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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

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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.<sup>1</sup> The region comprised of an indigenous Armenian majority—until September 2023.<sup>2</sup> In December 2022, Azerbaijani authorities blocked the only road that connected Nagorno-Karabakh to the outside world.<sup>3</sup> This blockade resulted in shortages of food, medical supplies, and fuel, the severity of which was especially felt during a harsh winter.<sup>4</sup>

After experiencing starvation and preventable medical complications under a nine month-long blockade,<sup>5</sup> the Azerbaijani government launched a military incursion on the Republic of Artsakh—claiming it was an “anti-terrorist offensive.”<sup>6</sup> 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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<sup>1</sup> See Pjotr Sauer, *Nagorno-Karabakh’s breakaway government says it will dissolve itself*, Guardian (Sept. 28, 2023), <https://www.theguardian.com/world/2023/sep/28/nagorno-karabakh-separatist-government-says-dissolve-azerbaijan-armenia>.

<sup>2</sup> See discussion *infra* Section IV(A).

<sup>3</sup> *Azerbaijan: Blockade of Lachin Corridor putting thousands of lives in peril must be immediately lifted*, AMNESTY INT’L (Feb. 9, 2023), <https://www.amnesty.org/en/latest/news/2023/02/azerbaijan-blockade-of-lachin-corridor-putting-thousands-of-lives-in-peril-must-be-immediately-lifted/>.

<sup>4</sup> *Id.*; Caolán Magee, ‘We are starving to death:’ Residents of Nagorno-Karabakh fear for future under blockade, CNN (last updated Sept. 7, 2023), <https://www.cnn.com/2023/09/06/europe/nagorno-karabakh-blockade-azerbaijan-armenia-intl-cmd/index.html>.

<sup>5</sup> *Id.*

<sup>6</sup> Center for Preventive Action, *Nagorno-Karabakh Conflict*, COUNCIL FOREIGN RELS. (Oct. 26, 2023), <https://www.cfr.org/global-conflict-tracker/conflict/nagorno-karabakh-conflict>.

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

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.<sup>10</sup> 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.<sup>11</sup> That same year, the Republic of Azerbaijan’s Supreme Council abolished Nagorno-Karabakh from possessing autonomous status.<sup>12</sup>

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.<sup>13</sup> Further, the Armenians of Nagorno-Karabakh cannot directly fight for their interests themselves under international law, given that they have no international legal personality.<sup>14</sup> When it came to advocating for their independence—and

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<sup>7</sup> See Francesca Ebel, *For three decades, Nagorno-Karabakh sought statehood. That quest is dead.*, WASH. POST (Sept. 28, 2023), <https://www.washingtonpost.com/world/2023/09/28/nagorno-karabakh-dissolved-azerbaijan-armenia/>; Gabriel Gavin, *Azerbaijan officially dissolves Nagorno-Karabakh*, POLITICO (Sept. 28, 2023), <https://www.politico.eu/article/nagorno-karabakh-dissolved-azerbaijan-armenia-de-facto-president-samvel-shakhramanyan/>; Christina Maranci, *What Cultural Genocide Looks Like for Armenians in Nagorno-Karabakh*, TIME (Oct. 12, 2023), <https://time.com/6322574/cultural-genocide-armenia-nagorno-karabakh-essay/>.

<sup>8</sup> Diana Roy, *In Photos: The Nagorno-Karabakh Exodus*, COUNCIL FOREIGN RELS. (Oct. 6, 2023), <https://www.cfr.org/article/photos-nagorno-karabakh-exodus>.

<sup>9</sup> Compare discussion *infra* Section II(A), with Roy, *supra* note 8.

<sup>10</sup> See discussion *infra* Sections II(A), IV(A).

<sup>11</sup> See *The Referendum on Independence of the Nagorno-Karabakh Republic*, MINISTRY OF FOREIGN AFFS.: REPUBLIC OF ARTSAKH, <https://web.archive.org/web/20240224075340/https://www.nkr.am/en/independence-referendum-in-karabakh> (last visited Oct. 31, 2023).

<sup>12</sup> MERIBAN MAMEDOCA ET AL., LOCAL GOVERNMENT IN AZERBAISAN IN DEVELOPING NEW RULES IN THE OLD ENVIRONMENT 378 (Igor Munteanu & Victor Popa eds., 2001); Ilham Aliyev, *Armenia-Azerbaijan Conflict*, PRESIDENT OF THE REPUBLIC OF AZERBAIJAN, <https://president.az/en/pages/view/azerbaijan/karabakh> (last visited March 29, 2023).

<sup>13</sup> Aliyev, *supra* note 12; Ebel, *supra* note 7; Roy, *supra* note 8.

<sup>14</sup> See *International Legal Personality*, ICELANDIC HUM. RTS. CTR., <https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/human-rights-actors/international-legal-personality> (last visited Oct. 31, 2023) (stating that only States, international organizations, and individuals facing liability for international crimes have international legal

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.<sup>15</sup> 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).<sup>16</sup> However, there is no authoritative answer regarding what indigenous people's right to self-determination precisely entails.<sup>17</sup>

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.<sup>18</sup> 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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personality); Ebel, *supra* note 7 (noting that the Armenians of Nagorno-Karabakh never received formal international recognition of its independent State status).

<sup>15</sup> See International Covenant on Civil and Political Rights art. 1, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; G.A. Res. 2200A (XXI), International Covenant on Economic, Social, and Cultural Rights (Dec. 16, 1966) [hereinafter ICESCR]; G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples (Sept. 13, 2007) [hereinafter UNDRIP]; G.A. Res. 25 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (Oct. 24, 1970) [hereinafter The Friendly Declaration].

<sup>16</sup> UNDRIP, *supra* note 15.

<sup>17</sup> Paul A. Isaac, *The Urgent Reawakening of the Assyrian Question in an Emerging Iraqi Federalism: The Self-Determination of the Assyrian People*, 29 N. ILL. U. L. REV. 209, 223 (2008).

<sup>18</sup> See generally *Middle East, North Africa & Turkey*, BODLEIAN LIBR. UNIV. OXFORD (Oct. 4, 2022), <https://libguides.bodleian.ox.ac.uk/law-menat/first> (listing Marsh Dwellers, Arab-Bedouins of the Negev Desert, and Palestinians as indigenous peoples of the Middle East); Brooke E. Hamilton, Comment, *Why Indigenous Peoples' Property Rights Matter: Why the United Nations Declaration on the Rights of Indigenous Peoples May be Used to Condemn ISIS and the State of Iraq for their Failure to Protect the Property Rights of Indigenous Peoples in the Nineveh Plains*, 41 AM. INDIAN L. REV. 51, 83 (2016) (identifying Yazidis as an indigenous people of Iraq); James L. Crawford, Comment, *The Continued Persecution of the Kurdish People in Turkey*, 45 AM. INDIAN L. REV. 327, 327 (2021) (suggesting Kurdish people should be classified as an indigenous people under international law); Yousef T. Jabareen, *Linguistic Rights for Minorities and the Quest for Equality: The Case of Arab-Palestinians in Israel*, 25 UNIV. PA. J. L. & SOC. CHANGE 259, 266 (2022) (suggesting that Palestinians in Israel are indigenous to their respective region).

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.<sup>19</sup> However, authoritative legal bodies have not interpreted or implemented these rights to their fullest potential.<sup>20</sup> But even though the implementation of indigenous people’s rights under international law “is far from perfect,”<sup>21</sup> recognition of the selected groups’ indigeneity under international law may introduce important rights recognized by the UN in the UNDRIP.<sup>22</sup> 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.<sup>23</sup> Iraq is a member state of the Organisation for Islamic Cooperation (the “OIC”) and the Arab League.<sup>24</sup> Azerbaijan is a member state of the Council of Europe, Organization for Security & Co-operation in Europe (the “OSCE”), and the OIC.<sup>25</sup>

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<sup>19</sup> See ICCPR, *supra* note 15; ICESCR, *supra* note 15; UNDRIP, *supra* note 15; The Friendly Declaration, *supra* note 15.

<sup>20</sup> 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”).

<sup>21</sup> *Indigenous Peoples and the United Nations Human Rights System*, U.N. HUM. RTS. OFF. HIGH COMM’R (2013), <https://www.ohchr.org/sites/default/files/Documents/Publications/fs9Rev.2.pdf>.

<sup>22</sup> UNDRIP, *supra* note 15.

<sup>23</sup> See *Regional Human Rights Systems*, GEO. L. LIBR., (Sep. 2022) [https://guides.ll.georgetown.edu/c.php?g=273364&p=6025368#:~:text=These%20regional%20human%20rights%20systems,of%20rights%20guaranteed%20under%20these\\_](https://guides.ll.georgetown.edu/c.php?g=273364&p=6025368#:~:text=These%20regional%20human%20rights%20systems,of%20rights%20guaranteed%20under%20these_)

<sup>24</sup> *International Organizations*, MINISTRY FOREIGN AFFS. IRAQ (last visited March 27, 2023), <https://mofa.gov.iq/international-organizations>.

<sup>25</sup> *Relations between Azerbaijan and the Council of Europe (CoE)*, MINISTRY FOREIGN AFFS. AZER. (last visited March 27, 2023), <https://www.mfa.gov.az/en/category/regional-organisations/relations-between-azerbaijan-and-the-council-of-europe-coe>; *Relations between Azerbaijan and the OSCE*, MINISTRY FOREIGN AFFS. AZER. (last visited March 27, 2023), <https://www.mfa.gov.az/en/category/regional-organisations/relations-between-azerbaijan-and-osce>; *Member States*, ORG. ISLAMIC COOP. (last visited March 27, 2023), <https://www.oic-oci.org/states/?lan=en>.

The OIC is “a peripheral grouping and a marginal player” in the public international legal field and has a defunct judicial body.<sup>26</sup> The Arab League has also received consistent criticism “for disunity and poor governance”—being more representative of states’ autocratic regimes than its citizens.<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup> Moreover, protections for minorities in the European Court of Human Rights do not include an explicit right to self-determination.<sup>30</sup>

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

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<sup>26</sup> Salim Farrar, *International Law and the Organization of Islamic Cooperation*, OXFORD BIBLIOGRAPHIES (Oct. 27, 2021), <https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0232.xml>.

<sup>27</sup> Jonathan Masters & Mohammed Aly Sergie, *The Arab League*, COUNCIL ON FOREIGN RELS., (Feb. 2020), <https://www.cfr.org/backgrounder/arab-league>.

<sup>28</sup> See Robert M. Cutler, *The Minsk Group is Meaningless*, FOREIGN POL’Y (July 2021), <https://foreignpolicy.com/2021/07/23/armenia-azerbaijan-nagorno-karabakh-osce-minsk-group-meaningless/>.

<sup>29</sup> Geoff Gilbert, *Autonomy and Minority Groups: A Right in International Law?*, 35 CORNELL INT’L L. J. 307, 321 (2002).

<sup>30</sup> Framework Convention for the Protection of National Minorities, Feb. 1, 1995, C.E.T.S. 157 (providing protections for minorities actionable in the European Court of Human Rights but not including an explicit right to self-determination).

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.<sup>31</sup> 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.<sup>32</sup>

UN Special Rapporteur José Martínez Cobo provided a set of criteria to determine whether a group is an indigenous people (the "Cobo factors").<sup>33</sup> Numerous international organizations, including the UN, rely on the Cobo factors when classifying indigenous populations.<sup>34</sup> 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."<sup>35</sup>

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

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<sup>31</sup> *Indigenous Peoples and the United Nations Human Rights System*, *supra* note 21.

<sup>32</sup> *Id.*

<sup>33</sup> See U.N. Department of Economic and Social Affairs of Indigenous Peoples, *Indigenous Peoples at the United Nations* (last visited Oct. 16, 2022), <https://www.un.org/development/desa/indigenouspeoples/about-us.html> (naming Jose Martinez Cobo's factors as "one of the most cited descriptions" for what constitutes an indigenous people).

<sup>34</sup> *Id.*

<sup>35</sup> *Indigenous Peoples and the United Nations Human Rights System*, *supra* note 21.

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.<sup>36</sup>

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").<sup>37</sup> Although the ILO Convention provides less precise criteria than the Cobo factors,<sup>38</sup> 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.<sup>39</sup> 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,<sup>40</sup> none have done so using the Cobo factors.

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> 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").

<sup>39</sup> *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").

<sup>40</sup> Rouben A. Zargarian, *Principles for conflict resolution in Nagorno-Karabakh*, 6 INT'L PEACEKEEPING 129, 129 (2007); Michael Youash, *Iraq's Minority Crisis and U.S. National Security: Protecting Minority Rights in Iraq*, 24 AM. U. INT'L L. REV. 342, 342 (2008); Emin Özmen, *A Forgotten People: Talysh Women in Azerbaijan*, PULTZER CTR. (Aug. 17, 2018), <https://pulitzercenter.org/stories/forgotten-people-talysh-women-azerbaijan>; Yelena Ambartsumian, *Why Armenian Cultural Heritage Threatens Azerbaijan's Claims to Nagorno-Karabakh*, HYPERALLERGIC (Feb. 28, 2021), <https://hyperallergic.com/614619/why-armenian-cultural-heritage-threatens-azerbajians-claims-to-nagorno-karabakh/>.



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.”<sup>41</sup> According to Azerbaijani history, “Azerbaijani Turks are ‘the Indigenous population of the Caucasus and, in particular Nagorno-Karabakh.’”<sup>42</sup> Nevertheless, various sources, removed from the Azerbaijani government’s influence, identify NK Armenians as the oldest surviving population indigenous to NK.<sup>43</sup>

NK’s earliest inhabitants were various ancient tribal populations, one known as the Kura-Araxes.<sup>44</sup> 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.”<sup>45</sup> NK’s earliest inhabitants are now extinct.<sup>46</sup> 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

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<sup>41</sup> *Nagorno-Karabakh*, MINORITY RTS. GRP. (Apr. 2018), <https://minorityrights.org/country/nagorno-karabakh-unrecognised-state/> [hereinafter *Nagorno-Karabakh*, MINORITY RTS. GRP.].

<sup>42</sup> Bashir Kitachayev, *What’s next for the Azerbaijani blockade of Nagorno-Karabakh?*, OPENDEMOCRACY (Jan. 2023), <https://www.opendemocracy.net/en/odr/nagorno-karabakh-blockade-azerbaijan-armenia-citizenship/>.

