

---

# Irredentist Secession in International Law

ARNOLD N. PRONTO

---

## ABSTRACT

Irredentism refers to the movement of people and territory from one state to another along with the modification of international boundaries and a transfer of sovereignty. The concept, which originated in the nineteenth century, has been at the root of many territorial disputes since the Second World War. The possibility of an irredentist outcome is rarely covered in the discourse on secession. This essay argues that irredentism is legally distinct from secession in the application of the principle of self-determination, the question of recognition by the international community, and the role of consent. It discusses the legal hurdles facing a people seeking to secede from one state in order to join another state, and outlines the contemporary legal framework applicable to irredentist secession based on the principles of territorial sovereignty, non-intervention and peaceful settlement of disputes. It concludes that international law significantly constrains the scope for irredentist secession as a legal and political phenomenon.

## INTRODUCTION

To think about secession in international law is to do so in multiple dimensions: both in terms of the law regulating secession, which, in contemporary times, is typically intertwined with the concept of self-determination (both in the political and legal sense) of peoples, as well as the rules on the

---

**Arnold N. Pronto** is a Principal Legal Officer in the United Nations Office of Legal Affairs, Secretariat of the International Law Commission. He earned his Master of Arts in Law and Diplomacy from the Fletcher School of Law and Diplomacy in May 1997.<sup>1</sup>

---

creation and recognition of states (and to some extent the internal law of states). Another way of looking at this problem is to think of secession as a journey, with a point of departure and a point of arrival, each with its own set of applicable rules. The former typically deals with questions of the right to secede, self-determination, and other ancillary matters, such as the legality of unilateral declarations of independence.<sup>2</sup> The latter relates to the (desired) outcome of secession, typically statehood. This essay focuses less on the point of departure of this journey, and more on that of arrival.

While there are historical examples of secession leading to statehood, it is by no means a foregone conclusion. In fact, not all claims for self-determination are asserted at the international level. “Internal” self-determination, which takes place entirely within the constitutional system of a state, is possible, even relatively common. At the international level, recent history shows that assertions of the “right” to secede, based on a claim to self-determination,

.....  
*At the international level, recent history shows that assertions of the “right” to secede, based on a claim to self-determination, face significant practical and legal impediments.*  
 .....

face significant practical and legal impediments. Contemporary legal thinking thus typically focuses on the extent to which, if at all, international law tolerates secession.

The primary context for such analyses is that of secession resulting in the creation of a new state (here referred to as “state secession”). Much of the law relating to secession has been extrapolated in an inductive manner from historical examples, which have

frequently involved claims—some more successful than others—to statehood, mostly undertaken, although not exclusively, in the context of decolonization. Such analyses typically focus on the question of whether statehood has been attained or not, as a matter of international law, accompanied by analysis of the role of recognition by the international community.

Statehood, however, is not the only possible outcome of secession. Secession can also occur when a people leave one state and join another. Distinct from mere migration from one state to another, secession in support of irredentist claims (here, “irredentist secession”) involves the land moving with the people (to another state).<sup>3</sup> From a legal perspective, this implies, *inter alia*, the cession of territory, the modification of international boundaries, and a transfer of sovereignty.<sup>4</sup> No new state emerges. Instead, irredentist secession modifies the extent of the territorial sovereignty of two (or more) states.

Irredentist outcomes are rarely covered in the discourse on secession. They are either ignored in contemporary reflections, or merely treated in historical terms as a throwback to another time, or subsumed in the analysis of state secession. Nonetheless, irredentism continues to be a sought-after outcome. This essay addresses the legal hurdles facing a people seeking to secede from one state in order to join another state, and maintains that the rules of international law applicable to state secession are only of limited relevance, if at all.

### UNDERSTANDING 'SUCCESSFUL' SECESSION

Contemporary reflection on the question of secession typically begins with the principle of self-determination, from which inferences as to certain legal consequences are drawn. This analysis occasionally conflates the existence of the "right" to self-determination with a supposed "right" to secede. It is by no means clear, though, that such a logical leap reflects the state of contemporary international law. What is important for present purposes is that international law also plays a role in whether an attempted secession succeeds or not. In other words, it is important to have a full understanding of how, in any given case, secession moves from a mere assertion to a legal reality.

