Remedial Secession: The legitimisation of a separatist quest

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Summary

This study examines the moral and legal justifications for remedial secession, which could be pursued by a region or group seeking to form a separate state without the parent state's consent. There are differing opinions on secession in international law, with some scholars arguing that it relates to colonialism only and others highlighting the tensions it can create. The dissertation examines the scope of the right to self-determination, territorial integrity, and remedial secession through self-determination in cases of persecution of human rights. The study will illustrate that although a right to remedial secession is not guaranteed in all circumstances, it is of considerable relevance for protecting human rights in the future. The method adopted in the text is by weighing territorial integrity against self-determination to illustrate that the latter should prevail when a minority group suffers persecution at the hands of the parent state. This approach implies that secession should only be permitted after peaceful resolution methods have been futile. The dissertation concludes by building upon a proposed framework for implementing and structuring a remedial right to secede in international law. While remedial secession remains a contentious issue, it could be a practical solution for addressing human rights violations. If a legal framework for remedial secession exists, the international community could offer a consistent approach to secessionist movements.

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Chapter 1

1.1 Introduction

Remedial secession is a concept that suggests minority groups should have the option to break away from a parent state if they suffer persecution at the hands of the state.[1] This remedy has been pursued previously in response to colonialism and national oppression.[2] The concept of remedial secession remains a topic of debate in international law. While it is connected to other established international legal principles, there must be a clear consensus on its validity and execution. No internationally recognised legal norm affirms this right.[3]

The central inquiry in this research study pertains to the supremacy of territorial integrity versus the protection of minority group rights persecuted within the parent state. It raises the question of whether, in a post-colonial context, in cases where internal remedies are inadequate, minority groups should be entitled to exercise their right to external self-determination through remedial secession.[4]

The study suggests that the international community needs greater clarity on implementing and enforcing remedial secession in unprecedented circumstances. Whether a minority group could resort to remedial secession depends on various factors; it is not always guaranteed.[5] The recent case of Kosovo might be relevant

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1 Milena Sterio, 'A Tale of Two States: Territoriality and Minority Rights in Kosovo and Georgia' (2012) 12 International Journal Of Minority and Group Rights 103.

2 Fenrich J, *'Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices'* in Kohen MG (ed), *The Cambridge Handbook of International Law* (Cambridge University Press 2006) 585-614.

3 The Promise Institute for Human Rights, *Self-Determination, Remedial Secession, and International Law*, (UCLA School of Law Fall 2021) available at <https://law.ucla.edu/sites/default/files/PDFs/Promise/Artsakh_Report_Final_Version.pdf > accessed on 11 March 2024, 17.

4 Allen Buchanan, 'Remedial Secession: A Just Cause?' (1991) 1 Journal of Political Philosophy 191.

5 Kasper Lippert-Rasmussen, 'Remedial Secession and Minority Groups: A Normative Analysis' (2007) 24 (1) Journal of Applied Philosophy 1.

to provide a brief overview of the current international response to remedial secession.

Should a state fail to protect victims of human rights abuses, the Responsibility to Protect Report[6] ('R2P') requires that the international community hold the state accountable for this failure to protect.[7] The proposition is that the notion of territorial integrity ought not to be regarded as an absolute principle. Instead, it must be subjected to an analysis prioritising human rights.[8]

1.2 Purpose of the study

This study aims to contribute to the debate on the legitimacy of remedial secession. It distinguishes territorial integrity from self-determination and proposes that, from a moral perspective, the latter should prevail when a minority group's rights are persecuted in a state's territory. It is suggested that the international community should 'interfere' by assisting a secessionist movement suffering at the hands of an oppressive parent state.[9]

This paper demonstrates the importance of a well-established protocol for remedial secession in contemporary international law. It will propose that a comprehensive and systematic framework for remedial secession holds significant value in resolving intricate matters.

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6 International Commission on Intervention and State Sovereignty, (International Development Research Centre, 2001).

7 Milena Sterio, 'The Applicability of the Humanitarian Intervention 'Exception' to the Middle Eastern Refugee Crisis: Why the International Community Should Intervene Against ISIS' (2015) 1 J Conflict & Security L 209 Cleveland-Marshall Legal Studies Paper No. 15-286, Available at SSRN: < https://ssrn.com/abstract=2660435 > accessed 15 June 2024.

8 Gareth Evans, 'The Responsibility to Protect: Human Rights and Humanitarian Dimensions' (2006) 100 (1) American Journal of International Law 107.

9 James Crawford, 'The Right of Self-Determination in International Law: Its Development and Future', (1993) 87 American Journal of International Law 259.

1.3 The issues identified

(1.3.1) Striking a balance between protecting human rights and the imperative of safeguarding a state's territorial integrity is multifaceted. This study explores the possibility of reconciling these two principles.

(1.3.3) Before the Kosovo conflict, various occurrences underscored the lack of uniformity in the international community's reaction to movements calling for secession.[10]

The late Crawford highlighted that the International Court of Justice's advisory opinion in Kosovo did not recognise a remedial right to secede, nor did it address the nature, implications, or restrictions concerning acts of secession. [11] Furthermore, the court needed to establish the conditions and requirements necessary for secession to take place.[12]

(1.3.4) The meaning attributed to self-determination in academic language and practice is often characterised as an inherent contradiction.[13] Hilpold argues, 'The call for self-determination permanently oscillates between apology (of post-factual development) and utopia (hope for a fairer, friendlier future).'[14]

(1.3.5) From a moral perspective, according to Buchanan, there is a tendency among scholars to need to be more specific about the difference between the moral justification for secession and the concrete steps that are necessary for achieving viable international legal transformation.[15] In other words, while much attention has

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10 Cristian Walter, and Antje von Ungern-Sternberg, *Secession, and International Law: Conflict Avoidance, Self-Determination, and Democracy* (Oxford University Press 2012) Ch 4,123.

11 James Crawford, *The Creation of States in International Law* (2nd edn, Oxford University Press 2011) 136.

12 *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* (Advisory Opinion)' (2010) ICJ Rep 403.

13 Peter Hilpold, 'Self-determination and Autonomy: Between Secession and Internal Self-determination' (2017) 24 International Journal on Minority and Group Rights 302, 3.

14 Hilpold, ibid, 3.

15 Allen Buchanan, 'Theories of Secession' (1997) 27(1) Philosophy and Public Affairs 31-61.

been devoted to debating the moral legitimacy of secession, he argues that little emphasis has been placed on the practical aspects of implementing a legal framework that can accommodate remedial secession. This latter assertion points out the need for a more comprehensive approach considering remedial secession's moral and pragmatic dimensions.[16] This study will analyse possible approaches to implementing and structuring such a framework.

1.4 The cavity on the subject of remedial secession

The existing international legal framework requires additional detail when applying a remedial right to secede. Elaborated upon below, this study will argue that certain aspects, such as the criteria for determining when a group is entitled to secede, the process for negotiating the terms of separation, and the legal status of the new state, are important considerations for developing the concept of remedial secession as a recognised right.

1.5 The primary and secondary questions considered

Who are the beneficiaries of the right to self-determination? What is the nature and extent of the harm suffered before remedial secession could be enforced, and what are the legal principles governing secession?[17] Many legal scholars from diverse academic disciplines, including but not limited to political science, philosophy, and law, have extensively examined the multifaceted nature of this issue. However, the legal complexities of this concept continue to be debated.[18]

1.6 The theory employed in this study

From a moral theory perspective, the legal justification for secession is examined by analysing the 'remedial right only theory'. Buchanan suggests that 'moral

16 Lea Brilmayer 'Secession and Self-Determination: A Territorial Interpretation' (1991) 16 Yale Journal of International Law 5.

17 Brilmayer, ibid, (n16), 3.

18 Allen Buchanan, *Justice, Legitimacy and Self-Determination – Moral Foundations for International Law* (Oxford Publishers 2004) 1-14.

theorising is paramount to producing an interrelated, mutually supportive set of prescriptive principles that will provide substantial guidance for most of the more critical issues of international law.'[19] He argues that unless these principles are;

> Reasonably interpreted and embedded in the structure of a moral philosophy of law, the principle of self-determination, state sovereignty and democracy become opportunistic tools for rationalising failure to act or for wrongful actions, rhetorical veils to mask unstrained pursuit of narrow self-interest or the lack of will to follow through on fundamental moral commitments.[20]

1.7 Methodology

The study methodology implemented in this research is based on a desk review approach, which involves an analysis of various sources of information, including the Charter of the United Nations, judicial decisions, scholarly literature, and relevant case studies. By adopting a desk-based methodology, this research seeks to critically evaluate relevant information from these sources to generate a comprehensive understanding of the subject.

1.8 Limitations of the study

This study is centred on remedial secession and its moral and legal justifications. As a result, instances of new state formation that occurred through mutual agreement between the parent state and the secessionist group, such as Eritrea's separation from Ethiopia in 1993, do not fall under the scope of this study. This is because such cases do not involve the same circumstances or issues as remedial secession. Instead, the focus is mainly on cases where the parent state does not consent to the minority group's quest for independence. As such, different cases of attempted and successful secession are mentioned and discussed to some extent; however, due to the limitation of word count in this study, these cases are not examined in detail.

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19 Buchanan, ibid, (n18), 1.

20 ibid,(n18), 1-14.

A brief overview of the different theories on secession is discussed; however, the remedial right-only theory will be discussed in more detail, as this theory applies to the research conducted in this study.

Chapter 2

The Legal Justification for Remedial Secession

2.1 Self-determination

After World War I, the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States ('Friendly Relations Declaration') was adopted.[21] This declaration recognises the right to self-determination. It guarantees the right of individuals not to be subjected to arbitrary or discriminatory treatment and to pursue their interests and aspirations without external interference. What is categorised as the 'safeguard clause' by some scholars in the Friendly Relations Declaration is that 'Every State must refrain from any forcible action which deprives 'peoples' in the elaboration of the present principle of their right to self-determination, freedom, and independence.'[22]

Self-determination was the theoretical and legal underpinning of decolonisation in the 1960s and 1970s, and it remains clear from the content of the Charter that colonised peoples whose governments are not representative of their interests have the right to self-determination.[23] Sterio suggests that whether the right to self-determination applies to the same extent in the non-colonisation paradigm remains under-theorised in international law.[24]

Resolution 1514 (XV) of the Declaration on the Granting of Independence of Colonial Peoples of the United Nations Charter is crucial to decolonisation, non-self-governing territories, and self-determination.[25] The International Covenant on Civil

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21 UNGA Res 2625 (XXV) (24 October 1970) UN Doc A/RES/2625.

22 Marcelo Kohen, Self-Determination - The UN Friendly Relations Declaration: An Assessment of the Fundamental Principles of International Law (Jorge E. Viñuales ed, Cambridge University Press 2020) 133-165.

23 The Promise Institute for Human Rights, ibid, (n3), 4.

24 ibid, 4.