<sup>43</sup> See *id.*; Timothy Jemal & Nerses Kopyalyan, *Law Is On Armenia’s Side in Nagorno-Karabakh*, NAT’L INTEREST (Sept. 2022), <https://nationalinterest.org/feature/law-armenia%E2%80%99s-side-nagorno-karabakh-204839>; Jackie Abramian, *A Year After Unleashing War Crimes Against Indigenous Armenians, Azerbaijan’s Threats And Violations Continue*, FORBES (Sept. 2021), <https://www.forbes.com/sites/jackieabramian/2021/09/27/a-year-after-unleashing-war-crimes-against-indigenous-armenians-azerbajians-threats-and-violations-continue/?sh=31a948738cc1>; Pietro Shakarian, *A Postcard from Nagorno-Karabakh*, ORIGINS, (Aug. 2017), [https://origins.osu.edu/connecting-history/postcard-nagorno-karabakh?language\\_content\\_entity=en](https://origins.osu.edu/connecting-history/postcard-nagorno-karabakh?language_content_entity=en); Yelena Ambartsumian, *Why Armenian Cultural Heritage Threatens Azerbaijani’s Claims to Nagorno-Karabakh*, HYPERALLERGIC (Feb. 2021), <https://hyperallergic.com/614619/why-armenian-cultural-heritage-threatens-azerbajians-claims-to-nagorno-karabakh/>.

<sup>44</sup> KARINE KHRISTOFOROVNA KUSNAREVA, *THE SOUTHERN CAUCASUS IN PREHISTORY 46-47* (H.N. Michael trans., 1997).

<sup>45</sup> See Robert H. Hewsens, *Ethno-History and the Armenian Influence Upon the Caucasian Albanians*, in *CLASSICAL ARMENIAN CULTURE: INFLUENCES AND CREATIVITY* 27, 31-34 (Thomas J. Samuelian ed., 1982).

<sup>46</sup> *Nagorno-Karabakh*, *supra* note 41.

Caucasus.<sup>47</sup> Parts of the Caucasian Albanian population assimilated into the Armenian population in the Artsakh province during the 4<sup>th</sup> century CE.<sup>48</sup>

Modern Azerbaijani lineage traces back to eastern Transcaucasia and northern Persia, bound by the Caspian Sea—and now encompassing present-day Azerbaijan.<sup>49</sup> Persian populations absorbed this segment of the Caucasian Albanian population, which later fell under Turkic influence and created the modern Azerbaijani ethnic identity.<sup>50</sup> The modern Udi lineage, on the other hand, traces back to present-day northern Azerbaijan and southern Dagestan.<sup>51</sup> 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 4<sup>th</sup> 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.<sup>52</sup> The NK Republic also has a series of modern cultural establishments.<sup>53</sup> In turn, NK Armenians possess a culture distinct from Azerbaijan and the Republic of Armenia.

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<sup>47</sup> Josh Wilson & David Parker, *Nagorno-Karabakh: The Volatile Core of the South Caucasus*, GEOHIST. (Feb. 26, 2019) <https://geohistory.today/nagorno-karabakh/>.

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

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

<sup>50</sup> C.E. Bosworth, *Servansahs*, ENCYCLOPAEDIA IRANICA (Feb. 11, 2011), <https://iranicaonline.org/articles/servansahs>; C.E. Bosworth, *Azerbaijan iv. Islamic History to 1941*, ENCYCLOPAEDIA IRANICA (Aug. 18, 2011), <https://iranicaonline.org/articles/azerbaijan-iv>; Wilson & Parker, *supra* note 47.

<sup>51</sup> Natalia G. Volkova, *Udis*, ENCYCLOPEDIA WORLD CULTURES (Kevin Tuite trans.), <https://www.encyclopedia.com/humanities/encyclopedias-almanacs-transcripts-and-maps/udis>.

<sup>52</sup> *Ancient Faith: The Churches of Nagorno-Karabakh*, MUSEUM BIBLE <https://www.museumofthebible.org/location/ancient-faith-the-churches-of-nagorno-karabakh>; Dikran Khodanian, *A brief introduction to Artsakh's culture: Part II – The Artsakh/Karabakh dialect*, H-PEM (Oct. 13, 2020) <https://www.h-pem.com/en/analysis/2020/10/13/a-brief-introduction-to-artsakh-s-culture-karabakh-dialect-2/30/>.

<sup>53</sup> *The Cultural and Spiritual Heritage of Nagorno-Karabakh*, OFF. NAGORNO-KARABAKH REPUBLIC: WASH. D.C., [http://www.nkrusa.org/country\\_profile/cultural\\_spiritual\\_heritage.shtml](http://www.nkrusa.org/country_profile/cultural_spiritual_heritage.shtml).

Furthermore, NK has an ethnic Armenian majority.<sup>54</sup> However, the region is still inside the internationally-recognized borders of Azerbaijan.<sup>55</sup> In this context, the NK Armenians have “non-dominance”—they comprise less than two percent of Azerbaijan’s total national population.<sup>56</sup> On top of modern cultural establishments, NK Armenians have their own constitution, government, and educational system.<sup>57</sup> 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.”<sup>58</sup>

Lastly, NK Armenians self-identify as a group indigenous to the NK region.<sup>59</sup> The National Assembly of the Republic of Artsakh—the NK Armenians’ democratically-elected governmental body<sup>60</sup> in the previously *de facto* independent region, now a government in exile<sup>61</sup>—mentioned numerous times that NK Armenians are the indigenous people of Nagorno-Karabakh,<sup>62</sup> whose “fight is continuous and [their] will to live” on their native

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<sup>54</sup> *Nagorno-Karabakh*, MINORITY RTS. GRP., *supra* note 41.

<sup>55</sup> *Nagorno-Karabakh*, BRITANNICA (last updated Sept. 15, 2022), <https://www.britannica.com/place/Nagorno-Karabakh>.

<sup>56</sup> *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), with *Population of Azerbaijan*, STATE STAT. COMM. REPUBLIC AZER. (last updated Aug. 29, 2022), <https://www.stat.gov.az/source/demography/ap/?lang=en> (stating the total population of Azerbaijan in 2022 was about 10,156,400).

<sup>57</sup> *The Cultural and Spiritual Heritage of Nagorno-Karabakh*, *supra* note 53.

<sup>58</sup> *Indigenous Peoples and the United Nations Human Rights System*, *supra* note 21.

<sup>59</sup> Mashinka Firunts Hakopian, *On the Struggle of Indigenous Self-Determination in the Republic of Artsakh*, LOS ANGELES R. BOOKS (Oct. 25, 2020), <https://lareviewofbooks.org/short-takes/struggle-indigenous-self-determination-republic-artsakh/>; Jackie Abramian, *A Year After Unleashing War Crimes Against Indigenous Armenians, Azerbaijan’s Threats And Violations Continue*, FORBES (Sept. 27, 2021), <https://www.forbes.com/sites/jackieabramian/2021/09/27/a-year-after-unleashing-war-crimes-against-indigenous-armenians-azerbajians-threats-and-violations-continue/?sh=6a15fe148cc1>.

<sup>60</sup> *See Freedom in the World 2022: Nagorno-Karabakh*, FREEDOM HOUSE (last visited March 22, 2023), <https://freedomhouse.org/country/nagorno-karabakh/freedom-world/2022> (Boxes A2 and A3 suggest that the current national legislative representatives were elected through free and fair elections, that more recent electoral law and implementation allowed “for broader political participation;” and that more recent elections “were not marred by significant criticism of electoral administration”).

<sup>61</sup> *See* Siranush Ghazanchyan, *No document can dissolve a state created by the people, Artsakh President says*, PUB. RADIO ARM. (Oct. 20, 2023), <https://en.armradio.am/2023/10/20/no-document-can-abolish-a-state-created-by-the-people-artsakh-president-says/>.

<sup>62</sup> *See, e.g.,* Aram Arkun, *Artsakh Ombudsman Brings Attention to Increasing Azerbaijani Threats, Calls on Diasporans to Help Break International Isolation*, ARM. MIRROR-SPECTATOR (Aug. 16, 2022), <https://mirrorspectator.com/2022/08/16/artsakh-ombudsman-brings-attention-to-increasing-azerbaijani-threats-calls-on-diasporans-to-help-break/>; *National Assembly Statement on Prevention of the Threats of Humanitarian Disaster to the People of the Republic of Artsakh*, NAT’L ASSEMBLY REPUBLIC ARTSAKH (Dec. 13, 2022), <https://web.archive.org/web/20230921000428/http://www.nankr.am/en/5039>; *Artsakh Republic National Assembly Statement*, NAT’L ASSEMBLY REPUBLIC ARTSAKH (Feb. 18, 2022), <https://web.archive.org/web/20230921002302/http://www.nankr.am/en/4569>; *Artsakh Republic NA*

land—”unbreakable.”<sup>63</sup> 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.<sup>64</sup> 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.<sup>65</sup> Abū Ja‘far Muḥammad ibn Jarīr al-Ṭabarī, a historian of Arab descent, produced the first written source mentioning the Talysh people as “al-Tylasan.”<sup>66</sup> Although the exact date al-Tabari wrote this source is unclear, it can logically date back to a time during his lifespan between circa 839 CE and 923 CE.<sup>67</sup> Al-Tabari 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.”<sup>68</sup>

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.<sup>69</sup> 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.<sup>70</sup> Talysh culture specifically manifests through “folk art, folklore, dances and

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*Factions’ Statement*, NAT’L ASSEMBLY REPUBLIC ARTSAKH (Feb. 27, 2021), <https://web.archive.org/web/20230921005416/http://www.nankr.am/en/4024>.

<sup>63</sup> *National Assembly Statement on Prevention of the Threats of Humanitarian Disaster to the People of the Republic of Artsakh*, NAT’L ASSEMBLY REPUBLIC ARTSAKH (Dec. 13, 2022), <https://web.archive.org/web/20230921000428/http://www.nankr.am/en/5039>.

<sup>64</sup> *Artsakh Republic National Assembly Statement*, *supra* note 62; *Artsakh Republic National Assembly Statement: President, Artur Tovmasyan, Appealed to the International Community and Intergovernmental Institutions*, ASSEMBLY REPUBLIC ARTSAKH (July 19, 2023), <https://web.archive.org/web/20230920235152/http://www.nankr.am/en/5278>; *Statement of the Factions and Independent MPs of the National Assembly of the Artsakh Republic on the 31st Anniversary of the Massacre of the Armenian Population of Sumgait*, ASSEMBLY REPUBLIC ARTSAKH (Feb. 27, 2019), <https://web.archive.org/web/20230921004921/http://www.nankr.am/en/3167>.

<sup>65</sup> Azer A. Mamedov et al., *Formation of the Talysh Ethnos Worldview under Geoethnic Conservation Area Conditions*, 7 J. HIST. CULTURE & ART RSCH. 155, 158 (2018).

<sup>66</sup> Garnik Asatrian & Habib Borjian, *Talish and the Talishis (The State of Research)*, 9 IRAN & CAUCASUS 43, 44 (2005).

<sup>67</sup> See David Waines, *al-Ṭabarī*, BRITANNICA (last updated Jan. 1, 2024) <https://www.britannica.com/biography/al-Tabari>.

<sup>68</sup> Asatrian & Borjian, *supra* note 66, at 44-45.

<sup>69</sup> *Id.*

<sup>70</sup> Mamedov et al., *supra* note 65.

games.”<sup>71</sup> The culture also includes traditional clothing for men and women, folk music, cuisine, and special instruments used for celebrations.<sup>72</sup> 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.”<sup>73</sup> These considerations can satisfy the factor for cultural distinctiveness.

A 2009 Azerbaijani census identified 112,000 people of Talysh descent in the country.<sup>74</sup> 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.<sup>75</sup> 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.<sup>76</sup>

The Talysh also have “a determination to preserve, develop and transmit to future generations their ancestral territories . . . in accordance with their own cultural patterns.”<sup>77</sup> 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.<sup>78</sup> 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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<sup>71</sup> Laman Ismayilova, *Unique photo project showcased in Baku*, AZERNEWS (Apr. 22, 2019), <https://www.azernews.az/travel/149405.html>.

<sup>72</sup> *Id.*; Dmitry Lemeshev, *Talysh*, CAUCASUS EXPLORER (Apr. 11, 2020), <https://www.caucasus-explorer.com/magazine/talysh/>.

<sup>73</sup> Ismayilova, *supra* note 71; *Talysh*, OMNIGLOT (last updated Apr. 23, 2021), <https://omniglot.com/writing/talysh.htm>; Asatrian & Borjian, *supra* note 66 at 51-53.

<sup>74</sup> *Population of Azerbaijan*, *supra* note 56.

<sup>75</sup> *An alternative report prepared by the Public Council of the Talysh People in Azerbaijan on implementation of CE Framework Convention for the Protection of National Minorities in the Republic of Azerbaijan for the protection of Talysh people, covering the period of 2016 – 2021 years*, TALYSH PUB. COUNCIL AZER. (2021), <https://www.irfs.org/wp-content/uploads/2021/09/An-alternative-report.pdf> [hereinafter *Alternative Report*]; *Azerbaijan: Talysh*, MINORITY RTS. GRP. INT’L (Mar. 2018), <https://www.refworld.org/topic,50ffbce5307,50ffbce56e2,49749d5946,0,,,AZE.html>.

<sup>76</sup> *Population of Azerbaijan*, *supra* note 56.

<sup>77</sup> *Indigenous Peoples and the United Nations Human Rights System*, *supra* note 21.

<sup>78</sup> Talysh Public Council of Azerbaijan, *Statement by the Talysh Public Council of Azerbaijan in the Republic of Azerbaijan on current status of the Talysh language*, VOICE TALYSH (Feb. 22, 2020), [http://www.talish.org/publ/news\\_talysh/statement/1-1-0-50](http://www.talish.org/publ/news_talysh/statement/1-1-0-50); *The government of Azerbaijan has suspended access to the TALISH.ORG website*, VOICE TALYSH (Feb. 16, 2017), [http://www.talish.org/news/az\\_rbaycan\\_hokum\\_ti\\_talish\\_org\\_saytina\\_girisi\\_dayandirib/2017-02-16-2172](http://www.talish.org/news/az_rbaycan_hokum_ti_talish_org_saytina_girisi_dayandirib/2017-02-16-2172).

ongoing assimilation of the Talysh people into Azerbaijan by working within the existing state's constitutional framework.<sup>79</sup>

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

Finally, the Talysh of southern Azerbaijan self-identify as indigenous to the regions they currently inhabit.<sup>83</sup> 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.”<sup>84</sup> 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 23<sup>rd</sup> century BCE.<sup>85</sup> 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.”<sup>86</sup> An estimated 300,000 Assyrians remain in northern Iraq today, representing the largest concentration of Assyrians who remain on their ancestral land.<sup>87</sup> Further, Assyrians share direct common ancestry with northern Iraq's earliest inhabitants. A genetic study revealed that Assyrians “have a distinct genetic

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<sup>79</sup> *Alternative Report*, *supra* note 75.