For those who agitate in favor of the possibility to secede, the desired outcome of state secession is the establishment of a new state, distinct from other states, including the state from which it emerged. Accordingly, a successful secession must satisfy the requirements for statehood established by international law. For irredentist secession, success is framed differently. Instead of establishing a new state, those agitating in favor of secession seek to join another state (and to take territory with them). No new state is created or sought. Unilateral declarations of independence make little sense in such cases, since irredentist secession does not seek "independence" as an outcome. Thus, the requirements established by international law for a valid state secession are less relevant since considerations as to whether the seceding territory qualifies as a state simply do not apply.

Furthermore, international lawyers typically treat the concept of the "right" to secede based on exercise of the right to self-determination as a self-standing question separate from that of statehood. Nor does it seem that international law considers the existence of a "right" to secede even to be a prerequisite for secession. Statehood arising from the grant of independence, for example, might be understood as an outcome of the application of the right to secede, but it does not need to be. The decolonization process

of the second half of the last century was undertaken within a specific legal framework, established within the United Nations, that did not involve assertions of a “right” to secede—at least, no such right was overtly asserted as distinct from a claim to independence.

In addition, standard narratives on occasion reveal a feedback loop between “successful” secessions and assertions of a legal “right” to secede in international law. Examples of successful secessions are cited in substantiation of claims of a legal “right,” under international law, to secede. Many successful secessions, however, are rooted in other legal bases, such as consent. Furthermore, precedents must be parsed both for historical accuracy and legal relevance. Such analysis reveals that extrapolations from examples involving state secession are of only limited relevance for irredentist secession: only some principles are common to both. Even with such principles, it is necessary to look deeper and consider the extent of (and differences in) their application.

#### IRREDENTISM AS A HISTORICAL PHENOMENON

Irredentism is not a particularly uncommon phenomenon. While it might conjure memories of another time (the term has its origins in the Italian unification during the nineteenth century), irredentist assertions were at the root of many territorial disputes during the twentieth century. Since the Second World War, irredentist claims have been expounded in almost every continent. These have included aspirations for Irish as well as German reunification, calls for the reclamation of lost German territories in Pomerania and East Prussia and of Greek territory in modern

day Turkey, calls for *enosis* (union) between Cyprus and Greece, attempts by Bolivia to secure the return of the Atacama, historical claims asserted by Guatemala over Belize, the Malvinas/Falklands dispute between Argentina and the United Kingdom, calls for the reintegration of Gibraltar into Spain and the Spanish African territories into Morocco, attempts by ethnic Serb Kosovars to join Serbia, the concept of a “greater Albania,” the ongoing dispute over the Crimea and in other territories in eastern Europe, the dispute over Nagorno-Karabakh, conflicting claims in the lingering dispute over the

*Irredentist assertions were at the root of many territorial disputes during the twentieth century. Since the Second World War, irredentist claims have been expounded in almost every continent.*

Western Sahara, and the dispute between the Sudan and South Sudan over the Abyei area, and that between Ethiopia and Somalia over the Ogaden. All of these have involved elements of irredentism, in one form or another.

In all of these disputes, claims have been made to the (re)incorporation of territory into an existing state. Such claims are not always analyzed in terms of secession. Instead, they are typically framed in terms of territorial disputes, usually in the guise of a state agitating for the return of lost territory, even though many also contain a secessionist dimension in the form of people living in the disputed territory (nationals of the state in question) agitating in support of the irredentist claim.

If there is a general reluctance among international lawyers to recognize the “right” to state secession given the consequential risk to international stability, the history of irredentist secession gives reason for even greater pause, with many such claims having been the subject of (inter-state) armed conflict in the past. Irredentist conflict during the inter-war period contributed significantly to the political instability at the root of the Second World War. It is no surprise, therefore, that in the post-war period the emphasis in international law has been placed on the sanctity of boundaries and the peaceful resolution of territorial disputes. A recent study of irredentism in Europe since the Second World War suggests a trend in favor of the peaceful resolution of conflicts, primarily through the abandonment of territorial claims, thereby implying that irredentist assertions enjoy scant tolerance under contemporary international law.<sup>5</sup>

At the same time, the possibility of state secession has enjoyed some, if limited, recognition in international law, largely as a consequence of being considered co-extensive with the principle of self-determination. Given this, it is not uncommon for contemporary irredentist claims to be framed in terms of state secession. This typically involves the putative creation of a new “state” that is either subsequently formally incorporated into, or falls within the sphere of influence of, the state that pursued the original irredentist claim. The perceived necessity of such convoluted arrangements speaks to the extent to which straightforward irredentism has fallen out of favor in contemporary times.

