they freely determine their political status and freely pursue their economic, social, and cultural development.”

The 1960 UNGA Resolution 1514—the Declaration on the Granting of Independence to Colonial Countries and Peoples—then reinforced the right to self-determination for colonized territories. Some international legal scholars use this declaration to argue that self-determination should strictly

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98 ICCPR, supra note 15, at art. 1, ¶ 1; ICESCR, supra note 15, at art. 1, ¶ 1.
100 U.N. Charter art. 1, ¶ 2.
101 ICCPR, supra note 15, at art. 1, ¶ 1; ICESCR, supra note 15, at art. 1, ¶ 1.
and narrowly apply to the liberation of formerly colonized peoples. But textual interpretation provides a rather broad definition for when the right to self-determination applies. The Declaration expansively mirrored the “all peoples” terminology used in the ICCPR and ICESCR. Such a plain and broad choice of terms signifies that the Declaration does not limit the right to self-determination to the decolonization process. Rather, the Declaration merely reaffirmed the right “all peoples” have to self-determination and specifically applied this broad right to formerly colonized populations.

The UNGA’s 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations (the “Friendly Declaration”) affirms this interpretation. The declaration states that “all peoples have the right to freely determine, without external interference, their political status and to pursue their economic, social and cultural development,” with every State obligated to respect the right to self-determination in accordance with the UN Charter.

Notably, the Friendly Declaration states “that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation [of the principle of self-determination]” and “is contrary to the Charter.” The declaration then proceeds to explain modes of implementing the right to self-determination, including (a) “establishment of a sovereign and independent State,” (b) “the free association or integration with an independent State,” or (c) “the emergence into any other political status freely determined by a people.”

B. Defining the “Self” in Self-determination as Applied to Indigenous Peoples

Although one can definitively trace the right to self-determination to key sources of international law, it is more difficult to define the right’s essential terms with authoritative precision. This article only examines how the right to self-determination applies to indigenous peoples. No matter
the definition of the “self” in self-determination, the UNDRIP explicitly links the right to self-determination to indigenous peoples.\textsuperscript{110} UNDRIP Article 3 states that “indigenous people have the right to self-determination,” and can “freely determine their political status and freely pursue their economic, social and cultural development” by virtue of that right.\textsuperscript{111} UNDRIP Article 3’s language identically reflects the provisions on self-determination in the ICCPR, ICESCR, and the Friendly Declaration.\textsuperscript{112}

In turn, the Cobo factors—used to assess whether a group is an indigenous people under international law—allow for the assessment of whether a group is an indigenous people and accorded the right to self-determination.\textsuperscript{113}

Indigenous peoples also have the right to autonomous administration under the UNDRIP.\textsuperscript{114} In Article 4, indigenous peoples, “in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.”\textsuperscript{115} Multiple states expressed concern over this explicit grant of self-determination before the UNDRIP’s passing.\textsuperscript{116} As a compromise between those advocating for self-determination and those wishing to maintain territorial integrity, Article 46 emphasizes that nothing in the UNDRIP shall be interpreted as implying an authorization or encouragement to take any action that “would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.”\textsuperscript{117}

In turn indigenous peoples do explicitly have a right to self-determination and autonomous administration under international law. However, these rights can end up competing or conflicting with a State’s right to territorial integrity. Reviewing the different modes of self-

\textsuperscript{110} See UNDRIP, supra note 15, at art. 3; see also Sigfried Wiessner, Rights and Status of Indigenous Peoples: A Global Comparative and International Legal Analysis, 12 HARV. HUM. RTS. J. 57, 119 (1999) (stating that “if any traditional criteria of ‘people’ exist” withing the meaning of self-determination, “indigenous groupings may very well meet them”).

\textsuperscript{111} UNDRIP, supra note 15, at art. 3.

\textsuperscript{112} Id.; ICCPR, supra note 15, at art. 1; ICESCR, supra note 15, at art. 1; The Friendly Declaration, supra note 15.

\textsuperscript{113} U.N. Department of Economic and Social Affairs of Indigenous Peoples, supra note 33.

\textsuperscript{114} UNDRIP, supra note 15, at art. 4.

\textsuperscript{115} Id.

\textsuperscript{116} See Press Release, General Assembly, General Assembly Adopts Declaration on Rights of Indigenous Peoples; ‘Major Step Forward’ towards Human Rights for All, Says President, U.N. Press Release GA/10612 (Sept. 13, 2007) (“Countries voting against the Declaration said they could not support it because of concerns over provisions on self-determination . . . ”).

\textsuperscript{117} UNDRIP, supra note 15, at art. 46; see also id. (citing at various points the speeches of various State delegates who emphasize that the right to self-determination should not be invoked for purposes of impairing territorial integrity).
determination through a holistic interpretation of international legal instruments—and proposing actionable legal tests for reviewing a request to enforce a right to self-determination with the right to territorial integrity in mind—can shed light on how to resolve these competing rights.\footnote{118 See generally supra note 116 (UN Commissioner for Indigenous Peoples advocating for a holistic review of the UNDRIP alongside existing international law).}

\section{C. Defining the Modes of Self-determination and Distinguishing its Forms}

The ICCPR, ICESR, Friendly Declaration, and UNDRIP state that all peoples can “freely determine their political status and freely pursue their economic, social, and cultural development by virtue of their right to self-determination.”\footnote{119 UNDRIP, supra note 15, at art. 3; ICCPR, supra note 15, at art. 1; ICESCR, supra note 15, at art. 1; The Friendly Declaration, supra note 15.} This shared language “suggests that, at its most basic level, self-determination constitutes the right to a people’s uninhibited political, cultural and social development.”\footnote{120 Hurst Hannum, Legal Aspects of Self-Determination, PRINCETON UNIV. (last visited Oct. 16, 2022), https://pese.princeton.edu/node/511 (stating that drafters of the United Nations Declaration on the Rights of Indigenous Peoples compromised on the grant of self-determination by including a caveat prioritizing States’ right to maintaining territorial integrity); Isaac, supra note 17, at 223-24.}

This right can materialize in two ways: through internal or external self-determination.\footnote{121 Compare Hurst Hannum, Autonomy, Sovereignty, and Self-Determination 49 (1996) (“[E]xternal self-determination defined as the right to freedom from a former colonial power, and . . . internal self-determination . . . as independence of the whole state’s population from foreign intervention or influence), with Antonio Cassese, Self-Determination of Peoples: A Legal Reappraisal 101, 120 (1995) (suggesting that the Friendly Declaration “links external self-determination to internal self-determination in exceptional circumstance” when “a racial or religious group may attempt secession, a form of external self-determination” when a right to “internal self-determination,” defined as a “right to authentic self-government” is absolutely beyond reach), with Rocky Esposito, Note, Ukraine, Self-Determination, and Emerging Norms for Unilateral Secession of States, 19 WASH. UNIV. GLOB. STUD. L. REV. 141, 147-49 (2020) (“[I]nternal self-determination — a people’s pursuit of its political, economic, social and cultural development within the framework of an existing state. [A] legal claim to external self-determination depends upon an abrogation of that right. Therefore . . . the inquiry is whether the right to internal self-determination has been abrogated by the parent state.”).}


Nevertheless, the right to self-determination under international law has significantly evolved since its appearance in the UN Charter Article 1(2).\footnote{123 See generally supra note 116 (UN Commissioner for Indigenous Peoples advocating for a holistic review of the UNDRIP alongside existing international law).} The International Court of Justice (ICJ) recognizes this evolutionary approach of state practice. Specifically, “during the second half of the twentieth century, the international law of self-determination
developed in such a way as to create a right to independence for the peoples of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation.” The Court has explicitly viewed the right of peoples to self-determination as a right that has “evolved from the [United Nations] Charter and from United Nations practice”—being “one of the essential principles of contemporary international law,” and possessing an *erga omnes* character. *Erga omnes* obligations under international law are obligations that all States have an interest in ensuring a fellow State fulfills, because their subject matter is of great importance to the international community as a whole.

Internal self-determination allows a people to determine its political status *internally* within the parent state’s existing domestic framework—granting a group increased autonomy by providing a mode of self-governance inside the home country’s internationally-recognized borders. In *Reference re Secession of Quebec*, the Supreme Court of Canada viewed internal self-determination as a favorable solution for groups wishing to exercise a right to self-determination because it represents a compromise between those wishing to assert a right to self-determination and a state’s desire to preserve its territorial integrity. A group can achieve internal self-determination through autonomy and quasi-autonomy-based solutions. Such solutions should “attempt to provide people with a greater degree of self-management and control in order to effectuate their right of self-determination... [and] ‘evidence creative legal and constitutional thought.’”

External self-determination allows a people to determine its political status *externally*, meaning outside the domestic level. The group determines “their international juridical status, with independence as the most frequent

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127 Isaac, *supra* note 17, at 225.
128 *Reference re Secession of Quebec*, [1998] S.C.R. 217 (Can.) (stating that “international law expects that the right to self-determination will be exercised by peoples within the framework of existing sovereign state and consistently with the maintenance of the territorial integrity of those states. Where this is not possible... a right of secession may arise”).
129 See *Hannum, supra* note 122, at 333-69 (discussing autonomous and quasi-autonomous modes of self-governance in the context of internal self-determination and providing examples of those structures in practice).
130 Isaac, *supra* note 17, at 225-26 (alteration in original).
External self-determination allows for unilateral secession. Because external self-determination directly impacts a state’s territorial integrity, the Canadian Supreme Court in Quebec viewed this mode of self-determination as a measure of “last resort”—arising when all paths to internal self-determination are blocked or exhausted.

A right to external self-determination can exist (a) in the context of former colonies undergoing decolonization, (b) “where a people is oppressed, as for example under foreign military occupation,” or (c) “where a definable group is denied meaningful access to government to pursue their political, economic, social and cultural development.” The Friendly Declaration also gives important insight into when a group can exercise a right to external self-determination. The Declaration only guarantees territorial integrity to States that conduct themselves “in compliance with the principle of equal rights and self-determination of peoples possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or color.”

Dr. Glen Anderson, a professor of international law who has extensively published works on the right to self-determination and secession, argues that the right to external self-determination and unilateral secession can extend beyond colonized territories. Notably, Anderson’s analysis of key UN instruments reveals that the right to self-determination is continuously evolving. Specifically, the UN Charter, Declaration on the Granting of Independence to Colonial Countries and Peoples, ICCPR, and ICESCR all

132 Anderson, supra note 123.
133 Reference re Secession of Quebec, supra note 128.
134 Id.; see also U.N Human Rights Committee, CCPR General Comment No. 12: Article 1, The Right to Self-determination of Peoples (Mar. 13, 1984), https://www.refworld.org/docid/453883822.html (in connection with Article 1 of the Covenant, the Committee refers to other international instruments concerning the right of all peoples to self-determination, in particular the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States).
135 The Friendly Declaration, supra note 15.
136 The Friendly Declaration, supra note 15; CASSESE, supra note 122, at 109-11 (defining this clause of the Friendly Declaration as “its savings clause” that is “of great importance”).
138 Anderson, supra note 123, at 1253.
generally express the right to self-determination. However, the right to unilateral non-colonial secession (UNC) first emerged from the Friendly Declaration and was later reaffirmed in the Declaration on the Occasion of the Fiftieth Anniversary of the UN. From these instruments, the contemporary right to self-determination evolved to permit a qualified right to UNC secession for oppressed sub-state national groups as a last resort. The right to external self-determination therefore evolved from a narrow view of decolonization to a broader view of encompassing groups who have endured grave human rights violations and are blocked from—or have exhausted all possible paths to—any meaningful exercise of internal self-determination.

Anderson delineates four implied requirements for a group to successfully assert a right to external self-determination from key sources of international law. The State must have discriminated against the group (1) in “a deliberate, sustained, and systemic nature,” leading to “‘exclusion of any likelihood for a possible peaceful solution within the existing state structure,’” and (2) with sufficient temporal nexus between the alleged discrimination and the resulting claim for unilateral secession. The group seeking unilateral secession must then (3) “agree to protect and uphold the human rights of any potential minorities, preferably by way of constitutional guarantees” and (4) “adhere to the rules for statehood in international law” as enumerated in Article 1 of the 1933 Montevideo Convention and under the peremptory norms of international law (e.g., not taking the territory through illegal use of force).

