

Secession in International Law: Could ISIS Become a Legally Recognized State?

Chelsea Elizabeth Bellew

Follow this and additional works at: https://digitalcommons.onu.edu/onu_law_review



Part of the [Law Commons](#)

Recommended Citation

Bellew, Chelsea Elizabeth () "Secession in International Law: Could ISIS Become a Legally Recognized State?," *Ohio Northern University Law Review*. Vol. 42: Iss. 1, Article 6.

Available at: https://digitalcommons.onu.edu/onu_law_review/vol42/iss1/6

This Article is brought to you for free and open access by the ONU Journals and Publications at DigitalCommons@ONU. It has been accepted for inclusion in Ohio Northern University Law Review by an authorized editor of DigitalCommons@ONU. For more information, please contact digitalcommons@onu.edu.

Ohio Northern University Law Review

Student Comments

Secession in International Law: Could ISIS Become a Legally Recognized State?

CHELSEA ELIZABETH BELLEW*

I. INTRODUCTION

The Islamic State of Iraq and the Levant has become known around the world for its violent acts in the name of Islamic fundamentalism, under Abu Bakr al-Baghdadi, with its involvement in the Syrian civil war.¹ The goal of this group—commonly referred to as ISIS, ISIL, or the Islamic State—is to unite the Sunni majority in the Levant region in the Middle East.² The Levant region consists of Syria, Jordan, Israel, Palestine, Lebanon, Cyprus and part of southern Turkey.³ ISIS has taken portions of Iraq and Syria by force, and is continuing to pursue control of other cities in the Levant Region.⁴

ISIS's main objective is to free Sunnis from Shia oppression,⁵ and it has become well known for its many human rights violations that were publicized on social media sites accessible around the world.⁶ Fights between Shias and Sunnis are prevalent in the Middle East, with each group

* Licensed Florida Attorney; Ohio Northern University, J.D., LL.M. in Democratic Governance and the Rule of Law, 2015; Denison University, B.A. in Economics, B.A. in International Studies, 2012. I would like to thank Professor Michael Lewis for his help in researching and writing this piece. His knowledge of international law was instrumental to the formulation of this Comment and his passing is a great loss to the ONU community.

1. *ISIS Fast Facts*, CNN (Oct. 14, 2015 2:54 PM), <http://www.cnn.com/2014/08/08/world/isis-fast-facts/>.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *ISIS Fast Facts*, *supra* note 1.

claiming that all individuals should strictly adhere to its view of Islam.⁷ Problems with Syria's government and instability in Iraq permitted ISIS to take control of those countries in the midst of internal fighting and poor governance.⁸

It is clear that ISIS desires to unite all Sunnis in a specific territory in the Middle East and the legitimacy of this unification can be analyzed under widely accepted customs of international law.⁹ Questions about how to stop this violence and hold perpetrators accountable for violence against non-Sunnis in the region have been uttered by many.¹⁰ The first question that must be asked under current international law principles is: Could ISIS become a state and govern the Sunni majority it seeks to unite? Many independence movements around the world have contributed to an ever-changing international landscape and forced institutions in the international community to answer questions about the legitimacy of secession by minority groups from pre-existing states.¹¹ Additionally, instability and oppression of these minority groups has forced several countries to face the question of how to control secession under domestic law.¹² Officials from the United Kingdom have hypothesized that ISIS could be the world's first terrorist state, creating a need to analyze ISIS's characteristics under current international law on the formation of nation states.¹³

This Comment seeks to answer whether ISIS could become a state under principles of international law, as well as to provide a discussion of the many attempts at independence of minority populations in countries around the world. Part II will explain applicable treaties and international case law that are used by international and domestic courts in deciding whether acts of secession should be permitted by a pre-existing state.¹⁴ Part III will summarize and explain recent movements in this area of international law with case studies where treaties and case law have been applied when a group has tried to secede from its mother state.¹⁵ Part IV

7. *Id.*

8. *Id.*

9. *Id.*

10. Attacks in France have caused the international community to rethink its strategy to fight ISIS when violence expanded beyond the Middle East. See Alex Barker, *Barack Obama Leads G20 Vow to Step up Fight Against ISIS*, CNBC, <http://www.cnbc.com/2015/11/15/financial-times-barack-obama-leads-g20-vow-to-step-up-fight-against-isis.html>; Neil MacFarquhar, *Russia Allies With France Against ISIS Saying that Jet that Crashed in Sinai Was Bombed*, N.Y. TIMES, http://www.nytimes.com/2015/11/18/world/europe/russia-plane-crash-bomb.html?_r=0.

11. *ISIS Fast Facts*, *supra* note 1.

12. See *infra* Part III.

13. Kounteya Sinha, *ISIS Could Become World's First Terrorist State, Warns UK*, TIMES INDIA (Oct. 1, 2014 6:07 AM), <http://timesofindia.indiatimes.com/world/uk/ISIS-could-become-worlds-first-terrorist-state-warns-UK/articleshow/43946422.cms>.

14. See *infra* Part II.

15. See *infra* Part III.

will use these treaties and international case law, in addition to the case studies from part III, to analyze whether ISIS could legitimately become a state.¹⁶ As Part V will discuss, some requirements for statehood are met by the current composition of ISIS; however, the human rights violations ISIS is committing will force the international community to reject statehood, should it pursue such a status.¹⁷

II. RELEVANT TREATIES, RECENT INDEPENDENCE MOVEMENTS, AND RECOGNITION OF STATEHOOD

A brief overview of relevant conventions and genocide cases from the International Court of Justice (hereinafter “ICJ”) on the dispute between Bosnia and Herzegovina and Serbia are necessary to establish that the right of self-determination does exist under principles of international law. While this right is not absolute, it is clear that many treaties recognize it, and it is provided for when the government treats communities unequally. These treaties would likely be used in a discussion of independence for ISIS because they establish standards of secession to be applied when groups unilaterally declare independence.¹⁸

a. *Montevideo Convention on the Rights and Duties of States*

The criteria that must be met for a state to be recognized under international law can be found in the *Montevideo Convention on the Rights and Duties of States*.¹⁹ Article 1 states that a group must have “(a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states” to be recognized as an autonomous state.²⁰ The *Third Restatement of the Foreign Relations Law of the U.S.* further clarifies how the four requirements are met under the *Convention*.²¹ A defined territory means that the “state” must have defined borders,²² and this includes no border disputes with the state from which the group is seceding.²³ Specifically, this prong of statehood requires that the entity have a specific piece of land that it claims.²⁴ The second prong of the *Montevideo Convention* requires that a “significant number of permanent

16. *See infra* Part IV.

17. *See infra* Part V.

18. *See infra* Part III.

19. *See* Montevideo Convention on the Rights and Duties of States, Dec. 26, 1933, 49 Stat. 3097, 165 L.N.T.S. 19, available at <http://www.cfr.org/sovereignty/montevideo-convention-rights-duties-states/p15897>.

20. *Id.* at art. 1.

21. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE US § 201 (1987).

22. *Id.* at § 201 cmt. b.

