

The Use of International Law and Power Politics in Justifying Statehood Recognition:
The Cases of Kosovo, Nagorno-Karabakh, and Crimea

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Introduction

When to allow for state secession is a difficult problem for the international community to resolve. Currently, international law does not have any established rules regarding when secession is permissible. The International Court of Justice has established the precedent of recognizing the legality of unilateral declarations of independence by breakaway regions, but this does not answer the question regarding whether or not regions such as Kosovo should be recognized as states. As a result, states are forced to adopt their own rules regarding when to grant *de jure* recognition, or recognition by law, to these breakaway groups.

At this moment, there are over one-hundred movements around the world advocating for separatism, or the political separation from a particular state.¹ In an attempt to legitimize their movements and garner greater international support, many of these separatist movements have set up government systems that claim to represent the interests of a particular group of people within a particular territory. Oftentimes, the separatist group will argue that the population it claims to represent has had its right to self-determination violated through discrimination and possible persecution.² This argument may actually be true in some cases. In Kosovo, for example, thousands of Albanians suffered ethnic cleansing at the hands of a Serb-dominated Yugoslav military seeking to reincorporate the region under the authority of Belgrade.

Statehood recognition based on self-determination principles, however, remains controversial. Currently, international law upholds territorial integrity over self-determination when considering sovereignty issues. One reason for the importance of

¹ "Separatism" *The American Heritage Dictionary of the English Language, Fourth Edition*, <http://www.thefreedictionary.com/separatism>

² V.Epps, *International Law*, p.268.

territorial integrity is because the international community is dominated by states, or “independent political communities each of which possesses a government and asserts sovereignty in relation to a particular portion of the earth’s surface and a particular segment of the human population.”³ These states seek to maintain authority over the borders they rule. Secession is a threat to the state, as its power will diminish as it loses territory to separatist groups. But with the advent of documents such as the United Nations Human Rights Charter, some states, including the United States, may argue that offering *de jure* recognition to breakaway region is justified particularly if the local population has suffered atrocious human rights violations such as ethnic cleansing. The protection of human rights was one reason why NATO intervened in Kosovo, creating the foundation for Kosovo’s unilateral declaration of independence in 2008 after NATO, and later the United Nations, effectively cut the region off from Belgrade’s authority.

Thus a debate is brewing regarding when state secession should be allowed. In an attempt to abate the fears of states who argue that Kosovo will become the precedent for other separatist groups worldwide in their attempts to garner *de jure* recognition, the United States has argued that Kosovo is a *sui generis*, or unique, case within international law.⁴ Rather than becoming a precedent, Kosovo is actually an exception to the rules of international law while no other contested state can claim to be, thereby making Kosovo the only case that will ever be allowed to breach the rules of territorial integrity.

But is this really true? Many contested states share significant historical, political, and economic similarities with Kosovo. One example of such an analogous situation is the Nagorno-Karabakh Republic, a breakaway region found within the Caucasian state of

³ H.Bull, *The Anarchical Society: A Study of Order in World Politics*, p.8.

⁴ “U.S. Rules Out Recognising S.Ossetia”, Civil Georgia, <http://www.civil.ge/eng/article.php?id=17273>

Azerbaijan. As in Kosovo, where the Albanian majority constitutes a minority within Serbia, Nagorno-Karabakh's majority population of ethnic Armenians is a minority within Azeri-dominated Azerbaijan. Like Kosovo, Nagorno-Karabakh suffered a brutal reincorporation attempt by its host state before the intervention of an outside force (NATO in Kosovo and Armenia in Nagorno-Karabakh). After an end to hostilities, both contested states became frozen conflicts for years, with a concrete resolution never established despite attempts made by the international community. During these years of deadlock, Kosovo and Nagorno-Karabakh developed democratic institutions and grew increasingly distant from the authorities in Belgrade and Baku respectively. Thus, one wonders what it is that makes Kosovo's independence case *sui generis* in light of the similarities it shares with the Nagorno-Karabakh Republic.

Chapter 1 will discuss the history of Kosovo, including the origins of Serb and Albanian rivalry over the region and their effects on Kosovo's current political situation today. In particular, the chapter attempts to highlight how the bad blood between Kosovar Albanians and Serbs from the nineteenth century to the present day has exacerbated the near impossibility of finding a viable resolution that would respect Serbia's territorial sovereignty while at the same time granting Kosovar Albanians autonomy and respect their right to self-determination. In the end, Kosovo's declaration of independence was perceived by many states as the only possible way of resolving the conflict.

Chapter 2 focuses on the history of Nagorno-Karabakh and the attempts made by Armenia to protect the region's Armenian population from Azeri discrimination both before and after of the collapse of the Soviet Union. It discusses how, like Kosovo, the

belligerent parties in the conflict—Armenia, Azerbaijan, and the Nagorno-Karabakh Republic—disagreed on how to effectively resolve Nagorno-Karabakh’s contested status, despite the efforts of world powers including the United States and Russia to do so. But unlike Kosovo, Nagorno-Karabakh has not found any external support for independence, despite the similarities of both cases.

In an attempt to answer the question as to why Nagorno-Karabakh has not attained any *de jure* recognition, Chapter 3 explains how it is extremely difficult to make appeals to international law in justifying state secession. Regardless of human rights violations and the right to self-determination, fears of the collapse of the state system lead to many states advocating for territorial integrity. Self-determination is important, but in an anarchical world, territorial integrity guarantees the security of borders, thus allowing states to develop politically, economically, and further accumulate power. Although the importance of territorial integrity is upheld in the Charter of the United Nations and in agreements such as the Helsinki Final Act, it did not stop the International Court of Justice from determining that Kosovo’s unilateral declaration did not violate international law, as there are no established rules for when secession is permitted. The Court, however, refused to answer whether Kosovo had met the requirements to be considered a state, based on the protocols of the Montevideo Convention of 1933.

This ambiguity regarding when to recognize declarations of independence contributes to states having to take into account their own interests before determining when to offer *de jure* recognition. Chapter 4 argues that despite claims to territorial sovereignty, states often take into account what geopolitical considerations may or may not be beneficial before making a final decision. Consequently, power politics may

explain why Kosovo has gained the *de jure* recognition of over one-hundred UN member states while Nagorno-Karabakh has not found any support at all.

Finally, Chapter 5 looks at the geostrategic considerations of the recent case regarding the Crimean peninsula's secession from Ukraine and subsequent annexation by Russia. Although Crimea is now part of Russia rather than an independent state, its reasons for seeking to break from Kiev are similar to those of Kosovo and Nagorno-Karabakh and further show what trends tend to contribute to frozen conflicts over breakaway regions. Additionally, the Crimea crisis offers an illustration of how Kosovo has been used as a precedent for Russian intervention and annexation while the United States remains steadfast in its argument that Kosovo is *sui generis*.

At the end of Chapter 5, a typology is offered that theorizes what factors states take into account when establishing their own rules for when to offer *de jure* recognition. These include economics, geopolitics, ethnicity and culture, and international law.

Chapter 1: A History of Kosovo's Independence

Kosovo's call for independence stems back to the nineteenth century and the rise of nationalism throughout Europe. Nationalists, who called for home states for different groups who shared linguistic, religious, and cultural similarities with one another, were found among both Serbs and Albanians, the two largest ethnic groups in Kosovo. While Serb nationalists claimed that Kosovo was the birthplace of Serb culture and civilization, the Albanians claimed that Kosovo was home to the Illyrians, their supposed ancestors long before the Serbs arrived. From these arguments stemmed increased hostility, especially after Kosovo was relinquished to Serbia from the Ottoman Empire in 1913. Viewed as non-Serb occupiers and subsequently having their entire culture ignored throughout the twentieth century, Kosovar Albanians led the movement to declare Kosovo's unilateral independence from Serbia in 2008.

For centuries, the region called Kosovo has seen numerous migrations of many different peoples through its territory. Most historians agree that the region's earliest inhabitants were two groups called the Illyrians and the Dardanians, who interacted with both the ancient Greeks and the Romans.⁵ Although it is possible that present-day Albanians may have some genetic inheritance from the Illyrians and Dardanians, it is highly unlikely. Nevertheless, many nationalist Albanian historians like to argue that Albanians are, in fact, the heirs of the Illyrian bloodline and thus are entitled to claim all lands that once made up the ancient Albanian kingdom called Illyria, which would include Kosovo.⁶ Thus, all other groups living in Albanian-dominated lands are in reality

⁵ G.R.Jansen, "Albanians and Serbs in Kosovo: An Abbreviated History" in *An Opening for the Islamic Jihad in Europe*, <http://lamar.colostate.edu/~grjan/kosovohistory.html>.

⁶ A.Schnabel & R.C.Thakur, *Kosovo and the Challenge of Humanitarian Intervention: Selective Indignation, Collective Action, and International Citizenship*, p.22.

interlopers on the ancient kingdom that all Albanians should reclaim. This nationalist view of Albanian history developed throughout the nineteenth century and soon found itself in direct conflict with the Serbian nationalist perspective on Kosovo.

According to Serb nationalists such as the linguist Vuk Karadžić, who wrote *Serbs All and Everywhere* in 1849, an epic designed to inspire the Serbian middle class to join the nationalist cause,⁷ Kosovo was home to the defining moment of Serbian civilization: the betrayal of Prince Lazar at the battle of Kosovo Polje in 1389 that placed Serbs under Turkish rule for the next five centuries. According to the legend, Prince Lazar, a member of the royal Serbian family, was in an intense battle with the Ottoman sultan Murat when he was suddenly betrayed by his son-in-law Vuk Branković. Branković had made a deal with Murat in which his army would join forces with the Turks and he, in return, would become the supreme ruler of Serbia. At the end of the battle, both Lazar and Murat were dead, but the betrayal had already done its part: Serbia had fallen to the Turks. Nevertheless, the story reemphasized the point that Kosovo was once part of a pre-Ottoman, Serbian kingdom and thus the Albanians were, in fact, the true interlopers.

Despite the fervent rhetoric regarding these stories, most historians today agree that neither of them is factually accurate. A probable theory is that there may have been gradual migrations of Albanians from what is today Albania into Kosovo in order to acquire more farmland as their populations grew. At this time, most Albanians were Christians but over the next few decades they converted to Islam as Turkish influence

⁷ D.Djokić, *Makers of the Modern World: Paić and Trumbić, The Kingdom of Serbs, Croats and Slovenes: The Peace Conferences of 1919-23 and their Aftermath*, pp.9-10.

grew.⁸ But this does not disregard the possibility of various population groups, Slavs, Vlachs, Turks, etc., redefining allegiances and loyalties to another group based on religious or linguistic similarities either. Even modern nationalists, in rebuttal of opposing views and in defense of their own arguments, will admit in their arguments regarding to whom Kosovo belongs that “every claim of territorial rights that relies on the ethnic map of premigration Europe is ‘simply impossible today’.”⁹ It is only possible, therefore, to assume that before 1389 Kosovo’s demography was a mixture of Slavs, who would later be identified as Serbs, and Vlachs and other groups that would later be identified as Albanians.¹⁰

Notwithstanding the uncertain past of Albanians, historians do know that there was a pre-Ottoman, Serbian kingdom under the Nemanjić dynasty that ruled Kosovo for a time. The first Slavic migrations into the Balkans happened in the sixth century. Originally, Serbs briefly settled in the territory of the present-day Czech Republic, but they began migrating southward and settled in areas that now constitute present-day Serbia and Kosovo around 580.¹¹ For the next six centuries, the populations that were the ancestors of self-identified Serbs lived as farmers within a feudal system based on a collection of tribes, feudal lords, and princes.¹² But by 1190, a mostly unified kingdom had developed under the reign of Stefan Nemanja, centered in the heartland of Kosovo. By the time Stefan abdicated the throne in 1196, his kingdom stretched over most of what is now Montenegro, Herzegovina, and much of Kosovo and central Serbia.¹³

⁸ Jansen..

⁹ F.Bieber & Z.Daskalovski (eds.), *Understanding the War in Kosovo*, p.20.

¹⁰ T.Judah, *The Serbs: History, Myth and the Destruction of Yugoslavia*, pp.8-9.

¹¹ *ibid*, p.7.

¹² T.Judah, *Kosovo: What Everyone Needs to Know*, p.19.

¹³ *ibid*..

Besides finding political roots in Kosovo, Serbs also find their religious roots there. Stefan's third son Rastko, known by Serbs today as Saint Sava, gave up his right to the throne in order to become a monk. In 1219, Rastko presided over the founding of the autocephalous Serbian Orthodox Church. Due to his familial connections, church and state were soon deeply intertwined, much like the neighboring Byzantine Empire.¹⁴ Because central political authority was located in Kosovo, religious authority followed in its tracks. Thus, some of the earliest Serbian Orthodox churches and monasteries can be found in Kosovo, including the patriarchates of Peć, Dečani, and Gračanica.

The fall of this pre-Ottoman kingdom and its defeat in battle was facilitated by a weakened political system that suffered from factionalism and the lack of an adequate leader to unite the competing parties within the political system. Up until 1355, the Serbian kingdom had expanded greatly and was even purported to be a threat to Constantinople. Rival factions, however, gradually developed after the death in 1355 of King Stefan Dušan, one of the kingdom's most powerful monarchs. His successors, including his young son Uroš V, lacked experience controlling opposing groups within the political framework.¹⁵ Consequently, the Serbian kingdom began to decline and contract. Ottoman forces sought to challenge the borders of the kingdom, and a weakened Serbia was unable to hold them back. Thus, the downfall of pre-Ottoman Serbia began long before the battle of Kosovo Polje.

Although Serbian nationalists insist that Kosovo Polje was the site of the greatest defeat for the Serbs, much of the battle is shrouded in mystery. What historians do know, however, is that both sides suffered heavy casualties amidst fierce fighting. Prince Lazar

¹⁴ Djokić, pp.9-10.

¹⁵ *ibid.*.

and Sultan Murat both died in the battle and Murat's son Bayezit soon took charge of the remnants of his forces to secure his authority back in the Ottoman heartlands.

Meanwhile, Lazar was succeeded by his young son Stefan Lazarević who, under the influence of his mother Milica, agreed to turn the Serbian kingdom into a Turkish vassal state, with Ottoman authority fully consolidated by 1489.¹⁶ Everything else about Kosovo Polje remains uncertain. In fact, the final outcome of the battle may have actually been a draw rather than a Serb defeat. Nevertheless, Serbian nationalists remain adamant that the myth is true and that Kosovo is thus the political, religious, and cultural cradle of all Serbs.

By the seventeenth century, Austrian incursions into Ottoman-controlled territory contributed to Serbian migrations north into areas around Belgrade, where the majority of Serbs remain today. While Serbian nationalists like to claim that a majority of the refugees were from Kosovo, many came from Serb-populated regions including Niš, the site of a military defeat for Serbs sympathetic with the Austrian incursions at the hands of Ottoman forces.¹⁷ Seizing the opportunity for more farmland with fertile soil, more Albanians from the highlands of present-day Albania soon migrated into Kosovo, like the theory mentioned above regarding the origins of previous generations of Kosovar Albanians suggests.¹⁸ Over time, these Albanian migrations contributed to a majority Albanian population in Kosovo, with some Serbian-speaking enclaves in the northern parts of the region by the nineteenth century.

In 1878, nationalist aspirations were finally fulfilled with the recognition of an independent Serbia as the Ottoman hold in the Balkans gradually diminished. Kosovo,

¹⁶ N.Malcolm, *Kosovo: A Short History*, p.61.

¹⁷ *ibid*, p.160.

¹⁸ Jansen..

however, remained under Istanbul's control. But in 1912, an alliance was established between Serbia, Greece, Bulgaria, and Montenegro to drive the Ottomans from Europe. What resulted was a conflict in which many Albanian villages were attacked and thousands of Albanians massacred at the hands of Serbian forces. In the end, the alliance, called the Balkan League, was successful, and at the London Conference where final peace settlements were made, the Balkan states were rewarded for their victory, with Serbia gaining control of Kosovo. Power politics, however, remained at play. Austria-Hungary by this time had annexed Bosnia, home to a significant population of Serbs. In an effort to curb growing Serbian power and influence among Bosnian Serbs and throughout the Balkans, Austria-Hungary sought to restrict Serbian access to the Adriatic Sea by proposing the creation of an independent Albania.¹⁹ This new state would be relatively small (mostly keeping Serbia from having a coastline), and the members of the Balkan League would still be handsomely rewarded. As a result, on May 30, 1913, Albania was recognized as independent.

While Albanians now had a homeland, one problem remained: only about half of all Albanians actually lived in Albania. The new state had a population of about 800,000, while substantial Albanian minorities lived in Kosovo and western Macedonia, now under Serbian, Montenegrin, and Greek control.²⁰ Albanian nationalists were discontented with the fact that Kosovo was not part of the new Albanian state, since their national myth of Illyria stated that the ancient kingdom had included that region. Additionally, the League of Prizren, a political organization that sought the establishment of a Greater Albania consisting of present-day Albania, Macedonia, and Kosovo, first

¹⁹ J.Ker-Lindsay, *The Path to Contested Statehood in the Balkans*, pp.8-9.

²⁰ Schnabel & Thakur, p.20.

met and established its goals in Prizren, a town located in Kosovo.²¹ Considering that the League was the birthplace of the Albanian national movement, it was essential to include Kosovo in the new Albanian state. Therefore, Albanian nationalists in Kosovo viewed the region's acquisition by Serbia as merely a new occupation on essentially Albanian territory. This attitude would continue into World War I and afterwards.

World War I began after Bosnian Serb Gavrilo Princip, a member of the Serbian terrorist group the Black Hand, assassinated the heir apparent to the Austro-Hungarian throne, Archduke Franz Ferdinand. When Belgrade refused to abide by an ultimatum to prosecute those responsible for the murder, Vienna declared war. Serbia was able to hold off Austro-Hungarian forces until 1915 when a disgruntled Bulgaria, which sought the acquisition of Macedonia, joined the Central Powers. Within six weeks of Bulgaria's entrance, Serbia had fallen. Its army fled to Kosovo, where it decided to trek across Albania's Accursed Mountains in order to rendezvous with Entente forces. But during the trek, vengeful Albanian militants attacked the Serb army, angry over Belgrade's hostile policies against Kosovo's majority Albanian population.²² What remained of the Serb army was met by French forces at the coastline and subsequently evacuated to Corfu.

In 1918, Serbian forces were finally able to push northwards back into Kosovo and then Serbia proper. Again numerous massacres against Kosovar Albanians by vengeful Serbs occurred as the army advanced through the region. Soon after, World War I came to an end and the Paris Peace Conference occurred. For being on the

²¹ Schnabel & Thakur, p.24.

²² Judah, *The Serbs*, p.100.

winning side of the war, Serbia was vastly rewarded, becoming the Kingdom of the Serbs, Croats, and Slovenes, and later the Kingdom of Yugoslavia.

With the international community's recognition that Kosovo was under the authority of the Serbian royal family, Serbian officials had few qualms about their subsequent policies regarding the Kosovar Albanians. The political discrimination they directed against Albanians was not based on religion. There were many Muslim Serbo-Croat-speaking Slavs in Kosovo who were believed to be ethnic Serbs who had converted from Serbian Orthodoxy to Islam.²³ Consequently, these Muslim Slavs were not discriminated against. Instead, the discrimination was ethnic in nature. Serbs refused to recognize that Albanian populations did, in fact, live in Kosovo. Instead, these strange foreigners had no right to live in the birthplace of Serbian civilization. Thus, Belgrade implemented a policy of colonization by Serb migrants into villages from which Albanians had been removed.²⁴ While the Serbian colonists received subsidies from the central government, the Albanians received no compensation since they were not, officially, citizens of the Kingdom of Yugoslavia. Consequently, Kosovar Albanians sank deeper into poverty while at the same time growing increasingly impatient with Belgrade's discriminatory policies.

