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الجمعية العامة
مجلس الأمن

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الجمعية العامة
الدورة الرابعة والسبعون
البنود 32 و 37 و 69 و 75 و 83 من جدول الأعمال
النزاعات التي طال أمدها في منطقة مجموعة بلدان جورجيا وأوكرانيا وأذربيجان ومولدوفا وآثارها على السلام والأمن والتنمية على الصعيد الدولي

الحالة في الأراضي المحتلة بأذربيجان

حق الشعوب في تقرير المصير

مسؤولية الدول عن الأفعال غير المشروعة دوليا

سيادة القانون على الصعيدين الوطني والدولي

مجلس الأمن
السنة الخامسة والسبعون

رسالة مؤرخة 21 تموز/يوليه 2020 موجهة إلى الأمين العام من الممثل الدائم لأذربيجان لدى الأمم المتحدة

كما هو معلوم، فقد نشب النزاع المسلح الدائر بين أرمينيا وأذربيجان في نهاية عام 1987 بمطالب إقليمية باطلة وغير مشروعة لأرمينيا في إقليم ناغورنو كاراباخ المتمتع بالحكم الذاتي في أذربيجان. وفي نهاية عام 1991 وبداية عام 1992، عندما حصلت أرمينيا وأذربيجان معاً على استقلالهما وحظيتا باعتراف دولي، شهد النزاع تصعيدا ليتحول إلى حرب شاملة بين الدولتين. ونتيجة لذلك، احتلت أرمينيا جزءا كبيرا من أراضي أذربيجان، بما في ذلك منطقة ناغورنو – كاراباخ والمقاطعات السبع المجاورة لها وبعض المناطق المفصولة عن أذربيجان. وقد أودت الحرب بحياة عشرات الآلاف من الأشخاص وألحقت دمارا كبيرا بالبنى التحتية والممتلكات المدنية في أذربيجان. وخضعت الأراضي المحتلة لتطهير عرقي من جميع الأذربيجانيين؛ وأُجبر أكثر من مليون شخص على مغادرة بيوتهم في تلك الأراضي. وتتعمد أرمينيا حاليا ارتكاب أعمال في هذه الأراضي بغية ضمان استعمارها وضمها، في انتهاك جسيم للقانون الدولي.

ومن خلال لجوء أرمينيا إلى روايات تاريخية زائفة وحجج قانونية واهية لإخفاء سياستها القائمة على العدوان وارتكاب جرائم فظيعة ضد أذربيجان وشعبها، فإنها تشوه قواعد ومبادئ القانون الدولي وتسيء تفسيرها. غير أن الحقائق الأساسية، التي تستند إلى وثائق قانونية، وقرارات مجلس الأمن والجمعية العامة،

* أعيد إصدارها لأسباب فنية في 14 أيلول/سبتمبر 2022.

وقرارات سائر المنظمات الدولية والمحاكم الدولية، والآراء الصادرة عن باحثين مرموقين، تدحض تماماً التأكيدات الكاذبة الصادرة عن أرمينيا.

وهكذا، فإن قرارات مجلس الأمن 822 (1993) و 853 (1993) و 874 (1993) و 884 (1993)، التي اتخذت ردا على استخدام القوة ضد أذربيجان وما نتج عن ذلك من احتلال لأراضيها، وصفت أعمال أرمينيا بأنها غير قانونية وأبطلت نهائيا مطالباتها بأراضي أذربيجان. وتقدم هذه القرارات توضيحات ذات حجية فيما يتعلق بالأعمال المرتكبة والالتزامات المنتهَكة والواجبات التي يتعين القيام بها لإنهاء الوضع غير القانوني الناجم عن ذلك. وتُصاغ على نفس المنوال العديد من القرارات والوثائق المعتمدة من قِبل المنظمات الدولية الأخرى.

وما فتئت أذربيجان تؤكد الأهمية الحاسمة للتمسك بالقانون الدولي وتطبيقه بإخلاص بغية إحراز تقدم طال انتظاره في حل النزاع وإنهاء احتلال أراضي أذربيجان ومعاناة السكان المتضررين من العدوان الأرميني. وما برحت أذربيجان تشجع بنشاط، على مر السنين التي تلت نشوب النزاع، المناقشات المتعلقة بالجوانب القانونية للنزاع، بما في ذلك داخل الأمم المتحدة، كما وجهت انتباه المجتمع الدولي إلى العديد من التقارير والآراء القانونية الشاملة[1].

واستمرارا لهذه الممارسة التي طال أمدها، أتشرف بأن أقدم لكم تقريرا عن القاعدة الأساسية للسلامة الإقليمية للدول والحق في تقرير المصير على ضوء المطالبات التحريفية لجمهورية أرمينيا، وهو تقرير أعده، بناءً على طلب من حكومة جمهورية أذربيجان، مالكولم شو، مستشار للملكة، بمساعدة ناومي هارت، محامية بمكتب Essex Court Chambers في لندن (انظر المرفق). ويشكل هذا التقرير نسخة مستكملة من التقرير الذي عُرِض ونُشِر في كانون الأول/ديسمبر 2008 (A/63/664-S/2008/823).

ويتناول التقرير، أولا، مفهوم السلامة الإقليمية للدول؛ وثانيا، تطور مبدأ تقرير المصير ووضعه؛ وأخيراً، طبيعة المطالبات الأرمينية، ولا سيما فيما يتعلق بإقليم ناغورنو – كاراباخ في أذربيجان. وكما يؤكد المؤلف في التقرير، فإن النزاع المذكور هو نزاع استولت أرمينيا خلاله على جزء من أراضي أذربيجان المعترف بها دوليا وقامت باحتلالها. ويخلص التقرير أساسا إلى أن ادعاءات أرمينيا بشأن فصل إقليم ناغورنو كاراباخ عن أذربيجان تتعارض بوضوح مع القانون الدولي، وبأن فهمها للحق في تقرير المصير فهم خاطئ، وبأن أرمينيا تنتهك القاعدة الأساسية المتمثلة في احترام السلامة الإقليمية للدول وغيرها من مبادئ القانون الدولي ذات الصلة، مثل القاعدة التي تحظر استخدام القوة.

وأرجو ممتنا تعميم هذه الرسالة ومرفقها باعتبارهما وثيقة من وثائق الجمعية العامة، في إطار البنود 32 و 37 و 69 و 75 و 83 من جدول الأعمال، ومن وثائق مجلس الأمن.

(توقيع) ياشار **علييف**
السفير
الممثل الدائم

(1) انظر على سبيل المثال التقرير المتعلق بالآثار القانونية المترتبة على العدوان المسلح لجمهورية أرمينيا على جمهورية أذربيجان، 24 كانون الأول/ديسمبر 2008 (A/63/662-S/2008/812)؛ والتقرير المتعلق بالحقوق القانونية الدولية للأذربيجانيين المشردين داخليا ومسؤولية جمهورية أرمينيا، 3 أيار/مايو (A/66/787–S/2012/289)؛ والرأي القانوني المتعلق بالتزامات الأطراف الثالثة فيما يتعلق بالأنشطة الاقتصادية والأنشطة الأخرى غير المشروعة في الأراضي المحتلة بأذربيجان، 26 نيسان/أبريل 2017 (A/71/880-S/2017/316)؛ والتقرير المتعلق بجرائم الحرب المرتكبة في الأراضي المحتلة لجمهورية أذربيجان ومسؤولية جمهورية أرمينيا، 7 شباط/فبراير 2020 (A/74/676-S/2020/90)؛ والتقرير المتعلق بالمسؤوليات القانونية الدولية لأرمينيا بصفتها محتلا للأراضي الأذربيجانية احتلالا حربيا، 5 حزيران/يونيه 2020 (A/74/881–S/2020/503).

مرفق الرسـالة المؤرخة 21 تموز/يوليه 2020 الموجهة إلى الأمين العام من الممثل الدائم لأذربيجان لدى الأمم المتحدة

Report on the fundamental norm of the territorial integrity of States and the right to self-determination in the light of Armenia's revisionist claims

1. The present Report constitutes an updated version of the one presented by the Republic of Azerbaijan (Azerbaijan) on 26 December 2008 to the United Nations.[1] It examines the interrelationship between the legal norm of the territorial integrity of States and the principle of self-determination in international law in the context of the revisionist claims made and maintained by the Republic of Armenia (Armenia).[2]

2. Such revisionist claims have been made with regard to the conflict over Nagorny Karabakh[3] between Armenia and Azerbaijan and essentially assert that Nagorny Karabakh did not form part of the new State of Azerbaijan on independence and this is maintained by various legal arguments, including with recourse to the principle of self-determination. Thus, Armenia asserts that "the inalienable right of the people of Nagorno-Karabakh to self-determination represents a fundamental principle and foundation for the peaceful resolution".[4]

3. The conflict in question is one where part of the internationally recognised territory of Azerbaijan has been captured and held by Armenia. Further, Armenia has set up and sustained the existence of an illegal and entirely unrecognised entity within that territory of Azerbaijan, by a variety of political and economic means, including the maintenance of military forces in the occupied territories of Azerbaijan. This entity, which has the self-proclaimed title of the "Nagorno-Karabakh Republic" (NKR),[5] is under Armenia's direction and control,[6] although neither Armenia nor any other State recognises its assertion of statehood.

4. This Report examines first the concept of the territorial integrity of States; secondly, the evolution and status of the principle of the self-determination of peoples; and finally, the nature of Armenian claims particularly with regard to the Nagorno-Karabakh region of Azerbaijan.

[1] UN Doc. A/63/664-S/2008/823 (29 December 2008).

[2] See paragraph 154 below.

[3] Note that "Nagorny Karabakh" or "Nagorno-Karabakh" is a Russian translation of the original name in Azerbaijani language – "Dağlıq Qarabağ" (pronounced as "Daghlygh Garabagh"), which literally means mountainous Garabagh. "Nagorny Karabakh" is conventionally used as a free-standing proper noun, whereas "Nagorno-Karabakh" is conventionally used as an attributive noun in conjunction with another noun (such as in "the Nagorno-Karabakh region" or "Nagorno-Karabakh forces"). This Report adopts these conventions.

[4] See, e.g., Statement by Zohrab Mnatsakanyan, Minister of Foreign Affairs of Armenia, at the 26th meeting of the Ministerial Council of the Organization for Security and Cooperation in Europe in Bratislava, 5 December 2019, Annex to the Letter dated 14 January 2020 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General, UN Doc. A/74/654-S/2020/38 (16 January 2020).

[5] Armenia refers to the entity it has established in the occupied Nagorno-Karabakh region of Azerbaijan as either the "Nagorno-Karabakh Republic" or alternatively the "Republic of Artsakh". "NKR" will be used hereafter, as appropriate, without prejudice to the status of the territory as an internationally recognised part of Azerbaijan and without exoneration of Armenia from its responsibility.

[6] See *Chiragov and Others v Armenia*, App. No. 13216/05, ECtHR (Grand Chamber), 16 June 2015, paras. 167 and following.

5. Essentially, the conclusion of the Report is that Armenia's claims as to the detachment of the Nagorno-Karabakh region from Azerbaijan are incorrect as a matter of international law, its understanding of the right to self-determination is flawed and Armenia is in violation of international legal principles concerning *inter alia* the norm of territorial integrity.

6. The purpose of this Report has been to document Armenia's violations of Azerbaijan's territorial integrity with reference to the principle of self-determination. Since Azerbaijan and Armenia achieved independence, Armenia has also engaged in egregious violations of Azerbaijan's territorial integrity by other means, including by carrying out armed attacks on Azerbaijan (both within Nagorny Karabakh and in surrounding territories) and by establishing and maintaining an illegal occupation in approximately one fifth of Azerbaijan's territory. These violations have been the subject of other reports[7] and are not documented in this Report.

A. The Fundamental Norm of the Territorial Integrity of States

I. International Practice

(a) Introduction

7. States are at the heart of the international legal system and the prime subjects of international law. However one defines the requirements of statehood, the criterion of territory is indispensable. It is inconceivable to envisage a State as a person in international law bearing rights and duties without a substantially agreed territorial framework. As Oppenheim has noted, "a state without a territory is not possible".[8]

8. In any system of international law founded upon sovereign and independent States, the principle of the protection of the integrity of the territorial expression of

[7] See, e.g., "Military Occupation of the Territory of Azerbaijan: a Legal Appraisal", Annex to the Letter dated 8 October 2007 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/62/491-S/2007/615 (23 October 2007); "Report on the Legal Consequences of the Armed Aggression of the Republic of Armenia Against the Republic of Azerbaijan", Annex to the Letter dated 22 December 2008 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/63/662-S/2008/812 (24 December 2008); "The Armed Aggression of the Republic of Armenia against the Republic of Azerbaijan: Root Causes and Consequences", Annex to the Letter dated 30 September 2009 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/64/475-S/2009/508 (6 October 2009); "The Facts Documented by Armenian Sources, Testifying to the Ongoing Organized Settlement Practices and Other Illegal Activities in the Occupied Territories of Azerbaijan", Annex to the Letter dated 27 April 2010 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/64/760-S/2010/211 (28 April 2010); "Illegal Economic and Other Activities in the Occupied Territories of Azerbaijan", Annex to the Letter dated 15 August 2016 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/70/1016-S/206/711 (16 August 2016); "Legal Opinion on Third Party Obligations with Respect to Illegal Economic and Other Activities in the Occupied Territories of Azerbaijan", Annex to the Letter dated 10 April 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/71/880-S/2017/316 (26 April 2017); "Report on War Crimes in the Occupied Territories of the Republic of Azerbaijan and the Republic of Armenia's Responsibility", Annex to the Letter dated 3 February 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/74/676-S/2020/90 (7 February 2020); "Report on the International Legal Responsibilities of Armenia as the Belligerent Occupier of Azerbaijani Territory", Annex to the Letter dated 4 June 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/74/881-S/2020/503 (5 June 2020).

[8] R.Y. Jennings and A.D. Watts (eds.), *Oppenheim's International Law*, 9th ed., 1992, p. 563.

such States is bound to assume major importance.[9] Together with the concept of the consequential principle of non-intervention, territorial integrity is crucial with respect to the evolution of the principles associated with the maintenance of international peace and security. It also underlines the decentralized State-orientated character of the international political system and both reflects and manifests the sovereign equality of States as a legal principle.

9. Territorial integrity and State sovereignty are inextricably linked concepts in international law. They are foundational principles. Unlike many other norms of international law, they can only be amended as a result of a conceptual shift in the classical and contemporary understanding of international law.

10. It was emphasised in the *Island of Palmas* case, arguably the leading case on the law of territory and certainly the starting-point of any analysis of this law, that:

> "Territorial sovereignty … involves the exclusive right to display the activities of a State",[10]

while:

> "Sovereignty in the relations between States signifies independence. Independence in relation to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State. The development of the national organisation of States during the last few centuries, and as a corollary, the development of international law, have established this principle of the exclusive competence of the State in regard to its own territory in such a way as to make it the point of departure in settling most questions that concern international relations".[11]

11. Accordingly, the concept of State sovereignty can only be exercised through exclusive territorial control so that such control becomes the cornerstone of international law, while the exclusivity of control means that no other State may exercise competence within the territory of another State without the express consent of the latter. To put it another way, the development of international law upon the basis of the exclusive authority of the State within an accepted territorial framework meant that territory became "perhaps the fundamental concept of international law".[12] This principle is two-sided. It establishes both the supervening competence of the State over its territory and the absence of competence of other States over that same territory. Recognition of a State's sovereignty over its territory imports also recognition of the sovereignty of other States over their territory. The International Court clearly underlined in the *Corfu Channel* case that "[b]etween independent

[9] Oppenheim notes that "the importance of state territory is that it is the space within which the state exercises its supreme, and normally exclusive, authority", *ibid*., p. 564. Bowett regards this principle as fundamental in international law and an essential foundation of the legal relations between States, *Self-Defence in International Law*, Manchester, 1958, p. 29. See, generally, J. Castellino and S. Allen, *Title to Territory in International Law: A Temporal Analysis*, Aldershot, 2002; G. Distefano, *L'Ordre International entre Légalité et Effectivité: Le Titre Juridique dans le Contentieux Territorial*, Paris, 2002; R. Y. Jennings, *The Acquisition of Territory in International Law*, Manchester, 1963; M.N. Shaw, "Territory in International Law", 13 Netherlands YIL, 1982, p. 61; N. Hill, *Claims to Territory in International Law and Relations*, London, 1945; J. Gottman, *The Significance of Territory*, Charlottesville, 1973; S. P. Sharma, *Territorial Acquisition, Disputes and International Law*, The Hague, 1997; "The Changing Nature of Territoriality in International Law", 47 Netherlands YIL, 2016; M.G. Kohen (ed.), *Territoriality and International Law*, Cheltenham, 2016.

[10] 1 RIAA pp. 829, 839 (1928).

[11] *Ibid*., at p. 838.

[12] D.P. O'Connell, *International Law*, 2nd ed., London, 1970, vol. I, p. 403.

States, respect for territorial sovereignty is an essential foundation of international relations".[13]

12. These principles have been further discussed by the world court. The Permanent Court of International Justice, for example, emphasised in the *Lotus* case that:

> "Now the first and foremost restriction imposed by international law upon a State is that – failing the existence of a permissive rule to the contrary – it may not exercise its power in any form in the territory of another State",[14]

while the International Court underlined in the *Corfu Channel* case "every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States"[15] and noted in the *Asylum* case that "derogation from territorial sovereignty cannot be recognised unless its legal basis is established in each case".[16]

13. Thus, despite the rise of globalisation, whether of commercial or trade relations or in matters concerning human rights or the environment, territorial sovereignty continues to constitute the lynch pin of the international legal system.

