

STATE PRACTICE AND INTERNATIONAL LAW IN RELATION TO UNILATERAL SECESSION

REPORT

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PART I. INTERNATIONAL LAW AND UNILATERAL SECESSION: INTRODUCTORY REMARKS

5. Question 2 of the Reference reads as follows:

"Does international law give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally? In this regard, is there a right to self determination under international law that would give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally?"

6. The Order in Council referring the three questions to the Court uses a number of phrases current in international practice, including "secession", "to secede unilaterally", "unilateral declaration of independence" and "right to self determination under international law". I discuss international practice in relation to the right of peoples to self-determination under international law in Parts II-IV of this Opinion. But it may be helpful if I first explain some commonly used terms:

"colonial territory" is a generic term used to refer to geographically separate territories which are dependent upon and subordinate to a metropolitan state. The United Nations Charter refers to two classes of such territories, non-self-governing territories and trust territories, dealt with respectively in Chapters XI and XII. Collectively these territories are referred to as "colonial", as for example in General Assembly Resolution 1514 (XV), the Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960 ([Attachment 2](#)). A shorthand term sometimes used for colonial territories is "dependent" territories.¹

"metropolitan" is a term used in Article 74 of the Charter of the United Nations in contradistinction to non-self-governing territories. Thus the term *"metropolitan state"* refers to the administering state in respect of a colonial territory.

"*secession*" is the process by which a particular group seeks to separate itself from the state to which it belongs, and to create a new state on part of the territory of that state. It is to be distinguished from a consensual process by which a state confers independence on a particular territory and people by legislative or other means, a process which may be referred to as *devolution* or the *grant of independence*.² The key difference between secession and devolution is that the former is essentially a unilateral process, whereas the latter is bilateral and consensual. For the sake of clarity I will use the term "unilateral secession" throughout.

"*state succession*" is the term used to refer to the complex of legal issues that arise when there is a change of sovereignty with respect to a particular territory.³ The concern of the law of state succession is with the *consequences* of a change of sovereignty in such fields as succession to treaties, state property, archives and debt, the nationality of natural and legal persons, etc. A state which acquires territory, or a new state which comes into existence after a succession, is referred to as a "*successor state*", and the state which has lost territory is referred to as the "*predecessor state*".⁴ It should be stressed that the law of state succession assumes that a change of sovereignty has occurred in accordance with international law.⁵ It does not purport to regulate the process of transfer of sovereignty or creation of statehood which underlies the succession. It applies to all the ways in which sovereignty over territory can be established, and not only to unilateral secession.

"*unilateral declaration of independence*" (or UDI) is a term commonly used to refer to the unilateral act by which a group declares that it is seceding and forming a new state. Although usually declaratory in form, a unilateral declaration of independence is not a self-executing act. The independence of a state is established by the process of establishment of effective control over territory and recognition by other states, especially the state on whose territory the secession is occurring. As will be seen, many attempts at unilateral secession fail, and even those that succeed take time. Thus a declaration of independence is a necessary, but not a sufficient, condition for unilateral secession.⁶

7. A further preliminary issue is the relationship between United Nations membership and independent statehood. States do not *have* to seek admission to the United Nations, but with a very few exceptions, all new states since 1945 have done so.⁷ Under Article 4 of the United Nations Charter, only states can be admitted to United Nations membership, and the practice of the Security Council and General Assembly in admitting states to membership is influential in determining their status as full members of the international community. I will refer to that practice where relevant in this Report.

8. Question 2 refers to "the right to effect the secession of Quebec from Canada unilaterally", and in particular asks whether such a right can derive from the right of self-determination under international law. The situation contemplated by Question 2 must be distinguished from another, quite different scenario, although both are covered by the term "unilateral secession". It has always been possible for a group to separate from a state and to achieve independence by achieving exclusive control over its territory - if necessary, by winning a war of independence. The Spanish American colonies did so in the early nineteenth century, and the Confederacy attempted to do so in the American Civil War. Secession of this kind was a process, which could take years and which might or might not lead to a successful outcome. From the perspective of different participants it might be seen either as an expression of an inherent right to be free from oppression or as an act of treason. But, however described by the participants, unilateral secession did not involve the exercise of any right conferred by international law. International law has always favoured the territorial integrity of states, and

correspondingly, the government of a state was entitled to oppose the unilateral secession of part of the state by all lawful means. Third states were expected to remain neutral during such a conflict, in the sense that assistance to a secessionary group which had not succeeded in establishing its independence could be treated as intervention in the internal affairs of the state in question, or as a violation of neutrality - as Great Britain discovered in the *Alabama Arbitration*.⁸

9. But on the other hand international law has been prepared to acknowledge political realities once the independence of a seceding entity was firmly established and in relation to the territory effectively controlled by it.⁹ This had, and has, nothing to do with any pre-existing right in international law on the part of any group or territory to secede. In international law before 1945, there was no such right.

10. Question 2 of the Reference asks whether there is now any legal right of unilateral secession, applicable to Quebec. The only arguable basis in modern international law for such a right would be by virtue of the principle of self determination, which has developed since 1945 on the basis of certain provisions of the Charter of the United Nations and related state practice. If international law does not confer any right to unilateral secession outside the colonial context - and in my opinion it does not - then the only way in which an entity can unilaterally secede is by the traditional means of winning a war of independence - as Bangladesh did in 1970-1 with India's help,¹⁰ and as Chechnya is trying to do now.¹¹ The alternative is to seek to negotiate its way to independence - if the central government agrees to engage in such negotiations, which it is not required by international law to do.

PART II. UNILATERAL SECESSION AND SELF-DETERMINATION OF COLONIAL TERRITORIES

11. Chapters XI and XII of the United Nations Charter (Attachment 5) made specific provision for territories of colonial type, i.e. dependent territories geographically distinct from the metropolitan territory of the state, as referred to in Article 74. None of the Articles of Chapter XI and XII actually use the phrase "right to self-determination". But their concern was evidently the progress to self-government of the peoples of dependent territories. The territories concerned fell into two classes.

12. One was the class of *trust territories*, covered by Chapter XII of the Charter. This included in particular the territories formerly covered by the system of Mandates under the League of Nations, as provided for in Article 22 of the Covenant of the League (Attachment 6). Mandated territories were territories taken from Germany and the Ottoman Empire (Turkey) at the end of the First World War and whose administration was conferred on one or other of the victorious states on terms agreed by the Council of the League of Nations. Those mandated territories which had not achieved independence were to be brought under the International Trusteeship System by separate agreements pursuant to Article 77 of the Charter.¹² Although Article 77 envisaged that certain additional territories might be brought under the Trusteeship System by agreement, in fact this only happened in one case, that of Somalia (Italian Somaliland).¹³

13. Under Article 22 of the Covenant, mandates fell into three classes.¹⁴ With one exception, the "A Class" mandates (formerly parts of the Ottoman Empire) had become or shortly after

1945 became independent (Iraq, Jordan, Syria, Lebanon). The exception was Palestine, a British "A class" mandate. Israel became independent after a short war of independence against neighbouring Arab states following the British withdrawal from Palestine in 1948. The remaining parts of Palestine were not brought under trusteeship, but the future of the Palestinian people was then and remained a matter of concern to the United Nations, and is covered by the rubric of self-determination.¹⁵

14. Of the "B Class" and "C Class" mandates, only one was not brought under the Trusteeship system under Chapter XII of the Charter, viz. South West Africa (Namibia). The International Court however repeatedly reaffirmed that the United Nations had responsibility for the self-government of the people of South West Africa. The territory became independent as Namibia on 31 March 1990, after the United Nations had conducted multi-party elections.¹⁶

15. The second class of colonial territories covered by the United Nations Charter was *non-self-governing territories*. These were dealt with in Chapter XI of the Charter. In the words of Article 73 of the Charter, they were "territories whose peoples have not yet attained a full measure of self-government". Initially these territories were identified by a voluntary listing process on the part of the States responsible for their administration - Australia, Belgium, France, Netherlands, New Zealand, United Kingdom and United States. Problems however arose when Portugal and Spain, which only became United Nations members in 1955, refused to bring any of their colonial territories within the reporting system of Chapter XI. In response to this refusal, the General Assembly moved to specify criteria for non-self-governing territories, which it did in Resolution 1541 (XV) ([Attachment 7](#)). In accordance with those criteria it has made several determinations that particular territories fell within Chapter XI. These concerned certain overseas territories of Spain and Portugal and, subsequently, Southern Rhodesia and certain French territories of which the most recent was New Caledonia.¹⁷

16. All the territories covered by the International Trusteeship System have now proceeded to "self-government or independence" in terms of Article 76 (b) of the United Nations Charter. So have almost all of the non-self-governing territories covered by Chapter XI, with the exception of a number of small island territories, and certain larger territories whose status or future are disputed - in particular, East Timor and Western Sahara. The position was succinctly summarised by the International Court of Justice in the *Namibia Opinion* in 1971:

"Furthermore, 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 concept of the sacred trust was confirmed and expanded to all 'territories whose peoples have not attained a full measure of self-government' (Art.73). Thus it clearly embraced territories under a colonial régime. Obviously the sacred trust continued to apply to League of Nations mandated territories on which an international status had been conferred earlier. A further important stage in this development was the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV) of 14 December 1960), which embraces all peoples and territories which 'have not yet attained independence'. Nor is it possible to leave out of account the political history of mandated territories in general. All those which did not acquire independence, excluding Namibia, were placed under trusteeship. Today, only two out of fifteen, excluding Namibia, remain under United Nations tutelage. This is but a manifestation of the general development which has led to the birth of so many new States."¹⁸

17. It should be noted that the principle of self-determination which, in the Court's words, was "made... applicable" to all non-self-governing territories, did not involve an automatic right of unilateral secession for the people of those territories. In the vast majority of cases, the progress to self-government or independence was consensual. It occurred with the agreement of the State responsible for the administration of the territory, in accordance with law and pursuant to arrangements between the government of that State and local leaders. These arrangements dealt with the modalities of transfer of power and, in many cases, made provision for succession with respect to treaties, property and debt. The United Nations General Assembly urged that rapid decisions be made as to the self-government or independence of those territories, especially after the adoption of the Declaration on the Granting of Independence to Colonial Countries and Peoples in 1960 ([Attachment 2](#)). But it did not advocate or support unilateral rights of secession for non-self governing territories, except where self-determination was opposed by the colonial power. This was the case for example in the Portuguese African territories (Angola, Mozambique, Guinea-Bissau). In the vast majority of cases, self-government or independence was achieved peacefully and by agreement with the administering authority.