25 Declaration on the Granting of Independence to Colonial Countries and Peoples, UNGA Res 1514 (XV)

and Political Rights[26], the International Covenant on Economic, Social and Cultural Rights[27] and the Friendly Relations Declaration contain the rights of all peoples to determine their political fate. The Charter also outlines a fundamental principle of international law, namely territorial integrity: 'Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.'[28][29]

On 29 April 2021, the Promise Institute for Human Rights at the UCLA School of Law hosted an event on self-determination, remedial secession, and international law. The hostilities in Nagorno-Karabakh/Artsakh were the trigger event that necessitated this panel and consequent report.[30] The principal objective of the panel was to conduct a critical examination and comparative analysis of self-determination and remedial secession for communities whose fundamental human rights were in peril due to their territorial status. In her introduction to this discussion, Sterio elaborated on these two cardinal norms relevant to the issue of secession and highlighted that, in general, the notion of remedial secession through external self-determination is a matter of contention as it poses a possible threat to the established norm of territorial integrity of existing states. However, international law recognises people's right to determine their political status and pursue their development.[31]

(14 December 1960) (adopted by 89 votes to none, 9 abstentions) Doc. A/Res/1514, preamble.

26 International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March (1976) 999 UNTS 171 (ICCPR).

27 International Covenant on Economic, Social and Cultural Rights (entered into force 3 January 1976, opened for signature 16 December 1966) 993 UNTS 3 (ICESCR).

28 1 UNTS XVI, art 2(4) (opened for signature 26 June 1945).

29 See also, Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights* (University of Pennsylvania Press 1996) 34.

30 The Promise Institute for Human Rights, ibid, (n3).

31 Promise Institute, ibid, (n3).

The process of decolonisation serves as an analogous example of this right, whereby peoples who had suffered the injustices of colonialism were granted the opportunity to chart their course free from external interference.[32] Sterio also suggests that if the situation of oppressed people is similar to colonised peoples, then it can be concluded that they also deserve the right to external self-determination through remedial secession.[33]

2.1.1 Internal Self-determination

The notion of self-determination comprises both internal and external aspects. The former

denotes the right of a people to govern themselves, while the latter pertains to a people's status concerning other nations.[34]

Internal self-determination includes 'peoples' living in a particular state and signifies that they should have respected rights within their respective states.[35] Sterio summarises the internal right to self-determination: 'As long as the mother state respects those rights, the "people" are not oppressed and do not need to challenge the territorial integrity of its mother state.'[36] The concept of 'peoples' should be clarified to determine the rightful holders of the right to self-determination. Castellino says that, in this light, the international society consists of individuals that ostensibly gain legitimacy and *locus standi* in international law by being part of a sovereign state.[37]

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32 ibid, (n3), 6.

33 ibid, 6.

34 Milena Sterio, 'Right to External Self-Determination: 'Selfistans,' Secession and the Great Powers' Rule' (2009) Minnesota Journal of International Law 19 available at SSRN <https://ssrn.com/abstract=1337172> [Accessed 15 June 2024].

35 Sterio, ibid, (n34).

36 ibid, (n34).

37 Joshua Castellino, 'Territorial Integrity and the "Right" to Self-Determination: An Examination of the

2.1.2. External Self-Determination

Concerning the external right to self-determination, Castellino argues that human rights provide a moral basis for the external self-determination of people.[38] In theory, oppressed groups subjected to human rights violations should, by default, have a right to self-determination. Sterio argues that, additionally, and in theory, the distinction seems very simple: 'Look at the human rights record of the parent state, and if the record shows violations, then the minority group should be allowed to separate'.[39] However, it is noted that this distinction is complicated to draw.[40]

Hilpold suggests that the external right to self-determination results from the delimitation of powers between two entities and '...If these entities are states, the right to self-determination corresponds to the right to territorial sovereignty...'[41] The right to territorial sovereignty is closely linked to the right to territorial integrity and the prohibition of intervention in international affairs, and based on the link between these rights, a paradigm is created when weighing self-determination against territorial integrity.[42]

In *East Timor* 1995, the International Court of Justice stated that East Timor had a right to self-determination and that this right has an *erga omnes* character.[43] [44] In

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Conceptual Tools' (2008) 33 Brooklyn Journal of International Law 769, available at <https://brooklynworks.brooklaw.edu/bjil/vol33/iss2/15> accessed 10 March 2024.

38 Castellino, ibid, (n37).

39 Milena Sterio, *Secession in International Law – A New Framework* (Edward Elgar Publishing 2018) 209.

40 Sterio, ibid, (n39) 209.

41 Peter Hilpold, 'Self-determination and Autonomy: Between Secession and Internal Self-determination' (2017) 24 (5) International Journal on Minority and Group Rights 302.

42 Hilpold, ibid, (n41), 302.

43 *East Timor (Portugal v. Australia)* (Judgment) [1995] ICJ Rep 90.

44 The International Court of Justice confirmed the *erga omnes* character of the right to self-determination and the ensuing obligation not to recognise situations resulting from the violation of this right (East Timor (Portugal v Australia), Judgment, I.C.J. Reports 1995, p. 90, para. 29). The Court stated, "*In the Court's view, Portugal's assertion that the right of peoples to self-determination, as it evolved from the*

the context of Quebec's proposed secession, the Canadian Supreme Court suggested that oppressed peoples might have the right to external self-determination through remedial secession in extreme circumstances of oppression.[45] However, the International Court of Justice (ICJ) has yet to directly give an opinion on the issue of recognising external self-determination through remedial secession. According to Sterio, the Kosovo Advisory Opinion 2010 can be read as implicitly recognising the right to external self-determination and remedial secession.[46]

During the panel discussion on self-determination, remedial secession and international law, Dugard indicated that he believes self-determination trumps territorial integrity by pointing to the recent examples of Bangladesh and South Sudan.[47] He stressed that the Kosovo Advisory Opinion has weakened the principle of territorial integrity. Dugard further highlighted that international law has yet to take a position on the legality of remedial secession.[48] In addition, the view adopted by Buchanan concerning the state's relationship with its citizens:

> If the state persists in grave injustices toward a group and the group's forming its independent political unit is a remedy of last resort for these injustices, the group ought to be acknowledged by the international community as having the right to repudiate the authority of the state and to attempt to establish an independent political unit.[49]

Charter and the United Nations practice, has an erga omnes character, is irreproachable" (ibid). The ICJ further observed that certain obligations violated by Israel were obligations erga omnes, namely, "*the right of the Palestinian people to self-determination and certain obligations under international law"* (ibid).

45 *Reference re Secession of Quebec*, [1998] 2 SCR 217.

46 Promise Institute, ibid, (n3).

47 Promise Institute, ibid, (n3) 4.

48 ibid, (n3).

49 Jason D. Hill, *Secession: A Moral and Political Theory* in *Theories of Secession* (Buchanan (ed) Edinburgh University Press 2005) 117.

2.2 Who are the beneficiaries of the right to self-determination?

Summers posits that 'peoples' hold the right of self-determination and are thus the most 'obvious entity for measuring the dimensions of the right.'[5051] Principle VIII (2) of the Helsinki Final Act 1979 provides that it is the dimensions of the people which determine the content of the right:

> By the principle of equal rights and self-determination of peoples, all peoples always have the right, in total freedom, to determine, when and as they wish, their internal and external political status, without external interference.

The report authored by Special Rapporteur Aurelia Cristescu on the definition of 'peoples' expounds on a critical issue that emerges from equal rights and self-determination. Specifically, it pertains to the challenges inherent in ascertaining the relevant right holders and delineating the nature of the corresponding obligations.[52]

The principle of equal rights and self-determination is that 'peoples', whether or not they are constituted as a state and whether or not they have attained nation status, are the holders of equal rights and of the right to self-determination. Cristescu further states in her report that the United Nations has proceeded with caution in the past in cases of political self-determination but, by contrast, has acted firmly in eliminating colonialism.[53] The elements which have emerged from discussions within the United Nations on the definition of 'peoples' and when an

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50 James Summers, 'The Internal and External aspects of self-determination reconsidered' in Duncan French (ed) *Statehood and Self-determination, Reconciling Tradition and Modernity in International Law*, (Cambridge University Press 2013) Ch 9, 230.

51 Advisory Opinion, ibid (n12): "An example of a people-centred approach can be found in oral submissions by Azerbaijan in Kosovo Opinion (2010).

52 UNCHR (Sub-Commission) 'Report of the Special Rapporteur Aurelia Cristescu, The Right To Self-Determination, Historical and Current Development based on United Nations Instruments' (1981) UN Doc E/CN/.4/Sub.2/404/Rev.1) E1, 2, 260-267.

53 UNCHR, ibid, (n52) 260-267.

entity constitutes a 'people' fit to enjoy and exercise the right of self-determination, according to Special Rapporteur Erica-Irene Daes,[54] would entail that:

(a) The term 'people' denotes a social entity possessing a clear identity and its characteristics;
(b) It implies the relationship with the territory, even if the people in question have been wrongfully expelled from it and artificially replaced by another population;
(c) And that a 'people' should not be confused with ethnic, religious, and linguistic minorities, whose existence and rights are recognised in Article 27 of the International Covenant on Civil and Political Rights.

This study applies these elements when considering 'peoples' in the context of self-determination as a right.

2.3 International instruments and remedial secession

2.3.1 Treaty Law

Article 1 of the International Covenant on Civil and Political Rights[55] and Article 1 of the International Covenant on Economic, Social and Cultural Rights[56] refer to the right of all peoples to self-determination. Unfortunately, these two covenants do not clarify the legal position concerning secession. During deliberations in the Commission on Human Rights, Yugoslavia presented an amendment to the effect that self-determination includes 'the right to secede and to establish a politically and economically independent state', and similar proposals were made by the United States.[57] Unfortunately, these proposals were not adopted, and it remains unclear

54 UNCHR 'Report of the Special Rapporteur Erica-Irene A. Daes on the Rights of Indigenous Peoples, Indigenous people and their relationship to land', 1995/32, UN Doc E/CN.4/Sub.2/1996/21 (1996).

55 International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

56 International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966) General Assembly Resolution 2200A (XXI) (CESCR).

57 ICESCR, ibid, (n56).

whether the self-determination clauses in the Covenants relate to a legal right to secede. [58]

No treaty on secession, therefore, has been negotiated in the past, and it would be challenging to argue that a customary norm on secession has developed over the last decades.[59]

2.3.2 Customary Law

As per Article 38 (1) (b) of the Statute of the International Court of Justice (ICJ), the establishment of customary law necessitates the fulfilment of two conditions.[60] Firstly, a persistent and uniform

practice is mandatory to substantiate a rule of international law. This implies that states must have consistently followed the observed practice over a prolonged period.

Secondly, the practice must be widely recognised between states in the international community as a legal obligation. Despite the strong moral and ethical arguments favouring the right to secede, there is little evidence in international law to suggest that it is a derivative of the right to self-determination.

As a result, identifying state practice as a means of recognising the right to secede remains challenging. Kohen argues that the international community only partially endorse the traditional approach to law-finding.[61] He states that, on the contrary, other methods of law-finding have been acknowledged by prominent international institutions such as the International Court of Justice and the International Criminal Tribunal for the former Yugoslavia.[62]

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58 Milena Sterio 'A Tale of Two States: Territoriality and Minority Rights in Kosovo and Georgia' (2012) 12 International Journal Of Minority and Group Rights 103.

59 Sterio, ibid, (n39)176-177.

60 33 UNTS 993, art 38(1)(b) (entered into force 24 October 1945).

