

Evaluating Remedial Secession as a Legitimate Territorial Acquisition: Lessons from Eastern Ukraine 2022

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Abstract

This study examines whether corrective secession can be considered a legitimate means of acquiring territory under contemporary international law, focusing on the secession referendum in Eastern Ukraine in 2022. Although the right to self-determination has evolved from a colonial context to broader applications, the legality of corrective secession in non-colonial situations remains controversial and under-explored. Previous research has largely focused on post-colonial cases such as Bangladesh and South Sudan, leaving a gap in understanding externally influenced secession movements. This article aims to address this gap through normative legal analysis, drawing on international legal instruments, state practice, and jurisprudence from the International Court of Justice and national courts. The findings of the study indicate that secession as a corrective measure can only be justified in exceptional cases where an ethnic group experiences ongoing and systematic discrimination, and where the parent state fails to provide an effective solution. When applied to Eastern Ukraine, this study finds no evidence of systematic human rights violations by the Ukrainian government that would justify secession. Instead, the conflict and referendum were largely triggered by external intervention, rendering such claims contrary to international law. This analysis reaffirms that the doctrine of secession as a remedy remains limited and exceptional, reinforcing the priority of territorial integrity in accordance with the UN Charter. This study contributes to the ongoing debate by clarifying the legal and moral thresholds for secession as a remedy, and provides a nuanced legal framework for assessing future claims of secession.

Keywords: *Eastern Ukraine; Referendum; Remedial Secession; Territorial Acquisition.*

Introduction

The concept of self-determination has evolved significantly from its initial political and philosophical origins to a well-established legal principle in international law. It was formally recognized in the United Nations Charter, Article 1(2) and Article 55, which provide for the right of peoples to determine



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their political status and freely pursue their economic, social, and cultural development.¹ This principle was historically applied to facilitate decolonization, allowing former colonies to gain independence. However, in the modern era, self-determination has become increasingly relevant in non-colonial contexts, particularly in cases involving claims of secession and territorial disputes.²

One key mechanism for exercising self-determination is the referendum, often used to express political aspirations. However, international law does not explicitly regulate referendums for secession, leading to legal ambiguity.³ This issue is particularly relevant in Eastern Ukraine, where referendums in Donetsk, Luhansk, Kherson, and Zaporizhzhia in 2014 and 2022 were framed as exercises of self-determination but were widely rejected by Ukraine and the international community.⁴

The conflict in Eastern Ukraine stems from deep-rooted historical, political, and ethnic divisions. Since its independence in 1991, Ukraine has faced internal disputes between pro-European and pro-Russian factions. These tensions escalated after the Euromaidan protests in 2013–2014, which led to the removal of President Yanukovich. In response, separatist movements in Donetsk and Luhansk, with Russian support, declared independence and held referendums to legitimize their secession claims.⁵ However, Ukraine and most international actors deemed these referendums illegal, arguing they violated the principle of territorial integrity.⁶ Russia's actions have been criticized as a misuse of the theory to justify territorial expansion rather than genuine self-determination.⁷ The international reaction to Russia's remedial secession invocation has been adverse.⁸ The situation in

¹ United Nations, "Charter of the United Nations: Article 1(2) & Article 55," 1945.

² James R. Crawford, "The Creation of States in International Law" (New York: Oxford University Press, 2006), 390, <https://doi.org/10.1093/acprof:oso/9780199228423.001.0001>.

³ United Nations General Assembly, "Resolution Adopted by the General Assembly on 27 March 2014, 68/262 Territorial Integrity of Ukraine, A/RES/68/262," *United Nations Sixty-Eighth Session Agenda Item, no. April* (2014): 1–2.

⁴ Anders Aslund and Michael McFaul, "Revolution in Orange: The Origins of Ukraine's Democratic Breakthrough" (Washington DC, 2006).

⁵ Human Rights Watch, "Ukraine: Conflict Violations on Both Sides" (New York, 2016).

⁶ United Nations General Assembly, "Resolution Adopted by the General Assembly on 27 March 2014, 68/262 Territorial Integrity of Ukraine, A/RES/68/262."

⁷ Júlia Miklasová, "Russian Approaches to Post-Soviet Secession: Bad Faith Argumentation and Its Limits," *Baltic Yearbook of International Law Online* 22, no. 1 (December 9, 2024): 64–87, https://doi.org/10.1163/22115897_02201_005.

⁸ Yolanda Gamarra, "Secesión, Derecho de Libre Determinación y Referéndums En Los Territorios Ocupados de Ucrania," *Anuario Español de Derecho Internacional* 40 (April 24, 2024): 537–78, <https://doi.org/10.15581/010.40.537-578>.