18. Independence for a colonial territory was the most common outcome of this process, but it was not the only one. As Principle VI of Resolution 1541 recognised, self-determination could lead to a number of different outcomes, including "integration with an independent state", whether the metropolitan state or a third state ([Attachment 7](#)). The point was reaffirmed by the International Court in the *Western Sahara Opinion*.¹⁹ Integration with the former metropolitan state or a third state occurred in a number of cases. For example, the electorate in the northern part of the British Trust Territory of the Cameroons preferred to be integrated with Nigeria, while in the southern part the preference was for integration with the Republic of Cameroon.²⁰

19. Nearly 100 territories designated as colonial under Chapters XI and XII have become independent and have been admitted to the United Nations.²¹

20. A few colonial territories have opted for a formal association arrangement with the former colonial power, under which they achieved a form of separate status falling short of independence; they did not become United Nations members in their own right. This applied to Puerto Rico (United States), the West Indies Associated States (United Kingdom), Cook Islands and Niue (New Zealand). More recently similar arrangements were made with different parts of the United States Strategic Trust Territory of the Pacific Islands, but the territories concerned have been regarded as independent and have been admitted to the United Nations. They are the Federated States of Micronesia, Marshall Islands and Palau.

21. Other former colonial territories have been integrated in a state following an act of self-determination: these include Cocos (Keeling) Islands (Australia); Greenland (Denmark); Northern Cameroons (Nigeria); Northern Mariana Islands (United States); Southern Cameroons (Cameroun). (West Irian (Indonesia) is a disputed example of integration.) The people of other territories have voted to remain dependent and continue to fall within Chapter XI of the Charter: this is true, for example, of Bermuda.

22. Although in exceptional cases, such as the British Trust Territory of Cameroons, a particular territory was divided for the purposes of the exercise of self-determination, the General Assembly has usually insisted on maintaining the unity of territories identified as colonial under Chapters XI and XII, and has resisted attempts to fragment them, even if sub-

groups within such territories have sought to separate. An example is the island of Mayotte, which was part of the Comoros Archipelago, a Chapter XI territory which became independent in 1975. The expressed wishes of the inhabitants of Mayotte to remain under French administration have been opposed by the General Assembly on the basis of the territorial integrity and declared wishes of the people of the Comoros as a whole.²²

23. This illustrates a broader point, viz., that the principle of self-determination in the colonial context has been applied by reference to existing colonial boundaries. The identification of sub-groups within a given territory as separate "peoples" has been discouraged, and colonial territories have acceded to independence - or to other forms of self-government - as a whole.²³

24. Even in the period before achieving self-government or independence, colonial territories are regarded as having a special status in international law. In particular, colonial territory is distinct from the metropolitan territory of the administering state. The distinction is implicit in Article 74 of the Charter, which contrasts metropolitan and non-self-governing territory. It is further elaborated in the so-called "Friendly Relations Declaration", in its influential restatement of the Charter principle of "equal rights and self-determination of peoples".²⁴ The Declaration provides, in part, as follows:

"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."

25. Underlying the special status accorded to colonial territories is the idea that by achieving self-government or independence a formerly colonized people achieves equality of rights with all other peoples. If it accedes to independence, the continued right of self-determination is reflected in control over the state, and is legally protected by the principles of territorial integrity and non-intervention. If it is integrated in an independent state, it thereafter shares on a basis of equality in the exercise of self-determination on the part of the people of that state as a whole. These propositions may be illustrated by a review of practice with respect to self-determination outside the colonial context.

PART III. UNILATERAL SECESSION AND SELF-DETERMINATION OF NON-COLONIAL TERRITORIES

Overview

26. By comparison with the acceptance of self-determination leading to the independence of colonial territories covered by Chapters XI and XII of the Charter (so-called "external self-determination"), the practice regarding unilateral secession of non-colonial territories is clear and distinct. Since 1945 the international community has been extremely reluctant to accept unilateral secession of parts of independent states, in situations where the secession is opposed by the government of that state. In such cases the principle of territorial integrity has been a significant limitation. There is only one clear example of successful unilateral secession during this period, viz. Bangladesh. Since 1945 no state which has been created by unilateral secession has been admitted to the United Nations against the declared wishes of

the government of the predecessor state.²⁵ By contrast there are many examples of failed attempts at unilateral secession, including cases where the seceding entity maintained *de facto* independence for some time.²⁶

27. It is necessary to distinguish unilateral secession of part of a state and the outright dissolution of the predecessor state as a whole. In the latter case there is, by definition, no predecessor state continuing in existence whose consent to any new arrangements can be sought. The distinction between dissolution of a state and unilateral secession of part of a state may be difficult to draw in particular cases. The dissolution of a state may be initially triggered by the secession or attempted secession of one part of that state. If the process goes beyond that and involves a general withdrawal of all or most of the territories concerned, and no substantial central or federal component remains behind, it may be evident that the predecessor state as a whole has ceased to exist. As will be seen, this was the position taken by the international community in the cases of Yugoslavia and Czechoslovakia.²⁷ Nonetheless even a successful unilateral secession of one part of a state will not normally produce that result.²⁸ There is a strong presumption in favour of the continuity of states, and the normal situation is that the predecessor state will continue in existence and be recognised as such.

28. Thus the distinction between unilateral secession and dissolution is clear in principle. It is adopted, for example, in the two Vienna Conventions on State Succession (Attachments 3, 4). The main difference is that in cases of dissolution, no one party is allowed to veto the process. By contrast where the government of the predecessor state maintains its status as such, its assent to secession is necessary, at least unless and until the seceding entity has firmly established control beyond hope of recall. Bangladesh is the only clear case in international practice since 1945. The position stated by the Commission of Jurists appointed by the League of Nations to examine the *Aaland Islands* situation remains true, notwithstanding subsequent developments in the principle of self-determination:

"Positive International law does not recognise the right of national groups, as such, to separate themselves from the State of which they form a part by the simple expression of a wish."²⁹

Post-1945 practice in respect of unilateral secession and dissolution

29. In the following paragraphs I will seek to substantiate these general remarks by an analysis of state practice since 1945.

30. Since 1945, the only new states, emerging from situations which were not formally recognised as colonial and covered by Chapters XI and XII of the Charter, have been:

- Senegal (1960);
- Singapore (1965);
- Bangladesh (1971);
- the 3 Baltic States (Latvia, Lithuania, Estonia (all 1991));³⁰

the 11 successor States of the former Soviet Union (Armenia; Azerbaijan; Belarus; Georgia; Kazakhstan; Kirgizstan; Moldova; Tajikistan; Turkmenistan; Ukraine; Uzbekistan (all 1991));³¹

the 5 successor States of the former Yugoslavia (Slovenia, Macedonia, Croatia, Bosnia-Herzegovina, Federal Republic of Yugoslavia (Serbia and Montenegro) (1991-2));

Czech Republic and Slovakia (1993), and

Eritrea (1993).

The list excludes the so-called divided states formed in the aftermath of the Second World War (North Korea, South Korea and East Germany), which are subject to special considerations.³²

31. **Senegal** emerged from the dissolution of the Mali Federation, a federal arrangement formed between it and Soudan. Under the French Constitution of 1958, the former colonies of Senegal and Soudan became "autonomous States" within the French Community. Subsequently, it was agreed that the Mali Federation would be established, and Senegal and Soudan agreed to join it. Under the Constitution of the Mali Federation of 17 January 1959, its constituent units were regarded as "sovereign", as was the Federation itself. Shortly after the Federation was inaugurated, serious difficulties arose between Senegal and Soudan and on 20 August 1960 Senegal purported to withdraw. This was initially opposed by Soudan, but was accepted on 22 September 1960, when Soudan asserted its independence outside the French Community under the name of Mali. The situation was described in different terms by different members of the Security Council when it considered the applications for United Nations membership by Senegal and Mali on 28 September 1960. But it was common ground that the two entities had resolved their differences, that each had achieved separate independence, and that the Federation of Mali had thereby ceased to exist.³³

32. **Singapore** was another former colony which became independent after a short-lived attempt at federation. This was done pursuant to a Separation Agreement which recited that...