14. The juridical requirement, therefore, placed upon States is to respect the territorial integrity of other States. It is an obligation flowing from the sovereignty of States and from the equality of States. This has been reflected in academic writing. One leading writer has noted that "[f]or States, respect for their territorial integrity is paramount. … [T]his rule plays a fundamental role in international relations".[17] It has also been stated that "[f]ew principles in present-day international law are so firmly established as that of the territorial integrity of States".[18] As the International Court emphasised in its *Kosovo* advisory opinion, "the principle of territorial integrity is an important part of the international legal order"[19] and further reaffirmed in *The Temple Interpretation* case, "the obligation which all States have to respect the territorial integrity of all other States".[20]

15. It is, of course, important to note that this obligation is not simply to protect territory as such or the right to exercise jurisdiction over territory or even territorial sovereignty. The norm of respect for the territorial *integrity* of States imports an additional requirement and this is to sustain the territorial wholeness or definition or delineation of particular States. It is a duty placed on all States to recognise that the very territorial structure and configuration of a State must be respected and cannot be changed in the absence of consent.

16. Further, respect for the territorial integrity of States may be seen as a rule of *jus cogens*, certainly that aspect of the rule that prohibits aggression against the territorial integrity of States possesses the status of a peremptory norm.[21]

(b) Societal Basis for the Norm of Territorial Integrity

17. The policy underlying the doctrine of respect for the territorial integrity of States may be seen both in terms of the very nature of State sovereignty and in terms of the perceived need for stability in international relations, specifically with regard to

[13] ICJ Reports, 1949, pp. 4, 35.
[14] PCIJ, Series A, No. 10, p. 18.
[15] ICJ Reports, 1949, pp. 6, 22.
[16] ICJ Reports 1950, pp. 266, 275.
[17] Kohen, "Introduction" in Kohen (ed.), *Secession: International Law Perspectives*, Cambridge, 2006, p. 6.
[18] See the Opinion on the "Territorial Integrity of Quebec in the Event of the Attainment of Sovereignty" by Professors Franck, Higgins, Pellet, Shaw and Tomuschat on 8 May 1992, para. 2.16, http://www.uni.ca/library/5experts.html.
[19] ICJ Reports, 2010, pp. 403, 437.
[20] ICJ Reports, 2013, pp. 281, 317.
[21] See further below, para. 69 and following.

territorial matters. In so far as the first is concerned, the doctrine of State sovereignty has at its centre the concept of sovereign equality, which has been authoritatively defined in terms of the following propositions:

> "(a) States are judicially equal;
>
> (b) Each State enjoys the rights inherent in full sovereignty;
>
> (c) Each State has the duty to respect the personality of other States;
>
> (d) The territorial integrity and political independence of the State are inviolable;
>
> (e) Each State has the right freely to choose and develop its political, social, economic and cultural systems;
>
> (f) Each State has the duty to comply fully and in good faith with its international obligations and to live in peace with other States".[22]

18. In addition to constituting, therefore, one of the key elements in the concept of sovereign equality, territorial integrity has been seen as essential in the context of the stability and predictability of the international legal system as a whole based as it is upon sovereign and independent States territorially delineated. The importance of territorial integrity is reflected in the key concept of the stability of boundaries which, it has been written, constitutes "an overarching postulate of the international legal system and one that both explains and generates associated legal norms".[23] The International Court, for example, has referred particularly to "the permanence and stability of the land frontier" in the *Tunisia/Libya Continental Shelf* case,[24] to the need for "stability and finality" in the *Temple of Preah Vihear* case,[25] and to the "stability and permanence" of boundaries in the *Aegean Sea Continental Shelf* case.[26] This was reaffirmed by the Tribunal in *Bangladesh v India*, where it was stated that, "maritime delimitations, like land delimitations, must be stable and definitive to ensure a peaceful relationship between the States concerned in the long term".[27]

19. Each of these declarations underscores the importance of the core principle of respect for the territorial integrity of States.

20. The International Court explained the rationale behind this as follows:

> "when two countries establish a frontier between them, one of the primary objects is to achieve stability and finality. This is impossible if the line so established can, at any moment, and on the basis of a continuously available process, be called in question".[28]

21. The point was emphasised by the Arbitral Tribunal in the *Beagle Channel* case, where it was noted that:

[22] Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 24 October 10970, General Assembly resolution 2625 (XXV).
[23] Shaw, "The Heritage of States: The Principle of *Uti Possidetis Juris* Today", 67 *British Year Book of International Law*, 1996, pp. 75, 81.
[24] ICJ Reports, 1982, pp. 18, 66.
[25] ICJ Reports, 1962, pp. 6, 34.
[26] ICJ Reports, 1978, pp. 3, 36.
[27] Award of 7 July 2014, para. 216.
[28] *Temple of Preah Vihear*, ICJ Reports, 1962, pp. 6, 34.

> "a limit, a boundary, across which the jurisdictions of the respective bordering States may not pass, implied definitiveness and permanence".[29]

(c) The Norm of Territorial Integrity as Enshrined in International Instruments of a Global Nature

22. A number of key instruments referred to the norm of territorial integrity in the nineteenth and early twentieth century. For example, at the Vienna Congress of 1815 the neutrality and territorial integrity of Switzerland were guaranteed,[30] while the London Protocol 1852 guaranteed that of Denmark and the Treaty of Paris 1856 that of the Ottoman Empire.[31] Further the Treaty of 2 November 1907 recognised the independence and territorial integrity of Norway.

23. The final text of President Woodrow Wilson's Fourteen Points delivered to Congress on 8 January 1918 referred to the need to establish a general association of nations under specific covenants for the purpose of "affording mutual guarantees of political independence and territorial integrity to great and small states alike".[32] This constituted a key inspiration with regard to the creation of the League of Nations.

24. Article 10 of the Covenant of the League of Nations provided that:

> "The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled".

25. It is to be noted that the Treaty of Mutual Guarantee between Germany, Belgium, France, Great Britain and Italy in 1925 (the Locarno Pact) provided explicitly for the maintenance of the territorial status quo resulting from the frontiers between Germany and Belgium and between Germany and France, and the inviolability of these frontiers as fixed by or in pursuance of the Versailles Treaty of Peace 1919.

26. In the Charter of the United Nations, the following provisions are particularly relevant. Article 2(1) provides that the Organisation itself is based on "the principle of the sovereign equality of all its Members", while article 2(4) declares that "[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state …". The latter principle is, of course, one of the core principles of the United Nations. It is discussed later in this Report in more detail.[33]

27. The Manila Declaration on the Peaceful Settlement of International Disputes, approved by the General Assembly on 15 November 1982, reaffirms in its preamble the "principle of the Charter of the United Nations that all States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations" and states in point 4 that:

> "States parties to a dispute shall continue to observe in their mutual relations their obligations under the fundamental principles of international law

[29] HMSO, 1977, p. 11.

[30] See, e.g., M. Kutter, *Die Schweizer und die Deutschen*, Frankfurt/M.: Fischer, 1997, pp. 97–105 cited in B. Schoch, "Switzerland – A Model for Solving Nationality Conflicts?", Peace Research Institute, Frankfurt, 2000, p. 26 and E.J. Osmańczyk and A. Mango, *Encyclopedia of the United Nations and International Agreements*, 3rd ed., 2004, vol. 4, p. 2294.

[31] *Ibid*.

[32] http://wwi.lib.byu.edu/index.php/President_Wilson's_Fourteen_Points.

[33] See below, para. 69 and following.

concerning the sovereignty, independence and territorial integrity of States, as well as other generally recognized principles and rules of contemporary international law".[34]

28. The Declaration on the Right to Development adopted by the General Assembly on 4 December 1986 in resolution 41/128 called in article 5 for States to take resolute action to eliminate "threats against national sovereignty, national unity and territorial integrity". General Assembly resolution 46/182, dated 19 December 1991, adopting a text on Guiding Principles on Humanitarian Assistance, provides in paragraph 3 that "[t]he sovereignty, territorial integrity and national unity of States must be fully respected in accordance with the Charter of the United Nations. In this context, humanitarian assistance should be provided with the consent of the affected country and in principle on the basis of an appeal by the affected country". Further, resolution 52/112 concerning the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination, adopted by the General Assembly on 12 December 1997, explicitly reaffirmed "the purposes and principles enshrined in the Charter of the United Nations concerning the strict observance of the principles of sovereign equality, political independence, territorial integrity of States …".

29. The United Nations Millennium Declaration, adopted by the General Assembly on 8 September 2000,[35] noted the rededication of the Heads of State and of Government gathered at the United Nations to supporting *inter alia* "all efforts to uphold the sovereign equality of all States, [and] respect for their territorial integrity and political independence". This Declaration was reaffirmed in the World Summit Outcome 2005, in which world leaders agreed "to support all efforts to uphold the sovereign equality of all States, [and] respect their territorial integrity and political independence".[36] In its turn, this provision in the World Summit Outcome was explicitly reaffirmed by the United Nations Global Counter-Terrorism Strategy 2006.[37] In the outcome document of the United Nations summit for the adoption of the post-2015 development agenda, "Transforming our world: the 2030 Agenda for Sustainable Development", adopted by the General Assembly on 25 September 2015, the Heads of State and Government and High Representatives "reaffirm[ed], in accordance with the Charter of the United Nations, the need to respect the territorial integrity and political independence of States".[38]

30. References to territorial integrity may also be found in multilateral treaties of a global character. For example, the preamble to the Nuclear Non-Proliferation Treaty 1968 includes the following provision:

"*Recalling* that, in accordance with the Charter of the United Nations, States must refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations".

31. Further, article 301 of the Convention on the Law of the Sea 1982 provides that:

[34] General Assembly resolution 37/10.
[35] General Assembly resolution 55/2.
[36] General Assembly resolution 60/1, para. 5.
[37] General Assembly resolution 60/288.
[38] General Assembly resolution 70/1, para. 38. See also General Assembly resolutions 53/243, Declaration and Programme of Action on a Culture of Peace, paragraph 15 (h) of which calls on States to refrain from any form of coercion aimed against the political independence and territorial integrity of States; 57/337 on the Prevention of Armed Conflict, which reaffirmed the Assembly's commitment to the principles of the political independence, the sovereign equality and the territorial integrity of States; and 59/195 on Human Rights and Terrorism, paragraph 1 of which refers to the territorial integrity of States.

> "In exercising their rights and performing their duties under this Convention, States Parties shall refrain from any threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the principles of international law embodied in the Charter of the United Nations",

while article 19 of that Convention provides that the passage of a foreign ship through the territorial sea of a coastal sea "shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities: (a) any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State".[39]

32. The norm of territorial integrity applies essentially to protect the international boundaries of independent States. However, it also applies to protect the temporary, if agreed, boundaries of such States from the use of force. The Declaration on Principles of International Law Concerning Friendly Relations, adopted by the General Assembly of the United Nations on 24 October 1970, provides that:

> "Every State likewise has the duty to refrain from the threat or use of force to violate international lines of demarcation, such as armistice lines, established by or pursuant to an international agreement to which it is a party or which it is otherwise bound to respect. Nothing in the foregoing shall be construed as prejudicing the positions of the parties concerned with regard to the status and effects of such lines under their special regimes or as affecting their temporary character".[40]

33. While the norm calling for respect for territorial integrity applies to independent States, it is also worth pointing to the fact that the international community sought to preserve the particular territorial configuration of colonial territories as the movement to decolonisation gathered pace. Point 4 of the Declaration on the Granting of Independence to Colonial Countries and Peoples adopted by the General Assembly on 14 December 1960 specifically called for an end to armed action against dependent peoples and emphasised that the "integrity of their national territory shall be respected".[41] The Declaration on Principles of International Law Concerning Friendly Relations further provided that:

> "The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles".[42]

34. The United Nations, while underlining the presumption of territorial integrity with regard to colonial territories in the move to independence,[43] was equally clear with regard to the need for respect for the territorial integrity of independent countries that were administering such territories. Point 6 of the Colonial Declaration stated that:

[39] See also article 39 providing for a similar rule with regard to the transit passage of ships and aircraft.
[40] General Assembly resolution 2625 (XXV).
[41] General Assembly resolution 1514 (XV).
[42] General Assembly resolution 2625 (XXV).
[43] See further, below, para. 82 and following.

> "Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations",

while point 7 of the same Declaration noted that:

> "All States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity".

35. On the same topic, although perhaps more robustly, the Declaration on Principles of International Law Concerning Friendly Relations ended the section on self-determination by stating that:

> "Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour".[44]

36. It was then separately emphasised that:

> "Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country".

37. Accordingly, acceptance of the separate status of the colonial territory was accompanied by recognition of the norm of territorial integrity of the State or country in question.

38. This approach whereby the recognition of particular rights in international law of non-State persons is accompanied by a reaffirmation of the principle of territorial integrity finds expression also in the United Nations Declaration on the Rights of Indigenous Peoples, adopted on 13 September 2007.[45] Article 46(1) of the Declaration provides that:

> "Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or 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".

(d) The Norm of Territorial Integrity as Enshrined in International Instruments of a Regional Nature

39. Many of the core constitutional documents of the leading regional organisations refer specifically to territorial integrity and the following examples, geographically arranged, may be provided.

(i) Europe

40. The Helsinki Final Act, adopted on 1 August 1975 by the Conference on Security and Cooperation in Europe (CSCE), included a Declaration on Principles Guiding Relations between Participating States (termed the "Decalogue"). Several of

[44] See further, below, para. 147 and following.
[45] General Assembly resolution 61/295.

these principles are of note. Principle I notes that participating States will "respect each other's sovereign equality and individuality as well as all the rights inherent in and encompassed by its sovereignty, including in particular the right of every State to juridical equality, to territorial integrity and to freedom and political independence". Principle II declares that participating States "will refrain in their mutual relations, as well as in their international relations in general, from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations and with the present Declaration". Principle III declares that participating States "regard as inviolable all one another's frontiers as well as the frontiers of all States in Europe", while Principle IV deals specifically with territorial integrity and States as follows:

> "The participating States will respect the territorial integrity of each of the participating States. Accordingly, they will refrain from any action inconsistent with the purposes and principles of the Charter of the United Nations against the territorial integrity, political independence or the unity of any participating State, and in particular from any such action constituting a threat or use of force. The participating States will likewise refrain from making each other's territory the object of military occupation or other direct or indirect measures of force in contravention of international law, or the object of acquisition by means of such measures or the threat of them. No such occupation or acquisition will be recognized as legal".

41. The Document on Confidence-Building Measures, adopted as part of the Helsinki Final Act, affirmed that participating States were:

> "Determined further to refrain in their mutual relations, as well as in their international relations in general, from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations and with the Declaration on Principles Guiding Relations between Participating States as adopted in this Final Act".

42. The Charter of Paris for a New Europe adopted by the renamed Organisation for Security and Cooperation in Europe (OSCE) in November 1990 reaffirmed that:

> "In accordance with our obligations under the Charter of the United Nations and commitments under the Helsinki Final Act, we renew our pledge to refrain from the threat or use of force against the territorial integrity or political independence of any State, or from acting in any other manner inconsistent with the principles or purposes of those documents".

43. The OSCE Code of Conduct on Politico-Military Aspects of Security approved at the Budapest Summit of 1994 affirmed the duty of non-assistance to States resorting to the threat or use of force against the territorial integrity or political independence of any other State. This was followed by the Lisbon Declaration on a Common and Comprehensive Security Model for Europe for the Twenty-First Century, adopted on 3 December 1996, in which the Heads of State and Government committed themselves *inter alia* "not to support participating States that threaten or use force in violation of international law against the territorial integrity or political independence of any participating State" (point 6). The Charter for European Security, adopted at the OSCE Istanbul Summit in November 1999, declared that participating States would "consult promptly, in conformity with our OSCE responsibilities, with a participating State seeking assistance in realizing its right to individual or collective self-defence in the event that its sovereignty, territorial integrity and political independence are threatened" (point 16), while the Agreement on Adaptation of the Treaty on Conventional Armed Forces in Europe, reached at the same OSCE Istanbul

Summit in 1999 by participating States, recalled "their obligation to refrain in their mutual relations, as well as in their international relations in general, from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes and principles of the Charter of the United Nations".

44. The Council of Europe has adopted two conventions of particular relevance. First, the European Charter for Regional or Minority Languages, adopted on 5 November 1992, provides in the preamble that:

> "the protection and promotion of regional or minority languages in the different countries and regions of Europe represent an important contribution to the building of a Europe based on the principles of democracy and cultural diversity within the framework of national sovereignty and territorial integrity",

while article 5 states that:

> "Nothing in this Charter may be interpreted as implying any right to engage in any activity or perform any action in contravention of the purposes of the Charter of the United Nations or other obligations under international law, including the principle of the sovereignty and territorial integrity of States".

45. Secondly, the Framework Convention for the Protection of National Minorities, adopted on 1 February 1995, provides that "the realisation of a tolerant and prosperous Europe does not depend solely on co-operation between States but also requires transfrontier co-operation between local and regional authorities without prejudice to the constitution and territorial integrity of each State" and called for:

> "the effective protection of national minorities and of the rights and freedoms of persons belonging to those minorities, within the rule of law, respecting the territorial integrity and national sovereignty of States".

46. Article 21 emphasises that:

> "Nothing in the present framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States".

(ii) The Atlantic Area

47. The North Atlantic Treaty, which was adopted on 4 April 1949 and established the North Atlantic Treaty Organization (NATO) as a collective security organisation, provides in article 4 that "[t]he Parties will consult together whenever, in the opinion of any of them, the territorial integrity, political independence or security of any of the Parties is threatened".

(iii) The Commonwealth of Independent States

48. The Charter of the Commonwealth of Independent States (CIS), adopted at Minsk on 22 January 1993, notes as amongst its principles listed in article 3, the inviolability of State borders, the recognition of existing borders and the rejection of unlawful territorial annexations; together with the territorial integrity of States and the rejection of any actions directed towards breaking up alien territory. Article 12 provides that:

> "In the event that a threat arises to the sovereignty, security or territorial integrity of one or several member states or to international peace and security, the member states shall without delay bring into action the mechanism for mutual consultations for the purpose of coordinating positions and for the

adoption of measures in order to eliminate the threat which has arisen, including peacekeeping operations and the use, where necessary, of the Armed Forces in accordance with the procedure for exercising the right to individual or collective defence according to Article 51 of the UN Charter".