Rebellion soon broke out. In protest against Serb colonization, many Albanians took up arms and joined the *kaçak* movement, targeting Serb farms and villages along with anything considered anti-Albanian.²⁵ Other methods of rebellion were noted by the prominent Communist official Milovan Djilas during his travels in interwar Kosovo, writing in his memoirs that many Albanians "resorted to all kinds of things: they

²³ D.Djokic (ed.), *Yugoslavism: Histories of a Failed Idea 1918-1992*

²⁴ Malcolm, p.281.

²⁵ *ibid.*.

mutilated themselves, they starved, they fled to the forests, they drank water drawn from boiled tobacco [to turn yellow as if they had consumption].”²⁶ All of these actions were attempts to magnify the plight of all Albanians under the rule of Belgrade: treatment so harsh that every Albanian was physically harmed in the process. Nevertheless, this did not abate Belgrade’s actions and by the outbreak of World War II, a majority of Kosovar Albanians were in dire straits.

During World War II, Italian forces occupied the state of Albania and soon established a puppet government there that answered directly to Mussolini. On April 6, 1941, Germany invaded Yugoslavia and within a few days had driven the country’s royal dictatorship from power.²⁷ This gave Kosovar Albanians a chance to unite Kosovo with Albania in a Greater Albania as earlier generations of nationalists had dreamed of. This dream came to fruition after both Kosovo and western, Albanian-inhabited Macedonia were conquered by Italy and soon united. In the process, however, tens of thousands of Serbs were expelled from Kosovo.²⁸

By the end of World War II, ethnic conflict had left over one million people dead throughout all of Yugoslavia. As Serb guerillas reentered Kosovo, thousands of Albanians were killed or expelled in a series of revenge attacks. Meanwhile, the Communist Partisans were cementing their control over the Yugoslav regions, and in 1946 the Federal People’s Republic of Yugoslavia was established under Josip Broz Tito. In an effort to prevent further ethnic violence, Tito suppressed any dialogue regarding what happened during World War II and instead emphasized the victories of the Partisans. Thus there was no outlet for any of the ethnic groups to explain what

²⁶ M.Djilas, *Memoir of a Revolutionary*, p.28.

²⁷ Schnabel & Thakur, p.20.

²⁸ *ibid.*.

happened during the war, contributing to a simmering tension that would later erupt again after Tito's death. One effort Tito took in establishing a sense of stability was to recognize six separate republics within Yugoslavia as a whole. These included Serbia, Croatia, Slovenia, Bosnia-Herzegovina, Montenegro, and Macedonia. Albanians, however were excluded on the basis that republic status was only to be enjoyed by South Slavs and not "by peoples within Yugoslavia that were considered to have an external homeland or belonged to transnational stateless groups, such as the Ruthenians, Jews and Roma."²⁹ Since Albania existed as a state, the Kosovar Albanians were free to go there if they wanted to live in their own republic. If not, then they would just have to accept the current circumstances. In the end, the Albanian language and culture were not considered Yugoslav at all and there was no real possibility to discuss any of the atrocities committed against Albanians living in Yugoslavia.

The tension continued to simmer. Throughout the 1960s, Kosovar Albanians continued their demands for republic status within Yugoslavia, but to no avail. But in 1974, the Yugoslav government met the Albanians half way and upgraded Kosovo's status from an autonomous region to an autonomous province in Serbia, thereby giving Kosovo many political rights similar to those possessed by the republics, including rights to their own constitution, assembly, and seat on the federal council.³⁰ Kosovo was now allowed to pass its own legislation and independently decide on provincial policies and finances.³¹ Nevertheless, Kosovo was to remain a part of Serbia and it still contained a significant Serb population in northern enclaves of the province.

²⁹ Ker-Lindsay, pp.9-10.

³⁰ *ibid*, p.10.

³¹ R.Muharremi, "Kosovo's Declaration of Independence: Self-Determination and Sovereignty Revisited" in *Review Of Central & East European Law*, pp.406-407.

Kosovo would enjoy autonomous province status for about fifteen years. The Kosovar Albanians were mostly permitted to act independently from Belgrade, and anger and tension were consequently held in check while Tito continued to rule. But after his death in 1980, the ethnic political balance within Yugoslavia faltered. A rotating presidency was established among the republics to give each equal authority, but in the process national tensions began to grow once again, including within Kosovo. Serbs, by now vastly outnumbered by Albanians, began emigrating from Kosovo to Serbia proper, mainly for economic reasons but also because of perceived discrimination by Albanians, who had much political control. Additionally, in 1985, a number of Serbian intellectuals, viewing the situation on the ground in Kosovo, wrote up a memorandum in which they decried the fact that “the Serbs were facing ‘genocide at the hands of the Albanian majority and called on Serbia to reassert its authority over the province’.”³² This memorandum added fuel to the Serbian nationalist politicians’ desire to revoke Kosovo’s autonomy. Subsequently, under the authority of Slobodan Milošević, Kosovo’s autonomous status was revoked in 1989 and it was subjected to direct rule by Belgrade once more, meaning that the Albanians had little say, if any, in the politics of a province that was essentially Serbian.

By 1991, as Yugoslavia began to fragment, the population of Kosovo included more than 1.6 million Albanians and around 215,000 Serbs and Montenegrins, making up 82.2 and 10.9 percent of the province’s population respectively.³³ But under the rule of Milošević, the Serbs and Montenegrins were the ones who were listened to. Albanians were merely interlopers. As a result, Kosovar Albanians were subject to extreme

³² Ker-Lindsay, p.10.

³³ Judah, *Kosovo*, p.59.

discrimination, including dismissals from public institutions, a ban on the Albanian language, arbitrary arrests, and summary executions.³⁴ Despite international outcry, Milošević asserted that the Kosovo problem was an internal dispute and that no outside influence would be needed.

In 1991, Kosovo attempted to declare independence from Serbia, but this was largely ignored by the international community. Even during the Dayton Accords that ended the conflict in Bosnia-Herzegovina, Kosovo was left off the agenda in order to keep Milošević at the negotiating table.³⁵ Serious discrimination and human-rights violations continued against Kosovo's Albanian population, and political leaders such as Ibrahim Rugova began losing credibility as effective resolvers of the situation. As in the interwar period, Albanians grew increasingly resentful of the minority Serb population's favored status. Thus, in 1996, a movement much like the *kaçaks* emerged: the Kosovo Liberation Army, or KLA.

The KLA first targeted mainly police and Serbian refugees within the province who had moved there from other conflict regions in Yugoslavia. By 1998, it was reported that the KLA was in control of many regions of Kosovo, particularly in the south. Nevertheless, international support remained mostly in favor of Serbia, with the American special envoy to the Balkans Robert Gelbard describing the KLA as a terrorist group.³⁶ After Gelbard's statement, however, Serbian forces began attacking KLA strongholds throughout Kosovo, killing women and children in the process, which subsequently earned Serbia negative attention from the international community,

³⁴ Muharremi, pp.407-408.

³⁵ Ker-Lindsay, p.11.

³⁶ *ibid*, pp.11-12.

particularly after it had already been viewed as the belligerent party in the Bosnian and Croatian wars of the early 1990s.

It was reported to the United Nations Security Council that thousands of Albanians were killed and hundreds of thousands were forced from their homes as Yugoslav operations against KLA forces progressed. The most damning evidence against Belgrade, however, was the discovery of forty-five summarily executed Albanian corpses in the town of Racak in January 1999.³⁷ How many Albanians had really been killed since the beginning of the operations and who had killed the forty-five in Racak is uncertain, but the Security Council subsequently condemned the Serbian operations, remarking that they were “excessive and indiscriminate.”³⁸ The Security Council thus authorized the Kosovo Verification Mission to monitor human rights and facilitate a political settlement to the conflict. However, the KVM was unsuccessful in finding a resolution, and in March 1999 NATO initiated the Rambouillet Agreement in an effort to quell the excessive use of force against civilians in Kosovo.

Rambouillet brought Serbia to the negotiating table, but the main problem that surfaced was the final status of Kosovo. The Kosovar Albanians sought the reestablishment of complete autonomy from Serbia as defined in the 1974 Yugoslav constitution. But Serbia regarded this demand as excessive for a province that was considered essentially Serbian. Besides, Kosovar Serbs had already complained that they were being mistreated and Belgrade was not going to allow this to happen again. According to the Serbian parliament, there was no way the talks at Rambouillet could have been fruitful, because “the separatist-terrorist delegation of ethnic Albanians

³⁷ Ker-Lindsay, p.13.

³⁸ *ibid.*.

avoided direct talks as it did not give up its separatist goals: to use autonomy as a means for establishing a ‘state within a state’.”³⁹ According to the parliament, Albanians had no intention of respecting the sovereignty of the Republic of Serbia over Kosovo, and autonomy would merely encourage further attempts to break from Serbia completely.

With the failure of Rambouillet, NATO found itself the opportunity to punish Serbia for its aggression against the Albanians. On March 24, 1999, NATO commenced Operation Allied Force, targeting strategic locations throughout Serbia, including Yugoslav military forces, bridges, and refineries throughout the country and in Kosovo. Rather than quickly capitulating, Milošević ordered operations against the KLA to continue, resulting in the mass exodus of 850,000 Albanians who fled into Macedonia and Albania.⁴⁰ As NATO continued to bomb Serbia, on June 10 the Security Council authorized Resolution 1244 and established a peacekeeping force called the United Nations Interim Administration Mission in Kosovo, or UNMIK.

Resolution 1244 was passed in accordance with Chapter VII of the Charter of the United Nations, Article 42 of which allows for “action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.”⁴¹ The resolution called for the “deployment of international police personnel to serve in Kosovo [in order to protect and promote] human rights [and to assure] the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo.”⁴² The resolution was indiscriminate. It called for Yugoslav forces to withdraw from Kosovo while at the same

³⁹ “Conclusions of Serbian parliament” March 24, 1999, <http://web.archive.org/web/20080214160503/http://www.serbia-info.com/news/1999-03/24/10030.html>

⁴⁰ Ker-Lindsay, pp.14-15.

⁴¹ “Chapter VII: Action with Respect to Threats to the Peace, Braches of the Peace, and Acts of Aggression”, *Charter of the United Nations*, <http://www.un.org/en/documents/charter/chapter7.shtml>.

⁴² “Resolution 1244” United Nations Security Council, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement>.

time requesting that all KLA forces lay down their arms. As NATO pushed Yugoslav forces out of Kosovo, UNMIK began moving in to reestablish order and political stability in the province. But the process faced many difficulties.

One problem was that there were too few UNMIK peacekeepers to protect civilians all across Kosovo. KLA forces did not immediately lay down their arms, and as Albanians returned to Kosovo, Kosovar Serbs and other minorities including the Roma and Gorani who were accused of being collaborators with Yugoslav forces soon faced revenge attacks and a number of other atrocities.⁴³ The peacekeepers could not be in too many places at once without being stretched too thin and thus were unable to protect Serbs, who watched their own homes burn and many ancient Serbian Orthodox churches and monasteries be destroyed before their eyes by Albanian militants. Thus, a large influx of Serbs left Kosovo as Yugoslav troops pulled back.

Besides reestablishing order in Kosovo, another priority of UNMIK was “facilitating a political process designed to determine Kosovo’s future status, taking into account the Rambouillet accords.”⁴⁴ This involved “organizing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections.”⁴⁵ In the process of meeting these goals, Kosovo was effectively cut off from Serbia proper by UN peacekeepers who assisted in the development of parallel government institutions that were designed to meet the needs of Kosovars. While this did improve the establishment of law and order again, it also further enflamed the desire of Kosovar Albanians to break from Serbia proper completely. As they acquired greater experience in running Kosovo

⁴³ Ker-Lindsay, p.16.

⁴⁴ Resolution 1244.

⁴⁵ *ibid.*.

independently from Serbia, any incentives for reintegration among Kosovar Albanians significantly diminished. It was this impasse that the UN Special Envoy to Kosovo, Martti Ahtisaari to suggest that the only viable option for a successful resolution to the crisis would be independence for Kosovo.

In a report written in 2007, Ahtisaari explained that independence for Kosovo was inevitable. In paragraph two of his report, Ahtisaari described how both parties at the negotiating table had such diametrically opposed opinions, including the fact that “Belgrade demands Kosovo’s autonomy within Serbia, while Priština [the capital of Kosovo] will accept nothing short of independence.”⁴⁶ These opposing opinions were no surprise, however, once one looks back on the history of Serbo-Albanian relations. Considering the atrocious acts against them throughout the twentieth century and the denial of even the most basic constitutional rights, Albanians were never going to tolerate reintegration into Serbia especially in light of the active ethnic cleansing by Serbian forces in 1999. To be sure, the Albanians, particularly the KLA, were not innocent either, having committed acts of vengeance against Serbs and other minorities throughout Kosovo. Furthermore, Serbia was not about to abandon the cradle of its civilization voluntarily. It was bad enough that Kosovo had been quasi-partitioned by UNMIK, but to have the international community officially sanction Kosovo’s separation would be too much. Ahtisaari’s report, however, remained firm in its position that there was no other solution to this frozen conflict.

The report of the Special Envoy of the Secretary-General emboldened calls for Kosovar independence by emphasizing that the uncertainty of Kosovo’s final political

⁴⁶ M.Ahtisaari, *Report of the Special Envoy of the Secretary-General on Kosovo’s future status*, 2007, <http://www.unosek.org/docref/report-english.pdf>.

status had deprived the province of “access [to] international financial institutions [and leaving Priština unable to] fully integrate into the regional economy or attract the foreign capital it [needed] to invest in basic infrastructure and redress widespread poverty and unemployment.”⁴⁷ As a result of a lack of capital inflows and economic development, Kosovo had become a hotbed for black market activity, including narco- and human-trafficking. Unless a resolution could be achieved, Kosovo’s future remained murky and despairing. Poverty would remain rampant and desperate Kosovars would find themselves relying increasingly on black market activities. If Kosovo were to integrate into the global and regional economy, Ahtisaari emphasized that independence would be the best way forward.

Based on Ahtisaari’s report on the reality of the Kosovo crisis, the Republic of Kosovo declared independence from Serbia on February 17, 2008, and soon gained *de jure* recognition from the United States and much of Europe. Immediately, Serbia condemned the declaration. According to the Serbian constitution, “Kosovo is defined as an ‘integral part’ of Serbia with ‘substantial autonomy’.”⁴⁸ Nowhere in the constitution does it suggest that Kosovo has a right to secede from Serbia. Thus, on February 18, one day after Kosovo’s declaration of independence, Serbia’s parliament concluded that the declaration was null and void in accordance with the ruling of the Constitutional Court of the Republic of Serbia.⁴⁹ Already, Serbia was protesting Kosovo’s move, and soon its main ally Russia began criticizing Priština as well.

⁴⁷ Ahtisaari..

⁴⁸ E.Berg, “Re-Examining Sovereignty Claims in Changing Territorialities: Reflections from ‘Kosovo Syndrome’” in *Geopolitics*, p.222.

⁴⁹ *ibid.*.

Russia had never been fully supportive of how the Kosovo situation had been handled by the international community. Struggling to assert itself as a great power in the wake of the collapse of the Soviet Union and the United States' rise as the lone world superpower, Russia refused to bandwagon with NATO or the West as if it was suddenly assumed that it would do so. It was intent on retaining international respect, particularly regarding Serbia, with whom Russia—an Orthodox country with a majority Slavic population—shared both religious historical ties.⁵⁰ Nevertheless, Moscow knew that it had very little leverage in stopping NATO from bombing Serbia and, in early October 1998, Russia indicated that “while it would denounce any attacks, it would not take active measures in the event of bombing.”⁵¹ While it disagreed with bombing Belgrade into submission, Moscow was willing to accept it in order to end the conflict. But from there, Moscow expected a conflict resolution that would favor Serbia's territorial integrity, not something that would result in a loss of Kosovo entirely. This perceived expectation that Russia would simply approve Kosovar independence as the best viable option without any input from Moscow on the matter resulted in staunch criticism from the Kremlin.

One reason for Russia's steadfast support of Serbian territorial integrity was its fear of weakening an international system that emphasized the state's territorial sovereignty. Russia feared that Kosovo might serve as a precedent for the use of human-rights arguments in breaking up future “problematic” states.⁵² Perhaps the same reasoning could be used in Russia, which has its own separatist movements in regions such as Chechnya. If Kosovo became a model for other breakaway regions, then

⁵⁰ J.Norris, *Collision Course: NATO, Russia, and Kosovo*, pp.xxiv-xxv.

⁵¹ Ker-Lindsay, p.13.

⁵² B.C.Harz, “Conflicting Perceptions: Russia, the West and Kosovo” in *Review Of Central and East European Law*, p.503.

Moscow could find itself facing increased threats to its own territorial integrity. This was something Moscow would not tolerate. Therefore, it needed to stand by its ally Serbia and condemn Kosovar independence.

In 2010, Serbia issued a request for an opinion of the International Court of Justice, or ICJ, on whether or not Kosovo's declaration of independence was legal based upon the guidelines set by UN Resolution 1244. After deliberating about the question, the Court issued a carefully limited opinion. One factor it refused to address was "whether or not Kosovo has achieved statehood. Nor [have we been asked] about the validity or legal effects of the recognition of Kosovo by those States which have recognized it as an independent State."⁵³ Additionally, the Court emphasized that it was not going to take a position "on whether international law conferred a positive entitlement on Kosovo unilaterally to break away from [Serbia]."⁵⁴ Instead, the Court only gave its opinion on the legality of the declaration of independence. No opinions about international law's role in independence movements in general or the impact of recognition by other states were needed.

Based on the conclusions of Resolution 1244, the Court affirmed that it "could not accept the argument that [Resolution 1244] contains a prohibition, binding on the authors of the declaration of independence, against declaring independence."⁵⁵ Instead, the wording of the resolution remained ambiguous and merely called for a political solution. In this regard, it was not illegal for Kosovo to declare independence. Additionally, the Court determined that since "general international law contains no applicable prohibition

⁵³ International Court of Justice, *Accordance with international law of the unilateral declaration of independence in respect of Kosovo*, July 22, 2010, <http://www.icj-cij.org/docket/files/141/15987.pdf>.

⁵⁴ *ibid.*.

⁵⁵ *ibid.*.

of declarations of independence...the declaration of independence of 17 February 2008 did not violate general international law.”⁵⁶ Since Kosovo had not breached international law in any way, the Court concluded that it would not condemn the unilateral declaration of independence as illegal.

Although the ICJ had given its opinion, this did not mean that all the judges were in agreement. Dissenting judge Abdul G. Koroma wrote that “the unilateral declaration of independence...was not intended to be without effect...It was the beginning of a *process* aimed at separating Kosovo from the State to which it belongs and creating a new State.”⁵⁷ Though the Court refused to determine whether Kosovo had achieved statehood criteria, Koroma argued he believed that Kosovo’s declaration of independence had an ultimate end in breaking away from Serbia completely. While he did not state that declarations of independence are illegal, Koroma criticized the abuse of them as a means of finding an easy solution that may result in significant repercussions throughout the international community regarding territorial disputes and breakaway regions.