Ukraine is often compared to other secessionist conflicts, such as Kosovo and South Ossetia, where similar arguments for remedial secession have been made.⁹

A primary legal debate surrounding self-determination concerns whether secession is permissible only within the framework of decolonization or if it can also apply in cases of severe human rights violations. The concept of remedial secession has been proposed as a legal justification for secession when a population suffers systematic oppression, and no viable alternatives exist within the parent state.¹⁰ However, remedial secession is not explicitly recognized under customary international law, and its applicability remains contested.¹¹ Legal precedents such as the Quebec Secession Case (1998) and Kosovo's Declaration of Independence (2008) highlight this ongoing debate.¹² The Supreme Court of Canada ruled that Quebec did not have a unilateral right to secede under international law, emphasizing the necessity of negotiating secession with the parent state. Similarly, the International Court of Justice (ICJ) found that Kosovo's unilateral declaration of independence did not violate international law but did not establish a clear precedent for future secessionist claims.¹³

The principle of territorial integrity is a fundamental aspect of international law, protecting state sovereignty and borders. UN General Assembly Resolution 68/262 reaffirmed Ukraine's territorial integrity, explicitly rejecting the referendums in Donetsk, Luhansk, Kherson, and Zaporizhzhia.¹⁴ The resolution underscored that territorial changes must comply with international legal norms and require the parent state's consent.¹⁵

Despite extensive legal discourse on self-determination and secession, ambiguity remains regarding the role of referendums in territorial

⁹ M Cappucci and L Zarrilli, "Armed Secessionism in the Post-Soviet Space. The Case of South Ossetia," *Documenti Geografici*, no. 2 (2022): 277–88, https://doi.org/10.19246/DOCUGEO2281-7549/202202_14; Themistoklis Tzimas, "The Impact of the Minsk Agreements on Ukrainian Sovereignty," *Journal of Balkan and Near Eastern Studies* 26, no. 4 (July 3, 2024): 432–51, <https://doi.org/10.1080/19448953.2024.2307808>.

¹⁰ David Raic, "Statehood and the Law of Self-Determination" (The Hague: Kluwer Law International, 2002), 178, <https://doi.org/10.1163/9789047403388>.

¹¹ Karwan Karimkhan Kakehamad and Mohammed Ehsan, "Evaluation of Theory of Remedial Secession in International Law and Its Corresponds to the Demand for Independence of the Kurdistan Region," *Twejer* 7, no. 1 (July 2024): 623–48, <https://doi.org/10.31918/twejer.2471.22>.

¹² Supreme Court of Canada, "Reference Re Secession of Quebec" (1998).

¹³ International Court of Justice, Advisory Opinion on the Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (2010).

¹⁴ United Nations General Assembly, "Resolution Adopted by the General Assembly on 27 March 2014, 68/262 Territorial Integrity of Ukraine, A/RES/68/262."

¹⁵ Human Rights Watch, "World Report 2023: Ukraine — Events of 2022" (New York, 2023).

independence. The Ukrainian case highlights this uncertainty, as the 2014 and 2022 referendums were framed as exercises of self-determination but were widely dismissed as unlawful. While some scholars argue that self-determination should be freely exercised through referendums, others emphasize that territorial changes must prioritize state sovereignty under international legal frameworks.¹⁶ This study analyzes whether Ukraine's referendums meet legal criteria for self-determination or constitute unlawful secession.

Several previous studies provide a conceptual foundation for this analysis. Remedial secession refers to the right of a group to secede from a state as a last resort in response to severe injustices¹⁷, such as egregious denial of political and human rights.¹⁸ This concept is not clearly recognized in international law,¹⁹ but has been discussed in various contexts and case studies. Remedial secession faces several moral and practical challenges, including the appropriateness and implementation of secession to achieve justice.²⁰ Remedial secession remains a contentious and complex issue within international law.²¹

Unlike these cases, this study focuses on Eastern Ukraine's referendums in 2014 and 2022. In contrast to Bangladesh, where systematic discrimination was evident, or South Sudan, which enjoyed broad international legitimacy, the secessionist claims in Eastern Ukraine were heavily influenced by external intervention, particularly from Russia. This highlights a gap in the literature, as most prior studies address post-colonial or ethnically driven secessionist movements recognized by the international community. The present study seeks to fill this gap by evaluating the legality of Eastern Ukraine's referendums

¹⁶ Crawford, "The Creation of States in International Law."

¹⁷ Fatima Mehmood, "Demystifying External Self-Determination and Remedial Secession in International Law," *Asia-Pacific Journal on Human Rights and the Law* 23, no. 1 (February 16, 2022): 1–46, <https://doi.org/10.1163/15718158-23010001>; Abhimanyu George Jain, "Bangladesh and the Right of Remedial Secession," in *Research Handbook on Secession* (Edward Elgar Publishing, 2022), 312–28, <https://doi.org/10.4337/9781788971751.00031>.

¹⁸ José Antonio Perea Unceta, "The Absence of Any Basis for Secession in the Right of Self-Determination of Peoples and in the Serious Violations of Human Rights," in *Legal Implications of Territorial Secession in Spain* (Cham: Springer International Publishing, 2022), 1–31, https://doi.org/10.1007/978-3-031-04609-4_1.