<sup>80</sup> Özmen, *supra* note 40.

<sup>81</sup> *Id.*

<sup>82</sup> *See Alternative Report*, *supra* note 75, at 7 (“Practices and policies aimed at assimilation of person belonging to talysh minority are being openly promoted in the Republic of Azerbaijan . . . There is only one reason behind this: to make the talysh people deny their national roots . . . and feel ashamed of being a talysh”).

<sup>83</sup> *See Alternative Report*, *supra* note 75.

<sup>84</sup> *Id.*

<sup>85</sup> SHAK HANISH, *NATIVE PEOPLES OF THE WORLD: AN ENCYCLOPEDIA OF GROUPS, CULTURES AND CONTEMPORARY ISSUES* 61 (Steven L. Danver ed., 2013).

<sup>86</sup> *Iraq*, ASSYRIAN POL'Y INST., <https://www.assyrianpolicy.org/iraq#:~:text=Prior%20to%20the%20U.S.%20led,dwindling%20number%20remain%20in%20Baghdad> (last visited Dec. 8, 2022).

<sup>87</sup> *Id.*

profile that distinguishes their population from any other population.”<sup>88</sup> Moreover, Assyrians have “remained in Iraq for the past two thousand five hundred years” since the ancient Assyrian Empire’s fall.<sup>89</sup>

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.<sup>90</sup> The Iraqi Constitution affirms its Assyrian population’s cultural distinction from its population.<sup>91</sup> Assyrians of northern Iraq speak their own language—“commonly known as Assyrian, neo-Aramaic, or Syriac.”<sup>92</sup> Assyrians are also non-dominant in Iraq. Iraq’s population is about forty-four million—with about 300,000 Assyrians reported.<sup>93</sup> 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.”<sup>94</sup>

Lastly, Assyrians of northern Iraq identify as a group indigenous to northern Iraq.<sup>95</sup> Assyrian author and journalist Fred Aprim stated that “many scholars and more importantly the Assyrian community, acknowledge

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<sup>88</sup> Joel J. Elias, *The Genetics of Modern Assyrians and their Relationship to Other People of the Middle East*, ASSYRIAN FOUND., <https://web.archive.org/web/20000816235456/http://www.assyrianfoundation.org/genetics.htm> (last visited Dec. 8, 2022).

<sup>89</sup> 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%20wider%20audience> (last visited Apr. 3, 2024); *Kha b’Nissan—the Assyrian New Year*, ASSYRIAN CULTURAL FOUND., <https://www.auaf.us/blog/kha-bnissan-the-assyrian-new-year-2/> (last visited Apr. 3, 2024); Nadia Younan, *Stateless Rhythms, Transnational Steps: Embodying the Assyrian Nation through Sheikhani Song and Dance*, 35 DANSES, MUSIQUES ET (TRANS)NATIONALISMS 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](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=0yKb0Jy7gB-88CD->.

<sup>90</sup> *Id.*

<sup>91</sup> See CONSTITUTION OF IRAQ Oct. 15, 2005, art. 4, § 1.

<sup>92</sup> Isaac, *supra* note 17, at 212.

<sup>93</sup> *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.

<sup>94</sup> *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%D8%B1%D9%89/100064783566552/> (last visited Dec. 8, 2022).

<sup>95</sup> *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.”<sup>96</sup> 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”<sup>97</sup>—a right that “[a]ll peoples have . . . [to] freely determine their political status and freely pursue their economic, social and cultural development.”<sup>98</sup> 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<sup>99</sup> Article 1(2), 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.”<sup>100</sup> 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]ll 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.”<sup>101</sup>

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.<sup>102</sup> Some international legal scholars use this declaration to argue that self-determination should strictly

<sup>96</sup> Fred Aprim, *Iraq Must Recognize Assyrians as its Indigenous People*, MOD. DIPL. (Aug. 10, 2022), <https://modern diplomacy.eu/2022/08/10/iraq-must-recognize-assyrians-as-its-indigenous-people/>.

<sup>97</sup> Thomas M. Franck, *The Emerging Right to Democratic Governance*, 1 AM. J. INT’L L. 46, 53 (1992).

<sup>98</sup> ICCPR, *supra* note 15, at art. 1, ¶ 1; ICESCR, *supra* note 15, at art. 1, ¶ 1.

<sup>99</sup> *The Universal Declaration of Human Rights Turns 70*, MINORITY RTS. GRP. INT’L (Dec. 7, 2018), <https://minorityrights.org/the-universal-declaration-of-human-rights-turns-70/>.

<sup>100</sup> U.N. Charter art. 1, ¶ 2.

<sup>101</sup> ICCPR, *supra* note 15, at art. 1, ¶ 1; ICESCR, *supra* note 15, at art. 1, ¶ 1.

<sup>102</sup> G.A. Res. 1514 (XV), Declaration on the Granting of Independence to Colonial Countries and Peoples (Dec. 14, 1960) [hereinafter Declaration on the Granting of Independence to Colonial Countries and Peoples].



and narrowly apply to the liberation of formerly colonized peoples.<sup>103</sup> 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.<sup>104</sup> 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.<sup>105</sup> 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.<sup>106</sup>

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.”<sup>107</sup> 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.”<sup>108</sup>

### *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.<sup>109</sup> This article only examines how the right to self-determination applies to indigenous peoples. No matter

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<sup>103</sup> Helen Quane, *The United Nations and the Evolving Right to Self-Determination*, 47 INT’L & COMPAR. L. Q. 537, 546 (1998) (raising the interpretation of the right to self-determination that the right only applies to States).

<sup>104</sup> Declaration on the Granting of Independence to Colonial Countries and Peoples, *supra* note 102.

<sup>105</sup> The Friendly Declaration, *supra* note 15.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> Isaac, *supra* note 17.

the definition of the “self” in self-determination, the UNDRIP explicitly links the right to self-determination to indigenous peoples.<sup>110</sup>

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.<sup>111</sup> UNDRIP Article 3’s language identically reflects the provisions on self-determination in the ICCPR, ICESCR, and the Friendly Declaration.<sup>112</sup> 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.<sup>113</sup>

Indigenous peoples also have the right to autonomous administration under the UNDRIP.<sup>114</sup> 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.”<sup>115</sup> Multiple states expressed concern over this explicit grant of self-determination before the UNDRIP’s passing.<sup>116</sup> 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.”<sup>117</sup>

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-

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<sup>110</sup> 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” within the meaning of self-determination, “indigenous groupings may very well meet them”).

<sup>111</sup> UNDRIP, *supra* note 15, at art. 3.

<sup>112</sup> *Id.*; ICCPR, *supra* note 15, at art. 1; ICESCR, *supra* note 15, at art. 1; The Friendly Declaration, *supra* note 15.

<sup>113</sup> U.N. Department of Economic and Social Affairs of Indigenous Peoples, *supra* note 33.

<sup>114</sup> UNDRIP, *supra* note 15, at art. 4.

<sup>115</sup> *Id.*

<sup>116</sup> 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 . . .”).

<sup>117</sup> 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.<sup>118</sup>

*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.”<sup>119</sup> 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.”<sup>120</sup>

This right can materialize in two ways: through internal or external self-determination.<sup>121</sup> Rife disagreement exists on how to define these modes of self-determination—with no single interpretation gaining sufficient scholarly consensus.<sup>122</sup> Nevertheless, the right to self-determination under international law has significantly evolved since its appearance in the UN Charter Article 1(2).<sup>123</sup> 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

<sup>118</sup> See generally *supra* note 116 (UN Commissioner for Indigenous Peoples advocating for a holistic review of the UNDRIP alongside existing international law).

<sup>119</sup> 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.

<sup>120</sup> Isaac, *supra* note 17, at 224.

<sup>121</sup> Hurst Hannum, *Legal Aspects of Self-Determination*, PRINCETON UNIV. (last visited Oct. 16, 2022), <https://pesd.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.

<sup>122</sup> 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.”).

<sup>123</sup> Glen Anderson, *A Post-Millennial Inquiry into the United Nations Law of Self-Determination: A Right to Unilateral Non-Colonial Secession?*, 49 VAND. J. TRANSN’L L. 1183, 1221 (2016) (stating the right to external self-determination “may be exercised by” unilateral non-colonial secession).

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.”<sup>124</sup> 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.<sup>125</sup> *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.<sup>126</sup>

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.<sup>127</sup> 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.<sup>128</sup> A group can achieve internal self-determination through autonomy and quasi-autonomy-based solutions.<sup>129</sup> 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.’”<sup>130</sup>

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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<sup>124</sup> Accordance with International Law of Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 2010 I.C.J. 403, ¶ 79 (July 22).

<sup>125</sup> East Timor (Port. v. Austl.), Judgment, 1995 I.C.J. 102, ¶ 29 (June 30).

<sup>126</sup> *Overview: erga omnes obligations*, OXFORD REFERENCE <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803095756413> (last visited Oct. 29, 2023).

<sup>127</sup> Isaac, *supra* note 17, at 225.

<sup>128</sup> 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”).

<sup>129</sup> 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).

<sup>130</sup> Isaac, *supra* note 17, at 225-26 (alteration in original).

choice.”<sup>131</sup> External self-determination allows for unilateral secession.<sup>132</sup> 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.<sup>133</sup>

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.”<sup>134</sup> The Friendly Declaration also gives important insight into when a group can exercise a right to external self-determination.<sup>135</sup> 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.”<sup>136</sup>

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.<sup>137</sup> Notably, Anderson’s analysis of key UN instruments reveals that the right to self-determination is continuously evolving.<sup>138</sup>

Specifically, the UN Charter, Declaration on the Granting of Independence to Colonial Countries and Peoples, ICCPR, and ICESCR all

<sup>131</sup> GUDMUNDER ALFREDSSON, *THE RIGHT TO SELF-DETERMINATION IN INTERNATIONAL LAW IN MINORITY SELF-GOVERNMENT IN EUROPE AND THE MIDDLE EAST* 4 (Olgun Akbulut & Elcin Aktoprak eds., 2019).

<sup>132</sup> Anderson, *supra* note 123.

<sup>133</sup> Reference re Secession of Quebec, *supra* note 128.

<sup>134</sup> *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/453883f822.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).

<sup>135</sup> The Friendly Declaration, *supra* note 15.

<sup>136</sup> 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”).

<sup>137</sup> Anderson, *supra* note 123, at 1215-16; Glen Anderson, *Who are the “Peoples” Entitled to the Right of Self-Determination?*, in *THE ROUTLEDGE HANDBOOK OF SELF-DETERMINATION AND SECESSION* (Ryan D. Griffiths et al. eds., 2023); Glen Anderson, *Secession in International Law and Relations: What Are We Talking About?*, 35 *LOY. L.A. INT’L & COMPAR. L.REV.* (2013); Dr. Glen Anderson, UNIV. NEWCASTLE AUSTL., <https://www.newcastle.edu.au/profile/glen-anderson#career>.

<sup>138</sup> Anderson, *supra* note 123, at 1253.

generally express the right to self-determination.<sup>139</sup> 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.<sup>140</sup> 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.<sup>141</sup> 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.<sup>142</sup>

Anderson delineates four implied requirements for a group to successfully assert a right to external self-determination from key sources of international law.<sup>143</sup> 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.<sup>144</sup> 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”<sup>145</sup> 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).<sup>146</sup>

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<sup>139</sup> *Id.* at 1204-15.

<sup>140</sup> *Id.* at 1215-36.

<sup>141</sup> *Id.* at 1235.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.* at 1217-22.

<sup>144</sup> *Id.*

<sup>145</sup> 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.

<sup>146</sup> 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.<sup>147</sup> If such is the case, a right to external self-determination and unilateral secession remains the last resort.<sup>148</sup> 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.<sup>149</sup>

*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.<sup>150</sup> 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.<sup>151</sup> However, newer declarations account for the evolution of international circumstances by evolving self-determination and natural resource sovereignty rights accordingly.<sup>152</sup>

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.<sup>153</sup> 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.<sup>154</sup>

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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).

<sup>147</sup> See UNDRIP, *supra* note 15; Reference re Secession of Quebec, *supra* note 128.

<sup>148</sup> Reference re Secession of Quebec, *supra* note 128.

<sup>149</sup> See UNDRIP, *supra* note 15; Anderson, *supra* note 123.

<sup>150</sup> Nicolaas Schrijver, *Self-determination of peoples and sovereignty over natural wealth and resources*, in REALIZING RT. TO DEV. 95, 96 (2013).

<sup>151</sup> *Id.* at 100-01.

<sup>152</sup> *Id.* at 96-100.

<sup>153</sup> *Id.* at 99.

<sup>154</sup> *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.”<sup>155</sup> 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.<sup>156</sup> 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.<sup>157</sup>

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.<sup>158</sup> 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).<sup>159</sup> 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.”<sup>160</sup> 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.”<sup>161</sup> 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.”<sup>162</sup> Read holistically, these articles may grant indigenous peoples an avenue for external relief should they exhaust all available domestic remedies in seeking

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<sup>155</sup> UNDRIP, *supra* note 15, at art. 26(1).

<sup>156</sup> *Id.*, at arts. 4, 46(1), 26, 32.

<sup>157</sup> *Reference re Secession of Quebec*, *supra* note 126; *id.* at arts. 4, 46(1).

<sup>158</sup> *Reference re Secession of Quebec*, *supra* note 126; UNDRIP, *supra* note 15, at arts. 10, 28, 8(2)(b), 26.

<sup>159</sup> UNDRIP, *supra* note 15, at arts. 10, 28, 8(2)(b).

<sup>160</sup> *Id.*, at arts. 10, 28.

<sup>161</sup> *Id.*

<sup>162</sup> *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.”<sup>163</sup> 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.”<sup>164</sup> 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.<sup>165</sup>

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.<sup>166</sup> In turn, the principle of sovereign equality of States kicks into effect.<sup>167</sup> 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.<sup>168</sup> 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.<sup>169</sup>

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<sup>163</sup> 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.

<sup>164</sup> *Id.*

<sup>165</sup> See UNDRIP, *supra* note 15, at arts. 4, 46(1), 26, 32.

<sup>166</sup> 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).