61 Marcelo G. Kohen, *Secession : International Law Perspectives* (Cambridge University Press 2006) 38.

62 Kohen, ibid, (n61) 39.

In the *Nicaragua v United States* case, the ICJ held that non-use of force and non-intervention have crystallised in customary international law despite these principles needing more attention. Kohen's argument in this context is that the commitment of states to protect human rights also deserves the determinative elements of the present-day legal order:

> Whenever governmental action in a given state amounts to a consistent pattern of gross and reliably attested human rights violations, the international community is called upon to respond by taking remedial action to protect human beings under threat.[63]

The status conferred upon the former Yugoslav province of Kosovo is one example which may be interpreted to acknowledge the international practice of remedial secession. The Security Council Resolution 1244, in the latter case, interfered with the country's sovereign rights.[64] The Resolution, which was adopted after NATO's air operations against the Federal Republic of Yugoslavia, forced the Federal Republic to withdraw all military, police, and paramilitary forces from Kosovo, and instead, a civil and military presence was established under United Nations auspices, leaving the Former Republic without any governmental powers.[65] The question of how Resolution 1244 may be interpreted and justified remains open for debate, and one may doubt whether this resolution provides the key to resolving the issues of secession. While remedial secession addresses extreme cases of oppression and discrimination, no consensus exists on defining and measuring these factors.[66]

63 ibid, 39.

64 UNSC, Res 1244 (1999) Doc S/RES/1244 (10 June 1999).

65 Kohen, ibid, (n61) 39.

66 Buchanan, ibid, (n15), 31-61.

2.3.3 Opinio Juris

Upon the requirement of *opinio juris*, it is noted that in the practice of the General Assembly, self-determination is still applied as a narrow concept only relating to territories which have not yet gained independence. Some international legal scholars believe self-determination does not automatically give people a unilateral right to secede. The disagreement with the latter view, underscored in this study, arises from an argument raised by Paylan, where she states:[67]

> ...even the staunchest anti-secessionist will be hard-pressed to find any principled justification as to why colonised peoples have every moral and legal right to cast off the domination of governments that are not representative of their interest, but a territorially distinct and concentrated minority which ...arbitrarily finds itself annexed to a similarly oppressive state must forever remain without recourse to external self-determination...

To examine evidence of opinion juris on a remedial right to secede, Kohen's study highlights that Indigenous peoples have never been recognised as holders of the right to self-determination, which includes the right to secession.[68] The draft declaration by the Sub-Commission on the Promotion and Protection of Human Rights on the rights of indigenous populations, which acknowledges their right to self-determination, has been pending since 1994 and has yet to be finalised.[69]

The General Assembly Resolution 2625 (XXV) places great emphasis on the principle of national unity, departing from such a proposition only in instances where a country's government fails to represent the entirety of its people due to discrimination based on race, creed, or colour.[70] Kohen posits that this resolution

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67 Sheila Paylan, 'Remedial Secession and the Responsibility to Protect: The Case of Nagorno-Karabakh' published in the *Opinio Juris*, available at < www.opiniojuris.org > accessed on 1 April 2024.

68 Kohen, ibid, (n61), 37.

69 UNCHR (Sub-Commission) 'Draft Declaration on The Promotion and Protection of Human Rights' UN Doc E/CN.4/1995/2, reprinted in International Legal Materials (ILM), vol 34(2) (1995), 546.

70 UNGA Res 2625 (XXV) (24 October 1970) GAOR 25th session UN Doc A/RES/2625(XXV).

reflects the international community's recognition of the importance of inclusivity and equality in governance and its commitment to promoting these fundamental values globally. The significant reservation conditioning national unity was reaffirmed not only in decolonisation processes but also in two critical documents, namely the Declaration of the United Nations World Conference on Human Rights[71] held in Vienna in June 1993 and the General Assembly Declaration on the Occasion of the Fiftieth Anniversary of the United Nations,[72] where the non-discrimination clause was extended to distinctions of 'any kind'. This phrase implies that in exceptional circumstances, secession may be deemed a legitimate remedy for human rights violations, thereby giving rise to remedial secession. [73]

Considering the examination of *opinio juris* as a requirement for recognition under customary law, the work of the General Assembly remains paramount in developing a right to secede through external self-determination. It is also essential to examine the Responsibility to Protect (R2P) after considering territorial integrity versus the right to self-determination, as this notion is consonant with the proposition that remedial secession is indispensable for safeguarding human rights. Such a discussion would provide a legal justification for recognising the right to remedial secession in international law.

2.4 The Responsibility to Protect

The International Commission on Intervention and State Sovereignty published a report highlighting a new approach to international intervention.[74] The report, titled 'The Responsibility to Protect', proposes that when the population faces serious harm due to internal insurgency, repression, or state failure and the government is

71 UNCHR, 'Declaration of the UN World Conference on Human Rights' (Vienna, 25 June 1993) UN Doc A/CONF 157/23.

72 UNGA 'Declaration on the Occasion of the Fiftieth Anniversary of the United Nations', Res 50/6 50 UN GAOR Supp (No 49) (1995) UN Doc A/50/49.

73 Kohen, ibid, (n61), 37.

74 International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa International Development Research Centre, 2001), 35-36.

unwilling or unable to prevent it, the principle of intervention is superseded by the international responsibility to protect.[75] As mentioned, the principle underscores the ethical obligation to protect human life, transcending the conventional assumption of prohibitive interventionism. It follows that the report posits the moral responsibility of the international community to safeguard populations under persecution, even if this necessitates interference in the internal affairs of a sovereign state.[76] This represents a significant shift in thinking about the responsibility of the international community to prevent mass atrocities and protect human rights.

The concept of the responsibility to protect emerged from discussions on humanitarian intervention. Following the controversy surrounding NATO's bombing of Serbia, former Secretary-General Kofi Annan called on the international community to determine the appropriate approach to take during the subsequent humanitarian crisis:[77]

...if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how

should we respond to Rwanda, to a Srebrenica – to gross and systemic violations of

human rights that affect every precept of our common humanity?...

The doctrine of the responsibility to protect was written into the World Summit Outcome document in 2005.[78] This obligation arises from the obligation *erga omnes,* which means “towards all” or “towards everyone”. This obligation and its

75 Responsibility to protect, (n74), 35-36.

76 Gareth Evans and Mohamed Sahnoun, ‘The Responsibility to Protect’ (2002) 81 Foreign Affairs 99,110.

77 Report of the Secretary-General, ‘We the Peoples: The Role of the United Nations in the Twenty-First Century’ (2000) 217, U.N. Doc. A/54/2000.

78 UNGA Res 60/1, UN Doc A/RES/60/1.

explanation can be found in Article 2(1) of the International Covenant on Civil and Political Rights. The article states that[79]

> Each State Party to the present Covenant undertakes to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In the current context, Paylan asserts that remedial secession is regarded as analogous to the responsibility to protect in international law.[80] The R2P comprises three pillars, namely the State's primary duty to protect its population, the international community's obligation to assist States in fulfilling their responsibility to prevent and protect, and the international community's responsibility to take timely and decisive action through peaceful means, including diplomatic and humanitarian measures, and ultimately, the use of force as a last resort.[81]

Upon consideration of the discourse surrounding the atrocities perpetrated in the Nagorno-Karabakh region, Paylan argues that the recent heinous acts inflicted upon its populace under Azerbaijani rule serve as compelling evidence that it cannot be suggested that persecuted minorities should continue to live in a strive for internal self-determination, despite them being severely persecuted by the state.[82] The Nagorno-Karabakh region has been plagued by state-sponsored anti-Armenian violence and hate speech, which have been ongoing despite condemnation from the European Court of Human Rights.[83] Based upon this, Paylan raises the question

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79 International Covenant on Civil and Political Rights (adopted 16 December 1966 entered into force 23 March 1976), 999 UNTS 171 (ICCPR).

80 Paylan, ibid, (n67).

81 Gareth Evans and Mohamed Sahnoun, 'The Responsibility to Protect', (2002) 81(6) Foreign Affairs 99-110.

82 Paylan, ibid, (n67).

83 ibid (n67).

of 'how much more persecution needs to occur before remedial secession or other intervention under R2P is deemed necessary.'[84]

The situation in Nagorno-Karabakh is a pertinent example of the potential utility of remedial secession in resolving protracted conflicts. Specifically, it is suggested that remedial secession may be an appropriate remedy in situations where atrocities and genocide are being perpetrated against populations that are seeking self-determination, significantly where the lack of international recognition of their sovereignty impedes the ability of states or international organisations to assist.[85]

2.5 The principles of territorial integrity and self-determination: a paradox?

The principle of territorial integrity is a crucial aspect of international law that safeguards the boundaries of existing states. Article 2(4) of the United Nations Charter provides that states are prohibited from using force against any other state's political independence or territorial integrity.[86]

Several scholars perceive the fundamental principles of territorial integrity and self-determination to be at odds with each other.[87] This argument arises from the recognition that these two ideals can be inherently contradictory, as the assertion of one principle may lead to the violation of the other. Territorial integrity emphasises the inviolability of state borders and, at the same time, self-determination prioritises people's right to determine their political status, develop their culture, and practise their religion.[88]

Kohen argues that the scarcity of state practice regarding remedial secession as a mechanism for external self-determination is in stark contrast to numerous

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84 Ibid (n67).

85 ibid (n67).

86 1 UNTS XVI (adopted 26 June 1945, entered into force 24 October 1945).

87 Urrutia Iñigo, 'Territorial Integrity and Self-Determination: The Approach of the International Court of Justice in the Advisory Opinion on Kosovo' (9 October 2012) Available at < https://ssrn.com/abstract=2365511> Accessed 12 June 2024.

88 Iñigo, ibid, (n87).

instances where the territorial integrity of existing states has been preserved despite profound grievances held by minority groups against the majority population.[89] In this context, Kohen asserts that genocide on racial grounds counts among the worst forms of violations. This violation should, in principle, exceed the preservation of national boundaries.[90]

Several human rights scholars have adopted the view that in case of breach of *jus cogens* rules or *erga omnes* obligations, any constraints derived from the principle of national sovereignty could be 'brushed aside'.[91] Kohen highlights that it would be wrong to contend that the primary rules do not command respect in cases of a breach of *jus cogens* or *erga omnes* obligations and that sovereign equality remains the cornerstone of international law. In cases of violation of *jus cogens* or *erga omnes* obligations, any approach must consider the delicate balance between achieving the desired outcome and preserving the viability of international law as a system.[92]

On this premise, Kohen asserts that the right to secede and the admissibility of humanitarian intervention converge to cover the same ground.[93] This assertion assumes that the international community ought to possess the same power to intervene, analogous to the justifiability of humanitarian intervention, to aid a subjugated minority group that is subjected to oppressive conditions at the hands of a parent state. On this deduction, Kohen suggests that remedial secession should be recognised as a legitimate part of positive law, as demonstrated by the events that resulted in establishing Kosovo as an independent territory under international supervision.[94]

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89 Kohen, ibid, (n61), 27.

90 Kohen, ibid, (n61), 39.

91 Enache-Brown (ed), A Fried, 'Universal Crime, Jurisdiction and Duty: The Obligation of *Aut Dedere Aut* Judicare in International Law' (1998) 43 McGill Law Journal 603.

92 Kohen, ibid, (n61), 42.

93 ibid (n61) 42.

94 ibid, 42.