¹⁹ Rokas Levinskas, "Whether There Is a Right to Remedial Secession under International Law?," *Law Review* 20 (2019): 44–67, <https://doi.org/10.7220/2029-4239.20.3>.

²⁰ Jovica Pavlović, Aleksandar Pavković, and Miša Đurković, "Nations, Corrective Justice and State Creation: How Normative Are Normative Remedial Theories of Secession?," *Nations and Nationalism*, December 29, 2024, <https://doi.org/10.1111/nana.13079>.

²¹ Michel Seymour, "Remedial Secession," in *Routledge Handbook of State Recognition* (Abingdon, Oxon; New York: Routledge, 2020; Routledge, 2019), 174–88, <https://doi.org/10.4324/9781351131759-14>; Pau Bossacoma Busquets, "The Regulation of Secession," in *Constitutional Law and Politics of Secession* (London: Routledge, 2023), 315–34, <https://doi.org/10.4324/9781003311461-19>.

under the doctrine of remedial secession.

Drawing on this background and literature review, the study addresses two central research questions. Firstly, can remedial secession be categorized as a legitimate mode of territorial acquisition under international law? Secondly, can the secessionist claims of Eastern Ukraine be accepted as a lawful mode of territorial acquisition under international law?

This study employs a normative juridical (doctrinal legal) approach to examine the legitimacy of remedial secession under international law, focusing on the 2022 referenda in Eastern Ukraine. Primary sources include the *UN Charter* (1945), *ICCPR* (1966), *UNGA Resolution 68/262*, and key judicial precedents such as the *ICJ Advisory Opinion on Kosovo* (2010) and the *Quebec Secession Case* (1998), while secondary sources consist of scholarly works by Cassese, Crawford, Vidmar, and Szpak. The analysis combines descriptive and comparative methods, identifying and interpreting relevant legal norms and evaluating Ukraine's case against precedents like Bangladesh (1971), Kosovo (2008), and South Sudan (2011). The research is grounded in three theoretical perspectives: the Doctrine of Self-Determination and Territorial Integrity, which balances collective rights and state sovereignty; the Remedial Right Theory, which allows secession only as a last resort to redress systematic oppression; and the State Consent Theory, which emphasizes constitutional legitimacy in secession processes. Together, these frameworks guide the doctrinal reasoning to assess whether Eastern Ukraine's referenda meet the legal and moral thresholds for lawful secession.

Discussion

Legal Criteria for Remedial Secession

In international practice, secession is generally not recognized under international law, except in certain exceptional circumstances where a region or group faces systematic oppression and human rights violations that justify separation.²² However, international law does not explicitly codify remedial secession, as the UN Charter (Article 1(2) and Article 55) emphasizes self-determination while upholding territorial integrity.²³ Remedial secession is regarded as a last resort, granted to a region or group that has suffered systemic discrimination, repression, or human rights violations and where internal remedies have failed to provide adequate protection.²⁴ Despite its theoretical

²² UNESCO. Division of Human Rights and Peace, "Final Report and Recommendations: International Meeting of Experts on Further Study of the Concept of the Rights of Peoples" (Paris, 1989).

²³ Arthur Agwuncha Nwankwo, *Nigeria: The Challenge of Biafra*, 3rd ed. (Fourth Dimension, 1980).

²⁴ Rudolph J. Rummel, *Statistics of Democide: Genocide and Mass Murder Since 1900* (Münster; Piscataway, N.J.: LIT Verlag / Transaction Publishers, 1998).

justification, international law does not explicitly codify remedial secession. It remains a contested principle, particularly with the UN Charter Article 1(2) and Article 55, which emphasize the right to self-determination while upholding the territorial integrity of states.²⁵ Given this legal ambiguity, several criteria have been proposed to determine when remedial secession can be considered legitimate under international law.²⁶ These criteria are key benchmarks for evaluating whether a region or group possesses legal legitimacy to pursue secession as a remedial measure.²⁷

Remedial secession applies only to groups that meet specific international legal criteria.²⁸ A fundamental requirement is that the claim must originate from a group recognized as a "people" within a defined territory.²⁹ States are generally reluctant to define "people" for fear of triggering national disintegration. The right to self-determination without clear boundaries can threaten the integrity of an internationally recognized state. A 1989 UNESCO expert meeting attempted to define "people" using shared history, culture, language, and religion criteria.³⁰ Despite this effort, concerns arose over the potential for state fragmentation and weakened governance.

The case of Biafra exemplifies this challenge, as the secession of the Ibo ethnic group was rejected due to insufficient territorial connection.³¹ Thus, remedial secession requires an identifiable group and a strong territorial and socio-cultural connection to justify separation.

In remedial secession, secession is often driven by systemic discrimination and human rights violations against a specific group.³² Persistent marginalization can create conditions that fuel demands for secession, especially when the state fails to protect fundamental rights.³³

²⁵ Jok Madut Jok, *Sudan: Race, Religion and Violence* (Oxford: Oneworld Publications, 2007).

²⁶ United Nations, "Charter of the United Nations," Pub. L. No. Article 2(4) (1945).