49. The CIS Collective Security Treaty was initially signed on 15 May 1992[46] and came into force on 20 April 1994 following the addition of further signatories. This treaty declared in article 2 that in the event of a threat to the security, sovereignty or territorial integrity of one or more of the signatory States, a mechanism for joint consultations would be activated. The treaty was renewed in 1999 for a further five years by the original six signatories,[47] but was replaced on 7 October 2002 by the Charter of the Collective Security Organisation. This Charter sought to ensure the "security, sovereignty and territorial integrity" of States parties as noted in the preamble, while article 3 described the purposes of the organisation as being "to strengthen peace and international and regional security and stability and to ensure the collective defence of the independence, territorial integrity and sovereignty of the member States, in the attainment of which the member States shall give priority to political measures".

50. Further, the Charter of GUAM,[48] adopted on 23 May 2006, calls for cooperation in article II based on "the principles of respect for sovereignty and territorial integrity of the states, inviolability of their internationally-recognized borders and non-interference in their internal affairs and other universally recognized principles and norms of international law".

(iv) Arab States

51. Article 5 of the Pact of the League of Arab States, adopted on 22 March 1945,[49] provides that:

> "The recourse to force for the settlement of disputes between two or more member States shall not be allowed. Should there arise among them a dispute that does not involve the independence of a State, its sovereignty or its territorial integrity, and should the two contending parties apply to the Council for the settlement of this dispute, the decision of the Council shall then be effective and obligatory".

(v) The Americas

52. Article 1 of the Charter of the Organization of American States 1948[50] provides that the American States parties to the Charter thereby establish an international organisation "to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence".

53. The Framework Treaty on Democratic Security in Central America, adopted on 15 December 1995, notes in article 26 as amongst its regional security principles the following:

[46] By Armenia, Kazakhstan, Kyrgyzstan, Russia, Tajikistan and Uzbekistan.

[47] With the addition of Georgia, but the exclusion of Uzbekistan, who joined in 2006. On 18 August 2008, Georgia notified its intention to withdraw from the CIS, http://www.mfa.gov.ge/index.php?lang_id=ENG&sec_id=36&info_id=7526.

[48] Consisting of Azerbaijan, Georgia, Moldova and Ukraine. The Charter transformed the GUAM Group established in 1997 as a consultative forum and then formalised in 2001 into the Organisation for Democracy and Economic Development – GUAM, see preamble.

[49] http://avalon.law.yale.edu/20th_century/arableag.asp.

[50] As amended in 1967, 1985, 1992 and 1993, see http://www.oas.org/juridico/English/charter.html.

> "(c) Renunciation of the threat or the use of force against the sovereignty, territorial integrity and political independence of any country in the region that is a signatory of this Treaty; …
>
> (h) Collective defence and solidarity in the event of armed attack by a country outside the region against the territorial integrity, sovereignty, and independence of a Central American country, in accordance with the constitutional provisions of the latter country and of the international treaties in force;
>
> (i) The national unity and territorial integrity of the countries in the framework of Central American integration".

54. Article 42 further provides that "[a]ny armed aggression, or threat of armed aggression, by a state outside the region against the territorial integrity, sovereignty or independence of a Central American state shall be considered an act of aggression against the other Central American states".

(vi) Africa

55. The Charter of the Organisation of African Unity (OAU) 1963 declares in article II(1)(c) that among the purposes of the organisation are the defence of their "sovereignty, their territorial integrity and independence", while article III lists the principles to which the members of the OAU adhere in fulfilling the stated purposes of the organisation. These include the sovereign equality of all Member States; non-interference in the internal affairs of States; and "respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence". The OAU was transformed into the African Union (AU) by the Constitutive Act of the African Union 2000. Article 3 includes, among the objectives of the Union, defence of the "sovereignty, territorial integrity and independence of its members", while article 4 provides that the AU is to function in accordance with a number of principles, including "sovereign equality and interdependence among Member States of the Union" and "respect of borders existing on achievement of independence". The principle of the territorial integrity was reaffirmed *inter alia* in the African Union Convention for the Protection and Assistance of Internally Displaced Persons, 2009.

56. The norm of territorial integrity also appears explicitly in the constitutional documents of sub-regional organisations. For example, the Heads of State and Government of the Member States of the Economic Community of West African States (ECOWAS) reaffirmed in article II of the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security, adopted on 10 December 1999, a series of "fundamental principles", including "territorial integrity and political independence of Member States", while the preamble to the Protocol on Politics, Defence and Security Cooperation, adopted by the Heads of State and Government of the Member States of the Southern African Development Community on 14 August 2001, recognised and reaffirmed the principles of "strict respect for sovereignty, sovereign equality, territorial integrity, political independence, good neighbourliness, interdependence, non-aggression and non-interference in internal affairs of other States" and declared in article 11(1)(a) that "State Parties shall refrain from the threat or use of force against the territorial integrity or political independence of any State, other than for the legitimate purpose of individual or collective self-defence against an armed attack".

(vii) Islamic States

57. The 1972 Charter of the Organisation of the Islamic Conference provides that amongst its principles laid down in article II are "respect for the sovereignty,

independence and territorial integrity of each member State" and "abstention from the threat or use of force against the territorial integrity, national unity or political independence of any member States". The Islamabad Declaration adopted at the 1997 Extraordinary Session of the Islamic Summit reaffirmed in its preamble respect for the principles of "sovereignty, territorial integrity and non-interference in internal affairs of states".[51] The Charter of the Organisation, later renamed to the Organisation of Islamic Cooperation, was replaced with an amended document dated 14 March 2008, which refers twice in its preambular to the determination of the organisation to "respect, safeguard and defend the national sovereignty, independence and territorial integrity of all Member States". Article 1 noted as one of the objectives of the organisation to respect the "sovereignty, independence and territorial integrity of each Member State", while another objective is to "support the restoration of complete sovereignty and territorial integrity of any Member State under occupation, as a result of aggression, on the basis of international law and cooperation with the relevant international and regional organisations". Article 2 states the principles of the organisation, including the principle that all Member States "undertake to respect national sovereignty, independence and territorial integrity of other Member States and shall refrain from interfering in the internal affairs of others".

(viii) Asia

58. The Southeast Asia Collective Defence Treaty (the Manila Pact) was signed on 8 September 1954 by the United States, United Kingdom and France with a number of Southeast Asian States, creating the Southeast Asia Treaty Organisation. In article II, the parties agreed that they "separately and jointly, by means of continuous and effective self-help and mutual aid will maintain and develop their individual and collective capacity to resist armed attack and to prevent and counter subversive activities directed from without against their territorial integrity and political stability". The organisation ceased to exist in 1977.

59. The Association of South East Asian Nations (ASEAN) was created on 8 August 1967. In the Treaty of Amity and Cooperation in Southeast Asia, 1976, the States parties agreed to be bound by a number of "fundamental principles" laid down in article 2, including "[m]utual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations". Article 10 provides that "[e]ach High Contracting Party shall not in any manner or form participate in any activity which shall constitute a threat to the political and economic stability, sovereignty, or territorial integrity of another High Contracting Party". The ASEAN Charter was signed on 20 November 2007, with the preamble noting respect for the "principles of sovereignty, equality, territorial integrity, non-interference, consensus and unity in diversity".[52] Article 2(2) provides that ASEAN and its member States are to act in accordance with a number of principles, including "respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States".

60. Further, the Charter of the South Asian Association for Regional Cooperation,[53] adopted on 8 December 1986, affirmed "respect for the principles of sovereign equality, territorial integrity, national independence, non-use of force and non-interference in the internal affairs of other States and peaceful settlement of all disputes" and emphasised in article II(1) that "[c]ooperation within the framework of the Association shall be based on respect for the principles of sovereign equality,

[51] UN Doc. A/51/915 (6 June 1997).

[52] The Member States currently are Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam.

[53] Consisting of Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan and Sri Lanka.

territorial integrity, political independence, non–interference in the internal affairs of other States and mutual benefit".

(e) The Norm of Territorial Integrity as Enshrined in Agreements Concerning Situations of a Specific Nature

61. The norm of territorial integrity has also been expressed in a number of bilateral or limited participation international agreements concerning the resolution of particular issues. A brief survey of some of the more significant examples will suffice.

62. In article 3 of the Japan–Korean Treaty of 23 February 1904, for instance, Japan guaranteed the territorial integrity of the Korean Empire, while the Treaty of Guarantee of 16 August 1960, part of the constitutional settlement of the Cyprus issue, provided both for the new Republic of Cyprus to "ensure the maintenance of its independence, territorial integrity and security" (article II) and for a guarantee of that territorial integrity by Greece, Turkey and the United Kingdom (article III). The Indo-Nepal Treaty of 31 July 1950 provided for mutual recognition of both States' independence and territorial integrity, while the Simla Agreement between India and Pakistan, signed on 2 July 1972, provided in point (v) for "respect each other's national unity, territorial integrity, political independence and sovereign equality". The peace agreements between Israel and Egypt of 26 March 1979 (article II) and between Israel and Jordan of 26 October 1994 (article 2(1)) both provided for recognition of each State's territorial integrity, while the General Framework Agreement for Peace in Bosnia and Herzegovina (the Dayton Agreement), signed on 14 December 1995, provided that the parties (Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia) agreed to "refrain from any action, by threat or use of force or otherwise, against the territorial integrity or political independence of Bosnia and Herzegovina or any other State".[54]

63. Further, a series of agreements between eastern European States after the end of the Cold War provided for the mutual recognition of borders.[55] For example, the Lithuania–Poland Agreement of 26 April 1994 "formally ratifying now and for the future the integrity of the current territories" (preamble) confirmed "the principles of respect for sovereignty, the inviolability of the borders, prohibition of armed aggression, territorial integrity, non interference in local affairs, and regard for human rights and basic freedoms" (article 1) and recognised the "inviolability of the existing border between them marked in the territory and mutually commit themselves to respect without any conditions the other's sovereignty and territorial integrity" (article 2). In the Hungary–Romania Treaty, signed on 16 September 1996, the parties provided in article 4 that they, "according to the principles and norms of international law and with the principles of the Final Act in Helsinki, reconfirm that they shall observe the inviolability of their common border and the territorial integrity of the other Party", while the Romania–Ukraine Treaty, signed on 2 June 1997, underlined the principles of the inviolability of frontiers and of the territorial integrity of States (article 1(2)) and reaffirmed that they "shall not have recourse, in any circumstances, to the threat of force or use of force, directed either against the territorial integrity or political independence of the other Contracting Party" (article 3).[56]

[54] UN Doc. A/50/790-S/195/999 (30 November 1995). This agreement was witnessed by France, the United Kingdom, the United States, Germany and Russia. See also the Croatia-Bosnia Treaty on the State Border of 30 July 1999.

[55] See also the German-Polish Agreement on the Confirmation of the Frontier, 14 November 1990.

[56] See also article 13(12) providing that none of the provisions of that article concerning national minorities could be interpreted as implying "any right to undertake any action or commit any activity contrary to the goals and principles of the Charter of the United Nations or to other obligations resulting from international

64. Finally, in the China–Russia Treaty of 16 July 2001 the parties reaffirmed in article 1 a number of principles, including "mutual respect of state sovereignty and territorial integrity" and in article 4 specifically supported each other's policies "on defending the national unity and territorial integrity" and promised not to undertake any action that "compromises the sovereignty, security and territorial integrity of the other contracting party" (article 8).

(f) The Norm of Territorial Integrity as Enshrined in United Nations Resolutions of a Specific Nature

65. The norm of territorial integrity has also been referred to and reaffirmed in a large number of United Nations resolutions adopted with regard to specific situations. In particular, and covering recent years only, the territorial integrity of the following States has been explicitly and specifically reaffirmed: Kuwait,[57] Ukraine,[58] Iraq,[59] Afghanistan,[60] Angola,[61] East Timor,[62] Sierra Leone,[63] Burundi,[64] Lebanon,[65] Georgia,[66] Cyprus,[67] the Comoros,[68] the Democratic Republic of the Congo,[69] Rwanda and other States in the region,[70] Burundi,[71] Côte d'Ivoire,[72] Somalia,[73] Sudan,[74] Chad and the Central African Republic,[75] Haiti,[76] the States of the Former Yugoslavia,[77] Nepal,[78] and Libya.[79]

66. Finally, it should be specifically noted for the particular purposes of this Report that the Security Council has explicitly reaffirmed the territorial integrity of Azerbaijan and of all other States in the region in resolutions 822 (1993), 853 (1993), 874 (1993) and 884 (1993). Further, the General Assembly in resolution 62/243, adopted on 14 March 2008, expressly reaffirmed "continued respect and support for

law or to the provisions of the Helsinki Final Act and of the Paris Charter for a New Europe, including the principle of territorial integrity of states".

[57] Security Council resolution 687 (1991).

[58] See Security Council Presidential statement of 20 July 1993, S/26118. See also Security Council resolutions 2166 (2014) and 2202 (2015) and see, e.g., General Assembly resolutions 68/262.

[59] Ibid. and resolutions 1770 (2007), 1790 (2007), 1830 (2008), 1936 (2010), 2061 (2012), 2169 (2014), 2299 (2016), 2421 (2018) and 2470 (2019).

[60] See Security Council resolutions 1267 (1999), 1776 (2007) and 2489 (2019).

[61] See Security Council resolution 1268 (1999). See also General Assembly resolution 52/211.

[62] See, e.g., Security Council resolutions 389 (1976), 1272 (1999), and 1745 (2007).

[63] Security Council resolution 1306 (2000).

[64] Security Council resolution 1719 (2006).

[65] See, e.g., Security Council resolutions 347 (1974), 425 (1978), 436 (1978), 444 (1979), 467 (1980), 490 (1981), 508 (1982), 509 (1982), 520 (1982), 542 (1983), 564 (1985), 587 (1986), 1052 (1996), 1559 (2004), 1655 (2006), 1701 (2006), 1757 (2007), 1773 (2007) and 2485 (2019). See also General Assembly resolution 36/226.

[66] See, e.g., Security Council resolutions 1752 (2007), 1781 (2007) and 1808 (2008).

[67] See, e.g., General Assembly resolutions 3212 (XXIX) and 37/253.

[68] See, e.g., General Assembly resolution 37/43.

[69] See, e.g., Security Council resolutions 1756 (2007), 1771 (2007), 1794 (2007), 1804 (2008), 1807 (2008), 2389 (2017), 2409 (2018) and 2502 (2019). See also General Assembly resolution 60/170.

[70] See, e.g., Security Council resolutions 1771 (2007), 1804 (2008) and 1807 (2008).

[71] See, e.g., Security Council resolution 1791 (2007).

[72] See, e.g., Security Council resolutions 1739 (2007), 1765 (2007), 1795 (2008) and 1826 (2008).

[73] See, e.g., Security Council resolutions 1766 (2007), 1772 (2007), 1801 (2008), 1811 (2008), 1816 (2008), 1918 (2010), 1976 (2011), 2184 (2014), 2316 (2016), 2442 (2018) and 2500 (2019).

[74] See, e.g., Security Council resolutions 1769 (2007), 1784 (2007), 1841 (2008) and 1828 (2008).

[75] See, e.g., Security Council resolution 1778 (2007).

[76] See, e.g., Security Council resolutions 1780 (2007) and 1840 (2008).

[77] See, e.g., Security Council resolutions 1785 (2007), 1845 (2008), 1948 (2010), 2074 (2012), 2247 (2015), 2384 (2017) and 2496 (2019).

[78] See, e.g., Security Council resolution 1796 (2008).

[79] See, e.g., Security Council resolution 2486 (2019).

the sovereignty and territorial integrity of the Republic of Azerbaijan within its internationally recognized borders".

(g) Conclusion

67. It can, therefore, be seen that the norm of territorial integrity has been comprehensively confirmed and affirmed in a long series of international instruments, binding and non-binding, ranging from United Nations resolutions of a general and a specific character to international multilateral, regional and bilateral agreements. There can thus be no doubting the legal nature of this norm, nor its centrality in the international legal and political system. As the Supreme Court of Canada concluded, "international law places great importance on the territorial integrity of nation states".[80]

II. Some Relevant Consequential Principles

68. The foundational norm of territorial integrity has generated a series of relevant consequential principles.

(a) Prohibition of the Threat or Use of Force

69. The territorial integrity of States is protected by the international legal prohibition on threat or use of force. Article 2(4) of the Charter of the United Nations lays down the rule that:

> "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations".

70. This principle constitutes a norm of particular importance. Article 9 of the Draft Declaration on Rights and Duties of States 1949 declares that:

> "Every State has the duty to refrain from resorting to war as an instrument of national policy, and to refrain from the threat or use of force against the territorial integrity or political independence of another State, or in any other manner inconsistent with international law and order".[81]

71. The 1970 Declaration on the Principles of International Law Concerning Friendly Relations[82] recalls "the duty of States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State" and emphasises that it was "essential that all States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations". The preamble continues by underlining that "any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or country or at its political independence is incompatible with the purposes and principles of the Charter".

72. Beyond these preambular comments, the Declaration interpreted specifically a number of principles, contained in the Charter of the United Nations, including the principle prohibiting *inter alia* the threat or use of force against the territorial integrity of States. The Declaration provides that:

[80] *Reference Re Secession of Quebec* [1998] 2 S.C.R. 217, para. 112.
[81] General Assembly resolution 375 (IV).
[82] General Assembly resolution 2625 (XXV).

> "Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. Such a threat or use of force constitutes a violation of international law and the Charter of the United Nations and shall never be employed as a means of settling international issues. … Every State has the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes and problems concerning frontiers of States".