23. *Id.*

24. *Id.*

inhabitants [be] in its territory”²⁵ Under the third prong, the *Restatement* defines a government as a body that has the ability to make decisions and carry out governmental functions.²⁶ The last prong requires a body that can represent the population in relations with other states.²⁷ The most important characteristic of these four prongs is the capacity to carry out relations with other countries. When other countries recognize the entity as a state and enter into binding agreements with its government, the entity will gain legitimacy in the international community.²⁸

The *Montevideo Convention* also has several articles that govern the interaction of states and how states should resolve disputes. Article 4 dictates that states in existence are equal when they meet the criteria to be a state under international law.²⁹ Article 8 states that “[n]o state has the right to intervene in the internal or external affairs of another.”³⁰ Further, Article 10 states that an essential interest of existing states is the conservation of peace and instructs that any differences arising between states should be settled by pacific means.³¹

Article 11 is the most important to determine whether ISIS could attain statehood and it declares:

The contracting states definitely establish as the rule of their conduct the precise obligation not to recognize territorial acquisitions or special advantages which have been obtained by force whether this consists in the employment of arms, in threatening diplomatic representations, or in any other effective coercive measure. The territory of a state is inviolable and may not be the object of military occupation nor of other measures of force imposed by another state directly or indirectly or for any motive whatever even temporarily.³²

Thus, the *Montevideo Convention* clearly defines the criteria for becoming a state factor by factor.³³ While most of these factors seem easy to satisfy, the most difficult hurdle is recognition by other states because it is unclear exactly how many other states must recognize that entity as a state or how

25. *Id.* at § 201 cmt. c.

26. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE US § 201 cmt. d.

27. *Id.*

28. *Montevideo Convention on the Rights and Duties of States*, *supra* note 19, at art. 3; RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE US § 201 cmt. e.

29. *Montevideo Convention on the Rights and Duties of States*, *supra* note 19, at art. 4.

30. *Id.* at art. 7.

31. *Id.* at art. 10.

32. *Id.* at art. 11.

33. *Id.* at art. 1.

many must enter into political agreements with them to pass this prong of the test.

As will become clear in the case studies about groups and countries that attempted to become states, self-determination by referendum is also important if pre-existing states are to recognize a newly created state. Gaining recognition from other states can be a slow moving process that hinders these entities from the rights given with full statehood.

b. Other Treaties and Sources of International Law

Other sources of international law that discuss self-determination as a right of the people are the *International Covenant on Civil and Political Rights*,³⁴ *International Covenant on Economic, Social, and Cultural Rights*,³⁵ and Article 1 of the *U.N. Charter*.³⁶ These sources are cited throughout case law and are referenced in situations where smaller groups of a country are arguing for the right to secede from a larger state.³⁷ These covenants show that the right to self-determination is one widely recognized under international law by the international community and can be used by minority groups that are not treated equally by the government in power.

Article 1 of the *UN Charter* declares the United Nations' purpose as follows:

To maintain international peace and security, and to that end: to take collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace; [t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace; [t]o achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging

34. International Covenant on Civil and Political Rights, UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (Dec. 16 1966), available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

35. International Covenant on Economic, Social, and Cultural Rights, UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, (Dec. 1966), available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

36. U.N. Charter, available at <http://www.un.org/en/sections/un-charter/chapter-i/index.html>.

37. See *infra* Part III.

respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and [t]o be a centre for harmonizing the actions of nations in the attainment of these common ends.³⁸

While this charter only applies to member states of the United Nations, it establishes that self-determination was recognized when international institutions were first created. While United Nations' documents are soft law, and therefore not binding documents, Article 1 explains that the purpose of these institutions is to promote peace and equal rights amongst people. The international community is averse to violence and that will clearly affect its view of ISIS.

The *International Covenant on Civil and Political Rights* states, “[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”³⁹ Article 2 states that all individuals within its territory should have rights recognized without distinction.⁴⁰ These same principles are discussed in the *International Covenant on Economic, Social and Cultural Rights* because they are fundamental principles to the subjects of both treaties and extend to rights recognized under each covenant.⁴¹

In 1970, the General Assembly of the United Nations adopted the *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*.⁴² This Declaration has been used in multiple cases of secession because it reinforces that the principle of equal rights and self-determination of peoples is an internationally recognized right.⁴³ The Declaration states:

Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples . . . bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well

38. U.N. Charter, *supra* note 36, at art. 1.

39. International Covenant on Civil and Political Rights, *supra* note 34, at art. 1.

40. *Id.* at art. 2.

41. See International Convention on Economic, Cultural and Social Rights, *supra* note 34, at art.'s 1-2.

42. Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, G.A. Res. 2625 (XXV), U.N. GAOR, 25th Sess., U.N. Doc. A/8082 (Oct. 24, 1970), available at <http://www.un.org/documents/ga/res/25/ares25.htm>.

43. See Parts III.a.i.-ii.

as a denial of fundamental human rights, and is contrary to the Charter.⁴⁴

The Declaration goes on to describe how the right to self-determination of the people should not be construed as permitting groups to dismember a pre-existing state that protects and treats all persons equally, or to impair its political and territorial unity.⁴⁵ A colony of non-self-governing territory must have a distinct status from the state controlling it, and this status remains in place until the people of the non-self-governing territory use their right of self-determination.⁴⁶ This Declaration is meant to guide member states on the right of self-determination and is the first to recognize the right of oppressed people to secede from the government oppressing them.⁴⁷

c. ICJ Opinion on Bosnia and the Genocide Convention

In 2007, the ICJ heard the case between Bosnia and Herzegovina, Serbia, and Montenegro on violations of the *Convention on the Prevention and Punishment of the Crime of Genocide*.⁴⁸ Bosnia argued that Yugoslavia had breached its legal obligations toward the people of Bosnia under the *Geneva Conventions*, the *Genocide Convention*, customary international laws of war, and the *United Nations Charter*.⁴⁹ Bosnia and Herzegovina asked the ICJ to declare that Serbia and Montenegro had tried to destroy ethnic or religious groups in Bosnia's territory by killing and torturing Muslims.⁵⁰ Serbia and Montenegro argued that the acts Bosnia alleged did not happen, asserting that there was no "intention of committing genocide" and that these acts were not taken out against a specific religious group.⁵¹ Serbia argued that genocide did not happen, and if it did, it was Bosnia committing these acts against Serbs within its territory.⁵² Serbia and Montenegro also argued that the ICJ had no jurisdiction over them to decide

44. Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, *supra* note 42.

45. *Id.*

46. *Id.*

47. *See id.*

48. Application of Convention on Prevention and Punishment of the Crime of Genocide (Bosn. & Herz v. Serb. & Montenegro), 2007 I.C.J. 26, ¶ 1 (Feb. 26), available at <http://www.icj-cij.org/docket/files/91/13685.pdf> [hereinafter *Crime of Genocide*].

49. *Id.* ¶ 64.

50. *Id.* ¶ 65.

51. *Id.*

52. *Id.*

the case.⁵³ The court found that it had jurisdiction under Article IX of the *Genocide Convention*.⁵⁴

The ICJ's opinion in Bosnia's case established that a state has an obligation to protect its people from violations of international law, such as committing genocide, crimes against humanity, or war crimes.⁵⁵ This responsibility arises under the *Genocide Convention*, which was discussed at length in the opinion.⁵⁶ The court noted that states have an affirmative duty not to violate the *Convention on Genocide*, a principle also adopted by the UN Assembly.⁵⁷

The *Convention on Genocide* states that genocide is an

act[] committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.⁵⁸

The court also stated, “[a]ccording to Article IV, persons committing any of those acts shall be punished whether they are constitutionally responsible rulers, public officials or private individuals.”⁵⁹ States must fulfill their obligations under both international law and international humanitarian law.⁶⁰ While the ICJ found that genocide did not take place in Srebrenica during the conflict between Bosnia and Serbia, the state's obligation to protect its people from genocide is a clearly pronounced principle from the case.⁶¹ This case demonstrates how hostile the international community is to human rights atrocities, and the standards articulated in this case could apply to ISIS if it was found to be a state.