Koroma also emphasized the fact that the declaration was unlawful under the guidelines of Resolution 1244. Koroma interpreted Resolution 1244’s call for a negotiated political settlement to mean that there was to be “a political solution based on respect for the territorial integrity of the Federal Republic of Yugoslavia and the autonomy of Kosovo.”⁵⁸ Thus there was no place for a declaration of independence. A unified Serbia and Kosovo was what the resolution actually intended, and Kosovar independence was therefore a blatant violation of Resolution 1244.

⁵⁶ International Court of Justice..

⁵⁷ A.G.Koroma, *Dissenting Opinion of Judge Koroma*, July 22, 2010, <http://www.icj-cij.org/docket/files/141/15991.pdf>.

⁵⁸ *ibid.*.

In the end, however, Kosovo continued to separate from Serbia. As of summer 2013, Kosovo claimed to have gained *de jure* recognition from over one hundred members of the United Nations. Meanwhile, in its efforts to join the European Union, Serbia has been forced to address the continued disagreements with Priština. In April 2013, a landmark deal between Prime Ministers Ivica Dačić and Hashim Thaçi was signed in which Belgrade acknowledged that “the government in Priština exercises administrative authority over the territory of Kosovo—and that it is prepared to deal with Priština as a legitimate government authority.”⁵⁹ Belgrade, however, did not recognize Kosovo as independent. Nevertheless, this may change in the coming months as Serbia gears up for further talks regarding EU accession. Before Serbia can ever become an EU member state, it needs to resolve its dispute with Kosovo.

In the end, Kosovo remains a strange anomaly in the international arena. Though it has substantial support for *de jure* recognition, it remains unrecognized by many states with separatist regions of their own, including not only Russia but also Spain with its Basque region, Cyprus struggling with the Turk-dominated Turkish Republic of Northern Cyprus, and Moldova dealing with Transdniestria. But Kosovo can still rely on support from many countries including the United States. Currently, Washington asserts that Kosovo is a *sui generis*, or unique, case, and that it therefore does not have implications for any other breakaway region in the world. But with contested states such as the Nagorno-Karabakh Republic sharing many similar circumstances to those with Kosovo, there is much debate as to whether Kosovo really is *sui generis*.

⁵⁹ N.K.Gvosdev, “Kosovo and Serbia Make a Deal” in *Foreign Affairs*, <http://www.foreignaffairs.com/articles/139346/nikolas-k-gvosdev/kosovo-and-serbia-make-a-deal>.

Chapter 2: A History of Nagorno-Karabakh

The Nagorno-Karabakh Republic, or NKR, is an oblast located in the western part of Azerbaijan and has been seeking to break away from Baku since 1988.

Demographically, NKR is composed almost entirely of Armenians as opposed to Azeris.⁶⁰ These Karabakhi Armenians fear that their identity will be taken away and they will face discrimination if Baku is able to reassert its authority as it did throughout the Soviet era. Consequently, the NKR believes that independence from Azerbaijan is its only option.

The Nagorno-Karabakh Republic comprises an area of approximately 4,400 square miles and has a mostly Armenian population of less than 190,000.⁶¹ The early history of the region remains vague and highly disputed among Armenian and Azeri historians. Armenian historians claim that Nagorno-Karabakh was originally part of the medieval Kingdom of Armenia and had been taken away by Turkish invasions. According to the Greek geographer and historian Strabo, the country called Orkhistene (Karabakh) was under Armenian rule by 189 B.C.⁶² The name Orkhistene is closely related to the Armenian name of Karabakh, Artsakh. Strabo indicates that by 100 B.C. Artsakh's population spoke Armenian. Meanwhile, fifth-century Armenian historian Movses Khorenatsi wrote that Artsakh was part of the ancient Armenian kingdom of the Orontids between the fourth and second centuries, B.C.⁶³ To further justify Karabakh's connection to Armenia, Armenian historians cite a geography book coming from the

⁶⁰ While the terms Azeri and Azerbaijani typically refer to the same group of people, Azeri will refer to the Turkic-speaking group that is the majority population of Azerbaijan today while Azerbaijani will refer to anybody who is a citizen of Azerbaijan.

⁶¹ G. Smith (ed.), *The Nationalities Question in the post-Soviet States*, p.255.

⁶² "History, Geography and Ethnology", *The Conflict of Nagorno-Karabakh*, 2/08/2014 http://www.mountainous-karabakh.org/book_02.html#UvqC1_IdWF8.

⁶³ Movses Khorenatsi (Moses of Khoren), *History of the Armenians, Vol. II*, pp. 180-185.

seventh-century Arshakounian dynasty that mentions that Artsakh was part of Greater Armenia's fifteen provinces.⁶⁴ In the end, Armenians will argue that Nagorno-Karabakh has, since antiquity, been part of various Armenian kingdoms and that Azeris thus have no strong historical ties to the oblast.

Azeri historians, meanwhile, counter these claims by arguing that the region was actually part of a long-vanished kingdom called Caucasian Albania, in which the Albanians lost their linguistic, religious, and cultural identity by assimilating into neighboring populations, subsequently defining themselves as Muslims or Christian Armenians.⁶⁵ If this argument is correct, then Armenia could not have any historic claims to Nagorno-Karabakh because the region would have been part of a completely different entity. Armenian historians argue, however, that any control by Caucasian Albania over Karabakh was incredibly brief and only happened because of divisions between the Roman Empire and Persia. This occupation lasted only about two-hundred years until it was reclaimed by the Arshakounian dynasty at the start of the seventh century.⁶⁶ Therefore, Azeris, who claim to be the descendants of the Caucasian Albanians, may have had momentary control over Karabakh, but not for as long as Armenia did. Additionally, if the Caucasian Albanians identified themselves as Christian Armenians later on, this would only strengthen the claims Armenia has over the region. It is arguments like these that Armenian and Azeri nationalists still use in their dispute over Nagorno-Karabakh.

Throughout the centuries, Nagorno-Karabakh fell under the control of numerous kingdoms and empires, including the Mongolians, the Tatars, and the Seljuk Turks,

⁶⁴ A. Shirakatsi, *Ashkharhatsoyts*..

⁶⁵ Smith, p.255.

⁶⁶ Mountainous-Karabakh.org..

before finally coming under the Persian Safavid dynasty by the seventeenth century. The name Nagorno-Karabakh is actually Turkish in origin and means “Mountainous Black Garden.”⁶⁷ The population of the region was predominantly Christian Armenian, but with significant numbers of Muslim Turkic groups who were the ancestors of the Azeris. These religious differences became an instrument of great power interest beginning in the eighteenth century, as Russia under Peter the Great began expanding southward in an effort to access warm-water ports. Russia, however, would not gain control of Nagorno-Karabakh until the beginning of the nineteenth century. Instead, the region remained under Muslim control, being handed back and forth between the Ottoman and Safavid Empires.⁶⁸

Because Peter the Great, the leader of a predominantly Christian empire, had attempted to win the allegiance of the Christian Armenians, the latter became the principal targets of persecution by the Ottomans and Safavids who accused them of being collaborators. As a result, during the Russo-Persian War from 1804-1813, Armenians actively supported Russian efforts to seize control of the Caucasus while the Muslims in the region actively supported the Persian Safavids.⁶⁹ This is a trend that has continued up to the present day. Because the states of the Caucasus region are relatively small and have engaged in rivalries, they have been prone to seek outside alliances in efforts to maintain stability.⁷⁰ Regardless of the theological differences between Russian Orthodoxy and the Monophysite Armenian Apostolic Church, Armenians in Karabakh reasoned that they had a better chance of avoiding persecution under Russian control than

⁶⁷ Mountainous-Karabakh.org..

⁶⁸ *ibid.*..

⁶⁹ O.Geukjian, *Ethnicity, Nationalism and Conflict in the South Caucasus: Nagorno-Karabakh and the Legacy of Soviet Nationalities Policy*, p.38.

⁷⁰ K.Dawisha & B.Parrott, *Russia and the New States of Eurasia: The Politics of Upheaval*, pp.53-54.

Persian. Their efforts paid off. By 1813, after signing the Treaty of Turkmenchai, Russia had firm control over the land consisting of present-day Armenia, Nagorno-Karabakh, and Azerbaijan. Christian Armenians could finally be ruled by a Christian great power. However, just because Nagorno-Karabakh was under Russian control did not mean the Armenians were free from the influence of the Muslim Turkic population that later came to be known as Azeris. These proto-Azeris remained the majority population enveloping the Armenian enclave of Nagorno-Karabakh and there were still plenty of Azeris living within the oblast. Thus, a new ruling power did not erase the fact that different religious and cultural loyalties still existed in a region with a diverse population. Christians now had the political advantage, but conflicts between both groups continued. Furthermore, another phenomenon would only exacerbate the problem: the rise of nineteenth-century ethnic nationalism.

Throughout the nineteenth and twentieth centuries, Armenians migrated throughout the world as merchants and artisans. Currently, they can be found throughout Europe and the United States while historically they were found throughout the Ottoman and Persian Empires. Some scholars refer to Armenian nationalism as a kind of relative of Zionism, in which the state of Armenia is very much like Israel. One traveler to the Armenian capital of Yerevan in the 1930s, described the city as a “kind of Tel Aviv where the survivors of another martyred nation gathered to construct a new home.”⁷¹ This Armenian unity was augmented by a massacre of up to one million Armenians by Ottoman forces in 1915. Today, the debate continues to rage regarding whether or not this massacre was actually genocide. Nevertheless, the sense of a unified Armenian nationalism despite the vast diaspora has created a vision of Karabakhi Armenians as

⁷¹ Y.Said, T.L.Karl & M.Kaldor, *Oil Wars*, p.160.

being “the last outpost of their Christian civilisation and a historic haven of Armenian princes and bishops before the East Turkic world begins.”⁷² Consequently, Karabakhi Armenians enjoy many close bonds with the Armenian state today.

Azeri nationalism, however, did not develop as extensively during the nineteenth century as Armenian nationalism. Although pre-twentieth-century Azeris knew that they were different linguistically and culturally from Persians, they did not define themselves as Azeris. The name Azerbaijan is derived from the term for the northwestern region of present-day Iran up to the current border with Armenia. It originates from the name Atropatkan, a realm under the control of the Median, and later Persian, Empire between the tenth and sixth centuries, B.C.⁷³ Caucasian Albania, the name of the ancient kingdom that Azeri nationalists cite in their sovereignty arguments regarding Karabakh, remained common for Azerbaijan until 1918 when Azerbaijan briefly became an independent republic. But until then, the proto-Azeri population was called Turki since they were a Turkic-speaking group.⁷⁴ After Azerbaijan’s incorporation in the Soviet Union in 1920, Azeri nationalism fully emerged. In an effort by local Communist officials to win resources from Moscow, nationalist debates emerged within academies for art, history, and ethnography. These academies tried to prove how valuable they were to the rich history of the Azerbaijani SSR, demonstrating how the Soviet framework consisted of many diverse people-groups cooperating together in the name of socialism.⁷⁵ Everything became Azeri as the academies created stories about how anything Turkic in nature was integral to Azeri culture. Although Nagorno-Karabakh had a majority Armenian

⁷² Said, Karl, & Kaldor, p.156.

⁷³ Mountainous-karabakh.org..

⁷⁴ I.M.Diakonoff & G.A.Hosking, *The Paths of History*, p. 100.

⁷⁵ Said, Karl, & Kaldor, p.160.

population, suddenly it had become a cultural cradle from which great Azeri poets and musicians were born.⁷⁶ Consequently, while Azerbaijan had relatively few connections with Nagorno-Karabakh, the enclave became a national icon that could not be taken for granted. In the end, a debate emerged over whether Nagorno-Karabakh was essentially Armenian or essentially Azeri and led to polarization between the oblast's two major ethnic groups.

At the beginning of the Russian Revolution in 1917, Nagorno-Karabakh was considered part of Armenia by the Provisional government. But by October 1917, the oblast became *de facto* independent from Armenia and was governed by a council consisting of Azeris and Armenians.⁷⁷ However, the Caucasus remained unstable as World War I continued. Ottoman forces invaded Nagorno-Karabakh in 1918 in an effort to aid the Turkic Azeri political movement Musavat in securing control over Baku, which allowed for Musavat to consolidate control over all of Azerbaijan. Tensions simmered as ethnic Armenians opposed the takeover by the Ottomans and consequently the Armenian general Andranik Ozanian sent his forces into Nagorno-Karabakh to drive out the Ottomans. As a result, the oblast fell under Armenian control along with an adjoining region called Zangezur that shares a border with Armenia.⁷⁸

By the end of World War I, the republics of Armenia, Azerbaijan, and Georgia had united into one Transcaucasian Republic but within a few months, political tensions led to the partition of the republic into the three separate entities once again with Nagorno-Karabakh still considered part of Armenia. In 1922, Bolshevik forces, having reestablished their authority in Russia and now retaking pieces of the former Russian

⁷⁶ Said, Karl, & Kaldor, p.156.

⁷⁷ C.M.L.Hille, *State Building and Conflict Resolution in the Caucasus*, p.163.

⁷⁸ *ibid*, p.163.

Empire that had taken advantage of the political chaos to seek independence, reincorporated Armenia and Azerbaijan as one republic within the Soviet Union.⁷⁹ Not until 1936 did Armenia become a separate republic.

One reason for the Soviet invasion of Azerbaijan was the republic's vast oil reserves. During the nineteenth century, Azerbaijani oil was developed by both the Nobel and Rothschild families, and the region became the second-largest oil producer in the world by the start of the twentieth century.⁸⁰ Not only did this provide the Soviet Union with a vast supply of Caspian Sea oil, but the reserves were also kept out of Turkish control, which weakened Turkey's influence in the Caucasus. Azerbaijani oil production, however, soon diminished as Moscow discovered other oil fields in Siberia and chose to develop those reserves rather than ones in an unstable region on the fringes of the Soviet Union.⁸¹ As a result, Armenia and Azerbaijan both slid into a state of irrelevance. They were both small republics with little to offer the Communist state as a whole, meaning that disputes over Nagorno-Karabakh were ignored. But clashes between Armenians and Azeris continued.

In an effort to quell the violence and reach a compromise, Soviet officials in 1923 established the Autonomous Oblast of Nagorno-Karabakh, or AONK. It was declared that it would become part of the Azerbaijani Soviet Socialist Republic and thus fall under the authority of Baku, based on a telegram sent by a Soviet official in Baku, who claimed that "considering the necessity of national harmony between Muslims and Armenians...and its permanent ties to Azerbaijan, [Nagorno-Karabakh] should be left

⁷⁹ Hille, p.54.

⁸⁰ Said, Karl & Kaldor, p.167.

⁸¹ *ibid.*.

within the boundaries of the Azerbaijani [SSR].”⁸² The Soviet upper echelons were firm: the AONK was going to stay in Azerbaijan and no further questions were to be asked. To appease the Armenian community, however, “all business, legislation and instruction in schools in the AONK [was to be] conducted in the native [Armenian] language.”⁸³ Thus, Azerbaijan would be able to keep control of a region that Azeri nationalists claimed was the home of many Azeri poets, while the Armenians would be free from the threat of cultural dissolution and forced integration into a Muslim society against which they had always been the final bulwark. This declaration established a shaky peace in the volatile region.

Although the compromise enabled a sense of stability in the Caucasus, national differences were far from subsiding. Soviet authorities had established fifteen national republics throughout the Soviet Union based on a doctrine that identified territoriality as a key feature of nationhood.⁸⁴ Although the Azeri and Armenian nationalities now had, officially, equal status in the eyes of Moscow due to their republic status, this did not create a sense of loyalty to Moscow or to the entire Soviet Union. Instead, nationalism was the only indicator of loyalty and ethnic differences increasingly polarized the region. The goal of each national republic was to gain advantages for its specific ethnic group over everybody else.⁸⁵ This sense of increased rivalry led to subsequent violence between Armenian and Azerbaijani forces over Nagorno-Karabakh.

Local nationalist tensions simmered throughout the decades of Soviet control in Armenia, Azerbaijan, and Nagorno-Karabakh. These tensions finally boiled over in 1988

⁸² Smith, pp.255-256.

⁸³ Hille, p.169.

⁸⁴ Dawisha & Parrott, p.10.

⁸⁵ *ibid*, p.11.

when AONK passed a resolution that called on Moscow to transfer the region to Armenian jurisdiction.⁸⁶ According to the Soviet constitution adopted under Leonid Brezhnev, however, this request was not feasible due to Article 78, which stated that “the territory of a Union Republic may not be altered without its consent.”⁸⁷ The AONK was not a republic and was, technically, a part of the Azerbaijani SSR. If Baku denied it the right to join Armenia, then that was the final outcome. Moscow was not about to let the AONK become a catalyst for the territorial disruption of republics throughout the Soviet Union.

Soon after the AONK declaration and the subsequent refusal by Baku to cooperate, thousands of Armenians throughout the Caucasus and in Moscow demonstrated in support of the Karabakh resolution. For years, nationalists in the Armenian SSR had not only considered Nagorno-Karabakh as the last outpost of Christian civilization before entering the Muslim World, but also as a bastion of persecuted brethren. Accusations surfaced that the supposed takeover of Armenian-occupied land by Turkic Azeris was a symbol of Turkish success in “getting away with” their atrocious acts during World War I.⁸⁸ Thus, if Moscow really had Nagorno-Karabakh’s best interests in mind, then it should fully support the resolution passed by the autonomous oblast’s local Soviet.

As Armenians amped up their support for the Karabakhi resolution, discrimination against them increased throughout Azerbaijan, particularly in negotiating the patronage and social networks of the local bureaucracy.⁸⁹ Azeris found favor in

⁸⁶ Smith, p.256.

⁸⁷ T.de Waal, *Black Garden: Armenia and Azerbaijan Through Peace and War*, p.133.

⁸⁸ *ibid*, p.255.

⁸⁹ M.Webber, *The International Politics of Russia and the Successor States*, p.223.

business transactions and local legislation, while Armenians grew increasingly isolated. Consequently, frustration grew not only in Nagorno-Karabakh but also in major Azerbaijani cities such as Baku; Stepanakert, the Karabakhi capital; and Sumgait. As protests mounted and tensions worsened during 1990, two Azeri youths were killed by Armenian protesters. Soon after, Azeri populations began fleeing Armenia and arriving in Sumgait, exacerbating an already ethnically divided situation. In an effort to ease the tensions, Baku attempted to convince the Armenians of the risks involved in their protests and announced the deaths of the Azeri youths. But the attempt backfired and resulted in a pogrom against Armenians in which officially thirty-two Armenians died while hundreds more were wounded. The exact numbers remain disputed.⁹⁰

After the Sumgait pogrom, thousands of Armenians, no longer feeling safe among Azeris, fled to Nagorno-Karabakh as refugees, changing the oblast's demographic makeup once again by making the Karabakhi population increasingly homogeneous, to the detriment of Azeris living in the region. Not only was Nagorno-Karabakh attempting to declare its independence from Azerbaijan, but now it was also becoming more and more Armenian and focusing on ethnic Armenian interests rather than the good of the entire population. Seeing that the situation was spiraling increasingly out of control, Baku decided that it was time to retake Nagorno-Karabakh and halt the separatist movement. By the winter of 1991, Azerbaijani forces had invaded Nagorno-Karabakh and were shelling Stepanakert.⁹¹

The meager Karabakhi forces were hardly a match for the Azerbaijani military, despite the latter's disorganization and limited materiel. By 1992, the Soviet Union had

⁹⁰ Smith, p.283.