²⁷ International Court of Justice, *Advisory Opinion on the Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*.

²⁸ Jing Lu, "Exploring the Legal Color of Secession," in *On State Secession from International Law Perspectives* (Cham: Springer International Publishing, 2018), 33–94, https://doi.org/10.1007/978-3-319-97448-4_2.

²⁹ Christian Tomuschat, "Yugoslavia's Damaged Sovereignty over the Province of Kosovo" (Oxford: Oxford University Press, 2002), 344.

³⁰ Scientific and Cultural Organization (UNESCO) United Nations Educational, "International Meeting of Experts for the Elucidation of the Concepts of Rights of Peoples" (Paris, 1990).

³¹ S. K. Blay, "Self-Determination: Its Evolution in International Law and Prescriptions for Its Application Post-Colony Context" (University of Tasmania, 1984).

³² Marcelo G. Kohen, "Secession: International Law Perspectives" (New York: Cambridge University Press, 2006), 104.

³³ Andrey Sujatmoko, "Hukum HAM Dan Hukum Humaniter" (Jakarta: Rajagrafindo Persada, 2015), 141.

Secession, therefore, is not merely a political reaction but an effort to rectify injustices experienced by marginalized groups.³⁴

Historical cases illustrate this dynamic. The secession of East Pakistan in 1971 was the first instance outside decolonization and underscored the link between discrimination and remedial secession.³⁵ Political, economic, and cultural discrimination by West Pakistan triggered discontent among Bengalis, escalating after the 1970 elections when the Awami League's victory was denied power.³⁶ The Pakistani government's repression, including mass arrests and killings, intensified demands for independence.³⁷ The international community condemned these violations, with India's support playing a crucial role in Bangladesh's eventual independence.³⁸

Another key case is South Sudan's 2011 secession, rooted in decades of ethnic, religious, and economic discrimination by Sudan's central government.³⁹ Years of armed conflict and humanitarian crises led to the 2005 Comprehensive Peace Agreement (CPA), enabling an independence referendum.⁴⁰ The 2011 vote overwhelmingly favored secession, with over 98% supporting independence.⁴¹

The annexation of Crimea by Russia in 2014 is often cited as a case of remedial secession. Russia justified its actions by claiming to protect the rights of the Russian-speaking population in Crimea and supporting their right to self-determination.⁴² However, this justification is widely disputed. The Ukrainian government and many international actors view the annexation as

³⁴ Yogi Dwi Saputra and Ramlan Ramlan, "Penerapan Prinsip Self Determination Terhadap Pembentukan Negara Kosovo Ditinjau Dari Perspektif Hukum Internasional," *Uti Possidetis: Journal of International Law* 1, no. 2 (2020): 193–223, <https://doi.org/10.22437/up.v1i2.9867>.

³⁵ Secretariat of the International Commission of Jurists, "The Events in East Pakistan, 1971: A Legal Study" (Geneva, 1972).

³⁶ Percy S. Gourgey, "The Middle East and the India-Pakistan Conflict," *The Scribe: Journal of the Descendants of Babylonian Jewry* 1, no. 3 (1972): 13.

³⁷ Ved P. Nanda, "Self-Determination in International Law: The Tragic Tale of Two Cities—Islamabad (West Pakistan) and Dacca (East Pakistan)," *American Journal of International Law* 66, no. 2 (1972): 321–36, <https://doi.org/10.2307/2199032>.

³⁸ Enver Hasani, "Self-Determination, Territorial Integrity, and International Stability: The Case of Yugoslavia" (Vienna: Gjon Buzuku, 2013), 111.

³⁹ Salman M. a. Salman, "South Sudan Road to Independence: Broken Promises and Lost Opportunities," *Pacific McGeorge Global Business & Development Law Journal* 26, no. 2 (2013): 343.

⁴⁰ Alasdair McKay, "Introductory Notes," in *Year One of a Nation: South Sudan's Independence* (London: E-International Relations, 2012), 5.

⁴¹ The Carter Center, "Observing the 2011 Referendum on the Self-Determination of Southern Sudan: Final Report" (Atlanta, GA, 2011).

⁴² R Rahami and M A Bahmaniqajar, "Prohibition of Annexation and Remedial Secession Theory in the Crimean Crisis," *Central Eurasia Studies* 13, no. 1 (2020): 47–70, <https://doi.org/10.22059/jcep.2019.286616.449862>.

an act of aggression and a violation of Ukraine's territorial integrity.⁴³

Similar arguments have been made regarding the regions of Donetsk and Luhansk, where Russia recognized the independence of these self-proclaimed republics. Russia's actions are framed as support for remedial secession due to alleged human rights abuses by the Ukrainian government.⁴⁴ However, these claims are also heavily contested and viewed as part of Russia's broader strategy of territorial expansion.⁴⁵

Application to the Eastern Ukraine Referenda (2022)

Several stringent criteria must be met for remedial secession to be considered legitimate: the existence of a distinct group facing severe persecution, the exhaustion of all other remedies, and recognition by the international community.⁴⁶ The secession of Donetsk and Luhansk has sparked debate on self-determination in international law. While self-determination grants groups political autonomy, it was historically applied to decolonization.