<sup>167</sup> *Id.*

<sup>168</sup> Friendly Declaration, *supra* note 15; G.A. Res. 1803 (XVII), Permanent Sovereignty Over Natural Resources, ¶ 5 (Dec. 14, 1962).

<sup>169</sup> Compare *List of former Trust and Non-Self-Governing Territories*, U.N. & DECOLONIZATION <https://www.un.org/dppa/decolonization/en/history/former-trust-and-nsgts> (last visited Dec. 14, 2022); *with Malta*, INDEX ECON. FREEDOM <https://www.heritage.org/index/country/malta> (last visited Dec. 14, 2022); *Morocco*, INDEX ECON. FREEDOM <https://www.heritage.org/index/country/morocco> (last visited Dec. 14, 2022); and *Rwanda*, INDEX ECON. FREEDOM <https://www.heritage.org/index/country/rwanda>

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.”<sup>170</sup> 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.<sup>171</sup> In such situations,

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(last visited Dec. 14, 2022); see also *Kosovo's Economy*, REPUBLIC KOSOVO <https://www.mei-ks.net/en/kosovo/kosovo146s-economy> (last visited Dec. 14, 2022).

<sup>170</sup> 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”).

<sup>171</sup> See e.g., Brianna Dyer, *A Slow Death: Long-Term Genocide*, OPINIOJURIS (Mar. 29, 2022), <http://opiniojuris.org/2022/03/29/a-slow-death-long-term-genocide/> (stating that “genocide will never disappear, but as states develop ‘innovative’ ways to destroy protected groups, we must restructure our concept of genocide while remaining within its legal framework”); *Genocide*, ENCYC. PRINCETONIENSIS, <https://pesd.princeton.edu/node/446> (last visited Feb. 8, 2023); Michael Rubin, *As Genocide Looms Against Armenians, Credibility Requires Action, Not Empty Rhetoric*, AM. ENTER. INST. (Jan. 20, 2023), <https://www.aei.org/foreign-and-defense-policy/as-genocide-looms-against-armenians-credibility-requires-action-not-empty-rhetoric/>; Geoffrey Johnston, *Column: Ethnic cleansing in Iraq: Part 2 - Assyrians face genocide in Iraq*, KINGSTON WHIG STANDARD (Mar. 12, 2015), <https://www.thewhig.com/2015/03/12/column-ethnic-cleansing-in-iraq-part-2-assyrians-face-genocide->

“it is important to consider whether a change of political control over territory is necessarily a negative phenomenon.”<sup>172</sup>

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.<sup>173</sup> Dispute over the region’s status began after the 1917 Russian Revolution, when Russian troops retreated from the Caucasus.<sup>174</sup> During this time, both Armenia and Azerbaijan claimed the region after both nations gained independence in 1918.<sup>175</sup> A congress elected by the region’s residents voted unanimously to join the Armenian Republic.<sup>176</sup> However, the Soviet Union placed the region inside Soviet Azerbaijan’s borders.<sup>177</sup> Despite this decision, NK still “maintained its autonomous status throughout the USSR period.”<sup>178</sup> 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.<sup>179</sup> Further, Azerbaijani authorities denied the region’s Armenians of “Armenian-language textbooks in schools and television broadcasting in their own language.”<sup>180</sup>

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.”<sup>181</sup>

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in-iraq; *Talysh people subject to genocide in Azerbaijan - says Talysh politician*, ARMENPRESS (Dec. 27, 2016), <https://armenpress.am/eng/news/873451/talysh-people-subject-to-genocide-in-azerbaijan-%E2%80%93-says-talysh-politician.html>.

<sup>172</sup> Anderson, *supra* note 123, at 1254.

<sup>173</sup> Anoush Baghdassarian, *The History Behind the Violence in Nagorno-Karabakh*, LAWFARE (Oct. 19, 2020), <https://www.lawfaremedia.org/article/history-behind-violence-nagorno-karabakh>; Françoise J. Compagnen, *Nagorno-Karabakh: Embedded in Geo-politics*, 34 ATLANTISCH PERSPECTIEF 9, 10-11 (2010).

<sup>174</sup> Baghdassarian, *supra* note 173.

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> Compagnen, *supra* note 173, at 11.

<sup>178</sup> Center for Preventative Action, *supra* note 6.

<sup>179</sup> Baghdassarian, *supra* note 173.

<sup>180</sup> *Id.*

<sup>181</sup> *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."<sup>182</sup>

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.<sup>183</sup> 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."<sup>184</sup>

The NK region continues to assert autonomy as the Republic of Artsakh, despite receiving no international recognition of its *de facto* independence.<sup>185</sup> Meanwhile, animosity has grown in Azerbaijan against its Armenian population.<sup>186</sup> 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.<sup>187</sup>

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

weekly/ssp/sng\_nac\_26.php?reg=2304 (last visited Dec. 9, 2022) (unofficial translation); Barbara A. Anderson & Brian D. Silver, *Demographic Sources of the Changing Ethnic Composition of the Soviet Union*, 15 *POPULATION & DEV. REV.* 609, 638-39 (1989).

<sup>182</sup> Baghdassarian, *supra* note 173; Heydar Aliyev: "A State With Opposition is Better," *ECHO NEWSPAPER*, [https://web.archive.org/web/20120524164730/http://www.echo-az.com/archive/2002\\_07/383/facts.shtml#11](https://web.archive.org/web/20120524164730/http://www.echo-az.com/archive/2002_07/383/facts.shtml#11) (last visited Dec. 9, 2022) (unofficial translation) (former Azerbaijani President Heydar Aliyev admitting that he "tried to increase the number of Azerbaijanis in Nagorno-Karabakh, and reduce the number of Armenians").

<sup>183</sup> Georgios Theophanous, *Blurred Borders: Armenia vs. Azerbaijan*, 24 *HARV. INT'L REV.* 12, 12-13 (2003).

<sup>184</sup> Baghdassarian, *supra* note 173.

<sup>185</sup> *The recognition of independence of the Republic of Artsakh*, MINISTRY FOREIGN AFFS. REPUBLIC ARTSAKH, <http://www.nkr.am/en/international-recognition-of-karabakh> (last visited Dec. 10, 2022).

<sup>186</sup> ECRI Report on Azerbaijan (Fifth Monitoring Cycle), *EUR. COMM'N AGAINST RACISM & INTOLERANCE* 7 (2016), <https://rm.coe.int/fourth-report-on-azerbaijan/16808b5581> [hereinafter ECRI Report 4].

<sup>187</sup> *Id.* at 9.

<sup>188</sup> See generally Amnesty Int'l, *Armenia: Last to Flee: Older People's Experience of War Crimes and Displacement in the Nagorno-Karabakh Conflict* (2022), <https://www.amnesty.org/en/documents/eur54/5214/2022/en/>; Joshua Kucera, *In Nagorno-Karabakh, the Cycle of Ethnic Cleansing Continues*, *PULITZER CTR.* (Nov. 12, 2020), <https://pulitzercenter.org/stories/nagorno-karabakh-cycle-ethnic-cleansing-continues>; Alexa Fults & Paul Stronski, *The Ukraine War is Reshaping the Armenia-Azerbaijan Conflict*, *CARNEGIE ENDOWMENT INT'L PEACE* (Apr. 25, 2022), <https://carnegieendowment.org/2022/04/25/ukraine-war-is-reshaping-armenia-azerbaijan-conflict-pub-86994>.

degrading conditions of detention.”<sup>189</sup> Azerbaijani 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.”<sup>190</sup>

Examples of elderly NK Armenians facing war crimes in Nagorno-Karabakh include the stories of Slavik Galstyan, sixty-eight years old, and Valery Poghosyan, seventy years old.<sup>191</sup> In October 2020, Slavik Galstyan refused to leave his home after Azerbaijani forces invaded.<sup>192</sup> Over two months later, Galstyan’s body was found—with “a death certificate issued by the Armenian authorities conclud[ing] that his death was the result of traumatic blood loss from shooting injuries to his chest, stomach, and other internal organs.”<sup>193</sup> 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.”<sup>194</sup> 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.”<sup>195</sup>

Valery Poghosyan tried to escape Nagorno-Karabakh on foot while unarmed in October 2020 when he saw soldiers he believed were Azerbaijani forces.<sup>196</sup> The soldiers grabbed Poghosyan and took him to an informal encampment, where he joined two other older men from his village.<sup>197</sup> A video circulated online showed Poghosyan and the two men lying flat in a vehicle bed as men in uniform kicked them.<sup>198</sup> At the encampment, Poghosyan and the men were detained in a cell.<sup>199</sup> The soldiers ordered one of the Armenian men to say “Karabakh is [part of] Azerbaijan.”<sup>200</sup> When the Armenian man refused, the soldiers kicked and beat him—Poghosyan never saw the man again.<sup>201</sup> 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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<sup>189</sup> Tanya Lokshina, *Survivors of unlawful detention in Nagorno-Karabakh speak out about war crimes*, HUM. RTS. WATCH (Mar. 12, 2021) <https://www.hrw.org/news/2021/03/12/survivors-unlawful-detention-nagorno-karabakh-speak-out-about-war-crimes>.

<sup>190</sup> *Id.*

<sup>191</sup> Amnesty Int’l, *supra* note 188.

<sup>192</sup> *Id.* at 6.

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> *Id.* at 22.

<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

War as an Armenian soldier.<sup>202</sup> One interrogation “led to a mock execution, where officers stood [Poghosyan] against a courtyard wall and pretended they were about to shoot him.”<sup>203</sup>

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.<sup>204</sup> 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.<sup>205</sup>

A future where Nagorno-Karabakh reintegrates 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.<sup>206</sup>

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.<sup>207</sup> Amnesty International called the blockade a humanitarian crisis.<sup>208</sup> The blockade led to severe shortages of food, life-saving medication, healthcare, hygiene products, and baby essentials.<sup>209</sup> 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.”<sup>210</sup>

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<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> Resolution on the Destruction of Cultural Heritage in Nagorno-Karabakh, EUR. PARL. DOC. 2022/2582(RSP) (2022).

<sup>205</sup> Natalia G. Volkova, *Udis*, ENCYCLOPEDIA WORLD CULTURES (Kevin Tuite trans.), <https://www.encyclopedia.com/humanities/encyclopedias-almanacs-transcripts-and-maps/udis>.

<sup>206</sup> David J. Scheffer, *Ethnic Cleansing Is Happening in Nagorno-Karabakh. How Can the World Respond?*, COUNCIL FOREIGN RELS. (Oct. 4, 2023), <https://www.cfr.org/article/ethnic-cleansing-happening-nagorno-karabakh-how-can-world-respond>; *Nagorno-Karabakh profile*, BBC News (last updated Oct. 2, 2023), <https://www.bbc.com/news/world-europe-18270325>.

<sup>207</sup> Siranush Sargsyan, *The Nagorno-Karabakh blockade hurts families — even leaders’ families*, OPENDEMOCRACY (Feb. 17, 2023), <https://www.opendemocracy.net/en/odr/nagorno-karabakh-artsakh-blockade-armenia-family-artak-beglaryan/>.

<sup>208</sup> *Azerbaijan: Blockade of Lachin Corridor putting thousands of lives in peril must be immediately lifted*, *supra* note 3.

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

Disruptions to electricity and natural gas from Azerbaijan added to the extreme hardship.<sup>211</sup> Mothers with premature babies were compelled to take turns using one incubator due to the electricity shortage.<sup>212</sup> Heating and electricity shortages led to a temporary closure of schools and kindergartens in Nagorno-Karabakh—effectively impacting 27,000 children.<sup>213</sup> 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.”<sup>214</sup> The blockade forced 782 businesses in Nagorno-Karabakh to shut down, resulting in 1,170 people losing their jobs.<sup>215</sup>

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.”<sup>216</sup> 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.”<sup>217</sup>

Despite this indication of provisional measures having a binding effect on Azerbaijan,<sup>218</sup> the state authorities blatantly refused to comply with the Order.<sup>219</sup> These “eco-activists”—“widely believed to be backed by [Azerbaijan’s] authorities”—continued to block the Lachin Corridor for nine months.<sup>220</sup> 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.”<sup>221</sup> 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

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<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

<sup>215</sup> *Azerbaijani blockade of Nagorno-Karabakh leads to widespread business closures, mass layoffs*, ARMENPRESS (Mar. 21, 2023), <https://armenpress.am/eng/news/1106757.html>.

<sup>216</sup> 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).

<sup>217</sup> SHABTAI ROSENNE, *WORLD COURT: WHAT IT IS AND HOW IT WORKS* 95 (Terry D. Gill ed. 1989).

<sup>218</sup> Application of the International Convention on the Elimination of All Forms of Racial Discrimination, *supra* note 216, ¶ 65.

<sup>219</sup> 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/>.

<sup>220</sup> *See id.*; *Azerbaijan: Blockade of Lachin Corridor putting thousands of lives in peril must be immediately lifted*, *supra* note 3.

<sup>221</sup> Center for Preventive Action, *supra* note 6.

mounting pressure from the months-long starvation-inducing blockade and military incursion.<sup>222</sup> 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.<sup>223</sup>

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 *de facto* integration of the region into Azerbaijan is far from shocking.<sup>224</sup> In Nakhichevan—another historically Armenian region granted to Azerbaijan during Soviet rule that remains part of Azerbaijan<sup>225</sup>—ninety-eight percent of Armenian cultural heritage sites have been destroyed.<sup>226</sup> This eradication is a “striking portrait of cultural erasure that, in its surgical precision, totality, and surreptitiousness, has few parallels.”<sup>227</sup> Amid the mass exodus of NK Armenians from Nagorno-Karabakh, Azerbaijani authorities encouraged NK

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<sup>222</sup> Ebel, *supra* note 7; Gavin, *supra* note 7; Maranci, *supra* note 7.

<sup>223</sup> 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>.

<sup>224</sup> 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.”).

<sup>225</sup> See *Nakhchivan*, OXFORD DICTIONARY LATE ANTIQUITY (2018), <https://www.oxfordreference.com.turing.library.northwestern.edu/display/10.1093/acref/9780198662778.001.0001/acref-9780198662778-e-5308;jsessionid=5BE06465171A1FABBDA6EA2CF0192B56> (“Located north of the Araxes, and known as Naxouana to Ptolemy (V, 12, 5), the city, in existence already during the Eruanduni/Orontid 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 Eruandashat, Armawir, Artashat, and Valarshapat (Valaršapat) . . . In 705, after an Armenian rebellion, the *naxarars* (*nakharars*; noble) were burned in churches in Nakhchivan and Goltn (Goght’n); thus an entire senior generation of the nobility perished”); see also *Naxçivan*, BRITANNICA (last updated June 1, 2017), <https://www.britannica.com/place/Naxcivan-republic-Azerbaijan>; *From ancient times until today*, NAKHCHIVAN AUTONOMOUS REPUBLIC, [https://nakhchivan.preslib.az/en\\_b1.html](https://nakhchivan.preslib.az/en_b1.html) (last visited March 30, 2023) (current regime of Nakhchivan Autonomous Republic explicitly denying any historical claim Armenians have to Nakhichevan).