⁹¹ C.Thompson (ed.), *Russia & Eastern Europe*, p.121.

collapsed and Red Army troops that had been acting as peacekeepers withdrew from the region, resulting in a fierce upturn in violence. Armenia, having declared independence in 1991 and itself a tiny state with a tiny military, refused to sit back and watch its ethnic kin be routed by their historic Turkic enemies. Heavily influenced by the nationalist Dashnak party, Yerevan responded and began an offensive against Azerbaijani forces.⁹²

With Armenia now in the fight, Azerbaijani forces grew increasingly stretched thin, and strains in their offensive against Nagorno-Karabakh appeared. By May 1992, Armenian forces retook Stepanakert and began a major offensive into Azerbaijan proper. Their success was assisted by the fact that Baku was facing political turmoil. The country's first democratically-elected president, Abulfaz Elchibey, found himself increasingly isolated in the Azerbaijani parliament as the conflict became disastrous for Azerbaijan. The tension became so intense that army commanders mutinied against Elchibey, including one Suret Husseinov. When Elchibey's forces attempted to capture Husseinov, he used women and children as human shields in order to avoid arrest.⁹³ Seeing how powerless Baku was in apprehending him, Husseinov began a march on Baku and called upon Heydar Aliyev to join him. Aliyev was a former Communist official for the Azerbaijani SSR who remained a highly popular politician. On June 24, 1993, Aliyev seized control of the Azerbaijani presidency as Elchibey fled Baku. By June 30, Husseinov had been appointed prime minister and on October 3, Aliyev conducted a national referendum in which the public voted to confirm Elchibey's ouster.⁹⁴ Having obtained his legitimacy, Aliyev was granted sweeping authoritarian powers by parliament, allowing him to wipe out internal dissent. Although Azerbaijan

⁹² Smith, p.262.

⁹³ de Waal, p.214.

⁹⁴ *ibid.*.

was clearly no longer a fledgling democracy, a sense of political stability returned to the country.

Nevertheless, the political turmoil in Baku caused the Azerbaijani armed forces to basically collapse. A lack of command from above caused drastic miscommunications and increased disorganization, allowing Armenian and Karabakhi forces to maintain their offensive. Thus, by the summer of 1993, Armenian and Karabakhi forces took control of not only Nagorno-Karabakh, but also large swathes of land all around it, including most of southern and western Azerbaijan as far as the Armenian and Iranian borders. The most important occupation was in Lachin, a land corridor that connected Armenia to Nagorno-Karabakh, thus establishing a lifeline for Karabakhi forces from Armenia for both military and economic support. This land is still controlled by Armenian forces today and remains highly militarized. In the end, Azerbaijan lost over five thousand square kilometers of land to Armenian and Karabakhi forces, losing not only Nagorno-Karabakh itself, but also five regions of Azerbaijan proper, thirteen percent of the country's land area.⁹⁵

Meanwhile, the ethnic makeup of Nagorno-Karabakh continued to homogenize. Karabakhi Azeris, no longer feeling safe in their homeland, fled behind the lines of Azerbaijani forces, leaving behind homes and belongings, resulting in many ghost-villages. These villages still exist, and are a symbol of the military line drawn between the Azerbaijani and Armenian/Karabakhi militaries. By the end of the Nagorno-Karabakh War, over 500,000 had been displaced within Azerbaijan, with twelve

⁹⁵ de Waal, p.215.

emergency camps established with UN assistance.⁹⁶ The last of these camps, located in Sabirabad and Saatli, were finally closed in 2008 due to rapidly deteriorating conditions since the camps had only been intended to last for a few months when the conflict ended. Currently, Baku is still helping to permanently relocate displaced Azeris into adequate housing with basic facilities and access to healthcare and education.⁹⁷ Due to the lack of a resolution to the Nagorno-Karabakh conflict, these Azeris have not been able to return to their homes in the Armenian-occupied regions. Nor have Azeris who lived in Armenia proper been able to return to reclaim belongings. Virtually no Azeris remain in Nagorno-Karabakh, whose population now consists almost entirely of Armenians, plus a few non-Azeri minorities.

Outside powers, especially the neighbors of Armenia and Azerbaijan, have attempted to negotiate numerous ceasefires in an effort to stop the violence. In 1991, Russian president Boris Yeltsin and Kazakhstani president Nursultan Nazarbayev mediated a brief ceasefire between Yerevan and Baku. The negotiations, called the Zheleznovodsk Declaration, were conducted under the theme of territorial integrity, with official documents stating that participants were “guided by the principles of non-interference in the internal affairs of sovereign states and the undeviating observance of civil rights of citizens, irrespective of their nationality and in accordance with international legal norms.”⁹⁸ As in the Kosovo crisis, Russia and Kazakhstan attempted to find peace by retaining Nagorno-Karabakh within Azerbaijan’s sovereign territory, while abating the fears of Karabakhi Armenians by upholding their rights as Azerbaijani

⁹⁶ N.Tagwerker, “Azerbaijan closes last of emergency camps”, *UNHCR: The UN Refugee Agency*, 2/07/2008, <http://www.unhcr.org/news/NEWS/47aaf6734.html>

⁹⁷ *ibid.*.

⁹⁸ Zheleznovodsk Declaration, 9/23/1991, http://peacemaker.un.org/sites/peacemaker.un.org/files/Azerbaijan_ZheleznovodskDeclaration1991.pdf

citizens. At the same time, Armenian-Azerbaijani diplomatic relations were to be reestablished with communications, air traffic, and highways reopened in an effort to regain calm in the region. Delegates from both countries would then meet in order to find a permanent solution to the conflict.⁹⁹ Zheleznovodsk, however, lasted less than two months before fighting erupted again.

In May 1992, Iran attempted to establish a ceasefire between Baku and Yerevan. Tehran tried to use its historical ties to both Armenia and Azerbaijan as a means of becoming a mediator, much as Russia had done. In a joint statement, Tehran emphasized “the necessity of ensuring peace and stability on the borders, in Nagorno Karabakh, pointing out that it is advantageous both for the two states and for the region.”¹⁰⁰ Not only were the threats of political and economic instability apparent in Armenia and Azerbaijan, but Iran feared spillover into its own borders, considering that it had its own vast population of ethnic Azeris. But unlike Russia’s calls for territorial integrity, the joint statement chaired by Iran does not emphasize this point. Rather, it again calls for diplomatic negotiations by delegates from both countries and also the respect of “human rights and the rights of minorities.”¹⁰¹ So long as Armenians and Azeris could be guaranteed security, Tehran reasoned that a solution could be found regarding Nagorno-Karabakh. This ceasefire ended within a single day, when Armenian troops attacked the town of Shusha and also took the Lachin corridor thereafter, driving out thousands of Azeris in the process.

⁹⁹ Zheleznovodsk Declaration..

¹⁰⁰ “Joint Statement of the Heads of State in Tehran”, 5/07/1992,
http://peacemaker.un.org/sites/peacemaker.un.org/files/ArmeniaAzerbaijanIran_JointStatementHeadsOfState1992.pdf

¹⁰¹ *ibid.*..

In 1994, the Minsk Group was established, co-chaired by the United States, Russia, and France. This group was to oversee any future peace negotiations and work with the Organization for Security and Co-operation in Europe, or OSCE, in the process. In May 1994, after six years of fighting and thousands of displaced persons in Armenia, Azerbaijan, and Nagorno-Karabakh, the Minsk Group organized the Bishkek Protocol. Signed by both Yerevan and Baku, the Protocol, like the Russian and Iranian attempts, demanded that all belligerent parties were to “cease to fire at the midnight of May 8 to 9...and work intensively to confirm this as soon as possible by signing a reliable, legally binding agreement...ensuring the non-resumption of military and hostile activities.”¹⁰² This time the ceasefire lasted. A no-man’s-land developed between the Armenian/Karabakhi and Azerbaijani forces that remains to this day. Meanwhile, with a lasting ceasefire implemented, the Minsk Group began the challenge of determining the final status of Nagorno-Karabakh.

One of the first big Minsk Group proposals was the Package Deal of 1997. In this deal, much as in the Zheleznovodsk Declaration, Nagorno-Karabakh was to remain part of Azerbaijan, but with the highest degree of autonomy possible just short of independence. According to the Package Deal, Nagorno-Karabakh would have “its own Constitution, adopted by the people of [Nagorno]-Karabakh on the basis of a referendum [and have] its own flag, national symbols and anthem.”¹⁰³ Additionally, Nagorno-Karabakh would become an economic free zone that would be independent of Azerbaijani economic policies, allowing foreign currency inflows to boost economic

¹⁰² “Bishkek Protocol”, 5/05/1994, http://peacemaker.un.org/sites/peacemaker.un.org/files/ArmeniaAzerbaijan_BishkekProtocol1994.pdf

¹⁰³ Minsk Group proposal (‘package deal’), July 1997, http://www.mountainous-karabakh.org/documents/osce_package_deal.html

development. While this proposal was accepted by both Armenia and Azerbaijan, Nagorno-Karabakh rejected it, arguing that the status quo of the Soviet-era AONK was being maintained.¹⁰⁴ With its rejection, the Package Deal failed.

The second attempt at peace by the Minsk Group was called the step-by-step agreement of December 1997. Under this agreement, all of the occupied regions of Azerbaijan would be demilitarized and Karabakhi forces would “be withdrawn to locations within the 1988 boundaries of the Nagorno-Karabakh Autonomous Oblast [AONK], with the exception of the Lachin corridor.”¹⁰⁵ The Lachin corridor would remain under Karabakhi control so that it would maintain a direct route to Armenia without Azerbaijani interference, meaning that Baku could not be accused of disrupting Armenian connections. Additionally, Armenia and Azerbaijan would establish “trade and normal interrelations between them, and...refrain from statements or acts capable of undermining the [step-by-step program] or good relations.”¹⁰⁶ Again, while Baku and Yerevan agreed to the guidelines, Stepanakert refused to comply, complaining that vital questions were being left unanswered, including the oblast’s final status.

Seeing that Nagorno-Karabakh would agree to nothing less than full independence, the Minsk Group drafted the Commonwealth Proposal in November 1998. In this proposal, Nagorno-Karabakh would have entered into “a state-territorial formation in the form of a Republic and [constituted] a common state with Azerbaijan in the latter’s internationally recognized borders.”¹⁰⁷ Like previous attempts at granting NKR the

¹⁰⁴ Mountainous-karabakh.org..

¹⁰⁵ Minsk Group proposal (‘step-by-step deal’), December 1997, <http://www.mountainous-karabakh.org/document.html#.UvwIEfldWF9>

¹⁰⁶ *ibid.*..

¹⁰⁷ Minsk Group proposal (‘common state deal’), November 1998, <http://www.mountainous-karabakh.org/document.html#.UvwLLfldWF8>

highest degree of autonomy possible short of independence, Nagorno-Karabakh would become an autonomous republic virtually free of any influence from Baku while still remaining part of Azerbaijan. Baku and Stepanakert would have different presidents and governments that implemented their own policies for their territories and would only work together for mutual concerns. Regarding foreign policy, Stepanakert would participate “in the implementation of Azerbaijan’s foreign policy on issues touching upon [Stepanakert’s] interests. Decisions on such issues cannot be taken without the agreement of both sides.”¹⁰⁸ The Lachin corridor would also be demilitarized, but a separate resolution would be agreed upon outside of the Minsk Group proposal. It was hoped that a separate resolution would help avoid a deadlock within the Minsk Group proposal and make progress in breaking the impasse. This time, both Yerevan and Stepanakert agreed to the Commonwealth Proposal, but Baku rejected the equal status Nagorno-Karabakh was given as a separate state at the negotiating table, arguing that Baku, not Stepanakert, was responsible for the fate of Nagorno-Karabakh.¹⁰⁹ Azerbaijan was not going to negotiate a resolution based on the assumption that it recognized the government in Stepanakert as having sovereign jurisdiction over the oblast.

After the failure of the Commonwealth Proposal, the Nagorno-Karabakh situation developed into a frozen conflict. There was no war, but peace had not really been established either. All connections between Armenia and Azerbaijan were completely severed. After Heydar Aliyev died in 2003, his son Ilham took over the presidency but did not change policy toward Nagorno-Karabakh. The dividing line between Armenian and Azerbaijani forces remained, while Nagorno-Karabakh developed parallel

¹⁰⁸ Minsk (‘common state deal’)..

¹⁰⁹ Mountainous-karabakh.org..

governmental institutions and ran its own affairs, though it was not recognized as independent by any sovereign state, including Armenia. It was not until 2011 that another attempt by the Minsk Group at peace was drafted.

The Madrid Principles borrowed a lot from the previous Minsk Group proposals, including calls for demilitarization of the occupied territories and a continuing connection between Armenia and Nagorno-Karabakh via the Lachin corridor along with the return of displaced persons on all sides of the conflict. This time, however, the final status of Nagorno-Karabakh would be determined through a referendum.¹¹⁰ Whether or not the displaced persons who previously lived in Nagorno-Karabakh could vote is unclear, but since the overwhelming majority of the region's population is Armenian, there is little doubt that Nagorno-Karabakh would have become independent under this proposal. This issue regarding Karabakhi independence has irked Baku, and thus no agreement has yet been reached.

Currently, the status of Nagorno-Karabakh remains unsettled. NKR continues to exist without any *de jure* recognition but remains outside of Baku's *de facto* control. NKR uses a different currency, the Armenian *dram*, and is still regarded as a rebellious region by Baku. At the same time, Armenia is caught in a very difficult situation. Not only are its ties with Azerbaijan severed, but it also has no diplomatic relations with its western neighbor Turkey. Turkey and Azerbaijan maintain their Turkic-brethren relationship and thus Turkey refuses to recognize Yerevan's government out of protest. However, in 2009, a rapprochement nearly occurred between Ankara and Yerevan. Under the rapprochement guidelines, both countries agreed to "conduct regular political consultations between [their] Ministries of Foreign Affairs...[and] develop the bilateral

¹¹⁰ Mountainous-Karabagh.org..

legal framework in order to foster cooperation.”¹¹¹ Other issues, such as the Armenian genocide dispute, would be discussed between Armenia and Turkey using archival documents from both countries.¹¹² Economically, this would have helped landlocked Armenia find access to Black Sea and Mediterranean ports, thus making Yerevan lucrative place for investment, as transportation costs for exports and imports would decrease. Baku, however, was not pleased.

Azerbaijan, as noted previously, is a major oil producer in the Caspian Sea. It ships oil to Russia and Turkey via carefully constructed pipelines that avoid Armenia altogether. One of these pipelines is called the Baku-Tbilisi-Ceyhan pipeline, and Turkey receives substantial revenue from Azerbaijan for allowing the pipeline to pass through Turkish territory.¹¹³ After the rapprochement, Baku threatened to cut off its oil shipments through Ankara, sapping it of substantial revenue. Consequently, Armenia remains sandwiched between two hostile neighbors. Because of this Azerbaijani pressure, Turkish officials explained that a thaw in Turkish-Armenian relations will only happen once there is a resolution to the Nagorno-Karabakh conflict.¹¹⁴

In the end, the Nagorno-Karabakh conflict shares many similarities with the Kosovo crisis. Both entities are populated by a minority within the states that have *de facto* sovereignty over them while at the same time operating under parallel governmental institutions. Both have had external forces come to their aid in times of violence. Nevertheless, Kosovo has garnered much more *de jure* recognition than Nagorno-

¹¹¹ “Protocol on the Establishment of Diplomatic Relations between the Republic of Turkey and the Republic of Armenia”, October 10, 2009, http://peacemaker.un.org/sites/peacemaker.un.org/files/AM-TR_091010_Protocol%20on%20the%20establishment%20of%20diplomatic%20relations.pdf

¹¹² *ibid.*.

¹¹³ E.Fuller, *Azerbaijan's Foreign Policy and the Nagorno-Karabakh Conflict*, pp.7-8.

¹¹⁴ *ibid.*, p.8.

Karabakh. Two big themes in international law echo throughout both conflicts: territorial integrity and self-determination. Both principles stress the need to preserve state borders while at the same time protecting equal rights for all ethnic groups under the laws of the state. But there is no recognized international legal process by which such a region may declare its independence. The next chapter examines this lacuna in international law and the reasons for it.

Chapter 3: Difficulties in Using International Law to Justify Secession

The United Nations remains divided over the secession of Kosovo from Serbia. As stated in Chapter 1, many states with separatist movements within their borders fear that Kosovo will become a precedent for future secession attempts. One reason why Nagorno-Karabakh has not found support for independence, despite the similarities between its situation and that of Kosovo, is because international law does not have an established set of rules for the secession of a territory from a host state. Instead, international law upholds the importance of territorial integrity and goes to great lengths to maintain this objective, which it ranks even above the right to self-determination. This lack of established rules for secession is a major challenge for separatist groups in their attempts to justify secession arguments within the confines of international law.

International law is based on the concept of a society of states, or “a group of states, conscious of certain common interests and common values, [that] form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations with one another.”¹¹⁵ Regardless of their differences, these states, each self-interested and seeking security, are “united in the belief that they are the principal actors in world politics and chief bearers of rights and duties within it.”¹¹⁶ Consequently, international law consists of the universally accepted rules that can help states maintain their sovereignty and independence while at the same time creating a secure environment within an anarchical world. Through international law, order is created.

Since the Treaty of Westphalia was signed in 1648, international relations and international law have been dominated by sovereign states. These states are entitled to

¹¹⁵ Bull, p.13.

¹¹⁶ *ibid*, p.16.

enact laws within their territorial borders and to treat their subjects and lands as they see fit. International law was established after Westphalia in an effort to “regulate inter-state relations, which means, in practice, upholding the cardinal principle of sovereignty.”¹¹⁷ Sovereignty defined here implies that “the norms of self-determination and non-intervention” are to be upheld in addition to recognizing a state’s existence.¹¹⁸ States are expected to refrain from intervening in one another’s internal affairs. Despite this non-involvement, many states have agreed to treaties that, once signed, guide state actions. These include agreements such as the UN Human Rights Charter and the Nuclear Non-Proliferation Treaty. If a state backtracks on these treaties, it may face the risk of isolation economically and diplomatically, as it is violating the obligations it has agreed to follow. For the self-interested state, this could be very detrimental to its accumulation of power.

However, adhering to the norms of international law can be a double-edged sword. With the rise of human rights declarations and the promotion of universal rights for each and every human being, some argue that the internal sovereignty and exclusive jurisdiction of a state has shrunk.¹¹⁹ Not only can one state argue that another is violating the human rights of its citizens and call for action to stop it, despite the importance of territorial integrity, but individual humans can also contribute to state isolation by using the UN Charter upheld by the General Assembly and Security Council as a moral authority. Consequently, a state may be forced to accept demands to uphold human rights based on intense pressure from the international community to do so. Yet if a state,

¹¹⁷ A.Heywood, *Global Politics*, p.341.

¹¹⁸ *ibid.*.