53. Crime of Genocide, *supra* note 48, at ¶ 66.

54. *Id.* ¶ 140.

55. *Id.* ¶ 155.

56. *Id.*

57. *Id.* ¶ 161.

58. Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9 1948, art. II, available at <http://www.preventgenocide.org/law/convention/text.htm>.

59. Crime of Genocide, *supra* note 48, at ¶ 144.

60. *Id.* ¶ 148.

61. *See generally id.*

III. ATTEMPTS TO BECOME NEW STATES

a. Violent Conflicts and Peaceful Referendums

While the break up of old states to form new states is not a new topic in international law, interest has peaked with recent events in Kosovo, South Sudan, Crimea, Scotland, Spain, and Canada.⁶² Some of these disputes involved violence and oppression of minorities while other events represent more peaceful means available in stable societies. The different results reached in each of these cases depend on the circumstances involved. Some were resolved with the help of the ICJ while other groups are still trying to gain independence through alternative means.

A survey of recent declarations of independence under general principles of international law is necessary to understand the current context in which ISIS would be evaluated for independence. While there is a general prohibition on the use of force and illegal military actions by states, there are legitimate mechanisms recognized under international law that ISIS could pursue if it met the criteria under the *Montevideo Convention*.

i. Kosovo

The secession of Kosovo was a result of conflict between Albanians and Serbians in Serbia after the break up of Yugoslavia.⁶³ This longstanding conflict between these two ethnic groups came to a head in the 1980s when Milosevic took over rule of Serbia, allowing Serbs to take control of Kosovo's radios, schools, museums, and other public places.⁶⁴ Albanians were not allowed to speak or read books in their native language—firmly establishing complete denial of equality for Albanians by the Serbian government.⁶⁵ Eventually, this oppression led to violence in the 1990s and Kosovars and Serbians began fighting one another.⁶⁶ After the United Nations intervened to end the violence, Kosovo unilaterally declared independence, which was and still is disputed by Serbia today.⁶⁷

In 2010, the ICJ issued an advisory opinion on whether Kosovo could unilaterally declare independence from Serbia.⁶⁸ The court first established that it had jurisdiction because it is permitted to make advisory opinions on

62. *See supra* Part III.

63. Robert Bideleux, *Kosovo's Conflict*, 48 HISTORY TODAY 11 (1998), available at <http://www.historytoday.com/robert-bideleux/kosovos-conflict>.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 2010 I.C.J. 403 (July 22) [hereinafter *Unilateral Declaration of Independence*].

questions of international law.⁶⁹ While the court could have exercised its discretion to decline to give an advisory opinion, it decided to hear the case because of the absence of compelling reasons to decline consideration of the legal question.⁷⁰ The opinion guided the General Assembly and the Security Council of the United Nations as to the appropriate action to take in Kosovo to end the violent conflict with Serbia.⁷¹

The question presented to the court for evaluation: “Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?”⁷² The court acknowledged that this is a different question than whether Kosovo has achieved statehood, which the court’s opinion did not answer.⁷³ The ICJ also referred to the Canada Supreme Court decision on Quebec—where the court decided that Quebec did not have a right to secede from Canada—to distinguish the question asked in this case.⁷⁴ This question revolved around whether this action was in accordance with principles of international law, not whether Kosovo had a right to secede.⁷⁵ The court notably declined to answer whether Kosovo could succeed and seemed to focus on recommendations from actors in the United Nations involved in the conflict.⁷⁶

The court then reviewed the factual background around Kosovo’s declaration of independence.⁷⁷ The court reviewed United Nations Security Council’s Resolution 1244 and the actions that followed the resolution that the Secretary-General used to stop the grave humanitarian crisis in Kosovo.⁷⁸ This included the creation of the United Nations Interim Administration Mission in Kosovo (UNMIK), which was given “[a]ll legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK[.]”⁷⁹ The Secretary-General was responsible for making reports to the Security Council and had power to oversee the “Provisional Institutions of Self-Government” while this interim administration was in place.⁸⁰

69. *Id.* ¶¶ 25, 28.

70. *Id.* ¶¶ 29-30.

71. *Id.* ¶ 33.

72. *Id.* ¶ 49.

73. Unilateral Declaration of Independence, *supra* note 68, at ¶ 51.

74. *Id.* ¶ 55.

75. *Id.* ¶ 56.

76. *Id.*

77. *Id.* ¶¶ 57- 63.

78. Unilateral Declaration of Independence, *supra* note 68, at ¶¶ 58-63.

79. *Id.* ¶ 61 (citing UNMIK regulation 1999/1).

80. *Id.* ¶ 62.

The court then described events that were “relevant” to the final status of Kosovo before its 2008 declaration of independence.⁸¹ Special envoys were appointed to carry out a Comprehensive Review of Kosovo,⁸² and to submit reports for the future status of Kosovo.⁸³ After envoys witnessed several rounds of negotiations, it was clear that Serbia and Kosovo were not going to agree upon many issues of autonomy relating to economic and governmental functions of Kosovo.⁸⁴ As the Special Envoy reported:

It is my firm view that the negotiations’ potential to produce any mutually agreeable outcome on Kosovo’s status is exhausted. No amount of additional talks, whatever the format, will overcome this impasse. The time has come to resolve Kosovo’s status. Upon careful consideration of Kosovo’s recent history, the realities of Kosovo today and taking into account the negotiations with the parties, I have come to the conclusion that the only viable option for Kosovo is independence, to be supervised for an initial period by the international community.⁸⁵

The Comprehensive Proposal discussed several independent institutions to be supervised by international structures,⁸⁶ and the Secretary-General supported a plan for an independent Kosovo.⁸⁷

In 2007, elections were held for Kosovo’s first parliamentary assembly.⁸⁸ In 2008, Kosovo’s declaration of independence was discussed and the Assembly adopted it in February of that year.⁸⁹ Serbia argued that this declaration was a unilateral secession of its territory, and therefore was an unlawful act under principles of international law.⁹⁰

General principles of international law permit self-determination as a way for groups to declare independence from the pre-existing state.⁹¹ The court cited the *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations* for the general principle that states cannot use

81. *Id.* ¶¶ 64-66.

82. *Id.* ¶ 64.

83. Unilateral Declaration of Independence, *supra* note 68, at ¶ 65.

84. *Id.* ¶¶ 67-68.

85. *Id.* ¶ 69.

86. *Id.* ¶ 70.

87. *Id.* ¶ 71.

88. Unilateral Declaration of Independence, *supra* note 68, at ¶ 73.

89. *Id.* ¶¶ 74-77.

90. *Id.* ¶ 77.

91. *Id.* ¶ 79.

the threat of force to violate territorial integrity of states.⁹² While the Security Council has denied declarations of independence in the past, the court stated that these denials were based upon the specific situation that the Security Council was reviewing.⁹³ Therefore, no general prohibition on unilateral declarations of independence exists under international law.⁹⁴ The development of the right to self-determination in light of domination and exploitation of minority groups may give portions of the population of a pre-existing state the right to secede.⁹⁵

The court concluded the opinion by stating that Kosovo's declaration of independence did not violate general international law principles.⁹⁶ Thereafter, the court held that the Security Council Resolution 1244 was a part of the Constitutional Framework of Kosovo and that it contributed to the resulting declaration.⁹⁷ Kosovo's declaration of independence was recognized after this case, even though it is still gaining international recognition by other states.

ii. South Sudan

In July 2011, South Sudan gained independence through use of a referendum after conflict and violence between groups in South Sudan and Sudan.⁹⁸ Ninety-nine percent of voters voted for independence from Sudan in the referendum.⁹⁹ After years of civil war between the south guerrilla movements and the Sudanese government, which resulted in millions of deaths, a peace agreement was signed in 2005 between the Sudanese and South Sudan governments.¹⁰⁰

On July 8, 2011, the United Nations Security Council adopted Resolution 1996 with the objective to "consolidate peace and security, and help establish conditions for development in the Republic of South Sudan, with a view to strengthening the capacity of the Government of the Republic of South Sudan to govern effectively and democratically and establish good relations with its neighbours"¹⁰¹ The next day the referendum was held, marking the completion of the six-year peace

92. *Id.* ¶ 80.