Remedial secession provides an alternative framework, asserting that secession is justified only when discrimination results in human rights violations with no internal remedies.⁴⁷ In the context of Eastern Ukraine, the conflict involving pro-Russian separatist groups is often claimed to be a reaction to discriminatory treatment by the Ukrainian government.⁴⁸ Self-determination and remedial secession often conflict with territorial integrity,

⁴³ Simone F. van den Driest, "Crimea's Separation from Ukraine: An Analysis of the Right to Self-Determination and (Remedial) Secession in International Law," *Netherlands International Law Review* 62, no. 3 (December 30, 2015): 329–63, <https://doi.org/10.1007/s40802-015-0043-9>; Vitalis Mbah Nankobe, "The Secession of Crimea from Ukraine: An International Law Perspective," *Journal of Global Social Sciences* 2, no. 6 (June 1, 2021): 1–14, <https://doi.org/10.31039/jgss.v2i6.29>.

⁴⁴ H J Triyana, "Relevance Of The Remedial Secession Theory For Indonesia's Territorial Integrity," *Indonesian Journal of International Law* 21, no. 1 (2023): 107–50, <https://doi.org/10.17304/ijil.vol21.1.5>; Agnieszka Szpak, "Ukraine: Remedial Secession and Russian Aggression," *Journal of Contemporary European Studies* 31, no. 3 (July 3, 2023): 1012–26, <https://doi.org/10.1080/14782804.2022.2106956>.

⁴⁵ R Dodonov and O Aleksandrova, "Discourse Techniques For Constructing Secessions: The Experience Of Donbass And Latgale," *Ideology and Politics Journal* 1, no. 12 (2020): 99–115, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85096943884&partnerID=40&md5=86bb10829c337452f8ce36108577003f>.

⁴⁶ Ali Omid, "Analyzing the Compatibility of the Remedial Right of Secession about the Nagorno-Karabakh Conflict," *Region: Regional Studies of Russia, Eastern Europe, and Central Asia* 11, no. 2 (July 2022): 167–91, <https://doi.org/10.1353/reg.2022.0011>.

⁴⁷ Satenik R Aleksanian, "On Theory of Remedial Secession in Contemporary International Law," *Moscow Journal of International Law*, no. 4 (2017): 141–50, <https://doi.org/10.24833/10869-0049-2017-4-141-150>.

⁴⁸ Marlene Laruelle, "Introduction to the Special Issue: The Donbas Conflict," *Nationalities Papers* 47, no. 5 (2019): 715–18, <https://doi.org/10.1017/nps.2019.42>.

prohibiting unilateral border changes without government consent.⁴⁹ A key issue in Eastern Ukraine is that the referendum was not internationally recognized and was conducted amid external influence.⁵⁰ The region's socio-political conditions further complicate secession claims under remedial secession theory.⁵¹ Therefore, further analysis is needed to assess whether the situation in Eastern Ukraine meets the criteria for remedial secession.

The Claim Must Derive From The Eastern Ukrainian People

For remedial secession to be valid, the claim must originate from a group recognized as a "people" with a strong connection to a specific territory.⁵² International law lacks a precise definition of "people," but it generally refers to a group with a shared identity regarding culture, language, religion, or territorial ties. UNESCO provides shared history, culture, language, religion, and territorial attachment criteria.

Biafra's 1967 secession attempt from Nigeria illustrates the importance of this criterion. The Ibo ethnic group lacked a significant territorial connection to Biafra despite having a distinct cultural identity, leading to the rejection of their secessionist claim by the international community.⁵³ Similarly, in the Quebec case, the Supreme Court of Canada ruled that secession is inadmissible without evidence of systemic discrimination. While Quebec has a unique cultural identity, the absence of state-led oppression rendered its claim legally weak.⁵⁴

In Eastern Ukraine, pro-Russian separatists face similar obstacles. Although most residents in Donetsk and Luhansk speak Russian, they do not meet the criteria of a "people" with a distinct historical and cultural identity separate from Ukraine.⁵⁵ Historically, these regions have been integral to Ukraine, with their populations fully engaged in the country's political and social life before the conflict. There is no substantial evidence that separatist

⁴⁹ David Lefkowitz, "A Critical Introduction," in *Philosophy and International Law*, 2020, 207.

⁵⁰ Tymur Korotkyi and Nataliia Hendel, "The Legal Status of the Donetsk and Luhansk 'Peoples' Republics'" (The Hague: TMC Asser Press, 2018), 145–70, https://doi.org/10.1007/978-94-6265-222-4_7.

⁵¹ Taras Kuzio, "Russian Stereotypes and Myths of Ukraine and Ukrainians and Why Novorossiia Failed," *Communist and Post-Communist Studies* 52, no. 4 (2019): 297–309, <https://doi.org/10.1016/j.postcomstud.2019.10.007>.

