

FREE ARTSAKH

Reading time ~ 7 min.

The current situation in Artsakh (also known as Nagorno-Karabakh) has two international aspects: Geopolitical and Legal. It is a mistake to ignore the legal part of the situation. In terms of International Law, the war in Artsakh highlighted, once again, the tension between two competing principles: a **people's right to self-determination and territorial integrity of states**.

Is a people's right to self-determination more important than the principle of territorial integrity of states? In case of Artsakh, this is the most important question in terms of international law. Having reviewed lots of documents and having talked to several experts, we have decided to share a few ideas.

The principle of territorial integrity is a key part of the international legal system. It prohibits territorial conquests through use of force. This principle condemns the partial or total disruption of the national unity and the territorial integrity of any country. However, this principle is not set in stone. Several countries have disintegrated – Yugoslavia, Czechoslovakia, the USSR – and created new internationally accepted borders.

Moreover, the principle of territorial integrity is often in conflict with another principle of international law, that of self-determination of “peoples”. The International Court of Justice defined the principle of self-determination as the need to pay regard to the freely expressed will of peoples. The principle of self-determination of peoples is enshrined in the United Nations (UN) Charter and many other international declarations, conventions and General Assembly resolutions.

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

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

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

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

First, the Government of Azerbaijan has always instituted policies of cultural assimilation and discrimination against the Armenian minority, through aggressive policies, to turn the majority of Armenians (more than 70%) into a minority.

Second, the government of Azerbaijan is among the most corrupt and authoritarian governments in the world with a completely dysfunctional legal system. This is easy to

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



prove. In 2017 the President of Azerbaijan amended the constitution to appoint his wife as vice president and second in command (see the article in the Global Legal Monitor [here](#)).

The question, therefore, is how can ethnic Armenians of Artsakh negotiate anything with the corrupt government of Azerbaijan?

The International Court of Justice will undoubtedly take these facts into account. Armenia should not be afraid to show to the world that it is a country founded on the principle of rule of law and peaceful resolution of conflicts.

The main dispute resolution forum in public international law is the International Court of Justice, also known as the World Court. Neither Armenia nor Azerbaijan have thus far recognized the compulsory jurisdiction of the International Court of Justice. This, however, does not prevent them from submitting a specific dispute to the Court for adjudication.

Conclusion:

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

But "TIS" does not say much about people living within States. This means States should not be using the notion of "TIS" against any part of its own population, regardless of that population's minority status, religious beliefs or orientations.

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

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

Maybe the best case is for these states to disintegrate into smaller law-abiding states? They would become a much safer place. If there is any evidence of human rights abuse, discrimination and ethnic cleansing, then it should be the moral obligation of all international organizations to support the minority group of people seeking its independence from tyranny and extermination.

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

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