<sup>226</sup> 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>.

<sup>227</sup> *Silent Erasure: A Satellite Investigation of the Destruction of Armenian Cultural Heritage in Nakhchivan, Azerbaijan*, CAUCASUS HERITAGE WATCH (Nov. 15, 2022) <https://storymaps.arcgis.com/stories/48703f664f2f467b8f4f42008d8c75da>.



Armenians to stay in Nagorno-Karabakh and “be part of a multi-ethnic Azerbaijan” and offered Azerbaijani citizenship.<sup>228</sup> 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.”<sup>229</sup> 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.<sup>230</sup>

### 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.<sup>231</sup> The republic’s autonomous status only lasted two months.<sup>232</sup> Azerbaijani authorities arrested the colonel and sentenced him to death—later amending the sentence to life in prison.<sup>233</sup> The Council of Europe then pressured Azerbaijani authorities into releasing the colonel.<sup>234</sup> But the Talysh National Movement continued its operations, now inside the framework of a unitary Azerbaijani state.<sup>235</sup>

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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<sup>228</sup> Andrew Osborn, *Azerbaijan says it does not want exodus from Nagorno-Karabakh, urges Armenians to stay*, REUTERS (Sept. 28, 2023), <https://www.reuters.com/world/azerbaijan-says-it-does-not-want-exodus-nagorno-karabakh-urges-armenians-stay-2023-09-28/>; Christian Edwards, *Azerbaijan has reclaimed Nagorno-Karabakh. What does that mean for the tens of thousands living there?*, CNN (Sept. 23, 2023), <https://www.cnn.com/2023/09/23/asia/nagorno-karabakh-armenia-azerbaijan-reintegrate-intl/index.html>.

<sup>229</sup> Kucera, *supra* note 188.

<sup>230</sup> 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”).

<sup>231</sup> *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).

<sup>232</sup> *Id.*

<sup>233</sup> *Id.*

<sup>234</sup> *Id.*

<sup>235</sup> *Id.*

identity.<sup>236</sup> Azerbaijani law “provides not more than two hours per week of Talysh language lessons. There is also a shortage of teachers and teaching materials.”<sup>237</sup> 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.<sup>238</sup>

UNESCO includes the Talysh language in its list of endangered languages, classifying it as vulnerable.<sup>239</sup> 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.<sup>240</sup> Key advocates in the Talysh community died under suspicious conditions while in Azerbaijani prisons.<sup>241</sup> 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.”<sup>242</sup>

Such conditions led Talysh activists to push for greater autonomy to properly preserve their language and culture.<sup>243</sup> 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.<sup>244</sup> 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

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<sup>236</sup> HEMA KOTECHA, *ISLAMIC AND ETHNIC IDENTITIES IN AZERBAIJAN: EMERGING TRENDS AND TENSIONS* 34 (2006).

<sup>237</sup> *Azerbaijan: Talysh*, *supra* note 75.

<sup>238</sup> See generally U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., *Azerbaijan 2021 Human Rights Report* 45 (2021); John M. Clifton, *Do the Talysh and Tat language have a future in Azerbaijan?*, 49 *UNIV. N.D. SESSION* 1, 4 (2008); U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., *Azerbaijan 2020 Human Rights Report* 49 (2020); U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., *Azerbaijan 2019 Human Rights Report* 38 (2019).

<sup>239</sup> UNESCO, *ATLAS OF THE WORLD’S LANGUAGES IN DANGER* 41 (Christopher Moseley et al. eds., 3rd ed. 2010).

<sup>240</sup> See *PEN Day Of The Imprisoned Writer: Azerbaijani Is Voice of Talysh Minority*, RADIO FREE EUR./RADIO LIBERTY (Nov. 15, 2012), <https://www.rferl.org/a/pen-day-of-imprisoned-writer-azerbaijan-journalist-voice-of-talysh-minority/24771751.html>; *Prominent Talysh activist dies in prison in Azerbaijan*, TALYSH.ORG (Nov. 12, 2020), [http://www.talish.org/news/prominent\\_talysh\\_activist\\_dies\\_in\\_prison\\_in\\_azerbaijan/2020-11-12-2214](http://www.talish.org/news/prominent_talysh_activist_dies_in_prison_in_azerbaijan/2020-11-12-2214).

<sup>241</sup> *Prominent Talysh activist dies in prison in Azerbaijan*, *supra* note 240.

<sup>242</sup> *Id.*

<sup>243</sup> *Rights of Talysh people grossly violated in Azerbaijan – says Shahin Mirzoyev*, ARMENPRESS (Mar. 3, 2017), <https://www.armenpress.am/eng/news/881084/rights-of-talysh-people-grossly-violated-in-azerbaijan-%E2%80%93-says-shahin-mirzoyev.html>.

<sup>244</sup> See Özmen, *supra* note 40; Paul Goble, *Talysh Movement Resurfaces in Azerbaijan – OpEd*, EURASIA REV. (Apr. 6, 2016), <https://www.eurasiareview.com/06042016-talysh-movement-resurfaces-in-azerbaijan-oped/>.

“ambiguity toward their own sense of Talyshness.”<sup>245</sup> 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.<sup>246</sup>

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.<sup>247</sup> Specifically, Talysh advocates inside Azerbaijan demand greater autonomy over preserving their cultural heritage and advocating for greater respect as a minority population in Azerbaijan.<sup>248</sup> 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.<sup>249</sup> In 2019, Russian authorities extradited Abbasov from Moscow to Baku—where Azerbaijani authorities detained him for “promoting anti-state activities and inciting ethnic discord.”<sup>250</sup> 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.”<sup>251</sup>

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<sup>245</sup> Özmen, *supra* note 40.

<sup>246</sup> See *id.*; *The Talysh People Demand Cultural Autonomy in Azerbaijan*, MEYDAN, <https://www.meydan.tv/en/article/the-talysh-people-demand-cultural-autonomy-in-azerbaijan/> (last updated Oct. 29, 2021).

<sup>247</sup> *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.

<sup>248</sup> Fahimeh Khansari Fard et al., *Ethnic Baragining and Separatism in the South Caucasus*, 8 SLAVICA PUBLISHERS 173 (July 2019); *The Talysh People Demand Cultural Autonomy in Azerbaijan*, MEYDAN (last updated Oct. 29, 2021), <https://www.meydan.tv/en/article/the-talysh-people-demand-cultural-autonomy-in-azerbaijan/>.

<sup>249</sup> Amnesty Int’l, *Azerbaijan Authorities Must Release Talysh Activists*, EUR 55/2492/2020 (June 8, 2020), <https://www.amnesty.org/en/documents/eur55/2492/2020/en/> (stating that Abbasov “continued his work to support the idea of Talysh independence and conducted educational and academic work to promote Talysh minority rights” after fleeing to Russia in October 2008).

<sup>250</sup> *Ethnic Talysh Activist Arrested In Baku After Being Deported From Russia*, RADIO FREE EUR./RADIO LIBERTY (March 1, 2019), <https://www.rferl.org/a/azerbaijan-talysh-activist-abbasov-arrested-baku-deported-russia/29798221.html>.

<sup>251</sup> *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.”<sup>252</sup> 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.”<sup>253</sup> 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.<sup>254</sup>

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.<sup>255</sup> The Allied powers secured Assyrian loyalty by representing that, if the Allies won the war, they would advance the Assyrian people’s national interests.<sup>256</sup> However, after World War I, Assyrian dignitaries’ attempts to assert national rights at various international conferences—including the League of Nations—were unsuccessful.<sup>257</sup> Over time, “it became increasingly clear that the promises” Allied powers “made to Assyrians had effectively been nullified.”<sup>258</sup> 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.<sup>259</sup>

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.<sup>260</sup> More recently, Assyrians of northern Iraq suffered even

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<sup>252</sup> Yuri Mantilla, *ISIS's Crimes Against Humanity and the Assyrian People: Religious Totalitarianism and the Protection of Fundamental Human Rights*, 23 ILSA J. INT'L & COMPAR. L. 77, 80 (2016).

<sup>253</sup> *Id.*; *Iraq: The Abbasid Caliphate*, BRITANNICA (last updated Oct. 6, 2022), <https://www.britannica.com/place/Iraq/The-Abbasid-Caliphate>.

<sup>254</sup> Isaac, *supra* note 17, at 215.

<sup>255</sup> *Id.* at 216.

<sup>256</sup> *Id.*

<sup>257</sup> Phillip C. Zane, *The League of Nations and the Quest for an Assyrian Homeland*, ASSYRIAN INT'L NEWS AGENCY, <http://www.aina.org/articles/lfnafah.pdf> (last visited Dec. 12, 2022).

<sup>258</sup> Isaac, *supra* note 17, at 216.

<sup>259</sup> *Assyrian Genocide in Modern History*, ASSYRIAN POL'Y INST. 8-9 (2019), [https://docs.wixstatic.com/ugd/6ae567\\_2baeeb49f5ec4fa09997290e86410902.pdf](https://docs.wixstatic.com/ugd/6ae567_2baeeb49f5ec4fa09997290e86410902.pdf).

<sup>260</sup> Max van der Stoep (Special Rapporteur of the Commission on Human Rights), *Rep. on the situation of human rights in Iraq*, ¶ 109-13, U.N. Doc. E/CN.4/1992/31 (Feb. 18, 1992); U.S. BUREAU

more death and destruction under the Islamic State’s (“ISIS”) capture of Mosul in 2014.<sup>261</sup>

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.<sup>262</sup> Nearly all of Mosul’s 35,000 to 50,000 Assyrian residents fled the city.<sup>263</sup> “ISIS members then marked Assyrian homes with the Arabic letter “noon” to symbolize the word “Nasrani,” a pejorative term meaning Christian.”<sup>264</sup>

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.<sup>265</sup> Roughly 200,000 Assyrian inhabitants of the Nineveh Plain fled to Kurdish-controlled regions of Iraq as ISIS continued to gain territory in the region.<sup>266</sup> 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.<sup>267</sup>

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.<sup>268</sup> Over one million Assyrians in Iraq left the country after the U.S.-led invasion of Iraq in 2003.<sup>269</sup> Presently, less than 300,000 Assyrians remain in Iraq.<sup>270</sup> 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.<sup>271</sup> Such a shift in power also presented its own

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CITIZENSHIP & IMMIGR. SERVS., IRQ03001.ZCH, IRAQ: INFORMATION ON TREATMENT OF ASSYRIAN & CHALDEAN CHRISTIANS (2003).

<sup>261</sup> *Assyrian Genocide in Modern History*, *supra* note 259, at 11-12.

<sup>262</sup> Sargon G. Donabed & Daniel J. Tower, *Reframing Indigeneity: The Case of Assyrians in Northern Mesopotamia*, AM. HIST. ASSOC. (Jan. 1, 2018) <https://www.historians.org/research-and-publications/perspectives-on-history/january-2018/reframing-indigeneity-the-case-of-assyrians-in-northern-mesopotamia>.

<sup>263</sup> *Assyria*, UNREPRESENTED NATIONS & PEOPLES ORG. (Jan. 19, 2018), <https://unpo.org/members/7859>.

<sup>264</sup> *Id.*

<sup>265</sup> *Id.*

<sup>266</sup> *Id.*

<sup>267</sup> *Assyrian Genocide in Modern History*, *supra* note 259, at 11.

<sup>268</sup> R.S. Zaya, *Iraq’s Indigenous Peoples Can’t Face Another Conflict*, FOREIGN POL’Y (Aug. 7, 2020), <https://foreignpolicy.com/2020/08/07/iraq-assyrian-indigenous-peoples-another-conflict-nineveh-plains-iran-backed-militia/>.

<sup>269</sup> *Iraq*, ASSYRIAN POL’Y INST., *supra* note 86.

<sup>270</sup> *Id.*

<sup>271</sup> Cameron Glenn et al., *Timeline: the Rise, Spread, and Fall of the Islamic State*, WILSON CTR. (Oct. 28, 2019), <https://www.wilsoncenter.org/article/timeline-the-rise-spread-and-fall-the-islamic-state>; *Iraq*, ASSYRIAN POL’Y INST., *supra* note 86.

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.<sup>272</sup>

Moreover, the "Iraqi government lacks effective capacity or incentives to protect Christian communities from abuse."<sup>273</sup> 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."<sup>274</sup> If given autonomy over their indigenous lands, people of the Assyrian diaspora may return to the Nineveh Plains.<sup>275</sup>

UNESCO listed Assyrian or Aramaic as a "definitely endangered" language with only about 240,000 speakers.<sup>276</sup> 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."<sup>277</sup> 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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<sup>272</sup> See *Assyrian Christians arrested after attempted land grab*, CSW (May 12, 2022), <https://www.csw.org.uk/2022/05/12/press/5699/article.htm>; *Northern Iraq Fact-Finding Visit*, CSW (June 18, 2020), <https://www.csw.org.uk/2020/06/18/report/4697/article.htm>; Shivan Fazil, *New SIPRI film-The Nineveh Plains of Iraq: How culture is helping to restore peace*, STOCKHOLM INT'L PEACE RSCH. INST. (Oct. 20, 2022), <https://www.sipri.org/news/2022/new-sipri-film-nineveh-plains-iraq-how-culture-helping-restore-peace>.

<sup>273</sup> *Assyria*, *supra* note 263.

<sup>274</sup> Crispin M.I. Smith & Vartan Shadarevian, *Wilting in the Kurdish Sun: The Hopes and Fears of Religious Minorities in Northern Iraq*, U.S. COMM'N INT'L RELIGIOUS FREEDOM 1, 18 (2017), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3006445](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3006445).

<sup>275</sup> *Id.* at 18-19.

<sup>276</sup> Yasmeen Altaji, *In a historic first, the Assyrian language enters a US public school district*, MIDDLE E. EYE (Nov. 4, 2022), <https://www.middleeasteye.net/news/chicago-area-school-districts-assyrian-language-course-makes-us-history>.

<sup>277</sup> Natasha Dado, *Fight to protect endangered Iraqi Christians continues after years of war*, NAT'L NEWS (Mar. 20, 2023), <https://www.thenationalnews.com/world/2023/03/20/fight-to-protect-endangered-iraqi-christians-continues-after-years-of-war/>.