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139 Id. at 1204-15.
140 Id. at 1215-36.
141 Id. at 1235.
142 Id.
143 Id. at 1217-22.
144 Id.
145 Guaranteeing protection of human rights of any potential minorities in a newly independent state can be speculative if the group seeking secession and control over the region has not created a constitution or implemented explicit laws protecting and upholding minority rights. However, encouraging the newly-independent state to submit to binding international legal instruments and an international monitoring mechanism can ensure effectuation of minority rights. For example, one can explore a novel international legal policy that could encourage newly-independent states to submit to the Rome Statute, consent to compulsory jurisdiction of the International Court of Justice, and commit to implementation of a periodic monitoring mechanism that can underscore the newly-seceded state’s commitment to protect and uphold minority rights in concrete ways. Such encouragements would have the upholding minority rights requirement work in harmony with the notion that states participate in international legal regimes by providing consent. See Eric Kolodner, The Future of the Right to Self-Determination, 10 CONN. J. INT’L L. 153, 161 (1994); see also discussion infra Section VII.
146 Anderson, supra note 123, at 1220; Montevideo Convention on the Rights and Duties of States, Dec. 26, 1933, 165 U.N.T.S. 19, art. 1 (noting that “the state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government;
Read in conjunction with the UNDRIP, it becomes clear that an indigenous group must first exhaust or be blocked from all possible avenues of achieving adequate internal self-determination inside the existing State’s framework. If such is the case, a right to external self-determination and unilateral secession remains the last resort. The indigenous group can then endeavor to prove it can meet all four of Anderson’s factors to successfully assert a right to external self-determination and unilaterally secede.

D. Modes of Self-Determination & Implications for Natural Resource Sovereignty

Like the right to self-determination itself, the right to sovereignty over natural resources under international law has evolved over time. Soon after the UN Charter’s creation, discourse on the self-determination of peoples and sovereignty over natural resources tended to solely focus on how these concepts apply to non-self-governing peoples undergoing decolonization and newly independent States. However, newer declarations account for the evolution of international circumstances by evolving self-determination and natural resource sovereignty rights accordingly.

More recently, indigenous peoples’ rights to natural resources on their ancestral lands “are inextricably linked to the right to enjoy their culture and to preserve their identity and natural environment” under international human rights law. The UN Special Rapporteur on the right to food stressed the link between sovereignty over natural resources and access to lands in his 2010 report to the General Assembly—specifically referring to indigenous peoples as a group whose rights to such natural resources ought to be protected.

and (d) capacity to enter into relations with the other states”). When construing the criterion that a state must be able to have the capacity to enter into relations with other states, there is no need to see evidence of that capacity effectuated in fact. Scholars evaluate fulfillment of this criterion by viewing “the degree of independence possessed by an entity . . . if all States are equal in terms of international legal personality, then a sovereign State is accountable to no other [State or entity] outside the institution of international law.” Sascha Dov Bachmann & Martinas Prazauskas, The Status of Unrecognized Quasi-States and Their Responsibilities Under the Montevideo Convention, 52 INT’L. LAW 393, 408-09 (2019).

147 See UNDRIP, supra note 15; Reference re Secession of Quebec, supra note 128.
148 Reference re Secession of Quebec, supra note 128.
149 See UNDRIP, supra note 15; Anderson, supra note 123.
150 Nicolaas Schrijver, Self-determination of peoples and sovereignty over natural wealth and resources, in REALIZING RT. TO DEV. 95, 96 (2013).
151 Id. at 100-01.
152 Id. at 96-100.
153 Id at 99.
154 Id at 100.
Several UNDRIP articles authorize indigenous peoples a level of sovereignty over natural resources on their ancestral lands. Article 26(1) explicitly grants indigenous peoples “the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.” In addition, several articles favor indigenous peoples having a meaningful role in their State’s governments when it concerns natural resources on their ancestral land. This prioritization of managing natural resources inside a State’s existing framework therefore mirrors the prioritization of having indigenous peoples exercise a right to internal self-determination before assessing any right to external self-determination and secession.

Nevertheless, a right to external self-determination must remain an option of last resort for indigenous peoples living under a State government that grossly fails to respect the rights accorded to their indigenous populations under the UNDRIP and Friendly Declaration. There is no clear answer to whether a newly-seceded state can assert sole sovereignty over its natural resources. Nevertheless, an indigenous people’s exercise of external self-determination should allow the assertion of sole sovereignty over natural resources on such lands.

A legal basis for the assertion of sole sovereignty of natural resources after the proper exercise of external self-determination can be found under UNDRIP Articles 10, 28, and 8(2)(b). UNDRIP Articles 10 and 28 provide indigenous peoples the right to restitution if their traditionally-owned lands and resources have been “confiscated, taken, occupied, used or damaged without their free, prior and informed consent.” Compensation “shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.” Lastly, Article 8(2)(b) requires States to provide effective mechanisms for prevention of, and redress for, “any action which has the aim or effect of dispossessing” indigenous peoples “of their lands, territories or resources.” Read holistically, these articles may grant indigenous peoples an avenue for external relief should they exhaust all available domestic remedies in seeking

155 UNDRIP, supra note 15, at art. 26(1).
156 Id., at arts. 4, 46(1), 26, 32.
157 Reference re Secession of Quebec, supra note 126; id. at arts. 4, 46(1).
158 Reference re Secession of Quebec, supra note 126; UNDRIP, supra note 15, at arts. 10, 28, 8(2)(b), 26.
159 UNDRIP, supra note 15, at arts. 10, 28, 8(2)(b).
160 Id., at arts. 10, 28.
161 Id.
162 Id., at art. 8(2)(b).
to assert a meaningful role in their State’s governments when it concerns natural resources on their ancestral land.

Arguably, the consistent grant of self-determination to “all peoples” in the ICCPR, ICESCR, and Friendly Declaration denotes that no specific group inside a State should have exclusive rights to its natural resources. In turn, “all peoples” must have the right to “freely pursue their economic” development, which necessarily includes the free use “of their natural wealth and resources.”

Because of these provisions, an indigenous group’s newly-seceded state exercising sole sovereignty over the land’s natural resources would unfairly deprive the peoples of its former host State from the free use “of their natural wealth and resources.”

This argument may have merit if an indigenous group asserts their right to internal self-determination inside a State’s existing framework. Under such circumstances, the indigenous group would not have exhausted all available domestic remedies—and a State structure where the indigenous group has a meaningful role in the administration of natural resources inside their semi-autonomous region can materialize.

However, once an indigenous group secedes from its host State—in accordance with Anderson’s factors for unilateral secession—the respective region transforms into a State of its own. In turn, the principle of sovereign equality of States kicks into effect. Specifically, the newly-seceded state inherits the right to freely “choose and develop its political, social, economic and cultural systems”—and the host State “has the duty to respect the personality of” the newly-seceded State. Territories that have seceded in the past further reinforce the idea that newly-seceded States should have the right to exercise sole sovereignty over natural resources on their lands—including Kosovo and several newly-independent trust territories such as Malta, Morocco, and Rwanda.

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163 ICCPR, supra note 15, at arts. 1(1), 1(2); ICESCR, supra note 15, at arts. 1(1), 1(2); Friendly Declaration, supra note 15.
164 Id.
165 See UNDRIP, supra note 15, at arts. 4, 46(1), 26, 32.
166 See supra notes 97-118 and accompanying text (including that a proper right to unilateral non-colonial secession requires fulfillment of all Montevideo criteria for statehood).
167 Id.
In turn, an indigenous population’s sovereignty over natural resources on their ancestral lands is directly linked to existing modes of self-determination. Much like the prioritization of internal self-determination itself, international law favors granting indigenous peoples a right to a meaningful role in decisions regarding natural resources on their lands within their ruling State’s existing framework. Nevertheless, if all domestic avenues are exhausted and the Anderson factors apply, then indigenous peoples should have a right to external self-determination as a last resort—which would include sole sovereignty over natural resources in the newly-seceded territory.

IV. IMPORTANCE OF A RIGHT TO SELF-DETERMINATION FOR MIDDLE EASTERN AND SOUTH CAUCASIAN INDIGENOUS PEOPLES

Territorial integrity and state sovereignty receive high priority under international law. However, “it is incumbent not to elevate the principles of state sovereignty and territorial integrity to such stratospheric heights that they lose all connection with their basal purpose—providing a territorial political unit for the benefit of human beings.” For many of these groups, the basal purpose behind territorial integrity has either been frustrated or bogged down significantly over time.

The selected groups have experienced significant repression, cultural erasure, and violent atrocities by their home governments over a consistent and long period of time. Demanding that these groups continue existing under the status quo could result in an eventual genocide—amounting to the most extreme denial of the right to self-determination. In such situations,

170 Anderson, supra note 123, at 1253-54; see also Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 2010 I.C.J. 403, 575-76, ¶ 129 (July 22) (separate opinion by Trindade, C.) (“International administration of territory does not appear as an end in itself — not international administration of territory for territorial administration’s sake — but rather as a means to an end, namely, to secure the well-being of the ‘people’ or the ‘population,’ and the inhabitant living under the rule of law in a democratic society”).
“it is important to consider whether a change of political control over territory is necessarily a negative phenomenon.”

The following sections discuss the importance of a right to self-determination for the selected groups in turn, with NK Armenians discussed in Part A, Talysh of southern Azerbaijan discussed in Part B, and Assyrians of northern Iraq discussed in Part C.

A. Nagorno-Karabakh (NK) Armenians

NK—referred to by its Armenian population as the Republic of Artsakh—has seen intense conflict and tragedy for over a century. Dispute over the region’s status began after the 1917 Russian Revolution, when Russian troops retreated from the Caucasus. During this time, both Armenia and Azerbaijan claimed the region after both nations gained independence in 1918. A congress elected by the region’s residents voted unanimously to join the Armenian Republic. However, the Soviet Union placed the region inside Soviet Azerbaijan’s borders. Despite this decision, NK still “maintained its autonomous status throughout the USSR period.” Demands for autonomy led Azerbaijani authorities to retaliate through various means, including indiscriminate mass killings, sexual violence, and live burning of Armenians in the region during the 1920s, 1980s, and 1990s. Further, Azerbaijani authorities denied the region’s Armenians of “Armenian-language textbooks in schools and television broadcasting in their own language.”

In 1926, USSR censuses reported that “89.1 percent of the region’s residents were Armenian, and 10 percent were Azerbaijani. By 1989 . . . the population was 76.9 percent Armenian and 21.5 percent Azerbaijani.”

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172 Anderson, supra note 123, at 1254.
174 Baghdassarian, supra note 173.
175 Id.
176 Id.
177 Id., at 11.
178 Center for Preventative Action, supra note 6.
179 Baghdassarian, supra note 173.
180 Id.
181 Id.; All-Union census of the population of 1926: National composition of the population by regions of the republics of the USSR, DEMOSCOPE WkLY. http://www.demoscope.ru/
Azerbaijan’s former president Heydar Aliyev admitted in a 2002 interview that “he had tried to increase the number of Azerbaijanis and reduce the number of Armenians living in the region while he was Soviet Communist Party Administrator.”182

From the USSR’s dissolution in 1991 to 2021, armed Armenian groups in NK and Azerbaijani authorities violently fought for control over the region—leading to mass casualties and displacement of ethnic Armenians and Azerbaijanis.183 Ethnic Armenian forces took control over the region, alongside surrounding districts inside Azerbaijan, to ensure “contiguity with the Republic of Armenia and a security buffer zone.”184

The NK region continues to assert autonomy as the Republic of Artsakh, despite receiving no international recognition of its de facto independence.185 Meanwhile, animosity has grown in Azerbaijan against its Armenian population.186 Government officials, media, and school textbooks have dehumanized Armenians for decades, portraying them as the Azerbaijani people’s greatest enemy. In turn, “an entire generation of Azerbaijanis has now grown up” listening to Armenophobic rhetoric.187

Once Azerbaijani forces took control of areas in and around NK in 2020, numerous attacks against Armenian civilians began.188 Human Rights Watch reported several cases where “Azerbaijani forces used violence to detain civilians and subjected them to torture,” as well as “inhuman and

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184 Baghdassarian, supra note 173.


187 Id. at 9.

degrading conditions of detention.” Azerbajani authorities detained these civilians, including elderly people, even though no evidence indicated that they posed a security threat to Azerbaijan—”they had no weapons and did not participate in the hostilities.”

Examples of elderly NK Armenians facing war crimes in Nagorno-Karabakh include the stories of Slavik Galstyan, sixty-eight years old, and Valery Phoghosyan, seventy years old. In October 2020, Slavik Galstyan refused to leave his home after Azerbaijani forces invaded. Over two months later, Galstyan’s body was found—with “a death certificate issued by the Armenian authorities concluding that his death was the result of traumatic blood loss from shooting injuries to his chest, stomach, and other internal organs.” Galstyan’s son identified his father at the morgue, and found “his father’s body appeared mutilated beyond the injuries that had caused his death.” Specifically, Galstyan’s son described Galstyan’s corpse as follows: “His head was crushed, it was as if all the bones in his body had been broken, he was like a [slab of] meat.”