"it has been agreed by the parties hereto that fresh arrangements should be made for the order and good government of the territories comprised in Malaysia by the separation of Singapore from Malaysia upon which Singapore shall become an independent and sovereign state and nation separate from and independent of Malaysia and so recognized by the Government of Malaysia."³⁴

Pursuant to this agreement, Singapore separated from Malaysia, which retained its international identity and United Nations membership. Singapore was forthwith admitted unopposed to the United Nations.³⁵

33. **Bangladesh** is a very different case. East Pakistan (otherwise known as East Bengal) was a geographically separate part of the state of Pakistan, which had been created when British India became fully independent in 1947. Its population accounted for rather more than half the population of Pakistan (estimate: East Pakistan, 62 million; West Pakistan, 56.5 million). In 1970 national elections were held with universal suffrage, and were won by the Awami League, a party based in East Pakistan, which obtained 167 out of 313 seats in the National Assembly. In March 1971, the military leadership of Pakistan refused to accept the result of the elections, and the leader of the Awami League thereupon (26 March 1971) proclaimed the independence of East Pakistan. The military government of Pakistan responded with bombing of cities and a civil war broke out. Some 9.5 million refugees fled to India, and there was widespread repression in East Bengal. On 4 December 1971 India declared war on Pakistan

and attacked its forces in East Bengal and the Punjab. On 6 December 1971 India recognized the independence of Bangladesh. The General Assembly on 7 December 1971 called for withdrawal of Indian forces, while "recognizing the need to deal appropriately *at a subsequent stage*, within the framework of the Charter of the United Nations, with the issues which have given rise to the hostilities"(emphasis added). That resolution, which referred to "India-Pakistan borders" and to the return of "East Pakistan refugees", was adopted by 104-11 with 10 abstentions.³⁶ The Soviet Union vetoed a similar resolution proposed in the Security Council. On 16 December 1971 Pakistani forces in East Bengal surrendered, and the Awami League came to have full de facto control over the territory of East Bengal. But despite the military defeat of Pakistan, Bangladesh was not admitted to the United Nations until 1974. This was shortly after its recognition by Pakistan, which occurred on 2 February 1974, although it had before then been individually recognised by many states.³⁷

34. Commentators have disagreed on whether in the circumstances of 1970-1, the people of East Bengal had a right of self-determination, whether this was a case of what may be called "remedial secession", or whether the acceptance of its secession following the withdrawal of the Pakistan Army after the ceasefire of 16 December 1971 merely produced a *fait accompli* which in the circumstances the international community had no alternative but to accept. It has been pointed out that under the criteria enunciated in General Assembly Resolution 1541 (XV),³⁸ East Bengal clearly qualified as a non-self-governing territory in 1971, after the election result had been cancelled and the territory placed under a repressive military rule from Islamabad.³⁹ But the fact is that it was not designated as such a territory at the time, nor treated as one by the General Assembly. On the other hand despite the violence of the military response to UDI, the large numbers of dead and displaced persons, and the sympathy for the position of East Bengal thereby generated, no state other than India was prepared to recognize Bangladesh prior to the surrender of the Pakistan forces from East Bengal in December 1971. General Assembly Resolution 2793 (XXVI) made no mention of the right of self-determination, and the Security Council took no action at all until after 16 December 1971, when it called for the withdrawal of "all armed forces to their respective territories", with emphasis on the "western theatre".⁴⁰ By that stage the "eastern theatre", that is, East Bengal, had finally fallen outside the control of Pakistan.

35. The **Baltic states** were separate states during the inter-war period and were members of the League of Nations. They were however occupied and illegally annexed by the Soviet Union in 1940 in circumstances involving the use of force and duress. There was little express recognition on the part of third states of the extinction of the Baltic states, and this was a relevant factor when those states sought to regain their independence in the changed circumstances of the Soviet Union after 1990.

Lithuania declared its independence on 11 March 1990. In January 1991 it resisted a half-hearted attempt on the part of Soviet Interior Ministry troops to force it to withdraw its UDI. In an ensuing referendum in February 1991, 90.47% of valid votes cast favoured independence from the Soviet Union.

In **Estonia**, after several transitional measures and a March 1991 referendum in which 77.83% of valid votes cast supported independence, the Supreme Soviet declared independence on 20 August 1991. By this stage it had become clear that the hardline coup attempt in Moscow had failed.

In **Latvia**, a referendum in March 1991 showed 73.68% of valid votes cast in favour of independence. The Latvian Supreme Soviet declared independence on 21 August 1991.

On 6 September 1991, the State Council of the Soviet Union voted unanimously to recognise the independence of the Baltic states. On 12 September 1991, the Security Council without dissent recommended their admission to the United Nations. Speaking after the adoption of the resolution, the President of the Security Council stated:

"The independence of the [Baltic states] was restored peacefully, by means of dialogue, with the consent of the parties concerned, and in accordance with the wishes and aspirations of the three peoples. We can only welcome this development, which obviously represents progress in respecting the principles of the Charter of the United Nations and in attaining its objectives."⁴¹

36. The twin emphasis on restoration of independence and on the "consent of the parties concerned" was clearly significant. It may be noted that the Security Council did not consider the applications for recognition made by the Baltic states until 12 September 1991, 6 days after the Soviet Union had agreed to recognize them. Thus the position of the Soviet authorities was treated as highly significant even in a case of suppressed independence. Individual member states emphasised that, since the independence of the Baltic states had been unlawfully suppressed, they had the right of self-determination. But this was seen not as a right of unilateral secession, but as a right "to resolve their future status through free negotiation with the Soviet authorities in a way which takes proper account of the legitimate rights and interests of the parties concerned".⁴²

37. The eleven **successor States of the former Soviet Union** achieved independence by a form of break-away from the Soviet Union, a process which soon acquired the support of all the constituent republics, including the Russian Federation. The position of the Russian Federation was crucial, since, despite initial uncertainty and some discontinuity of government personnel with the former Soviet Union, it was rapidly recognised as continuing the latter's legal personality, both by the other constituent republics⁴³ and by the United Nations.⁴⁴ At the same time the Russian Federation accepted the emergence to independence of the other republics and supported their applications for United Nations membership. Moldova, Kazakhstan, Kirgizstan, Tajikistan, Turkmenistan and Uzbekistan were admitted to the United Nations on 2 March 1992, as were Armenia and Azerbaijan (despite the fact that they were then at war over Nagorny-Kharabakh). Ukraine and Belarus were original members of the United Nations, a position they retained after independence. On 31 July, Georgia became the last of the former Soviet republics to be admitted to the United Nations, having also been the last to apply (on 6 May 1992). In all cases, admission to the United Nations was unopposed.

38. The **successor States of the former Yugoslavia** came into existence through a complex and violent process, which is by no means fully resolved. This is, *inter alia*, the only case since 1971 in which new states have emerged in a non-colonial context against the continued opposition of a government claiming to represent the predecessor state. Despite the opposition of the Belgrade regime, the breakaway republics were relatively soon recognised by third states and admitted to the United Nations. An assessment of the Yugoslav case is thus central to any study of the issue of self-determination and unilateral secession in modern international law. I attach as Attachment 11 a more detailed account of the Yugoslav case. That account calls for the following observations.

39. The international response to the Yugoslav crisis was largely articulated through the Conference on Yugoslavia established on 27 August 1991 by the European Communities. The Conference on Yugoslavia established an Arbitration Commission presided over by M Robert Badinter, President of the French Constitutional Court, to advise it on legal issues in relation to the crisis. That Commission gave a series of opinions, of which Numbers 1, 2, 3 and 8 are particularly relevant (see Attachment 12).

40. In its Opinion No 1, dated 29 November 1991, the Commission expressed the view that the situation in Yugoslavia was one involving the dissolution of the Federal Republic and the consequent emergence of its constituent republics as independent states, although that process was not yet complete. The underlying rationale was that, in the absence of a reconstituted federal government which represented the population of Yugoslavia as a whole, there was no government which had the authority to seek to prevent the break-away of the constituent republics, and that this would lead inevitably to the disappearance of the Socialist Federal Republic itself. It should be noted that the Commission did not use the phrase "self-determination" in Opinion No. 1. Rather its focus was on the breakdown of the federal arrangements for power sharing, arrangements which involved the representation of the constituent republics as such. A further critical factor was the fact that the breakdown of the federal system was accompanied by widespread ethnically-motivated violence and displacement of persons ("ethnic cleansing").

41. It should be noted that none of the constituent republics was admitted to the United Nations prior to the adoption by Serbia-Montenegro on 27 April 1992 of a new Constitution, which clearly implied renunciation of any territorial claim to the territory of the other republics. At the same time, Serbia-Montenegro declared that it was...

"disposée à respecter pleinement les droits et les intérêts des républiques yougoslaves qui ont déclaré leur indépendance. La reconnaissance des Etats nouvellement constitués interviendra une fois qu'auront été réglées les questions en suspens actuellement en cours de négociation dans le cadre de la Conférence sur la Yougoslavie."⁴⁵

42. Slovenia, Croatia and Bosnia-Herzegovina were admitted to the United Nations on 22 May 1992. Macedonia was admitted on 8 April 1993. The United Nations has so far taken the view that Serbia and Montenegro is not entitled to participate as a United Nations member on the basis of continuity with the membership of the former Yugoslavia.⁴⁶ In other words, like the EC Arbitration Commission, it has proceeded on the basis that the former Yugoslavia has been dissolved.