73. It is accepted that the unlawful use of force is not only a rule contained in the Charter of the United Nations and in customary international law, but that it is also contrary to the rules of *jus cogens*, or a higher or peremptory norm. The International Law Commission in its commentary on the Draft Articles on the Law of Treaties noted that "the law of the Charter concerning the prohibition of the use of force in itself constitutes a conspicuous example of a rule in international law having the character of jus cogens" and included as an example of a treaty which would violate the rules of *jus cogens* and thus be invalid, a treaty contemplating an unlawful use of force contrary to the principles of the Charter,[83] while the Commission in its commentary on article 40 of the Draft Articles concerning State Responsibility noted that "it is generally agreed that the prohibition of aggression is to be regarded as peremptory".[84] Support for this proposition included not only the Commission's commentary on what became article 53 of the Vienna Convention on the Law of Treaties 1969,[85] but also uncontradicted statements by Governments in the course of the Vienna Conference on the Law of Treaties[86] and the view of the International Court in the *Military and Paramilitary Activities in and against Nicaragua* case.[87]

74. Linked to this rule of *jus cogens*, is the associated principle that boundaries cannot in law be changed by the use of force. Security Council resolution 242 (1967), for example, emphasised the "inadmissibility of the acquisition of territory by war", while the Declaration on Principles of International Law Concerning Friendly Relations declared that:

> "The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognised as legal".

75. Principle IV of the Declaration of Principles adopted by the CSCE in the Helsinki Final Act 1975 noted that:

> "The participating States will likewise refrain from making each other's territory the object of military occupation or other direct or indirect measures of force in contravention of international law, or the object of acquisition by means

[83] *Yearbook of the International Law Commission*, 1966, vol. II, pp. 247–8.

[84] J. Crawford, *The International Law Commission's Articles on State Responsibility*, Cambridge, 2002, p. 246.

[85] *Ibid.*, referring to *Yearbook of the International Law Commission*, 1966, vol. II, p. 248.

[86] The Commission noted in a footnote to these comments that "[i]n the course of the conference, a number of Governments characterized as peremptory the prohibitions against aggression and the illegal use of force: see *Official Records of the United Nations Conference on the Law of Treaties, First Session, Vienna, 26 March to 24 May 1968, summary records of the plenary meeting and of the meetings of the Committee of the Whole* (United Nations publication, Sales No. E.68.V.7), 52nd meeting, paras. 3, 31 and 43; 53rd meeting, paras. 4, 9, 15, 16, 35, 48, 59 and 69; 54th meeting, paras. 9, 41, 46 and 55; 55th meeting, paras. 31 and 42; and 56th meeting, paras. 6, 20, 29 and 51", see Crawford, *The International Law Commission's Articles on State Responsibility*, *op.cit.*, p. 246.

[87] ICJ Reports, 1986, pp. 14, 100–101. This view is supported by scholars, see, e.g., B. Simma, "NATO, the UN and the Use of Force: Legal Aspects", 10 *European Journal of International Law*, 1999, pp. 1, 3.

> of such measures or the threat of them. No such occupation or acquisition will be recognized as legal",

while Security Council resolution 662 (1990), adopted unanimously and under Chapter VII as a binding decision, declared that the purported Iraqi annexation of Kuwait "under any form and whatever pretext has no legal validity and is considered null and void".

76. The International Court in the *Construction of a Wall* advisory opinion[88] emphasised that, just as the principles as to the use of force incorporated in the Charter reflected customary international law, "the same is true of [their] corollary entailing the illegality of territorial acquisition resulting from the threat or use of force". In the *Kosovo* advisory opinion[89] the International Court similarly recognised extensive Security Council practice condemning unilateral declarations of independence which were "connected with the unlawful use of force or other egregious violations of norms of general international law, in particular those of a peremptory character (*jus cogens*)". The Court has made clear that all States are under an obligation not to recognise a situation resulting from the breach of such fundamental norms of international law.[90]

(b) The Objectivisation of Boundary Treaties

77. One further aspect of the importance of the territorial definition of States and the special protection afforded to it by international law is with regard to boundary treaties. Treaties as a matter of general principle bind only those States that are parties to them and the rights conferred by them will normally subside with the termination of the treaty itself. However, and due to the special position of boundaries in international law, treaties that concern boundaries between States manifest an unusual character in this respect.

78. Boundary treaties create an objective reality. That is, the boundaries established in such treaties will apply *erga omnes* and will survive the demise of the treaty itself. This proposition was reaffirmed by the International Court in the *Libya/Chad* case. The Court noted that:

> "the establishment of this boundary is a fact which, from the outset, has had a legal life of its own, independently of the fate of the 1955 Treaty. Once agreed the boundary stands, for any other approach would vitiate the fundamental principle of the stability of boundaries, the importance of which has been repeatedly emphasised by the Court (*Temple of Preah Vihear, ICJ Reports, 1962*, p. 34; *Aegean Sea Continental Shelf, ICJ Reports, 1978*, p. 36).
>
> A boundary established by treaty thus achieves a permanence which the treaty itself does not necessarily enjoy. The treaty can cease to be in force without in any way affecting the continuance of the boundary. … This is not to say that two States may not by mutual agreement vary the border between them; such a result can of course be achieved by mutual consent, but when a boundary has been the subject of agreement, the continued existence of that boundary is not dependent upon the continued life of the treaty under which the boundary is agreed".[91]

79. This position is supported, or reflected, by two further principles. The first relates to the *rebus sic stantibus* rule. This provides that a party to a treaty may

[88] ICJ Reports, 2004, pp. 136, 171. See also General Assembly resolution ES-10/14, 8 December 2003.
[89] *Kosovo Advisory Opinion*, ICJ Reports, 2010, pp. 403, 437–438.
[90] *Construction of a Wall Advisory Opinion*, ICJ Reports, 2004, pp. 136, 200.
[91] ICJ Reports, 1994, pp. 6, 37.

unilaterally invoke as a ground for terminating or suspending the operation of the treaty the fact that there has been a fundamental change of circumstances from those which existed at the time of the conclusion of the treaty.[92] The doctrine was enshrined in article 62 of the Vienna Convention on the Law of Treaties 1969, which was accepted by the International Court in the jurisdictional phase of the *Fisheries Jurisdiction* cases as a codification of existing customary international law. The issue focused on whether there had been a radical transformation in the extent of obligations imposed by the treaty in question.[93] However, article 62(2)(a) of the Vienna Convention provides that the doctrine could not be invoked "if the treaty establishes a boundary" and it is clear from the International Law Commission's Commentary that such treaties should constitute an exception to the general rule permitting termination or suspension, since otherwise the rule might become a source of dangerous frictions.[94]

80. The second principle relates to State succession. Article 16 of the Vienna Convention on Succession of States in Respect of Treaties 1978 provides the basic rule that a newly independent State (in the sense of a former colonial territory) was not bound to maintain in force or to become a party to any treaty by reason only of the fact that at the date of the succession of States the treaty was in force in respect of the territory to which the succession of States relates. However, this adoption of the so-called "clean slate" principle was held not to apply to boundary treaties. Article 11 of the Vienna Convention on Succession of States in Respect of Treaties 1978 provides that "a succession of States does not as such affect: (a) a boundary established by a treaty…". The wording used is instructive. The reference, of course, is to a boundary established by a treaty and not to the treaty itself as such and it is important to differentiate between the instrument and the objective reality it creates or recognises. In this sense, the treaty is constitutive.

81. Article 11 has subsequently been affirmed as requiring respect for treaty based boundary settlements. The International Court of Justice in the *Tunisia/Libya* case expressly stated that "this rule of continuity *ipso jure* of boundary and territorial treaties was later embodied in the 1978 Vienna Convention on Succession of States in Respect of Treaties",[95] while the Arbitration Commission established by the International Conference on Yugoslavia stated in Opinion No. 3 that "all external frontiers must be respected in line with the principle stated in the United Nations Charter, in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly Resolution 2625 (XXV)) and in the Helsinki Final Act, a principle which also underlies Article 11 of the Vienna Convention of 23 August 1978 on the Succession of States in Respect of Treaties".[96]

[92] See, e.g., A.D. McNair, *The Law of Treaties* (1961), pp. 681–91 and T.O. Elias, *The Modern Law of Treaties* (1974), p. 119.

[93] ICJ Reports, 1974, pp. 3, 18.

[94] *Yearbook of the International Law Commission* (1966 II), p. 259.

[95] ICJ Reports, 1982, pp. 18, 66. See also the *Burkina Faso/Mali* case, ICJ Reports, 1986, pp. 554, 563 and Judge Ajibola's Separate Opinion in the *Libya/Chad* case, ICJ Reports, 1994, pp. 6, 64.

[96] 92 *International Law Reports*, pp. 170, 171.

(c) The Principle of *Uti Possidetis Juris*[97]

82. The principle of *uti possidetis* is a critical doctrine which underpins the process of coming to statehood of a new entity under international law. Essentially it provides that new States achieve independence with the same borders that they had when they were administrative units within the territory or territories of either a colonial power or an already independent State. The fundamental aim of the doctrine is to underline the principle of the stability of State boundaries, but it also provides the new State with a territorial legitimation. This legitimation may derive from boundaries that were originally international boundaries or boundaries that were originally internal lines. In the former case, the rule of State succession to boundaries established by treaties will, of course, apply. However, the rule of continuity of international boundaries constitutes a general principle and will also apply however that boundary was established, for example, by way of recognition or by way of an international award. As the International Court made clear in the *Burkina Faso/Mali* case,[98] "[t]here is no doubt that the obligation to respect pre-existing international boundaries in the event of a State succession derives from a general rule of international law…".

83. Essentially, the principle of *uti possidetis* functions in the context of the transmission of sovereignty and the creation of a new independent State and conditions that process. Once the new State has become independent, the norm of territorial integrity takes over to provide protection for the territorial framework of that State.

84. The principle of *uti possidetis* first appeared in modern times in Latin America as the successor States to the Spanish Empire obtained their independence. The primary intention was clearly to seek to prevent the return of European colonialism by an acceptance that no areas of *terra nullius* remained on the continent since successor States succeeded to the boundaries of the former Spanish colonies or administrative units.[99] From Latin America the doctrine moved across to Africa, where the situation was rather more intricate both because of the involvement of a number of European colonial powers and because of the complex ethnic patterns of the continent.

85. Resolution 16(1) adopted by the OAU at its Cairo meeting in 1964 entrenched, or, more correctly, reaffirmed the core principle. This stated that colonial frontiers existing at the moment of decolonization constituted a tangible reality which all Member States pledged themselves to respect. This resolution was a key political statement and one with crucial legal overtones. It was carefully analysed by the International Court in the *Burkina Faso/Mali* case as an element in a wider situation.[100]

86. The Court declared that the 1964 resolution "deliberately defined and stressed the principle of *uti possidetis juris*", rather than establishing it. The resolution

[97] See, e.g., Kohen, *Possession Contestée et Souveraineté Territoriale*, Geneva, 1997, chapter 6, and *ibid.*, "*Uti Possidetis*, Prescription et Pratique Subséquent à un Traité dans l'Affaire de *l'Ile de Kasikili/Sedudu* devant la Cour Internationale de Justice", 43 German YIL, 2000, p. 253; G. Nesi, *L'Uti Possidetis Iuris nel Diritto Internazionale*, Padua, 1996; Luis Sánchez Rodríguez, "L'*Uti Possidetis* et les Effectivités dans les Contentieux Territoriaux et Frontaliers", 263 Hague Recueil, 1997, p. 149; J.M. Sorel and R. Mehdi, "L'*Uti Possidetis* Entre la Consécration Juridique et la Pratique: Essai de Réactualisation", AFDI, 1994, p. 11; T. Bartoš, "*Uti Possidetis. Quo Vadis*?", 18 Australian YIL, 1997, p. 37; "L'Applicabilité de l'*Uti Possidetis Juris* dans les Situations de Sécession ou de Dissolution d'Ētats", Colloque, RBDI, 1998, p. 5, and Shaw, "Heritage of States", *op.cit*.

[98] ICJ Reports, 1986, pp. 554, 566. See also the *Tunisia/Libya* case, ICJ Reports, 1982, pp. 18, 65–6.

[99] See *Colombia-Venezuela*, 1 *Reports of International Arbitral Awards*, pp. 223, 228 and *El Salvador/Honduras (Nicaragua Intervening)*, ICJ Reports, 1992, pp. 351, 387.

[100] ICJ Reports, 1986, pp. 554, 565–6.

emphasized that the fact that the new African States had agreed to respect the administrative boundaries and frontiers established by the colonial powers "must be seen not as a mere practice contributing to the gradual emergence of a principle of customary international law, limited in its impact to the African continent as it had previously been to Spanish America, but as the application in Africa of a rule of general scope". The acceptance of the colonial borders by African political leaders and by the OAU itself neither created a new rule nor extended to Africa a rule previously applied only in another continent. Rather it constituted the recognition and confirmation of an existing principle. As the Chamber noted, the essence of the principle of *uti possidetis* "lies in its primary aim of securing respect for the territorial boundaries at the moment when independence is achieved. Such territorial boundaries might be no more than delimitations between different administrative divisions or colonies all subject to the same sovereign. In that case the application of the principle of *uti possidetis* resulted in administrative boundaries being transformed into international frontiers in the full sense of the term".[101]

87. This definition was reaffirmed by the International Court in the *El Salvador/Honduras* case and referred to as an authoritative statement.[102] The Court declared that *uti possidetis* was essentially "a retrospective principle, investing as international boundaries administrative limits intended originally for quite other purposes".[103] It was underlined in the *Burkina Faso/Mali* case[104] that "the principle of *uti possidetis* freezes the territorial title; it stops the clock but does not put back the hands".

88. It is also clear that the principle of *uti possidetis* applies beyond the decolonisation context to cover the situation of secession from, or dissolution of, an already independent State. The International Court in the *Burkino Faso/Mali* case[105] took pains to emphasise that the principle was not "a special rule which pertains solely to one specific system of international law", but rather:

> "[i]t is a general principle, which is logically connected with the phenomenon of the obtaining of independence, wherever it occurs. Its obvious purpose is to prevent the independence and stability of new States being endangered by fratricidal struggles provoked by the challenging of frontiers following the withdrawal of the administering power".[106]

89. This formulation was repeated and affirmed in the decision of the International Court in *Nicaragua v Honduras*[107] and reaffirmed by the Tribunal in *Croatia v Slovenia*, where it was noted that *uti possidetis* was a "well-established principle of international law …. [which] governs the transformation of administrative borders into international boundaries following the dissolution of a State".[108]

90. That *uti possidetis* is a general principle appears also from later practice. This may be seen, for example, with regard to the former USSR,[109] Czechoslovakia[110] and the former Yugoslavia. In the latter case, the Yugoslav Arbitration Commission

[101] *Ibid.*, at p. 566.
[102] ICJ Reports, 1992, pp. 351, 386.
[103] *Ibid.*, at 388.
[104] ICJ Reports, 1986, pp. 554, 568.
[105] *Ibid.*, at p. 565.
[106] *Ibid*. See also the Separate Opinion of Judge Kooijmans, *Qatar v. Bahrain*, ICJ Reports, 2001, pp. 40, 230–2.
[107] ICJ Reports, 2007, pp. 659, 706 and following.
[108] Award of 29 June 2017, para. 256.
[109] See, e.g., R. Yakemtchouk, "Les Conflits de Territoires and de Frontières dans les Etats de l'Ex-URSS", *AFDI*, 1993, p. 401. See further below, paragraph 94 and following.
[110] See J. Malenovsky, "Problèmes Juridiques Liés à la Partition de la Tchécoslovaquie", *AFDI*, 1993, p. 328.

established by the European Community and accepted by the States of the former Yugoslavia made several relevant comments. In Opinion No. 2, the Arbitration Commission declared that:

> "whatever the circumstances, the right to self-determination must not involve changes to existing frontiers at the time of independence (*uti possidetis juris*) except where the states concerned agree otherwise".[111]

91. In Opinion No. 3, the Arbitration Commission, in considering the internal boundaries between Serbia and Croatia and Serbia and Bosnia-Herzegovina, emphasised that:

> "except where otherwise agreed, the former boundaries became frontiers protected by international law. This conclusion follows from the principle of respect for the territorial status quo and in particular from the principle of *uti possidetis*. It can be stated that the principle of *uti possidetis*, though initially applied in settling decolonization issues in America and Africa, is today recognised as a general principle, as stated by the International Court of Justice in its Judgment of 22 December 1986 in the case between *Burkina Faso and Mali (Frontier Dispute)*".[112]

92. This approach was confirmed, for example, by the Under-Secretary of State of the Foreign and Commonwealth Office of the United Kingdom, who stated in a Note in January 1992[113] that:

> "the borders of Croatia will become the frontiers of independent Croatia, so there is no doubt about that particular issue. That has been agreed amongst the Twelve, that will be our attitude towards those borders. They will just be changed from being republican borders to international frontiers".

93. Article X of the General Framework Agreement for Peace in Bosnia and Herzegovina 1995 (the Dayton Peace Agreement) provided that "the Federal Republic of Yugoslavia and the Republic of Bosnia and Herzegovina recognise each other as sovereign independent States within their international borders", while Security Council resolution 1038 (1996) reaffirmed the independence, sovereignty and territorial integrity of Croatia.

94. Further relevant State practice may be noted. For example with regard to the former USSR, article 5 of the Agreement Establishing the Commonwealth of Independent States, signed at Minsk on 8 December 1991,[114] provided that "the High Contracting Parties acknowledge and respect each other's territorial integrity and the inviolability of existing borders within the Commonwealth". This was reinforced by the Alma Ata Declaration of 21 December 1991, signed by eleven of the former Republics (i.e., excluding the Baltic States and Georgia),[115] which referred to the States "recognising and respecting each other's territorial integrity and the inviolability of existing borders". Although these instruments refer essentially to the principle of territorial integrity protecting international boundaries, it is clear that the intention was to assert and reinforce a *uti possidetis* doctrine, not least in order to provide international, regional and national legitimation for the new borders. This is

[111] 92 *ILR*, p. 168. See also A. Pellet, "Note sur la Commission d'Arbitrage de la Conférence Européenne pour la Paix en Yugoslavie", *AFDI*, 1991, p. 329, and Pellet, "Activité de la Commission d'Arbitrage de la Conférence Européenne pour la Paix en Yugoslavie", *AFDI*, 1992, p. 220.