⁵² United Nations Educational, "International Meeting of Experts for the Elucidation of the Concepts of Rights of Peoples."

⁵³ Crawford, "The Creation of States in International Law."

⁵⁴ Jure Vidmar, "Remedial Secession in International Law: Theory and (Lack of) Practice," *St Antony's International Review* 6, no. 1 (2010): 37–56, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2060318.

⁵⁵ Lefkowitz, "A Critical Introduction."

groups represent a homogenous community with a territorial connection strong enough to justify secession.⁵⁶ Under international law, a legitimate secession claim requires a well-organized, socially cohesive group closely tied to the territory.⁵⁷ Eastern Ukraine's separatist movement is driven more by geopolitical influence than by genuine identity-based grievances, undermining its legal justification for remedial secession.

No Discrimination Leading To Human Rights Violations By Ukraine

Pro-Russian separatists in Donetsk and Luhansk argue they face discrimination, but they do not meet the criteria of a distinct "people" under international law.⁵⁸ These regions have historically been integral to Ukraine, and no substantial evidence suggests that separatists form a homogeneous identity with strong historical ties warranting secession.⁵⁹ International law requires a well-organized, socially cohesive community linked to a claimed territory to justify secession.⁶⁰

In September 2022, referendums were held in Donetsk, Luhansk, Kherson and Zaporizhzhia.⁶¹ This referendum occurred after a series of clashes and mass actions since 2004. This began with the Orange Revolution by the masses due to differences in political views, culminating in the issuance of the Ukrainization policy and the issuance of the Law on Language, which was passed in 2012.⁶² Eastern Ukrainians viewed Ukrainization policies and language restrictions as discriminatory.⁶³ Locals feel that this policy not only belittles the native language of the Eastern Ukrainian people but also threatens the survival of a culture that has been an essential part of the Eastern Ukrainian people's identity for many years.

On this basis, the people of Eastern Ukraine view that the actions experienced by the people of Eastern Ukraine are classified as a form of discrimination leading to human rights violations. This perception encourages the people of Eastern Ukraine to claim the right to remedial secession, which, in principle, has been recognized in international law, especially in customary international law. This right to secession is viewed by the people of Eastern

⁵⁶ Nino Oktorino, *Ukraina: The Road to Armageddon* (Jakarta: PT Elex Media Komputindo, 2022).

⁵⁷ Max Planck, "Encyclopedia of Public International Law" (Oxford University Press, 2011).

⁵⁸ David R. Marples, *The War in Ukraine's Donbas: Origins, Contexts, and the Future* (Budapest: Central European University Press, 2021).

⁵⁹ Oktorino, *Ukraina: The Road to Armageddon*.

⁶⁰ Planck, "Encyclopedia of Public International Law."

⁶¹ Novi Christiastuti, "Rusia Gelar Referendum Di 4 Wilayah, Ukraina Sebut Warga Dipaksa," dw.com, 2022.

⁶² Oktorino, *Ukraina: The Road to Armageddon*.

⁶³ Marples, *The War in Ukraine's Donbas: Origins, Contexts, and the Future*.

Ukraine as a legitimate step to overcome the injustice felt due to the human rights violations experienced by the people of Eastern Ukraine.⁶⁴

Another relevant event occurred in South Sudan. This event originated from the British colonial policy of dividing Sudan into two regions with different treatments. The northern region received priority in political and economic development, while the southern area was marginalized.⁶⁵ These inequalities were exacerbated after independence by homogenization policies, including forced Islamization efforts, which marginalized traditional African beliefs and Christianity in the southern regions.⁶⁶

Ethnic and cultural divisions deepened the conflict. Northerners, predominantly Muslim and of Arab descent, often discriminated against black Southerners, viewing them as second-class citizens. This was further exacerbated by a history of slavery, where Southerners were subjected to forced labor and conversions to Islam to escape enslavement.⁶⁷ Economic inequality also exacerbated tensions, with the North dominating resources and economic access.⁶⁸

The prolonged conflict, spanning over 20 years, led to the 2005 Nairobi Comprehensive Peace Agreement (CPA), granting South Sudan special economic status and the right to hold a referendum.⁶⁹ The 2011 referendum overwhelmingly favored secession, leading to South Sudan's recognition as the 193rd UN member state. This case is a significant precedent where the international community acknowledged remedial secession as a necessary resolution to systemic discrimination and human rights violations, reinforcing its role in international law.⁷⁰

In contrast, no substantial evidence shows that Ukraine systematically violated human rights in Eastern Ukraine. However, Human Rights Watch (HRW) (2015) reported violations of war laws and human rights. Ukrainian government forces and rebel groups both used weapons indiscriminately in civilian areas, including Grad, Smerch, and Uragan rockets with explosive

⁶⁴ Amnesty International, "The State of the World's Human Rights: 2024" (London, UK, 2025).