43. The Arbitration Commission repeated this view in its Opinion No 8 of 4 July 1992. It said, *inter alia*:

"2. The dissolution of a State means that it no longer has legal personality, something which has major repercussions in international law. It therefore calls for the greatest caution. The Commission finds that the existence of a federal State, which is made up of a number of separate entities, is seriously compromised when a majority of these entities, embracing a greater part of the territory and population, constitute themselves as sovereign States with the result that federal authority may no longer be effectively exercised.

By the same token, while recognition of a State by other States has only declarative value, such recognition, along with membership of international organizations, bears witness to these

States' conviction that the political entity so recognized is a reality and confers on it certain rights and obligations under international law."

After a review of developments, including the Constitution adopted by Serbia Montenegro on 27 April 1992 and the admission of three of the other former Republics to the United Nations, it concluded that the process of dissolution of the Socialist Federal Republic of Yugoslavia "is now complete and that the SFRY no longer exists".⁴⁷

44. The appropriateness of the international response to the Yugoslav crisis continues to be debated. In particular the early recognition of Croatia and Bosnia-Herzegovina by member States of the European Union continues to be controversial - as too the unduly delayed recognition of Macedonia, contrary to the advice of the Arbitration Commission and out of deference to Greek sensitivities. The Arbitration Commission, for its part, has been criticised for advocating, *inter alia*, notions about protection of minorities which go well beyond current international law, and for failing to take into account standard criteria for independence based on effective control of territory.⁴⁸

45. In assessing the relevance or otherwise of the Yugoslav case to whether there is a right of unilateral secession, a number of points must be borne in mind.

First, the Arbitration Commission, which provided the underlying legal rationale for the positions taken by the members of the European Community and eventually by most members of the United Nations, proceeded on the basis that the "process of breaking up" of the Yugoslav Federation was a matter of fact, and that the emergence to independence of the constituent republics was a *consequence* of that fact.

Secondly, it did not articulate any prior right to independence on the part of the constituent republics (although the Yugoslav Constitution of 1974 did purport to guarantee such a right to the six "nations" it treated as indigenous to Yugoslavia). In particular the Commission did not rely on any right of self-determination of the constituent republics, as distinct from the continued proper functioning of federal organs in which those republics were intended to be directly represented.⁴⁹

Thirdly, the situation was strongly affected by the following facts: (1) four of the six republics, containing a substantial majority of the population, were attempting to break away; (2) the constitutional order, under which the constituent republics themselves "participate[d] in the exercise of political power within the framework of institutions common to the Federation",⁵⁰ had completely broken down, and (3) Yugoslavia was undergoing large-scale and unrelenting ethnic conflict which threatened to lead and did in fact lead to war crimes and crimes against humanity.

46. In each of these respects, in my opinion, the way in which the Yugoslavian situation was handled provides no precedent for the extension of any international legal right to secede to the constituent units of federal states. To paraphrase the Commission of Jurists in the *Aaland Islands* case, international law does not recognise the right of the constituent units of federal states, as such, "to separate themselves from the state of which they form a part by the simple expression of a wish".⁵¹ Instead, early recognition of the successor states was based on the conclusion that as a matter of political fact the former Yugoslavia was dissolving, that this process was irreversible, and that the so-called "federal authorities" were in fact an emanation of Serbia-Montenegro and had no title to represent the former Yugoslavia as a whole. Even

then, the successor states were not admitted to the United Nations until after Yugoslavia (Serbia/Montenegro) had reconstituted itself as a new entity under a constitution which excluded the other four former republics, and had announced its preparedness in principle to recognise them.⁵²

47. By comparison with the complex and tragic story of the former Yugoslavia, the separation of the **Czech Republic** and **Slovakia** was a straightforwardly consensual process at the level of the governments and parliaments concerned. The two constituent republics became separate states after an agreement between them dissolving the Czechoslovak Federation. Dissolution was achieved by parliamentary action under a Constitutional Act of 1992, rather than by a secession referendum as provided for in a Constitutional Act of 1991. By the time agreed upon as the date for independence (1 January 1993), most of the arrangements for the dissolution of the Federation had been worked out by agreement between the two governments and ratified by the Federal Assembly, although certain other changes (including minor exchanges of territory) were subsequently agreed to. On 31 December 1992, the state of Czechoslovakia ceased to exist. The two new states were subsequently admitted unopposed to the United Nations.⁵³

48. **Eritrea** was formerly a separate British colonial territory. It was federated with Ethiopia under UN auspices in 1952. In 1962 the federal arrangement was abolished unilaterally by Ethiopia, without any reaction from the United Nations. The Eritrean Peoples Liberation Front (EPLF) fought for many years to gain independence without achieving any international recognition. In 1991 that movement assisted an Ethiopian movement (EPRDF) in defeating the forces of the military regime under Menghistu Haile Mariam, who later fled to Zimbabwe. The Transitional Government of Ethiopia, which emerged after this military victory, accepted that the people of Eritrea had a right of self-determination. A plebiscite was held under UN auspices, resulting in a 99.8% vote for independence. General Assembly Resolution 47/114 established an observer mission for that purpose, on the basis that "the authorities directly concerned have registered their commitment to respect the results of the referendum in Eritrea". Eritrea was admitted to the United Nations with the support of the Transitional Government of Ethiopia, and without any opposition.⁵⁴ None of the United Nations resolutions concerning Eritrea since 1952 referred to self-determination, despite the agreement between the Transitional Government and the EPLF that this was a case of self-determination.⁵⁵

Post-1945 practice in respect of attempted unilateral secession

49. Before summarizing the modern practice, it is useful to mention some of the many cases of attempted or threatened unilateral secession of non-colonial territories. It is precisely because of the threat represented by unilateral secession to many states and the potential for instability this creates that states are so insistent on the principle of territorial integrity.

50. Since 1945 there have been numerous attempts unilaterally to secede by groups or territories within independent states. The cases include, for example:

- Tibet (China);
- Katanga (Congo);
- Biafra (Nigeria);
- Kashmir (India);
- East Punjab (India);
- The Karen and Shan states (Burma);

- Turkish Federated State of Cyprus (Cyprus);
- Tamil Elam (Sri Lanka);
- South Sudan (Sudan);
- Somaliland (Somalia);
- Bougainville (Papua New Guinea);
- Kurdistan (Iraq/Turkey);
- Republika Srpska (Bosnia/Herzegovina);
- Chechnya (Russian Federation);
- Kosovo (Serbia-Montenegro);
- Abkhazia (Russian Federation);
- South Ossetia (Russian Federation);
- Nagorny-Kharabakh (Azerbaijan);
- Democratic Republic of Yemen (Yemen)

51. In many other cases support for unilateral secession has existed in a territory, but has not risen to the level of a unilateral declaration of independence or some other formal attempt at unilateral secession with substantial popular support. In Europe alone such cases include, for example:

- Corsica (France);
- the Basques (Spain);
- South Tyrol (Italy);
- the Bretons (France);
- the Alsations (France);
- Catalonia (Spain);
- Faroes (Denmark);
- Scotland (United Kingdom);
- the Flemish (Belgium);
- Padania (Italy).

52. In all these cases one common feature can be observed. Where the government of the state in question has maintained its opposition to the secession, such attempts have gained virtually no international support or recognition, and this has been true even when other humanitarian aspects of the situations have triggered widespread concern and action. For example the situation of the Kurds in Northern Iraq has been a matter of international concern, triggering action by the Security Council under Chapter VII of the Charter and by individual states by way of humanitarian intervention, both military and civil. But the operations in Northern Iraq, including the "no-fly" zones policed by some western states, have been explicitly carried out on the basis of the territorial integrity of Iraq, and this despite continued Iraqi repression of the Kurds and the stringent United Nations response to most other aspects of Iraqi policy.⁵⁶

53. It is sufficient to refer only to a few of the cases referred to in paragraphs 50 and 51 above.

54. The **Faroes** are a Danish territory under Home Rule. Unlike Greenland they were never treated as a colonial territory after 1945.⁵⁷ But in a referendum on 14 September 1946 the electorate by a very narrow majority of valid votes cast favoured secession over autonomy, and this was followed by a parliamentary vote on 18 September 1946 in favour of secession. The Danish Government rejected unilateralism, and on 24 September 1946 the King, acting on the advice of the Danish Government, intervened, dissolving the Parliament and calling a

general election (which was won by the Home Rule party). Following negotiations, a new arrangement for Home Rule was ratified by the Danish Parliament and took effect on 1 April 1948. The Home Rule arrangements have evolved since but have remained stable. There was at no stage any international recognition of the Faroes as independent, nor any international reaction to the unprecedented intervention by the King on 24 September 1946. The matter was throughout treated as internal to Denmark.⁵⁸

55. No international acceptance or recognition has been forthcoming for various **seceding entities within the constituent republics of the former Yugoslavia**. For example, by January 1992 the Serbian population in Bosnia-Herzegovina (which constituted about 35% of the population of the Republic) had constituted their own parliament, conducted a plebiscite, and, on 9 January 1992, proclaimed their own republic - **Republika Srpska**. Opinion No. 2 of the EU's Arbitration Commission (Attachment 12) specifically addressed the right to self-determination of the Serbs within Bosnia-Herzegovina. The Commission treated them as a "minority" and denied that they had any right to form an independent state. On the other hand, it did not deny the right of self-determination at the internal level, with the consequence, first, that "every individual may choose to belong to whatever ethnic, religious or language community he or she wishes", and, secondly, that they might possibly have the right to adopt the nationality of their choice, under agreements to be concluded between the various republics.⁵⁹ In the result, external self-determination was denied to Republika Srpska, notwithstanding the latter's proclamation of independence on 4 July 1992, a position expressly confirmed in the Dayton-Paris Peace Agreement.⁶⁰

56. So too was it denied to the lesser territorial units within former Yugoslavia, and in particular the autonomous region of **Kosovo**. Kosovo (like Vojvodina) was an autonomous region within the Republic of Serbia; it had nearly 2 million inhabitants, of whom nearly 90% were ethnic Albanians. Its substantial autonomy was unilaterally terminated by the Serbian Government in 1990, and there has since been a substantial measure of repression. More than one sixth of the population has fled abroad. The Albanian leadership of Kosovo declared its independence in October 1991, but this has been recognised only by Albania.