93. Unilateral Declaration of Independence, *supra* note 68, at ¶ 81.

94. *Id.*

95. *Id.* ¶ 82.

96. *Id.* ¶ 84.

97. *Id.* ¶¶ 80-105.

98. *South Sudan Profile - Overview*, BBC (Aug. 6, 2014), <http://www.bbc.com/news/world-africa-14069082>.

99. *Id.*

100. *Id.*

101. United Nations Security Council Resolution 1996 (2011) (July 8, 2011), http://www.un.org/en/peacekeeping/missions/past/unmis/documents/sres1996_2011.pdf.

agreement.¹⁰² No court decisions were necessary to finalize this declaration of independence and the legitimacy of the referendum was not questioned when secession took place.

Since independence, South Sudan has faced serious political, security, and humanitarian problems.¹⁰³ There was a dispute within the Sudan People's Liberation Movement.¹⁰⁴ President Kiir fired everyone in his cabinet, causing worry that the former Vice President may try to gain power by force (as he had already done in the 1990s), causing instability in the new nation.¹⁰⁵ The party in power was originally an army that wanted a change in leadership, and since this party has been in power in an independent South Sudan, fighting and disagreement has erupted like it did during the period of pre-independence.¹⁰⁶ Instability stems from weak institutions and lack of political will to make changes that could bring stability to the new country.¹⁰⁷ This case shows that while an act of secession may be successful and undisputed, independence may not result in the stability of the new country.

iii. *Crimea*

In early 2014, Crimea became the center of attention for international media outlets when Russia annexed Crimea from the Ukraine.¹⁰⁸ When former President Viktor Yanukovich decided not to sign a pact with the European Union, the people of Ukraine became angry, and tensions escalated between ethnic groups in the country.¹⁰⁹ Yanukovich was a pro-Moscow president, so he did not want to sign the agreement with the European Union with the possibility of alienating Russia in the process.¹¹⁰ Shortly after this political failure, Yanukovich was driven out of office and elections were held for a new president.¹¹¹ East Ukrainians supported closer ties with Russia while West Ukrainians wanted to create closer ties to the

102. *United Nations Mission in the Republic of South Sudan Background*, UNMISS, <http://www.un.org/en/peacekeeping/missions/unmiss/background.shtml> (last visited Nov. 3, 2015).

103. Lesley Warner, *South Sudan Post-Independence: Things Fall Apart*, WAR ON THE ROCKS (July 27, 2014), <http://warontherocks.com/2014/07/south-sudan-post-independence-things-fall-apart/#>.

104. *Id.*

105. *Id.*

106. Alex de Waal & Abdul Mohammed, *Breakdown in South Sudan: What Went Wrong—And How to Fix It*, FOREIGN AFFAIRS (Jan. 1, 2014), <http://www.foreignaffairs.com/articles/140617/alex-de-waal-and-abdul-mohammed/breakdown-in-south-sudan>.

107. *Id.*

108. *Crimea Profile - Overview*, BBC NEWS (Mar. 13, 2015), <http://www.bbc.com/news/world-europe-18287223>.

109. Catherine E. Shoichet et al., *Ukraine Crisis: Russia Stands Firm Despite Rebukes, Threats of Sanctions*, CNN (Mar. 3 2014 10:14 PM), <http://www.cnn.com/2014/03/03/world/europe/ukraine-tensions/>.

110. *Id.*

111. *Id.*

European Union.¹¹² These opposing interests caused the fighting and resulting problems for the Ukraine.

The new government in place was not stable, so Russian President Vladimir Putin took advantage of the opportunity to annex Crimea.¹¹³ Russian troops were deployed to aid in the conflict between ethnically Russian Ukrainians and other Ukrainian groups.¹¹⁴ Many international bodies were worried that the deployment of Russian troops would cause the already tense situation to escalate.¹¹⁵ It is clear that the action that Russia took violated the *United Nations Charter* and the international prohibition against force.¹¹⁶ Putin received permission from the Russian legislature to invade Crimea and use military force to protect Russian Ukrainians that were being threatened by the central government.¹¹⁷ After sending military actors to intervene in the conflict, fighting took place and Putin officially claimed the territory of Crimea with military force.¹¹⁸

A referendum was held in Crimea shortly after Putin's declaration, and to no one's surprise, the vote was overwhelmingly in favor of Crimea joining Russia.¹¹⁹ Yet, there are questions surrounding the legitimacy of this election and there are certainly questions surrounding Putin's interest in securing such votes since he was in favor of Crimea's annexation before the vote took place.¹²⁰ While international law favors the idea that states may be able to exercise self-determination in certain cases, it is not clear that this is what took place in Crimea in the midst of the conflict and fighting with Russia.¹²¹

While it is clear that this action of annexation violated principles of international law, what is not clear is how international bodies plan to deal with the violation—if they deal with it at all.¹²² The United States and other countries imposed sanctions on Russia for its annexation of Crimea,¹²³ but these sanctions do not seem to have any debilitating effect on Russia. Russia accounts for a large portion of trade with the European Union,

112. Marie-Louise Gumuchian et al., *Ukraine Mobilizes Troops After Russia's 'Declaration of War'*, CNN (Mar. 3, 2014 8:26 AM), <http://www.cnn.com/2014/03/02/world/europe/ukraine-politics/>.

113. *Id.*

114. Shoichet et al., *supra* note 109.

115. *Id.*

116. Gumuchian et al., *supra* note 112 (quoting NATO Secretary General Anders Fogh Rasmussen).

117. *Id.*

118. Ashley Fantz, *6 Questions—and Answers—About the Crisis in Ukraine*, CNN (Aug. 29, 2014 9:27 AM), <http://www.cnn.com/2014/08/28/world/europe/ukraine-russia-questions/index.html?iref=allsearch>.

119. *Id.*

120. *Id.*

121. *Id.*

122. *See id.*

123. Fantz, *supra* note 118.

creating problems for both countries on the either end of the sanction.¹²⁴ To date, no other action has been taken against Russia.

iv. Quebec

The French population of Quebec has consistently declared that it is diverse from the rest of Canada and that its minority population should be able to govern its territory.¹²⁵ Quebec would like autonomy over its population, legislation, and economy.¹²⁶ In 1998, after a referendum resulted in an affirmative vote to secede from Canada, the Supreme Court of Canada heard the issue of whether Quebec could unilaterally secede from the rest of the state.¹²⁷ After deciding that that the Canadian Constitution did not allow unilateral secession, the court looked to see whether a right of secession exists in international law.¹²⁸

The court found that international law does not grant the right to groups of a population to secede from their parent state in every case where a unilateral declaration of independence is made. The court also found that the absence of a prohibition on this right of secession in sources of international law does not mean secession is prohibited, but this was irrelevant when secession was prohibited by the parent state's domestic constitution.¹²⁹ The Canadian constitution does not permit unilateral secession of provinces and this prohibition does not violate international law.