Oeter explores the conceptual and legal aspects of the tension between territorial integrity and self-determination, offering a framework for reconciling the two principles.[95] He argues that both principles are essential to international law and should be interpreted to support their harmonious coexistence.[96] He further proposes applying the balancing test to find a harmonious balance between the two principles.[97]

According to the late Crawford, one of the critical factors that must be considered in applying the balancing test is the principle of proportionality.[98] The principle of proportionality is a fundamental aspect of international law that governs the conduct of states concerning the protection of human rights, including the rights to self-determination and territorial integrity.[99] This principle requires that any measures to limit these rights must be proportionate to the legitimate aim pursued. In other words, the actions taken must be necessary and reasonable, considering the case's specific circumstances. Moreover, the principle of proportionality must be considered alongside the rights of minority groups when disputes relating to territorial integrity and self-determination are being resolved.[100]

2.6 The General Assembly

The mandate of safeguarding human rights and ensuring international peace and security is granted to the General Assembly by the United Nations Charter.[101] This

95 Stefan Oeter, 'Self-Determination' in Bruno Simma and others, Nikolai Wessendorf (eds), The Charter of the United Nations: A Commentary (Vol I, 3rd ed, Oxford University Press 2012).

96 Oeter, ibid, (n95)

97 ibid, (n95).

98 Milanović M and Wood M (ed), The Law and Politics of the Kosovo Advisory Opinion (Oxford University Press, 2015) 280-290.

99 Grant Huscroft and Bradley W. Miller, Proportionality and the Rule of Law: Rights, Justification, Reasoning (Cambridge University Press, 2014).

100 *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Request for Advisory Opinion)*, General List No 141, International Court of Justice (ICJ), 22 July 2010 https://www.refworld.org/jurisprudence/caselaw/icj/2010/en/68017 accessed 23 June 2024.

101 UNGA, '2005 World Summit Outcome', UN Doc A/60/L.1 (24 October 2005) (Outcome Document of

is an essential aspect of the UN's efforts to prevent and address serious violations of international law, such as genocide, war crimes, and crimes against humanity. The General Assembly has various means to respond to reports of atrocities, including diplomatic measures that involve urging member states to use their influence to discourage violence or to engage in discussions to resolve underlying conflicts. Economic sanctions may also be imposed to exert pressure on governments or other responsible parties.[102]

2.7 The Security Council

The United Nations Charter empowers the General Assembly to 'receive and consider... special reports from the Security Council', with such reports to account for the measures that the Security Council has decided upon or taken to maintain international peace and security.[103]

2.8 Conclusion

The chapter delves into the prospect of acknowledging remedial secession on an international level in cases where minority groups are subjected to persecution by their parent state. It sheds light on the ongoing debate and the lack of well-defined criteria for ascertaining the legitimacy of remedial secession. Drawing upon the works of Crawford and Oeter, it is advisable to apply the balancing test to estimate each case's proportionality and balance the principles of self-determination and territorial integrity. The work of Kohen explores the legal implications of violating *jus cogens* and *erga omnes* obligations in international law, arguing that such violations may impact the state's claim to territorial integrity.

This chapter also aims to illustrate the analogy between a proposed right to secede and the admissibility of humanitarian intervention. It cites the establishment of Kosovo as an autonomous entity under international administration as an

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the 2005 World Summit, adopted by the General Assembly on 16 September 2005) para 138-139

102 UNGA, ibid, (n101).

103 1 UNTS XVI, Art 15(1) 26 June 1945.

illustrative example. The next chapter analyses the moral justification for remedial secession.

Chapter 3

The moral justification for remedial secession

3.1. The reasoning behind moral justification

Although unique, the Kosovo case represents a particular form of secession precedent. In this instance, most of the world community agreed that separation from the parent state was the just and morally correct result.[104] However, should a normative framework for secession exist, it would be easier to argue that Kosovo had the right to secede from the parent state. According to Sterio, this is why several scholars espoused the idea of remedial secession, where groups may accrue valid claims for secession under "circumstances which may be roughly summarised as a grave and massive violation of the human rights of a specific group in a discriminatory fashion."[105]

From a moral perspective, Buchanan suggests that, by institutionalising moral argument and given the ethical implications of secession, it is essential to 'uphold moral principles such as impartiality, fairness, and justice to guarantee legally valid and ethically defensible procedures'.[106] According to Buchanan, the law is not just a collection of rules governing behaviour but a complex system that influences and guides the thought process.[107]

Buchanan further argues that one of the most commonly disregarded aspects of the moral argument is the inability to derive a universal principle suitable for institutionalisation from a moral argument that only supports one particular course of action in a single case. This assertion posits that institutions are of great

104 Sterio, ibid, (n39), 177-178.

105 ibid, (n39) 177.

106 Allen Buchanan, 'International Law and Morality' (2002) 16(2) Ethics & International Affairs 113-124.

107 Buchanan, ibid, (n15),171-189.

importance. If moral principles guide institutional reform, institutions should be taken seriously and considered substantially.[108]

Buchanan further posits that a moral theory concerning the right to secede should clarify the circumstances under which a group is justified in asserting the right to establish a legitimate state. There needs to be more than the mere presence of a group's right to political association or to reject the state's authority over its members to establish its right to secede.[109] This inadequacy stems from such rights failing to address the state's and secessionists' conflicting claims to the territory.[110] An institutionalised concept of secession should, therefore, evaluate assertions of the moral right to secede together with the conditions required to qualify as a legitimate state in unity with the conditions of the existing state and its valid claim to its territory. In turn, these considerations would depend upon which role legitimate states are to play in a morally defensible international legal system.[111]

The Responsibility to Protect, as discussed in the previous chapter, suggests that the international community has a moral duty to protect populations in danger, even if it means intervening in the internal affairs of a sovereign state.[112] The international community's approach to preventing mass atrocities and protecting human rights has recently developed significantly in contemporary international law. Buchanan posits that establishing and implementing robust institutional structures is crucial for ensuring the safety and security of individuals and effectively protecting their human rights.[113]

Normative theories of secession can be classified under the 'Remedial Right Only' and the 'Primary Right' theories to secede.[114] The two distinguished primary

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108 Buchanan, ibid, (n18), 23.

109 Buchanan, ibid, (n18) 24.

110 ibid, (n18) 24.

111 ibid, 24.

112 Gareth Evans and Mohamed Sahnoun, ibid, (n81) 99.

113 James Crawford, *Statehood and Self-Determination* (Cambridge University Press 2013) 2.

114 Buchanan, ibid, (n18) 31.

right theories are categorised as the 'Ascriptive Group Theories' and the 'Associative Group Theories'.[115] According to the research conducted in this study and based on the findings of Buchanan, it is suggested that Remedial Right-Only theories hold greater efficacy and applicability than the Primary Right theory. Buchanan argues that the Primary Right theory lacks utility in the context of developing an international response to issues associated with secession. [116]

3.2 Remedial Right Only Theory

The theory of remedial rights only proposes that secession should be considered only after all other efforts to resolve an intra-state violation, such as discrimination or oppression, have failed. This theory supports secession as a last resort to remedy severe violations and necessitates that the wrong is significant enough to warrant the separation.[117] In cases of persecution, the theory proposes that it is rational for the affected group to pursue separation from their existing state as a remedy. [118] This approach is consistent with human rights principles for fundamental rights and freedoms to be upheld and protected, and it is argued that providing a practical remedial theory for human rights violations should only address persistent, large-scale breaches of fundamental human rights.[119]

Buchanan identifies the three particular kinds of injustices for which secession can be a remedy, namely **(1)** genocide or other large-scale violations of fundamental human rights, **(2)** unjust annexation, and **(3)** the persistent violation of intrastate autonomy agreements.[120] According to the remedial right-only theory, secession is not a general right. Instead, it is subject to specific requirements that must be met to be deemed valid. These requirements can include the state's consent, a right to

115 Buchanan, (n18).

116 ibid, (n18).

117 Buchanan, ibid, (n15).

118 ibid, (n15).

119 Buchanan, ibid, (n18), 36.

120 ibid, 36.

secede in the state's constitution, and the allowance for secession in the agreement whereby the state was initially formed for secession at a later stage.[121]

Furthermore, regarding the remedial right-only theory, establishing a new state should require fulfilling multiple conditions and safeguarding minority and human rights. These preconditions would entail, for example, the attainment of credible guarantees that the newly established state will respect the rights of its citizens; it will ensure equitable distribution of national debt, make provision for negotiation of the delineation of new boundaries and make provisions for the continuation or termination of treaty obligations, as well as for defence and security.[122]

3.3. The Primary Right to Secede

The Primary Right to Secede theory proposes an inherent right to secede, which a group or an individual can exercise without the need for an injustice to be present. This theory is based on the belief that self-determination is a fundamental human right and that individuals and communities can determine their political status and pursue economic, social, and cultural development without external limitations.[123] Under this theory, there is a unilateral right to secede over and above the remedial aspect. The Primary Right to Secede theory is divided into the two categories below.

3.3.1 Ascriptive Group Theories

The ascriptive theorists hold that certain groups are defined by ascriptive characteristics by the type of group with a unilateral right to secede.[124] The defining factor of this theory is the cultural uniformity of a group, which determines whether it is considered a nation or a people. The theory does not consider the impact of political structures on nation-building, focusing instead on the cultural identity of a

121 ibid, 37.

122 ibid, 37.

123 Lea Brilmayer ‘Secession and Self-Determination: A Territorial Interpretation’ (1991) 16 Yale Journal of International Law 5.

124 Buchanan, ibid, (n18), 38.

group as the primary determinant of its classification as a nation. Margalit and Raz ascribe this right to a large-scale group with a common culture and character where membership is a matter of mutual recognition, which is vital for self-identification as belonging rather than achievement.[125]

3.3.2 Plebiscitary Theories

This theory suggests that a group within a state has the moral right to secede if the majority in that group wishes to form their independent state, regardless of any shared characteristics other than the wish for independence.[126] This study will not analyse these theories in depth, as the remedial right theory applies to current research.

3.4 What would a normative framework for remedial secession from a moral theory perspective consist of?

The remedial right-only theory goes beyond the traditional context of decolonisation. It offers a measured approach to ensuring that the right to self-determination is balanced against other important considerations. Applying this theory makes it possible to determine whether secession is necessary in certain circumstances where ongoing and severe injustices could undermine the legitimacy of the state's territorial claim.[127] This approach focuses on constraining the state's power rather than empowering secessionist movements.

According to Buchanan, legitimacy and justice are distinct concepts: '...a state's legitimacy doesn't necessarily indicate justice being fully served. However, a state's legitimacy should be defined by a threshold approaching full justice...'[128].

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125 Avishai Margalit and Joseph Raz, 'National Self-Determination', in Allen Buchanan (ed), *Theories of Secession* (Oxford University Press 2004) 445-47.

126 Avishai Margalit and Joseph Raz, ibid, (n125), 445-47.

127 Thomas Pink, *Self-Determination: The Ethics of Action*, (Vol 1, Oxford Academic 2016) Available at< https://doi.org/10.1093/acprof:oso/9780199272754.001.0001> accessed 12 June 2024.

128 Buchanan, ibid, (n106).

In addition to the remedial right-only theory, Sterio introduces criteria that could be used to assess specific instances of secession. For this study, Sterio's criteria are considered alongside Buchanan's, which aims to provide a more comprehensive framework for implementing a right to remedial secession.