¹¹⁹ N.Shawki & M.Cox (eds.), *Negotiating Sovereignty and Human Rights: Actors and Issues in Contemporary Human Rights Politics*, p.9.

such as the United States or China (both of which additionally have a veto on the UN Security Council), has enough power economically and militarily to withstand international pressure, it may still retain the ability to restrict human rights without too much backlash. Smaller states such as Serbia, however, do not have this ability to withstand pressure without international backing from stronger states, particularly when all of the permanent members of the Security Council either favor or abstain from criticizing intervention and consequently breaching Belgrade's territorial sovereignty, as in the case of the ethnic cleansing of Albanians in Kosovo. Nevertheless, international law does not have established norms for secession, and offering *de jure* recognition often draws concern that the established norms regarding territorial sovereignty are being compromised, a principle through which all states seek to preserve their borders and their authority over the population within them.

Before determining why there are no established rules of secession in international law, we should first define what exactly constitutes a state. On December 26, 1933, the Montevideo Convention, attended by states from the Western Hemisphere, determined that for a state to have access to the benefits of international law, it must have the following qualifications: a permanent population, a defined territory, government, and the capacity to enter into relations with other states.¹²⁰ Thus, a state must have constant borders that are not subject to rapid changes, allowing a state's government to maintain control over resources and territory. A constant population means a population permanently living in the territory's borders that is not subject to large-scale migrations or rapid influxes of aliens. A stable citizenry is needed. A government that has adequate

¹²⁰ *Montevideo Convention on the Rights and Duties of States*, 1933, <http://www.cfr.org/sovereignty/montevideo-convention-rights-duties-states/p15897>

institutions able to provide security to the population is essential to the maintenance of a state. Any chances of anarchy will lead to the inability to engage in interstate relations, since no recognized representative will exist to enter into diplomatic relations.

Kosovo and Nagorno-Karabakh are territories of, respectively, Serbia and Azerbaijan. Territory is defined as the “spatial sphere within which a state’s sovereignty is normally manifested.”¹²¹ Nevertheless, both could claim to meet the Montevideo standards. Kosovo and Nagorno-Karabakh both have established borders that have not been subject to dispute. True, Armenian forces occupy the territory around NKR, but this is to act as a buffer against Azerbaijani troops. Meanwhile, both territories have constant populations who have citizenship granted by the governments of both contested states. Through their governments, Kosovo and NKR can both establish diplomatic relations with the international community, albeit on very limited terms since many recognized states refuse to reciprocate, arguing that the governments in Priština and Stepanakert are not the legitimate sovereigns of these breakaway states.

Sovereignty is another vital characteristic of statehood. According to the former American Secretary of State Robert Lansing, the concept of sovereignty has two essential elements: “the power to compel obedience to the sovereign will and the possession of physical force superior to any other that makes such compulsion possible.”¹²² But Lansing’s definition is incomplete, as one could have superior military forces to coerce a population into complying but this does not mean that the dominating force is recognized as the legitimate authority. As Max Weber notes, “the state is a relation of men

¹²¹ E.Milano, *Unlawful Territorial Situation in International Law: Reconciling Effectiveness, Legality and Legitimacy*, pp.66-67.

¹²² G.Gottlieb, *Nation Against State: A New Approach to Ethnic Conflicts and the Decline of Sovereignty*, p.14.

dominating men, a relation supported by legitimate (i.e. considered to be legitimate) violence.”¹²³ For sovereignty to be fully implemented, one needs to find legitimacy from the population being ruled over. Thus, sovereignty is defined as an authority’s legitimate monopoly on the use of force to maintain control of a territory and its population. But with the rise of ideologies such as ethnic nationalism, whose followers may not recognize state rulers as legitimate and profess the need for independence through self-determination, many states have become paranoid over the possibility of a complete state breakup, as the use of force may not be successful in compelling a separatist population into compliance with the sovereign’s authority. But having the willing compliance of a population within a territory is only one aspect of a sovereign’s legitimacy. As Kosovo and Nagorno-Karabakh have both discovered, legitimacy also comes from the international community, particularly from a community founded on the importance of territorial sovereignty.

International law declares that a state is to operate in its own manner and have control over its territory and population unless it has already signed treaties and charters affirming its commitment to established norms of international law or otherwise limiting its own sovereign power. The United Nations Charter itself endorses the principle of territorial sovereignty. Chapter I, Article 2, Section 4 affirms that “all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state.”¹²⁴ Additionally, the United Nations “is based on the principle of the sovereign equality of all its Members.”¹²⁵ Thus, all member states are equal according to international law. Russia, the world’s largest state, shares

¹²³ M.Weber, *Politics as Vocation*, <http://www.sscnet.ucla.edu/polisci/ethos/Weber-vocation.pdf>

¹²⁴ Charter of the United Nations, <https://www.un.org/en/documents/charter/chapter1.shtml>.

¹²⁵ *ibid.*.

sovereign equality with tiny Nauru, the world's smallest republic. Each and every member state enjoys the same benefits of international law, along with the same responsibilities, including the respect of state borders.

This territorial sovereignty principle, however, is often subject to dispute among states. Kosovo and Nagorno-Karabakh, both breakaway regions, are examples of this ongoing dispute, in which “one government does not recognize the sovereignty of another country over some portion of territory within the borders of that county [resulting in the support of] separatist groups who claim that the disputed territory should form the basis of an independent sovereign state.”¹²⁶ The United States and its NATO allies disputed with Serbia over Kosovo while Armenia disputed with Azerbaijan over Nagorno-Karabakh. There are many ways to resolve territorial disputes, including war, but usually other means are pursued. These include the occupation and assumption of control over disputed territory by the challenger, the signing of a bilateral agreement in which territorial claims are either renounced or are satisfied with a compromise settlement, or an agreement to abide by a ruling issued by the International Court of Justice or an international arbitration panel.¹²⁷ This last option was pursued by Serbia to determine the final status of Kosovo.

Every member state of the United Nations is also *ipso facto* a member of the International Court of Justice, or ICJ. As mentioned in Chapter 1, Serbia, using its member status, submitted the question whether Kosovo's unilateral declaration of independence was legal in accordance with international law to the ICJ. The Court has two primary functions: “to settle disputes submitted to it by members [and] to give

¹²⁶ P.K.Huth, *Standing Your Ground: Territorial Disputes and International Conflict*, p.21.

¹²⁷ *ibid*, p.23.

advisory opinions on legal questions referred to it.”¹²⁸ No member state, however, is bound by the Court’s rulings. Thus, despite the Court’s official ruling that Kosovo’s unilateral declaration of independence was legal since international law does not have any established rules regarding when declarations of independence should be permitted even if Kosovo may or may not meet the requirements for statehood, Serbia was not bound by this ruling and has continued, subsequently, to deny Kosovo *de jure* recognition. Nevertheless, the moral weight of the Court remains a vital factor in international law disputes, and many states continue to seek legitimacy for their actions from ICJ rulings.

Despite the ICJ ruling on the legality of Kosovo’s declaration of independence, international law still contains “neither a right of unilateral secession nor the explicit denial of such a right.”¹²⁹ Instead, most of international law leaves “the creation of a new state to be determined by the domestic law of the existing state of which the seceding entity presently forms a part.”¹³⁰ Because the Serbian constitution declares Kosovo to be an integral part of Serbia, Priština could not count on this clause of international law to find legitimacy in its unilateral declaration of independence. Here one can see the importance of the preservation territorial integrity within a state’s legal framework as well. One should remember, however, that the ICJ explicitly stated that its ruling did not determine whether Kosovo has met the qualifications to be considered a state. Thus, individual states may argue in their refusal to offer *de jure* recognition that not only was Serbia’s territorial integrity violated, but Kosovo may still be lacking in Montevideo Convention requirements for statehood.

¹²⁸ D.A.Wells, *The United States vs International Laws*, pp.26-27.

¹²⁹ Epps, p.262.

¹³⁰ *ibid.*.

In the end, territorial integrity is an important factor in establishing a secure environment for international law to function successfully. This is a law created by states for states in an effort to establish a secure environment for each state to develop economically and politically. But territorial integrity is only one of two important factors in statehood recognition. The other factor, one that may give Nagorno-Karabakh greater legitimacy in its quest for statehood and help Kosovo continue to consolidate its statehood, is self-determination.

Most separatist movements base their arguments for independence on the concept of self-determination. This concept has inspired ethno-national groups, including both Kosovo and Nagorno-Karabakh, to rebel against central authorities throughout history, resulting in conflicts with the principle of territorial integrity. This tension has led to a long-running debate over how these two ideas can be reconciled. Often, this self-determination argument will arise as the political interest of a state's central government and diverges from that of a separatist group. Because local interests are usually not uniform throughout an entire state, "the local population knows that, as long as majority rule is in place at the local level...policy decisions will tend to redound to the benefit of the local majority, i.e., the national minority."¹³¹ Self-government on the local level for minority groups looking after their own interests is therefore desirable. By declaring that self-determination has been violated because these local interests are not being acknowledged by a state's central government, the separatist group makes the argument that international law has been breached as well.

Self-determination was first promoted by the United Nations in 1960 by means of Resolution 1514, which states that "all peoples have the right to self-determination; by

¹³¹ J.G.V.McGaughey, *Secessionism: Identity, Interest, and Strategy*, p.38.

virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”¹³² At the same time, however, these three developments are to be confined within the territories of established states. The United Nations does not support the breakup of states in an effort to appease all ethno-national groups. Currently, international law only allows former colonial possessions the right to secede from their colonizing powers within their established colonial borders, as written in the Declaration on the Granting of Independence to Colonial Countries and Peoples. These colonies are to become states based on established colonial borders in an effort to avoid conflict over the redefinition of national borders based on *uti possidetis*, or retaining possession over what has been “acquired by force during...war.”¹³³ The need for territorial integrity, however, often divides ethnic groups, meaning that heterogeneity continues and one group may become a minority on one side of the border while a majority on the other side.¹³⁴ But the UN states that independence is done in the name of the people of the former colony, and that all the inhabitants of the former colony will benefit from it.

Resolution 1514 remains vague, however, in its definition of what constitutes a people. There are many possible ways of defining a people. For example, the people could include the “population of a territory; the markedly different idea of *whoever* populates a state territory; an electorate; a racial or ethnic majority or minority; legal citizens of a state; a representative assembly; or some kind of aggregation or compound of any of these.”¹³⁵ It is therefore too ambiguous to declare self-determination in the

¹³² J.Dahlitz (ed.), *Secession and International Law: Conflict Avoidance: Regional Appraisals*, p.92.

¹³³ “Uti possidetis Law & Legal Definition”, USLegal, <http://definitions.uslegal.com/u/uti-possidetis/>

¹³⁴ Dahlitz, p.92.

¹³⁵ A.Vincent, *Nationalism and Particularity*, p.31.

name of “the people.” But so long as this lack of a definition of what a people is persists, the haziness will continue and states will be forced to make their own determinations about whom to regard as “a people” on their own. Usually, the UN unofficially defines a people as “all the people within a State, that is its population.”¹³⁶ This is advantageous, because by stating that the people is the population of a state within established borders, the UN can provide a sense of unity regardless of potential ethnic, linguistic, and religious differences, as seen in many former colonies worldwide. Doing so helps to avoid the complexity of creating new states and borders when many established states already deal with ethnic divisions of their own. If borders had to be redrawn, then the risk of recreating borders everywhere based on self-determination could arise. However, if the UN used its unofficial definition of “a people” to hold both Kosovo and Nagorno-Karabakh accountable for the good governance of their populations, then these contested states and the separatist groups that support them could be forced to rescind their narrow definitions of “a people” defined as Kosovar Albanians and Karabakhi Armenians, thereby complicating efforts at declaring independence based on their “peoples” right to self-determination.

Typically, secessionist movements advocating self-determination constitute a group of human beings that share one or more of the following characteristics: “a (historical) territorial connection, on which territory the group forms a majority; a common history; a common ethnic identity or origin; a common language; a common culture; a common religion or ideology.”¹³⁷ Moreover, such a group considers itself “a distinct people distinguishable from any other people inhabiting the globe, [with] the

¹³⁶ Dahlitz, p.92.

¹³⁷ D.Raić, *Statehood an the Law of Self-Determination*, pp.262-263.

wish to be recognized as such, as well as the wish to maintain, strengthen and develop the group's identity [consequently]."¹³⁸ It is this definition of a group that both Kosovar Albanians and Karabakhi Armenians use to distance themselves from the dominant Serb and Azeri populations from whom they wish to secede. Despite the possible criticism coming from the UN regarding the treatment of those parts of a territory's population that are not part of the separatist group's concept of "a people," the principle of self-determination is still used by separatists to argue that these dominating groups are not allowing the goals of Resolution 1514 to be achieved. Consequently, both Kosovar Albanians and Karabakhi Armenians argue that independence is their only option, especially given the previous conflicts they have endured.

Sometimes secessionist groups attempt to find legitimacy for their cause by seeking a national referendum to show that the group they draw their support from overwhelmingly supports the idea of independence. Referenda, however, can entail numerous problems. First, a state may not constitutionally permit national referenda, and since international law does not call for every state to allow referenda, separatist groups cannot find much external support for this strategy. Additionally, there are four problematic issues regarding how a referendum is conducted, including "who calls for the referendum to be held; who is entitled to vote; the wording of the referendum question; and what majority vote must be reached for the referendum to be passed."¹³⁹ If a state does permit the use of referenda for secession, then the question of how many voters who decide in favor of the referendum are needed for it to pass becomes much more complex. A referendum that only allows a select group to vote may not be completely accurate or

¹³⁸ Raić, pp.262-263.

¹³⁹ A.Pavkovic & P.Radan (eds.), *The Ashgate Research Companion to Secession*, p.336.

honest in its results. Had Nagorno-Karabakh conducted a referendum that only allowed Armenians to vote, then this would have excluded minorities such as Azeris who lived in the oblast prior to the war. To claim that a vote that only included a portion of a region's population is the will of the people is flawed reasoning. Thus, a referendum is not always a useful way to find legitimacy for one's separatist movement.

In an effort to reconcile the secessionist concept of self-determination with territorial integrity, scholars have considered numerous options. J.E.S. Fawcett, for example, argued that newly recognized states should be subjected to special requirements, such as not denying "in its territory...certain civil and political rights, including in particular the right of every citizen to participate in the government of his country."¹⁴⁰ With everybody given the ability to participate in government, self-determination can still be fulfilled as each different group is able to maintain its identity and culture in the form of official languages, recognized churches, and similar matters, resulting in decreased risk in future separatist movements within these new states. The idea is to provide enough access to state facilities and institutions to every group so that there is no need for a return to separatist movements; everybody is already content. Fawcett's idea is backed up by James R. Crawford, who wrote that "a new rule has come into existence, prohibiting entities from claiming statehood if their creation is in violation of an applicable right to self-determination."¹⁴¹ A new incentive is provided: for a state to be recognized based on the right to self-determination, it must treat every group within its borders equally, thereby helping to reduce the risk of future state breakup or failure by abating the possibility of renewed separatism. It could be possible to argue that Kosovo,

¹⁴⁰ T.D. Grant, *The Recognition of States: Law and Practice in Debate and Evolution*, p.92.

¹⁴¹ *ibid*, p.92.

with its heterogeneous population, has already tried to comply with this precedent in an effort to legitimize its independence claims. The constitution of the Republic of Kosovo states that the government is to allow the full participation of all minorities, including Serbs, Gorani, Ashkali, Egyptians, and Bosnians, in the implementation of policy within the state.¹⁴²

But it is not easy to achieve this reconciliation in a post-conflict state. Kenneth Waltz offers an example of how states operate. In a heterogeneous state, there is high incentive for one group to seize the structural institutions of the state in order to maintain its security. Like the state itself within an anarchical world, each group within the heterogeneous state has its own particular interests, finding it nearly impossible to create, according to Waltz's argument, "an emerging central authority to mobilize the resources needed to create and maintain the unity of the system by regulating and managing its parts."¹⁴³ The competing interests of each group make the establishment of a unified state with uniform support impossible. Since Belgrade could never convince Kosovar Albanians that they would be safe after the ethnic cleansing, Serbia could not possibly hope for a fully unified state once more. Azerbaijan would find itself in the same situation. After the pogroms against Armenians, there was no chance for Baku to be able to convince Karabakhi Armenians that they would be safer as an integral part of Azerbaijan. When the operational institutions are under the control of a rival group, challengers will remain insecure. Few guarantees of safety can be made by a belligerent rival that will convince a rival group to cooperate. Secessionist groups feed on this

¹⁴² *Constitution of the Republic of Kosovo*, 2008, <http://www.kryeministri-ks.net/repository/docs/ConstitutionIKosovo.pdf>

¹⁴³ T.L.Pangle & P.J.Ahrens Dorf (eds.), *Justice Among Nations: On the Moral Basis of Power and Peace*, p.246.

insecurity and use it to rally support. Outside powers may also use this insecurity to justify actions that may violate international law in the name of protecting these afflicted groups, including the use of humanitarian intervention regardless of long-term effects on sovereignty debates.

Based on the desire to assist ethnic kin or an extremely marginalized group, many states, including the United States, insist on a right to humanitarian intervention, particularly for those groups that have suffered crimes against humanity. Crimes against humanity are “intentionally committed acts that form part of a widespread, systematic and repeated attack against a civilian population.”¹⁴⁴ It was this argument that led to NATO intervention in Kosovo and Armenian intervention in Nagorno-Karabakh. Armenia, meanwhile, is still reeling from the massacre committed against Armenians by Turkish forces in 1915, and it demands that the world recognize this atrocity as genocide. Thus, Yerevan may have also intervened in Nagorno-Karabakh in order to save from annihilation part of its perceived nation. Nevertheless, protection from crimes against humanity is not universally considered a legitimate reason to violate international law through intervention.

To intervene means to ignore the concepts of internal sovereignty and territorial integrity. Based on international law, a state has the right to treat its citizens as it sees fit. This treatment, however, occasionally oversteps the limitations of human rights which documents such as the UN Human Rights Charter seek to enforce. However, many international agreements still uphold the need for territorial integrity. The Helsinki Final Act, signed in 1975, for example, states that “where territorial integrity [collides] with the equal rights and self-determination of peoples...the international community should

¹⁴⁴ Heywood, p.345.

favour the former principle.”¹⁴⁵ Before anything else, international law hopes to achieve a diplomatic resolution to every conflict, regardless of the severity of crimes against humanity. One could therefore argue that, because both the KLA and Serbian forces were responsible for violence in Kosovo, NATO should not have intervened on behalf of Albanians, since Serbs were also being mistreated.

The argument against intervention is further supported by an ICJ ruling in 1986 regarding a Belgian arrest warrant against a Congolese Foreign Minister for human rights violations he was accused of committing while in office. The Court ruled that “there does not exist a right of intervention by one state against another on the grounds of human-rights violations.”¹⁴⁶ By arresting the Congolese Foreign Minister, Belgium had attempted to assert its jurisdiction over another country when the Court argued that “the world is divided up into different jurisdictions, each with its own rights and duties.”¹⁴⁷ To the ICJ, no state can independently intervene in another state’s internal affairs even in regards to human rights violations. The only way this is possible is through a UN resolution that has the approval of the Security Council. Failure to garner this approval means that the consent of the United Nations cannot be used as a legitimate argument for intervention. Effectively, to intervene independently is to ignore international law’s most fundamental principles and this is why very few states ever do so or at least admit that they are doing so.