⁶⁵ Solomon Dersso, "International Law and the Self-Determination of South Sudan," *Institute for Security Studies Papers*, no. 231 (2012).

⁶⁶ *Ibid.*

⁶⁷ Home Office UK Border Agency, "Republic of Sudan: Country of Origin Information (COI)" (London, UK, 2012).

⁶⁸ Minority Rights Group International, "World Directory of Minorities and Indigenous Peoples–Sudan: Nuba," 2018.

⁶⁹ Edward Thomas, *South Sudan: A Slow Liberation* (London: Bloomsbury Publishing, 2015).

⁷⁰ Pieter Esterhuysen, *Africa at a Glance: Facts and Figures* (Africa Institute of South Africa, 2008).

submunitions that caused civilian casualties.⁷¹ Separatists targeted suspected Kiev supporters through beatings, executions, kidnappings, and forced labor.⁷²

Ukrainian forces also conducted arbitrary arrests, detaining over 1,000 individuals, with reports of torture.⁷³ The Aydar battalion was accused of enforced disappearances and abuse. Thirteen journalists were illegally detained, while media workers faced threats and bans, leading to seven deaths. These violations highlight disregard for international humanitarian law.⁷⁴

HRW (2023) documented severe Russian violations, including attacks on civilians, hospitals, and schools.⁷⁵ Russia used cluster weapons, tortured prisoners, and forcibly transferred Ukrainian civilians. Reports detail sexual violence, executions, and the mistreatment of detainees.⁷⁶ Ukrainian forces also committed abuses, including the use of banned weapons and the mistreatment of Russian prisoners. Arbitrary detention and ill-treatment of migrants were also reported.⁷⁷

The UN High Commissioner for Human Rights (OHCHR) stated Russia's annexation of Donetsk, Luhansk, Kherson, and Zaporizhzhia violated international law.⁷⁸ The imposition of Russian laws and property confiscations breached humanitarian norms. Referendums held in occupied areas were deemed illegitimate due to military coercion. OHCHR also recorded 133 cases of conflict-related sexual violence, mainly in Russian detention centers. Ukrainian prisoners endured torture and inhumane conditions, while forced civilian transfers to Russia violated international law.⁷⁹

In Ukrainian-controlled areas, reports included enforced disappearances and torture of suspected Russian collaborators.⁸⁰ Gender-based violence was recorded, including rape threats against detainees.⁸¹ Ukrainian media laws raised concerns over minority language discrimination. Restrictions on religious freedom affected Russian Orthodox Church members, leading to detentions and bans. These violations, documented by HRW and OHCHR, indicate potential war crimes and crimes against humanity.⁸²

Based on HRW and OHCHR reports, human rights violations in

⁷¹ Human Rights Watch, "Ukraine: Events of 2014. World Report," 2015.

⁷² *Ibid.*, p. 573.

⁷³ *Ibid.*, p. 572.

⁷⁴ *Ibid.*, p. 574.

⁷⁵ Human Rights Watch, "World Report 2023: Ukraine — Events of 2022."

⁷⁶ *Ibid.*, p. 638.

⁷⁷ *Ibid.*, p. 636.

⁷⁸ United Nations High Commissioner for Human Rights, "Report on the Human Rights Situation in Ukraine: 1 August 2022 – 31 January 2023. 2023. Pg. 12,," 2022.

⁷⁹ *Ibid.*, p. 16.

⁸⁰ *Ibid.*, p. 26.

⁸¹ *Ibid.*, p. 27–28.

⁸² *Ibid.*, p. 31–32.

Eastern Ukraine stem from armed conflict, not systematic discrimination by Ukraine.⁸³ Russia's influence in provoking separatist groups played a significant role in escalating violence. Consequently, human rights abuses in Eastern Ukraine do not meet the legal threshold for a remedial secession claim.

The Absence of Ukraine's Consent

The role of the parent country in granting permission to people who want to secede is often closely related to its failure to provide a legitimate political or legal solution to the people's demands. When dialogue and efforts to resolve conflicts through constitutional channels do not produce adequate solutions, aspirations for secession tend to grow stronger. This reflects the inability of the parent country to accommodate the needs and aspirations of the people within the framework of a unitary state.

Research shows that political exclusion can exacerbate discontent among marginalized populations, increasing the risk of armed conflict. Lack of access to the state and limited opportunities for peaceful resolution of grievances can exacerbate tensions.⁸⁴ In such conditions, people who feel marginalized often see secession as a more promising alternative.

As the role of the parent country itself was discussed in the case of Quebec in Canada, the Supreme Court of Canada affirmed that there is no right to secede unilaterally under international law, especially when the rights of citizens remain protected by the parent country.⁸⁵ The Court stated that secession is unacceptable as long as the parent state can protect the rights of its citizens and provide a legitimate political solution. This ruling reinforces that secession is only acceptable in exceptional circumstances where the parent state has failed to protect the fundamental rights of the secessionist group. The above is in line with Cassese's opinion. This emphasizes that secession can only be justified if there are human rights violations by the parent country and the country's failure to protect the group seeking to secede adequately.⁸⁶

This is similar to what happened in Eastern Ukraine. As HRW and OHCHR reports show, the Ukrainian government is not involved in systematic violations of the rights of pro-Russian citizens in the Donetsk and Luhansk regions. On the contrary, the Ukrainian government has sought to maintain its territorial integrity in accordance with international law.