Buchanan believes establishing a justice-based account of state legitimacy allows for a better understanding of self-determination. Ultimately, a justice-based account supports the remedial right-only theory of the unilateral right to secede.[129] The fundamental content of a moral theory of international law, as an ideal, should consist of some aspects following specific criteria. Buchanan lists these elements as a) Minimal Realism, b) Consistency with Well-Entrenched, Morally Progressive Principles of International Law, c) absence of perverse incentives and d) Moral Accessibility - specifying an international legal framework which has to be morally legitimate for individuals and groups to participate in its processes of creating, applying, and enforcing rules. [130]

3.5 Minimal Realism

A proposal likely to be adopted by the international community soon satisfies minimal realism requirements. [131] One crucial feature of these criteria is that international law is made by existing states that are recognised as legitimate states by the global community.[132] According to Buchanan, a theory is morally progressive and minimally realistic only if its implementation better serves fundamental values than the current state of affairs. This would need to be achievable through the processes by which international law is made and applied.[133]

In this context, the remedial right-only theory seems to favour the category of minimal realism as it advances a more restricted right to secede, proposing less of

129 Buchanan, ibid, (n18), 42.

130 Buchanan, ibid, (n18), 31.

131 Buchanan, ibid, (n18) 31.

132 ibid, (n18) 41.

133 ibid, 41.

a threat to the existing territorial integrity of states, and which could therefore be assumed to be more likely to be incorporated into international law.[134]

3.6 Consistency with well-entrenched morally progressive principles of international law

When considering the principles of existing international law, a proposal for a new norm should build upon or, at the very least, not contradict the morally acceptable principles of existing law.[135]

When implementing a new norm, one should be confident in the validity of a well-established and morally advanced principle. Buchanan suggests that, compared to primary right theories, remedial right-only theories align with a morally progressive understanding of what is considered the most crucial principle of international law: the principle of the territorial integrity of existing states.[136]

3.7 Absence of perverse incentives and moral accessibility

According to Buchanan, when a proposal is accepted and recognition is integral to the international institutional conflict resolution system, it should not incentivise behaviour that undermines morally sound principles of international law. Furthermore, it should encourage the pursuit of morally progressive strategies for conflict resolution and achieving desirable outcomes, such as improved government efficiency or enhanced protection of individual liberty.[137] The fourth suggested criterion is moral accessibility, which means that a proposal to reform international law should be morally acceptable to a broad global audience. This means it should rely on something other than a specific religious ethic or ethical principles that people do not widely share with secular and religious viewpoints.[138]

134 ibid, 41.

135 Buchanan, ibid, (n15).

136 Buchanan, ibid, (n18), 42.

137 Buchanan, ibid, (n18),42.

138 ibid, (n108),45.

3.8 The advances in the application of the remedial right-only theory

Upon examination of the criteria mentioned above, it is evident that the remedial right-only aligns better with the proposed criteria for a morally progressive framework for secession. Buchanan underscores the historical pattern of severe violence, human rights violations, and resource destruction associated with secession, emphasising that secession should not be taken lightly. He also points out that secession (premised on the primary right theory) has the potential to exacerbate existing ethnic conflicts, with the previously persecuted sometimes becoming the persecutors. The right to secede unilaterally should be restricted as outlined in the remedial right only theory, and legal frameworks should only allow unilateral secession in cases where pursuing independence is the sole remaining response to ongoing injustices. This theory is particularly valuable as it provides a convincing and compelling rationale for territorial claims, which are integral to requests for secession.[139]

As suggested by the theoretical framework of the remedial right only, recognising a remedial right to secede by the international legal regime in response to the persecution of minorities would serve as a powerful incentive for states to protect their citizens. This incentive would be more pronounced if the right to secede is complemented by a corresponding right to recognition, which would be conditional upon fulfilling normative criteria for legitimacy rather than being left solely to states' discretion.[140]

3.9 Conclusion

This chapter discusses the moral theories of secession and briefly examines the implications of each theory. Additionally, the criteria proposed by Buchanan are examined by briefly outlining the advances of the remedial right-only theory in

139 ibid,42.

140 ibid,130.

alignment with these criteria. The text concludes that the remedial right-only theory adopted in alignment with these suggested criteria would benefit future considerations for a normative framework for remedial secession. The following chapter will analyse the proposed legal framework based on Sterio's work. It will examine whether this proposal could be incorporated and falls within this chapter's criteria for a morally acceptable framework.

Chapter 4

Relevant considerations for a moral approach to secession

4.1 Critical moral goals of international law

As discussed in the first chapter, the norm of state sovereignty, which would protect a state from outside interference, may not apply in situations where that sovereign nation has severely persecuted a group's fundamental rights, and it has been mentioned that some scholars suggested aligning the right to secession with circumstances giving rise to humanitarian intervention.[141] Sterio posits that if the right to secede is examined alongside a parent state's claim to territorial integrity, it will not violate the territorial integrity of the parent state if the reason for secession is that the parent state and the secessionist group may come to a negotiated agreement, alternatively, because the parent state would have forfeited its sovereignty claim.[142] Sterio concludes this argument by stating that: [143]

> This approach to secession, which combines a traditional state-centric international law approach with a more modern human rights-orientated version of international law, is consistent with the development and evolution of international law in the second half of the twentieth century.

The effectiveness of any governing system relies on its transparent structure, which must abide by its core principles. These principles should ensure the protection of the rights of all individuals, regardless of their minority status. They must be established on a sound moral and backed by substantial evidence of their potential

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141 Kohen, ibid, (n61), 42.

142 Sterio, ibid,(39), 177.

143 Sterio, ibid, quoting Cristian Walter and Antje von Ungeren-Sternberg:

"If International Law recognised a right to remedial secession as a response to gross human rights violations, this would align with this general trend: state sovereignty is no longer an end. It is part and parcel of a state's responsibility to protect its population..."

implementation while remaining aligned with the system's most significant moral goals.[144]

Sterio argues that modern international law emphasises the importance of individual and group rights over protecting state actors and their territory.[145] She suggests that it is reasonable to include a framework for secession in international law as long as it is carefully designed to respect state sovereignty and territorial integrity. Sterio asserts that contemporary international law emphasises safeguarding individual and group rights rather than solely focusing on protecting state actors and their territorial interests.[146] She advocates for incorporating a well-structured framework for secession within international law, contending that such a framework, if thoughtfully developed, need not necessarily undermine state sovereignty and territorial integrity.[147]

This study suggests it is essential to identify a point of triangulation outside the parent state to achieve a moral foundation for a proposed framework. This point should be utilised to determine whether a group's right to self-determination has been violated and should be established solely on the existence of the internal right to self-determination. The following paragraph briefly explains this suggestion concerning approaching a legal institution.

4.1.1 Opening the pathway to institutional resources

Economists suggest presenting data on mass and systemic violations can increase international awareness. International organisations usually focus on the widespread nature of such abuses.[148] The Darfur Atrocities Documentation Project

144 Milena Sterio, 'A Tale of Two States: Territoriality and Minority Rights in Kosovo and Georgia' [2012] International Journal Of Minority and Group Rights 12, 103.

145 Sterio, ibid, (n39), 181.

146 ibid, (n39), 181.

147 ibid, 177.

148 Anderton and Breuer, 'Incentivizing Advocates to Focus on Significant Cases: Quantitative Threshold for Violations in International Legal Forums' (2014) 47(2) Vanderbilt Journal of

has compiled a database of over 10,000 eyewitness incidents but mainly reports the percentages of different types of abuses.[149] Legal experts Charles Anderton and Jurgen Braeuer have proposed a novel approach to incentivise advocates to focus on significant cases by imposing a quantitative threshold for violations in international legal forums. [150] This approach would modify procedural and substantive requirements to make the conveyance of information more accessible, leading to innovative solutions to address human rights violations.

Another promising solution is victim empowerment, which involves a deliberative process where human rights victims are empowered to trigger institutional responses. This can include initiating international court proceedings, placing an issue on the agenda of a global political body, or presenting their case as part of the deliberative process.[151] Human rights organisations, such as the United Nations Office of the High Commissioner for Human Rights, can play an instrumental role in personally involving victims to make representations or read their statements to such bodies, thus giving voice to those wronged. It is suggested that states be incentivised to comply with obligations to protect by following a due process to highlight any knowledge of human rights abuse to the following legal institutions as a triangular point to advance a compelling appeal for secession by recommending sanctions or incentives by way of example.

As discussed above, the United Nations General Assembly has suggested measures in the past, including diplomatic, economic, and other sanctions, which have been recommended in response to various situations.

Transnational Law 357.

149 Pablo de Greiff (ed.) The Handbook of Reparations (Oxford Academic 2006),< https://doi.org/10.1093/0199291926.001.0001> accessed 17 June 2024.

150 Anderton, ibid, (n148), 357.

151 Anderton, ibid, (n148), 357.

4.2 Articulating the Moral Reasons

Buchanan suggests an international right to secede that should be morally progressive and realistically feasible.[152] This means such an implementation should improve the existing law and illustrate a prospect of success should it be implemented as an international norm.[153] This procedure would require the careful consideration of a range of factors, including the history and culture of the region, the political and economic impact of secession on the surrounding area, and the potential consequences for the population of the seceding territory.[154]

Additionally, the established legal principles and norms that govern the right to self-determination and secede and any relevant international treaties, conventions, or agreements that may apply should be scrutinised.[155] Essentially, to exercise the right to secede, a fair and objective review process must be in place to establish a structured set of rules. The decision must be legally valid and politically acceptable to all parties, ensuring transparency, impartiality, and consistency with legal norms and standards.[156]

Sterio proposes that developing a customary norm through doctrinal work is paramount and provides examples of the decisions of the World Court in East Timor, Western Sahara, and the Kosovo Advisory Opinion, where several issues were discussed. Still, a definitive position needs to be identified regarding the legality of secession.[157]

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152 Buchanan, ibid, (n107).

153 ibid, (n107).

154 Milena Sterio, 'The Right to Self-Determination and Indigenous Peoples' (2014) 62(4) Cleveland State Law Review 640.

155 Crawford J and Koskenniemi M, 'The Right to Self-Determination, Remedial Secession, and Humanitarian Intervention: Reconceptualizing the Doctrine' (2005) 99 American Journal of International Law 847.

156 Buchanan, ibid, (n18).

157 Sterio, ibid, (n39), 177.

The final argument raised by Sterio regarding secession concerns the influence of geopolitics and the dominance of major powers. She posits that an absence of a legal framework for secession has enabled geopolitics, guided by the interests of powerful states, to exert control and influence secessionist movements, leading to de facto states and unresolved conflicts.[158] Sterio suggests that while geopolitics has always played an essential role in the development of international law, the great powers should not determine the outcome of secessionist struggles:

> I believe that rule by the great powers inherently undermines state equality and the entire sovereign-based system of global international relations... Not having a positive law norm on secession within the existing framework of international law allows the Great Powers to determine the outcome of secessionist struggles without the constraints of a legal system...[159]

The most critical moral reason for creating a legal standard for secession is that having a specific norm for secession would limit certain behaviours of all states and compel them to consider secessionist conflicts from a different, perhaps legal, perspective.[160]

Lastly, suppose a secession framework is carefully constructed to consider norms of the territorial integrity of existing states alongside human rights concerns. In that case, it may guide and influence the international community to support or not support specific secessionist conflicts because of legal considerations.[161]

The principle of sovereignty is a fundamental concept in political theory that describes the relationship between a state's territory and its people. It asserts that a state's territory should be considered the people's territory rather than just a

158 ibid, (n39), 190.

159 ibid,193-194.