Such phenomena have also influenced legal thinking. Contemporary legal theory often treats irredentist assertions, arising from within the state, as part of the general phenomenon of “secession,” thereby extending the traditional legal analysis of state secession to irredentist secession. While this may, in some cases, be influenced by actual developments on the ground, the choice to seek the creation of a state as an intermediate step towards attaining the eventual goal of (re)incorporation into another state

is merely a strategy; a means to an end. It does not necessarily constitute a form of state secession.

Yet, applying the state secession framework to irredentist action results in strained legal arrangements, ranging from “transitional statehood” followed by subsequent voluntary annexation, to the establishment of “quasi-states” existing in a twilight zone of international law, recognized by none (or few), except the state pursuing the original irredentist claim (which is typically the source of both moral and material support). Such anomalous arrangements are shrouded in legal uncertainty and bring with them the specter of instability.

The complexities of such arrangements are not limited to questions of legal status. Other legal complexities that arise include the possibility of a double state succession (of treaties and property), first following the creation of the putative new “state” and the second following the incorporation into the “mother” state; the applicability of full independence requirements for membership in international organizations; problems concerning the succession of debts and international responsibility; and the impact on the nationality of the persons on the territory undergoing the secession.

#### LEGAL DISTINCTION BETWEEN STATE SECESSION AND IRREDENTIST SECESSION

In addition to the obvious difference in outcomes (statehood versus cession of territory), the legal implications of irredentist secession diverge to some degree from those of state secession, including as regards the application of the principle of self-determination, the question of recognition by third states and the international community as a whole, and the role of consent.

##### *The Principle of Self-Determination*

The principle (and accompanying right) of self-determination, have, in their maximalist manifestations, become synonymous with secession. They, respectively, represent the points of departure and of arrival: cause and effect. An unsuccessful secession can be construed as a denial of the right of self-determination.<sup>6</sup>

One of the purposes of citing the principle of self-determination in secession (regardless of type) is to provide a political (and potentially legal) justification for *prima facie* unlawful conduct. In other words, without

a valid claim to self-determination as understood by international law, attempts at secession (absent other legal grounds) are sometimes treated as unsanctioned by the law—akin to revolution. Further, the fact that the “right” to self-determination might be available to those claiming the right to leave and join another state (and take the territory with them) suggests that, in principle, international law allows for this possibility. In other words, irredentist secession is not prohibited *per se* by international law (even if it may be extensively circumscribed). This is not the same as saying that the “right” to secede and join another self-determination unit exists under international law. It simply means that some legal assessment is called for.

In fact, the principle of self-determination does not operate in the case of irredentist secession in the same manner as that in state secession. Take, for example, the process of ascertaining the “self” in self-determination. With state secession, the goal is to establish distinctiveness—a group identity distinct from that of the rest of the population of the state. Irredentist secession calls for additional nuance: the identity claim is simultaneously one of exclusion (from others within the state) and inclusion within another self-determination unit located elsewhere (in another state or states). Not one but two claims are being made: about the identity of the self-determination units in the state, as well as those in another state. Given the complexities of (and controversies surrounding) ascertaining what constitutes a self-determination unit in international law, irredentist claims have—at least in theory—a steeper hill to climb.