## 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.<sup>278</sup> 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.<sup>279</sup> 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.<sup>280</sup> 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.<sup>281</sup> Notably, "[t]here seems to be little space for expression of national minority

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<sup>278</sup> See Nedžad 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).

<sup>279</sup> A.A. Cançado Trindade, *Exhaustion of Local Remedies in International Law and the Role of National Courts*, 17 ARCHIV DES VÖLKERRECHTS 333, 334 (1978).

<sup>280</sup> See Jared Skinner, Comment, *Una Solució, Si us Plau: 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").

<sup>281</sup> See, e.g., *Azerbaijan*, MINORITY RTS. GRP. INT'L (last updated Mar. 2018), <https://minorityrights.org/country/azerbaijan/>; Uzay Bulut, *Armenians of Artsakh: An Indigenous Nation Targeted by Genocidal Regional Powers*, MODERN DIPLOMACY (Aug. 3, 2023), <https://modern diplomacy.eu/2023/08/03/armenians-of-artsakh-an-indigenous-nation-targeted-by-genocidal-regional-powers/>; Simon Maghakyan, *Cultural Desecrations is Racial Discrimination*, FOREIGN POL'Y (Jan. 13, 2023), <https://foreignpolicy.com/2022/01/13/armenia-azerbaijan-nagorno-karabakh-cultural-desecration-is-racial-discrimination/>.

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

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

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.”<sup>286</sup> In fact, “the state institution most engaged with ethnic minorities is [the] Ministry of National Security.”<sup>287</sup> 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.”<sup>288</sup> However, the constitution limits the exercise of this sovereign right to a standard nationwide popular vote, or a nationwide popular-vote referendum.<sup>289</sup>

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<sup>282</sup> Compare Advisory Committee on the Framework Convention for the Protection of National Minorities, *Fourth Opinion on Azerbaijan*, COUNCIL EUR. (2017), <https://rm.coe.int/4th-acfc-opinion-on-azerbaijan-english-language-version/1680923201>, with *Ethnic Diversity*, AZERBAIJANI MULTICULTURALISM, [https://multiculturalism.preslib.az/en\\_a3.html](https://multiculturalism.preslib.az/en_a3.html) (last visited Dec. 12, 2022).

<sup>283</sup> THE CONSTITUTION OF THE REPUBLIC OF AZERBAIJAN Nov. 12, 1995, art. 11 (securing the preservation of a national culture including “cultural originality of all national minorities living in the territory of the Republic of Azerbaijan”), art. 6 (guaranteeing the right to education in the languages of national minorities); *Experts of the Committee on the Elimination of Racial Discrimination Commend Azerbaijan on its Regional Legal Counselling Centers, Ask Questions about the Conflict in the Nagorno-Karabakh Regions and the Baku Multiculturalism Centre*, U.N. HUM. RTS. OFF. HIGH COMM’R (Aug. 16, 2022), <https://www.ohchr.org/en/news/2022/08/experts-committee-elimination-racial-discrimination-commend-azerbaijan-its-regional> (Azerbaijani Deputy Minister of Foreign Affairs mentioning draft legislation that would provide a framework for the protection of ethnic minorities, with no mention of its passing or ratification).

<sup>284</sup> *Azerbaijan*, *supra* note 281.

<sup>285</sup> See THE CONSTITUTION OF THE REPUBLIC OF AZERBAIJAN Nov. 12, 1995, art. 3.

<sup>286</sup> *Azerbaijan*, *supra* note 281.

<sup>287</sup> *Id.*

<sup>288</sup> THE CONSTITUTION OF THE REPUBLIC OF AZERBAIJAN Nov. 12, 1995, art. 2.

<sup>289</sup> 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.<sup>290</sup> Azerbaijani legislation further elaborates on these provisions through the Law on Municipal Elections and Law on the Status of Municipalities.<sup>291</sup> However, local self-government can only be implemented “within territories approved by the legislature of the Republic of Azerbaijan.”<sup>292</sup> Of note, “the Supreme Council of the Republic of Azerbaijan abolished the status of autonomy for Nagorno-Karabakh” in 1991.<sup>293</sup>

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.”<sup>294</sup> 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.<sup>295</sup> Further, “municipalities have no power to determine the rate of their own taxes and are overall financially dependent” on the state.<sup>296</sup> 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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<sup>290</sup> THE CONSTITUTION OF THE REPUBLIC OF AZERBAIJAN Nov. 12, 1995, arts. 142-46.

<sup>291</sup> Meriban Mamedova et al., *Local Government in Azerbaijan*, in 3 DEVELOPING NEW RULES OLD ENVIRONMENT 371, 377 (Igor Munteanu & Victor Popa eds., 2001).

<sup>292</sup> *Law on the Status of Municipalities of the Republic of Azerbaijan*, EUR. COMM’N DEMOCRACY THROUGH L. 1, 5 (2009), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2009\)163-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2009)163-e) (provision stated in Article 12(1)).

<sup>293</sup> Meriban Mamedova et al., *supra* note 291, at 378; *Armenia-Azerbaijan conflict*, PRESIDENT REPUBLIC AZER., <https://web.archive.org/web/20240213100835/https://president.az/en/pages/view/azerbaijan/karabakh> (last visited March 29, 2023).

<sup>294</sup> *Local self-government in Azerbaijan: few improvements observed, limited powers and weak financial position of municipalities must be urgently addressed*, COUNCIL EUR. CONGRESS LOC. & REG’L AUTHS. (June 17, 2021), <https://www.coe.int/en/web/congress/-/local-self-government-in-azerbaijan-few-improvements-observed-limited-powers-and-weak-financial-position-of-municipalities-must-be-urgently-addressed>.

<sup>295</sup> *Id.*

<sup>296</sup> *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.”<sup>297</sup> 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.<sup>298</sup> The Centre has an Advisory Council designed to represent members of national and religious minorities.<sup>299</sup> However, the council’s “scope is limited to cultural and language issues.”<sup>300</sup> 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.”<sup>301</sup> 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.<sup>302</sup> 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<sup>303</sup>. 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

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<sup>297</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, *supra* note 282, ¶ 10; *Freedom in the World 2022: Azerbaijan*, FREEDOM HOUSE (2022), <https://freedomhouse.org/country/azerbaijan/freedom-world/2022>.

<sup>298</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, *supra* note 282, ¶ 10

<sup>299</sup> *Id.*

<sup>300</sup> *Id.*

<sup>301</sup> *Id.*

<sup>302</sup> THE CONSTITUTION OF THE REPUBLIC OF AZERBAIJAN Nov. 12, 1995, art. 3(II)(1).

<sup>303</sup> See *supra* Part II(A) and accompanying notes.

general marginalization these groups face in Azerbaijan systemically and in their daily lives<sup>304</sup>

Further, the Azerbaijani government has strongly opposed Armenian autonomy in NK.<sup>305</sup> 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.<sup>306</sup>

But the Talysh National Movement only seeks a right to internal self-determination in Azerbaijan.<sup>307</sup> 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.”<sup>308</sup> 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.”<sup>309</sup> 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.<sup>310</sup>

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

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<sup>304</sup> See *supra* Part V(A) and accompanying notes; *infra* Part V(B) and accompanying notes.

<sup>305</sup> Rep. of the Working Group on the Universal Periodic Review: Azerbaijan, U.N. Doc A/HRC/39/14, at 5 (2018) (Azerbaijani government declaring it “would never allow the creation of the second Armenian state in the territory of Azerbaijan”).

<sup>306</sup> Sauer, *supra* note 223.

<sup>307</sup> *Talysh*, *supra* note 247.

<sup>308</sup> *Id.*

<sup>309</sup> CONSTITUTION OF IRAQ Oct. 15, 2005, art. 111.

<sup>310</sup> CONSTITUTION OF IRAQ Oct. 15, 2005, art. 112.

profit from oil and gas resources on their territories.<sup>311</sup> The KRG initially resisted the ruling, labeling it as politicized and illegitimate.<sup>312</sup> But more recently, Iraqi and Kurdish governments agreed to increase dialogue and reach common ground surrounding natural resource allocation inside Iraq's existing frameworks.<sup>313</sup> 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 Turkomen, Chaldeans, Assyrians, and all other constituents.”<sup>314</sup> 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.<sup>315</sup> 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.<sup>316</sup>

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

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<sup>311</sup> *Iraqi Supreme Court Casts Doubt Over Legitimacy of Kurdistan's Oil and Gas Sector*, NORTON ROSE FULBRIGHT (Mar. 2022), <https://www.nortonrosefulbright.com/en/knowledge/publications/0af5e6a5/iraqi-supreme-court-casts-doubt-over-legitimacy-of-kurdistan-oil-and-gas-sector>.

<sup>312</sup> Rowena Edwards & Moataz Mohamed, *Iraq's Kurdistan Judicial Council Defies Supreme Court Over Oil Law*, REUTERS (June 4, 2022), <https://www.reuters.com/markets/commodities/iraqs-kurdistan-judicial-council-defies-supreme-court-over-oil-law-2022-06-04/>.

<sup>313</sup> Wladimir van Wilgenburg & Claudia Carpenter (ed.), *Iraqi Kurds Agree With Baghdad to 'increase dialogue' on Oil and Gas Dispute*, S&P GLOB. (July 24, 2022), <https://www.spglobal.com/commodityinsights/en/market-insights/latest-news/oil/072422-iraqi-kurds-agree-with-baghdad-to-increase-dialogue-on-oil-and-gas-dispute>.

<sup>314</sup> CONSTITUTION OF IRAQ Oct. 15, 2005, art. 125.

<sup>315</sup> 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”).

<sup>316</sup> 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](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.”<sup>317</sup>

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.<sup>318</sup> 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.”<sup>319</sup> 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.”<sup>320</sup> However, the province’s formation “was halted after ISIS seized Mosul in June that same year.”<sup>321</sup>

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.<sup>322</sup> ISIS occupation led to a mass ethnic cleansing and exodus of Assyrians from northern Iraq—drastically reducing the Assyrian population.<sup>323</sup> Given ongoing land disputes between the Iraqi and Kurdish governments in the Nineveh Plains, “neither

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<sup>317</sup> *Minorities and the Law in Iraq*, INST. FOR INT’L L. & HUM. RTS., [https://iilhr.org/wp-content/uploads/2022/08/2\\_Minorities-and-the-Law-In-Iraq\\_Jun-2011\\_EN.pdf](https://iilhr.org/wp-content/uploads/2022/08/2_Minorities-and-the-Law-In-Iraq_Jun-2011_EN.pdf) (last visited Dec. 13, 2022).

<sup>318</sup> *Ninewa:NCCI Governorate Profile*, NGO COORDINATION COMM. FOR IRAQ (Dec. 2010), [https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ncci.dawakar.com/root/root/attach/131562022\\_NCCI\\_Ninewa\\_Governorate\\_Profile.pdf&ved=2ahUKEwj7LCxj8WFAxXAq4kEHdzdBXEQFnoECBEQAQ&usg=AOvVaw3H6qK4qvXKqOPCNliJR0S3](https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ncci.dawakar.com/root/root/attach/131562022_NCCI_Ninewa_Governorate_Profile.pdf&ved=2ahUKEwj7LCxj8WFAxXAq4kEHdzdBXEQFnoECBEQAQ&usg=AOvVaw3H6qK4qvXKqOPCNliJR0S3).

<sup>319</sup> *Iraq*, ASSYRIAN POL’Y INST., *supra* note 86; *Iraq*, MINORITY RTS. GRP. (May 2018) <https://minorityrights.org/country/iraq/#:~:text=Ethnic%20minorities%20include%20Turkmen%2C%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”).

<sup>320</sup> *Dado*, *supra* note 277.

<sup>321</sup> *Id.*

<sup>322</sup> 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”).

<sup>323</sup> 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.”<sup>324</sup>

In 2019, Kurdish security forces blocked “displaced residents from return, as well as supplies of food, equipment and essentials.”<sup>325</sup> Kurdish officials also “asserted their intention to permanently annex areas” of the Nineveh Plains now under their influence.<sup>326</sup> 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.<sup>327</sup> 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.<sup>328</sup>

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.<sup>329</sup> 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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<sup>324</sup> *The Future of the Nineveh Plain: A Proposal from Chaldean/Syriac/Assyrian Political Parties*, SCRIBD <https://www.scribd.com/document/352513487/The-Future-of-the-Nineveh-Plain> (last visited Dec. 13, 2022).

<sup>325</sup> *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).

<sup>326</sup> *Iraq*, MINORITY RTS. GRP, *supra* note 319.

<sup>327</sup> 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/iraqs-supreme-court-rules-it-cannot-dissolve-parliament>.

<sup>328</sup> *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”).

<sup>329</sup> James Macintyre, *Iraqi Parliament Votes Against New Christian Province In Nineveh Plain*, CHRISTIAN TODAY (Sept. 27, 2016), <https://www.christiantoday.com/article/iraqi-parliament-votes.against.new.christian.province.in.nineveh.plain/96511.htm>.

Iraq's Assyrian population—who have been explicitly denied their right to internal self-determination under Iraq's constitution.<sup>330</sup>

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.<sup>331</sup> Specifically, the Federal Supreme Court of Iraq's rules of procedure allow a litigant to challenge a legislative decision in the country's parliament.<sup>332</sup> 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:<sup>333</sup>

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

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<sup>330</sup> Compare Wilgenburg & 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.

<sup>331</sup> CONSTITUTION OF IRAQ Oct. 15, 2005 (providing that the Federal Supreme Court of Iraq has jurisdiction over interpreting constitutional provisions).

<sup>332</sup> See Internal Regulation No. (1) of 2005, FED. SUP. CT. IRAQ, <https://www.iraqidevelopers.com/iraqfsc/ar/procedure-ar> (unofficial translation) (last visited March 9, 2023) (Chapter II Articles 3-6 discuss the requirements for a plaintiff to request a ruling on the legitimacy of a legislative decision under the Iraqi Constitution).

<sup>333</sup> Anderson, *supra* note 123, at 1217-22.

(2) with “sufficient temporal nexus between the alleged discrimination and the resulting claim for [unilateral] secession.”<sup>334</sup>

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”<sup>335</sup> 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).<sup>336</sup>

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<sup>337</sup> and are therefore discussed in Section VIII. Part A will apply the Anderson 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.<sup>338</sup> 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*

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<sup>334</sup> *Id.* at 1218.

<sup>335</sup> *Id.* at 1219; 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* Kolodner, *supra* note 145; *see also* discussion *infra* Section VII.