160 ibid, 194.

161 ibid, 194.

collection of individuals. In other words, the people have a special relationship with the entire state territory.[162]

4.3 Conclusion

When contemplating institutionalising a moral theory, Buchanan raises a fundamental question that necessitates further exploration within this context. Specifically, Buchanan queries how due consideration for human interests can remain harmonious with the international legal framework without requiring entities to protect such interests. Therefore, Buchanan posits that it is morally permissible and a legal obligation for states to intervene when human rights are in jeopardy.[163]

In Sterio's proposal for a new framework, she builds on earlier work done by Lea Brilmayer over two decades ago, which evaluated the legitimacy of a territorial claim by a group.[164] The next and final chapter of this study will examine Sterio's work and the proposed framework for a structure for remedial secession in international law.

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162 Jens Bartelson, The Concept of Sovereignty Revisited' (2006) 17 European Journal of International Law 463.

163 Buchanan, ibid, (n18).

164 Sterio, ibid, (n39), 190.

Chapter 5

A proposed structure for a remedial right to secede

5.1.1 Negotiating secession

Firstly, it is proposed that absent oppression or persecution of the parent state, secessions undertaken through a constitutional framework, presumably with the parent state's consent, should be legal.[165] Furthermore, this rationale would not be tenable should the parent state be governed by a dictatorship. Sterio posits that in such instances, it would be essential to look at the existence of internal self-determination rights to establish whether the parent state has respected the groups' autonomy, for example, its right to linguistic, cultural, ethnic and religious rights—the latter considerations which were pivotal in the argument made in favour of Kosovar independence.[166]

In the case of Kosovo, the Kosovar Albanians claimed territory for many centuries and had been vocal about their claim for secession since the end of World War II. The Serbian government had denied Kosovars any meaningful right to self-determination.[167] The Serbian government had severely oppressed them, and the argument was advanced that they could no longer exist within the more significant Serbian state.[168] Additionally, Sterio contends that it is necessary to look ahead to gauge the likelihood of the mother state upholding the internal self-determination rights of a minority group. This evaluation would hinge on scrutinising whether the

165 Sterio, ibid, (n39), 203.

166 (n39), ibid, 203.

167 ibid, 203.

168 Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Request for Advisory Opinion), General List No 141, International Court of Justice (ICJ), 22 July 2010,< https://www.refworld.org/jurisprudence/caselaw/icj/2010/en/68017 > accessed 23 June 2024.

overall human rights record of said state is dismal, thus determining whether the secession demands of the minority should be endorsed.[169]

The perspective mentioned above posits a scenario in which the right to secede would be distinct from the right to achieve external self-determination, which would only be permissible if the internal self-determination rights of the group had not been honoured by the parent state. Consequently, the focus of the right to secede would centre on the legitimacy of the existing state. If it is established that the existing state has upheld the internal self-determination rights of the group, then its territorial integrity would be preserved. However, suppose it becomes evident that the state has violated the minority rights. In that case, the state's territorial integrity may be compromised as the rights of the minority group would take precedence.[170]

To achieve such an analysis, Sterio refers to work done by Antonello Tancredi, which has already proposed a "due process" international law theory on secession.[171] This concept suggests that international law can govern the procedure through which an entity separates from its parent state.[172] Tancredi maintains that this process should comply with the principle of non-intervention, occurring per the desires of the local population, possibly through a plebiscite or referendum, and should uphold the principle of self-determination.[173]

5.1.2 Does this proposal conform to a moral framework?

As mentioned earlier in this study, the remedial right-only theory limits a general right to secede. Buchanan argues that the qualification is crucial because remedial right-only theories permit special rights to secede if, for example, the state grants

169 Sterio, ibid (n39), 203.

170 Sterio, ibid, (n39), 205.

171 Antonello Tancredi, 'A Normative 'Due Process' in the Creation of States through Secession', in M.G. Kohen (ed.), *Secession: International Law Perspectives* (Cambridge University Press, 2006), 189-193.

172 Tancredi, (n171).

173 Ibid, (n171), 189-193.

such a right.[174] In comparing primary right theories, Buchanan contends that the remedial right-only theory imposes further criteria that should be met to recognise a group experiencing injustices.[175] Chief among these criteria is the requirement for credible assurances from the new state that it will uphold the rights of all its citizens and pursue establishing just terms for secession.[176]

Lastly, Buchanan states that in addition to protecting minority rights, the just terms of secession should include a fair division of the national debt, a negotiated determination of new boundaries, arrangements for continuing, renegotiating, or terminating treaty obligations, and provisions for defence and security.[177]

The progression of Buchanan's moral viewpoint appears to align with Sterio's proposal. This builds upon the "due process" suggested by Tancredi, which is based on the idea that international law can regulate the process by which an entity achieves secession from the parent state.[178] In Tancredi's doctrinal work, such a procedurally proposed secession will take place without military support from foreign states because international law already prohibits states from intervening in the domestic affairs of other states and would, therefore, protect the territorial integrity of existing states.[179] Lastly, the secessionist movement should focus on the majority of the local population, which could be democratically expressed through plebiscites.[180]

174 Buchanan, ibid, (n107).

175 ibid, (n107).

176 Allen Buchanan, *Self-Determination, Secession, and the Rule of International Law* in *The Morality of Nationalism*, (R. McKim and J. McMahan (eds), Oxford University Press - forthcoming).

177 Buchanan, ibid, (n107).

178 Sterio, ibid, (n39), 203.

179 ibid, (n39), 203.

180 Tancredi, ibid, (n171),189-193.

5.2. Reconciling Secession with Territorial Integrity

Sterio proposes that when evaluating the legitimacy of a territorial claim, one could look at the immediacy of the claim, how the secessionist group has pursued such a claim, and how long the group has been in occupation in the disputed area. [181]

A further evaluation of whether secessionist demand can be reconciled with territorial integrity is the degree to which the movement will destabilise the region. Should the scale tip approach a great extent of destabilisation, the group must provide extrinsic evidence that the parent state is highly oppressive and unrepresentative. If, however, the proposed secession would not significantly affect the parent state's territory and would not cause significant destabilisation, then the argument for secession should be favoured. [182]

Sterio posits that any legal examination of secession has to look at the territorial claim made by the minority group versus the claim made by the parent state. [183] She then elaborates upon this point by posing a valid question: "How does one evaluate the legitimacy of any territorial claim by any group?"[184] Building on the work of Lea Brilmayer, which was written over two decades ago, Sterio advances the assertion that one should have regard to the immediacy of the claim, how vocal the secessionist entity has been about its claim, and whether the secessionist group has been vocal about this claim for a consistent time, throughout their existence within the boundaries of the parent state?[185]

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181 Sterio, ibid, (n39).

182 James Crawford, Secession and International Law (Oxford University Press, 2014); Kohen, M.G, Secession in International Law: A New Framework (Oxford University Press, 2016)

182 Sterio, ibid, (n39).

183 ibid, (n39), 206-207.

184 ibid, 206-207.

185 Diane F. Orenlichter, 'Separation Anxiety: International Responses to Ethno-Separatist Claims' in (1998) 23 Yale Journal of International Law 1.

-Lea Brilmayer, 'Secession and Self-Determination: A Territorial Interpretation' in (1991) 16 Yale Journal of International Law 177.

Additionally, it is proposed that upon evaluating the legitimacy of the territorial claim, it could also be helpful to look at the composition of the local population to determine whether the ethnic group constitutes a significant majority.[186] In this regard, one should look at this issue pragmatically and question whether the borders could quickly be redrawn to allow the secessionist entity to form its independent state without completely undermining the territorial layout of the parent state.[187]

The latter assertion aligns with the following consideration in evaluating the degree to which the parent state's territorial integrity may be destabilised if secession occurs within its region.[188] Should this question be answered in the affirmative, in that it would cause a high degree of destabilisation, the group wishing to secede should prove that the parent state's government is highly oppressive and unrepresentative. Roya Hanna explains, in the context of self-determination, that[189]

> If a government is at the high end of the scale of democracy, the only self-determination claims that will be given international credence are those with minimal destabilising effect. If a government is exceptionally unrepresentative, much more destabilising self-determination claims may be recognised.

Upon concluding the second proposal, Sterio posits that the statement above applies equal force to secession. If it cannot be proven that the parent state is highly oppressive toward the secessionist group, and if the secession would lead to the state territory being highly disruptive, then it would cause high destabilisation and would not prove favourably in advance of the legality of the proposed secession. If

186 Sterio, ibid, (n39), 203-207.

187 ibid, (n142) 208.

188 ibid, 208-209.

189 Roya M. Hanna, 'Right to Self-Determination in In Re Secession of Quebec' (1999) 23 Maryland Journal of International Law 213, 240.

the proposed secession would not disturb the territorial equilibrium, then the argument could be advanced in favour of the proposed secession.[190]

5.2.1 Does this proposition align with the moral theory perspective?

This study concludes that the second proposal by Sterio, namely reconciling secession with territorial integrity, aligns with the remedial right-only theory. This argument is underscored by Buchanan whereby the remedial right-only theory is consistent with, rather than in direct opposition to, a morally progressive interpretation of what is generally regarded as the single most fundamental principle of international law: the principle of the territorial integrity of existing states.[191]

The interest of existing states in continuing to support the principle of territorial integrity is morally legitimate because the recognition of that principle in international law and political practice promotes two morally essential goals:

(1) The protection of individuals' physical security, the preservation of their rights and the stability of their expectations, and
(2) An incentive structure is one in which it is reasonable for individuals and groups to invest themselves in participating conscientiously and cooperatively in the fundamental government processes.[192]

Buchanan posits that, upon a progressive interpretation, the principle of territorial integrity would apply to legitimate states but highlights that international law provides some guidance in that states would not be legitimate if they threaten the lives of significant portions of their population and if they exhibit institutional racism that deprives a substantial portion of the population of fundamental economic and political rights.[193]

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190 Sterio, ibid, (n39), 208-209.

191 Buchanan, ibid, (n107).

192 ibid, (n107).

193 Buchanan, ibid, (n18) 50.

The United Nations and various member states signalled this lack of legitimacy not only by different economic sanctions but by refusing even to use the phrase "The Republic of South Africa" in public documents and pronouncements. Most recently, the Iraqi government's genocidal actions towards the Kurds were accepted as a justification for infringing Iraq's territorial sovereignty to establish a "safe zone".[194] Upon these assertions, Buchanan concludes by stating to the extent that the injustices cited by a remedial right-only theory are of the sort that international law regards as depriving a state of legitimacy; the right to secede is consistent with the principle of territorial integrity of existing states.

It is concluded that the remedial right-only theory, precisely insofar as it concerns moral accessibility, restricts cases of secession to the most severe instances of moral wrongs perpetrated against human rights. As Buchanan states: ...if anything can justify secession, these injustices can...". [195] In other words, the proposed framework by Sterio would complement a remedial right-only theory.

5.3 Fairness

An analysis of secession in international law emphasises the significance of fairness in preventing any unjust action.[196] If a secessionist entity is prevented from forming an independent state, it can be seen as an act of injustice. In international law, fairness refers to reasonable and rational actions taken by relevant actors that result in satisfactory outcomes from a neutral perspective.[197]

Sterio argues that fairness in international law involves a procedural component, meaning that any changes must occur through neutral and unbiased processes. For example, this could be seen in free and fair elections or public referendums.[198]

194 ibid, (n18), 50.