[112] 92 *ILR*, p. 171.

[113] UKMIL, 63 *BYIL*, 1992, p. 719.

[114] See 31 *ILM*, 1992, p. 138 and p. 147 and following, and 34 *ILM*, 1995, p. 1298.

[115] 31 *ILM*, 1992, p. 148.

so since the borders to be protected that had just come into being as international borders were those of the former Republics of the USSR and no other.

95. In addition, article 6 of the Ukraine–Russian Federation Treaty of 19 November 1990 provided specifically that both parties recognized and respected the territorial integrity of the former Russian and Ukrainian Republics of the USSR within the borders existing in the framework of the USSR.[116] Similarly, the Treaty on the General Delimitation of the Common State Frontiers of 29 October 1992 between the Czech Republic and Slovakia confirmed that the boundary between the two new States as of their independence on 1 January 1993 would be the administrative border existing between the Czech and Slovak parts of the former State.[117]

96. Of particular interest are the European Guidelines on Recognition of New States in Eastern Europe and the Soviet Union, adopted by the European Community and its Member States on 16 December 1991. These provided for a common policy on recognition with regard to the States emerging from the former Yugoslavia and former USSR in particular, which required *inter alia* "respect for the inviolability of all frontiers which can only be changed by peaceful means and by common agreement".[118] This reference was thus not restricted to international frontiers and since the context was the coming to independence of a range of new States out of former federal States, all of whom became sovereign within the boundaries of the former federal units, the Guidelines constitute valuable affirmation of the principle of *uti possidetis*.

97. International practice, therefore, supports the conclusion that there is at the least a very strong presumption that a colony or federal or other distinct administrative unit will come to independence within the borders that it had in the period immediately prior to independence. As the International Court emphasised in the *Chagos* advisory opinion, State practice and *opinio juris* "confirm the customary law character of the right to territorial integrity of a non-self-governing territory as a corollary of the right to self-determination" and, further, that "States have consistently emphasized that respect for the territorial integrity of a non-self-governing territory is a key element of the exercise of the right to self-determination under international law".[119] The *uti possidetis* line may be altered, following the acquisition of independence, but provided that the relevant parties agree.[120]

98. Apart from this, decolonisation practice shows essentially that only where there has been international legitimation by the United Nations may the operation of the principle be altered, and this would be dependent upon an internationally accepted threat to peace and security. The examples of Palestine[121] and Ruanda-Urundi[122] are instructive here in showing that the United Nations was convinced that for reasons of peace and security the territory in question should come to independence in a partitioned form and the United Nations proceeded to affirm this formally. However, these cases involved territories under United Nations supervision (as mandate or trust territories respectively) and it is difficult to think of an example of a non-consensual

[116] See also the Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons (Ukraine, the Russian Federation, the United Kingdom and the United States), UN Doc. A/49/765-S/1994/1399.

[117] See Malenovsky, "Problèmes", *op.cit*.

[118] 92 *ILR*, p. 174 (emphasis added).

[119] ICJ Reports, 2019, para. 160.

[120] Shaw, "Heritage of States", *op.cit.*, p. 141 and General Assembly resolution 1608 (XV). See also the *Beagle Channel* case, HMSO, 1977, pp. 4–5 and *El Salvador/Honduras*, ICJ Reports, 1992, pp. 351, 408.

[121] See General Assembly resolution 181 (II) and Shaw, "Heritage of States", *op.cit.*, p. 148.

[122] *Ibid*. See also T/1551; T/1538; T/L.985 and Add.1; T/L.1004 and T/L.1005; A/5126 and Add.1 and General Assembly resolution 1746 (XVI).

alteration of the *uti possidetis* line outside of this context and with regard to secession from, or dissolution of, an already independent State.

B. The Principle of Self-Determination[123]

I. Self-Determination as a Legal Right

99. Self-determination has proved to be one of the key principles of modern international law, but, unlike, for example, the philosophical or political expression of the principle, the right to self-determination under international law has come to have a rather specific meaning, or more correctly two specific meanings.

100. The principle of self-determination essentially emerged through the concepts of nationality and democracy in nineteenth century Europe and very gradually extended its scope, owing much to the efforts of President Wilson of the United States. Although there was no reference to the principle as such in the League of Nations Covenant and it was clearly not accepted as a legal right at the date of that instrument,[124] its influence can be detected in the various provisions for minority protection[125] and in the establishment of the mandates system based as it was upon the sacred trust concept.[126] In the early 1920s, in the *Aaland Islands* case it was clearly accepted by both the International Commission of Jurists and the Committee of Rapporteurs that the principle of self-determination was not a legal rule of international law, but purely a political concept.[127]

101. Self-determination does, however, appear in the Charter of the United Nations. Article 1(2) states that the development of friendly relations among nations, based upon respect for the principle of equal rights and self-determination, constituted one of the purposes of the United Nations. This phraseology is repeated in article 55. Although clearly not expressed as a legal right, the inclusion of a reference to self-determination in the Charter, particularly within the context of the statement of purposes of the United Nations, provided the opportunity for the subsequent interpretation of the principle. It is also to be noted that Chapters XI and XII of the Charter deal with non-self-governing and trust territories and may be seen as relevant within the context of the development and definition of the right to self-determination, although the term is not expressly used.

102. Practice since 1945 within the United Nations, both generally and particularly with regard to specific cases, can be seen as having ultimately established the legal

[123] See, in general, e.g., A. Cassese, *Self-Determination of Peoples*, Cambridge, 1995; K. Knop, *Diversity and Self-Determination in International Law*, Cambridge, 2002; A.E. Buchanan, *Justice, Legitimacy and Self-Determination*, Oxford, 2004; D. Raic, *Statehood and the Law of Self-Determination*, The Hague, 2002; Crawford, *The Creation of States in International Law*, Oxford, 2nd ed., 2006, pp. 107 ff, and Crawford, "The General Assembly, the International Court and Self-Determination" in *Fifty Years of the International Court of Justice* (eds. A.V. Lowe and M. Fitzmaurice), Cambridge, 1996, p. 585; C. Tomuschat (ed.), *Modern Law of Self- Determination*, The Hague, 1993; A. Coleman, *Resolving Claims to Self-Determination*, London, 2015; D. French (ed.), *Statehood and Self-Determination: Reconciling Tradition and Modernity in International Law*, Cambridge, 2013; and Shaw, *International Law*, Cambridge, 2017, 8th ed., p. 198 and following.

[124] See, e.g., A. Cobban, *The Nation-State and National Self-Determination*, London, 1969, and D.H. Miller, *The Drafting of the Covenant*, New York, 1928, vol. II, pp. 12–13.

[125] See, e.g., I. Claude, *National Minorities*, Cambridge, 1955, and J. Lador-Lederer, *International Group Protection*, Leiden, 1968.

[126] See, e.g., H.D. Hall, *Mandates, Dependencies and Trusteeships*, Washington, 1948 *and* Q. Wright, *Mandates under the League of Nations*, Chicago, 1930.

[127] LNOJ Supp. No. 3, 1920, pp. 5–6 and Doc. B7/21/68/106[VII], pp. 22–3. See also J. Barros, *The Aaland Islands Question*, New Haven, 1968.

standing of the right in international law. Resolution 1514 (XV), the Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted in 1960 by eighty-nine votes to none, with nine abstentions, for example, stressed that:

> "all peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development".

103. It continued by noting that inadequacy of political, social, economic or educational preparedness was not to serve as a justification for delaying independence, while attempts aimed at the partial or total disruption of the national unity and territorial integrity of a country were deemed incompatible with the Charter of the United Nations. The Colonial Declaration set the terms for the self-determination debate in its emphasis upon the colonial context and its opposition to secession, and has been regarded by some as constituting a binding interpretation of the Charter.[128] The International Court initially referred to the Colonial Declaration as an "important stage" in the development of international law regarding non-self-governing territories and as the "basis for the process of decolonization",[129] but took this further in its advisory opinion in the *Chagos* case. In this case, the Court described the Colonial Declaration as "a defining moment in the consolidation of State practice on decolonization"[130] and noted in particular that "it has a declaratory character with regard to the right to self-determination as a customary norm, in view of its content and the conditions of its adoption"[131] and that "the wording used … has a normative character, in so far as it affirms that '[a]ll peoples have the right to self-determination".[132]

104. The Declaration on Principles of International Law Concerning Friendly Relations, which can be regarded as constituting an authoritative interpretation of the seven Charter provisions it expounds, states *inter alia* that:

> "by virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all people have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter".

105. The International Court in the *Chagos* case declared that "[b]y recognizing the right to self-determination as one of the 'basic principles of international law', the Declaration confirmed its normative character under customary international law".[133]

106. In addition to this general, abstract approach, the United Nations organs have dealt with self-determination in a series of specific resolutions with regard to particular situations and this practice may be adduced as reinforcing the conclusions that the principle has become a right in international law by virtue of a process of Charter interpretation. Numerous resolutions have been adopted in the General Assembly and also the Security Council.[134] It is also possible that a rule of customary law has been created since practice in the United Nations system is still State practice, but the identification of the *opinio juris* element (as distinct from States' mere

[128] See, e.g., O. Asamoah, *The Legal Significance of the Declarations of the General Assembly of the United Nations*, The Hague, 1966, pp. 177–85.

[129] The *Western Sahara* case, ICJ Reports, 1975, pp. 12, 31. Tomuschat has called the Colonial Declaration "the starting point for the rise of self-determination as a principle generating true legal rights", see "Secession and Self-Determination" in Kohen (ed.), *Secession, op.cit.*, p. 23.

[130] ICJ Reports, 2019, para. 150.

[131] *Ibid.*, para. 151.

[132] *Ibid.*, para. 153.

[133] *Ibid.*, para. 155.

[134] See, e.g., Assembly resolutions 1755 (XVII); 2138 (XXI); 2151 (XXI); 2379 (XXIII); 2383 (XXIII) and Security Council resolutions 183 (1963); 301 (1971); 377 (1975) and 384 (1975).

compliance with their duties under the Charter) is not easy and will depend upon careful assessment and judgment.

107. In 1966, the General Assembly adopted the two International Covenants on Human Rights, namely, on Civil and Political Rights and on Economic, Social and Cultural Rights. Both these Covenants have an identical first article, declaring *inter alia* that:

> "All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development",

while States parties to the instruments:

> "shall promote the realization of the right of self-determination and shall respect that right in conformity with the provisions of the Charter of the United Nations".

108. The Covenants came into force in 1976 and thus constitute binding provisions as between the parties. The Human Rights Committee, established under the International Covenant on Civil and Political Rights (and with its jurisdiction extended under the first Optional Protocol), has discussed the nature of self-determination and this will be noted below (see paras. 122–123).

109. There has also been judicial discussion of the principle of self-determination. In the *Namibia* advisory opinion[135] the International Court emphasised that "the subsequent development of international law in regard to non-self-governing territories as enshrined in the Charter of the United Nations made the principle of self-determination applicable to all of them". The *Western Sahara* advisory opinion reaffirmed this point.[136]

110. The Court moved one step further in the *East Timor (Portugal v. Australia)* case[137] when it declared that "Portugal's assertion that the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an *erga omnes* character, is irreproachable." The Court also emphasised that the right of peoples to self-determination was "one of the essential principles of contemporary international law".

111. In the *Construction of a Wall* advisory opinion,[138] the Court summarised the position as follows:

> "The Court would recall that in 1971 it emphasized that current developments in 'international law in regard to non-self-governing territories, as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to all [such territories]'. The Court went on to state that: 'These developments leave little doubt that the ultimate objective of the sacred trust' referred to in Article 22, paragraph 1, of the Covenant of the League of Nations 'was the self-determination … of the peoples concerned' (*Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, 1. C. J. Reports 1971*, p. 31, paras. 52–53). The Court has referred to this principle on a number of occasions in its jurisprudence (*ibid.*; see also *Western Sahara, Advisory Opinion, I.C.J. reports, 1975*, p. 68, para. 162). The

[135] ICJ Reports, 1971, pp. 16, 31.
[136] ICJ Reports, 1975, pp. 12, 31.
[137] ICJ Reports, 1995, pp. 90, 102.
[138] ICJ Reports, 2004, pp. 136, 172. See also *ibid.*, p. 199. See also the *Kosovo Advisory Opinion*, ICJ Reports, 2010, pp. 403, 436 and 438.

Court indeed made it clear that the right of peoples to self-determination is today a right *erga omnes* (see *East Timor (Portugul* v. *Australia), Judgment, 1. C. J. Reports 1995*, p. 102, para. 29)".

112. Confirmation of the status of the principle of self-determination was provided by the Supreme Court of Canada in 1998 in the *Reference re Secession of Quebec* case.[139] The Court responded to the second of the three questions posed, asking whether there existed in international law a right to self-determination which would give Quebec the right unilaterally to secede from Canada, by declaring that the principle of self-determination "has acquired a status beyond 'convention' and is considered a general principle of international law".[140] It is also clear from the *Chagos* advisory opinion (discussed above) that the right to self-determination constitutes a rule of customary international law.[141]

113. Since it is undeniable that the principle of self-determination is a legal norm, the question arises as to its scope and application. Although the usual formulation contained in international instruments[142] from the 1960 Colonial Declaration to the 1970 Declaration on Principles of International Law and the 1966 International Covenants on Human Rights refers to the right of "all peoples" to determine "freely their political status", international practice is clear that not all "peoples" as defined in a political–sociological sense[143] are accepted in international law as able to freely determine their political status up to and including secession from a recognised independent State. In fact, practice shows that the right has been recognised for "peoples" in strictly defined circumstances.

II. The Nature and Scope of the Right to Self-Determination

114. The following propositions, based on international practice and doctrine, may be put forward.[144]

(a) Self-Determination Applies to Mandate and Trusteeship Territories

115. The right to self-determination was first recognised as applying to mandate and trust territories — that is, the colonies of the defeated powers of the two world wars. Such territories were to be governed according to the principle that "the well-being and development of such peoples form a sacred trust of civilisation". This entrusted the tutelage of such peoples to "advanced nations who by reason of their resources, their experience or their geographical position" could undertake the responsibility. The arrangement was exercised by them as mandatories on behalf of the League.[145]

[139] [1998] 2 S.C.R. 217. The first question concerned the existence or not in Canadian constitutional law of a right to secede, and the third question asked whether in the event of a conflict constitutional or international law would have priority.

[140] *Ibid.*, para. 115.

[141] ICJ Reports, 2019, para. 146 and following.

[142] See also article 20 of the African Charter of Human and Peoples' Rights 1981, which provides that, "all peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have chosen".

[143] See, e.g., Cobban, *Nation-State*, p. 107, and K. Deutsche, *Nationalism and Social Communications*, New York, 1952. See also the *Greco-Bulgarian Communities* case, PCIJ, Series B, No. 17; 5 AD, p. 4.

[144] See, e.g., O. De Schutter, *International Human Rights Law*, Cambridge, 3rd ed., 2019, chapter 7.5; K. Knop, *Diversity and Self-Determination in International Law*, Cambridge, 2002, and J. Fisch, *The Right of Self-Determination of Peoples*, Cambridge, 2015.

[145] See article 22 of the Covenant of the League of Nations. See also the *International Status of South West Africa*, ICJ Reports, 1950, pp. 128, 132; the *Namibia* case, ICJ Reports, 1971, pp. 16, 28–9; *Certain*

Upon the conclusion of the Second World War and the demise of the League, the mandate system was transmuted into the United Nations trusteeship system under Chapters XII and XIII of the Charter of the United Nations.[146]

(b) Self-Determination Applies to Non-Self-Governing Territories under the Charter of the United Nations

116. The right of self-determination was subsequently recognised as applicable to all non-self-governing territories as enshrined in the Charter of the United Nations. An important step in this process was the Colonial Declaration 1960, which called for the right to self-determination with regard to all colonial countries and peoples that had not attained independence. The legal status of the right was confirmed by the International Court of Justice in a number of advisory opinions.[147] The United Nations based its policy on the proposition that "the territory of a colony or other non-self-governing territory has under the Charter a status separate and distinct from the territory of the State administering it" and that such status was to exist until the people of that territory had exercised the right to self-determination.[148] The Canadian Supreme Court concluded in the *Quebec Secession* case that "[t]he right of colonial peoples to exercise their right to self-determination by breaking away from the 'imperial' power is now undisputed".[149]

117. The principle of self-determination provides that the people of the colonially defined territorial unit in question may freely determine their own political status. Such determination may result in independence, integration with a neighbouring State, free association with an independent State or any other political status freely decided upon by the people concerned.[150]

(c) Self-Determination Applies to Territories under Foreign or Alien Occupation

118. The Declaration on Principles of International Law 1970 noted that the "subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle [of self-determination], as well as a denial of fundamental human rights, and is contrary to the Charter", while article 1(4) of Additional Protocol I to the Geneva Conventions 1949, adopted in 1977, referred to "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations". The Canadian Supreme Court also referred to the right of self-determination in the context of foreign military occupations.[151]

Phosphate Lands in Nauru, ICJ Reports, 1992, pp. 240, 256; and *Cameroon v. Nigeria*, ICJ Reports, 2002, pp. 303, 409.

[146] See, e.g., *Certain Phosphate Lands in Nauru*, ICJ Reports, 1992, pp. 240, 257 and *Cameroon v. Nigeria*, ICJ Reports, 2002, pp. 303, 409.

[147] See the *Namibia* case, ICJ Reports, 1971, pp. 16, 31 and the *Western Sahara* case, ICJ Reports, 1975, pp. 12, 31–3. See also the *Construction of a Wall* case, ICJ Reports, 2004, pp. 136, 172 and the *Chagos* advisory opinion, ICJ Reports, 2019, paras. 150–153.

[148] 1970 Declaration on Principles of International Law. Note also that resolution 1541 (XV) declared that there is an obligation to transmit information regarding a territory "which is geographically separate and is distinct ethnically and/or culturally from the country administering it".

[149] [1998] 2 S.C.R. 217, para. 132.

