

International legal foundations for the independence of the Republic of Artsakh (Nagorno Karabakh)

(1) The independence of the Republic of Artsakh (Nagorno-Karabakh) has its authoritative legal basis under international law in the principle of the right of peoples to self-determination. Its respect and implementation is expressly recognized as one of the goals of the United Nations (Art. 1 No. 2; Art. 55 UN Charter). The legal content of the principle is determined by the identically worded Article 1, Paragraph 1 of the two United Nations International Covenants of December 16, 1966, which came into force in 1976, on civil and political or economic, social and cultural rights. It consists in the “right of all peoples to decide freely and without outside interference about their political status and to shape their economic, social and cultural development”. In 1970 the United Nations specified the power to freely decide on political status in the (fifth) principle of the “Principle of Equal Rights and Self-Determination of Peoples” of the Friendly Relations Declaration¹ with the recognition of the following “possibilities”: 1. Foundation of a sovereign and independent state; 2. Free association with an independent state; 3. Free integration into an independent state, and 4. Entry into another independent status freely determined by the people. The peoples' right to self-determination has the quality of “compelling law” (*ius cogens*). It is one of the highest-ranking norms of international law. Treaties between states that contradict the principle are void.

(2) The principle of the peoples' right to self-determination is, when it comes to the secession of a people from its parent state, in a legal tension with and in conflict with the international law principle of the sovereign equality of states (Art. 2 No. 1 UN Charter) and the associated principle of their territorial integrity (cf. Art. 2 No. 4 UN Charter). Both principles: the principle of the right to self-determination and the principle of sovereign equality of states, can each have a different, higher or lower weight depending on the specific political circumstances. This has legal implications for which of the two principles prevails over the other.

(3) In the case of the Armenian Republic of Artsakh (Nagorno-Karabakh), the right of self-determination prevails over the sovereignty and territorial integrity of the Republic of Azerbaijan, because the Armenians, who founded the Republic of Artsakh (Nagorno-Karabakh) at the time of the Soviet Union, **first** of all fulfill the Criteria of a “people” in the sense of the right to self-determination and they can, **secondly**, the highest form and level of the right to self-determination, i.e. claim the secession from the Republic of Azerbaijan and the establishment of its own (national) state.

(4) The recognition of the fact that the Armenians of Artsakh (Nagorno-Karabakh) have the quality and quality of a “people” in the sense of the right to self-determination is implied in the fact that in 1924 they received their own, autonomous territory within the Soviet Republic of Azerbaijan In the "Nagorno-Karabakh Autonomous Region" bordering the Soviet Republic of Armenia, the Armenians formed the overwhelming majority with around 85 percent of the population. The Armenians in Nagorno-Karabakh did not lose the quality of a people in the sense of international law until the end of the USSR.

¹ The full title of the document is: The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations ('Friendly Relations Declaration'), adopted by the United Nations General Assembly Resolution No. 2625 (XXV), 24 October 1970.

(5) The Armenians of the former "Nagorno-Karabakh Autonomous Region" had the right to form their own state, because they were entitled to secession from the Soviet Republic of Azerbaijan by virtue of international law and successfully carried out the secession in accordance with international law.

(6) According to the international law principle of the right to self-determination, a people is entitled to secession if, as a foreign ethnic group, it is so severely discriminated and suppressed by the parent state that the members of the people have political loyalty to the government and remain in the foreign national mother state can no longer be expected. The so-called "remedial secession" is today a legal doctrine recognized by international law.² It's closely related to the UN concept of the "responsibility to protect", which breaks with the traditional idea that the state and its rulers are entitled to deal with their citizens at will by virtue of state sovereignty.

(7) The Armenians had the experience of discrimination and oppression in the Soviet Republic of Azerbaijan, especially in the final phase of the USSR, when they tried, in accordance with Soviet constitutional law, to peacefully and in democratic steps (mass petitions; parliamentary resolutions; referendum) to realize the right of self-determination in the Soviet Union (1986-1991). Hindered from doing this, the Armenians of Nagorno-Karabakh were forced, now based solely on international law, to enforce their right of self-determination by way of a war of independence against the Republic of Azerbaijan, which had only just become independent (1992-1994). The Republic of Artsakh successfully achieved this with the support of the Republic of Armenia and the worldwide Armenian diaspora. In the tripartite ceasefire agreement concluded on May 11, 1994 in Bishkek with the Republic of Armenia and the Republic of Artsakh and other tripartite agreements, the Republic of Azerbaijan treated Nagorno-Karabakh as a contractual partner and independent party in the conflict in a form relevant under international law.

(8) The right of the Armenians and the Republic of Artsakh (Nagorno-Karabakh) to secession by virtue of remedial secession is stronger than the sovereignty claim made by Azerbaijan, because in 1992/1993, i.e. immediately after the fall of the Soviet Union, the sovereignty of the Republic of Azerbaijan was weak fragile. Conditions resembling civil war prevailed in the country, and the republic was not yet a fully established sovereign member of the international community. Compared to that of the Republic of Artsakh. The right to self-determination made, the legal elements of which were particularly strong and sustained on the part of the Armenians in Nagorno-Karabakh and have since been much more pronounced, had and still has a far weaker weight on Azerbaijan's claim to sovereignty.

(9) When the Republic of Azerbaijan finally became a fully-fledged sovereign state and subject of international law around 1994/1995, the Republic of Artsakh had long since broken away from it. It was and is definitely separated from the Republic of Azerbaijan to this day by a clear border on the ceasefire line of 1994 ("contact line"), has its own, democratically legitimized

² The legal institution of the "remedial secession" is based on Paragraph 7 of the "Principle of Equal Rights and Self-Determination of Peoples" specified by the United Nations in the "Friendly Relations Declaration": "Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour. A state that does not meet this legal condition forfeits its claim to power over the affected people who have previously been subject to it."

and functional state organs including its own, internationally recognized, strong army and is part of the Republic of Azerbaijan completely independent.

(10) The Republic of Artsakh (Nagorno-Karabakh) is not internationally recognized, but it fulfills all the criteria of a de facto state and therefore has partial international law subjectivity according to internationally recognized international law. The most important consequence of this is that the Republic of Artsakh is protected against attacks from outside by the general prohibition of force under international law in accordance with Art. 2 No. 4 of the UN Charter and can invoke the right to self-defense under international law (Art. 51 UN Charter). As Article 51 sentence 1 expressly states, it can and may not only be exercised “individually”, i.e. by the Republic of Artsakh alone, but also “collectively”. Military aid to the Republic of Artsakh (Nagorno-Karabakh) from the Republic of Armenia or from the Russian Federation would therefore not constitute a violation of international law.