The court then turned to a discussion of the phrase: "right of a people to self-determination."¹³⁰ The court stated that this right is a general principle of international law and that it has an elevated status compared to other rights discussed in international treaties.¹³¹ The right of peoples to self-determination is recognized in several international instruments: Article 1 of the *Charter of the United Nations*, Article 1 of the *International Covenants on Civil and Political Rights*, the *International Covenant on Economic, Social, and Cultural Rights*, the *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, and the *Vienna Convention*.¹³² The *Declaration on the Occasion of the Fiftieth Anniversary*

124. *Id.*

125. See generally Rene Levesque, *For an Independent Quebec*, FOREIGN AFFAIRS (July 1976), <http://www.foreignaffairs.com/articles/26074/rene-levesque/for-an-independent-quebec>.

126. *Id.*

127. Reference Re Secession of Quebec, [1998] 2 S.C.R. 217 (Can.).

128. *Id.*

129. *Id.* ¶ 112.

130. *Id.* ¶¶ 112-46.

131. *Id.* ¶ 114.

132. Reference Re Secession of Quebec, [1998] 2 S.C.R. 217 ¶¶ 115-16, 118-20.

of the United Nations also states that the right to self-determination does not authorize actions that would allow the territory or political unity of a state to be threatened.¹³³ The inclusion of this right in so many instruments affords it this elevated status.

The court then went on to briefly state that while defining what “peoples” means in these instruments may seem necessary, it is not necessary in this case because self-determination is only permitted in extreme cases.¹³⁴ The people of Quebec may have a similar interest, language, and culture that separates them from the rest of Canada, but this does not give them the right to external self-discrimination under international or domestic law.¹³⁵ Principles of self-determination have developed in international law with respect to the “territorial integrity of existing states” in mind.¹³⁶ Though the right to self-determination exists, it is clear that

various international documents that support the existence of a people’s right to self-determination also contain parallel statements supportive of the conclusion that the exercise of such a right must be sufficiently limited to prevent threats to an existing state’s territorial integrity or the stability of relations between sovereign states.¹³⁷

The court discussed that the aforementioned instruments do not permit Quebec to use the right of self-determination:

[S]uch rights are not to ‘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.’¹³⁸

Therefore, because the Canadian government was not treating the people of Quebec unfairly or discriminating against them, they were not permitted to use self-determination to secede from a country that allowed them to have

133. *Id.* ¶ 120.

134. *Id.* ¶¶ 125-26.

135. *Id.* ¶¶ 125-26.

136. *Id.* ¶ 127.

137. Reference Re Secession of Quebec, [1998] 2 S.C.R. 217 ¶ 127.

138. *Id.* ¶ 128 (emphasis omitted).

their own representatives participate in government institutions to further their minority interests.¹³⁹

The court went on to explain that there are only two classes of people permitted to use external self-determination to secede from a state: those under colonial rule or foreign occupation.¹⁴⁰ Colonial peoples are allowed to break away from imperial rule, and peoples that are “subject to alien subjugation, domination or exploitation outside a colonial context” are allowed to secede.¹⁴¹ The court noted that some scholars have identified a third method of unilateral secession when a group of peoples is blocked from being able to use the right of self-determination in any meaningful way, creating a right to secede from the country.¹⁴²

The court ultimately held that Quebec could not secede unilaterally because it is not in a disadvantaged position within the institutional structures of Canada that would allow them to secede under international law.¹⁴³ The court briefly discussed the principle of “effectivity” because *amicus curiae* argued that even if Quebec’s secession was not recognized under international law, it could become a political reality if Quebec was internationally recognized as its own state.¹⁴⁴ The court stated that international recognition can only take place after successful secession and that this principle does not apply to Quebec.¹⁴⁵ The court stated that if Quebec wants independence, it must be a result of discussions with the Canadian government—not just through a referendum.

v. *Scotland*

In September 2014, Scots participated in a referendum on Scottish independence from the United Kingdom.¹⁴⁶ The process began in 2012 with an independence referendum consultation that took place for five months.¹⁴⁷ In 2013, the wording of the independence poll question was affirmed and guides were published explaining what the result of an independent Scotland would mean for Scots.¹⁴⁸

The Scottish government published a guide called “Scotland’s Future: Your Guide to an Independent Scotland,” which explained why Scots

139. *Id.* ¶¶ 129-30.

140. *Id.* ¶ 131.

141. *Id.* ¶ 133.

142. Reference Re Secession of Quebec, [1998] 2 S.C.R. 217 ¶ 134.

143. *Id.* ¶¶ 135-39.

144. *Id.* ¶¶ 140-46.

145. *Id.* ¶¶ 143-44.

146. *Scotland’s Referendum: Background*, SCOTTISH GOVERNMENT, <http://www.scotreferendum.com/information/> (last visited Nov. 3, 2015).

147. *Id.*

148. *Id.*

should support secession from the United Kingdom.¹⁴⁹ The guide claimed that the government of Scotland wanted to control its own resources and economic destiny, use its wealth for its own citizens' benefit, and elect its own government rather than remain ruled by the United Kingdom.¹⁵⁰ Recently, Scotland's economy has had higher productivity and been more stable than the United Kingdom.¹⁵¹ The guide discussed several key Scottish industries that contribute to its healthy economy, such as oil, food and drink, energy, and tourism.¹⁵² The regional arrangement under the Westminster system does not give Scotland the autonomy it desires to address its citizens' problems.¹⁵³ The guide guaranteed that Scotland would remain a member of the European Union as well as a member of the United Nations after secession, quelling Scots' concerns that they would lose valued membership in these regional arrangements.¹⁵⁴

When Scots went to the polls in September 2014, 55.5 percent of citizens voted "no" for Scottish Independence.¹⁵⁵ Despite this defeat, there is still discussion of Scottish independence in light of the political and economic concerns Scots have about the Westminster system.¹⁵⁶ While the unsuccessful referendum must be accepted, the Scottish government will continue to press for more autonomy from Westminster.¹⁵⁷

vi. Catalonia

Catalonia is a distinct territory and its people have a distinct culture from the rest of Spain's regions.¹⁵⁸ Due to events in the nineteenth century, the region has exercised a small amount of autonomy from the rest of Spain during the twentieth century.¹⁵⁹ The Spanish Constitution and a Statute of Autonomy passed in 1979 set the initial limits of Catalonia's autonomy

149. *Scotland's Future - Your Guide to an Independent Scotland*, SCOTTISH GOVERNMENT (2013) <http://www.gov.scot/Resource/0043/00439021.pdf>.

150. *Id.* at 2.

151. *Id.* at 2.

152. *Id.* at 4.

153. *Id.* at 5.

154. *Scotland's Future*, *supra* note 149, at 2, 25.

155. *Scotland's Referendum*, *supra* note 146.

156. Henry McLeish, *McLeish: If Labour Does Not Sort This Problem Out Scotland Will Become Independent*, HERALD SCOTLAND (Oct. 25, 2014), <http://www.heraldsotland.com/news/home-news/mcleish-if-labour-does-not-sort-this-problem-out-scotland-will-become-independent.25688884>.

157. *Id.*

158. Xavier Vilà Carrera, *The Domain of Spain: How Likely is Catalan Independence?*, WORLD AFFAIRS J. (Jan./Feb. 2014), <http://www.worldaffairsjournal.org/article/domain-spain-how-likely-catalan-independence>.