This argument for non-intervention is also found in the Charter of the United Nations. Chapter I, Article 2, Section 7 states that nothing within the Charter “shall

¹⁴⁵ Berg, p.220.

¹⁴⁶ “The Crooked Timber of Reality: Sovereignty, Jurisdiction, and the Confusions of Human Rights” in *Monist*, p.11.

¹⁴⁷ “The Crooked Timber” p.11.

authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state.”¹⁴⁸ Some may argue, however, that severe human rights violations, such as ethnic cleansing, are often a viable justification for intervention. Along with the writings of Fawcett and Crawford, one can effectively argue that “where a government manifestly fails to ‘represent the whole people belonging to a territory without distinction’, as by the conduct of ethnic cleansing, the imperatives of ‘territorial integrity’ and ‘political unity’ lose their rationale.”¹⁴⁹ Open and blatant attacks on a particular group without regard to possible international retributions in the future, along with the failure of non-military means to stop the actions may, in fact, justify an argument for intervention. As with UNMIK, to make intervention legal and stop this extreme discrimination in favor of one group over another, the international community may collectively, through the use of Chapter VII of the Charter, derogate “from the system’s ordinary respect for territorial integrity and political unity.”¹⁵⁰ The protection of the Kosovar Albanians from ethnic cleansing and the subsequent construction of proto-state institutions within Kosovo illustrate the described derogation from territorial integrity and political unity. By intervening, NATO was, in a way, helping to achieve the right to self-determination for Kosovar Albanians. The problem, however, lies in Kosovo’s subsequent declaration of independence. Intervention was already a breach of international law and independence for Priština only exacerbated the challenge to international norms. Often, Resolution 1244 is used to explain why the government institutions established by UNMIK and later used to consolidate Priština’s independence from Belgrade should not have been used for separatist means.

¹⁴⁸ Charter of the United Nations.

¹⁴⁹ Pavkovic & Radan, p.330.

¹⁵⁰ *ibid.*.

According to Resolution 1244, the “sovereignty and territorial integrity of the Federal Republic of Yugoslavia [Serbia] and the other states in the region as set out in the Helsinki Final Act and annex 2” were to be respected at all times.¹⁵¹ At no time was Kosovo to be prepared for future statehood free from Serbia. Annex 2 of Resolution 1244, however, notes that political institutions in frameworks were to be established within Kosovo, “providing substantial self-government.”¹⁵² Because Kosovar Albanians were not willing to trust direct authority from Belgrade any longer, one could argue that Annex 2 is a means of protecting the Albanians from future attempts at ethnic cleansing while at the same time preserving Serbia’s territorial integrity, thus securing Kosovar Albanians’ right to self-determination within the established boundaries of a sovereign state. The government institutions developed under the auspices of UNMIK were meant, according to the annex, for “the establishment of democratic self-governing institutions.”¹⁵³ If Kosovo was going to become autonomous and had its previous self-governing institutions eliminated under Milošević, then UNMIK would help to reestablish them. Though the intentions may have been good, one could argue, however, that UNMIK’s duties as defined in Resolution 1244 should still have never occurred if this was merely a way of covering up the illegality of NATO’s intervention. This argument finds its support in the Helsinki Final Act, of which both the United States and Serbia (with Serbia being the successor of Yugoslavia) are signatories.

In light of the Helsinki Final Act, a treaty that affirmed the territorial integrity of each state and non-intervention in domestic affairs, one can claim that the NATO intrusion into Yugoslavia was a violation of this agreement between both states.

¹⁵¹ A.G.Koroma, *Dissenting Opinion of Judge Koroma*, <http://www.icj-cij.org/docket/files/141/15991.pdf>.

¹⁵² “Annex 2” in *Resolution 1244 (1999)*.

¹⁵³ *ibid.*.

Regarding the territorial integrity of the Act, participants in the agreement were to “refrain from making each other’s territory the object of military occupation or other direct or indirect measures of force in contravention of international law, or the object of acquisition by means of such measures or the threat of them.”¹⁵⁴ Based on these agreements, the United States and its NATO allies did, in fact, break international law since the United Nations had not sanctioned the intervention. While the lives of perhaps thousands of Kosovar Albanians were saved, territorial integrity was still violated and no outside authority should have intervened. But by declaring Kosovo *sui generis*, the United States may argue that Kosovo’s declaration of independence in the name of self-determination after NATO’s intervention and UNMIK’s development of self-governing institutions independent of Belgrade is an exception to the rules of international law and thus no other contested state can use Kosovo as a precedent. Kosovo was, therefore, a one-time-only instance. This *sui generis* argument, however, does not resolve questions regarding the legality of Kosovo’s declaration of independence, despite the ruling of the International Court of Justice, and the extent to which this has contributed to other states offering *de jure* recognition.

One must keep in mind that the ICJ’s ruling on Kosovo’s declaration of independence “does not ask about the legal consequences of that declaration.”¹⁵⁵ The ruling is only answering the question about the legality of the declaration of independence, not what comes afterward. Additionally, the ICJ made clear that the question presented to it by Serbia “does not ask whether or not Kosovo has achieved statehood. Nor does it ask about the validity or legal effects of the recognition of Kosovo

¹⁵⁴ *Helsinki Final Act*, 1975, <http://www.osce.org/mc/39501?download=true>.

¹⁵⁵ International Court of Justice..

by those States which have recognized it as an independent State.”¹⁵⁶ One may question, based on the definition of a state within the Montevideo Convention, whether Kosovo truly does have a functioning government and the ability to engage in diplomatic relations with other states. One could argue that Priština is a state based on its constitution and governmental institutions that have been established with the help of UNMIK. This argument, however, is a double-edged sword. While these institutions exist, the UN is still helping Priština to implement good governance. Thus, perhaps Kosovo has not yet reached the standard required to be defined as a state.

In the end, what the International Court of Justice wanted to emphasize most was, crucially, that “general international law contains no applicable prohibition of declarations of independence. Accordingly, it concludes that the declaration of independence of 17 February 2008 did not violate general international law.”¹⁵⁷ This ruling, however, does not necessarily imply that other states should immediately recognize Kosovo as independent thereafter, though it does declare that Resolution 1244 “did not bar the authors of the declaration of 17 February 2008 from issuing a declaration of independence from the Republic of Serbia.”¹⁵⁸ Consequently, the ICJ’s ruling sets a precedent allowing Kosovo or any other unrecognized state to declare independence, but it takes no position on whether or not the other states of the international community should recognize that independence.

With the ICJ’s refusal to take a side regarding when *de jure* recognition should be offered, one wonders how Kosovo has been so successful in garnering this recognition by around one hundred United Nations member states. Additionally, if Kosovo is still a

¹⁵⁶ International Court of Justice..

¹⁵⁷ *ibid.*..

¹⁵⁸ *ibid.*..

country assisted by the United Nations in rebuilding its political structures, then one also wonders why other unrecognized states such as Nagorno-Karabakh have not had greater recognition. For a small, isolated region in western Azerbaijan, the oblast has some of the most developed democratic, governmental institutions to be found among many recognized and unrecognized states.¹⁵⁹

Nina Caspersen has theorized about how the failure of the self-determination argument for separatist movements in the wake of the need for territorial integrity has caused many unrecognized states to attempt democratization. The idea behind this is that recognition from states such as the United States is awarded “to entities that have succeeded in building effective, democratic institutions. These entities now argue that they have proven their viability as democratic states and thereby *earned* their sovereignty.”¹⁶⁰ With Kosovo building democratic institutions and conducting free and fair elections, for example, entities like Stepanakert reason that by following Kosovo’s lead they will someday be able to achieve independence.

Thus Nagorno-Karabakh has established mostly free and fair elections along with democratic political institutions in which citizens can fully participate. Stepanakert possibly has a more democratic government than Baku. Presidents of different political orientations have been elected and have been succeeded by new ones with little to no violence or flaws in voting. But there is one caveat to this method of democratization within Nagorno-Karabakh. Unlike Kosovo, with its significant Serb minority and other groups, Stepanakert has very few, if any, minorities under its authority. Azeri residents of Nagorno-Karabakh, now displaced for over twenty years, do not participate in the

¹⁵⁹ N.Caspersen, “Separatism and Democracy in the Caucasus” in *Survival*, p.119.

¹⁶⁰ *ibid*, p.114.

oblast's political system, and this has drawn criticism from both Baku and numerous international organizations.¹⁶¹ Therefore, Nagorno-Karabakh may be more democratic, but only because of its nearly homogeneous ethnic make-up, which makes self-determination arguments for minorities within the entity irrelevant as a means of garnering international recognition, which Kosovo has had to do as seen with its constitution as mentioned above. Nonetheless, the political stability in the oblast along with its ability to be represented in the international arena (as seen with the numerous peace attempts through the Minsk Group), one could argue that Nagorno-Karabakh does have the four defining characteristics of statehood as established by the Montevideo Convention.

Thus, perhaps there is more to Kosovo's *sui generis* status within international law. Throughout the world, human rights abuses have occurred with no humanitarian intervention and subsequent declarations of independence ever resulting. In the end, there may also be something to be said about a state's self-interest in granting Kosovo, but not Nagorno-Karabakh, *de jure* recognition. Perhaps under the surface of international law and its precedents, a realist worldview among states is really driving their decisions about whether or not to extend recognition to secessionist territories. Rather than relying on international law, separatist movements may be forced to rely on power politics and state intrigue to find support for their secessionism, as it is nearly impossible to convince an international community emphasizing territorial integrity over self-determination that their justification for secession is legitimate.

¹⁶¹ Caspersen, p.127.

Chapter 4: The Role of Realism in State Recognition

States take into account many different considerations when determining whether or not they should grant *de jure* recognition to a contested region. These include geopolitics, economics, and even the country's ethnic demography. As a result, international law's calls for territorial integrity are not always upheld, and often opponents of the contested region's newly acquired *de jure* recognition will cite this as a breach of the norms of the international community. But when state self-interest is a priority, power politics and realism may end up trumping this norm of international law. However, it does not always have to be this way. If the interests of a state are met by not granting *de jure* recognition, then territorial integrity may become a priority, especially from a geostrategic perspective.

Currently, American foreign policy seeks to establish market-oriented liberal democracies throughout the world with a special emphasis on human rights, something Washington does "to shape the changing international environment into more permanent patterns that will benefit US interests in the long run".¹⁶² The idea behind this is that having more governments that are similar to the American political and economic system will increase American influence and interest abroad by promoting Washington's political and economic ideals. In light of the bloodshed and ethnic cleansing being committed by Belgrade in Kosovo, there was little surprise that the United States intervened. This intervention was compounded by the fact that the Balkans had already experienced massive amounts of bloodshed and crimes against humanity during both the

¹⁶² S.Blum, "Chinese Views of US Hegemony" in *Journal of Contemporary China*, p.243.

war in Bosnia-Herzegovina, in which over 110,000 people had died within three years.¹⁶³ This massive loss of life was something Washington wanted to avoid repeating, particularly after President Clinton had signed the Dayton Accords that brought an end to the violence that had shattered Bosnia-Herzegovina and deepened its ethnic and political divisions. By intervening in Kosovo, Washington was showing that protection from ethnic cleansing was essential to the human rights agenda the United States was pushing countries like Bosnia-Herzegovina to follow. If the US took no action against Belgrade, then other states might have thought that Washington would sanction further ethnic cleansing elsewhere.

Additionally, some commentators have noted that independence for Kosovo was the least bad scenario for stabilizing the Balkans. Reiterating the comments made by Special Envoy Ahtisaari, there was no way Priština was going to accept Belgrade's authority and every proposition that did not involve independence was dismissed at the negotiating table. Furthermore, the majority of Kosovar Albanians were prepared to continue fighting for independence if either NATO or the UN decided to reassert Serbia's sovereignty over the region. Thus, returning Kosovo to Serbia would only have been a *casus belli* and exacerbated regional instability.¹⁶⁴

But from an ethnic paradigm, it is possible that an independent Kosovo may also contribute to regional instability just as much as reintegration back into Serbia would have. As noted using the arguments of Kenneth Waltz in Chapter 3, the risk of state collapse is greater if a multiethnic society has numerous rivalries among its different

¹⁶³ "Bosnia war dead figure announced" *British Broadcasting Corporation* 21 June 2007, <http://news.bbc.co.uk/2/hi/europe/6228152.stm>

¹⁶⁴ A. Yannis, "The politics and geopolitics of the status of Kosovo: the circle is never round" in *Journal Of Southeast European & Black Sea Studies* pp.164-165.

groups, which contributes to problems in states such as Bosnia-Herzegovina today. In fact, increased homogeneity within a state may increase the opportunity for a stable, democratic government with greater representation of society as a whole. States such as Croatia and Slovenia, for example, both have successfully developed democratic institutions over the past twenty years and are now members of the European Union.¹⁶⁵ True, Croatia did experience the Homeland Wars of the early 1990s, but after Operation Storm and the destruction of the Republika Srpska Krajina, resulting in the mass exodus of Serbs from Croatia,¹⁶⁶ the country's dominant Croat population allowed for a smoother democratic transition, as the much-diminished Serb population posed less of a destabilizing force within Croatian politics. This is not a defense of ethnic cleansing. Instead, it is an honest appraisal of the dangers of ethnic nationalism and the problems it can cause in multiethnic states.

Clearly, Kosovo will have to face this issue in the coming years. Just because Kosovo has unilaterally declared its independence does not mean that history has been erased from the minds of Belgrade or Kosovar Serbs. Kosovo remains the cultural cradle of Serbia and Albanians are still looked upon as usurpers of the Serbian heritage and intruders on holy land. A government dominated by Albanians—regardless of any special privileges granted for Serbs, such as making Serbian an official language, or preserving cultural heritage sites—may continue to be unacceptable for much of the Kosovar Serb population for generations to come. This problem will be further magnified by Belgrade's continued refusal to recognize an independent Kosovo.¹⁶⁷

¹⁶⁵ "EU member countries," European Union, http://europa.eu/about-eu/countries/member-countries/index_en.htm

¹⁶⁶ R.J.Crampton, *Eastern Europe in the Twentieth Century—and after*, p.439

¹⁶⁷ Gvosdev..

Whether or not a deal can be made that would allow Serbia to move one step toward EU membership is up for debate. But until that day, Kosovar Serbs will find solace in the fact that Serbia will continue to support them in establishing parallel political structures independent of Priština.¹⁶⁸ Perhaps a partition of Kosovo is possible, but then this opens up new problems, including whether an Albanian-dominated rump state can be economically sustainable or whether it would seek to join Albania, much to the dismay of Belgrade. Thus, potential for ethnic conflict and its ensuing instability is an important factor to consider when determining whether or not a contested state should be recognized.

Moreover, from an economic perspective, one may argue that based on Kosovo's current black-market activities, independence may contribute to Kosovo becoming a haven for crime independent of Belgrade's authority, which would further contribute to regional instability. But this does not take into account that Kosovo has the advantage of large mineral deposits within its borders, including fifty percent of the former Yugoslavia's nickel deposits, allowing for future extractions and revenues from resource rents.¹⁶⁹ The main reason why international organizations have not exploited Kosovo's mineral deposits is because its statehood remains contested and it therefore lacks access to development agencies.¹⁷⁰ Kosovo has an independent government in Priština, but it remains heavily dependent on UN aid. Furthermore, until an agreement is reached with Belgrade, Kosovo will be unable to assert its authority over its northern, Serb-dominated regions. Consequently, the risk of conflict remains and thus Kosovo still struggles to develop a market for its own resource endowments.

¹⁶⁸ S.Lehne, *Kosovo and Serbia: Toward a Normal Relationship*, p.1.

¹⁶⁹ Schnabel & Thakur, p.26.

¹⁷⁰ Ahtisaari..

But even with the possible risks of regional instability in the Balkans, there may be other reasons why the United States so fervently advocated the protection of Kosovar Albanians from Belgrade's armed forces in the name of human rights. From a geopolitical angle, one can also see Kosovo as a balancer against Russian influence in the Balkans. This factor is becoming more important as Moscow tries to reassert itself as a great power on the world stage.

After the collapse of the Soviet Union, Russia under President Boris Yeltsin was staunchly pro-American, seeking to cooperate with Washington on all issues. Meanwhile, the United States was seeking to increase economic reform in Russia to suit Washington's market-oriented agenda, thereby allowing Russia to integrate more efficiently into the world economy.¹⁷¹ The countries also cooperated in foreign policy and in seeking stabilization within the former Soviet republics, particularly the three nuclear successor states: Belarus, Ukraine, and Kazakhstan. Because these states were small and fairly unstable, the elimination of their nuclear weapons was a priority in order to avoid having them fall into the wrong hands, such as terrorist groups or radical presidents who might have been willing to use nuclear weapons threats for personal gain.¹⁷²

After the nuclear threat was eliminated, however, Moscow discovered that its opinions regarding how the post-Cold War world order should be shaped were mostly ignored by the West. Rather than being partners for peace and stability, Moscow perceived itself as increasingly sidelined by both the United States and Europe, despite its

¹⁷¹ S.E.Cornell, *Small Nations and Great Powers: A Study of Ethnopolitical Conflict in the Caucasus*, p.358.

¹⁷² *ibid.*.

perception of itself as a great power.¹⁷³ Hardened by this apparent snub, Moscow began pursuing a more Russia-centered foreign policy, which sought a central position for Moscow among its neighbors, particularly former Soviet states, along with Slavs, including those in the Balkans. Serbia, both Slavic and Orthodox and with historical ties to Russia, could always be counted on as a close ally.¹⁷⁴ Consequently, once Russia began acting as a big brother to Serbia, this meant that Moscow would always advocate for Belgrade's territorial integrity.

Yet Russia also had another reason for stridently opposing Kosovo secession: as the former Russian Foreign Minister Igor Ivanov stated, there were “many Kosovos in Russia”, including Chechnya.¹⁷⁵ Even the current Foreign Minister, Sergei Lavrov, has echoed Ivanov's comments, saying that “Kosovo could set a precedent for two hundred other regions in the world where secessionist movements are active”.¹⁷⁶ Allowing Kosovo to declare independence unilaterally risked setting a precedent for breakaway regions within Russia. Additionally, NATO was supposed to be a completely defensive organization. If NATO were changing its purpose for the protection of human rights, then this could, theoretically, increase the risk of a NATO intervention within Russia, particularly after its bloody crackdown on Chechnya.¹⁷⁷ While there was never an actual risk of NATO intervention in Russia, Moscow still perceived the organization's actions in Kosovo as threatening.

¹⁷³ J.Norris, *Collision Course: NATO, Russia, and Kosovo* pp.xxiv-xxv.

¹⁷⁴ *ibid.*

¹⁷⁵ *ibid.*

¹⁷⁶ G.N.Bardos, “The Regional and International Implications of Kosovo Independence” in *Mediterranean Quarterly* pp.55-56.

¹⁷⁷ B.C.Harz, “Conflicting Perceptions: Russia, the West and Kosovo” in *Review Of Central & East European Law*, p.503.