A further complexity involves who is entitled to make the claim. Whose assertion of the right of self-determination is relevant in the eyes of the law? The principle of self-determination is constructed in terms of the traditional arrangement in state secession, where the assertion is made by a sub-national group located within the state. Irredentist claims, however, typically also involve assertions made by another state or states; i.e., invocations of the principle of self-determination by members of the same self-determination unit located in another state. In fact, irredentist claims

.....  
*The legal implications of irredentist secession diverge to some degree from those of state secession, including as regards the application of the principle of self-determination, the question of recognition by third states and the international community as a whole, and the role of consent.*  
 .....

by states have traditionally focused more on territory, typically based on historical claims, than on the unification of “peoples”; and claims as to the exercise of self-determination have in reality been a secondary consideration.

It is not clear that the contemporary conception of the principle of self-determination can tolerate the strains introduced by such “exogenous” invocations made in the context of irredentist claims. Even if it can do so, the application of the principle of self-determination in such cases would likely be significantly constrained, if not barred, by other rules of contemporary international law, including those prohibiting intervention in the internal affairs of states, as discussed below.

### *Recognition*

In the contemporary international system, political recognition by third states of a secession plays a significant role in its success. The *legal* function of such recognition is essentially that of validation. In state secession,

.....  
*The legal implications of irredentist secession diverge to some degree from those of state secession, including as regards the application of the principle of self-determination, the question of recognition by third states and the international community as a whole, and the role of consent.*  
 .....

recognition declares the existence of the state, and thus the fact of a successful secession. It might also, depending on the perspective taken, even be constitutive of statehood (such as recognition that takes the form of admission to membership in an universal international organization), although this possibility does not currently enjoy general support.<sup>7</sup> In irredentist secession, the function of recognition is to validate not the existence of a new state, but rather the lawfulness of the change in the *status quo* resulting from the secession. Questions of the constitutive versus declaratory effect of recognition are simply less relevant, as no new state

is being created. Nor is there any question as to the existence of the state to which sovereignty over the territory has shifted.

Recognition simply plays a different role in the context of irredentist secession. In fact, recognition serves as the main, and sometimes only available, brake on rampant irredentism—and the chaos that can result therefrom. The post-World War II phenomenon of a general unwillingness, on



the part of third states and the international community, to recognize the lawfulness of irredentist claims has played a significant role in limiting the number of such claims being actively pursued (in relation to previous epochs), even if not all have been abandoned.

Recognition by a state or states is both a political act and a legal concept. As the latter, it is merely a manifestation of a more general concept applicable in a number of contexts. The legal recognition of belligerency, neutrality, a state of war, and of a legal occupation etc., have all been questions considered by international law at different points in time. When coming to statehood, recognition, generally speaking, exists in a weak and strong form. In its weaker form, the *positive* recognition of a legal *status quo* is not consistently a guarantee of its general acceptance (nor eventual success). Recent history provides examples of putative states recognized only by one or some other states, but whose legal status remains in question. An often cited example is that of the *bantustans*: the existence of formal recognition by South Africa did not affect the overall legal picture of their status under international law.

On the other hand, the experience of successful and unsuccessful secessions (of both types) points to the legal significance of recognition in its negative form (non-recognition). State sovereignty inherently includes the discretion not to recognize the lawfulness of a particular *status quo*. Non-recognition coordinated by a multitude of, or all, other states, known as “collective non-recognition,” is a particularly strong form of the application of the mechanism.<sup>8</sup> This was evident in the collective *non-recognition* of the attempted secession of the *bantustans*, the unilateral declaration of independence of Rhodesia, the ongoing non-recognition of northern-Cyprus, and by some states of the secession of Kosovo. All of these contributed (or are contributing) to either blocking or slowing down the change in the *de jure status quo*—irrespective of any *de facto* status. On the other hand, there have been cases, such as the secessions of Timor Leste and South Sudan, that owed their success in no small part to the fact that no serious opposition against the legal recognition of the newly established *status quo* existed.

While international law does not impose on states a positive obligation to recognize a situation as being lawful, the discretion not to recognize is not entirely unfettered. In some circumstances the law might impose an obligation not to recognize. For example, under the articles on the responsibility of states for internationally wrongful acts, adopted by the International Law Commission in 2001, states are required to *not* “recognize as lawful a situation created by a serious breach [of a peremptory norm of general international law].”<sup>9</sup>

The role of international law is not limited to permitting or constraining the act of recognition or non-recognition. The law also provides some substantive guidance. For example, international law suggests certain requirements for ascertainment of statehood—drawn from the Montevideo Convention of 1933,<sup>10</sup> but which have come to reflect international law more generally. So too, the recognition (or not) of an irredentist claim should take into account the applicable substantive rules of international law, some of which are discussed below. Recognition does not take place in a vacuum. For the political act to trigger legal consequences, legal requirements, limitations and considerations must be taken into account. Before turning to a discussion of such substantive legal considerations in the case of irredentist secession, it is necessary to also consider the role played by consent in secession.