Valery Poghosyan tried to escape Nagorno-Karabakh on foot while unarmed in October 2020 when he saw soldiers he believed were Azerbaijani forces. The soldiers grabbed Poghosyan and took him to an informal encampment, where he joined two other older men from his village. A video circulated online showed Poghosyan and the two men lying flat in a vehicle bed as men in uniform kicked them. At the encampment, Poghosyan and the men were detained in a cell. The soldiers ordered one of the Armenian men to say “Karabakh is [part of] Azerbaijan.” When the Armenian man refused, the soldiers kicked and beat him—Poghosyan never saw the man again. The soldiers later transported Poghosyan to a detention facility in Baku, where Azerbaijani authorities repeatedly interrogated him to find whether or not Poghosyan took part in the First Nagorno-Karabakh

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190 Id.
191 Id. at 6.
192 Id.
193 Id.
194 Id.
195 Id.
196 Id. at 22.
197 Id.
198 Id.
199 Id.
200 Id.
201 Id.
War as an Armenian soldier. One interrogation “led to a mock execution, where officers stood [Poghosyan] against a courtyard wall and pretended they were about to shoot him.”

The Azerbaijani military also desecrated ancient Armenian cultural property and cemeteries in Nagorno-Karabakh, with the government propagating misinformation that ancient Armenian churches in the region have historically belonged to the Udi population. In reality, the Udi population is a group indigenous to northern Azerbaijan and southern Dagestan—areas that do not overlap with the Nagorno-Karabakh region.

A future where Nagorno-Karabakh re integrates into Azerbaijan de facto has led to intense ethnic cleansing—with practically the entire Armenian population of Nagorno-Karabakh forcibly displaced to Armenia after Azerbaijan conducted months-long blockade that starved the NK Armenian population—and seized the entire region from NK Armenian defending troops.

Azerbaijanis claiming to be “eco-activists,” with the Azerbaijani government’s support, blocked the only road connecting Nagorno-Karabakh to Armenia and the world beyond—known as the Lachin Corridor. Amnesty International called the blockade a humanitarian crisis. The blockade led to severe shortages of food, life-saving medication, healthcare, hygiene products, and baby essentials. Patients in critical condition at a hospital in the region’s capital Stepanakert remained “in a health facility where appropriate care was not available, resulting in several preventable deaths.”

202 Id.
203 Id.
208 Azerbaijan: Blockade of Lachin Corridor putting thousands of lives in peril must be immediately lifted, supra note 3.
209 Id.
210 Id.
Disruptions to electricity and natural gas from Azerbaijan added to the extreme hardship.\footnote{Id.} Mothers with premature babies were compelled to take turns using one incubator due to the electricity shortage.\footnote{Id.} Heating and electricity shortages led to a temporary closure of schools and kindergartens in Nagorno-Karabakh—effectively impacting 27,000 children.\footnote{Id.} Food rationing due to shortages from the blockade directly resulted in “a significant increase in cases of immunodeficiencies, anemia, thyroid disease, and worsened diabetes conditions among women and children.”\footnote{Id.} The blockade forced 782 businesses in Nagorno-Karabakh to shut down, resulting in 1,170 people losing their jobs.\footnote{Id.}

In the ICJ case Armenia v. Azerbaijan, the Court indicated that Azerbaijan shall “take all measures at its disposal to ensure unimpeded movement of persons, vehicles and cargo along the Lachin Corridor in both directions.”\footnote{Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Arm. v. Azer.), Order, 2023 I.C.J. 180, ¶ 62 (Feb. 22).} The Court’s power to indicate provisional measures “is roughly equivalent to” an interim injunction, which the Court normally only accedes to “if there is the possibility that the object of the litigation will be prejudiced by the action of the respondent State.”\footnote{Sheila Paylan, When Might Is Wrong: Addressing Azerbaijan’s Refusal to Comply with the ICJ’s Order to Unblock the Lachin Corridor, OPINIOJURIS (Mar. 16, 2023), https://opiniojuris.org/2023/03/16/when-might-is-wrong-addressing-azerbaijans-refusal-to-comply-with-the-icjs-order-to-unblock-the-lachin-corridor/.}

Despite this indication of provisional measures having a binding effect on Azerbaijan,\footnote{See id.; Azerbaijan: Blockade of Lachin Corridor putting thousands of lives in peril must be immediately lifted, supra note 3.} the state authorities blatantly refused to comply with the Order.\footnote{Center for Preventive Action, supra note 6.} These “eco-activists”—“widely believed to be backed by [Azerbaijan’s] authorities”—continued to block the Lachin Corridor for nine months.\footnote{Id.} On September 19, 2023, “days after an agreement to reopen the Lachin Corridor for aid deliveries sparked hopes of easing the crisis, Azerbaijan launched an ‘anti-terrorist’ offensive in Nagorno-Karabakh.”\footnote{Id.}

About a week later, the Republic of Artsakh’s president signed a decree to dissolve the Republic of Artsakh’s government by January 2024 amid

\begin{flushleft}
\textsuperscript{211} Id.
\textsuperscript{212} Id.
\textsuperscript{213} Id.
\textsuperscript{214} Id.
\textsuperscript{217} SHABTAI ROSENNE, WORLD COURT: WHAT IT IS AND HOW IT WORKS 95 (Terry D. Gill ed. 1989).
\textsuperscript{218} Application of the International Convention on the Elimination of All Forms of Racial Discrimination, supra note 216, ¶ 65.
\textsuperscript{220} See id.; Azerbaijan: Blockade of Lachin Corridor putting thousands of lives in peril must be immediately lifted, supra note 3.
\textsuperscript{221} Center for Preventive Action, supra note 6.
\end{flushleft}
mounting pressure from the months-long starvation-inducing blockade and military incursion.\footnote{Ebel, supra note 7; Gavin, supra note 7; Maranci, supra note 7.} As a result, nearly the entire NK Armenian population fled Nagorno-Karabakh, leaving the region emptied of its indigenous Armenian population for the first time in nearly 1,200 years.\footnote{Compare Pjotr Sauer, ‘It’s a ghost town’: UN arrives in Nagorno-Karabakh to find ethnic Armenians have fled, GUARDIAN (Oct. 2, 2023), https://www.theguardian.com/world/2023/oct/02/nagorno-karabakh-ghost-town-un-ethnic-armenians-azerbaijan, with discussion infra Section II(A); see also Know Your Facts: A Historical Overview of Artsakh, ARM. MUSEUM AM. (last visited Jan. 10, 2024), https://www.armenianmuseum.org/artsakh.}

Considering how Azerbaijani authorities have treated Armenians and their cultural heritage in regions that fell under their control, the resulting ethnic cleansing of Nagorno-Karabakh after a \textit{de facto} integration of the region into Azerbaijan is far from shocking.\footnote{See, e.g., Karnig Kerkonian, Op-Ed: In Artsakh (Nagorno-Karabakh), the Answer is Self-Determination Not Subjugation, ZARTONK MEDIA (Jan. 25, 2023), https://zartonkmedia.com/2023/01/25/op-ed-in-artsakh-nagorno-karabakh-the-answer-is-self-determination-not-subjugation/ (“Azerbaijan has already ethnically cleansed Armenians from every city that has fallen under its authority and control. There are no more Armenians in Baku, Sumgait, Kirovabad, Nakhichevan—and, since 2020, there are none in Shushi and Hadrut either. The pogroms, massacres, and/or war crimes committed by Azerbaijan against Armenians in those areas are a well-documented and dark chapter of Azerbaijan’s treatment of Armenians—a chapter that simply will not end.”).} In Nakhichevan—another historically Armenian region granted to Azerbaijan during Soviet rule that remains part of Azerbaijan\footnote{See Nakchivan, OXFORD DICTIONARY LATE ANTIQUITY (2018), https://www.oxfordreference.com/turing.library.northwestern.edu/display/10.1093/acref/9780198662778.001.0001/acref-9780198662778-e-5308?sessionid=5BE06465171A1FABBDA6EA2CF0192B36 (“Located north of the Araxes, and known as Nazouana to Ptolemy (V, 12, 5), the city, in existence already during the Erundumian/Oriental Armenian kingdom (4th–2nd cent. BC), formed part of the road system connecting Iran with the shores of the Black Sea through the successive Armenian capitals of Erundashat, Armawir, Artashat, and Valarshapat (Valărşapat) . . . In 705, after an Armenian rebellion, the naxarars (nakhvans; noble) were burned in churches in Nakchivan and Goltu (Goght’n); thus an entire senior generation of the nobility perished”); see also Naxşivan, BRITANNICA (last updated June 1, 2017), https://www.britannica.com/place/Naxxiv-an-republic-Azerbaijan; From ancient times until today, NAKCHIVAN AUTONOMOUS REPUBLIC, https://nakchivan.preslib.az/en_b1.html (last visited March 30, 2023) (current regime of Nakchivan Autonomous Republic explicitly denying any historical claim Armenians have to Nakchichevan).}—ninety-eight percent of Armenian cultural heritage sites have been destroyed.\footnote{David Nutt, Reports shows near-total erasure of Armenian heritage sites, CORNELL CHRON. (Sept. 12, 2022) https://news.cornell.edu/stories/2022/09/report-shows-near-total-erasure-armenian-heritage-sites.} This eradication is a “striking portrait of cultural erasure that, in its surgical precision, totality, and surreptitiousness, has few parallels.”\footnote{Silent Erasure: A Satellite Investigation of the Destruction of Armenian Cultural Heritage in Nakchivan, AZERBAIJAN, CAUCASUS HERITAGE WATCH (Nov. 15, 2022) https://storymaps.arcgis.com/stories/48703f664f2f467bbf4f42008d8c75da.} Amid the mass exodus of NK Armenians from Nagorno-Karabakh, Azerbaijani authorities encouraged NK
Armenians to stay in Nagorno-Karabakh and “be part of a multi-ethnic Azerbaijan” and offered Azerbaijani citizenship. But given such history of intense violence, animosity, discrimination, and cultural erasure, NK Armenians “have had little reason to believe the Azerbaijani government’s promises of a peaceful life under Azerbaijani rule.” In turn, the rise and fall of the Republic of Artsakh—and the resulting mass exodus of NK Armenians off their indigenous land—has shown the dire need to assess the Nagorno-Karabakh Armenians’ right to self-determination under international law.

B. Talysh of Southern Azerbaijan

The Talysh of southern Azerbaijan have experienced repression and backlash by the Azerbaijani government for their cultural practices and separatist ideology. In June 1993, inspired by the Armenian population’s success in asserting de facto autonomy in NK, a Talysh army colonel declared the formation of the Talysh-Mughan Republic in southern Azerbaijan. The republic’s autonomous status only lasted two months. Azerbaijani authorities arrested the colonel and sentenced him to death—later amending the sentence to life in prison. The Council of Europe then pressured Azerbaijani authorities into releasing the colonel. But the Talysh National Movement continued its operations, now inside the framework of a unitary Azerbaijani state.

However, historical repression of Talysh identity led the Talysh people to an internalized self-repression and a nebulous sense of their ethnic

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229 Kucera, supra note 188.

230 See Asbarez Staff, Artsakh Calls for International Acknowledgment of its Independence, ASBAREZ (Feb. 24, 2023), https://www.asbarez.com/artsakh-calls-for-international-acknowledgement-of-its-independence/ (Republic of Artsakh’s foreign minister stating that “the recognition of independence of Artsakh by the international community is a means to stop the mass and regular violations of the rights of the people of Artsakh”).

231 Azerbaijan: Talysh, supra note 75; see also Özmen, supra note 40 (the Talysh-Mughan Autonomous Republic was formed by an army colonel in order to protect their language and culture by pushing for land independence).

232 Id.

233 Id.

234 Id.

235 Id.
Azerbaijani law “provides not more than two hours per week of Talysh language lessons. There is also a shortage of teachers and teaching materials.” Numerous human rights reports on the region repeat the Talysh community’s dissatisfaction with the limited ability to pass on their language and culture to future generations.

UNESCO includes the Talysh language in its list of endangered languages, classifying it as vulnerable. Azerbaijani authorities also imprisoned various Talysh intellectuals who created textbooks on the Talysh language or ran Talysh-language media outlets, alongside shutting down operations of the media outlets themselves. Key advocates in the Talysh community died under suspicious conditions while in Azerbaijani prisons. Rahim Shaliyev, a Talysh activist and journalist, accused the Azerbaijani government of “trying to root out scientific research on the Talysh language and history by arresting and killing these people.”

Such conditions led Talysh activists to push for greater autonomy to properly preserve their language and culture. However, the Azerbaijani government has repressed Talysh identity and punished separatist ideology to the point that such calls for independence gain little mainstream support in Azerbaijan’s Talysh community. This lack of mainstream support among Azerbaijan’s Talysh community is likely due to the population having “a nebulous sense of Talysh identity,” with Talysh people often expressing

237 Azerbaijan: Talysh, supra note 75.
241 Prominent Talysh activist dies in prison in Azerbaijan, supra note 240.
242 Id.
“ambiguity toward their own sense of Talyshness.” 245 Researchers argue these responses reflect the long history of the Azerbaijani government’s marginalization of the Talysh people and repression of their cultural expression and preservation. 246

Although the Talysh community’s resolve in seeking land independence has yielded mixed support inside its own community, the Talysh advocates continue to demand greater autonomy for the Talysh population in southern Azerbaijan. 247 Specifically, Talysh advocates inside Azerbaijan demand greater autonomy over preserving their cultural heritage and advocating for greater respect as a minority population in Azerbaijan. 248 Fakhraddin Abbasov, the exiled Talysh-Mughan Autonomous Republic Chairman, reaffirmed the need for greater Talysh autonomy after fleeing Azerbaijan to Russia in October 2008—when the Azerbaijani government began cracking down on political dissent by arbitrarily arresting and detaining civil society activists. 249 In 2019, Russian authorities extradited Abbasov from Moscow to Baku—where Azerbaijani authorities detained him for “promoting anti-state activities and inciting ethnic discord.” 250 In 2020, Abbasov died in Azerbaijani prison by allegedly committing suicide. Talysh human rights defender Ogtay Asgarov published a statement written by Abbasov regarding his detention, telling his loved ones and supporters “that under no circumstances [should they] believe that I have committed suicide.” 251

245 Özmen, supra note 40.