57. The situation in **Chechnya** is also of interest. Under the USSR, the Chechen and Ingush peoples were united in the autonomous republic of Chechen-Ingushetia, a constituent republic of the Russian Federative Soviet Socialist Republic. On 2 November 1991, Chechnya declared its independence from the Russian Federation, the USSR and also Ingushetia, the other region constituting the former autonomous republic of Chechen-Ingushetia.⁶¹ After a brief skirmish with Russian troops, Chechnya was largely left to its own devices; its government maintained effective control over the republic, even requiring that citizens of the neighbouring republics obtain special Chechnyan visas.⁶² In December 1994 the Russian Army made a large-scale attempt to suppress the separatist movement. However a ceasefire was agreed between the Russian Federation and the Chechen Republic, and subsequently a Joint Declaration of 31 August 1996, which referred *inter alia* to "the commonly recognised right of peoples to self-determination" and provided for an agreement on mutual relations "in accordance with commonly recognised principles and the norms of international law" to be achieved by 31 December 2001.⁶³ Despite the Russian military defeat and subsequent withdrawal, there has so far been no international recognition of the independence of Chechnya. Many governments have criticised the conduct of Russian forces in Chechnya on grounds of the use of disproportionate force, violations of international humanitarian law and breach of arms control agreements.⁶⁴ But it has also been accepted that the conflict with

Chechnya is an internal armed conflict, and that the principle of territorial integrity applies. For example, the French Foreign Minister said on 9 January 1995:

"La Tchétchénie fait partie de la Fédération de Russie. Le respect du principe de souveraineté et d'intégrité territoriale est une des règles de base de la vie internationale. Mais les États membres de la OSCE ont pris des engagements et sont reconnus un droit de regard mutuel sur ce qui se passe à l'intérieur de leurs propres territoires nationaux."⁶⁵

The British Government stated that:

"the exercise of the right [of self-determination] must also take into account questions such as what constitutes a separate people and respect for the principle [of] territorial integrity of the unitary state. In the case of Chechnya no country has recognised President Dudayev's unilateral declaration of independence, but we have repeatedly called on the Russians to work for a political solution which would allow the Chechen people to express their identity within the framework of the Russian Federation."⁶⁶

The United States Government said that:

"We support the sovereignty and territorial integrity of the Russian Federation... We oppose attempts to alter international boundaries by force, whether in the form of aggression by one state against another or in the form of armed secessionist movements such as the one led by Dzhokhar Dudayev. That is why we have said that we regard Chechnya as a matter which the Russian Government and the people of Chechnya will have to resolve together peacefully by political means... [A]lthough Chechnya is an integral part of the Russian Federation, Moscow should limit any use of force to a minimum, and respect human rights..."⁶⁷

58. The point is that, even though other governments qualified the Chechens as a "people", and even though this people was subject to violations of human rights and humanitarian law on a large scale, the principle of territorial integrity was respected. The relations between the Russian Federation and Chechnya were, and remain, a matter for negotiation between them. They were not resolved by the latter's unilateral declaration of independence - or even, for that matter, its subsequent military successes.

59. A final example, illustrating the unwillingness of some constitutional systems to use the term "people" for distinctive linguistic and historic groups, is **Corsica**. Article 2 of the Constitution of the French Republic of 1958 declares that France is an "indivisible Republic". On the basis of Article 2, the French Government denies that there are even linguistic or cultural minorities within its metropolitan territory.⁶⁸ But Corsica, acquired by purchase from Genoa in 1768, has its own language and culture. On 13 October 1988 the Corsican Assembly affirmed "the existence of a living historical and cultural community comprising native-born Corsicans and Corsicans by adoption: the Corsican people". Partly in response, the French Parliament in 1991 enacted a law "portant statut de la collectivité territoriale de Corse", Article 1 of which provided:

"La République française garantit à la communauté historique et culturelle vivante que constitue le peuple corse, composante du peuple français, les droits à la préservation de son identité culturelle à la défense de ses intérêts économiques et sociaux spécifiques. Ces droits, liés à l'insularité, s'exercent dans le respect de l'unité nationale, dans le cadre de la Constitution, des lois de la République et du présent statut."

In a decision of 9 May 1991, the Constitutional Court held Article 1 invalid, although other aspects of the law were upheld. It said, *inter alia*:

"Considérant que la France est, ainsi que se proclame l'article 2 de la Constitution de 1958, une République indivisible, laïque, démocratique et sociale qui assure l'égalité devant la loi de tous les citoyens quelle que soit leur origine; que dès lors la mention faite par le législateur du 'peuple corse, composante du peuple français' est contraire à la Constitution, laquelle ne connaît que le peuple français, composé de tous les citoyens français sans distinction d'origine, de race ou de religion..."⁶⁹

On the other hand the Court upheld provisions allowing the territorial assembly to promote the teaching of Corsican language and culture.⁷⁰

Summary of post-1945 practice

60. To summarize, outside the colonial context, the principle of self-determination is not recognised in practice as giving rise to unilateral rights of secession by parts of independent states. Self-determination outside the colonial context is primarily a process by which the peoples of the various states determine their future through constitutional processes without external interference. Faced with an expressed desire of part of its people to secede, it is for the government of the state to decide how to respond, for example by insisting that any change be carried out in accordance with constitutional processes. In fact no new state formed since 1945 outside the colonial context has been admitted to the United Nations over the opposition of the predecessor state.

61. The unwillingness of the international community to accept unilateral secession from an independent state can be illustrated by reference to the so-called "safeguard" clause to the Friendly Relations Declaration, which, in elaborating the Charter principle of self-determination specifies 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.*"⁷¹

The "safeguard clause" was reaffirmed in slightly different language by the United Nations World Conference on Human Rights held in Vienna in 1993. The Vienna Declaration provides, in relevant part:

"In accordance with the Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations, this [*sc* the right of self-determination] shall not 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 and thus

possessed of a Government representing the whole people belonging to the territory *without distinction of any kind*.⁷²

In accordance with this formula, a state whose government represents the whole people of its territory without distinction of any kind, that is to say, on a basis of equality, and in particular without discrimination on grounds of race, creed or colour, complies with the principle of self-determination in respect of all of its people and is entitled to the protection of its territorial integrity. To put it another way, the people of such a state exercise the right of self-determination through their participation in the government of the state on a basis of equality.⁷³

62. There is a distinct issue of internal self-determination, in the sense of the recognition of cultural identity and internal self-government for different groups or peoples within the state. Traditionally international law treated such issues as essentially matters of domestic jurisdiction, as reflected in the very reserved formulation in the minority rights clause, Article 27, of the International Covenant on Civil and Political Rights.⁷⁴ Developments in respect of the idea of internal self-determination and self-government are however occurring, and they are accompanied by an extension of minority rights, including the rights of national minorities,⁷⁵ and an increased recognition of the rights of indigenous peoples.⁷⁶ Consistently with these developments, the term "peoples" is coming to be seen as more inclusive, and is not limited to the people of the state as a whole. But these developments are still tentative (*de lege ferenda*), and they do not affect the established rules and practices with respect to self-determination and the territorial integrity of states.

PART IV. CONCLUSION

63. As this brief review demonstrates, state practice since 1945 shows very clearly the extreme reluctance of states to recognise or accept unilateral secession outside the colonial context. That practice has not changed since 1989, despite the emergence during that period of 22 new states. On the contrary, the practice has been powerfully reinforced.

64. Of the new states which have emerged since 1945 outside the context of decolonization, only one case can be classified as a successful unilateral secession in the sense described in paragraph 6 above, that is, Bangladesh - and its emergence was hardly "unilateral".⁷⁷ In truth the indications are that the United Nations did not treat the emergence of Bangladesh as a case of self-determination, despite good grounds for doing so - but rather as a *fait accompli* achieved as a result of foreign military assistance in special circumstances.⁷⁸ The violence and repression engaged in by the Pakistan military regime made reunification unthinkable, and in effect legitimized the creation of the new state. In all other cases which might otherwise be classified as unilateral secession (Senegal, Singapore, the Baltic States and Eritrea) the consent of the relevant parties was given before independence was externally recognised as accomplished, and the process was accordingly not unilateral.⁷⁹ The key feature in the cases of Senegal, Singapore and Eritrea was that separation was expressly agreed to by the parties directly concerned. With the Baltic states, the essential rationale was the recovery of independence forcibly suppressed.⁸⁰ Even so, considerable importance was attached to the indication of consent given by the State Council of the Soviet Union.