### *Consent*

One of the oddities of contemporary reflection on secession is that the possibility of consent receives scant attention. Yet, many, if not most, successful secessions (mostly of the state variety) in recent times have been undertaken on the basis of the consent of the state from which a people (or territory) seceded. Eritrea's secession from Ethiopia, Timor-Leste from

*Many, if not most, successful secessions (mostly of the state variety) in recent times have been undertaken on the basis of the consent of the state from which a people (or territory) seceded.*

Indonesia, and South Sudan from Sudan were all undertaken on the basis of consent. In some cases, such consent arises from the peaceful operation of internal constitutional processes that permit secession from the state. Had Québec or Scotland voted in favor of secession, such outcome would have been understood at the international level as consensual secession. Consent might also arise in the context of a negotiated settlement to a conflict. That

it may have only been granted following a protracted period of conflict does not necessarily diminish its legal significance. Consent might also be indirect, for example, through the transfer of control over territory as a consequence of a judicial or arbitral process to which the ceding state had consented.<sup>11</sup>

Three points are of further interest when considering the legal function of consent. First, it has to be validly granted, as understood by international law. Coerced consent vitiates its lawfulness, and that of any acts

that flow therefrom. A treaty for the cession of territory, adopted under coerced circumstances, is null and void.<sup>12</sup> A state which has been coerced into undertaking a specific act can rely on the defense of *force majeure* to preclude any wrongfulness attributed to it.<sup>13</sup> Furthermore, contemporary international law recognizes a prohibition on an aggressor state benefitting from its aggression. As such, a territorial settlement (involving a modification of a treaty-based *status quo*) imposed by a successful aggressor state is considered unlawful under international law.<sup>14</sup> Such possibility is less pertinent in the case of state secession, which typically only involves internal armed conflict. On the other hand, armed conflict sparked by irredentist secession has a greater likelihood of implicating two or more states, which brings more starkly into play questions of the legal relationships between states, and the concomitant application of international rules.

Second, the discretion to grant consent (or not) is not completely unfettered under international law. It is limited by general rules of international law, such as by the operation of conflicting peremptory norms (*jus cogens*). For example, what is less known about the *bantustans* in South Africa is that, subsequent to their establishment, some went through a series of enlargements involving the further cession of territory from South Africa. The nominal “consent” of South Africa to the “cession” of territory did not serve to cure the underlying unlawfulness of their establishment (to further the racial policies of the apartheid government, in violation of the peremptory principle of non-discrimination). The ability to consent to a territorial rearrangement (or the legal effects of such consent) might also be constrained by more regular treaty obligations. It is not uncommon for states to fix their territorial boundaries by means of treaty arrangements, with the result that the other contracting parties retain a legal interest in any subsequent territorial rearrangement.<sup>15</sup> Part of the legal picture surrounding the Bolivian irredentist claim over the Atacama desert is the Treaty of Ancón between Chile and Peru of 1883, which might affect the legal ability of Chile to consent to the transfer of (former Peruvian) territory to Bolivia. There are a number of states, in Europe and elsewhere, whose existence is guaranteed by treaties between other states. There are also historical examples of treaties specifically prohibiting territorial rearrangements, such as the prohibition on the *Anschluss* (union) between Austria and Germany in the State Treaty of 1955.<sup>16</sup> The intended legal effect of such treaties is precisely to constrain the ability of the state or states in question to consent to territorial re-arrangements.