[150] *Western Sahara* case, ICJ Reports, 1975, pp. 12, 33 and 68. See also Judge Dillard, *ibid.*, p. 122; 59 ILR, pp. 30, 50, 85, 138. See General Assembly resolution 1541 (XV) and the 1970 Declaration on Principles of International Law.

[151] The *Quebec Secession* case, [1998] 2 S.C.R. 217, para. 138.

119. The Palestinian people under Israeli occupation (that is, in the territories occupied since the 1967 war) has, in particular, been recognised as having the right to self-determination. This was noted in a number of United Nations resolutions[152] and by the International Court in the *Construction of a Wall* advisory opinion.[153] Further examples of this might include, amongst others, Afghanistan under Soviet occupation.[154]

(d) Self-Determination Applies within States as a Rule of Human Rights

120. Cassese has written that:[155]

> "Internal self-determination means the right to authentic self-government, that is, the right for a people really and freely to choose its own political and economic regime – which is much more than choosing among what is on offer perhaps from one political or economic position only. It is an ongoing right. Unlike external self-determination for colonial peoples – which ceases to exist under customary international law once it is implemented – the right to internal self-determination is neither destroyed nor diminished by its already once having been invoked and put into effect".

121. This aspect of self-determination applies in a number of contexts, but with the common theme of the recognition of legal rights for communities of persons within the recognised territorial framework of the independent State.

(i) Generally

122. The interpretation of self-determination as a principle of collective human rights has been analysed by the Human Rights Committee in interpreting article 1 of the International Covenant on Civil and Political Rights.[156] In its General Comment on Self-Determination adopted in 1984, the Committee emphasised that the realisation of the right was "an essential condition for the effective guarantee and observance of

[152] See, e.g., General Assembly resolutions 3236 (XXIX), 55/85 and 58/163. See also General Assembly resolutions 38/16 and 41/100 and Cassese, *Self-Determination*, *op.cit.*, p. 92 and following. The application of the right to self-determination to peoples which remain under colonial domination and foreign occupation has been reaffirmed in numerous United Nations resolutions, including those adopted at the level of the Heads of State and Government. Among them are the Millennium Declaration (General Assembly resolution 55/2), para. 4; World Summit Outcome (General Assembly resolution 60/1), para. 4; Outcome Document of the United Nations Conference on Sustainable Development, entitled "The future we want" (General Assembly resolution 66/288), annex, para. 27; Outcome Document of the United Nations summit for the adoption of the post-2015 development agenda, entitled "Transforming our world: the 2030 Agenda for Sustainable Development" (General Assembly resolution 70/1), para. 35; Political Declaration of the Nelson Mandela Peace Summit (General Assembly resolution 73/1), para. 6. The only document on self-determination regularly adopted within the United Nations is the annual resolution of the Third Committee of the General Assembly on the universal realization of the right of peoples to self-determination. The resolution makes particular focus on the situations of peoples under colonial, foreign and alien domination resulting from "acts of foreign military intervention, aggression and occupation", regards such acts as leading to the suppression of the right of peoples to self-determination and other human rights and, in this regard, calls upon those States responsible to cease immediately their military intervention in and occupation of foreign countries and territories. See, e.g., General Assembly resolution 74/140.

[153] ICJ Reports, 2004, pp. 136, 183, 197 and 199. See also, e.g., Cassese, *Self-Determination*, *op.cit.*, pp. 90–9.

[154] See, e.g., Cassese, *Self-Determination*, *ibid.*, p. 94 and following.

[155] *Ibid.*, p. 101.

[156] See, in particular, D. McGoldrick, *The Human Rights Committee*, Oxford, 1994, chapter 5; Cassese, *Self-Determination*, *op.cit.*, p. 59 and following, and M. Nowak, *UN Covenant on Civil and Political Rights, CCPR Commentary*, Kehl, 2nd ed., 2005, part 1.

individual human rights".[157] The Committee has taken the view, as Higgins has noted,[158] that:

> "external self-determination requires a state to take action in its foreign policy consistent with the attainment of self-determination in the remaining areas of colonial or racist occupation. But internal self-determination is directed to their own peoples".

123. In its discussion on self-determination, the Committee has encouraged States parties to provide in their reports details about peoples' participation in social and political structures.[159] Further, in engaging in dialogue with representatives of States parties, questions are regularly posed as to how political institutions operate and how the people of the State concerned participate in the governance of their State.[160] This necessarily links in with consideration of other articles of the Covenant concerning, for example, freedom of expression (article 19), freedom of assembly (article 21), freedom of association (article 22) and the right to take part in the conduct of public affairs and to vote (article 25). The right of self-determination, therefore, provides the overall framework for the consideration of the principles relating to democratic governance.

124. The Committee on the Elimination of Racial Discrimination adopted General Recommendation 21 in 1996, in which it similarly divided self-determination into an external and an internal aspect. The former:

> "implies that all peoples have the right to determine freely their political status and their place in the international community based upon the principle of equal rights and exemplified by the liberation of peoples from colonialism and by the prohibition to subject peoples to alien subjugation, domination and exploitation",

while the latter referred to the:

> "rights of all peoples to pursue freely their economic, social and cultural development without outside interference. In that respect there exists a link with the right of every citizen to take part in the conduct of public affairs at any level…".[161]

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[157] General Comment 12: see HRI/GEN/1/Rev.1, p. 12, 1994. However, the principle is seen as a collective one and not one that individuals could seek to enforce through the individual petition procedures provided in the First Optional Protocol to the Covenant, see, e.g., the *Kitok* case, Report of the Human Rights Committee, UN Doc. A/43/40, pp. 221, 228; the *Lubicon Lake Band* case, UN Doc. A/45/40, vol. II, pp. 1, 27; and *RL v. Canada*, UN Doc. A/47/40, pp. 358. 365. However, in *Mahuika et al.* v. *New Zealand*, the Committee took the view that the provisions of article 1 may be relevant in the interpretation of other rights protected by the Covenant, in particular article 27 on the rights of persons belonging to minorities, UN Doc. A/56/40, vol. II, annex X, A. See also *Diergaardt et al.* v. *Namibia*, UN Doc. A/55/40, vol. II, annex IX, sect. M, para. 10.3 and A. Conte and R. Burchill, *Defining Civil and Political Rights: The Jurisprudence of the United Nations Human Rights Committee*, London, 2nd ed., 2009, chapter 9.

[158] R. Higgins, "Postmodern Tribalism and the Right to Secession" in C. Brölmann, R. Lefeber and M. Zieck (eds.), *Peoples and Minorities in International Law*, Dordrecht, 1993, p. 31.

[159] See, e.g., the report of Colombia, UN Doc. CCPR/C/64/Add.3, pp. 9 ff., 1991. In the third periodic report of Peru, it was noted that the first paragraph of article 1 of the Covenant "lays down the right of every people to self-determination. Under that right any people is able to decide freely on its political and economic condition or regime and hence establish a form of government suitable for the purposes in view", UN Doc. CCPR/C/83/Add.1, 1995, p. 4.

[160] See, e.g., with regard to Canada, UN Doc. A/46/40, p. 12. See also UN Doc. A/45/40, pp. 120–1, with regard to Zaire.

[161] UN Doc. A/51/18. See also P. Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination*, Oxford, 2016, pp. 84–6 and 334–6.

125. The issue was touched upon by the Canadian Supreme Court in the *Quebec Secession* case, where it was noted that self-determination "is normally fulfilled through *internal* self-determination – a people's pursuit of its political, economic, social and cultural development within the framework of an existing state".[162]

(ii) Minorities

126. The international protection of minorities has gone through various guises.[163] After the First World War and the collapse of the German, Ottoman, Russian and Austro-Hungarian Empires, coupled with the rise of a number of independent nation-based States in Eastern and Central Europe, series of arrangements were made to protect the rights of those racial, religious or linguistic minority groups to whom sovereignty and statehood could not be granted.[164] Such provisions constituted obligations of international concern and could not be altered without the assent of a majority of the League of Nations Council. The Council was to take action in the event of any infraction of minorities' obligations. There also existed a procedure for minorities to submit petitions to the League, although they had no standing as such before the Council or the Permanent Court of International Justice.[165] After the Second World War, the focus shifted to the international protection of universal individual human rights, although several instruments dealing with specific situations incorporated provisions concerning the protection of minorities.[166]

127. It was with the adoption of the International Covenant on Civil and Political Rights in 1966 that the question of minority rights came back onto the international agenda. Article 27 of this Covenant provides that "[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language". This cautious formulation made it clear that such minority rights adhered to the members of such groups and not to the groups themselves, while the framework for the operation of the provision was that of the State itself. The Committee adopted a General Comment on article 27 in 1994 after much discussion.[167] The General Comment pointed to the distinction between the rights of persons belonging to minorities on the one hand, and the right to self-determination and the right to equality and non-discrimination on the other. It was particularly emphasised that the rights under article 27 did not prejudice the sovereignty and territorial integrity of States.

128. The United Nations General Assembly adopted a Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities in December 1992. Article 1 provides that States "shall protect the existence and the

[162] [1998] 2 S.C.R. 217, para. 126 (emphasis in original).

[163] See, e.g., M. Weller, *Universal Minority Rights: A Commentary on the Jurisprudence of International Courts and Treaty Bodies*, Oxford, 2007; O. De Schutter, *International Human Rights Law*, Cambridge, 3rd ed., 2019, chapter 7.5; A. Conte and R. Burchill, *Defining Civil and Political Rights: The Jurisprudence of the United Nations Human Rights Committee*, London, 2nd ed., 2009, chapter 10; Higgins, "Minority Rights: Discrepancies and Divergencies Between the International Covenant and the Council of Europe System" in *Liber Amicorum for Henry Schermers*, Dordrecht, 1994, p. 193; Thornberry, *International Law and Minorities*, Oxford, 1991; H. Hannum (ed.), *Documents on Autonomy and Minority Rights*, Dordrecht, 1993; J. Rehman, *The Weakness in the International Protection of Minority Rights*, The Hague, 2000 and *International Protection of Human Rights Law*, Harlow, 2nd ed., 2010, chapter 13; and the Capotorti Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities, E/CN.4/Sub.2/384/Rev.1, 1979.

[164] See, generally, Thornberry, *International Law and Minorities*, *op.cit.*, pp. 38 ff.

[165] See, e.g., the Capotorti Report, *op.cit.*, pp. 20–2.

[166] See, e.g., Annex IV of the Treaty of Peace with Italy, 1947; the Indian–Pakistan Treaty, 1950, and article 7 of the Austrian State Treaty, 1955. See also the provisions in the documents concerning the independence of Cyprus, Cmnd 1093, 1960.

[167] General Comment No. 23, HRI/GEN/1/Rev.1, p. 38.

national or ethnic, cultural, religious and linguistic identity of minorities *within their respective territories*" (emphasis added) and shall adopt appropriate legislative and other measures to achieve these ends. The Declaration states *inter alia* that persons belonging to minorities have the right to enjoy their own culture, to practise and profess their own religion and to use their own language in private and in public without hindrance. Such persons also have the right to participate effectively in cultural, social, economic and public life. However, the Declaration concludes by explicitly stating that "[n]othing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of states".[168]

129. In a similar vein, the Framework Convention for the Protection of National Minorities, adopted by the Council of Europe in 1995, establishes as its aim, as expressed in the preamble, "the effective protection of national minorities and of the rights and freedoms of persons belonging to those minorities, within the rule of law, respecting the territorial integrity and national sovereignty of States", while specifically providing that "[n]othing in the present framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States".

(iii) Indigenous Peoples

130. International law has also concerned itself increasingly with the special position of indigenous peoples.[169] While recognizing the special position of such peoples with regard to the territory with which they have long been associated, relevant international instruments have consistently constrained the rights accepted or accorded with reference to the need to respect the territorial integrity of the State in which such peoples live. Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries, adopted by the International Labour Organisation in 1989, underlined in its preamble the aspirations of indigenous peoples "to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, *within the framework of the states in which they live*" (emphasis added).

131. A Declaration on the Rights of Indigenous Peoples was adopted by the United Nations in 2007.[170] The Declaration, noting that indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law, specifically recognised their right to self-determination.[171] In exercising their right to self-determination, it was noted that indigenous peoples have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.[172] While thus essentially

[168] Article 8(4).

[169] See, e.g., Thornberry, *Indigenous Peoples and Human Rights*, Manchester, 2002; S. Marquardt, "International Law and Indigenous Peoples", 3 *International Journal on Group Rights*, 1995, p. 47; R. Barsh, "Indigenous Peoples: An Emerging Object of International Law", 80 *American Journal of International Law*, 1986, p. 369; J. Anaya, *Indigenous Peoples in International Law*, Oxford, 2nd ed., 2004, and G. Bennett, *Aboriginal Rights in International Law*, London, 1978. See also *Justice Pending: Indigenous Peoples and Other Good Causes* (eds. G. Alfredsson and M. Stavropoulou), The Hague, 2002.

[170] General Assembly resolution 61/295.

[171] Articles 1 and 3.

[172] Article 4. The Declaration also noted that indigenous peoples have the right to maintain and strengthen their distinctive political, economic, social and cultural characteristics, as well as their legal systems, while

defining the meaning of self-determination for indigenous peoples, the point was underlined in article 46(1) that:

> "Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or 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".

(e) Self-Determination Reinforces the Sovereign Equality and Territorial Integrity of States

132. The relevant formulation in the Charter of the United Nations provides in article 1(2) that one of the purposes of the organisation is to "develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples", while article 55 refers to "peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples". Although the terminology is somewhat unclear, the only logical interpretation of this phrase is that friendly relations as between States (since in the Charter the term "nations" bears this meaning)[173] should proceed on the basis of respect for the principles of equal rights of States, being a long-established principle of international law. The reference to the self-determination of peoples appears in the Charter to refer either to the population of a Member State of the United Nations[174] or to the population of a non-self-governing or trust territory.[175] Accordingly, the principle of self-determination as it has been enshrined in the Charter of the United Nations may be interpreted as reinforcing the principle of respect for the territorial integrity of States since it constitutes a reaffirmation of the principle of sovereign equality as well as that of colonial territories *mutatis mutandis*. This in turn underlined the principle of non-intervention by States into the domestic affairs of other States.

133. Kelsen emphasised that self-determination as expressed in the Charter simply underlined the concept of the sovereignty of States. He noted that since the "self-determination of the people usually designated a principle of internal policy, the principle of democratic government" and article 1(2) referred to relations among States, and since "the terms 'peoples' too … in connection with 'equal rights' means probably states since only states have 'equal rights' according to general international law ... then the self-determination of peoples in article 1(2) can mean only sovereignty of the states".[176] While this view may now in hindsight be seen as unduly cautious, the fact that self-determination acts to reinforce the principles of the sovereign equality of States and of non-intervention is undiminished. Indeed, Higgins has written that:

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retaining the right to participate fully in the life of the State (article 5), the right to a nationality (article 6), and the collective right to live in freedom and security as distinct peoples free from any act of genocide or violence (article 7(2)). They also have the right not to be subjected to forced assimilation or destruction of their culture (article 8).

[173] Note in addition the title of the organisation ("United Nations") and the articles cited above, the preamble and article 14.

[174] Note the reference at the start of the preamble to "We, the Peoples of the United Nations" and later to "our respective Governments" establishing the United Nations.

[175] See articles 73 and 76 respectively.

[176] *Law of the United Nations* (1950), pp. 51–3. See also pp. 29–32. See, generally, Schwelb, "The International Court of Justice and the Human Rights Clauses of the Charter", 66 *American Journal of International Law*, 1972, p. 337. In his report to Commission I, the Rapporteur noted that it was understood that the "principle of equal rights of peoples and that of self-determination are two component elements of one norm". Summary Reports of Committee I/I DOC.I/I/I of 16 May 1945, 6 *UNCIO Docs.*, p. 296.

> "In both article 1 (2) and article 55, the context seems to be the right of the peoples of one state to be protected from interference by other states or governments".[177]

134. Further, in the decolonisation context, since self-determination has been understood to mean that the people of the colonially defined unit may freely determine their political status (up to and including independence) but within that colonial framework, unless the United Nations has otherwise accepted that the peoples within the territory cannot live within one State and that this situation has produced a threat to peace and security,[178] then one consequence of the exercise of self-determination is to forge the territorial extent of the newly created State, which is then protected by the application additionally of the principle of respect for its territorial integrity.

(f) Self-Determination Does Not Authorise Secession

(a) The General Principle

135. Outside of the special context of decolonisation, which may or may not be seen as a form of "secession", international law is unambiguous in not providing for a right of secession from independent States. The practice surveyed above in section A.I on the fundamental norm of territorial integrity demonstrates this clearly. Indeed, such a norm would be of little value were a right to secession under international law to be recognised as applying to independent States.

136. The United Nations has always strenuously opposed any attempt at the partial or total disruption of the national unity and territorial integrity of a State. Point 6 of the Colonial Declaration 1960, for example, emphasised that:

> "Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations",

while the preamble to the Declaration on Principles of International Law 1970 included the following paragraphs:

> "Recalling the duty of States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State,
>
> Considering it essential that all States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,
>
> Convinced in consequence that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or country or at its political independence is incompatible with the purposes and principles of the Charter".

137. In addition, it was specifically noted that:

> "Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country".

[177] "Self-Determination and Secession" in J. Dahlitz (ed.), *Secession and International Law*, New York, 2003, pp. 21, 23. See also T.M. Franck, *The Power of Legitimacy Among Nations*, Oxford, 1990, p. 153 and following and Franck, "Fairness in the International Legal and Institutional System", 240 HR, 1993 III, pp. 13, 127–49.

[178] See above, para. 98.

138. This approach has also been underlined in regional instruments. For example, article III(3) of the OAU Charter emphasises the principle of "Respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence", while Principle VIII of the Helsinki Final Act noted that:

> "The participating States will respect the equal rights of peoples and their right to self-determination, acting all times in conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to the territorial integrity of States". [179]

139. In addition, the Charter of Paris for a New Europe 1990 declared that the participating States:

> "reaffirm the equal rights of peoples and their right to self-determination in conformity with the Charter of the United Nations and with the relevant norms of international law, including those relating to the territorial integrity of States".