The Ukrainian government also rejected the referendum held by the

⁸³ *Ibid.*, p. 1.

⁸⁴ Micha Germann and Nicholas Sambanis, "Political Exclusion, Lost Autonomy, and Escalating Conflict over Self-Determination," *International Organization* 75, no. 1 (2021): 178–203, <https://doi.org/10.1017/S0020818320000557>.

⁸⁵ Vidmar, "Remedial Secession in International Law: Theory and (Lack of) Practice."

⁸⁶ Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge: Cambridge University Press, 1995).

separatists because it violated the Ukrainian Constitution. Article 73 of the Ukrainian Constitution explicitly states that changes to the country's borders can only be made through a national referendum involving the entire Ukrainian people, not through a unilateral referendum in a particular region. This effort demonstrates the Ukrainian government's commitment to maintaining its territorial integrity without violating the fundamental rights of its citizens.⁸⁷

This rejection aligns with UN General Assembly Resolution No. 68/262, which affirms the importance of preserving Ukraine's territorial integrity. The resolution states that the referendums held by separatist groups in Ukrainian territories, including Donetsk and Luhansk, have no legitimate legal basis.⁸⁸ The resolution was supported by a majority of UN member states, indicating an international consensus to reject the legality of secession carried out by separatist groups in Eastern Ukraine. In addition, Russia's support for pro-Russian separatist groups in Eastern Ukraine is seen as a violation of the principle of non-interference, as stipulated in Article 2(4) of the United Nations (UN) Charter. This principle prohibits foreign states from interfering in the domestic affairs of another state, including in the form of military or political support for separatist groups.⁸⁹

In addition, Russia's support for separatist groups in Eastern Ukraine is seen as a violation of the principle of non-intervention, which is one of the main pillars of international law. This principle is affirmed in Article 2(4) of the United Nations Charter, which prohibits foreign states from interfering in the domestic affairs of other states. Russia's military and political support for separatist groups has exacerbated the conflict in the region, but it does not provide a legitimate legal basis for secession.⁹⁰

Thus, the role of the mother country in maintaining its territorial integrity remains an important element of international law. The Ukrainian government has demonstrated its commitment to protecting the rights of its citizens in accordance with national and international law. There is no evidence that the Ukrainian government has completely failed to protect the fundamental rights of pro-Russian citizens in the Donetsk and Luhansk regions. On the contrary, the secession claims by pro-Russian separatists have no legitimate legal basis to be considered as a remedial secession. UN

⁸⁷ United Nations, "So-Called Referenda during Armed Conflict in Ukraine 'Illegal', Not Expressing Popular Will, United Nations Political Affairs Chief Tells Security Council," 2022.

⁸⁸ United Nations General Assembly, "Resolution Adopted by the General Assembly on 27 March 2014, 68/262 Territorial Integrity of Ukraine, A/RES/68/262."

⁸⁹ Deni Yusup Permana, "Russia's Violation of the Principle of Non-Intervention Against Ukraine in the Perspective of International Law," *HERMENEUTIKA: Jurnal Ilmu Hukum* 6, no. 2 (2022): 226–34, <https://doi.org/10.33603/hermeneutika.v6i2.7448>.

⁹⁰ *Ibid.*

resolutions and the principle of non-interference further strengthen the legitimacy of the Ukrainian government's actions in maintaining its territorial integrity.

Conclusion

In conclusion, only under very specific and extraordinary circumstances may remedial secession be a valid method of acquiring territory under international law. Such legitimacy emerges when systematic and protracted human rights violations occur against a distinct people, when all internal remedies have been exhausted, and when secession is the only practical option for redress. Bangladesh (1971), Kosovo (2008), and South Sudan (2011) are historical examples that show that meeting these stringent cumulative requirements is necessary for secession to be accepted internationally.

According to this framework, the 2022 referenda in Eastern Ukraine fall short of the moral and legal requirements for legitimate secession. Instead of intentional persecution by the Ukrainian government, the alleged violations of human rights in Donetsk and Luhansk were mainly caused by armed conflict and outside intervention. Furthermore, Ukraine's decision to reject the referendum is consistent with both its constitutional framework and the UN General Assembly Resolution 68/262, which reaffirms the principle of territorial integrity. As a result, international law does not recognize Eastern Ukraine's purported remedial secession.

By making clear the restrictive nature of remedial secession in non-colonial contexts, this study adds to the continuing discussion about the boundaries of secession and self-determination. It also emphasizes how urgently more precise international rules are needed to stop the abuse of humanitarian excuses for territorial expansion. The relationship between remedial secession, hybrid warfare, and international recognition in comparable conflicts may be further investigated in future studies.

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