247 Talysh, UNREPRESENTED NATIONS & PEOPLES ORG. (July 8, 2015), https://unpo.org/members/17338 (the movement’s advocates call for “a Talysh province with regional co-governance within the borders of Azerbaijan” through “a decentralization of power so as to promote fairer representation of minority groups”); Alternative Report, supra note 75.


251 Prominent Talysh activist dies in prison in Azerbaijan, supra note 240.
C. Assyrian of Northern Iraq

For centuries, the Assyrians of northern Iraq have sought autonomy “in the Nineveh region where they can be politically independent to protect their status as a people group.” Such demands mainly derive from the numerous atrocities that the Assyrian people have endured in northern Iraq throughout history. After Arab troops conquered northern Iraq in 651 CE, Assyrians “were often treated as second-class citizens.”

During the Armenian, Assyrian, and Greek Genocide in 1915, the Turkish Ottoman Empire killed between 175,000 and 250,000 Assyrians—with nearly two-thirds of the global Assyrian population reduced by the end of World War I.

During World War I, trained Assyrian military regiments fought against Ottoman forces and Kurdish sympathizers in northern Iraq and southern Turkey for the Allied powers. The Allied powers secured Assyrian loyalty by representing that, if the Allies won the war, they would advance the Assyrian people’s national interests. However, after World War I, Assyrian dignitaries’ attempts to assert national rights at various international conferences—including the League of Nations—were unsuccessful. Over time, “it became increasingly clear that the promises” Allied powers “made to Assyrians had effectively been nullified.”

The Iraqi government then proceeded to vehemently oppose Assyrian self-governance. Iraqi General Bakr Sidqi ordered a large-scale massacre of Assyrian civilians at Simele in 1933 and forcibly converted the population to Islam under the threat of death.

Assyrians of northern Iraq continued to suffer under the Saddam Hussein regime. According to the UN Special Rapporteur of the Commission on Human Rights, Assyrian populations endured destruction of their villages and churches, alongside killings of their civilians, throughout Saddam Hussein’s rule. More recently, Assyrians of northern Iraq suffered even

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254 Isaac, supra note 17, at 215.
255 Id. at 216.
256 Id.
258 Isaac, supra note 17, at 216.
259 Assyrian Genocide in Modern History, ASSYRIAN POL’Y INST. 8-9 (2019), https://docs.wixstatic.com/ugd/6ae567_2baeeb49f5ec4fa09997290e86410902.pdf.
more death and destruction under the Islamic State’s (“ISIS”) capture of Mosul in 2014.261

Under ISIS occupation, Assyrians and all other non-Muslim groups in the region were ordered to either convert to Islam, pay a non-Muslim tax, leave their homes, or be killed.262 Nearly all of Mosul’s 35,000 to 50,000 Assyrian residents fled the city.263 “ISIS members then marked Assyrian homes with the Arabic letter “noon” to symbolize the word “Nasrani,” a pejorative term meaning Christian.”264

In Erbil, the Chaldean Catholic Church’s Archbishop declared that mass would no longer occur in Mosul for the first time in 1,600 years.265 Roughly 200,000 Assyrian inhabitants of the Nineveh Plan fled to Kurdish-controlled regions of Iraq as ISIS continued to gain territory in the region.266 The UN, European Parliament, U.S. House of Representatives, and U.S. Department of State recognized ISIS’s acts against non-Muslim minorities in Iraq as a genocide.267

Although Assyrian populations have returned to the regions they inhabited before ISIS’s occupation since liberation from ISIS in 2017, many still feel a lack of security.268 Over one million Assyrians in Iraq left the country after the U.S.-led invasion of Iraq in 2003.269 Presently, less than 300,000 Assyrians remain in Iraq.270 Kurdish Peshmerga forces then reclaimed Assyrian-populated territories formerly occupied by the Islamic State—leading the Kurdish Regional Government (“KRG”) to gain greater influence over northern Iraq.271 Such a shift in power also presented its own

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261 Assyrian Genocide in Modern History, supra note 259, at 11-12.
264 Id.
265 Id.
266 Id.
267 Assyrian Genocide in Modern History, supra note 259, at 11.
269 Iraq, ASSYRIAN POL’Y INST., supra note 86.
270 Id.

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unique issues. Notably, several reports accuse Kurdish leaders of not providing adequate infrastructure to areas with high Assyrian populations, allowing illegal landgrabs by Kurdish people of Assyrian people’s property, and arbitrarily detaining Assyrian civilians.272

Moreover, the “Iraqi government lacks effective capacity or incentives to protect Christian communities from abuse.”273 Chaldean Assyrian Syriac Popular Council politicians have expressed fears that “regional persecution, combined with opportunities abroad, will lead to the complete disappearance of Assyrian Christians from their historic homeland.”274 If given autonomy over their indigenous lands, people of the Assyrian diaspora may return to the Nineveh Plains.275

UNESCO listed Assyrian or Aramaic as a “definitely endangered” language with only about 240,000 speakers.276 Such situations demonstrate repeated, explicit attempts by ruling governments to wipe Assyrian presence off their indigenous lands of northern Iraq throughout the past century. A Demand for Action—a non-profit focused on the right of Assyrians, Chaldeans, and Syriacs in the Middle East—expressed that “[t]he only way Assyrian, Chaldean, Syriac Christians and other minorities can remain in their ancestral homeland, which at some level is a prerequisite to their survival, is with some semblance of self-determination and self-protection.”277 Given the constant appeals for Assyrian autonomy that continue today, alongside the consistent inability of ruling governments to protect Assyrians from gross human rights violations and atrocities, a need to evaluate a right to self-determination is highly necessary.

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273 Assyria, supra note 263.


275 Id. at 18-19.


V. DOMESTIC LEGAL MECHANISMS FOR THE SELECTED GROUPS TO EXERCISE A RIGHT TO INTERNAL SELF-DETERMINATION

International law prioritizes maintaining States’ territorial integrity over the right to self-determination.278 Further, the local remedies rule “is a generally observed rule in international law,” where a State must have the opportunity to remedy an “alleged wrong within the framework of its own domestic legal system” before a party can seek relief under international law.279 Exploring the possibility for these groups to assert a right to internal self-determination through mechanisms available inside their existing state frameworks therefore logically precedes an analysis on the possibility of enforcing a right to external self-determination and secession.280 Part A of this section analyzes Azerbaijan’s domestic laws that could grant a right to self-determination, concluding that there is no feasible avenue for NK Armenians or the Talysh people to assert a right to internal self-determination under the current domestic legal framework. Part B analyzes Iraq’s domestic laws that could grant a right to self-determination, concluding that there is a feasible avenue for Assyrians to assert a right to self-determination, but that avenue is being blocked or unenforced.

A. Domestic law in Azerbaijan and the Right to Self-determination

The NK conflict played an important role in shaping the Azerbaijani government’s attitude toward its ethnic minorities and indigenous groups whose indigeneity to the land it has attempted to erase, avoid, or dispute.281 Notably, “[t]here seems to be little space for expression of national minority rights.”

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278 See Nedzad Basic, International Law and Security Dilemmas in Multiethnic States, 8 ANN. SURV. INT’L & COMPAR. L. 1, 7 (2002) (“principles of territorial integrity and non-interference halt the influence of self-determination at” a state’s borders, with international law giving strong regard to preserving a state’s territorial integrity).


280 See Jared Skinner, Comment, Una Solució, Si us Plan: Self-Determination and the Catalan Crisis, 36 EMORY INT’L L. REV. 389, 420 (2022) (“internal self-determination broadly has to do with the exercise of domestic power” which “is done in several ways depending upon the nation”).

identities” in Azerbaijan—particularly if such expressions are done collectively and go beyond a narrow cultural, folkloristic sense.282

Although the Azerbaijani constitution provides protections for ethnic minorities in theory, the country continues to lack comprehensive legislation on the treatment of ethnic minorities.283 At an institutional level, only the Ombudsman Institute deals with issues surrounding minority rights.284 Further, the constitutional provisions on self-determination only provide procedural mechanisms that ensure minority rights cannot survive majoritarian domination.285

Lack of proper legislative implementation of minority rights in Azerbaijan is no accident. Due to “fears of secession and state disintegration, [Azerbaijani] authorities primarily regard the situation of ethnic minorities from the perspective of national security, rather than human rights and inclusion.”286 In fact, “the state institution most engaged with ethnic minorities is [the] Ministry of National Security.”287 The Azerbaijani constitution does, theoretically, have constitutional provisions reflecting a narrower view of self-determination. Article 2 expresses that “[f]reely and independently determining their destiny and establishing their own form of governance are the sovereign rights of the people of Azerbaijan.”288 However, the constitution limits the exercise of this sovereign right to a standard nationwide popular vote, or a nationwide popular-vote referendum.289

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284 Azerbajian, supra note 281.

285 See THE CONSTITUTION OF THE REPUBLIC OF AZERBAIJAN Nov. 12, 1995, art. 3.

286 Azerbajian, supra note 281.

287 Id.


289 See THE CONSTITUTION OF THE REPUBLIC OF AZERBAIJAN Nov. 12, 1995, art. 3 (requiring that the “adoption of the Constitution of the Republic of Azerbaijan and introduction of amendments thereto” and the “alteration of state borders of the Republic of Azerbaijan” can only be resolved through a nationwide popular-vote referendum).
The constitution also has provisions allowing for local self-government through the creation of municipalities. Azerbaijan legislation further elaborates on these provisions through the Law on Municipal Elections and Law on the Status of Municipalities. However, local self-government can only be implemented “within territories approved by the legislature of the Republic of Azerbaijan.” Of note, “the Supreme Council of the Republic of Azerbaijan abolished the status of autonomy for Nagorno-Karabakh” in 1991.

And even if minority groups were able to gain approval from the Azerbaijani legislature to form a municipality, these municipalities “remain unable in practice to exercise the basic functions attributed to them by legislation.” Municipal responsibilities “are even more limited than they are according to legislation, and at best are related to the maintenance of municipal roads, cemeteries and some aspects of the delivery of social care” not covered by the central government. Further, “municipalities have no power to determine the rate of their own taxes and are overall financially dependent” on the state. In turn, local self-government in Azerbaijan practically prevents municipalities from playing a meaningful role in the overall state system.

The Azerbaijani people’s right to self-determination is therefore limited to a majoritarian approach on a national level and subjected to intensely impractical constraints on the local level. These limitations leave ethnic minorities, including indigenous peoples, little to no mechanisms to properly effectuate their own rights to self-determination as provided by appropriate international legal instruments. This notable lack of a domestic legal framework that supports ethnic minorities in general, including indigenous

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295 Id.
296 Id.
peoples, necessarily precludes such groups from having a meaningful role in administering and managing natural resources on their ancestral lands.

Moreover, “[m]inority representatives do not have access either at national or at regional level to an institutionalised mechanism to voice their views on issues of their concern.”297 The Azerbaijani government takes pride in its Baku International Multiculturalism Centre designed “to foster intercultural and interreligious understanding,” but its initiatives “seem to aim more at promoting ‘Azerbaijani multiculturalism’ to the outside world rather than providing a forum for open exchange between different communities” inside Azerbaijani society itself.298 The Centre has an Advisory Council designed to represent members of national and religious minorities.299 However, the council’s “scope is limited to cultural and language issues.”300 Azerbaijani law and policy therefore restricts national minority “access to effective participation in decision making” due to a general “lack of freedom of expression and association.”301 Azerbaijani authorities can theoretically resolve this issue by constitutional amendment, but any introduced amendments also can only be approved through a nationwide popular-vote referendum.302 In turn, the ability for indigenous peoples to successfully assert a right to internal self-determination in Azerbaijan would require comprehensive constitutional reform and faithful implementation of such reforms into Azerbaijani society.