<sup>336</sup> Anderson, *supra* note 123, at 1220.

<sup>337</sup> *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”).

<sup>338</sup> *Nagorno-Karabakh*, BRITANNICA, *supra* note 55.



integration into Azerbaijan.<sup>339</sup> 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.<sup>340</sup>

*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.<sup>341</sup> Several reports spanning over a decade reveal persistent hate speech by government officials, media outlets, and educational institutions against ethnic Armenians.<sup>342</sup> Several statements by Azerbaijani officials—spanning approximately two decades—indicate a genocidal intent that the Azerbaijani government harbors toward people of Armenian descent.<sup>343</sup> 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.”<sup>344</sup> 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.”<sup>345</sup> 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.”<sup>346</sup> During the

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<sup>339</sup> See Edwards, *supra* note 228.

<sup>340</sup> See Sossi Tatikyan, *Deliberate Starvation of Nagorno-Karabakh Armenians*, EVN REP. (Aug. 10, 2023), <https://evnreport.com/politics/deliberate-starvation-of-nagorno-karabakh-armenians/>; Scheffer, *supra* note 206.

<sup>341</sup> ECRI Report on Azerbaijan, EUR. COMM'N AGAINST RACISM & INTOLERANCE 20 (2002), <https://rm.coe.int/first-report-on-azerbaijan/16808b5579> [hereinafter ECRI Report 1].

<sup>342</sup> See *id.* at 19-20; ECRI Second Report on Azerbaijan, EUR. COMM'N AGAINST RACISM & INTOLERANCE 27-29 (2006), <https://rm.coe.int/second-report-on-azerbaijan/16808b557b> [hereinafter ECRI Report 2]; ECRI Report on Azerbaijan (fourth monitoring cycle), EUR. COMM'N AGAINST RACISM & INTOLERANCE 29-30 (2011), <https://rm.coe.int/third-report-on-azerbaijan/16808b557e> [hereinafter ECRI Report 3]; ECRI Report 4, *supra* note 186.

<sup>343</sup> See *Azerbaijan's Genocidal Intent: Genocidal Threats Against Armenians by Azerbaijani Authorities, Including President Aliyev (2004-2023)*, ARM. ASSEMBLY AM., <https://www.armenian-assembly.org/azerbaijangenocideintent> (last visited Mar. 30, 2023).

<sup>344</sup> *Id.*

<sup>345</sup> *Id.*

<sup>346</sup> Ilham Aliyev (@presidentaz), TWITTER (Jan. 29, 2015, 2:37 AM), <https://twitter.com/presidentaz/status/560718307515318272?lang=en>.

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!”<sup>347</sup> 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.<sup>348</sup> In turn, “an entire generation of Azerbaijanis has now grown up listening to,” and viewing this hateful and dehumanizing rhetoric toward Armenian people.<sup>349</sup>

A 2012 survey conducted in Azerbaijan showed that ninety-one percent of respondents perceived Armenia as Azerbaijan’s greatest enemy.<sup>350</sup> 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.”<sup>351</sup> 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.”<sup>352</sup> 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.<sup>353</sup>

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.<sup>354</sup> 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.<sup>355</sup>

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

<sup>347</sup> *Azerbaijan’s Genocidal Intent: Genocidal Threats Against Armenians by Azerbaijani Authorities, Including President Aliyev (2004-2023)*, *supra* note 343.

<sup>348</sup> Lucía de la Torre, *Azerbaijan postal stamps accused of spreading anti-Armenian propaganda*, NEW EAST DIGIT. ARCHIVE (Jan. 12, 2021), <https://www.new-east-archive.org/articles/show/12442/azerbaijan-stamps-nagorno-karabakh-war-anti-armenian-propaganda>.

<sup>349</sup> ECRI Report 4, *supra* note 186, at 9.

<sup>350</sup> Anar Valiyev, *Azerbaijan and the Eurasian Union: Costs and Benefits*, in CAUCASUS ANALYTICAL DIGIT. NO. 51-52, 21, fig.2b (Iris Kempe ed., 2013).

<sup>351</sup> ECRI Report 3, *supra* note 342, at 19.

<sup>352</sup> *Id.* at 29.

<sup>353</sup> See generally *CHW Reports*, CAUCASUS HERITAGE WATCH, <https://caucasusheritage.cornell.edu/index.php/report#> (last visited Dec. 13, 2022); Resolution on the Destruction of Cultural Heritage in Nagorno-Karabakh, *supra* note 204.

<sup>354</sup> See *supra* notes 204-20 and accompanying text.

<sup>355</sup> *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.<sup>356</sup> 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.<sup>357</sup> 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.<sup>358</sup> This linkage then continues to appear in ECRI reports from 2006 until 2023.<sup>359</sup> 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.<sup>360</sup> Such constitutional guarantees included prohibition of incitement of national, racial, or religious hatred.<sup>361</sup> 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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<sup>356</sup> ECRI Report 3, *supra* note 342, at 29.

<sup>357</sup> ECRI Report 1, *supra* note 341, at 19-20; ECRI Report 2, *supra* note 242, at 27-29; ECRI Report 3, *supra* note 242, at 18-19; ECRI Report 4, *supra* note 186, at 17-18; ECRI Report on Azerbaijan (sixth monitoring cycle), EUR. COMM'N AGAINST RACISM & INTOLERANCE 5, 16 (2023), <https://rm.coe.int/sixth-report-on-azerbaijan/1680ab9e35> [hereinafter ECRI Report 5].

<sup>358</sup> ECRI Report 1, *supra* note 341, at 20.

<sup>359</sup> 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.

<sup>360</sup> 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).

<sup>361</sup> 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).

minorities.<sup>362</sup> 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.<sup>363</sup> 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.<sup>364</sup> 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.<sup>365</sup> 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.<sup>366</sup>

### 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.<sup>367</sup> The region had a permanent population defined by official periodic census surveys,<sup>368</sup> a defined territory set out by historical maps before,

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<sup>362</sup> 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).

<sup>363</sup> See Kolodner, *supra* note 145.

<sup>364</sup> *Id.*

<sup>365</sup> 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).

<sup>366</sup> 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).

<sup>367</sup> See Michael Ajemian, Note, *Territorial Stalemate: Independence of Nagorno-Karabakh Following the Dissolution of the Soviet Union, and its Lingering Effects Decades Later*, 34 SUFFOLK TRANSNAT'L L. REV. 375, 378 (2011); Montevideo Convention, art. 1 (Dec. 26, 1934).

<sup>368</sup> *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,<sup>369</sup> and a “democratically elected, constitutionally based government that possesse[d] full physical control over its claimed territory.”<sup>370</sup> 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.”<sup>371</sup>

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.<sup>372</sup> 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.<sup>373</sup> 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 Azerbaijanis and reduce the number of Armenians living in the region while he was Soviet Communist Party Administrator.”<sup>374</sup> As discussed, NK Armenians did not “occupy” Nagorno-

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<sup>369</sup> See generally Vladimir A. Kolosov & Maria V. Zotova, *Multiple Borders of Nagorno-Karabakh*, 13 GEOGRAPHY, ENV’T, SUSTAINABILITY 84, 84-91 (2020); *The Nagorno-Karabakh Conflict: A Visual Explainer*, INT’L CRISIS GRP. (last updated Nov. 18, 2022), <https://www.crisisgroup.org/content/nagorno-karabakh-conflict-visual-explainer>; Nancy N. Falco & Marie Hoffman, *Mapping the Nagorno-Karabakh Conflict*, UNIV. KENT (Apr. 15, 2018), <https://blogs.kent.ac.uk/carc/2018/04/15/the-nagorno-karabakh-conflict/>.

<sup>370</sup> Ajemian, *supra* note 367.

<sup>371</sup> *Id.*; see also *Permanent Representations of the Republic of Artsakh in the Republic of Armenia*, REPUBLIC ARTSAKH MINISTRY FOREIGN AFFS. (last visited Dec. 14, 2022) <https://web.archive.org/web/20240223102020/http://www.nkr.am/karabakh-permanent-representations>.

<sup>372</sup> See U.N. Charter art. 2, ¶ 4; GLORIA GAGGIOLI, INT’L COMM. RED CROSS, *THE USE OF FORCE IN ARMED CONFLICTS* 1-6 (2012).

<sup>373</sup> See National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16.21: Azerbaijan, U.N. Doc A/HRC/WG.6/30/AZE/1, at 20-21 (2018); National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16.21: Azerbaijan, U.N. Doc A/HRC/WG.6/16/AZE/1, at 18-21 (2013); National report submitted in accordance with paragraph 15(A) of the annex to Human Rights Council resolution 5/1: Azerbaijan, U.N. Doc A/HRC/WG.6/4/AZE/1, at 20-21 (2008).

<sup>374</sup> 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*, HARV. 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

Karabakh, because Nagorno-Karabakh was consistently an ethnic Armenian-majority enclave from the pre-Soviet period until 2023.<sup>375</sup> 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.<sup>376</sup> 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.<sup>377</sup>

*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.<sup>378</sup> This massacre killed 6,000 Assyrian civilians.<sup>379</sup> The Iraqi Government does not recognize the Simele Massacre.<sup>380</sup> A mass gravesite in the town remains unmarked and unprotected, with bones exposed and the site littered with waste.<sup>381</sup>

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J. Kim, Comment, *Self-Defense on Behalf of Non-State Actors*, 43 UNIV. PA. J. INT'L L. 241, 265-66 (2021).

<sup>375</sup> See discussion *infra* Sections II(A), IV(A).

<sup>376</sup> *Azerbaijan/Nagorno-Karabakh (1991-Present)*, UNIV. CENTRAL ARK. GOV'T, PUB. SERV., & INT'L STUD., <https://uca.edu/politicalscience/home/research-projects/dadm-project/europerussiacentral-asia-region/azerbajannagorno-karabakh-1991-present/>.

<sup>377</sup> 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).

<sup>378</sup> *Iraq*, *supra* note 86.

<sup>379</sup> *Id.*

<sup>380</sup> *Id.*

<sup>381</sup> *Recognition of the Simele Massacre of 1933*, ASSYRIAN POL'Y INST. 7 (2018), [http://www.aina.org/reports/simmele\\_api.pdf](http://www.aina.org/reports/simmele_api.pdf).

Assyrians endured more destruction of their villages and churches, alongside civilian deaths, throughout Saddam Hussein's rule from 1979 until 2003.<sup>382</sup> Assyrians faced systemic discrimination by being "denied equal access to jobs, schooling, and 'physical security.'"<sup>383</sup> They were only able to sell their homes to Arab-identifying civilians and could not register or inherit property.<sup>384</sup> 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."<sup>385</sup>

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.<sup>386</sup> Islamic fundamentalist groups also bombed Assyrian churches, set Assyrian businesses on fire, and forced Assyrian women to wear head coverings.<sup>387</sup>

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.<sup>388</sup> Nearly all of Mosul's Assyrian residents fled the region.<sup>389</sup> 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.<sup>390</sup> Assyrian

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<sup>382</sup> U.S. BUREAU CITIZENSHIP & IMMIGR. SERVS., *supra* note 260.

<sup>383</sup> *Id.*

<sup>384</sup> *Id.*

<sup>385</sup> BETH DOUGHERTY, HISTORICAL DICTIONARY OF IRAQ 359 (2019).

<sup>386</sup> *See Iraq, supra* note 86; Reine Hanna & Gregory J. Kruczek, *Contested Control: The Future of Security in Iraq's Nineveh Plain*, ASSYRIAN POL'Y INST. 15-16 (June 1, 2020), [https://50f3ad00-5b28-4016-898f-6130d301c97a.filesusr.com/ugd/6ae567\\_98f8f8912baa40949a18a3a0b717eaea.pdf](https://50f3ad00-5b28-4016-898f-6130d301c97a.filesusr.com/ugd/6ae567_98f8f8912baa40949a18a3a0b717eaea.pdf); *Assyrians Stage Protest in Erbil Demanding an End to KDP Interference in Minority Elections*, ASSYRIAN POL'Y INST. (July 30, 2018), <https://www.assyrianpolicy.org/post/assyrians-stage-protest-in-erbil-demanding-an-end-to-kdp-interference-in-minority-elections>.

<sup>387</sup> Magdi Abdelhadi, *Analysis: Iraq's Christians under attack*, BBC NEWS (last updated Aug. 2, 2004), [http://news.bbc.co.uk/2/hi/middle\\_east/3529364.stm](http://news.bbc.co.uk/2/hi/middle_east/3529364.stm).

<sup>388</sup> *Mass Violence and Genocide by the Islamic State/Daesh in Iraq and Syria*, UNIV. MINN. HOLOCAUST & GENOCIDE STUD. (last visited Dec. 14, 2022), <https://cla.umn.edu/chgs/holocaust-genocide-education/resource-guides/mass-violence-and-genocide-islamic-statedaesh>.

<sup>389</sup> *Assyrian Aid Society President Testifies at UN Session on the Rights of Indigenous Peoples*, ASSYRIAN POL'Y INST. (July 14, 2018), <https://www.assyrianpolicy.org/post/assyrian-aid-society-president-testifies-at-un-session-on-the-rights-of-indigenous-peoples>.

<sup>390</sup> *Access route in the Nineveh Plain blocked by KRG security forces*, ASSYRIAN POL'Y INST. (Sept 9, 2020), <https://www.assyrianpolicy.org/post/access-route-in-the-nineveh-plain-blocked-by-kr-security-forces>; *id.*; Hanna & Kruczek, *supra* note 386, at 46-47.

Democratic Movement officials “said at least 54 villages have been subject to partial or complete appropriation by Kurds since the 1960s.”<sup>391</sup> 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.”<sup>392</sup>

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.<sup>393</sup>

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.<sup>394</sup> Zowaa’s constitution notably advocates for the protection and advancement of women, children, disabled people, and ethnic minorities’ rights across Iraq.<sup>395</sup> 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

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<sup>391</sup> Crispin M.I. Smith & Vartan Shadarevian, *Wilting in the Kurdish Sun: The Hopes and Fears of Religious Minorities in Northern Iraq*, U.S. COMM’N INT’L RELIGIOUS FREEDOM 1, 38 (2017), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3006445](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3006445).

<sup>392</sup> *Id.*

<sup>393</sup> 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.

<sup>394</sup> *Political Platform*, ASSYRIAN DEMOCRATIC MOVEMENT, 73-75, 81-83, 84 (2017), <https://www.zowaa.org/wp-content/uploads/2017/10/Full-Version-Political-Platform-Bylaws.pdf>.