159. *Id.*

within Spain.¹⁶⁰ Catalonia has a distinct and separate history from the rest of Spain and the region has maintained its own language and traditions.¹⁶¹

When Zapatero was campaigning to become the Prime Minister of Spain, he promised that he would support reforms by the Catalan parliament for autonomy.¹⁶² Two years after his initial campaign speech, the Catalan parliament took measures to ensure that it could hold a referendum for independence in the future.¹⁶³ In 2006, a Statute of Autonomy was passed by the Catalan parliament.¹⁶⁴ The statute did not give Barcelona the right to self-determination but it did permit the beginning of discussions and negotiations of Catalan independence with the Spanish government.¹⁶⁵ The Spanish Constitutional Court later annulled several articles of the statute in 2010.¹⁶⁶

The annulments, along with pre-existing economic distrust, angered Catalan nationalists.¹⁶⁷ Barcelona is Spain's second wealthiest community after Madrid, despite its high unemployment rate.¹⁶⁸ Catalans desire to be able to make their own decisions about taxes and how to govern themselves because the Spanish government in Madrid does not treat the region fairly in light of how prosperous it is, especially with Spain's recent economic issues.¹⁶⁹ In 2013, the Government of Catalonia stated that it would hold a referendum on independence from Spain so that it can manage its own affairs.¹⁷⁰

Catalans have been pushing for independence from Spain for decades, and with the same spirit in which the referendum in Scotland was scheduled, a vote for Catalonian independence was scheduled for November 9, 2014.¹⁷¹ While this vote was non-binding, over eighty percent of voters supported Catalan independence.¹⁷² However, the Spanish government stated that this referendum was unconstitutional and prosecutors threatened to file criminal charges against Catalan President and other politicians for

160. *Why Vote?*, CATALONIA VOTES, <http://www.cataloniavotes.eu/why-a-independence-referendum-incatalonia/> (last visited Nov. 5, 2015).

161. *Catalonia Profile - Overview*, BBC NEWS (Jan. 15, 2015), <http://www.bbc.com/news/world-europe-20345071>.

162. Carrera, *supra* note 158.

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. Carrera, *supra* note 158.

168. *Id.*

169. Jeremy Lee, *8 Things about the Catalonia Independence Vote*, STRAITS TIMES (Oct. 8, 2014, 9:47 AM), <http://www.straitstimes.com/world/europe/8-things-about-the-catalonia-independence-vote>.

170. *Catalonia Profile-Overview*, *supra* note 160.

171. Lee, *supra* note 169.

172. *Prosecutors in Spain to Charge Catalonia Leader Mas*, BBC NEWS (Nov. 19, 2014), <http://www.bbc.com/news/world-europe-30111044>.

holding the unofficial vote.¹⁷³ These charges included “disobedience and perverting the course of justice [and] misuse of public funds.”¹⁷⁴ Only about half of the Catalan population took part in the vote, so it is unclear whether it will have any impact on relations between the Catalan government and Spain, although the Spanish government has clearly stated that the vote is nonbinding.¹⁷⁵ Discussions continue regarding the desire for Catalans to gain independence, although the Spanish government clearly does not support the bid for secession.¹⁷⁶

IV. EVALUATION OF WHETHER ISIS COULD BECOME A STATE UNDER INTERNATIONAL LAW

ISIS was first known as the Islamic State of Iraq and it was comprised of several different insurgent groups, including Al Qaeda.¹⁷⁷ In April 2013, ISIS was formed and “has evolved into one of the main jihadist groups fighting government forces in Syria and Iraq.”¹⁷⁸ Abu Omar al-Baghdadi is ISIS’s leader and its headquarters are in Baquba, Iraq.¹⁷⁹ It has large financial resources to buy weapons and many members to carry out operations.¹⁸⁰ The goal of the group is to unite a “world wide Caliphate” and eliminate Shia and Christian civilians, as well as members of the United States military.¹⁸¹

Sixteen provinces make up the territory that ISIS currently claims in Iraq and Syria.¹⁸² ISIS has control of Aleppo, Idlib, and Raqqa provinces in Syria as well as a stronghold in Anbar and the provinces of Kurdistan, Nanawa, Mosul, Baiji, Babil, and has also attacked Baghdad with the hope of gaining control of the city.¹⁸³ ISIS has also moved into Lebanon and continues to maneuver to gain more territory.¹⁸⁴ It seeks to unite all Sunnis

173. *Id.*

174. *Id.*

175. *Id.*

176. Raphael Minder, *Catalonia Calls Election in New Bid for Secession From Spain*, N.Y. TIMES (Aug. 4, 2015), http://www.nytimes.com/2015/08/05/world/europe/catalonia-calls-election-in-new-bid-for-secession-from-spain.html?_r=0.

177. *Islamic State of Iraq and ash Sham (ISIS)/Islamic State (Islamic State of Iraq, ISIS or ISIL, IS)*, TERRORISM RESEARCH & ANALYSIS CONSORTIUM, <http://www.trackingterrorism.org/group/islamic-state-iraq-islamic-state-iraq-and-sham-isis> (last visited Nov 5, 2015) [hereinafter *Islamic State of Iraq and ash Sham/Islamic State*].

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Islamic State of Iraq and ash Sham/Islamic State*, *supra* note 177.

183. *Id.*

184. *Id.*

in the Levant region,¹⁸⁵ which consists of Syria, Jordan, Israel, Palestine, Lebanon, Cyprus and part of Southern Turkey.¹⁸⁶ ISIS seeks to free Sunnis in the region from Shia oppression resulting from Shia political rule in governments in the region.¹⁸⁷

This objective stems from ISIS's "political mindset" from the creation of the Wahhabi state in the eighteenth century when a political alliance created a religious state to "monopolize Sunni political representation."¹⁸⁸ Princes in the region used their religious beliefs in decision-making about how to govern the state.¹⁸⁹ This was a widely accepted form of governance at the time and people wanted religious-based rule in the region.¹⁹⁰ Eventually, some individuals became upset with the Saudi states departure from these principles and passing laws that were not grounded in the Quran.¹⁹¹ This departure from religious governance was seen as the entrance of disbelievers into the government, which was strictly prohibited under the Wahhabi doctrine.¹⁹² When secular law was applied in the courts in Saudi Arabia, the state was deemed an unbeliever and central figures that pointed out the state's disobedience became figures that al-Qaeda and ISIS would later follow in their quest to unite Sunnis.¹⁹³ Literature from the Wahhabi movement is distributed by ISIS in the region it occupies and its leaders state that they desire to establish religion and "disseminat[e] monotheism[.]"¹⁹⁴ This deep-seeded historical preference for religious-based rule has caused dissention in the Middle East and has resulted in violence amongst religious groups for hundreds of years.

By employing "jihadi salafism," members of ISIS use savage acts to convert people to their religion through fear.¹⁹⁵ ISIS's goals for its conquest are constantly evolving: In 2006, ISIS first desired to unite Sunnis in Iraq and then, in 2013, moved to unite Sunnis in Iraq and Syria.¹⁹⁶ ISIS now seeks to become an Islamic caliphate in the Middle East to govern the region according to Sunni religious beliefs and purge the region of non-

185. Adam Withnall, *Iraq Crisis: Isis Declares its Territories a New Islamic State With 'Restoration of Caliphate' in Middle East*, THE INDEPENDENT (June 30, 2014), <http://www.independent.co.uk/news/world/middle-east/isis-declares-new-islamic-state-in-middle-east-with-abu-bakr-al-baghdadi-as-emir-removing-iraq-and-9571374.html>.