Another reason why Russia opposes Kosovar independence is its belief that the West is attempting to contain Russian influence, as if Western Cold War strategy had never ended. Besides Serbia, Russia has very few allies that rely on its military and economic support in the Western Balkans, with the possible exception of the Republika Srpska entity in Bosnia-Herzegovina. Slovenia and Croatia are members of the European Union, half of Bosnia-Herzegovina, the Croat- and Bosniak-dominated Federation, is pro-United States, and Albania is a member of NATO. Even Macedonia and Montenegro, majority Orthodox countries with arguably closer cultural ties to Russia, are attempting to join NATO and the EU. One reason Montenegro voted in 2006 to break from Serbia was because Podgorica believed it would have a better chance of joining NATO by doing so.¹⁷⁸ Thus keeping Kosovo within Serbia extends Russia's influence over a larger area of the Western Balkans and prevents the establishment of another staunchly pro-American government. This shift in the balance of power is something Russia despises, particularly as it seeks to offer an alternative to the perceived hegemony of the United States and Europe in shaping the post-Cold War world order.

This issue of containing Russian influence illuminates the many reasons why an independent Kosovo is a valuable asset in the game of power politics. By arguing that Kosovo is an exception to the rules of international law, the United States is able to keep checks on rivals such as Russia who may support a contested territory's independence by arguing that no other territory can justify secession based on a Kosovo precedent. Additionally, if other contested regions do not meet the geostrategic characteristics Kosovo has that favor American interests, this further helps the United States in finding other reasons for why it is wrong to offer *de jure* recognition to contested states besides

¹⁷⁸ McGaughey, p.40.

Kosovo. Maybe this is one reason why Nagorno-Karabakh remains a frozen conflict even after twenty years.

Despite the relatively small size of the Caucasus region, it is located in an important geostrategic location between both Russia and the Middle East, thus drawing activity from many powers including the United States, Russia, Iran and Turkey who seek to counter the interests of one another. This state interaction is augmented by the fact that Azerbaijan has extensive Caspian Sea oil and natural gas reserves, something Serbia does not have.

Russia is one the largest exporters of oil and natural gas in the world, and through its state-owned company Gazprom, it exports a majority of Azerbaijan's Caspian oil and natural gas. As of 2011, Russia was Azerbaijan's third-largest trading partner, mostly because of the hydrocarbon sector.¹⁷⁹ However, in a bid to operate outside of Gazprom's control, Baku made a deal with both Turkey and Georgia to construct pipelines that pass through their territories, allowing Baku to curb Gazprom's influence in its economic affairs. This has upset Russia, particularly since Azerbaijan has hydrocarbon reserves said by some to be the third-largest reserves in the world after those in the Persian Gulf and Russia, making the country a very lucrative business opportunity.¹⁸⁰

Consequently, Russia has tended to ally itself with Armenia as a check on Azerbaijan and has supplied Yerevan's stagnating economy with substantial aid packages, making it one of the most subordinate former Soviet republics to Moscow. Nevertheless, Russia is walking a very thin tightrope in doing this. Unable to completely align itself with either country, Moscow prefers the current status quo regarding

¹⁷⁹ Fuller, p.6.

¹⁸⁰ Cornell, p.367.

Nagorno-Karabakh. If Moscow were to side with Yerevan, then Baku would have the ability to minimize to the fullest extent possible Gazprom's ability to extract hydrocarbons from the Caspian Sea and seek business opportunities with other oil companies, including Exxon and Chevron. Additionally, Baku has the ability to sell its hydrocarbons to Europe and the United States through the Baku-Tbilisi-Ceyhan pipeline that does not run through Russian territory at all.¹⁸¹

One might wonder if Nagorno-Karabakh has any access to the Azerbaijani oil fields at all, which may bolster arguments that a future independent state would be economically sustainable. The answer to this question is no, since very few of Azerbaijan's hydrocarbon fields are land-based and those that it does have are located on the shores of the Caspian Sea. Nagorno-Karabakh, however, does have resource endowments in the mining sector, including semi-precious metals.¹⁸² While one could argue that NKR thus has a sustainable mining sector that could be developed, NKR is still landlocked and would be virtually a microstate with little access to countries outside of Azerbaijan unless the Lachin Corridor is maintained with Armenia.

However, if Moscow were to side completely with Baku and sanction Azerbaijan's retaking of Nagorno-Karabakh, then it would lose a key ally in Yerevan, which helps to balance Georgia, already a pro-U.S. country that seeks to join NATO, particularly after the 2008 war with Russia in which T'bilisi lost control over its own two contested regions, Abkhazia and South Ossetia.¹⁸³ Armenians currently have a very powerful lobbying group in Washington that constantly advocates for pro-Armenian

¹⁸¹ Fuller, pp.7-8.

¹⁸² "Base Metals", Vallex Group, <http://www.bm.am/en/about/history.htm>

¹⁸³ *ibid*, p.8.

policies, including recognition for Nagorno-Karabakh.¹⁸⁴ Thus, with significant American economic aid pouring into both Georgia and Armenia, Russia, as in the Balkans, could face the threat of encirclement by the United States, thus curbing its influence within the former Soviet republics. In the end, keeping an ambiguous stance on Nagorno-Karabakh may, in fact, be Russia's best foreign policy option regarding the current conflict.

This ambiguity is also currently attractive to the United States, as Azerbaijan not only acts as an alternative to Persian Gulf oil but also as a counterweight to Iran. Both Exxon and Chevron are developing increasingly important partnerships with Azerbaijan's state-owned SOCAR oil company. As mentioned above, these companies act as alternatives to Russian hydrocarbon industries, which allows Baku to avoid economic dominance by Russia.

Furthermore, the United States has good reasons to support Azerbaijan in an already volatile region of the world. First, Azeris are a Shiite Muslim population that shares many close cultural connections with the Azeris across its southern border in Iran. However, due to the secularist policies of the former Soviet Union, the government in Baku is not a theocracy and strictly follows a separation of mosque and state, as stated in the Azerbaijani Constitution.¹⁸⁵ As a result, Baku has become a valuable asset for Washington as the latter seeks alternative sources of oil and natural gas in order to decrease its dependence on Middle Eastern oil and from cartels such as OPEC.

¹⁸⁴ Cornell, p.364.

¹⁸⁵ M.Najafizadeh, "Gender and Ideology: Social Change and Islam in Post-Soviet Azerbaijan" in *Journal of Third World Studies*, pp.85-86.

Azerbaijan also fully recognizes the State of Israel and has maintained full diplomatic relations with Jerusalem since 1992.¹⁸⁶ Since Israel has very few other diplomatic relations with many Muslim states (only Jordan, Egypt, and Turkey, with the latter relationship currently under tremendous strain), Azerbaijan is a valuable ally who has the special bonus of being a Shiite state that recognizes the world's only Jewish state. Consequently, the United States has a lot at stake in maintaining its alliance with Azerbaijan.

Nevertheless, Washington has had trouble maintaining full diplomatic relations with Baku due to the large Armenian lobby in the US. During the Nagorno-Karabakh war, this Armenian lobby was able to persuade Congress to create a relief package that provided humanitarian aid to Armenia while blaming Azerbaijan for blatant aggression.¹⁸⁷ Thus, even though already impoverished Baku was struggling to meet the needs of thousands of internally displaced persons within its own territory, Washington refused to deliver any humanitarian aid, resulting in cool relations between the two countries. Nevertheless, after the end of the war in 1994 Azerbaijani president Heydar Aliyev and his son, Ilham, began using the country's oil wealth and strategic assistance as a supply route for troops in Afghanistan to persuade Washington to improve its relations with Baku.¹⁸⁸ Thus, the United States finds Azerbaijan a valuable ally in the Caucasus.

The ambiguity over Nagorno-Karabakh remains, however. The United States, like Russia, walks a tightrope in the region, particularly as it seeks to counter both Russian and Iranian interests, along with appeasing the Armenian lobby. There are over

¹⁸⁶ I.Bourtman, "Israel and Azerbaijan's Furtive Embrace" in *Middle East Quarterly* p.6.

¹⁸⁷ S.O'Lear, "Azerbaijan's resource wealth: political legitimacy and public opinion" in *Geographical Journal* p.214.

¹⁸⁸ *ibid.*.

one million Armenians living in the United States, the world's third-largest population, behind only Armenia itself and Russia.¹⁸⁹ Azeris, by contrast, number only about 400,000 in the United States, making their lobbying influence much smaller because of this diminished support base.¹⁹⁰ Additionally, Armenia's economy is supplemented by capital inflows from its diaspora community abroad. These inflows are also a major source of revenue for Nagorno-Karabakh. Thus, to advocate for the reintegration of NKR into Azerbaijan would be to betray the powerful Armenian lobby, perhaps resulting in political repercussions from the lobby later on. The human rights emphasis of American foreign policy would also be betrayed, particularly if the reintegration of NKR meant a violent military crackdown and the mass exodus of Karabakhi Armenians. But to say that Nagorno-Karabakh should have *de jure* recognition, resulting in a loss of up to one fifth of Azerbaijani territory, could result in deeper cooperation between Baku and Moscow. Thus, based on this line of reasoning, one can begin to understand why Minsk Group statements are usually vague and call for a diplomatic resolution as opposed to a military option, including the most recent statement which calls for "a peaceful, negotiated settlement [that] can allow the entire region to move beyond the status quo toward a secure and prosperous future".¹⁹¹ By keeping Nagorno-Karabakh as a frozen conflict, the United States is able to maintain the delicate status quo that favors its interests in satisfying the Armenian lobby while keeping a close ally in countering Iran

¹⁸⁹ E.S.Chouldjian (ed.), *Press Release: Barack Obama Calls for Passage of Armenian Genocide Resolution*, paragraph 6

¹⁹⁰ "Azerbaijani-American Council partners with U.S. Census Bureau" 28 December 2009, <http://www.news.az/articles/5620>

¹⁹¹ B.Obama, "Joint Statement by President Barack Obama, President Vladimir V. Putin of Russia, and President Francois Hollande of France on the Nagorno-Karabakh Conflict" in *Daily Compilation of Presidential Documents*, p.1.

through Azerbaijan. Thus both the US and Russia share a strategic interest, at least for the time being, in avoiding a clear resolution to the dispute over Nagorno-Karabakh.

This status quo, however, cannot last forever. Currently, Azerbaijan's Caspian oil reserves are estimated to reach their peak in 2019.¹⁹² Due to the corruption and mismanagement of its political system, much of Azerbaijan's oil revenue has been wasted, with little going to development in public sector areas such as including education and healthcare. Meanwhile, the heavy dependence on hydrocarbons has resulted in Dutch Disease, meaning the development of all other economic sectors has been neglected. Azerbaijan will thus be unable to sustain its current economic growth.¹⁹³ How this will affect the status of Nagorno-Karabakh, however, remains debatable. If the United States wants to keep Azerbaijan as an ally in the Caspian Sea region and the Caucasus, it may supply Baku with economic aid packages and, perhaps, military aid. However, since Baku will not be able to play the oil card, Washington may attach foreign policy strings to these aid packages, including greater emphasis on democratic reform, human rights, and calls for a resolution to the Nagorno-Karabakh crisis. However, Moscow may seize the opportunity to help Azerbaijan in its dire economic crisis by offering an aid package to counter that of Washington's without any strings attached, thus pulling Baku into the Russian sphere of influence, as has happened with Armenia. The lack of strings may not encourage human rights at all, and if Moscow emphasizes territorial integrity, it may sanction the reintegration of Nagorno-Karabakh, much to the chagrin of Yerevan. But since Yerevan relies heavily on military and economic aid from Moscow, it may be forced to watch idly as Baku reasserts authority over Stepanakert.

¹⁹² A.Rasizade, "Azerbaijan's Prospects in Nagorno-Karabakh" in *Mediterranean Quarterly*, p.91.

¹⁹³ The World Factbook, "Azerbaijan" www.cia.gov/library/publications/the-world-factbook/geos/aj.html

Thus, Russia could play both former Soviet republics off against one another. However, if Washington decided to cut ties with Azerbaijan, Armenia might find an ally in the United States through the influence of the Armenian lobby. This could result in calls for *de jure* recognition of the Nagorno-Karabakh Republic, if Azerbaijan were no longer of any strategic importance.

In spite of these considerations, however, the likelihood of the status quo's changing drastically after Azerbaijan hits its peak oil production remains very low. Azerbaijan still retains extensive natural gas fields that will fuel economic growth even if they do not completely cushion the blow from a loss of oil revenue. Currently, Baku is in the process of constructing a Trans-Anatolia Gas Pipeline, or TAGAP, that can carry "a capacity of 16 billion cubic meters [of natural gas] a year, to begin operation in 2017".¹⁹⁴ With demand for natural gas high in Europe, Azerbaijan will still be able to continue its economic growth. Moreover, so long as there is not an American-Iranian rapprochement, Washington will continue to see Baku as a strategic ally in a region with few pro-American governments. Thus, while the status quo may evolve with the coming Azerbaijani peak oil, it is unlikely to change radically. Nagorno-Karabakh may well remain a frozen conflict for decades to come.

There are still more reasons for the maintenance of the status quo regarding Nagorno-Karabakh. For example, Azerbaijan may act as a counterweight to Iran for the United States, but Tehran in turn seeks to use Nagorno-Karabakh as a means to foment instability within Azerbaijan. This is because Azeris in Iran are the country's largest minority, consisting of about a third of the Iranian population.¹⁹⁵ Seeking to divert any

¹⁹⁴ Fuller, p.6.

¹⁹⁵ B.Shaffer, "The Geopolitics of the Caucasus" in *Brown Journal Of World Affairs*, p.139.

risks of Azeri separatism within its borders, Iran has looked, ironically, to Christian Armenia as a partner in the Caucasus against the Azerbaijani state. Thus, Iran has become one of Armenia's biggest trading partners and has provided it with military training and support. So long as Azerbaijan looks to be teetering on the point of collapse, Tehran will be able to abate the risk of a growing sense of Azeri separatism, because the incentive to join a collapsing state will diminish.

Turkey is also in a delicate situation regarding its relations with both Armenia and Azerbaijan. Seeking to establish itself as a great power among the Turko-speaking republics of Central Asia (such as Azerbaijan, Uzbekistan, and Turkmenistan), Ankara has aligned itself with Baku, viewing Azerbaijan as a Turkish brother with a common Armenian enemy sandwiched between them.¹⁹⁶ Once the Nagorno-Karabakh conflict erupted, Turkey immediately cut off relations with Yerevan and showed full support for Baku. However, when the United States sought to deliver humanitarian aid to Armenia, it was delivered through Turkey.¹⁹⁷ Nevertheless, Ankara continued its frozen diplomatic relations with Yerevan after the end of the war.

The diplomatic problems with Ankara and Yerevan are further compounded by the dispute over the 1915 Armenian genocide. There is little to no dialogue between the two governments surrounding the issue, and frustrations continue to grow as states like France declare that Turkey's massacre against Armenian populations was, in fact, genocide. During the attempted rapprochement in 2009 between Yerevan and Ankara, both governments agreed to share documents and begin dialogue over the genocide

¹⁹⁶ Fuller, p.8.

¹⁹⁷ Shaffer, p.140.

claims.¹⁹⁸ However, Ankara's Turkish brother Azerbaijan stepped in, using its strategic placement to its advantage. Turkey is the only viable route outside of Russia for oil pipeline flows to Europe from Azerbaijan. Consequently, Ankara receives a substantial rent for allowing the Baku-Tbilisi-Ceyhan pipeline to run through its territory. Baku, however, is aware of the valuable revenue this gives Turkey and consequently is not afraid to cut off oil flows in retaliation. When it discovered that Ankara and Yerevan were close to signing off on the rapprochement process, Baku threatened to cut off all of the oil flows through the Baku-Tbilisi-Ceyhan pipeline and send its oil to Europe via Georgia and Russia.¹⁹⁹ One reason for the Baku-Tbilisi-Ceyhan pipeline is that its route completely avoids crossing into Armenian territory, effectively isolating Armenia economically in a sea of hydrocarbon revenue. By keeping diplomatic relations frozen, Azerbaijan is able to keep the Armenian economy stagnant, apart from the little trade it has with Iran and Russia. Even the capital inflows from the Armenian diaspora cannot meet the demands for supplies in shortage, including oil. If the rapprochement had occurred, then Armenia would have obtained a new source of income through its ability to trade with Turkey, along with better access to outside goods. The tiny, landlocked state currently finds it very expensive to ship its trading goods to international markets. Thus, by throwing up continued obstacles to Armenian economic growth, Azerbaijan can bide its time while its own economy grows. This gives Baku the further advantage of increased spending on military hardware.

¹⁹⁸ "Protocol on the Establishment of Diplomatic Relations between the Republic of Turkey and the Republic of Armenia", 10 October 2009, http://peacemaker.un.org/sites/peacemaker.un.org/files/AM-TR_091010_Protocol%20on%20the%20establishment%20of%20diplomatic%20relations.pdf

¹⁹⁹ Fuller, pp.7-8.

One commentator on the Nagorno-Karabakh conflict noted that Azerbaijan does not consider itself the loser of the war to Armenia. Rather, it considers itself having lost the first round, as if the war were a boxing match.²⁰⁰ As Azerbaijan builds its economy, it has been able to spend more on things such as military hardware. Currently, Baku outspends Armenia on its military by far, to the point of spending around \$3 billion in 2011, or the total Armenian federal budget.²⁰¹ Thus, Baku may, in fact, be biding its time before it retakes Nagorno-Karabakh. In order to do so, it will need to modernize the Azerbaijani military, with better, newer weapons that will give it enough firepower to destroy Karabakhi Armenian forces and stave off any risks of retaliation by Yerevan. Because Azerbaijan is a strategic asset to the United States, there is a possibility that it could avoid long-term retribution for its actions, even if they are considered human rights violations, crimes against humanity, or simply an act of aggression. Even if Washington cuts off relations with Baku, the latter could move closer to Russia and find a diplomatic and economic ally in Moscow.

In the end, the status quo of the frozen conflict over Nagorno-Karabakh is arguably advantageous to many great and regional powers in the Caucasus. Risking a change could result in a serious disruption of the strategic and diplomatic interests of the United States, Russia, Iran, and Turkey. Thus, while Nagorno-Karabakh may share many similar characteristics with Kosovo, recognizing its independence may simply be too disadvantageous for too many interested parties. Priština has the advantage of being in a region already wracked with violence and—ironically—of having few high-demand resources, so that granting it *de jure* recognition generates few risks. True, from a US

²⁰⁰ O.Behlul, “Who Gains from the ‘No War No Peace’ Situation? A Critical Analysis of the Nagorno-Karabakh Conflict” in *Geopolitics* pp.583-584.

²⁰¹ A.Valiyev, “Nagorno-Karabakh: Twenty Years Under Damocles’ Sword” in *Demokratizatsiya*, p.200.

perspective, Kosovo will act as a counter to Russian interests in the Balkans, but beyond that it does not have the strategic importance in geopolitics that restricts the *de jure* recognition of Nagorno-Karabakh. As a result, power politics may, in fact, be of greater importance in the recognition of statehood than international law.

Chapter 5: Concluding Remarks and an Analysis of the Crimean Crisis

After looking at the relevance of international law, economics, ethnicity, and geopolitics in both the Kosovo and Nagorno-Karabakh cases, one can see certain patterns regarding when and how each are used in determining whether or not to grant a contested state *de jure* recognition. Although territorial integrity remains a weightier argument for state sovereignty than self-determination, states will still cite the latter as a major factor in determining when to offer *de jure* recognition. Self-determination is especially pertinent when considering the strategic advantages, including economic, alliance-based, and political ones, in justifying statehood recognition. Using Crimea as the most recent example of contested statehood, one can begin to determine the reasons behind why the United States and Europe refuse to recognize its secession from Ukraine and why Russia has openly accepted it and subsequently annexed the peninsula.