<sup>395</sup> *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.<sup>396</sup> 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.<sup>397</sup> 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.<sup>398</sup> 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.<sup>399</sup> 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”).<sup>400</sup> Thus, Assyrians have—at some level, and against the odds—maintained a permanent population inside northern Iraq for centuries.

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<sup>396</sup> See Kolodner, *supra* note 145.

<sup>397</sup> *Id.*

<sup>398</sup> See *Political Platform*, *supra* note 394.

<sup>399</sup> See Anderson, *supra* note 123, at 1217-22.

<sup>400</sup> *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.<sup>401</sup> More contemporary and historical maps provide a defined territory for this region inside present-day Iraq.<sup>402</sup> One of the oldest, presently-known maps including the land of Assyria dates to around the 6th century BCE.<sup>403</sup> 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.<sup>404</sup> 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.<sup>405</sup> Reverend William Ainger Wigram, appointed by the Archbishop of Canterbury to head a mission to the Assyrian Church of the East, authored this 1920 book.<sup>406</sup>

The Nineveh Provincial Council technically presides over the Nineveh Plains, although the KDP has now non-democratically controlled the council for a few decades.<sup>407</sup> 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<sup>408</sup> and the existence of numerous political and humanitarian organizations that now lobby for the Assyrian cause in various foreign, national, and local

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<sup>401</sup> *Iraq*, *supra* note 86; Shamiran Mako, Address to the U.N. Commission on Human Rights Sub-Commission 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).

<sup>402</sup> See *Assyria Maps*, ASSYRIAN INFO. MGMT., <https://www.atour.com/maps/> (last visited Dec. 14, 2022).

<sup>403</sup> *Tablet*, BRITISH MUSEUM, [https://www.britishmuseum.org/collection/object/W\\_1882-0714-509](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>.

<sup>404</sup> See *Tablet*, *supra* note 403.

<sup>405</sup> WILLIAM WIGRAM, *OUR SMALLEST ALLY: A BRIEF ACCOUNT OF THE ASSYRIAN NATION IN THE GREAT WAR* (1920), <https://www.atour.com/media/files/library/government/William-Ainger-Wigram/William-Ainger-Wigram--Our-Smallest-Ally--a-brief-account-of-the-Assyrian-nation-in-the-Great-War--Introduction-General-H-H-Austin-CMG.pdf>; John Davison, *An ancient monastery in Iraq is a symbol of Christian survival*, REUTERS (Mar. 3, 2021), <https://www.reuters.com/article/us-pope-iraq-monastery/an-ancient-monastery-in-iraq-is-a-symbol-of-christian-survival-idUSKCN2AV0PA>.

<sup>406</sup> 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:odnb/9780198614128.001.0001/odnb-9780198614128-e-58374>.

<sup>407</sup> *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.

<sup>408</sup> JOSEPH NAAYEM, *SHALL THIS NATION DIE?* 280-81 (1921).

governments.<sup>409</sup> 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.<sup>410</sup> 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.<sup>411</sup>

## 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 *de facto* independent status.<sup>412</sup> 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.”<sup>413</sup> 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 *de facto* independence.<sup>414</sup>

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<sup>409</sup> See generally *Our Mission*, ASSYRIAN POL'Y INST., <https://www.assyrianpolicy.org/our-work> (last visited Dec. 14, 2022); *About AAS*, ASSYRIAN AID SOC'Y, <https://assyrianaid.org/who-we-are/> (last visited Dec. 14, 2022); *Our Work*, SHLAMA FOUND., <https://www.shlama.org/> (last visited Dec. 14, 2022); *About*, ETUTI INST., <https://www.etuti.org/about/> (last visited Dec. 14, 2022).

<sup>410</sup> See generally SARGON DONABED, *REFORDING A FORGOTTEN HISTORY: IRAQ AND THE ASSYRIANS IN THE 20<sup>TH</sup> CENTURY* 54-269 (2015) (providing a historical timeline of Iraq's Assyrians throughout the late nineteenth until the end of the twentieth century with no mention of acts that go against the peremptory norms of international law or international humanitarian law); *Rule 101 – The Principle of Legality*, INT'L HUMANITARIAN L. DATABASES, [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule101](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule101) (last visited Dec. 14, 2022) (illustrating the legality principle as an element of customary international humanitarian law).

<sup>411</sup> See *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).

<sup>412</sup> See *About Artsakh Republic*, GOV'T ARTSAKH REPUBLIC, <https://web.archive.org/web/20230921011335/http://gov.nkr.am/en/general-information/> (last visited Mar. 3, 2023).

<sup>413</sup> Ghazanchyan, *supra* note 61.

<sup>414</sup> See *id.*; Jessie Williams, *Ethnic Armenians who fled Nagorno-Karabakh long from home, decry Azerbaijan*, AL JAZEERA (Oct. 6, 2023), <https://www.aljazeera.com/news/2023/10/6/ethnic-armenians-who-fled-karabakh>.

The Assyrian Democratic Moment actively seeks semi-autonomous control over the Nineveh Plains under the jurisdiction of the Iraqi government.<sup>415</sup> 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.<sup>416</sup> 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<sup>417</sup> 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.<sup>418</sup> Further, continued NK Armenians have faced intense violence and ethnic cleansing before and after falling under Azerbaijani authority.<sup>419</sup> The Republic of Armenia can spearhead a UNGA resolution requesting the ICJ issue an advisory opinion regarding Nagorno-Karabakh's status under international law.<sup>420</sup> If passed, the resolution would authorize the ICJ to answer this question of law.<sup>421</sup> 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.<sup>422</sup>

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<sup>415</sup> See Gregory J. Kruczek, *Christian (Second-Order) Minorities and the Struggle for the Homeland: The Assyrian Democratic Movement in Iraq and the Nineveh Plain Protection Units*, 12 J. MIDDLE E. & AFR. 93, 113 (2021).

<sup>416</sup> See *supra* Part IV(C) and accompanying notes.

<sup>417</sup> *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”).

<sup>418</sup> See generally discussion *infra* Section IV(A).

<sup>419</sup> See *supra* notes 129-49 and accompanying text; Roy, *supra* note 8.

<sup>420</sup> 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”).

<sup>421</sup> *Questions & Answers about the advisory procedure*, I.C.J. INFO. DEP'T (July 2010) [https://www.idi.org.il/media/5812/kos\\_faq\\_en.pdf](https://www.idi.org.il/media/5812/kos_faq_en.pdf).

<sup>422</sup> See S.C. Res. 822, ¶ 1 (Apr. 30, 1993); S.C. Res. 853, ¶ 3 (July 29, 1993); S.C. Res. 874, ¶ 4 (Oct. 14, 1993) [hereinafter UNSC Resolutions].

Namely, these resolutions demand for immediate, complete, and unconditional withdrawal of “occupying forces” from occupied areas of Azerbaijan.<sup>423</sup> Security Council resolutions have binding force under international law.<sup>424</sup> 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.<sup>425</sup>

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 1 of the UN Charter: namely, the right to self-determination and the evolution of this right over time.<sup>426</sup> Further, arguments of self-defense can counter the perception that NK Armenians took control of the region through illegal use of force.<sup>427</sup> The Security Council resolutions also acknowledge that the Armenians of Nagorno-Karabakh are a party in the conflict distinct from the Republic of Armenia.<sup>428</sup> 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.<sup>429</sup>

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.<sup>430</sup> The resolution expressed views similar to the

<sup>423</sup> *Id.*

<sup>424</sup> See *United Nations Security Council Resolutions*, U.N. REG’L CTR. PREVENTIVE DIPL. CENTRAL ASIA [https://unrcca.unmissions.org/sites/default/files/6-unrcca\\_handout\\_unsc\\_resolutions\\_eng\\_2020\\_1\\_2.pdf](https://unrcca.unmissions.org/sites/default/files/6-unrcca_handout_unsc_resolutions_eng_2020_1_2.pdf) (last visited Dec. 14, 2022).

<sup>425</sup> Marko D. Öberg, *The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ*, 16 EUR. J. INT’L L. 879, 885 (2006).

<sup>426</sup> 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).

<sup>427</sup> 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.

<sup>428</sup> UNSC Resolutions, *supra* note 422.

<sup>429</sup> See generally Rouben Galichian, *Karabagh (Artsakh) in Old Maps*, GALICHIAN (2018), <https://roubengalichian.com/2018/04/19/karabagh-artsakh-in-old-maps-2/>.

<sup>430</sup> Compare Current Members, U.N. SEC. COUNCIL, <https://www.un.org/securitycouncil/content/current-members> (last visited Dec. 14, 2022), with Press Release, General Assembly, General Assembly Adopts Resolution Reaffirming Territorial Integrity of Azerbaijan, Demanding Withdrawal of All

Security Council resolutions on the same topic.<sup>431</sup> Notably, only 39 states voted in favor of the resolution, with seven against and 100 abstentions.<sup>432</sup> 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.<sup>433</sup>

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.<sup>434</sup> 117 out of 193 UN member states presently recognize Kosovo's independence since the ICJ's advisory opinion.<sup>435</sup> 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.<sup>436</sup> 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.<sup>437</sup> However, more recent commentary accused the court of

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Armenian Forces, U.N. Press Release GA/10693 (Mar. 14, 2008) (displaying the voting record where China and the United Kingdom abstained and France, the Russian Federation, and the United States voted against the resolution).

<sup>431</sup> Compare UNSC Resolutions, *supra* note 419, with G.A. Res. 62/243, ¶ 1-2 (Apr. 25, 2008).

<sup>432</sup> Press Release, *supra* note 430.

<sup>433</sup> 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).

<sup>434</sup> *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.”).

<sup>435</sup> *Kosovo: On the road to becoming a fully-functioning state*, GER. FED. MINISTRY ECON. COOP. & DEV. U.N. (last updated Nov. 3, 2022), <https://www.bmz.de/en/countries/kosovo>.

<sup>436</sup> See CONSTITUTION OF IRAQ Oct. 15, 2005, art. 125.

<sup>437</sup> 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.<sup>438</sup> Nevertheless, judicial relief remains the only available <sup>439</sup>[~~option~~].

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.<sup>440</sup> 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.<sup>441</sup>

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.<sup>442</sup> 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.<sup>443</sup> Further, Iraq has not submitted to compulsory ICJ jurisdiction.<sup>444</sup> 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.<sup>445</sup>

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

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*Constitutional Democracy*, 46 GEO. WASH. INT'L L. REV. 29, 54 (2013) (suggesting that important constitutional provisions require legislative implementation in post-conflict Iraq to enhance the Federal Supreme Court of Iraq's independence and legitimacy).

<sup>438</sup> Abu Zeed, *supra* note 327.

<sup>439</sup> See discussion *infra* Section VI(B).

<sup>440</sup> See discussion *infra* Section IV(B).

<sup>441</sup> Trinidad, *supra* note 279.

<sup>442</sup> See STATUTE OF THE INTERNATIONAL COURT OF JUSTICE art. 1 (defining the ICJ as “the principle judicial organ of the United Nations”).

<sup>443</sup> 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).

<sup>444</sup> *Declarations Recognizing the jurisdiction of the Court as compulsory*, I.C.J., <https://www.icj-cij.org/en/declarations> (last visited Dec. 14, 2022).

<sup>445</sup> See discussion *infra* Section VI(B).

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.<sup>446</sup>

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.<sup>447</sup>

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.<sup>448</sup> Indigenous groups will then be able

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<sup>446</sup> See *History of Kosovo*, BRITANNICA (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”).

<sup>447</sup> See discussion defining external self-determination, *infra* Part IV(C).

<sup>448</sup> 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.<sup>449</sup> 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.<sup>450</sup>

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.<sup>451</sup> 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.<sup>452</sup> 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.<sup>453</sup>

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<https://www.icj-cij.org/en/organs-agencies-authorized> (last visited Dec. 14, 2022); *United Nations Permanent Forum on Indigenous Issues*, U.N. DEP'T ECON. & SOC. AFFS., <https://www.un.org/development/desa/indigenouspeoples/unpfii-sessions-2.html> (last visited Dec. 14, 2022).

<sup>449</sup> *Id.*

<sup>450</sup> GER. FED. MINISTRY ECON. COOP. & DEV. U.N., *supra* note 435.

<sup>451</sup> See generally *About Democracy International*, DEMOCRACY INT'L, <http://democracyinternational.com/about/> (last visited Dec. 14, 2022); *About Us*, INT'L FOUND. ELECTORAL SYS., <https://www.ifes.org/about-us> (last visited Dec. 14, 2022).

<sup>452</sup> See *Brief IV. ECOSOC Subsidiary Bodies*, U.N. HIGH-LEVEL POL. F. ON SUSTAINABLE DEV. (Jan. 2024), <https://hlpf.un.org/sites/default/files/2024-02/BRIEF%204%202024.pdf>; *Economic And Social Counsel (ECOSOC)*, FIU LIBR. <https://library.fiu.edu/c.php?g=160201&p=1047174> (last visited Apr. 5, 2024).

<sup>453</sup> See U.N. Secretary-General, *Guidance Note of the Secretary-General on United Nations Constitutional Assistance* (2020), [https://peacemaker.un.org/sites/peacemaker.un.org/files/SG%20Guidance%20Note%20on%20Constitutional%20Assistance\\_1.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/SG%20Guidance%20Note%20on%20Constitutional%20Assistance_1.pdf).

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.<sup>454</sup> The UN Charter created a now-dissolved Trusteeship Council to aid trust territories in nation building and decolonization.<sup>455</sup> 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.<sup>456</sup> 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.<sup>457</sup> 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

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<sup>454</sup> See U.N. Charter arts. 86-91.

<sup>455</sup> See *Trusteeship Council*, U.N. (last visited Dec. 14, 2022), <https://www.un.org/en/about-us/trusteeship-council>

<sup>456</sup> See *Military*, U.N. PEACEKEEPING (last visited Dec 14, 2022), <https://peacekeeping.un.org/en/military>.

<sup>457</sup> See *Mesopotamia – The Assyrians*, HIST. (Sept. 30, 2019), [https://www.history.com/topics/ancient-middle-east/mesopotamia#section\\_11](https://www.history.com/topics/ancient-middle-east/mesopotamia#section_11); *History of Armenia*, BRITANNICA (Aug. 23, 2022), <https://www.britannica.com/place/Armenia/History>; Mamaykhan A. Aglarov, *Talysh*, ENCYCLOPEDIA WORLD CULTURES, <https://www.encyclopedia.com/humanities/encyclopedias-almanacs-transcripts-and-maps/talysh>.

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.