65. A second group of cases involved states in Eastern and Central Europe immediately after the collapse of communism (Soviet Union, Yugoslavia, Czechoslovakia).⁸¹ With the exception of Yugoslavia, the emergence of the constituent units of these states took place on a basis of

agreement by those concerned, and international recognition followed upon that agreement. The position of Yugoslavia was different, but the articulated basis for the European and international response to the outbreak of violence and armed conflict in Yugoslavia was that this was inevitably producing the dissolution of Yugoslavia as a matter of fact. Neither the European Union nor the United Nations proclaimed that the peoples of Yugoslavia had a prior right to secede by virtue of the principle of self-determination. On the contrary the emergence of the constituent republics was treated as a consequence of the dissolution of Yugoslavia, and early international recognition was seen (rightly or wrongly) as a way of containing the violence and limiting the issues to be resolved.⁸²

66. By contrast, many attempts at unilateral secession have occurred, and continue to occur. Where the government of the state in question has maintained its opposition to the unilateral secession, such attempts have gained virtually no international support or recognition, and this has been true even when other humanitarian aspects of the situation have triggered widespread concern and action.

67. Thus there is a common pattern of international responses to unilateral secession and threats of such secession in the non-colonial context, a pattern which has normative significance. This may be summarized as follows:

(a) There is strong international reluctance to support unilateral secession or separation, and there is no recognition of a unilateral right to secede based merely on a majority vote of the population of a given sub-division or territory. In principle, self-determination for peoples or groups within the state is to be achieved by participation in its constitutional system, and on the basis of respect for its territorial integrity.

(b) In most cases, referenda conducted in territories wishing to secede have returned very substantial majorities in favour (in the range of 65-99%). But even in cases where there is a strong and continued call for independence, it is a matter for the government of the state concerned to consider how to respond.⁸³

(a) Even in the context of separate colonial territories, unilateral secession was the exception. Self-determination was in the first instance a matter for the colonial authority to implement; only if it was blocked by the colonial authority did the United Nations support unilateral secession. Outside the colonial context, the United Nations is extremely reluctant to admit a seceding entity to membership against the wishes of the government of the state from which it has purported to secede. In fact there is no case since 1945 where it has done so. Where the parent state agrees to allow a territory to separate and become independent, the terms on which separation is agreed between the parties concerned will be respected, whether it involves continued association with that state (e.g. Faroes) or emergence to independence (e.g. Eritrea). If independence is achieved under such an agreement, rapid admission to the United Nations will follow. But where the government of the state concerned has maintained its opposition to an attempted unilateral secession, such secession has in modern practice attracted virtually no international support or recognition.

(b) This pattern is reflected in the so-called "safeguard" clause to the Friendly Relations Declaration of 1970, as restated by the 1993 Declaration of the Vienna World Conference on Human Rights. In accordance with this formula, a state whose government represents the whole people of its territory on a basis of equality complies with the principle of self-determination in respect of all of its people and is entitled to the protection of its territorial

integrity. The people of such a state exercise the right of self-determination through their participation in the governmental system of the state on a basis of equality.

(e) But the inhibitions on international recognition of unilateral secession movements go further, and are even stronger than the "safeguard clause" in the 1970 and 1993 Declarations imply. If the 1970/1993 proviso is taken to mean that unilateral secession is permissible where the government is constituted on a discriminatory basis, it is doubtful whether the proviso reflects international practice. But however this may be, a state which *is* governed democratically and respects the human rights of all its people is entitled to respect for its territorial integrity.

(d) Propositions (a)-(d) above apply to secession movements within independent states, even in cases where the state itself may be in the process of dissolution. However, there is a distinction between cases of unilateral secession and dissolution. If it becomes clear that the process of dissolution of the state as a whole is irreversible, the consent of the government of the predecessor state may cease to be required for the separation of its constituent parts. In such a case that government will itself be in the process of dissolution, and may have ceased to represent the former state. But there is a strong presumption against dissolution, and the only case of successful separation under these circumstances is that of the constituent republics of the former Yugoslavia.

(e) There is a distinct issue of internal self-determination, in the sense of the recognition of cultural identity and internal self-government for different groups or peoples within the state. But these developments do not affect the established rules and practices with respect to self-determination and the territorial integrity of states. They lend no support to the view that peoples within independent states have a unilateral right to secede.

Professor James Crawford

19 February 1997

¹ E.g. in the Vienna Convention on Succession of States in Respect of Treaties, 23 August 1978, (1978) 72 *AJIL* 971, Art 2 (1) (f), definition of "newly independent State"; Vienna Convention on Succession of States in Respect of State Property, Archives and Debts, 7 April 1983, (1983) 22 *ILM* 306, Art 2 (1) (e), definition of "newly independent State"; see also Art 15, 28, 38. For the texts of the Conventions see [Attachments 3, 4](#).

² See J Crawford, *The Creation of States in International Law* (Oxford: Clarendon Press, 1979) pp. 215, 247, for an explanation of the distinction.

³ The Vienna Convention on Succession of States in Respect of Treaties, 23 August 1978, Art 2 (1) (b) defines "succession of States" as "the replacement of one State by another in the responsibility for the internal relations of territory". In the same terms, Vienna Convention on Succession of States in Respect of State Property, Archives and Debts, 7 April 1983, Art 2 (1) (a).

⁴ A cognate term which has recently gained currency is "*continuator state*". This contrasts with "successor state", and refers to a state which retains its legal identity and existence

notwithstanding some significant change in its circumstances (e.g., loss of part of its territory and population, or foreign occupation). Thus the Russian Federation is regarded as continuing the legal personality of the former USSR (see below, para. 37), and the Baltic states are regarded as having recovered their independence lost in 1940 (see below, para. 35-36). Although the term is new, the concept is of long-standing: see K Marek, *Identity and Continuity of States in Public International Law* (Geneva, 1955).

⁵ Cf Vienna Convention on Succession of States in Respect of Treaties, 23 August 1978, Art 6; Vienna Convention on Succession of States in respect of State Property, Archives and Debts, 7 April 1983, Art 6.

⁶ An entity which does not claim to be a state in international law will not be recognised as such - for example Taiwan. See Crawford (1979) 119.

⁷ Of states in existence in 1945, only Switzerland and the Vatican City are not United Nations members. Of states which have come into existence since 1945, Kiribati, Nauru, Tonga and Tuvalu have not sought UN admission. For the position of the Federal Republic of Yugoslavia (Serbia and Montenegro) see below, para. 42. On UN admission practice, see R Higgins, *The Development of International Law through the Political Organs of the United Nations* (Oxford: Oxford University Press, 1963) pp. 11-57; Crawford (1979) pp. 132-7

⁸ Moore (1872) 1 *Int Arb* 495. In that case, substantial damages were awarded against Great Britain for allowing the Confederate cruiser, the Alabama, to be built and later provisioned in or from British ports during the American Civil War.

⁹ See Crawford (1979) pp. 247-266 for an analysis of international law rules relating to secession in the 19th and 20th centuries.

¹⁰ See below, paragraphs 33-34.

¹¹ See below, paragraphs 57-58.

¹² The International Court held that there was no automatic transfer of mandated territories to the trusteeship system: *Status of South West Africa Advisory Opinion* ICJ Reports 1950 p. 128.

¹³ See Crawford (1979) p. 428.

¹⁴ A list of the three classes of mandates and the territories covered is in Crawford (1979), Appendix 2, pp. 426-8.

¹⁵ *Id.*, pp. 337, 426. See e.g. General Assembly Resolution 48/94, 20 December 1993, paras 3, 5, 6.

¹⁶ See Security Council Resolution 682, 17 April 1990; General Assembly Resolution S-18/1, 23 April 1990. See further Crawford (1979), pp. 340-1, 355-6, 427-8; R Goy, "L'indépendance de la Namibie" (1991) 37 *AFDI* 387; M Kamto, "L'accession de la Namibie à l'indépendance" (1990) 94 *RGDIP* 577; G Abi-Saab, "Namibia and International Law" (1993) 1 *African YBIL* 3.

¹⁷ See General Assembly Resolution 1542 (XV), 15 December 1960, para. 1 (Portuguese territories); para. 5 (Spanish territories); General Assembly Resolution 1747 (XVI), 28 June 1962 (Southern Rhodesia); General Assembly Resolution 2069 (XX), 16 December 1965 (Condominium of New Hebrides); General Assembly Resolution 2228 (XXI), 20 December 1966 (French Somaliland); General Assembly Resolution 3161 (XXVIII), 14 December 1973 (Comoros); General Assembly Resolution 41/41A, 2 December 1986 (New Caledonia).

¹⁸ ICJ Reports 1971 p. 6 at p. 31 (para. 52).

¹⁹ ICJ Reports 1975 p. 12 at pp. 32-3 (paras 57-8).

²⁰ See *Northern Cameroons Case* ICJ Reports 1963 p. 15.