140. International practice demonstrates that self-determination has not been interpreted to mean that any group defining itself as such can decide for itself its own political status up to and including secession from an already independent State. [180] The United Nations Secretary-General has emphasised that:

> "as an international organisation, the United Nations has never accepted and does not accept and I do not believe it will ever accept the principle of secession of a part of a member State". [181]

141. The Yugoslav Arbitration Commission underlined in Opinion No. 2 that:

> "whatever the circumstances, the right to self-determination must not involve changes to existing frontiers at the time of independence (*uti possidetis juris*) except where the states concerned agree otherwise", [182]

while, the Canadian Supreme Court concluded in the *Quebec Secession* case that:

> "international law expects that the right to self-determination will be exercised by peoples within the framework of existing sovereign states and consistently with the maintenance of the territorial integrity of those states. … The international law principle of self-determination has evolved within a framework of respect for the territorial integrity of existing states. The 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". [183]

142. In its report of September 2009, the Independent International Fact-Finding Mission on the Conflict in Georgia (appointed by the EU Council of Ministers and

[179] Principle IV on the Territorial Integrity of States underlined respect for this principle, noting that the participating States "will refrain from any action inconsistent with the purposes and principles of the Charter of the United Nations against the territorial integrity, political independence or the unity of any participating state", see above, para. 40.

[180] See, e.g., Hannum, *Autonomy, Sovereignty and Self-Determination*, Pennsylvania, 1990, p. 469; Higgins, *op.cit.*, p. 121; Franck, *Fairness*, *op.cit.* p. 149 et seq. and Cassese, *op.cit.*, p. 122.

[181] *UN Monthly Chronicle* (February 1970), p. 36. See also the comment by the United Kingdom Foreign Minister that "it is widely accepted at the United Nations that the right of self-determination does not give every distinct group or territorial sub-division within a state the right to secede from it and thereby dismember the territorial integrity or political unity of sovereign independents", 54 *BYIL*, 1983, p. 409.

[182] 92 *ILR*, p. 168.

[183] [1998] 2 S.C.R. 217, paras. 122 and 127.

led by the distinguished Swiss diplomat Heidi Tagliavini) expressed the same view, stating:

> "According to the overwhelmingly accepted *uti possidetis* principle, only former constituent republics such as Georgia but not territorial sub-units such as South Ossetia or Abkhazia are granted independence in case of dismemberment of a larger entity such as the former Soviet Union. Hence, South Ossetia did not have a right to secede from Georgia, and the same holds true for Abkhazia for much of the same reasons. Recognition of breakaway entities such as Abkhazia and South Ossetia by a third country is consequently contrary to international law in terms of an unlawful interference in the sovereignty and territorial integrity of the affected country, which is Georgia. It runs against Principle I of the Helsinki Final Act which states 'the participating States will respect each other's sovereign equality and individuality as well as all the rights inherent in and encompassed by its sovereignty, including in particular the right of every State to juridical equality, to territorial integrity and to freedom and political independence.'"[184]

143. Leading writers have come to the same general conclusion. Cassese has written that:

> "Ever since the emergence of the political principle of self-determination on the international scene, States have been adamant in rejecting even the possibility that nations, groups and minorities be granted a right to secede from the territory in which they live. Territorial integrity and sovereign rights have consistently been regarded as of paramount importance; indeed they have been considered as concluding debate on the subject".[185]

144. That author concluded with the observation that:

> "the international body of legal norms on self-determination does not encompass any rule granting ethnic groups and minorities the right to secede with a view to becoming a separate and distinct international entity".[186]

145. Crawford has written that:

> "Since 1945 the international community has been extremely reluctant to accept unilateral secession of parts of independent States if the secession is opposed by the government of that State. In such cases the principle of territorial integrity has been a significant limitation. Since 1945 no State which has been created by unilateral secession has been admitted to the United Nations against the declared wishes of the predecessor State".[187]

146. He has concluded as follows:

> "To summarise, outside of the colonial context, the principle of self-determination is not recognised as giving rise to unilateral rights of secession by parts of independent States. … State practice since 1945 shows the extreme reluctance of States to recognise unilateral secession outside of the colonial context. That practice has not changed since 1989, despite the emergence during that period of twenty-three new States. On the contrary, the practice has been powerfully reinforced".[188]

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[184] Independent International Fact-Finding Mission on the Conflict in Georgia, Report, Vol. I (September 2009), p. 17, <https://www.echr.coe.int/Documents/HUDOC_38263_08_Annexes_ENG.pdf>.
[185] *Op.cit.*, p. 122.
[186] *Ibid.*, p. 339.
[187] *The Creation of States*, *op.cit.*, p. 390.
[188] *Ibid.*, p. 415.

(b) The Reverse Argument – The "Saving" or "Safeguard" Clause of the Declaration on Principles of International Law 1970

147. The Declaration on Principles of International Law Concerning Friendly Relations contains in its section on self-determination the following provision:

> "Nothing in the foregoing paragraph shall be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour".[189]

148. The thrust of this clause is to reinforce the primacy of the principle of territorial integrity and political unity of sovereign and independent States, while reaffirming the importance of States conducting themselves in accordance with the principle of self-determination. The primary starting-point is clearly the principle of territorial integrity, for its significance is of the essence in the clause in prohibiting action to affect in any way detrimentally the territorial integrity of States. Further, it is to be noted that this clause is immediately followed by the statement that "[e]very State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country". This provision is laid down without condition or provision, nor is expressed as being contingent upon any particular factual situation. The concordance can hardly be coincidental.

149. Secondly, the clause provides a definition of the principle of self-determination in terms of the representative and non-discriminatory requirement of government so that a people validly exercise such right by participation in the governance of the State in question on a basis of equality. This is a clear reference to "internal self-determination" as it has been analysed and recognised by the Human Rights Committee in its implementation of article 1 of the International Covenant on Civil and Political Rights expressing the right of all peoples to self-determination.

150. However, some have drawn the inference by way of reverse or *a contrario* argument that States that are not conducting themselves in accordance with the principle of self-determination are not therefore protected by the principle of territorial integrity, thus providing for a right of secession. Even those writers that do draw this conclusion express themselves in extremely cautious and hesitant terms. Cassese, for example, concludes that:

> "a racial or religious group may attempt secession, a form of external self-determination, when it is apparent that internal self-determination is absolutely beyond reach. Extreme and unremitting persecution and the lack of any reasonable prospect for peaceful challenge may make secession legitimate",[190]

while Crawford has noted that:

> "it is arguable that, in extreme cases of oppression, international law allows remedial secession to discrete peoples within a State and that the 'safeguard clauses' in the Friendly Relations Declaration and the Vienna Declaration recognise this, even if indirectly".[191]

151. The Canadian Supreme Court in the *Quebec Secession* case mentioned the issue, noting that it was unclear whether the reverse argument actually reflected an

[189] See also the similar clause in the Vienna Declaration of the World Conference on Human Rights 1993.
[190] *Op.cit.*, p. 120.
[191] *The Creation of States*, *op.cit.*, p. 119.

"established international law standard" and in any event concluding that it was irrelevant to the Quebec situation.[192] The International Court in the *Kosovo* advisory opinion noted that whether the international law right of self-determination conferred a right of secession from an already independent State was "a subject on which radically different views were expressed by those taking part in the proceedings and expressing a position on the question. Similar differences existed regarding whether international law provides for a right of 'remedial secession' and, if so, in what circumstances".[193] In the event, the Court did not take the matter further as it felt that it was not necessary to decide on this for the purposes of the case.

152. A more general comment should be made. It would be extremely unusual for a major change in legal principle such as the legitimation of the right to secession from an independent State, even in extreme conditions, to be introduced by way of an ambiguous subordinate clause phrased in a negative way, especially when the principle of territorial integrity has been accepted and proclaimed as a core principle of international law. Further the principle of territorial integrity is repeated both before the qualifying clause in the provision in question and indeed in the immediately following paragraph. It is also to be underlined that the 1970 Declaration provides that each principle contained in the Declaration is to be interpreted in the context of the other principles and that all these principles are interrelated. The principle of sovereign equality includes the unconditional provision that "[t]he territorial integrity and political independence of the State are inviolable". Accordingly, it is hard to conclude that the "saving" or "safeguard" clause so indirectly provides such an important exception to the principle of territorial integrity.

153. Additionally, actual practice demonstrating the successful application of this proposition is lacking, even when expressed as restricted to "extreme" persecution. This is particularly so where the governing norm of respect for the territorial integrity of States is so deeply established.

[192] [1998] 2 S.C.R. 217, para. 135.
[193] ICJ Reports, 2010, pp. 403, 438.

C. Armenia's Revisionist Claims and Responses Thereto

154. Armenia's revisionist claims with regard to self-determination and territorial integrity proceed as follows.[194]

(a) Prior to Azerbaijan's Independence

155. Armenia makes a series of historical assertions. It claims that Nagorny Karabakh was arbitrarily placed in the Soviet Republic of Azerbaijan on 5 July 1921 with the status of an autonomous region. Within the Soviet Union, it is claimed, the Nagorno-Karabakh Autonomous Oblast (NKAO) was subject to pressures aimed at reducing the ethnic Armenian population.[195] However, it is well known that Nagorny Karabakh has been part of Azerbaijan for centuries.[196] In 1919 the Allied Powers recognized that Nagorny Karabakh formed part of Azerbaijan.[197] After Soviet rule was established in the region, in response to territorial claims of Armenia, the decision was taken on 5 July 1921 to leave Nagorny Karabakh within Azerbaijan.[198] The status of Nagorny Karabakh as an autonomous oblast within the Soviet Socialist Republic of Azerbaijan (Azerbaijan SSR) was governed by the Law "On the Nagorno-Karabakh Autonomous Oblast", adopted by the Supreme Soviet of the Azerbaijan SSR on 16 June 1981. According to article 78 of the Constitution of the USSR, the territory of a Union Republic[199] could not be altered without its consent, while the borders between the Union Republics could be altered by mutual agreement of the Republics concerned, subject to approval by the USSR. It is also well documented that the NKAO possessed all essential elements of self-government and enjoyed a wide range of rights and privileges. In a letter dated 30 January 2018, Azerbaijan noted that "[i]n terms of economic development, the region was second, behind only the capital city of Baku. Overall, it edged out Azerbaijan and Armenia in almost all categories,

[194] See, e.g., Armenia's Initial Report to the Human Rights Committee, UN Doc. CCPR/C/92/Add.2 (30 April 1998); and Armenia's Initial Report to the Committee on the Economic, Social and Cultural Rights, UN Doc. E/1990/5/Add.36 (9 December 1998); "Legal aspects for the right to self-determination in the case of Nagorny Karabakh", Annex to the note verbale dated 21 March 2005 from the Permanent Mission of Armenia to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights, UN Doc. E/CN.4/2005/G/23 (22 March 2005); "Nagorny Karabakh: peaceful negotiations and Azerbaijan's militaristic policy", Annex to the letter dated 23 March 2009 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General, UN Doc. A/63/781-S/2009/156 (24 March 2009); Remarks by Nikol Pashinyan, Prime Minister of Armenia, at the meeting with Armenia's ambassadors accredited abroad, 27 August 2019, <http://www.primeminister.am/en/statements-and-messages/item/2019/08/27/Nikol-Pashinyan-meeting-ambassadors-27-08/>; Statement by Nikol Pashinyan, Prime Minister of Armenia, at the 74th session of the UN General Assembly, 26 September 2019, <http://www.primeminister.am/en/statements-and-messages/item/2019/09/26/Nikol-Pashinyan-74th-session-of-UN-General-Assembly/>; Letter dated 18 November 2019 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General, UN Doc. A/74/555-S/2019/894 (19 November 2019); UN Doc. A/74/654-S/2020/38, *op.cit.* See also S. Avakian, "Nagorno-Karabagh: Legal Aspects", Moscow, 5th ed., 2015, appearing on the website of the Ministry of Foreign Affairs of Armenia, <http://www.mfa.am/filemanager/Statics/nk-eng-2015.pdf>.

[195] See, e.g., UN Doc. E/1990/5/Add.36, *op.cit.*, p. 4 and UN Doc. CCPR/C/92/Add.2, *op.cit.*, pp. 6–7.

[196] See, e.g., UN Doc. A/64/475-S/2009/508, *op.cit.*, pp. 5–6, paras. 20–24.

[197] See, e.g., *ibid.*, p. 7, para. 30. See also "Profiles in displacement: Azerbaijan", Report of the Representative of the Secretary-General, Francis M. Deng, UN Doc. E/CN.4/1999/79/Add.1 (25 January 1999), pp. 7–8, para. 21.

[198] *Extract from the Protocol of the plenary session of the Caucasian Bureau of the Central Committee of the Russian Communist Party (Bolsheviks) of 5 July 1921*, in "To the History of Formation of the Nagorno-Karabakh Autonomous Oblast of the Azerbaijan SSR. 1918-1925: Documents and Materials", Baku, 1989, p. 92; See also UN Doc. A/64/475-S/2009/508, *op.cit.*, pp. 12–17, paras. 53–72.

[199] Within the USSR, there were fifteen Union Republics: Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

including in the number of hospital beds, physicians in all specialties, public libraries, schools, preschool facilities and other social infrastructure. The Armenian language was widely used in public life and in the work of local authorities. The State Pedagogical Institute has functioned in Khankandi with more than 2,000 students, mostly Armenians."[200] Above all, Armenia's assertions cannot affect the legal position as it existed during the critical period leading up to and including the independence of Azerbaijan nor the legal position after such independence, for otherwise the international community would be faced with scores of revisionist claims based upon historical arguments.

156. Armenia claims that the key to the legal situation is the period commencing 20 February 1988, when the members of the Armenian community represented in the local self-government institutions of the NKAO adopted a resolution seeking the transfer of the autonomous oblast from the Azerbaijan SSR to the Soviet Socialist Republic of Armenia (Armenian SSR) (within the USSR). This was accepted by the Armenian SSR on 15 June 1988, but was rejected by the Azerbaijan SSR two days previously and again on 17 June 1988. The members of the Armenian community of the NKAO adopted another resolution on 12 July 1988 – this time on the unilateral secession of the oblast from Azerbaijan – and confirmed it on 16 August 1988. These decisions were declared null and void by the Azerbaijan SSR on 12 July 1988 and 26 August 1989, respectively.[201] On 18 July 1988, the Presidium of the Supreme Soviet of the USSR, the body with the primary relevant authority (faced with the above-mentioned resolutions adopted by the Armenian community of the NKAO, their support by the Armenian SSR and rejection by the Azerbaijan SSR) decided to leave the NKAO within the Azerbaijan SSR, in accordance with the relevant constitutional provisions.[202] On 1 December 1989, the Supreme Soviet of the Armenian SSR adopted a resolution calling for the unification of the Armenian SSR and Nagorny Karabakh. However, on 10 January 1990, the Presidium of the Supreme Soviet of the USSR adopted a resolution on the "Nonconformity with the USSR Constitution of the Acts on Nagorny Karabakh Adopted by the Armenian SSR Supreme Soviet on 1 December 1989 and 9 January 1990", declaring the illegality of the claimed unification of Armenia with Nagorny Karabakh without the consent of the Azerbaijan SSR.[203]

157. On 2 September 1991, the Armenians of Nagorny Karabakh adopted a "Declaration of Independence" of the "NKR". This was declared invalid by the Azerbaijan SSR, on 27 November 1991 by the USSR State Council, and the following day by the USSR Committee of the Constitutional Oversight. However, on 10 December 1991, the Armenians held a "referendum on independence" of Nagorny Karabakh (without the support or consent of Azerbaijan, now an independent State of which it legally constituted a part), which was confirmed two days later by an "Act on the Results of the Referendum on the Independence" of the "NKR". On 28 December that year, the so-called "parliamentary elections" were held there and, on 6 January 1992, the newly convened "parliament" adopted a "Declaration of Independence", followed two days later by the adoption of a "Constitutional Law 'On Basic Principles of the State Independence" of the "NKR".[204]

[200] Letter dated 30 January 2018 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/72/725–S/2018/77 (1 February 2018); See also UN Doc. A/64/475-S/2009/508, *op.cit.*, pp. 17–18, paras. 74–77.

[201] See *Bulletin of the Supreme Soviet of the Azerbaijan SSR*, 1988, No. 13–14, pp. 14–15 and *Bulletin of the Supreme Soviet of the Azerbaijan SSR*, 1989, No. 15–16, pp. 21–22.

[202] See *Bulletin of the Supreme Soviet of the USSR*, 1988, No. 29, pp. 20–21.

[203] See *Bulletin of the Supreme Soviet of the USSR*, 1990, No. 3, p. 38.

[204] See UN Doc. E/1990/5/Add.36, *op.cit.*, pp. 7–9.

158. Azerbaijan had declared independence on 18 October 1991. This was confirmed on 29 December 1991 by a nationwide referendum. On 8 December 1991, a formal declaration was made by the States-founders of the USSR that "the Union of Soviet Socialist Republics as a subject of international law and a geopolitical reality no longer exists".[205]

159. Armenia's view is that, following the collapse of the USSR, on the territory of the former Azerbaijan SSR two States were formed: the Republic of Azerbaijan and the "NKR"[206] and that "[t]he establishment of both States has similar legal basis".[207] However, this approach is fundamentally flawed. The following points need to be made bearing in mind the analysis of the relevant concepts made earlier in this Report.

160. First, the critical moment for the purposes of *uti possidetis* and thus the legitimate inheritance of territorial frontiers is the time of independence. The International Court has made this very clear. In *Burkina Faso/Mali*, it was stated that:[208]

> "The essence of this principle [*uti possidetis*] lies in its primary aim of securing respect for the territorial boundaries *at the moment when independence is achieved*",

and further, that:[209]

> "By becoming independent, a new State acquires sovereignty with the territorial base and boundaries left to it by the colonial power. This is part of the ordinary operation of the machinery of State succession. International law – and consequently the principle of *uti possidetis* – applies to the new State (as a State) not with retroactive effect, but immediately and from that moment onwards. It applies to the State *as it is*, i.e., to the 'photograph' of the territorial situation then existing. The principle of *uti possidetis* freezes the territorial title; it stops the clock, but does not put back the hands".