Azerbaijani legal frameworks provide little to no possibility for any ethnic minority to assert a right to internal self-determination inside the country’s borders. The majoritarian approach to exercising the right to self-determination under Azerbaijan’s constitution further sets NK Armenians and the Talysh people up to fail in their respective pursuits to assert a form of internal self-determination. NK Armenians comprise less than two percent of Azerbaijan’s total population, and the Talysh people generously comprise about three percent of the total population.303 There is little to no realistic chance that these groups’ assertion of a right to self-determination could prevail in a nationwide popular-vote referendum—especially given the

299 Id.
300 Id.
301 Id.
302 THE CONSTITUTION OF THE REPUBLIC OF AZERBAIJAN NOV. 12, 1995, art. 3(II)(1).
303 See supra Part II(A) and accompanying notes.
general marginalization these groups face in Azerbaijan systemically and in their daily lives.304

Further, the Azerbaijani government has strongly opposed Armenian autonomy in NK.305 In turn, NK Armenian and Talysh populations in Azerbaijan are completely blocked from asserting a right to internal self-determination. An inquiry of whether NK Armenians could still successfully assert the right to external self-determination as a last resort is therefore required—especially given that this group explicitly desires unilateral secession from Azerbaijan and has now fled in a mass exodus from the region after de facto integration into the Azerbaijani state has occurred.306

But the Talysh National Movement only seeks a right to internal self-determination in Azerbaijan.307 Specifically, the Talysh National Movement’s advocates call for “a Talysh province with regional co-governance within the borders of Azerbaijan” through “a decentralization of power so as to promote fairer representation of minority groups.”308 Thus, an analysis of whether the Talysh can assert a right to external self-determination is unwarranted. Section VIII will address policy proposals to advance mechanisms for internal self-determination in the context of the Talysh people’s situation in southern Azerbaijan.

B. Domestic Law in Iraq, the Right to Self-determination

Unlike Azerbaijani law, Iraqi law provides appropriate guidelines for administering and managing natural resources inside Iraq’s borders, and consequently gives more leeway for ethnic minorities to assert a right to internal self-determination. Article 111 of Iraq’s constitution states that “oil and gas are owned by all the people in Iraq in all the regions and governorates.”309 Article 112 then provides that “the federal government, with the producing governorates and regional governments” shall work in a cooperative relationship to distribute revenues and formulate strategic policies surrounding oil and gas extraction.310

The Federal Supreme Court of Iraq affirmed this cooperative relationship in its interpretation of Articles 111 and 112 when the KRG passed an oil and gas law and attempted to independently extract, export, and

304 See supra Part V(A) and accompanying notes; infra Part V(B) and accompanying notes.
306 Sauer, supra note 223.
307 Talysh, supra note 247.
308 Id.
309 CONSTITUTION OF IRAQ Oct. 15, 2005, art. 111.
310 CONSTITUTION OF IRAQ Oct. 15, 2005, art. 112.
A path toward cooperation and joint management of natural resources inside Iraq’s borders presents a feasible solution for its indigenous peoples.

Article 125 is the strongest constitutional basis for Assyrians to assert a right to internal self-determination in Iraq by guaranteeing “administrative, political, cultural, and educational rights of the various nationalities, such as Turkmen, Chaldeans, Assyrians, and all other constituents.” However, Article 2(1)(A) blocks the enactment of any law “that contradicts the established provisions of Islam” which inherently limits Assyrians’ rights to administration in accordance with their culture and practice as a non-Muslim minority in Iraq. The Iraqi Constitution provides provisions granting a freedom to exercise one’s religion, but a legal framework that inherently prioritizes Islamic law intrinsically constrains non-Muslim minorities, including Assyrians, from fully expressing their identities within a more institutionalized context.

Nevertheless, Iraqi law lays a clear avenue for Assyrians of northern Iraq to assert a right to internal self-determination. Despite this clear avenue for Assyrian self-determination in Iraqi law, “[s]everal key Constitutional provisions, which facially offer protections to minorities,” are yet to be reached.

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315 See CONSTITUTION OF IRAQ Oct. 15, 2005, art. 2(1); Iraq, ASSYRIAN POL’Y INST., supra note 86 (noting that Assyrians are predominantly Christian and that “the majority of Assyrians who remain in Iraq today adhere to the Chaldean and Syriac Churches”).

316 See e.g., Haider Ala Hamoudi, Religious Minorities and Shari’a in Iraqi Courts, 31 B.U. INT’L L. J. 387, 398, 408-09 (2013) https://scholarship.law.pitt.edu/cgi/viewcontent.cgi?article=1440&context=fac_articles (stating an inherent tension between Article 2(1)(A)’s provision prioritizing Islamic law and Article 2(2) that guarantees freedom of religious belief for Muslims and non-Muslim minority groups in Iraq; also detailing a case where a person whose Christian parent converted to Islam necessarily converted the person to Islam as well as dictated under Iraqi law. When the person attempted to register as Christian at the Court of Cassation, their claim to register as Christian was denied three times —and the Federal Supreme Court of Iraq did not indicate a willingness to hear the case).
adequately implemented through legislation “in order to have meaningful impact.”

A local Nineveh Plains government exists in northern Iraq, but the region’s Kurdish population has asserted political and military control over the region since the 2003 U.S.-led invasion of Iraq. Consequently, the Kurdish Democratic Party (KDP) has installed “its own loyalists in the Nineveh Governorate for years, and it often succeeded in doing so in local districts within Nineveh.” In January 2014, “the Iraqi government initiated the process of creating a province in the Nineveh Plain to be used for the protection of religious minorities.” However, the province’s formation “was halted after ISIS seized Mosul in June that same year.”

The impact of ISIS occupation and withdrawal from northern Iraq between 2014 and 2017 further complicates implementation of key constitutional provisions granting Assyrians a right to internal self-determination. In 2014, ISIS overran the Nineveh Plain’s capital of Mosul—leading any former governance in Mosul to collapse. ISIS occupation led to a mass ethnic cleansing and exodus of Assyrians from northern Iraq—drastically reducing the Assyrian population. Given ongoing land disputes between the Iraqi and Kurdish governments in the Nineveh Plains, “neither

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319 Iraq, ASSYRIAN POL’Y INST., supra note 86; Iraq, MINORITY RTS. GRP. (May 2018) https://minorityrights.org/country/iraq/#:~:text=Ethnic%20minorities%20include%20Turkmen%20Shabak,others%20identify%20as%20being%20Kurds (stating that “in regained Assyrian town Batnaya, where Peshmerga forces are stationed, the Kurdish flag is planted high above the destroyed houses of Christian families. In the Assyrian town of Alqosh, the Assyrian mayor Fayez Abed Jawahreh was forcibly and illegally removed from his post by the KRG in July 2017 by the head of the Ninewa Province Council and a member of the KDP. Jawahreh was replaced by a Kurd, who is a member of the KDP”).

320 Dado, supra note 277.

321 Id.

322 See R. Lafta et al., Living in Mosul during the time of ISIS and the military liberation: results from a 40-cluster household survey, 12 CONFLICT & HEALTH 1, 1 (2018) (after ISIS seized Mosul, “a caliphate was established with a repressive bureaucracy to manage city affairs and control the life of its citizens.”)

323 Eric Osborne et al., Intending the Worst: The Case of ISIS’s Specific Intent to Destroy the Christians of Iraq, 46 PEPP. L. REV. 545, 564-68 (2019).
the Iraqi Army nor the Peshmerga contributed to the defense of the Nineveh Plains upon the ISIS offensive.”

In 2019, Kurdish security forces blocked “displaced residents from return, as well as supplies of food, equipment and essentials.” Kurdish officials also “asserted their intention to permanently annex areas” of the Nineveh Plains now under their influence. This continued political and military takeover by Kurdish authorities obstructs “minority communities of the [Nineveh Plains] from fully practicing their right to public participation and self-governance.”

Such events can rise to a violation of the Assyrian people’s right to internal self-determination under Article 125. Litigation of this issue before the Federal Supreme Court of Iraq is necessary. The Iraqi government instituted no actions since the region’s liberation from ISIS occupation to ensure Assyrians can adequately enforce their right to internal self-determination on their indigenous lands—free from external interference by Kurdish political factions.

In fact, lawmakers in Iraq’s Parliament blocked a demand for a new province in the Nineveh Plains to serve as a safe zone for Assyrians in Iraq’s Parliament in 2016. Iraq’s Kurdish population in Iraq has found greater success in exercising its right to internal self-determination and having a meaningful role in managing and administering natural resources in the Kurdistan region. However, the events discussed prove a different fate for

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325 Iraq, MINORITY RTS. GRP, supra note 319; Henriette Johansen et al., Ninewa Plains and Western Ninewa Barriers to Return and Community Resilience, MIDDLE E. RSCH. INST., 4-6 (2019).

326 Iraq, MINORITY RTS. GRP, supra note 319.

327 CONSTITUTION OF IRAQ Oct. 15, 2005, art. 93 (providing that the Federal Supreme Court of Iraq has jurisdiction over interpreting constitutional provisions); but see Adnan Abu Zeed, Iraqi federal court accused of politicization, AL-MONITOR (Mar. 3, 2022), https://www.al-monitor.com/originals/2022/03/iraqi-federal-court-accused-politicization (stating a debate between political researchers, legal researchers, and Iraqi parliament members regarding whether the Federal Supreme Court of Iraq may lack independence due to seemingly politically influenced decisions on sensitive cases); Iraq’s Supreme Court says it cannot dissolve parliament, AL JAZEERA (Sept. 7, 2022), https://www.aljazeera.com/news/2022/9/7/iraq-supreme-court-rules-it-cannot-dissolve-parliament.

328 See Reine Hanna, Testimony for the U.S. Commission on International Religious Freedom: Religious Minorities’ Fight to Remain in Iraq, (Sept. 26, 2019) (stating that “the dangerous security and political status quo” in Iraq “has been upheld” since liberation from ISIS occupation, and that “local governance and security policies have not changed”).

Iraq’s Assyrian population—who have been explicitly denied their right to internal self-determination under Iraq’s constitution.330

In turn, the Federal Supreme Court of Iraq remains the only domestic juridical avenue for Assyrians of northern Iraq. The group can request the Court to interpret Article 125 under its Article 93 constitutional interpretation powers to give effect to Article 125’s autonomous administrative language.331 Specifically, the Federal Supreme Court of Iraq’s rules of procedure allow a litigant to challenge a legislative decision in the country’s parliament.332 Here, the Assyrians of northern Iraq can challenge the legislative decision by Iraq’s parliament to block the bill that would dedicate an Assyrian safe zone in the Nineveh Plains—asserting it violates their right to autonomous administration under Article 125. If the Federal Supreme Court of Iraq denies this claim, the Assyrians of northern Iraq would have exhausted all internal avenues available to adequately assert a right to internal self-determination. In turn, analysis of the Assyrians of northern Iraq’s right to external self-determination is warranted.

VI. ASSESSING THE SELECTED GROUPS’ RIGHT TO EXTERNAL SELF-DETERMINATION UNDER INTERNATIONAL LAW

This section will apply the Anderson factors to determine whether each group can successfully assert a right to external self-determination. According to the Anderson factors, a group’s right to external self-determination exists when the following applies:

333 The State must have discriminated against the group

(1) in “a deliberate, sustained, and systemic nature,” leading to “‘exclusion of any likelihood for a possible peaceful solution within the existing state structure,’” and

330 Compare Wilenburg & Carpenter, supra note 313, and Kurdistan, BRITANNICA (Sept. 9, 2022), https://www.britannica.com/place/Kurdistan (stating that “in Iraq the establishment of a Kurdish autonomous region in 1974 led to some level of self-governance, which increased after the Persian Gulf War and after its autonomy was recognized in Iraq’s 2005 constitution”), with Constitution of Iraq Oct. 15, 2005, art. 125 and MacIntyre, supra note 329.

331 Constitution of Iraq Oct. 15, 2005 (providing that the Federal Supreme Court of Iraq has jurisdiction over interpreting constitutional provisions).


333 Anderson, supra note 123, at 1217-22.
(2) with “sufficient temporal nexus between the alleged discrimination and the resulting claim for [unilateral] secession.”

The group seeking unilateral secession must then

(3) “agree to protect and uphold the human rights of any potential minorities, preferably by way of constitutional guarantees” and

(4) “adhere to the rules for statehood in international law” as enumerated in Article 1 of the 1933 Montevideo Convention and under the peremptory norms of international law (e.g., not taking the territory through illegal use of force).

Given the inherently intertwined nature of assessing the first two factors on discrimination and temporal nexus, the following sections will apply the facts to both standards concurrently. The Talysh of southern Azerbaijan exclusively desire a right to internal self-determination and are therefore discussed in Section VIII. Part A will apply the Andersen factors to NK Armenians and Part B will apply the Andersen factors to the Assyrians of northern Iraq to assess both groups’ rights to external self-determination and—in turn—secession.

A. NK Armenians’ Right to External Self-Determination

Given that NK’s autonomous status is not internationally recognized, this section will review the treatment of Armenians inside Azerbaijan as a whole. This broader analysis is especially important in considering whether NK Armenians can be guaranteed their basic human rights under Azerbaijani jurisdiction, especially given the region’s now-de facto
This article will analyze the NK Armenians’ right to external self-determination with facts from before the Republic of Artsakh government’s September 2023 dissolution decree—which evidenced the NK Armenians’ ability to operate an independent state before external interference led to dissolution and mass exodus under coercive conditions.