²¹ They are: Algeria; Angola; Antigua and Barbuda; Bahamas; Bahrain; Barbados; Belize; Benin; Botswana; Brunei; Burkina Faso; Burma (Myanmar); Burundi; Cambodia; Cameroon; Cape Verde; Central African Republic; Chad; Comoros; Congo (Brazzaville); Cote d'Ivoire; Cyprus; Djibouti; Dominica; Equatorial Guinea; Federated States of Micronesia; Fiji; Gabon; Gambia; Ghana; Grenada; Guinea; Guinea-Bissau; Guyana; India; Indonesia; Jamaica; Jordan; Kenya; Kiribati; Kuwait; Laos; Lesotho; Liberia; Libya; Madagascar; Malaysia; Malawi; Maldives; Mali; Malta; Marshall Islands; Mauritania; Mauritius; Morocco; Mozambique; Namibia; Nauru; Niger; Nigeria; Oman; Pakistan; Palau; Papua New Guinea; Philippines; Qatar; Rwanda; St Christopher and Nevis; St Vincent and the Grenadines; Sao Tome and Principe; Seychelles; Sierra Leone; Solomon Islands; Somalia; Sri Lanka; Sudan; Surinam; Swaziland; Syria; Tanzania (formed by the union of Tanganyika and Zanzibar); Togo; Tonga; Trinidad and Tobago; Tunisia; Tuvalu; Uganda; United Arab Emirates; Vanuatu; Vietnam (formerly North & South Vietnam); Western Samoa; Yemen (formed by union of North and South Yemen); Zaire (formerly Congo (Kinshasa)); Zambia; Zimbabwe (92).

²² General Assembly Resolution 3161 (XXVIII), 14 December 1973, and for a recent repetition of its position, General Assembly Resolution 49/18, 28 November 1994. For the dispute see Ahmed W Mahamoud, *Mayotte: le contentieux entre la France et les Comores* (Paris: L'Harmattan, 1992); Malyn Newitt, *The Comoro Islands. Struggle against Dependency in the Indian Ocean* (Boulder: Westview Press, 1984) pp. 48-70. Conversely, in the case of Southern Rhodesia the international community opposed secession of a territory by a settler minority regime, in circumstances where the majority of the territory had no say in the process: see Crawford (1979) 103-6, 123-4; John Dugard, *Recognition and the United Nations* (Cambridge, Grotius, 1987) 90-98; Jericho Nkala, *The United Nations, International Law and the Rhodesian Independence Crisis* (Oxford: Clarendon Press, 1985).

²³ Cf *Case concerning the Frontier Dispute (Burkina Faso/Mali)* ICJ Reports 1986 p. 554 at pp. 565-7 (paras 22, 25)

²⁴ General Assembly Resolution 2625 (XXV), 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 1970. The Declaration was adopted without a vote after lengthy preparation, and is widely regarded as an authoritative interpretation of the principles dealt with: see e.g. *Military and Paramilitary Activities in and against Nicaragua (Merits)* ICJ Reports 1986 p. 14 at p. 101. For the text of the Declaration see [Attachment 8](#).

²⁵ Bangladesh, although it applied for UN admission in 1972 (S/10759), was not admitted until 1974, subsequent to its recognition by Pakistan. See below, paras. 33-34.

²⁶ See below, paras. 51-58.

²⁷ See below, paras. 38-47.

²⁸ E.g., Pakistan after the secession of Bangladesh, when Pakistan retained its legal existence and UN membership notwithstanding the loss of over 50% of its population.

²⁹ *League of Nations Official Journal*, Sp Supp 3 (1920) at p.5.

³⁰ As explained below, the Baltic states were strictly not "new" but re-emerged after their illegal annexation in 1940: see paragraphs 35-36.

³¹ As explained below, the Russian Federation was recognised as continuing the legal personality of the former Soviet Union and was therefore not a "new" state: see paragraph 37.

³² Korea was a Japanese colony which was, like Germany, subject to divided military government by the Allies after the end of World War II. Separate states were established by the military occupants, and were eventually recognised as *faits accomplis*. Vietnam was divided as a result of a ceasefire in a colonial war of independence. On the "divided states" see Crawford (1979) pp. 271-87.

³³ For the Security Council debate see *Security Council Official Records*, 907th Mtg., 28 September 1960. Generally see: F Borella, "L'Evolution de la Communauté en 1960: De la Communauté Constitutionnelle à la Communauté Conventionnelle" (1960) 6 *AFDI* 925 at p. 945; R Cohen, "Legal Problems arising from the Dissolution of the Mali Federation" (1960) 36 *BYIL* 375; A Gandolfi, "Naissance et Mort sur le Plan International d'un Etat Ephémère: La Fédération du Mali" (1960) 6 *AFDI* 881.

³⁴ See Government of Malaysia-Government of Singapore, Independence of Singapore Agreement, 7 August 1965 ([Attachment 9](#)).

³⁵ See Security Council Resolution 213 (1965), 20 September 1965; General Assembly Resolution 2010 (XX), 1 September 1965.

³⁶ General Assembly Resolution 2793 (XXVI), 7 December 1971.

³⁷ See Security Council Resolution 351, 10 June 1974; General Assembly Resolution 3203 (XXIX), 17 September 1974.

³⁸ See above, para. 15.

³⁹ Crawford (1979) p. 116.

⁴⁰ See Security Council Resolution 307 (1971), 21 December 1971; India-Pakistan, Agreement on Bilateral Relations, Simla, 3 July 1972: (1971) 11 *ILM* 954. On Bangladesh see further Crawford (1979) pp. 115-17; Dugard (1987) pp. 75-6; VP Nanda, "Self-Determination in International Law. The Tragic Tale of Two Cities - Islamabad (West Pakistan) and Dacca

(East Pakistan)" (1972) 66 *AJIL* 321; TM Franck & NS Rodley, "The Law, the United Nations and Bangla Desh" (1972) 2 *Israel YB on Human Rights* 142; TM Franck & NS Rodley, "After Bangladesh: the Law of Humanitarian Intervention by Military Force" (1973) 67 *AJIL* 275; International Commission of Jurists, "East Pakistan Staff Study" *ICJ Review* No. 8 (June 1972) 23; JJA Salmon, "Naissance et Reconnaissance du Bangladesh", *Multitudo legum, lex unum. Mélanges en honneur de Wilhelm Wengler* (Berlin, 1973) vol I, 467; J Salzberg, "UN Prevention of Human Rights Violations: The Bangladesh Case" (1973) 27 *International Organisations* 115.

⁴¹ SCOR, S/PV/3007, 12 Sep 1991 (Mr Merimée (France)). See Security Council Resolutions 709- 11, 12 September 1991; Committee on Admission of New Members, *Report*, S/23021, 11 September 1991. On the Baltic states see R Yakemtchouk, "Les républiques baltes en droit international. Échec d'une annexion opérée en violation du droit des gens" (1991) 37 *AFDI* 259; Cassese, 258-64; R Pullat, "The Restoration of the Independence of Estonia" (1991) 2 *Finnish YBIL* 512; R Rich, "Recognition of States: The Collapse of Yugoslavia and the Soviet Union" (1993) 4 *European JIL* 36.

⁴² *HL Debates*, vol.525 (written answers), col 9 (23 January 1991), in (1991) 62 *BYIL* 573 (Minister of State, Foreign and Commonwealth Office). See also "Pratique Française du Droit International" (1991) 37 *AFDI* 976-9.

⁴³ On 8 December 1991, the heads of state of Belarus, the Russian Federation and Ukraine signed an Agreement establishing the Commonwealth of Independent States, declaring in the preamble that "the Union of Soviet Socialist Republics as a subject of international law and as a geopolitical reality no longer exists": (1992) 31 *ILM* 143. This Agreement was modified by a Protocol of Alma Ata of 21 December 1991, signed by 11 of the Republics (but not by Georgia): *id.*, p. 147. An accompanying "Decision" by the Council of the CIS (*id.*, p. 151) recorded the agreement of the CIS to "support Russia's continuance of the membership of the Union of Soviet Socialist Republics in the United Nations, including permanent membership of the Security Council, and other international organizations": see [Attachment 10](#). By letter of 24 December 1991, President Yeltsin informed the UN Secretary-General of the view of Russia and the other republics: see (1992) 31 *ILM* 138. The implications of Russia's position as continuing the legal personality of the USSR have since been accepted for non-UN purposes as well (e.g., ownership of extraterritorial property, residual responsibility for the external debt of the USSR, etc.). On the dissolution of the Soviet Union see R Rich, "Recognition of States: The Collapse of Yugoslavia and the Soviet Union" (1993) 4 *European JIL* 36; R Mullerson, "The Continuity and Succession of States, by reference to the former USSR and Yugoslavia" (1993) 42 *ICLQ* 473; M Bothe, "Sur quelques questions de succession posées par la dissolution de l'URSS et celle de la Yougoslavie" (1992) 96 *RGDIP* 811; W Czaplinski, "La Continuité, l'Identité et la Succession d'États - Évaluation de Cas Recents" (1993) 26 *Revue belge dedroit international* 374; M Scharf, "Musical Chairs: The Dissolution of States and Membership of the United Nations" (1995) 28 *Cornell ILJ* 29; P Juviler, "Contested Ground: Rights to Self-Determination and the Experience of the Former Soviet Union" (1993) 3 *Trans L & Cont Problems* 71.

⁴⁴ No resolution was necessary; the USSR seat was simply taken up without objection by the Russian Federation following President Yeltsin's letter of 24 December 1991: see Sharf (1995) pp. 46-7.