161. What mattered, therefore, was the frontier "which existed at the moment of independence".[210] Insofar as the situation in Nagorny Karabakh is concerned, this must be 18 October 1991, the date of independence of the Republic of Azerbaijan, confirmed at the referendum held on 29 December 1991. Accordingly, the situation as at that date must be examined.

162. Secondly, the applicable law governing the application of *uti possidetis*, being the rule determining the territorial boundaries of an entity upon independence is the constitutional law of the former or predecessor State for it is primarily with respect to the valid titles established under that system that one can identify the relevant administrative line.

163. The Chamber in *Burkina Faso/Mali* noted that the determination of the relevant frontier line had to be appraised in the light of French colonial law since the line in question had been an entirely internal administrative border within French West Africa. As such it was defined not by international law, but by the French legislation

[205] Agreement Establishing the Commonwealth of Independent States, 8 December 1991, 31 *ILM*, 1992, p. 138.
[206] See UN Doc. CCPR/C/92/Add.2, *op.cit.*, p. 8; UN Doc. A/74/555-S/2019/894, *op.cit*.
[207] See, e.g., UN Doc. A/63/781-S/2009/156, *op.cit.*, p. 11, para. 43; Remarks by Nikol Pashinyan, Prime Minister of Armenia, 27 August 2019, *op.cit*.
[208] ICJ Reports, 1986, pp. 554, 566 (emphasis added). This was reaffirmed in *El Salavador/Honduras*, ICJ Reports, 1992, pp. 351, 386–7.
[209] ICJ Reports, 1986, p. 568.
[210] Ibid., p. 570.

applicable to such territories.[211] This approach was reinforced in the El Salvador/Honduras case, where the Chamber stated that "when the principle of *uti possidetis* juris is involved, the *jus* referred to is not international law but the constitutional or administrative law of the pre-independence sovereign".[212]

164. Thirdly, it has been established that the principle of *uti possidetis* is applicable to all contexts in which States may achieve their independence.[213] It is not, for example, limited to decolonisation contexts. The International Court made clear in *Burkina Faso/Mali* that the principle "is not a special rule which pertains solely to one specific system of international law" but is "a general principle, which is logically connected with the phenomenon of the obtaining of independence, wherever it occurs".[214] This text was repeated and affirmed by the Court in *Nicaragua v Honduras*.[215] The Yugoslav Arbitration Commission stated in Opinion Nos. 2[216] and 3, citing *Burkina Faso/Mali*, that the principle applied to the dissolution of the Former Yugoslavia, which was not a decolonisation context.[217] In any event, whatever the status of *uti possidetis juris* as a principle generally applicable to newly independent States, its application to the former republics of the Soviet Union is put beyond doubt by the various international instruments concluded by those republics upon achieving independence which reflected the principle and committed those States to respecting the boundaries as they stood at the moment of each new State's independence. The Agreement Establishing the Commonwealth of Independent States (signed on 8 December 1991) and the Alma Ata Declaration of 21 December 1991 both contain an obligation on all signatory States, including Armenia and Azerbaijan, to respect "the inviolability of existing borders".

165. Accordingly, the application of the principle of *uti possidetis* is conditioned upon the constitutional position as at the moment of independence with regard to the administrative boundaries in question. In this sense, the position as far as Azerbaijan is concerned is clear. As discussed earlier in this Report,[218] the attempts made by the Armenians of Nagorny Karabakh and Armenia to alter the line (or remove Nagorny Karabakh from the recognised territory of Azerbaijan) were not accepted either by the Azerbaijan SSR or by the authorities of the USSR at the relevant time.

166. In a recent letter to the United Nations, Armenia has adopted the position that the principle of *uti possidetis* is not relevant because "the consistent body of jurisprudence demonstrates that the doctrine of *uti possidetis juris* is not an automatic rule that binds successors, but rather it based on their expressed consent" and that "[i]nternational courts and tribunals have only ever applied the doctrine of *uti possidetis juris* in their jurisprudence with the mutual consent of the parties".[219] There is simply no support for that position in the relevant authorities. It would undermine the very purpose of the *uti possidetis* principle as an automatic default rule for defining the borders of new States and thereby avoiding conflict if it applied only where the States had expressly consented to it. In any event, even if its legal analysis were correct, Armenia is wrong to claim that "Armenia and Azerbaijan, as former

[211] Ibid., p. 568. The situation is slightly different where the boundaries in question where constituted by international agreement prior to independence, rather than where, as here, the relevant boundaries were prior to independence internal or administrative lines of the predecessor State.
[212] ICJ Reports, 1992, pp. 351, 559.
[213] See also above paras. 89 and following.
[214] ICJ Reports, 1986, pp. 554, 565.
[215] ICJ Reports, 2007, pp. 659, 706.
[216] 92 *ILR*, p. 168.
[217] 92 *ILR*, p. 171.
92 *ILR*, p. 168.
[218] See paras. 155–157 above.
[219] UN Doc. A/74/555-S/2019/894, op.cit., p. 3.

Union Republics, did not form a common agreement on the principle of *uti possidetis juris*".[220] They reached precisely such an agreement in article 5 of the Agreement Establishing the Commonwealth of Independent States (signed on 8 December 1991) and in the Alma Ata Declaration of 21 December 1991.[221] The fact (as Armenia refers to) that the so-called "NKR" had purported to declare independence before these instruments were signed (on 2 September 1991) is irrelevant as that declaration of independence had no effect under international law and did not deprive Azerbaijan of its right to territorial integrity.

167. Armenia's reference to the Law of the USSR "On the Procedures for Resolving Questions Related to the Secession of Union Republics from the USSR" of 3 April 1990[222] also provides no support to its position. Under article 72 of the Constitution of the USSR, only Union Republics, not their autonomous units or any other parts, had the right to secede freely from the USSR. In fact, although the formal objective of the Law was to regulate mutual relations within the framework of the USSR by establishing specific guidelines to be followed by Union Republics in the event of their secession from the USSR, the true intention behind that Act, hastily adopted shortly before the Soviet Union ceased to exist, was to create serious barriers to the path of secession of Union Republics and thus prevent the dissolution of the USSR.[223]

168. According to the said Law, a decision by a Union Republic to secede had to be based on the will of the people of the Republic freely expressed through a referendum, subject to authorization by the Supreme Soviet of the Union Republic. At the same time, according to this Law, in a Union Republic containing autonomous entities, the referendum had to be held separately in each entity in order to decide independently the question of staying in the USSR or in the seceding Union Republic, as well as to raise the question of its own legal status as a State. Moreover, the Law provided that in a Union Republic, whose territory included areas with concentration of national groups that made up the majority of the population in a given locality, the results of the voting in those localities had to be considered separately during the determination of the referendum results. The secession of a Union Republic from the USSR could be regarded as valid only after the fulfillment of complicated and multi-staged procedures and, finally, the adoption of the relevant decision by the Congress of the USSR People's Deputies.

169. As Cassese pointed out, "the law made it extremely difficult for republics successfully to negotiate the entire secession process" and thus "clearly failed to meet international standards on self-determination". The same author concludes with the observation that "[t]he Law [of 3 April 1990] made the whole process of possible secession from the Soviet Union so cumbersome and complicated, that one may wonder whether it ultimately constituted a true application of self-determination or was rather intended to pose a set of insurmountable hurdles to the implementation of that principle".[224] It is therefore curious to hear this Act being invoked against the background of claims to application of the right of peoples to self-determination, since that is precisely what the Law limited.

170. During the short period from the adoption of the Law until the formal dissolution of the USSR, none of the Union Republics resorted to the secession procedure stipulated in it. For these reasons, the Law of 3 April 1990 was never applied. Instead,

[220] *Ibid.*, p. 4.
[221] See above, para. 94 and following.
[222] See *Bulletin of the Supreme Soviet of the USSR*, 1990, No. 15, pp. 303–308.
[223] Identical letters dated 20 September 2019 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, the President of the General Assembly and the President of the Security Council, UN Doc. A/74/450–S/2019/762 (23 September 2019).
[224] Cassese, *Self-Determination*, *op.cit.*, pp. 264–265.

it was rapidly superseded by the dramatic events in the USSR and lost any legal effect even before the Soviet Union had ceased to exist as international legal person. Cassese has written that the "process of independence by the twelve republics therefore *occurred outside the realm of law, both international and municipal*" and "was precipitated by the political crisis at the centre of the Soviet Union and the correlative increase in the strength of centrifugal forces".[225]

171. In other words, on the eve of the independence of Azerbaijan, the unlawfulness within the Soviet legal system of any unification of Nagorny Karabakh with Armenia without Azerbaijan's consent was confirmed at the highest constitutional level. Azerbaijan did not so consent, so that the definition of the territory of Azerbaijan as it proceeded to independence and in the light of the applicable law clearly included the territory of Nagorny Karabakh. Accordingly, the factual basis for the operation of the legal principle of *uti possidetis* is beyond dispute in this case. Azerbaijan was entitled to come to independence within the territorial boundaries that it was recognised as having as the Azerbaijan SSR within the USSR.

172. It follows from this that Armenia's claims as to the claimed "independence" or "reunification" of Nagorny Karabakh are contrary to the internationally accepted principle of *uti possidetis* and therefore unsustainable in international law.

173. Finally, Armenia's arguments that Azerbaijan proclamation that it succeeded to the 1918–20 State of Azerbaijan[226] meant that Azerbaijan succeeded to the boundaries of its former incarnation is equally fallacious. It is one thing to claim succession to a former legal personality, something which would mean more in political than in legal terms; it is quite another to argue that such a process would mean a reversion to territorial boundaries. If accepted as a rule of international law, it would run counter to all understanding of the principle of self-determination and lead to considerable uncertainty as States sought to redefine their territorial extent in the light of former entities to which they may be able to claim succession.[227] Further, such an approach would reduce the principle of territorial integrity to a fiction, since States could challenge and seek to extend their boundaries and claim areas legitimately in the territory of other States on the basis of such reversionary irredentism. It would also mean that the principle of *uti possidetis* would be subject to a considerable exception. It is a doctrine with no support in international law in the light of its considerable inherent dangers.

(b) After Azerbaijan's Independence

174. The claims made by Armenia insofar as they relate to the period prior to the independence of Azerbaijan are contrary to international law. However, claims have been made in relation to the post-independence period and these are similarly unlawful as amounting to a violation of the principle of the respect for the territorial integrity of sovereign States.

175. The United Nations Security Council explicitly referred, in its resolutions 853 (1993), 874 (1993) and 884 (1993), adopted in response to the use of force against Azerbaijan and the resulting occupation of its territories, to "the conflict in and around the Nagorny Karabakh region of the Azerbaijani Republic", while "*Reaffirming* the sovereignty and territorial integrity of the Azerbaijani Republic", as well as "the inviolability of international borders". Similar language had been used earlier, in resolution 822 (1993).

[225] *Ibid.*, p. 266 (emphasis in original).
[226] See e.g. the terms of the Declaration of 30 August 1991 and article 2 of the Declaration of 18 October 1991.
[227] See, e.g., Shaw, *Title to Territory in Africa*, Oxford, 1986, chapter 4.

176. In a letter dated 20 September 2019,[228] Azerbaijan stated:

> "The resolutions of the Security Council provide authoritative clarification as to the committed acts, the violated obligations and the duties to put an end to the illegal situation thus created. They qualified Armenia's actions as the unlawful use of force and invalidated its claims over the territories of Azerbaijan once and for all. The numerous decisions and documents adopted by other international organizations are framed along the same lines. Thus, in its declaration made in connection with the capture and occupation of the territories of Azerbaijan, the Minsk Group of the Conference on Security and Cooperation in Europe, which is mandated to promote a resolution of the conflict and facilitate negotiations to that end, stated in particular that "no acquisition of territory by force can be recognized, and the occupation of territory cannot be used to obtain international recognition or to impose a change of legal status."

and further:

> "The primary objective of the ongoing peace process, the mandate of which is based on the Security Council resolutions, is to ensure the immediate, complete and unconditional withdrawal of the occupying forces from all the occupied territories of Azerbaijan, the restoration of the sovereignty and territorial integrity of Azerbaijan within its internationally recognized borders and the return of the forcibly displaced persons to their homes and properties. The achievement of that objective is a must, not a compromise. It is equally inevitable and pressing, as the unlawful use of force and the resulting military occupation and ethnic cleansing of the territories of Azerbaijan do not represent a solution and will never bring peace, reconciliation and stability."

177. Armenia continues to violate its obligations to respect Azerbaijan's territorial integrity by using force to occupy the latter's sovereign territories and actively supporting and advertising the subordinate local administration it has set up in these territories. For example, Armenia consistently presents papers to the United Nations purportedly on behalf of the so-called "NKR" – the fact which cannot be taken as anything other than as an assertion of an umbilical link and inexorable connection between them.[229] Armenia also participates in purported "joint sessions" of its Security Council and the *soi-disant* "Security Council" of the "NKR"[230] and "joint meetings" on "Armenia-Artsakh military cooperation".[231]

178. The assertion that the "NKR" has seceded from an independent Azerbaijan on the grounds of self-determination contradicts the universally accepted norm of territorial integrity, as discussed earlier in this Report. Not only has Azerbaijan not

[228] UN Doc. A/74/450–S/2019/762, *op.cit*.

[229] See, e.g., the Letter dated 10 October 2019 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General, UN Doc. A/74/497–S/2019/810 (15 October 2019) (enclosing a Memorandum from the "Ministry of Foreign Affairs of the Republic of Artsakh"); Letter dated 29 July 2019 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General, UN Doc. A/74/282 (7 August 2019). See the Letter dated 19 August 2019 from the Chargé d'Affaires a.i. of the Permanent Mission of Azerbaijan to the United Nations addressed to the Secretary-General, UN Doc. A/74/320–S/2019/669 (20 August 2019).

[230] Office of the Prime Minister of the Republic of Armenia, "Armenia, Artsakh Security Councils hold joint session in Yerevan" (23 December 2019): <https://www.primeminister.am/en/press-release/item/2019/12/23/Nikol-Pashinyan-meeting-Security-Council/>.

[231] Office of the Prime Minister of the Republic of Armenia, "Nikol Pashinyan, Bako Sakakyan hold consultation with Armed Forces leadership" (22 February 2020), <https://www.primeminister.am/en/press-release/item/2020/02/22/Nikol-pashinyan-Bako-Sahakyan/>.

consented to this secession (indeed it has constantly and continuously protested against it), but no State in the international community has recognised the "NKR" as independent, not even Armenia, even though Armenia provides indispensable economic, political and military sustenance without which that entity could not exist.[232] As recognised by the International Court in the *Kosovo* advisory opinion,[233] a declaration of independence brought about in violation of a fundamental rule of international law, such as an unlawful use of force as in Armenia's case with regard to the "NKR", is legally ineffective and thus the illegal situation it creates must not be recognised as lawful by any State. Further, the illegality of the acquisition of territory resulting from the threat or use of force was reaffirmed in the *Construction of a Wall* advisory opinion.[234]

D. Conclusions

179. The following general conclusions may be drawn from the above analysis:

(1) The principle of respect for the territorial integrity of States constitutes a foundational norm in international law buttressed by a vast array of international, regional and bilateral practice, not least in the United Nations.

(2) The territorial integrity norm may well constitute a rule of *jus cogens*.

(3) The territorial integrity norm reflects and sustains the principle of sovereign equality.

(4) The territorial integrity norm is reflected in a range of associated and derivative international legal principles, the most important of which is the prohibition of the threat or use of force against the territorial integrity of States, which is without dispute a rule of *jus cogens*.

(5) A related principle of territorial integrity, that of *uti possidetis* juris, provides for the territorial definition of entities as they move to independence.

(6) This principle of *uti possidetis* applies to new States, irrespective of colonial or other origins, and asserts that absent consent to the contrary, a new State will come to independence in the boundaries that it possessed as a non-independent entity.

(7) The principle of self-determination exists as a rule of international law. As such it provides for the independence of colonial territories and for the participation of peoples in the governance of their States within the territorial framework of such States. The principle of self-determination also has an application in the case of foreign occupations and acts to sustain the integrity of existing States.

(8) The principle of self-determination cannot be interpreted to include a right in international law of secession (outside of the colonial context).

180. The following particular conclusions may be drawn:

(1) The principle of *uti possidetis* establishes that Azerbaijan validly came to independence within the borders that it had under Soviet law in the period preceding its declaration of independence.

[232] *Chiragov and Others v Armenia*, *op.cit.*, paras. 170–186.
[233] See above, para. 76.
[234] ICJ Reports, 2004, pp. 136, 171.

(2) These borders included the territory of Nagorny Karabakh as affirmed by the legitimate authorities of the USSR at the relevant time.

(3) Azerbaijan has not consented to the removal of Nagorny Karabakh from within its own internationally recognised territorial boundaries.

(4) Neither the purported unification of Nagorny Karabakh with Armenia nor its purported independence have been recognised by any third State, including Armenia.

(5) Accordingly, the actions of those in control in Nagorny Karabakh prior to the independence of Azerbaijan offend the principle of *uti possidetis* and fall to be determined within the legal system of Azerbaijan.

(6) The inhabitants of Nagorny Karabakh, however, are entitled to the full benefit of international human rights provisions, including the right to self-determination, within the boundaries of Azerbaijan. There is no applicable right to secession under international law.

(7) The actions of those in control in Nagorny Karabakh following the independence of Azerbaijan amount to secessionist activities and fall to be determined within the domestic legal system of Azerbaijan.

(8) The actions of Armenia, up to and including the resort to force, constitute a violation of the fundamental norm of respect for the territorial integrity of States, as well as a violation of other relevant international legal principles, such as rule prohibiting the use of force.