186. *Id.*

187. *Id.*

188. Fouad al-Ibrahim, *Why ISIS is a Threat to Saudi Arabia: Wahhabism's Deferred Promise*, ALAKHBAR ENGLISH, (Aug. 22, 2014), <http://english.al-akhbar.com/node/21234>.

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.*

193. al-Ibrahim, *supra* note 188.

194. *Id.*

195. *Id.*

196. *Id.*

believers.¹⁹⁷ Wahhabi principles were created to “establish[] a religious principality to serve as a basis to launch the Islamic caliphate built on monotheism, loyalty, disavowal, exile and jihad.”¹⁹⁸ Leaders of the movement call for emigration of believers to the caliphate, which means that everyone that does not emigrate must be a disbeliever, and are therefore enemies of ISIS.¹⁹⁹ This religious radicalism has created a state of terror for people in the Middle East, ISIS will undoubtedly continue to use violence and unequal treatment should it have uncontroverted rule in the region.

a. Treaties Applied to ISIS

ISIS fulfills the first three prongs of the characteristics of a state under the *Montevideo Convention*.²⁰⁰ It is gaining territory in the Middle East and once it has completed its take over to create its caliphate, it will be able to claim the territory within the Levant region.²⁰¹ It has an established government in Anbar and continues to extend its rule over the rest of the territory it has taken over. The goal to unite the Sunni community shows that it has a defined population within the Levant territory that the group claims. Al-Baghdadi would undoubtedly be able to represent the group in relations with other states and make decisions about the governance of the territory. Nonetheless, being able to enter into relations with other states would be the biggest problem for the group as other states disapprove of ISIS’s acts of terrorism.

Moreover, the problem with recognizing ISIS under the *Montevideo Convention* is that ISIS has committed numerous human rights violations in its quest to unite Sunnis in the Middle East.²⁰² These violations have caused numerous countries, as well as the United Nations, to categorize ISIS as a terrorist group.²⁰³ These violent acts against non-believers are the reason that the United States began carrying out air strikes against ISIS in Raqqa, Syria on September 23, 2014.²⁰⁴ Thereafter, the United Kingdom joined the United States in its fight against ISIS in an attempt to end the violence

197. *Id.* Some argue that the establishment of the caliphate happened when al-Baghdadi gave a sermon in July 2014, restoring previously lost leadership in Islam. See Graeme Wood, *What ISIS Really Wants*, THE ATLANTIC (March 2015), <http://www.theatlantic.com/magazine/archive/2015/03/what-isis-really-wants/384980/>.

198. al-Ibrahim, *supra* note 188.

199. *Id.*

200. See *Montevideo Convention on the Rights and Duties of States*, *supra* note 19, at art 1; see also *supra* Part II.a.

201. See *supra* note 197 and accompanying text.

202. *ISIS Fast Facts*, *supra* note 1. Recently, ISIS has claimed responsibility for reprehensible attacks in Paris that killed and injured many people. See *Paris Attacks: Hollande Blames Islamic State for “Act of War,”* BBC NEWS (Nov. 14, 2015), <http://www.bbc.com/news/world-europe-34820016>.

203. *ISIS Fast Facts*, *supra* note 1.

204. *Id.*

against Shia and Christian civilians in the region.²⁰⁵ ISIS has killed hundreds of people—one of the more atrocious events publicized worldwide was when more than six hundred male Shiite inmates were murdered by ISIS members in a prison outside Mosul.²⁰⁶ Under the *jus cogens* prohibition on gross human rights violations, as well as the *Genocide Convention*, these acts by the United States and the United Kingdom are a legitimate use of force to stop crimes recognized under the *Genocide Convention*.²⁰⁷

There is also a problem with the fact that the United States, the United Nations, the United Kingdom, and other countries deemed ISIS a “terrorist organization.”²⁰⁸ This designation shows that key players in the international community will most likely not be recommending that the ICJ hear a case on the independence of ISIS, let alone to permit the actual independence of ISIS.²⁰⁹ Its terrorist designation plainly comes from the crimes against humanity that it has committed in its conquest for territory in the Middle East.²¹⁰ ISIS could argue that it was trying to unite Sunnis and save them from persecution of the Shias, but it does not seem like this “persecution” was similar enough to the situation Albanians faced in Serbia.²¹¹ ISIS appears to be more similarly situated to Serbia in the conflict between Serbia and Kosovo.²¹²

While the *ICCPR*, *ICESCR*, and the *United Nations Charter* all recognize the right of people to self-determination, ISIS’s creation of a Sunni state does not fit into this already existing right to self-determination by colonial or oppressed minorities.²¹³ This conflict is not a state versus state conflict, which is the type of conflict international law is meant to address, but instead is a war waged by a rebel group in multiple states.²¹⁴ ISIS’s desire to unite one religious group across such a large territory goes against the United Nations *Resolution on Friendly Relations amongst States*

205. *Id.*

206. Sinan Salaheddin, *Survivors Describe ISIS Massacre of 600 Prisoners in Iraq’s Mosul*, HUFFINGTON POST (Oct. 30, 2014, 1:24 PM), http://www.huffingtonpost.com/2014/10/30/isis-kills-prisoners-mosul_n_6076448.html.

207. *Genocide Convention* art.’s I-IV.

208. U.N. Security Council, Meetings Coverage 24 September 2014: Security Council Unanimously Adopts Resolution Condemning Violent Extremism, Underscoring Need to Prevent Travel, Support for Foreign Terrorist Fighters (Sept. 24, 2014), <http://www.un.org/press/en/2014/sc11580.doc.htm>; *Proscribed Terror Organisations*, UNITED KINGDOM HOME OFFICE (Oct. 30, 2015), <https://www.gov.uk/government/publications/proscribed-terror-groups-or-organisations—2>; *Foreign Terrorist Organizations*, U.S. DEP’T OF STATE, <http://www.state.gov/j/ct/rls/other/des/123085.htm>.

209. *See id.*

210. *See supra* Part IV.

211. *See supra* Part III.a.i.

212. *See id.*

213. *See supra* Part II.b.

214. *See id.*

because the territorial integrity of these states would be compromised.²¹⁵ Not only would unification of these states under ISIS's reign be problematic, the international community would be forced to look past the human rights violations in its territorial conquest and religious unification.

The case on the *Genocide Convention* alone shows that the international community would be unwilling to overlook ISIS's egregious human rights violations.²¹⁶ ISIS has clearly targeted one religious group and killed a vast number of individuals belonging to that religious group.²¹⁷ This killing is taking place with the intent to destroy all other religious groups in the region so that ISIS can unify the Levant and bring the caliphate back to rule the area with the one true religion to guide him.²¹⁸ These acts will make it impossible for other states to interact with ISIS despite meeting one of the two theories of declaratory independence if it begins to act like a state and waits for the outside world to recognize it as such.²¹⁹

b. Comparison of ISIS to Case Studies

ISIS can be compared to recent cases of unilateral secession and declarations of independence that have taken place in the international community. These case studies show that ISIS is not similarly situated to the groups whose secession was recognized internationally, and so it would most likely not be a legitimate state under the *Montevideo Convention* or other standards applied by international and domestic courts.

Kosovo's independence and the ICJ decision are instructive on whether ISIS could become a state according to international law.²²⁰ The ICJ's opinion on the unilateral declaration of independence of Kosovo heavily relied on the Security Council's Resolution 1244 and the reports from the Special Envoy employed by the United Nations to take account of the conflict between Serbia and Kosovo.²²¹ The resolution and these reports made it clear that the ICJ and the Security Council did not believe there was a way to protect Albanians from oppression and allow Serbia to maintain its territorial integrity.²²² With the establishment of UNMIK, the United Nations' guidance on the establishment of institutions in light of the conflict with Serbia helped to aid the country in making its declaration of independence.²²³ This is different from ISIS's case because members of the

215. *See id.*

216. *See supra* Part.II.c.