1. Deliberate, sustained, and systemic discrimination and temporal nexus

Armenians in Azerbaijan have faced “widespread negative sentiment... in Azerbaijani society” largely due to the NK conflict. Several reports spanning over a decade reveal persistent hate speech by government officials, media outlets, and educational institutions against ethnic Armenians. Several statements by Azerbaijani officials—spanning approximately two decades—indicate a genocidal intent that the Azerbaijani government harbors toward people of Armenian descent. Azerbaijan’s former defense minister Safar Abiyev stated in 2004 that “within the next 25 years there will be no state of Armenia in the South Caucasus. These people have no right to live in this region.” In 2005, Hajibala Abutalybov, the former mayor of Azerbaijan’s capital Baku, told a municipal delegation from Bavaria, Germany that Azerbaijan’s “goal is the complete elimination of Armenians. You, Nazis, already eliminated the Jews in the 1930s and 1940s, right? You should be able to understand us.” The sitting president of Azerbaijan at the time of this paper’s publication—Ilham Aliyev—has kept a tweet on his social media page published in 2015 stating that “Armenia is not even a colony, it is not even worthy of being a servant.”

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339 See Edwards, supra note 228.
344 Id.
345 Id.
2020 Nagorno-Karabakh war, Azerbaijani President Aliyev stated in a televised address that the Azerbaijani army was “driving [NK Armenians] away like dogs! Azerbaijani soldiers drive them away like dogs!” Toward the end of 2020, Azerbaijan released a stamp commemorating their victory in the 2020 Nagorno-Karabakh war depicting a person in a hazmat suit “de-fumigating” Nagorno-Karabakh. In turn, “an entire generation of Azerbaijani is now grown up listening to,” and viewing this hateful and dehumanizing rhetoric toward Armenian people.

A 2012 survey conducted in Azerbaijan showed that ninety-one percent of respondents perceived Armenia as Azerbaijan’s greatest enemy. Azerbaijani media coverage on the NK conflict fails to draw a clear distinction between the Republic of Armenia “and persons of Armenian origin coming under the jurisdiction of Azerbaijan.” Prejudice against Armenians in Azerbaijan “is so ingrained that describing someone as an Armenian in the media is considered . . . to qualify as an insult that justifies initiating judicial proceedings against the persons making such statements.” Ethnic hatred against Armenians in Azerbaijan also includes destruction of Armenian heritage on Azerbaijani lands, including widespread erasure of Armenian cultural heritage in Nakhichevan and NK territories reclaimed by Azerbaijan.

The blockade of the Lachin Corridor, widely believed to be done with the support of Azerbaijani authorities, is also a more recent, extreme example of the treatment of Armenians under Azerbaijani authority. The blockade has led to the deliberate creation of an uninhabitable region, made inhospitable for those of Armenian origin so that they leave their indigenous lands.

Mounting ethnic hatred that leads to discrimination in Armenians’ daily lives has led some Armenians in Azerbaijan to take affirmative steps against

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351 ECRI Report 3, supra note 342, at 19.
352 Id. at 29.
354 See supra notes 204-20 and accompanying text.
355 Id.
their own identity. Systemically, persons of mixed Azerbaijani and Armenian origin intentionally erase their Armenian identity, sometimes by changing their names on government documents. Armenian people in Azerbaijan experience deliberate, sustained, and systemic discrimination. Such discrimination leads to a low likelihood of a possible peaceful solution inside the existing state framework. In turn, the Azerbaijani government’s treatment of Armenians inside its existing state fulfills the first Anderson factor.

Numerous reports indicate that the discrimination Armenians face inside Azerbaijan is mainly due to the NK conflicts. Such reports of this link between discrimination against Armenians and the NK conflicts are consistent from eight years after the First NK War’s ceasefire in 1994, until the present day. The earliest report of this linkage appears in the European Commission against Racism and Intolerance’s (the “ECRI”) report on Azerbaijan’s treatment of minorities in 2002. This linkage then continues to appear in ECRI reports from 2006 until 2023. Therefore, a sufficient temporal nexus exists between the alleged discrimination Armenian people face in Azerbaijan and the resulting claim for unilateral secession. In turn, the Republic of Artsakh fulfills the second Anderson factor.

2. Agreement to protect and uphold the human rights of potential minorities.

The Republic of Artsakh provided NK Armenians certain constitutional guarantees upholding the human rights of potential minorities. Such constitutional guarantees included prohibition of incitement of national, racial, or religious hatred. They also provided national minorities an explicit right to preserve and develop their traditions, religion, language, and culture, and afford a general prohibition of discrimination against national

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356 ECRI Report 3, supra note 342, at 29.


358 ECRI Report 1, supra note 341, at 20.

359 ECRI Report 2, supra note 342, at 27-29; ECRI Report 3, supra note 342, at 18-19; ECRI Report 4, supra note 186; ECRI Report 5, supra note 357.

360 CONSTITUTION OF THE REPUBLIC OF ARTSAKH Feb. 20, 2017, arts. 28, 29, 56, 76 (providing various rights to vulnerable groups, including ethnic minorities, and excepting all such rights from the ability of suspension under a State of Emergency or Martial Law).

361 CONSTITUTION OF THE REPUBLIC OF ARTSAKH Feb. 20, 2017, arts. 28, 29, 56, 76 (providing various rights to vulnerable groups, including ethnic minorities, and excepting all such rights from the ability of suspension under a State of Emergency or Martial Law).
The Republic of Artsakh, therefore, agreed to protect and uphold the human rights of any potential minorities by way of constitutional guarantees and, in turn, fulfilled the third Anderson factor.

Upon receiving internationally-recognized state status under international law, the Republic of Artsakh could willingly submit to international legal instruments and international monitoring mechanism to underscore its commitment to protecting and upholding minority rights in the region. For example, the Republic of Artsakh can feel encouraged to become a party to the Rome Statute, consent to compulsory jurisdiction under the ICJ, and cooperate with Universal Periodic Review under the UN Human Rights Council to prove this commitment to minority rights in more concrete ways. The ruling government’s own constitution explicitly guaranteeing minority rights can reveal an inclination the potentially ruling party has to willingly submit to such instruments and mechanisms on an international level. Nevertheless, submission to these instruments would be sufficient, but not necessary, to fulfill the third Anderson factor because the Republic of Artsakh met this standard by granting minorities explicit constitutional rights under their authority.

3. Adherence to the Montevideo Convention rules for statehood and peremptory norms of international law.

NK Armenians also satisfied the enumerated Montevideo Convention criteria for statehood—including a (a) permanent population, (b) defined territory, (c) government, and (d) capacity to enter into relations with other states. The region had a permanent population defined by official periodic census surveys, a defined territory set out by historical maps before, and constitutional guarantees and exceptions from suspension of rights under a State of Emergency or Martial Law.

362 Constitution of the Republic of Artsakh Feb. 20, 2017, arts. 28, 29, 56, 76 (providing various rights to vulnerable groups, including ethnic minorities, and excepting all such rights from the ability of suspension under a State of Emergency or Martial Law).

363 See Kolodner, supra note 145.

364 Id.

365 Constitution of the Republic of Artsakh Feb. 20, 2017, arts. 28, 29, 56, 76 (providing various rights to vulnerable groups, including ethnic minorities, and excepting all such rights from the ability of suspension under a State of Emergency or Martial Law).

366 See Constitution of the Republic of Artsakh Feb. 20, 2017, arts. 28, 29, 56, 76 (providing various rights to vulnerable groups, including ethnic minorities, and excepting all such rights from the ability of suspension under a State of Emergency or Martial Law).


368 The Results of 2005 Census of the Nagorno-Karabakh Republic, Nagorno-Karabakh Republic (2005), https://web.archive.org/web/20230909154249/http://census.stat-nkr.am/; Nagorno-Karabakh, Minority RTS. GRP., supra note 41 (noting “the NKR held its first census in October 2005, which recorded a total population of 137,737 . . . The last official census took place in 2015 and estimated that the total population was 150,932”).
during, and after Soviet rule, and a “democratically elected, constitutionally based government that possesses[d] full physical control over its claimed territory.” Further, the region’s government had the capacity to enter relations with other states as demonstrated by its “active Ministry of Foreign Affairs that operate[d] permanent diplomatic missions in other countries.”

The most contentious aspect of this requirement, however, is whether NK Armenians took the region through illegal use of force, which would constitute a violation of the peremptory norms of international law. The Azerbaijani government has consistently maintained that the Republic of Armenia—in an act of aggression—invaded Azerbaijan’s internationally-recognized borders and currently occupies the region illegally. However, the NK Armenians were arguably resisting the Azerbaijani government’s attempts to control and ethnically cleanse them off their ancestral land—as indicated by former Azerbaijani President Heydar Aliyev’s admission in that “he had tried to increase the number of Azerbaijani and reduce the number of Armenians living in the region while he was Soviet Communist Party Administrator.” As discussed, NK Armenians did not “occupy” Nagorno-


370 Ajemian, supra note 367.


374 See supra, note 182 and accompanying text. Armed non-state actors do not expressly have a right to self-defense under international law, especially if acting without the explicit and prominent backing of a UN member state. Although armed non-state actors have clear duties under international law, they have no clear rights or exceptions — especially if they are facing violations of customary international law by a UN member state themselves. This can indicate an urgent policy gap under international law and has ensued a scholarly debate. See generally Jessica S. Burniske et al., Armed Non-State Actors and International Human Rights Law: An Analysis of the Practice of the U.N. Security Council and U.N. General Assembly, HAVR. L. SCH. PROGRAM INT’L L. & ARMED CONFLICT 1, 4-30 (2017); Anthea Roberts & Sandesh Sivakumaran, Lawmaking by Nonstate Actors: Engaging Armed Groups in the Creation of International Humanitarian Law, 37 YALE J. INT’L L. 107, 152 (2012); Annie Himes & Brian

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Karabakh, because Nagorno-Karabakh was consistently an ethnic Armenian-majority enclave from the pre-Soviet period until 2023. In response to Nagorno-Karabakh’s December 10, 1991 referendum—where ninety-nine percent of ethnic Armenians voted for independence from Azerbaijan—the Azerbaijani government “launched a military offensive against ethnic Armenians” in the region. In such a context, NK Armenians were defending themselves and the exercise of their right to self-determination through the referendum from Azerbaijani military force. NK Armenians can therefore potentially prove that the land they inhabit adheres “to the rules for statehood in international law” as enumerated in Article 1 of the 1933 Montevideo Convention and under peremptory norms of international law. In turn, the Republic of Artsakh fulfills the fourth Anderson factor. Consequently, NK Armenians can successfully assert a right to external self-determination under the Anderson factors and may be entitled to permanent sovereignty over the region’s natural resources.

**B. Assyrians of Northern Iraq’s Right to External Self-Determination**

1. **Deliberate, sustained, and systemic discrimination and temporal nexus**

   Discrimination of Assyrians in northern Iraq by the Iraqi government traces back to 1933, when Iraqi General Bakr Sidqi ordered a massacre in Simele and sixty-three other Assyrian villages in response to Assyrian demands for self-governance. This massacre killed 6,000 Assyrian civilians. The Iraqi Government does not recognize the Simele Massacre. A mass gravesite in the town remains unmarked and unprotected, with bones exposed and the site littered with waste.

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**Notes:**

375 See discussion infra Sections II(A), IV(A).
377 See supra notes 135-42 and accompanying text (arguing for the purposes of this note that an indigenous group’s newly-seceded state in accordance with the Anderson factors should be allowed to assert sole sovereignty over the land’s natural resources while acknowledging there is disagreement and no clear consensus regarding the issues surrounding sovereignty over natural resources in the context of a newly-seceded State under international law).
378 *Iraq*, supra note 86.
379 *Id.*
380 *Id.*
Assyrians endured more destruction of their villages and churches, alongside civilian deaths, throughout Saddam Hussein’s rule from 1979 until 2003.382 Assyrians faced systemic discrimination by being “denied equal access to jobs, schooling, and ‘physical security.’”383 They were only able to sell their homes to Arab-identifying civilians and could not register or inherit property.384 Saddam Hussein targeted prominent Assyrian activists who opposed such systemic discrimination. Notably, he sentenced the Assyrian Democratic Movement’s founder, Yunadim Yusuf Kanna, to death “for his anti-regime activities.”385

After the U.S.-led invasion of Iraq in 2003, the KDP installed its loyalists in the Nineveh Governorate and bypassed local election processes, in effect denying Assyrians of northern Iraq appropriate political representation.386 Islamic fundamentalist groups also bombed Assyrian churches, set Assyrian businesses on fire, and forced Assyrian women to wear head coverings.387

Under ISIS occupation between 2014 and 2017, Assyrians either had to convert to Islam, pay a tax for non-Muslims, leave their homes, or be killed.388 Nearly all of Mosul’s Assyrian residents fled the region.389 Kurdish Peshmerga forces reclaimed Assyrian-populated territories from ISIS in 2017. Shortly after, Kurdish officials began blocking the Assyrian people’s return to their homes, failing to provide adequate infrastructure to areas with high Assyrian populations—allowing illegal landgrabs of Assyrian people’s properties, and arbitrarily detaining Assyrian civilians.390 Assyrian

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382 U.S. BUREAU CITIZENSHIP & IMMIGR. SERVS., supra note 260.
383 Id.
384 Id.
385 BETH DOUGHERTY, HISTORICAL DICTIONARY OF IRAQ 359 (2019).
Democratic Movement officials “said at least 54 villages have been subject to partial or complete appropriation by Kurds since the 1960s.”\(^{391}\) Several northern Iraqi Christian leaders’ “failures to protect the rights and property of Christians will contribute to the continued decline of the Christian population of Iraq, and the disappearance of Assyrians from their historic homeland.”\(^{392}\)

Such conditions show a deliberate, sustained, and systemic discrimination against Assyrians in northern Iraq that has lasted nearly a century and persisted throughout various changes of leadership in the Nineveh Plains. Although Iraqi law explicitly provides for Assyrians to assert a right to internal self-determination, the Iraqi government has taken no steps to effectuate this right—even blocking assertion of this constitutional right in a parliamentary session.\(^ {393}\)

Thus, there is an “exclusion of any likelihood for a possible peaceful solution within the existing state structure” that Assyrians of northern Iraq can achieve internal self-determination. Given that these listed acts of discrimination have persisted from 1933 until the present day, a sufficient temporal nexus exists between the alleged discrimination and the Assyrian people’s resulting claim for unilateral secession. In turn, the treatment of Assyrians in Iraqi and Kurdish government structures fulfills the first and second Anderson factors.