195 ibid 55.

196 Sterio, ibid, (n39), 209.

197 ibid, (n39) 209.

198 ibid, (n39) 209.

Fairness may also involve a consensus among most states that the outcome of a secessionist struggle was positive.[199]

The argument in advance of the criteria of fairness is, according to Sterio, consistent with the idea of remedial secession, which had already been advanced by some scholars, and posits that most scholars who advocate the concept of remedial secession argue that remedial secession should be available in cases of persecution of a minority's human rights.[200] The latter should occur consistently and oppressively and cannot be resolved in some other manner.[201]

This criterion includes a moral perspective highlighting the importance of procedural and fair consensus among states. It reflects the belief of other states that secession was the most reasonable and appropriate solution to the conflict and that the secessionist entity should be treated as a sovereign partner in international law.[202] On the other hand, blocking a secessionist conflict would be unfair, unjust, and contrary to moral principles in human rights instruments.[203]

Sterio also posits that politics and strategic interests often drive states in the global sphere. Further states frequently claim that their behaviour is entirely consistent with international law:

> If they chose not to recognise secessionist entity X, such nonrecognition was a result of some illegality by entity X. To the extent that international law could develop to embrace a normative framework on secession, we could expect to see that acts of recognition follow such a normative framework closely.[204]

199 ibid, 209-210.

200 ibid, 208.

201 ibid, 209.

202 ibid, 209.

203 ibid, 210.

204 ibid, 211.

Examining state behaviours in recognition practices and international organisations is essential to establish a normative framework for secession in international law.[205] This examination could lead to the emergence of a customary norm on secession.[206] It is crucial to consider whether states are acting from a legal obligation in this regard. Analysing state behaviours can provide insights into the emergence and evolution of customary norms in international law.[207] Studying these norms makes it possible to develop a more comprehensive understanding of the legal framework for secession in international law.[208]

5.4 Limitations posed by some scholars

Sterio posits that developing a secession framework is a complex endeavour that may arouse emotional criticism.[209] Some may dispute the necessity of creating such a framework "because bestowing secession rights may disrupt existing state territorial equilibrium." [210]

Similarly, Buchanan posits that primary rights theories advanced by some scholars favour a presumption in favour of political liberty, which essentially develops a position on the right to secede that takes a point of departure where individuals ought to enjoy liberty as long as their actions do not harm the legitimate interest of others.[211] Buchanan names this departure the 'Harm Principle' and quotes Wellman in his justification for secession:[212]

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205 ibid, 211.

206 ibid 211.

207 ibid, 211.

208 ibid, 212.

209 ibid, 212.

210 ibid, 212.

211 Buchanan, ibid, (n107), 50.

212 Christopher Wellman, A Defense of Secession and Self-Determination, (Oxford University Press, 2012), 163.

> We begin with liberalism's presumption of individual liberty, which provides a prima facie case against the government's coercion and for the permissibility of secession...[T]his presumption in favour of secession... is outweighed by the negative consequences of exercising such liberty. But if this is so, the case for liberty is defeated only in circumstances where its exercise would lead to harmful conditions. And because harmful conditions would occur only in cases in which either the seceding region or the remaining state cannot perform its political function of protecting rights, secession is permissible in any case in which this peril would be avoided.[213]

Premised on the argument advanced by Buchanan, considering the theory above, being the primary right theorists, it is submitted that secession in these circumstances would not be tenable but that the remedial right-only theory should be employed.

Sterio posits that some may argue that international law does not have a referee. Still, while this argument may be valid, the global system comprises various international organisations that routinely bestow their judgment on proposed and accomplished secessions.[214]

Organisations, such as the United Nations, the World Bank, the International Monetary Fund and the World Trade Organisation, must decide to allow membership when an entity chooses to secede. Of paramount importance is the assertion that if states and other organisations had legal criteria to resort to when determining whether a secessionist claim is legitimate, such criteria would lead toward more consistent results and legally guide existing international actors.

Upon a possible counterargument that some may object to secession causing unwarranted results, for example, that too many secessionist movements may claim this right, this study employs the remedial right-only theory for precisely this

213 Wellman, ibid, (n212), 163.

214 Sterio, ibid, (n39), 213.

reason. The remedial right-only theory restricts when a secessionist movement should be allowed only in exceptional instances.

Nevertheless, Sterio argues that the criteria proposed by her work, and a secession which would be accomplished in line with these criteria, would not conflict with the principle of non-intervention.[215] Further, this type of lawful secession would not violate the principle of territorial integrity as the proposed secession would be reconciled with the parent state's existing territory to ensure stability.[216] Finally, she argues that such a type of secession through a carefully structured framework would not threaten the existing international law system and could lead to more consistent and fair secessionist outcomes. The latter statement is underscored in this study.[217]

215 ibid, (n39), 214-216.

216 ibid, 214-216.

217 ibid.

Chapter 6

CONCLUSION

6.1 A summary of the study

This study delves into secessionist movements, making a case for a justified remedial right to secede. This is based on recent separatist movements and the ambiguity surrounding the International Court of Justice's stance on such cases. The study examines the moral justifications for this right by employing the remedial right-only theory, suggesting that its institutionalisation aligns with morally restrictive criteria. Furthermore, the research points out that a remedial right to secede can uphold international human rights norms while safeguarding territorial integrity, which would only be compromised if the parent state violates its international obligations.

Chapter 2 explores the potential for recognising remedial secession internationally in cases where minority groups face persecution by their parent state. It discusses the ongoing debate and the absence of well-defined criteria for determining the legitimacy of remedial secession. Drawing on the works of Crawford and Oeter, it is suggested that a balancing test be used to evaluate each case's proportionality and to balance the principles of self-determination and territorial integrity. Kohen's work examines the legal implications of violating *jus cogens* and *erga omnes* obligations in international law, suggesting that such violations may impact the state's claim to territorial integrity.

Chapter 2 further illustrates the comparison between a proposed right to secede and the acceptability of humanitarian intervention. It provides the example of Kosovo's establishment as an autonomous entity under international administration.

Chapter 3 analyses the moral theories of secession and their implications. Furthermore, it examines Buchanan's proposed criteria, outlining the alignment of the remedial right-only theory with these criteria. It concludes that adopting the remedial right-only theory following these criteria could significantly inform future considerations for a normative framework for remedial secession.

In Chapter 4, the discussion centres on the institutionalisation of a moral theory, with Buchanan presenting a pivotal question that warrants further exploration within this context. Specifically, Buchanan enquires about the harmonious coexistence of due consideration for human interests within the international legal framework without necessitating entities to adopt a protective stance toward such interests. Therefore, Buchanan argues that states have a moral and legal obligation to intervene when human rights are at risk.

Chapter 5 examines the complexities of establishing a legal framework for secession in international law. It discusses the limitations highlighted by scholars, such as the potential disruption of state territorial integrity and the necessity of creating a secession framework. The role of international organisations in adjudicating secessionist claims is discussed. It suggests implementing legal criteria to ensure more consistent outcomes. Additionally, it addresses potential objections to secession. It argues that a carefully structured framework for lawful secession would be part of the non-intervention principle and would not violate territorial integrity. The chapter asserts that such a framework could lead to more consistent and equitable outcomes in secessionist cases.

The proposed framework for a remedial right to secede underscores the legal permissibility of secession within a constitutional framework contingent upon the parent state's consent unless there is evidence of oppression or persecution. It also includes an evaluation of whether the parent state has upheld the internal self-determination rights of the minority group. This proposal distinguishes between the right to secede and the right to external self-determination, stating that the latter would only be permissible if the parent state did not respect the internal self-determination rights of the group. The process is designed to adhere to the principle of non-intervention and uphold the principle of self-determination, potentially through mechanisms such as a plebiscite or referendum.

After considering the text above, it is concluded that the proposed structure for remedial secession, when applied with a remedial right-only theory, would meet Buchanan's criteria. This means it would adhere to the principles of minimal realism,

absence of perverse incentives, moral accessibility, and compliance with morally progressive principles of existing law.

The framework proposed by Sterio presents a carefully crafted secession structure that prioritises justice and fairness. It aims to prevent illegitimate secessionist movements while providing an avenue for minorities facing severe persecution to exercise their right to separate from a parent state. This framework, if integrated into international law, can promote peace, stability, and the protection of human rights. Offering a structured approach to remedial secession upholds the principle of the state's responsibility to protect and contribute to a less violent international community.

6.2 Suggestions based on the preceding findings

6.2.1. Comparative Analysis of Remedial Secession Frameworks

A comprehensive study should compare the existing remedies for secessionist movements and evaluate their effectiveness in addressing minority persecution and upholding international human rights norms.

6.2.2. Legal Implications of Remedial Secession

It is suggested that an in-depth examination of the legal implications of violating jus cogens and erga omnes obligations in international law follow, focusing on how such violations may impact a state's claim to territorial integrity and the potential consequences for remedial secession.

6.2.3. Normative Framework for Remedial Secession

A proposal to develop a normative framework for remedial secession based on moral theories and existing legal principles, focusing on aligning the proposed framework with Buchanan's criteria and ensuring compliance with morally progressive principles of existing law.

6.2.4 Institutionalisation of Moral Theories in International Law

A study is suggested to examine the feasibility and implications of institutionalising moral theories within the international legal framework, particularly the remedial right-only theory.

6.2.5 Framework for Lawful Secession Within International Law

It is suggested that Sterio's proposal to develop a carefully structured framework for lawful secession under the principle of non-intervention and following the right to self-determination should be built upon, with a focus on preventing illegitimate secessionist movements while providing avenues for minorities facing severe persecution to exercise their right to separate from a parent state. These suggestions could serve as a starting point for further research into the issues surrounding secessionist movements and a suggested remedial right to secede.

BIBLIOGRAPHY

International Legal Materials

-UN Sub-Commission, 'Draft Declaration on The Promotion and Protection of Human Rights' UN Doc E/CN.4/1995/2, reprinted in International Legal Materials (ILM), vol 34(2) (1995), 546.

Treaties

- Charter of the United Nations, 1 UNTS XVI, art 2(4) (opened for signature 26 June 1945).

- Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Advisory Opinion)' (2010) ICJ Rep 403

- UNGA Res 1514 (XV) (14 December 1960) (adopted by 89 votes to none, nine abstentions) Doc. A/Res/1514, preamble.

- International Covenant on Civil and Political Rights, 999 UNTS 171 (adopted 16 December 1966, entered into force 23 March 1976) (ICCPR).

- International Covenant on Economic, Social and Cultural Rights, 993 UNTS 3 (entered into force 3 January 1976, opened for signature 16 December 1966) (ICESCR).

- Treaty of the United Nations 33 UNTS 993, art 38(1)(b) (entered into force 24 October 1945).

- International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

- International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966) General Assembly Resolution 2200A (XXI) (CESCR).

- Declaration on the Granting of Independence to Colonial Countries and Peoples, UNGA Res 1514 (XV) (14 December 1960) (adopted by 89 votes to none, nine abstentions) Doc. A/Res/1514, preamble

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976), 999 UNTS 171 (ICCPR).

- International Covenant on Economic, Social and Cultural Rights (entered into force 3 January 1976, opened for signature 16 December 1966) 993 UNTS 3 (ICESCR).

Advisory Opinions

- Advisory Opinion, ibid (n13): "An example of a people-centred approach can be found in oral submissions by Azerbaijan in Kosovo Opinion (2010).

- Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Request for Advisory Opinion), General List No 141, International Court of Justice (ICJ), 22 July 2010, accessed 23 June 2024.

- UNCHR (Sub-Commission) 'Draft Declaration on The Promotion and Protection of Human Rights' UN Doc E/CN.4/1995/2, reprinted in International Legal Materials (ILM), vol 34(2) (1995), 546

'Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Advisory Opinion)' (2010) ICJ Rep 403

Reports

- Cristescu, A, 'Report of the Special Rapporteur Aurelia Cristescu, The Right To Self-Determination, Historical and Current Development based on United Nations Instruments' (1981) UN Doc E/CN/.4/Sub.2/404/Rev.1, E1, 2, 260-267.

- Daes, E-I. A., 'Report of the Special Rapporteur Erica-Irene A. Daes on the Rights of Indigenous Peoples, Indigenous people and their relationship to land', 1995/32, UN Doc E/CN.4/Sub.2/1996/21 (1996)

- International Commission on Intervention and State Sovereignty, The Responsibility to Protect (Ottawa International Development Research Centre, 2001).

Resolutions

- UN General Assembly, Res 2625 (XXV) (24 October 1970) UN Doc A/RES/2625

- UNGA Res 2625 (XXV) (24 October 1970) GAOR 25th session UN Doc A/RES/2625(XXV). 1

- UNGA 'Declaration on the Occasion of the Fiftieth Anniversary of the United Nations', Res 50/6 50 UN GAOR Supp (No 49) (1995) UN Doc A/50/49.

- UN General Assembly, 'Declaration of the UN World Conference on Human Rights' (Vienna, 25 June 1993) UN Doc A/CONF 157/23.

- UN General Assembly, 'Declaration on the Occasion of the Fiftieth Anniversary of the United Nations', Res 50/6 50 UN GAOR Supp (No49) (1995) UN Doc A/50/49.

-UN General Assembly, Res 2625 (XXV) (24 October 1970), GAOR 25th session, UN Doc A/RES/2625(XXV).

- UN General Assembly, Res 60/1, UN Doc A/RES/60/1.

- UN General Assembly, Res 2625 (XXV) (24 October 1970) UN Doc A/RES/2625.

- Declaration on the Granting of Independence to Colonial Countries and Peoples, UNGA Res 1514 (XV) (14 December 1960) (adopted by 89 votes to none, nine abstentions) Doc. A/Res/1514, preamble.

- Secretary-General, 'We the Peoples: The Role of the United Nations in the Twenty-First Century' (2000) 217, U.N. Doc. A/54/2000.

- - UNSC, Res 1244 (1999) Doc S/RES/1244 (10 June 1999)

-UN General Assembly, Res 2625 (XXV) (24 October 1970) UN Doc A/RES/2625.

Cases

- East Timor (Portugal v. Australia) (Judgment) [1995] ICJ Rep 90.

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

Bibliography of Books

Buchanan A, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (Oxford University Press 2004)

Crawford J, *The Creation of States in International Law* (2nd ed, Oxford University Press 2011)

Crawford J, *Statehood and Self-Determination* (Cambridge University Press 2013).

Fenrich J, *'Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices'* in Kohen MG (ed), The Cambridge Handbook of International Law (Cambridge University Press 2006)

Hill J.D, 'Secession: A Moral and Political Theory' in Buchanan (ed) *Theories of Secession* (Edinburgh University Press 2005)

Huscroft G and Miller, B. W, *Proportionality and the Rule of Law: Rights, Justification, Reasoning* (Cambridge University Press, 2014)

Kohen M.G, *Secession: International Law Perspectives* (Cambridge University Press 2006)

Oeter S, 'Self-Determination' in Simma, B. and Wessendorf, N. (eds), *The Charter of the United Nations: A Commentary* (Vol I, 3rd edn, Oxford University Press 2012).

Pink T, *Self-Determination: The Ethics of Action* (Vol 1, Oxford Academic 2016)

Sterio M, *Secession in International Law – A New Framework* (Edward Edgar Publishing Ltd, 2018)

Summers J, 'The Internal and External aspects of self-determination reconsidered' in Duncan French (ed) *Statehood and Self-determination, Reconciling Tradition and Modernity in International Law* (Cambridge University Press 2013)

Tancredi A, 'A Normative "Due Process" in the Creation of States through Secession' in M.G. Kohen (ed), *Secession: International Law Perspectives* (Cambridge University Press 2006)

Viñuales JE (ed), 'Self-Determination - The UN Friendly Relations Declaration: An Assessment of the Fundamental Principles of International Law' in Kohen M*, Self-Determination - The UN Friendly Relations Declaration: An Assessment of the Fundamental Principles of International Law (*Cambridge University Press 2020) 133-165

Walter C, and von Ungern-Sternberg A, *Secession and International Law: Conflict Avoidance, Self-Determination, and Democracy* (Oxford University Press 2012)

Journal Articles

-

-Anderton K. and Breuer, N., 'Incentivizing Advocates to Focus on Significant Cases: A Quantitative Threshold for Violations in International Legal Forums' (2014) 47(2) Vanderbilt Journal of Transnational Law 357

-Bartelson, J, 'The Concept of Sovereignty Revisited' (2006) 17 European Journal of International Law 463

-Buchanan, A., 'Theories of Secession' (1997) 27(1) Philosophy and Public Affairs 31-61

--Buchanan A, 'Remedial Secession and Human Rights' (2004) 12 Journal of Political Philosophy

-Brilmayer L, 'Secession and Self-Determination: A Territorial Interpretation' (1991) 16 Yale Journal of International Law 5

-Castellino J, 'Territorial Integrity and the "Right" to Self-Determination: An Examination of the Conceptual Tools' (2008) 33 Brooklyn Journal of International Law 769

-Crawford J, and Koskenniemi M, 'The Right to Self-Determination, Remedial Secession, and Humanitarian Intervention: Reconceptualizing the Doctrine' (2005) 99 American Journal of International Law 847

-Evans G. and Sahnoun M, 'The Responsibility to Protect', (2002) 81(6) Foreign Affairs 99-110

-Fenrich J, 'Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices' in Kohen, M.G. (ed), The Cambridge Handbook of International Law (Cambridge University Press 2006) 585-614

-Hilpold P, 'Self-determination and Autonomy: Between Secession and Internal Self-determination' (2017) 24 International Journal on Minority and Group Rights 302

-Kasper Lippert-Rasmussen, 'Remedial Secession and Minority Groups: A Normative Analysis' (2007) 24(1) Journal of Applied Philosophy 1

-Paylan S, 'Remedial Secession and the Responsibility to Protect: The Case of Nagorno-Karabakh', Opinio Juris (1 April 2024)

-Sterio M, 'The Applicability of the Humanitarian Intervention 'Exception' to the Middle Eastern Refugee Crisis: Why the International Community Should Intervene Against ISIS' (2015) 1 J Conflict & Security L 209, Cleveland-Marshall Legal Studies Paper No. 15-286, Available at SSRN: < https://ssrn.com/abstract=2660435 > [accessed 15 June 2024]

--Sterio M, 'Right to External Self-Determination: 'Selfistans,' Secession and the Great Powers' Rule' (2009) Minnesota Journal of International Law 19

--Sterio M, 'A Tale of Two States: Territoriality and Minority Rights in Kosovo and Georgia' (2012) 12 International Journal of Minority and Group Rights 103

--Sterio M, 'The Right to Self-Determination and Indigenous Peoples' (2014) 62 Cleveland State Law Review 640

-Crawford J, 'The Right of Self-Determination in International Law: Its Development and Future', (1993) 87 American Journal of International Law 259

-Brilmayer L, 'Secession and Self-Determination: A Territorial Interpretation' (1991) 16 Yale Journal of International Law 377

-Orenlichter D.F, 'Separation Anxiety: International Responses to Ethno-Separatist Claims' (1998) 23 Yale Journal of International Law 1

-Enache-Brown (ed), A Fried, 'Universal Crime, Jurisdiction and Duty: The Obligation of Aut Dedere Aut Judicare in International Law' (1998) 43 McGill Law Journal 603

--Buchanan A, 'International Law and Morality' (2002) 16(2) Ethics & International Affairs 113-124

-Evans, G, 'The Responsibility to Protect: Human Rights and Humanitarian Dimensions' (2006) 100 (1) American Journal of International Law 107

-Walter, C and von Ungern-Sternberg, A, Secession and International Law: Conflict Avoidance, Self-Determination, and Democracy (Oxford University Press 2012) 123

'Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Advisory Opinion)' (2010) ICJ Rep 403

Lippert-Rasmussen, K, 'Remedial Secession and Minority Groups: A Normative Analysis' (2007) 24 (1) Journal of Applied Philosophy 1

Buchanan, A., 'Remedial Secession: A Just Cause?' (1991) 1 Journal of Political Philosophy 191

Hilpold, P., 'Self-determination and Autonomy: Between Secession and Internal Self-determination' (2017) 24 International Journal on Minority and Group Rights 302

Articles Accessed online:

Promise Institute for Human Rights, Self-Determination, Remedial Secession, and International Law (UCLA School of Law Fall

2021

--Sterio, M., 'Right to External Self-Determination: 'Selfistans,' Secession and the Great Powers' Rule' (2009) Minnesota Journal of International Law 19, available at SSRN <https://ssrn.com/abstract=1337172> [Accessed 15 June 2024].

--Castellino, J., 'Territorial Integrity and the "Right" to Self-Determination: An Examination of the Conceptual Tools' (2008) 33 Brooklyn Journal of International Law 769, available at <https://brooklynworks.brooklaw.edu/bjil/vol33/iss2/15> [Accessed 10 March 2024].

Paylan, Sheila, 'Remedial Secession and the Responsibility to Protect: The Case of Nagorno-Karabakh' published in the Opinio Juris, available at <www.opiniojuris.org> accessed on 1 April 2024.

Urrutia Iñigo. "Territorial Integrity and Self-Determination: The Approach of the International Court of Justice in the Advisory Opinion on Kosovo" (9 October 2012) Available at <https://ssrn.com/abstract=2365511> Accessed 12 June 2024.

-Pink, T., Self-Determination: The Ethics of Action (Vol 1, Oxford Academic 2016)

<https://doi.org/10.1093/acprof:oso/9780199272754.001.0001> accessed 12 June 2024

Reports:

- Cristescu, A, 'Report of the Special Rapporteur Aurelia Cristescu, The Right To Self-Determination, Historical and Current Development based on United Nations Instruments' (1981) UN Doc E/CN/.4/Sub.2/404/Rev.1, E1, 2, 260-267.

- Daes, E-I. A., 'Report of the Special Rapporteur Erica-Irene A. Daes on the Rights of Indigenous Peoples, Indigenous people and their relationship to land', 1995/32, UN Doc E/CN.4/Sub.2/1996/21 (1996)

- International Commission on Intervention and State Sovereignty, The Responsibility to Protect (Ottawa International Development Research Centre, 2001).

Institute Publication:

The Promise Institute for Human Rights, Self-Determination, Remedial Secession, and International Law,

(UCLA School of Law Fall 2021) available at

<https://law.ucla.edu/sites/default/files/PDFs/Promise/Artsakh_Report_Final_Version.pdf> accessed on 11

March 2024, 17. (Cambridge University Press 2006) 585-614.