217. *See id.*

218. *See id.*

219. *See supra* Part.III.a.i.

220. *See id.*

221. *See id.*

222. *See id.*

223. *See id.*

Security Council have consistently vetoed taking any action against ISIS in Syria.²²⁴ There would also be no unilateral secession of a group in ISIS's case because it desires to consolidate several individual states into one region for religious rule through fear and the use of violence.²²⁵ The presence of extreme violence and minority oppression is closer to Serbia's treatment of Albanians, and so for the groups to be more similarly situated to that conflict, Shias would have to assert independence from oppressive rule.

Additionally, the civil war in South Sudan has similar characteristics to the conflict with ISIS in the Middle East. Fighting took place for years between north and south Sudan, and the Sudanese People's Liberation Movement urged independence for the south.²²⁶ Once the peace agreement was signed in 2005, the conflict effectively ended and mechanisms were put in place to permit South Sudan to have autonomy and its own government.²²⁷ If peace talks occurred between ISIS and the pre-existing governments in the states it wants to control, it would be more similarly situated to South Sudan, resulting in independence and recognition of ISIS as a new state under international law.²²⁸ This, however, is unlikely to happen in the midst of violence and oppression that ISIS has used to gain control of the region. The trajectory of the conflict is different and ISIS wants oppressive rule in the region to exterminate all non-believers in the Levant.

Today, the situation seems more like Russia's annexation of Crimea.²²⁹ Russia gained power over Crimea by force, stating that it was trying to unite ethnic Russians and protect them from violence in Ukraine.²³⁰ This is similar to ISIS's goal with respect to unification and protection of the Sunnis.²³¹ While the West disapproved Russia's action, it is clear that there will be no force exercised by western powers to require Russia to relinquish its claims to Crimea.²³² A referendum was held in an attempt to legitimize the annexation, but there was not widespread acceptance of the truthfulness of the results.²³³ This would undoubtedly be the same result for ISIS if it were to hold a referendum for secession or creation of a new state.²³⁴ Other

224. *See supra* Part III.a.i.

225. *See supra* Part IV.

226. *South Sudan Profile - Timeline*, BBC NEWS (Aug. 27, 2015), <http://www.bbc.com/news/world-africa-14019202>.

227. *Id.*

228. *See id.*

229. *See supra* Part III.a.iii.

230. *See id.*

231. *See id.*

232. *See id.*

233. *See id.*

234. *See supra* Part IV.

countries and international organizations would undoubtedly question these results if the vote resulted in overwhelming acceptance of unification.²³⁵ ISIS's reign of terror on minorities, women, and the West would make it difficult to accept that the population supports such oppressive rule from its government.²³⁶ In light of the number of people that have left Syria and Iraq in the midst of ISIS violence and persecution, it is clear that people in the region are afraid and do not believe they will be treated fairly by such a state.

Quebec finds itself in a similar situation to Catalonia and Scotland.²³⁷ While the Canadian Supreme Court has held that Quebec may not secede from Canada because it is not an oppressed province, it is permitted to govern its own territory semi-autonomously.²³⁸ While the French are a minority group in Canada, they are treated differently than the rest of Canada and allowed to govern their own province accordingly.²³⁹ ISIS's territory cannot be viewed in the same context. While it is claiming to unite Sunnis to free them from Shia oppression, which resulted from Shia controlled governments, Sunnis were not allowed to govern themselves autonomously.²⁴⁰ While secession is permitted under international law, minority oppression in this case was not strong enough to warrant allowing Quebec to split from Canada.²⁴¹ None of these cases have encompassed violent acts like ISIS has committed in its quest for control of the Levant.

In contrast, Scotland, Quebec, and Catalonia's desire for independence stems from different circumstances than those that surround ISIS's declaration of independence.²⁴² While all of these minority groups claim they should be able to govern themselves according to their own beliefs and standards instead of being forced to go along with what the majority controlled government wants, all these groups have had referendums to peacefully secede from their countries instead of leading militaristic attacks to gain control over claimed territory.²⁴³ Because these minorities have a long history of peacefully residing within their countries, it will be difficult to argue that they fit into the colonial or oppressed peoples groups that are permitted to use unilateral secession to overcome British, Canadian, and Spanish territorial integrity.²⁴⁴ These territories have already been given

235. *See id.*

236. *See id.*

237. *See supra* Part III.a.iv.

238. *See id.*

239. *See id.*

240. *See id.*

241. *See id.*

242. *See supra* Parts III.a.iv-vi.

243. *See id.*

244. *See id.*

their own semi-autonomous governments and are permitted to govern their territories somewhat separately from the rest of the country. These groups may have similar motivations for independence, but they have used very different means to gain independence. These minorities will need approval from the United Kingdom, Spain, and Canada in order to gain their independence, unlike the violent force ISIS has used to gain control over its territory.

V. ISIS CANNOT BECOME A LEGALLY RECOGNIZED STATE UNDER CURRENT INTERNATIONAL LAW

ISIS will not be recognized as a state under the *Montevideo Convention* because it will never achieve international recognition under the Convention's requirements. With the United Nations and many other countries identifying ISIS as a terrorist organization, it is difficult to see how the international community could bless ISIS's rule in the Middle East through recognition of its government. People around the world would be outraged if the group was permitted to rule the population in the Middle East when it has plainly violated human rights norms in an egregious manner. The be-heading of Peter Kassig had Americans calling for some solution to the conflict in Syria and spurred conversation about the best way to deal with this radical group.²⁴⁵ Furthermore, the attacks in Paris show that ISIS's violence will no longer be contained to the Middle East.²⁴⁶ In addition, the media has played a part in labeling ISIS as a terrorist group and promoting its reputation in a negative light. No western countries could politically justify entering into treaties with ISIS when some are calling for interventionist measures to save the populations it is attacking.

If the international community acknowledged ISIS as a state under the *Montevideo Convention* and permitted secession from the rest of the Middle East, it would open the door to hold ISIS accountable for its human rights violations and crimes against humanity committed during its conquest of territory to unite the Levant. The only option that seems possible for ISIS under current international law standards is for it to choose a smaller territory to claim where it may rule Sunnis who choose to reside there. However, this case differs from the case studies discussed throughout this Comment because those cases dealt with minority groups that wanted freedom from different types of oppression and the desire to rule themselves without having to abide by a majority rule. For example, there was a gross violation of human rights in the Serbia-Kosovo conflict and it was clear that

245. See Mark Thompson, *Peter Kassig's Powerful Silence Before ISIS Beheaded Him*, TIME (Nov. 17, 2014), <http://time.com/3589350/peter-kassigs-powerful-silence-before-isis-beheaded-him>.

246. See *supra* note 202 and accompanying text.

Albanians were being persecuted, so the need to permit Kosovo's secession under international law was greater than in Scotland, Catalonia, and Quebec in order to save lives. The minorities in Scotland, Catalonia, and Quebec were not being persecuted or treated unequally compared to individuals residing in the rest of their respective countries. The desire for independence in those cases stems from wanting to control economic resources and govern its people accordingly. There are no gross human rights violations there and secession is taking place by peaceful referendum in a democratic society. ISIS does not operate by peaceful means and does not protect the lives of the people it governs so it will never be able to claim status as a state under international law.