2. **Agreement to protect and uphold the human rights of potential minorities**

Assyrians of northern Iraq have not drafted a constitution for the Nineveh Plains. However, the Assyrian Democratic Movement, known as “Zowaa,” drafted its own political party constitution with guarantees for minority rights embedded in several articles.\(^ {394}\) Zowaa’s constitution notably advocates for the protection and advancement of women, children, disabled people, and ethnic minorities’ rights across Iraq.\(^ {395}\) The drafting of such a document by a notable Assyrian political party in Iraq can, in turn, potentially serve as an indication that Assyrians of northern Iraq have


\(^ {392}\) Id.

\(^ {393}\) CONSTITUTION OF IRAQ Oct. 15, 2005, art. 125; Zaya, supra note 268 (stating that Iraq’s central government could have prioritized the return of its Indigenous peoples. Instead, it returned to the same security arrangement that led to an Assyrian exodus from the plains in 2014: a U.S.-supported balance of Arab and Kurdish forces claiming the plains as their own); Macintyre, supra note 329.


\(^ {395}\) Id.
implicitly agreed to protect and uphold the human rights of any potential minorities inside the Nineveh Plains.

Upon receiving internationally-recognized state status under international law, the ruling government of the Nineveh Plains could willingly submit to international legal instruments and international monitoring mechanisms to underscore its commitment to protect and uphold minority rights in the region. For example, the Nineveh Plains government can feel encouraged to become a party to the Rome Statute, consent to compulsory jurisdiction under the ICJ, and cooperate with Universal Periodic Review under the UN Human Rights Council to prove this commitment to minority rights in more concrete ways. Assuming the Assyrian Democratic Movement becomes the ruling government of the Nineveh Plains, the political party’s own constitution explicitly guaranteeing minority rights can reveal an inclination the potentially ruling party has to willingly submit to such instruments and mechanisms on an international level. In turn, there is a potential for the Assyrians of northern Iraq to fulfill the third Anderson factor. Fulfillment of the third Anderson factor would be conditional upon the ruling government agreeing to protect and uphold minorities’ human rights through certain means. Such means can include, for example, including enforceable, explicit language protecting minorities’ rights in the Nineveh Plains’ constitution—and submitting to international legal instruments and monitoring mechanisms that include such protections.

3. Adherence to the Montevideo Convention rules for statehood and peremptory norms of international law

Although the Assyrian population in Iraq significantly dropped from 2003 until the present day, an estimated 300,000 Assyrians still remain in the region, with many others returning to regions protected by Assyrian-led forces under the Nineveh Plain Protection Unit (“NPU”). Thus, Assyrians have—at some level, and against the odds—maintained a permanent population inside northern Iraq for centuries.

396 See Kolodner, supra note 145.
397 Id.
398 See Political Platform, supra note 394.
399 See Anderson, supra note 123, at 1217-22.
400 Iraq, supra note 86; Zaya, supra note 268 (“internally displaced Assyrians cite mistrust of security forces as the primary impediment to their return, so it is no surprise that the NPU—the only force made up of locals from the plains—has return rates in areas it controls significantly higher than in areas secured by Kurdish forces or Iran-backed militias alone and higher return rates than all areas controlled by other forces in the plains combined”).
The Nineveh Plains is also the area of northern Iraq that Assyrians specifically continue to demand autonomy over.\footnote{Iraq, supra note 86; Shamiran Mako, Address to the U.N. Commission on Human Rights Subcommittee on the Promotion and Protection of Human Rights Working Group on Minorities on The Current Situation of the Indigenous Assyrians of Iraq (May 30, 2005).} More contemporary and historical maps provide a defined territory for this region inside present-day Iraq.\footnote{See Assyria Maps, ASSYRIAN INFO. MGMT., https://www.atour.com/maps/ (last visited Dec. 14, 2022).} One of the oldest, presently-known maps including the land of Assyria dates to around the 6th century BCE.\footnote{Tablet, BRITISH MUSEUM, https://www.britishmuseum.org/collection/object/W_1882-0714-509; Catherine Delano Smith, Imago Mundi’s Logo: The Babylonian Map of the World, 48 IMAGO MUNDI 209 (1996), https://www.jstor.org/stable/1151277.} Although the map does not provide a clearly-delineated region, it evidences Assyria’s orientation of being in the modern-days borders of northern Iraq and southeastern Turkey.\footnote{See Tablet, supra note 403.} The 1920 book Our Smallest Ally: A Brief Account of the Assyrian Nation in the Great War, provides a map including the region of Assyria—which encompasses the areas of Alqosh and Mosul in the modern-day Nineveh Plains.\footnote{WIGRAM, supra note 405; J. F. Coakley, Wigram, William Ainger, OXFORD DICTIONARY NAT’L BIOGRAPHY (Sept. 23, 2004), https://www.oxforddnb.com/display/10.1093/ref:odnb9780198614128.001.0001/odnb-9780198614128-e-58374.} Reverend William Aigner Wigram, appointed by the Archbishop of Canterbury to head a mission to the Assyrian Church of the East, authored this 1920 book.\footnote{Iraq, supra note 86; Hanna & Kruczek, supra note 386, at 15-16, 21; Assyrians Stage Protest in Erbil Demanding an End to KDP Interference in Minority Elections, supra note 386.}

The Nineveh Provincial Council technically presides over the Nineveh Plains, although the KDP has now non-democratically controlled the council for a few decades.\footnote{Joseph Naayem, SHALL THIS NATION DIE? 280-81 (1921).} Nevertheless, the Nineveh Provincial Council itself is a governmental body that exists to serve the Nineveh Plains. Lastly, Assyrians of northern Iraq—alongside the Assyrian diaspora—have demonstrated a capacity to enter relations with other states throughout history. Such instances included Assyrian military actions in World War I\footnote{JOSEPH NAAYEM, SHALL THIS NATION DIE? 280-81 (1921).} and the existence of numerous political and humanitarian organizations that now lobby for the Assyrian cause in various foreign, national, and local
governments.\textsuperscript{409} Further, Assyrians have never attempted to reclaim their territory through any means that would be against the peremptory norms of international law since the UN Charter’s ratification in 1945.\textsuperscript{410} The Assyrians of northern Iraq can therefore adhere to the rules for statehood under the Montevideo Convention and the peremptory norms of international law, fulfilling the fourth Anderson factor. In turn, Assyrians of northern Iraq can assert a right to external self-determination under international law and are entitled to permanent sovereignty over the region’s natural resources under international law.\textsuperscript{411}

\section*{VII. MODES OF RELIEF}

This section will only address modes of relief available to the selected groups that may wish to assert a right to external self-determination. NK Armenians actively sought and fought for a right to external self-determination by maintaining governmental control over the NK region and asserting their \textit{de facto} independent status.\textsuperscript{412} Despite signing the dissolution decree under coercive conditions, the Republic of Artsakh’s president—now exiled in Armenia—has maintained that “the Republic of Artsakh is not disbanded, no document can dissolve a state created by the people.”\textsuperscript{413} Such an indication, alongside now-displaced NK Armenians holding hope that they will one day return to Nagorno-Karabakh, reveals that there is still a desire for NK Armenians to regain \textit{de facto} independence.\textsuperscript{414}

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\textsuperscript{411} See \textit{supra} notes 150-69 and accompanying text (arguing for the purposes of this note that an indigenous group’s newly-seceded state in accordance with the Anderson factors should be allowed to assert sole sovereignty over the land’s natural resources while acknowledging there is disagreement and no clear consensus regarding the issues surrounding sovereignty over natural resources in the context of a newly-seceded State under international law).


\textsuperscript{413} Ghazanchyan, \textit{supra} note 61.

The Assyrian Democratic Moment actively seeks semi-autonomous control over the Nineveh Plains under the jurisdiction of the Iraqi government. However, due to the repeated denials of this request by the Iraqi government—the exhaustion of all domestic remedies may eventually necessitate and qualify the Assyrians of northern Iraq to assert a right to external self-determination under international law. Part A analyzes available modes of relief for NK Armenians, and Part B analyzes available modes of relief for the Assyrians of northern Iraq. The Talysh of southern Azerbaijan exclusively desire a right to internal self-determination and are therefore discussed in Section VIII.

A. Modes of Relief: Armenians of Nagorno-Karabakh

Before the September 2023 dissolution decree, NK Armenians fulfilled the four implied requirements for external self-determination. Further, continued NK Armenians have faced intense violence and ethnic cleansing before and after falling under Azerbaijani authority. The Republic of Armenia can spearhead a UNGA resolution requesting the ICJ issue an advisory opinion regarding Nagorno-Karabakh’s status under international law. If passed, the resolution would authorize the ICJ to answer this question of law. However, a series of Security Council resolutions passed in 1993—a few years after NK Armenians declared independence—could possibly lead an ICJ advisory opinion to rule against the legality of the Republic of Artsakh’s independence.

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416 See supra Part IV(C) and accompanying notes.
417 Talysh, supra note 247 (the movement’s advocates call for “a Talysh province with regional co-governance within the borders of Azerbaijan” through “a decentralization of power so as to promote fairer representation of minority groups”).
418 See generally discussion infra Section IV(A).
419 See supra notes 129-49 and accompanying text; Roy, supra note 8.
420 See How the Court Works, I.C.J., https://www.icj-cij.org/en/how-the-court-works (last visited Dec. 14, 2022) (stating that, in accordance with Article 96, paragraph 1 of the Charter of the United Nations “[t]he General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on “any legal question”’’); G.A. Res. 64/298 ¶ 1-2 (Sept. 9, 2010); STATUTE I.C.J. art. 65 (stating that the “Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request”).
Namely, these resolutions demand for immediate, complete, and unconditional withdrawal of “occupying forces” from occupied areas of Azerbaijan.\(^{423}\) Security Council resolutions have binding force under international law.\(^{424}\) However, the ICJ has historically placed limits on the binding effect of Security Council decisions when they “conflict with the principles and purposes in Chapter I of the UN Charter”—which includes the right to self-determination.\(^{425}\)

Thus, NK Armenians can argue that the Security Council resolutions regarding the NK conflict are directly at odds with the principle and purpose in Chapter I of the UN Charter: namely, the right to self-determination and the evolution of this right over time.\(^{426}\) Further, arguments of self-defense can counter the perception that NK Armenians took control of the region through illegal use of force.\(^{427}\) The Security Council resolutions also acknowledge that the Armenians of Nagorno-Karabakh are a party in the conflict distinct from the Republic of Armenia.\(^{428}\) As such, implying that the NK Armenians are “occupying forces” themselves seems contradictory given that they previously and continuously inhabited the territories named in the resolutions themselves.\(^{429}\)

All permanent members of the Security Council either voted against or abstained from voting on the 2008 UNGA Resolution 62/243 regarding the Nagorno-Karabakh conflict.\(^{430}\) The resolution expressed views similar to the

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\(^{423}\) Id.
\(^{426}\) See U.N. Charter art. 1, ¶ 2; discussion infra Section IV(C); East Timor, supra note 125, ¶ 32 (“[w]ithout prejudice to the question whether the resolutions under discussion could be binding in nature, the Court considers as a result that they cannot be regarded as “givens ” which constitute a sufficient basis for determining the dispute between the Parties[]”); Arthur W. Rovine, The World Court Opinion on Namibia, 11 COLUM. J. TRANSNAT’L L. 203, 228-29 (2006); Tadashi Mori, Namibia Opinion Revisited: A Gap in the Current Arguments on the Power of the Security Council, 4 ILSA J. INT’L & COMPAR. L. 121, 128 (1997).
\(^{427}\) Compare Jan A. Hessbruege, Human Rights and Personal Self-Defense, in INTERNATIONAL LAW, OXFORD UNIV. PRESS 316-25 (2017) (arguing that “people and the national liberation movements representing them may engage in militarily organized armed resistance as a last resort, including a full-fledged war of national liberation, if their right to self-determination is forcibly denied due to colonial domination, unlawful alien occupation, or a racist regime”), with supra note 459 and accompanying text.
\(^{428}\) UNSC Resolutions, supra note 422.