⁴⁵ UN Doc. A/46/915, 7 May 1992, reprinted in B Stern (ed), *Le Statut des États Issus de l'ex Yougoslavie à l'ONU. Documents* (Paris: Montchrestien, 1996) p. 58.

⁴⁶ Security Council Resolution 757 (1992), 30 May 1992; Security Council Resolution 777 (1992), 19 September 1992; General Assembly Resolution 47/1, 22 September 1992.

⁴⁷ Conference on Yugoslavia, Arbitration Commission, Opinion No. 8, 4 July 1992: 92 *ILR* 199 at pp. 201, 202.

⁴⁸ MCR Craven, "The European Communities' Arbitration Commission on Yugoslavia" (1995) 66 *BYIL* 333 at p. 335. But see Alain Pellet, "L'Activité de la Commission d'Arbitrage de la Conférence Européenne pour la Paix en Yougoslavie" (1992) 38 *AFDI* 220

⁴⁹ Craven (1995) at pp. 389-90.

⁵⁰ Conference on Yugoslavia, Arbitration Commission, Opinion No. 1, 29 November 1991: 92 *ILR* 162 at p. 163.

⁵¹ See para. 28 above

⁵² See further: Marc Weller, "The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia" (1991) 86 *AJIL* 596; R Bieber, "European Community Recognition of Eastern European States: A New Perspective for International Law?" (1992) 86 *Proc ASIL* 374; J Charpentier, "La déclaration des Douze sur la reconnaissance des nouveaux états" (1992) 96 *RGDIP* 343; Genevieve Burdeau & Brigitte Stern (eds), *Dissolution, Continuation et Succession en Europe de l'Est* (Paris: Montchrestien, 1994).

⁵³ See: Czech and Slovak Federal Republic, Constitutional Act No. 541/1992 on the Division of Property, 13 November 1992; Czech and Slovak Federal Republic, Constitutional Act No. 542/1992 on the Extinction of the Czech and Slovak Federal Republic, 25 November 1992. See further J Malenovsky, "Problèmes Juridiques Liés à la Partition de la Tchécoslovaquie" (1993) 39 *AFDI* 305; V Mikulka, "The Dissolution of Czechoslovakia and the Succession in Respect of Treaties" (forthcoming in *Development and International Cooperation*, December 1996). For an account of the political background see Robert A Young, *The Breakup of Czechoslovakia* (Kingston: Institute of Intergovernmental Relations, 1994).

⁵⁴ Security Council Resolution 828, 26 May 1993; General Assembly Resolution 47/230, 28 May 1993.

⁵⁵ See further E Gayim, *The Eritrean Question. The Conflict between the Right of Self Determination and the Interests of States* (Uppsala: Iustus Förlag, 1993); R Goy, "L'indépendance de l'Erythrée" (1993) 39 *AFDI* 337; M Haile, "Legality of Secessions: The Case of Eritrea" (1994) 8 *Emory ILR* 479; R Iyob, *The Eritrean Struggle for Independence* (Cambridge: Cambridge University Press, 1995); O Yohannes, "The Eritrean Question: A Colonial Case?" (1987) 25 *JMod Af St* 643.

⁵⁶ See Security Council Resolutions 686 (1991), 2 March 1991; 687 (1991) 3 April 1991; 688 (1991), 5 April 1991; 949 (1994), 15 October 1994. Each of these resolutions explicitly affirms Iraq's territorial integrity.

⁵⁷ See Isi Foighel, "A Framework for Local Autonomy: The Greenland Case" in Yoram Dinstein (ed), *Models of Autonomy* (New Brunswick: Transaction Books, 1981) 31.

⁵⁸ See A Olafsson, "International Status of the Faroe Islands" (1982) 51 *Nordic JIL* 29; E Patursson, "Some Critical Observations on the Political Development of the Faroe Islands and their Present Political Situation" (1985) 54 *Nordic JIL* 52; F Harhoff, "Faroe Islands" (1995) 2 *Enc PIL* 357.

⁵⁹ Conference on Yugoslavia, Arbitration Commission, Opinion No. 2, 11 January 1992: 92 *ILR* 167 at pp. 168-9.

⁶⁰ Bosnia and Herzegovina-Croatia-Yugoslavia, General Framework Agreement for Peace in Bosnia and Herzegovina with Annexes, Paris, 14 December 1995: (1996) 35 *ILM* 75. The Agreement and its annexes seek to guarantee the territorial integrity of Bosnia and Herzegovina against any form of secession or dismemberment.

⁶¹ This occurred on 2 November 1991 under the leadership of retired Air Force General Djokar Dudayev. It was not put to a referendum. On 6 June 1992, activists also declared Ingushetia a sovereign republic. This was unceremoniously crushed by troops of the Russian Interior Ministry in November and Ingushetia was placed under direct rule from Moscow. On 10 December 1992, Ingushetia was made a republic of the Russian Federation. See R Yakemtchouk, "Les conflits de territoire et de frontière dans les états de l'ex-URSS" (1993) 39 *AFDI* 393 at pp. 424-6.

⁶² *Ibid.*, at p. 426.

⁶³ Joint Declaration, and Principles for Determining the Basics for Mutual Relations between the Russian Federation and the Chechen Republic, 31 August 1996 ([Attachment 13](#)).

⁶⁴ In particular the Treaty on Conventional Armed Forces in Europe, Paris, 19 November 1990, (1991) 30 *ILM* 1, Art V.

⁶⁵ "Pratique Française du Droit International" in (1995) 41 *AFDI* at p. 911.

⁶⁶ HL Debates, vol 563, col 476, 18 April 1955; in (1995) 66 *BYIL* 621.

⁶⁷ Deputy Secretary of State S Talbott, "Supporting Democracy and Economic Reform in the New Independent States" (1995) 6 *US Department of State Dispatch* 119 at p. 120.

⁶⁸ When France ratified the International Covenant on Civil and Political Rights in 1980, it made the following reservation: "In the light of Article 2 of the Constitution of the French Republic, the French Government declares that Article 27 [minority rights] is not applicable so far as the Republic is concerned.": United Nations, *Multilateral Treaties Deposited with the Secretary-General. Status as at 31 December 1995* (ST/LEG/SER.E/14, 1996) p. 124. The position of French overseas departments and territories is different under French constitutional law and practice, as the Constitutional Court recognised in its decisions of 30 December 1975 concerning Mayotte, and of 2 June 1987 concerning New Caledonia.

⁶⁹ Cour Constitutionnel, Décision 91-290 DC, 9 May 1991: [1991] *Revue du Droit Public* 969 at p. 971.

⁷⁰ Ibid at p. 975-6. For commentary see François Luchaire, "Le Statut de la Collectivité de Corse" [1991] *Revue du Droit Public* 943. It should be noted that the separatist movement in Corsica has little popular support (ca 10%).

⁷¹ 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), 24 October 1970, "The principle of equal rights and self-determination of peoples", para. 7 (emphasis added).

⁷² United Nations World Conference on Human Rights, Vienna Declaration and Programme of Action, 25 June 1993, (1993) 32 ILM 1661, at p. 1665 (emphasis added).

⁷³ See Cassese (1995) pp. 109-25 for a full discussion of the "safeguard clause".

⁷⁴ This provides: "In 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 practice their own religion, or to use their own language."

⁷⁵ See e.g. General Assembly Resolution 47/135, 18 December 1992, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities. At the regional level, Council of Europe, Framework Convention for the Protection of National Minorities, 1 February 1995, (1995) 34 ILM 351.

⁷⁶ ILO Convention No 169 concerning Indigenous and Tribal Peoples in Independent Countries, 27 June 1989: (1989) 28 ILM 1382; UN Commission on Human Rights, Draft Declaration on the Rights of Indigenous Peoples, E/CN.4/SUB.2/1994/2/Add.1 (1994), (1995) 34 ILM 535.

⁷⁷ By the time Bangladesh was admitted to the United Nations in 1974, it had been recognised by Pakistan: see above, paragraph 33.

⁷⁸ See above, paragraph 34.

⁷⁹ It may be noted that in each of these cases the territory concerned had been either an independent state or a separate colonial territory to which the principle of self-determination had expressly applied. In each case the exercise of self-determination had either misfired (Senegal, Singapore) or been suppressed (Baltic states, Eritrea).

⁸⁰ This is the only case since 1989 in which the rationale for admission to the United Nations was expressly spelled out by the Security Council at the time it recommended admission to the United Nations. In all other cases the recommendation for admission, however controversial, was made in purely formal terms, suggesting an awareness of a need for an articulated justification in the case of the Baltic states. See above, paras 35-36.

⁸¹ Cf Luzius Wildhaber, "Territorial Modifications and Breakups in Federal States" (1995) 33 *Canadian YBIL* 1, at pp. 12-13.

⁸² See above, paras.38-46 and Attachment 11.

⁸³ In such cases the state must comply with its obligations under international human rights and international humanitarian law. The latter are contained *inter alia* in Protocol II additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, Geneva, 12 December 1977, (1977) 16 ILM 1442. It should be noted that certain "internal" conflicts are specifically included in Additional Protocol I relating to the Protection of Victims of International Armed Conflicts, (1977) 16 ILM 1391, specifically "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes 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": see Protocol I, Art 1 (4).