Historically, Crimea was not officially part of Ukraine. Rather, it was a territory taken from the Ottoman Empire by Russia in 1783 under the reign of Catherine the Great after having been previously closely linked with the Russian Empire through the signing of the Perejaslav Agreement in 1654, which affirmed Muscovy's commitment to protecting Cossacks in Ukraine from the Polish-Lithuanian Commonwealth.²⁰² The ethnic population of Crimea was mostly Muslim Tatars, a Turkic-speaking group whose ancestors came from the Golden Horde who had established a khanate there. But over the centuries, Russians began migrating to Crimea in waves. The population of Crimea thus became majority Russian, and this was augmented by the 1944 mass deportation of

²⁰² E.Armandon, "Popular Assessments of Ukraine's Relations with Russia and the European Union under Yanukovych" in *Demokratizatsiya*, p.302.

Tatars to Uzbekistan by Joseph Stalin, who accused them of collaborating with German troops.²⁰³

By the time of Stalin's death in 1953 and the rise of Nikita Khrushchev to power, Crimea was over ninety percent Russian, with smaller minorities including a few Tatars and Ukrainians. The region was also officially part of the Russian Soviet Federal Socialist Republic, or RSFSR. In 1954, however, Khrushchev decided to give authority over Crimea to the Ukrainian SSR. This occurred during the 300th anniversary of the contract of Perejaslav. Why Khrushchev transferred the territory is uncertain.²⁰⁴ Whatever the reason, what is certain is that Ukraine was left to deal with an unruly Russian population that did not want to be placed under the authority of Ukrainians.

In a bid to appease the ethnic Russians there, Ukraine granted Crimea the fullest amount of autonomy possible without the region becoming independent. A local Soviet was established and citizens managed their own economic affairs. Nonetheless, all residents of Crimea were considered citizens of the Ukrainian SSR. This remained the status quo until the collapse of the Soviet Union in 1991. After Ukraine became fully independent, there was a brief separatist movement led by the president of the Autonomous Republic of Crimea, but it soon fizzled out due to a lack of popular support. In an effort to quell any further separatist sentiment, Kiev again allowed full autonomy for Crimea, as established in Article 136 of the Ukrainian Constitution.²⁰⁵ While this abated the threat of future secession movements, Ukraine soon discovered that it was situated directly on the fault line of Western and Russian geopolitics.

²⁰³ D.Wydra, "The Crimea Conundrum: The Tug of War Between Russia and Ukraine on the Questions of Autonomy and Self-Determination" in *International Journal on Minority & Group Rights*, p.113.

²⁰⁴ *ibid.*.

²⁰⁵ *ibid.*, p.125.

Historically, the territory that constitutes today's Ukraine had never been completely united until the early twentieth century. Instead, it was divided between Russia, Poland, Romania, and the Austrian Empire.²⁰⁶ These divisions also led to cultural disunity among ethnic Ukrainians. In the southern and eastern regions of contemporary Ukraine, the population tends to favor pro-Russian foreign policy initiatives, such as joining a Customs Union economic bloc led by Russia.²⁰⁷ This loyalty to Russia is also based on religious affiliation: a majority of the population is either Ukrainian or Russian Orthodox, whose allegiance is given to the Metropolitan of Moscow. Moreover, most of the population speaks Russian as its first language, regardless of whether they declare their ethnicity to be Ukrainian.

The western and central parts of Ukraine, on the other hand, tend to be pro-Western. They favor joining the European Union or at least cooperating economically with Europe. Additionally, support for NATO membership tends to be stronger in these regions than in the south and east of the country. Furthermore, most of the population tends to speak Ukrainian as its first language and has historical ties to the Uniate, or Greek Catholic, branch of Christianity, meaning that its allegiance is given to the Pope, considered by Russia to be a mark of Westernization. As a result, Ukraine is a country divided culturally, economically, and politically, with many presidents attempting to walk a tightrope of not being perceived as selling the country out to either the West or Russia as they seek to maintain the support of voters on both sides.²⁰⁸ This problematic situation contributed to the recent secession of Crimea during the 2014 political upheaval following the overthrow of Ukraine's pro-Russian president, Viktor Yanukovich.

²⁰⁶ Armandon, p.302.

²⁰⁷ *ibid.*.

²⁰⁸ O.Haran, "Ukraine" in *Russian Social Science Review* pp.71-72.

The spark that ignited the protests that eventually led to Yanukovich's overthrow was his abrupt rejection of a deal that would have integrated Ukraine into the European economy. Signing the deal would have helped the country's sputtering, Soviet-era, heavy industry economy by making Ukrainian exports cheaper to sell to Europe. However, Yanukovich favored a pro-Russian foreign policy and therefore, instead of endorsing the European deal, he accepted an alternative offer of \$15 billion in Russian economic aid and integration into Russia's Customs Union, which also includes Kazakhstan and Belarus.²⁰⁹ Ukraine's entry into the bloc would have enabled Russia to consolidate its authority over historically Russian regions and spheres of influence. But other underlying grievances against Yanukovich—economic stagnation, political inactivity, and rampant corruption—resulted in the loss of his support base even among Russian speakers in the country. Consequently, Yanukovich fled Kiev, and the Verkhovna Rada, or Ukrainian parliament, subsequently voted to remove him from office.²¹⁰ A caretaker, pro-Western government took over—at the time of this writing, it continues to govern Ukraine—and promptly signed the integration deal with the European Union, much to the chagrin of Moscow. These events laid the foundation for Crimean secession.

Despite guarantees of continued autonomy from Kiev, the Autonomous Republic of Crimea grew nervous at the idea that Ukraine was drifting away from Russia. Crimea is the only region within Ukraine with a majority-Russian population. According to the latest census from 2001, 1,180,441 residents of Crimea identify as ethnic Russian,

²⁰⁹ "Ukraine Leader Seeks Cash at Kremlin to Fend off Crisis" *Reuters*, 17 December 2013, <http://www.cnn.com/id/101277705>

²¹⁰ D.McElroy, "Ukraine revolution: live – Ukraine's president has disappeared as world awakes to the aftermath of a revolution" *Daily Telegraph*, 23 February 2014, <http://www.telegraph.co.uk/news/worldnews/europe/ukraine/10659755/Ukraine-revolution-live.html>

compared to 11,090 Tatars and 492,227 Ukrainians (the next census is to be conducted in 2016).²¹¹ These Russians firmly endorse a lease signed between Kiev and Moscow allowing the latter to base its Black Sea Fleet in the port of Sevastopol. The lease was due to expire in 2017, but an extension has been signed that would give Moscow the ability to keep using the port until 2042. Much of the Crimean economy is centered upon jobs created by the Black Sea Fleet. Up to twenty percent of all Crimean residents depend upon the signed lease's remaining in force for their livelihoods.²¹² Turning away from Moscow could thus have a detrimental effect on a huge portion of the Crimean economy. This is compounded by the fact that the pro-Russian population fully supports Moscow as Vladimir Putin pushes his assertive foreign policy as a counterweight to Western hegemony. An about-face to Europe is not an option for these ethnic Russians. Herein lies the basis for Crimean separatism.

In light of the reasons why Kosovo and Nagorno-Karabakh have and have not been recognized, respectively, one can explain why the West has condemned the annexation of Crimea by Russia, while Russia has not backed down on its support for Crimean self-determination. To begin, when Putin cites Kosovo as a reason for Russian intervention to protect the ethnic Russians' right to self-determination in Crimea,²¹³ the West continues to respond—persuasively—that Kosovo was a *sui generis* case under international law. Had the region not been so incredibly polarized at the negotiating

²¹¹ "The distribution of the population by nationality and mother tongue: Autonomous Republic of Crimea", *All Ukrainian population census 2001*, http://2001.ukrcensus.gov.ua/eng/results/nationality_population/nationality_1/s5/?bottom=cens_db&box=5.1W&k_t=01&p=0&rz=1_1&rz_b=2_1%20%20%20%20%20%20%20&n_page=1

²¹² F.S.Larrabee, "Russia, Ukraine, and Central Europe: The Return of Geopolitics" in *Journal of International Affairs*, p.41.

²¹³ S.Gutterman, "Russia uses 1999 NATO bombing in media war over Crimea", *Reuters* 24 March 2014, <http://www.reuters.com/article/2014/03/24/us-ukraine-crisis-russia-kosovo-idUSBREA2N0SC20140324>

table, perhaps the Special Envoy Ahitsaari would not have suggested independence as a means of resolving the frozen conflict. Additionally, Crimea is not neighboring countries that are on the verge of ethnic conflict, where over 110,000 lives have already been lost. Had Kosovo been allowed to plunge deeper into ethnic cleansing, the Western Balkans region could well have fallen into violence once again. Post-Dayton Bosnia-Herzegovina was still highly polarized and UN peacekeepers continued to supervise the entire situation. Spillover into Bosnia-Herzegovina could have happened and further human rights violations and crimes against humanity would have continued. Crimea is not in this situation. Arguments for independence based on self-determination as a last resort due to ethnic cleansing are not present. The closest argument for a breach of self-determination may be the interim Prime Minister Arseny Yatseniuk's refusal to make Russian an official language of Ukraine, lest Moscow use this to justify its historic claims over Ukraine.²¹⁴ Consequently, the West can rebut Moscow's use of Kosovo as a precedent for Crimean independence.

But what about the Russian view of NATO's apparent aggression in Kosovo and containment of Russian interests in the Western Balkans? Currently, Estonia, Latvia, and Lithuania are the only NATO members along Russia's borders. At the same time, the Black Sea is ringed by NATO members, including Turkey, Greece, Bulgaria, and Romania. The Black Sea is an important warm-water port for Russia, and having a naval fleet in the region is critical to Russian interests. If Ukraine were to join NATO, the Black Sea Fleet could be forced to vacate Sevastopol after 2042 and Russia would have no other highly strategic base at which to station a naval presence. Georgia will not

²¹⁴ Interfax-Ukraine, "Yatseniuk: Ukrainian must be only state language in Ukraine" *Kyiv Post* 28 November 2009, <http://www.kyivpost.com/content/ukraine/yatseniuk-ukrainian-must-be-only-state-language-in-53849.html>

cooperate with Moscow after the 2008 war, and whatever naval bases that can be found in Abkhazia are too insignificant to help Moscow secure effective warm-water port access in the Black Sea. Thus, only Crimean independence or annexation by Russia could guarantee a permanent Russian presence in the region. Annexation removed the threat of the lease expiration by giving Moscow full sovereignty over Sevastopol, especially since any threat from the tiny Ukrainian military is minimal. A lack of Ukrainian military action is further supported by the fact that NATO is very apprehensive of granting Kiev a Membership Action Plan, or MAP, because of the geopolitical fault line on which Ukraine is located.

NATO is aware of Russia's historic ties to Ukraine, considering that Russia finds its origins in the tenth-century founding of Kievan Rus'. NATO is thus extremely cautious regarding membership for Ukraine. During the 1990s, Ukraine was offered an MAP, but this was soon shelved after Germany requested further democratic and economic reforms that it knew Ukraine could not yet implement, as it was still too young a country.²¹⁵ Additionally, the European Union was not going to grant membership to a country so close to Russia and not part of NATO. The desire for good relations with Russia in order to assure peace and security in Europe is too great a priority to risk tension over Ukraine. Ukrainian membership in NATO, a collective security organization, would commit the organization to come to Ukraine's defense if Russia ever intervened there, as it did in Crimea. Until Russia's foreign policy becomes pro-Western, one could argue that Ukraine will act as a buffer between Western and Russian interests, in much the way that Belarus does. While it is true that the Baltic states border Russia,

²¹⁵ T.Kuzio, "Strident, Ambiguous and Duplicitous" in *Demokratizatsiya* p.355.

their Russian populations are very insignificant and Russia still has access to the Baltic Sea via Kaliningrad.

In the end, it is quite possible that the crisis in Crimea may become a frozen conflict much like the situation in Nagorno-Karabakh. In an effort to keep peace in Europe, the United States may accept Russian sovereignty over the region, but it will use Security Council Resolutions to condemn Moscow for its actions. A recent non-binding resolution that Russia rejected called upon states to not recognize changes in Crimea's sovereignty status.²¹⁶ China, typically siding with Russia on Security Council Resolutions, voted to abstain from condemning Russia's claims on Crimea, indicating a tacit approval of the resolution. This may be a means of showing world unity regarding the desire to preserve territorial integrity and serve as a warning against less powerful states that might imitate Russia's actions. But nothing will really be done to contest Russia's hold on the peninsula. The desire for stability is too great and even Russia may aware that if it tries to take more of Ukraine it risks significant instability right on its doorstep. Thus, there is, perhaps, less risk of a Russian takeover of eastern and southern Ukraine proper.

Furthermore, the economic costs of a confrontation with Russia over Crimea may also be too great. Much of Europe depends on Russian natural gas for energy during the winter. This gas arrives to Europe via pipelines that cross Ukraine, giving Kiev a significant amount of rent for revenue. One means of retaliation against Russian interference in Ukrainian affairs is for Kiev to cut the supplies agreed upon in Russo-European contracts by siphoning off the gas for its own needs. This results in a breach of

²¹⁶ "General Assembly adopts resolution calling upon states not to recognize changes in status of Crimea region," United Nations General Assembly, <https://www.un.org/News/Press/docs/2014/ga11493.doc.htm>

contract by Russia and consequently it loses business in Europe because it is an unreliable partner. Russia, however, is also able to retaliate by cutting off gas altogether through Ukraine, dealing a serious blow to the Ukrainian economy. Additionally, as a means of avoiding precisely this sort of retaliation by Kiev, Russia is currently building the Nord Stream Baltic pipeline that will circumvent Ukraine completely and ship gas directly to Germany.

In light of all these factors, there is little that can be done to return Crimea to Ukraine. Economic cooperation continues, Russia has access to warm-water ports, and relative stability is preserved. In the end, the vested interests of Russia, NATO, and the EU are too great to risk a confrontation over the Crimean peninsula. Thus, there may be a big possibility that the whole scenario may become a frozen conflict, with no threat of violence unless Ukraine decides to intervene or Russia decides to seize more Ukrainian territory. But with Ukraine having recently signed the deal to integrate economically into the European Union, this may give it the economic boost that it needs to help it not become a stagnating economy if Russian decides to retaliate against Kiev economically by cutting off natural gas flows. In a way, the EU economic integration deal may prove to be a means of giving Kiev some sort of small victory in light of losing part of its territory.

Because international law lacks established guidelines regarding when and how to grant *de jure* recognition to a contested state that is not a former colony or under military occupation, considerations of power politics fill the void and provide a means for wading through the uncertainty. States are forced to make their own determinations about

whether to grant *de jure* recognition to an aspirant state, and when not to. Although emphasis on the following factors differs depending on the aspirant state and its circumstances, each almost always play a role. The following typology offers a theory regarding what states consider as they establish their own rules for when to recognize a breakaway region as independent.

Economics: Particularly in the energy sector, states will be sure to determine the risks to their economic security before recognizing a contested state. While Kosovo lacks the risk of having oil or hydrocarbons cut off from Europe, Nagorno-Karabakh is located in the middle of a transit point for Caspian Sea oil. As seen with Azerbaijan's retaliation against Turkey for the latter's rapprochement with Armenia, energy and economic security can be a crucial factor in granting a state *de jure* recognition. This can also be seen in Crimea, where Ukraine's economy is dependent on the rent acquired by allowing Russian hydrocarbons to pass through its territory. Perhaps if alternative means of energy can be attained, such as domestic production on the part of the United States or the rise of green technology such as windmills and hydrogen-powered vehicles, energy security could become a less critical factor in such decisions, and regions like Nagorno-Karabakh would have a better chance of becoming fully independent.

Geopolitics: The strategic location of any contested states is extremely important. Kosovo is located in an already volatile post-conflict zone with a neighbor that still struggles with ethno-political paralysis even after twenty years of peace established by the Dayton Accords, meaning that the costs of allowing it to remain unresolved are too high for powers like the United States. Meanwhile, Nagorno-Karabakh is stuck in the middle of a region where both the United States and Russia are striving to assert their

influence. The status quo provides an equilibrium that favors neither Azerbaijan nor Armenia. But if one side decides to favor Azerbaijan, for example, then the other side will favor Armenia. As for Crimea, as mentioned above it is the home of Russia's Black Sea Fleet in one of Moscow's few warm-water ports in Europe. Recognition and annexation of the peninsula helps Russia not only economically, but also strategically as a counter military force against encircling NATO members.

Looking at American and Russian foreign policy, one can see the reasons regarding why Kosovo was recognized by the United States and Crimea by Russia before its annexation. Kosovo provides the United States with another staunch ally in the Balkans as a means of countering Russian influence. Serbia has grown increasingly isolated as Albania, Croatia, Romania, and Bulgaria become NATO members while Macedonia and Montenegro seek membership as well. As for Crimea, Russia now has the advantage of always having a naval base in the Black Sea that it can use if it ever has to assert its authority in the region, such as if it faced an economic blockade by Turkey, thereby cutting off its access to the Mediterranean. As for Nagorno-Karabakh, there is no clear advantage for either Russia or the United States in giving the oblast *de jure* recognition. Instead, keeping the status quo may be the most advantageous move for both sides. *De jure* recognition may damn one of the sides by losing an ally in Azerbaijan and thus access to Caspian Sea oil. In the end, the vague definition of the NKR's current status may, in fact, be the most advantageous situation for both parties.

Ethnicity and Culture: This is a risky factor in the process of *de jure* recognition. For example the more heterogeneous the state is, the greater the chance that recognition will anger another party. Because Kosovar Albanians had historically been discriminated

against by Belgrade, and in light of the ethnic cleansing of the late 1990s, the United States intervened under the auspices of human rights protection. In doing so, however, the KLA perceived that it was receiving direct support, despite being previously declared a terrorist organization, in persecuting Kosovar Serbs. Serbia and other Orthodox Slav states opposed Kosovo's *de jure* recognition due to the cultural and ethnic ties to Serbia. When one declares the ancestral home of another nation-state's culture to be independent, this is bound to be controversial. It is the same with Nagorno-Karabakh and Crimea. No matter how embellished Azeri cultural claims to Nagorno-Karabakh may be, it is necessary to understand how important these remain in the eyes of Baku. Additionally, ethnic Russians in Crimea had few to no close cultural ties with Ukraine proper and this was amplified by years of autonomy, meaning it was not that hard to break from Kiev politically. In the end, the greater the historic, cultural, and ethnic ties to a contested state, the more difficult it will be for the host country to let it go.

International Law: Finally, international law can be used in legitimizing a region's claims to statehood. If a region is a former colony or is occupied by a foreign military, it automatically has the right to independence in accordance with international law.

However, states often use the two most important elements of international law regarding state recognition, territorial integrity and self-determination, as a means of supporting or countering another state's decision to offer recognition. Consequently, international law may become another tool in the pursuit of state interest rather than an authority that should always be adhered to. Nevertheless, the general consensus of all states is that territorial integrity should be put before self-determination, as this international norm helps maintain sovereignty over their borders.

Appendix A: The Contested Regions within their Host States

Kosovo



“Map: Serbia and Montenegro,” Infoplease, <http://www.infoplease.com/atlas/country/serbiaandmontenegro.html>

Nagorno-Karabakh



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Crimea



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