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Security Council resolutions on the same topic.\textsuperscript{431} Notably, only 39 states voted in favor of the resolution, with seven against and 100 abstentions.\textsuperscript{432} Although UNGA resolutions are not legally binding, the resolution’s lack of support potentially reveals a shift in Security Council permanent members’ views over time.\textsuperscript{433}

The ICJ’s advisory opinion on Kosovo’s independence—and its recognition by a majority of UN member states shortly after—reveals how a non-binding advisory opinion can influence a shift in customary international law.\textsuperscript{434} 117 out of 193 UN member states presently recognize Kosovo’s independence since the ICJ’s advisory opinion.\textsuperscript{435} Thus, the Republic of Armenia may spearhead an effort for the ICJ to formally decide on the legality of the Republic of Artsakh’s independence under international law. This may serve as a powerful tool for NK Armenians to amass international recognition and more effectively assert a right to external self-determination.

B. Modes of Relief: Assyrians of Northern Iraq

Assyrians of northern Iraq can potentially assert a right to internal or external self-determination under international law. A right to internal self-determination, may take the form of Assyrians seeking enforcement of their constitutional right in federal court under Article 125 of the Iraqi Constitution.\textsuperscript{436} Some view the Federal Supreme Court of Iraq—the highest judicial body that decides constitutional questions—as independent and legitimate enough to render valid judicial decisions on constitutional questions of law.\textsuperscript{437} However, more recent commentary accused the court of

\textsuperscript{431} Compare UNSC Resolutions, supra note 419, with G.A. Res. 62/243, ¶ 1-2 (Apr. 25, 2008).

\textsuperscript{432} Press Release, supra note 430.

\textsuperscript{433} See generally How Decisions are Made at the UN, MODEL UNITED NATIONS, https://www.un.org/en/model-united-nations/how-decisions-are-made-un#:~:text=The%20only%20resolutions%20that%20have,adopted%20by%20the%20Security%20Council.&text=This%20explains%20why%20Member%20States,possible%20agreement%20among%20Member%20States (last visited Dec. 14, 2022).

\textsuperscript{434} How the Court Works, supra note 420 (“the Court’s advisory opinions are associated with its authority and prestige, and a decision by the organ or agency concerned to endorse an opinion is as it were sanctioned by international law.”).


\textsuperscript{436} See CONSTITUTION OF IRAQ Oct. 15, 2005, art. 125.

\textsuperscript{437} Compare Jeremiah Lee, The Iraqi High Court’s Understated Rise to Legitimacy, JURIST (Apr. 23, 2010), https://www.jurist.org/commentary/2010/04/iraqi-high-courts-understated-rise-to/, with David Pimentel, Judicial Independence in Postconflict Iraq: Establishing the Rule of Law in an Islamic
falling under political influence.\footnote{Abu Zeed, supra note 327.} Nevertheless, judicial relief remains the only available \footnote{See discussion infra Section VI(B).} remedy. If this good faith attempt at asserting a right to internal self-determination is subsequently blocked once again, then asserting a right to external self-determination remains the last resort for the Assyrian population’s survival in northern Iraq.\footnote{See discussion infra Section IV(B).} All good-faith attempts to assert a right to internal self-determination would have been effectively blocked by the Iraqi government’s existing framework at such a point and the local remedies rule would apply—enabling the Assyrians of northern Iraq to seek relief under international law.\footnote{Trinidad, supra note 279.}

However, Assyrians of northern Iraq have no easily-accessible avenue of relief under international law to peaceably assert a right to external self-determination. The ICJ is the only court that has the authority to decide whether the Assyrians of northern Iraq can assert a right to external self-determination without violating international law.\footnote{See STATURE OF THE INTERNATIONAL COURT OF JUSTICE art. 1 (defining the ICJ as “the principle judicial organ of the United Nations”).} But the ICJ can only assert jurisdiction over Iraq with the government’s consent because no international legal document surrounding self-determination ratified by Iraq binds state parties to ICJ jurisdiction.\footnote{See generally U.N. Charter; ICCPR, supra note 15; ICESCR, supra note 15; Friendly Declaration, supra note 15; see also Basis of the Court’s jurisdiction, I.C.J., https://www.icj-cij.org/en/basis-of-jurisdiction (last visited Dec. 14, 2022).} Further, Iraq has not submitted to compulsory ICJ jurisdiction.\footnote{Declarations Recognizing the jurisdiction of the Court as compulsory, I.C.J., https://www.icj-cij.org/en/declarations (last visited Dec. 14, 2022).} Given the Iraqi government’s dismissive response to Assyrian claims to self-determination, there is low likelihood that the state would voluntarily submit itself to ICJ jurisdiction on the question of the Assyrian people’s right to self-determination inside their borders.\footnote{See discussion infra Section VI(B).}

If a request for enforcement of Article 125 of the Iraqi Constitution proves fruitless, the Assyrians of northern Iraq can unilaterally assert their right to external self-determination by issuing a declaration of independence. However, in doing so, the group must prepare the Nineveh Plain Protection Units—an Assyrian military defense unit—to protect the region from a
foreseeable consequence of an imminent crackdown by the KRG and Iraqi government. This approach would reflect the initial path that Kosovo took in receiving review of its potential right to external self-determination by the ICJ under international law.446

However, as a matter of policy, international law should not implicitly force indigenous groups to resort to armed conflict to gain the international community’s attention and action—especially given the reasonably foreseeable chance of only more ethnic violence and atrocities occurring as a result of these actions. Thus, the conclusion in Section VIII will, in part, address how international legal policy can advance to better address indigenous peoples’ urgent need for a mode of relief to properly assert a right to external self-determination as a last resort.

VIII. INTERNATIONAL LEGAL POLICY RECOMMENDATIONS TO ADVANCE THE RIGHT TO SELF-DETERMINATION

Two policy concerns color the international right to self-determination. The first policy concern involves the lack of a mode of relief for indigenous groups wishing to assert a right to internal self-determination at the international level if a State has blocked all modes of relief at the domestic level. The second policy concern involves the lack of a mode of relief for indigenous groups wishing to assert a right to external self-determination as a last resort when all paths to asserting a right to internal self-determination have been domestically blocked or exhausted.447

Indigenous groups must have a more accessible avenue to raise self-determination claims at the ICJ. Under existing UN frameworks, the UN Economic and Social Council (the “UNECOSOC”) should allow the UN Permanent Forum on Indigenous Issues (the “UNPFII”) to request advisory opinions from the ICJ on behalf of indigenous groups seeking a right to internal or external self-determination.448 Indigenous groups will then be able

446 See History of Kosovo, BRITTANICA (Nov. 8, 2022), https://www.britannica.com/place/Kosovo/History (“Kosovar Albanians became increasingly frustrated by the failure of their noncooperation campaign to win for them independence or even autonomy from the Serb-dominated Yugoslav government... the Kosovo Liberation Army, a small ethnic Albanian guerrilla organization... began attacking Serbian police and officials in Kosovo” and “stepped up its attacks in 1997... prompting the Yugoslav military, largely a Serbian force, to stage a major crackdown in the rebel-held Drenica region... International negotiators, especially from the United States, met repeatedly with Yugoslav and Kosovar Albanian representatives in an attempt to end the Kosovo conflict”).

447 See discussion defining external self-determination, infra Part IV(C).

448 See U.N. Charter art. 96, ¶ 2 (“other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities”); STATUTE OF THE INTERNATIONAL COURT OF JUSTICE art. 65; Organs and agencies authorized to request advisory opinions, I.C.J.
to apply to the UNPFII to request an assessment of their precise right to self-determination through an ICJ advisory opinion.\textsuperscript{449} Although ICJ advisory opinions are not binding, their subsequent impact on gaining international recognition of a newly-formed state or autonomous region can lead to increased response, enforcement, and intervention when necessary by UN member states.\textsuperscript{450}

The ICJ can then determine the possible forms of self-determination available to the appropriate indigenous group under international law depending on the type of self-determination they wish to assert. The Court can then determine whether the group is entitled to a right to internal self-determination, external self-determination, or either form of self-determination under international law.

Should the ICJ decide an indigenous group is entitled to either form of self-determination, a referendum in the respective region can proceed under independent, international arrangement and monitoring.\textsuperscript{451} Specifically, UNECOSOC can create a subsidiary body that provides independent arrangement, enforcement, and monitoring of referenda in the respective regions, while also determining how much of the population’s vote will constitute a conclusive decision.\textsuperscript{452} During these referenda, indigenous populations can vote whether they want to have greater autonomy inside the existing state or unilaterally secede. If the indigenous population votes for greater autonomy inside the existing state, the UN’s Constitutions Working Group—specifically tasked with providing constitutional drafting and implementation assistance—can help the ruling government amend its constitution and develop implementing legislation so it allows for the group’s right to internal self-determination.\textsuperscript{453}

\textsuperscript{449} Id.

\textsuperscript{450} GER. FED. MINISTRY ECON. COOP. & DEV. U.N., supra note 435.


If the indigenous population votes for unilateral secession, then the region can enter an international trust—similar to trust territories created as a result of decolonization efforts outlined in the UN charter.\(^{454}\) The UN Charter created a now-dissolved Trusteeship Council to aid trust territories in nation building and decolonization.\(^{455}\) The creation of a council similar to the Trusteeship Council can address nation building efforts in newly-seceded or semi-autonomous territories, which could, in turn, ensure internal and global stability with respect to the region’s new status.

This newly-created council can help ensure the region has adequate administrative authorities, legal frameworks, and infrastructure to maintain regional stability. The council can also engage in periodic missions to these territories until it finds that the region is no longer in a transitional phase. Finally, the UNSC can arrange for UN peacekeepers to patrol and help the region develop and maintain regional security during its transitional period.\(^{456}\) Further cultivating international mechanisms to effectuate indigenous people’s right to self-determination can ensure that the right’s enforcement occurs in a peaceable and legitimate framework, as opposed to leaving indigenous groups to fend for themselves.

IX. CONCLUSION

Indigenous peoples of the Middle East and South Caucasus represent some of the world’s most ancient, foundational civilizations.\(^{457}\) Allowing the continued erasure of and violence against the people who developed humanity’s cradle of civilization is not only a tragedy to these indigenous communities of the region, but a tragedy to humanity itself. The international community, as an arbiter of justice, is obliged to ensure these indigenous groups can seek the peaceable, enforceable recourse necessary to ensure preservation of their culture, language, and practices on their ancestral land.

In Azerbaijan, NK Armenians can assert a right to external self-determination under international law. Further developing the appropriate UN bodies as discussed in Section VIII can ensure this group can secure lasting authority over their ancestral land. The Talysh of southern Azerbaijan

\(^{454}\) See U.N. Charter arts. 86-91.


exclusively seek a right to internal self-determination inside Azerbaijan’s existing borders. However, Azerbaijani law facially provides no opportunity for any ethnic minority to assert a right to internal self-determination. This group requires international intervention to ensure they can properly assert a right to internal self-determination.

Assyrians of northern Iraq can assert a right to internal or external self-determination. Iraqi law provides this group a right to internal self-determination. However, no implementation of this right has occurred, and the group has even been actively blocked from exercising the right at certain points in time. Thus, Assyrians of northern Iraq can first seek relief through the Federal Supreme Court of Iraq, then through the ICJ by way of the policy proposals advanced.

UN bodies must provide a comprehensive, enforceable, and legitimate international legal framework for indigenous people’s right to self-determination. Although the UNDRIP marked a significant step in recognizing indigenous people’s right to self-determination, it remains non-binding and vague. Connecting the UNDRIP’s granting of a right to self-determination to the internal or external self-determination framework provided by Reference re Secession of Quebec, and the Anderson factors for assessing unilateral non-colonial secession, paves a road for advancing indigenous people’s right to self-determination in the Middle East, South Caucasus, and beyond.

The advancements proposed will ensure indigenous groups with a necessary right to self-determination and no relief are no longer left to a neglectful or abusive ruling government. The legal advancement of self-determination will ensure that indigenous groups no longer need to resort to armed conflict or endure gross human rights atrocities to capture international attention when all other peaceable modes of exercising internal or external self-determination are blocked. In turn, advancing the right to self-determination will ensure a peaceful and justiciable means of protection for indigenous peoples, assuring the maintenance of a cultural integrity that no dominant power can revise or erase.