The third issue has to do with the effect of consent on the operation of recognition. The significant role played by the recognition of third

states in the ultimate success of a secessionist claim, including that of the irredentist variety, has already been referred to. However, the operation of consent shifts the balance of possibilities open to third states. In the case of non-consensual secession, third states retain, in principle, a wide berth to recognize or not the change in the legal *status quo*;

.....  
*Secession on the basis of consent, while it does not create an outright obligation to recognize, leaves third states with less legal ground to justify not recognizing the new legal status quo.*  
 .....

of consent, while it does not create an outright obligation to recognize, leaves third states with less legal ground to justify not recognizing the new legal *status quo* (especially if the process involved a popular expression of preference for secession by the population involved).<sup>17</sup> Were Serbia, for example, to consent to the secession of Kosovo, this would no doubt transform the legal position on the recognition of Kosovo. Similarly, to cite an irredentist

example, third states would be hard pressed not to recognize the resulting change in the legal position were the United Kingdom ever to consent to the reintegration of Northern Ireland into the Irish Republic (or of the Falklands/Malvinas into Argentina, or Gibraltar into Spain).

Consent plays a similar role in more general limitations on territorial re-arrangements. The application of the *uti posseditis* principle (discussed further below), while considered during the period of decolonization to constrain subsequent territorial re-arrangements in Africa, did not do so in the context of the secession of South Sudan, which was undertaken on the basis of the consent of Sudan. Nonetheless, the ameliorative effect of such consent would still be subject to the legal obligation on states not to extend recognition in certain circumstances, involving the operation of peremptory norms, and would, in each case, still have to be viewed in light of applicable treaty obligations.

#### LEGAL FRAMEWORK APPLICABLE TO IRREDENTIST SECESSION

The legal analysis of secession is guided by several framework principles, all of which are fundamental to the contemporary system of international peace and security. While these principles do not expressly distinguish between the types of secession, their application in practice varies in relation to the type being considered. The following key principles are particularly relevant to the special case of irredentist secession.

*Principles of Territorial Integrity, Non-Intervention, and Peaceful Settlement of Disputes*

Other than the Charter of the United Nations, the main instrument of general relevance to secession is the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (“Friendly Relations Declaration”), which was adopted by the UN General Assembly in 1970.<sup>18</sup> The instrument is organized around several key assertions, posited as principles of international law,<sup>19</sup> which establish the basic parameters for the legal relationship between states in the contemporary international legal order. Although developed during the Cold War, the Declaration is yet to be supplanted by any other comparable exposition of the applicable law, and enjoys general recognition as a reflection of existing customary international law. An important—and often overlooked—feature of the Declaration is that, by its own terms, “[i]n their interpretation and application the... principles are interrelated and each principle should be construed in the context of the other principles.”<sup>20</sup>

In addition to the principle of equal rights and self-determination of peoples, three other principles provide the prevailing legal and conceptual framework for secession. The first two deal with the range of actions states may take against other states. Moving from maximalist to minimalist, the first of the two is the basic principle that “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.”<sup>21</sup> States are thus prohibited by international law from pursuing a policy of the threat or use of force against the territorial integrity or political independence of another state, such as through the waging of aggressive warfare. The principle reflects, *inter alia*, the general prohibition on the use of force contained in the Charter of the United Nations,<sup>22</sup> and is considered a rule of customary international law.<sup>23</sup> Applying this principle yields specific consequences such as the obligation to respect existing international boundaries and the prohibition on the annexation of territory (both of which are discussed below).

When the principle is invoked in the context of state secession, the question is whether it can be said to apply not only between states but also to internal actors seeking to secede (thereby affecting the territorial integrity of the state). The International Court of Justice, in its advisory opinion on the unilateral declaration of independence of Kosovo, took

the narrow view that “the scope of the principle of territorial integrity is confined to the sphere of relations between States.”<sup>24</sup> While this may be formally correct (sub-national actors are not *per se* subjects of international law, enjoying rights and obligations, except in certain exceptional circumstances), it overlooks the complexity arising from the fact that the principle is also opposable to third states. More specifically, it implies not only a negative obligation on such states not to undermine the territorial integrity of the state in question, but also a positive one, namely not to recognize as lawful actions which have or may affect the territorial integrity of the state, in circumstances where the state in question has not consented or acquiesced thereto. In the case of irredentist secession, the problem of the applicability of the principle is less stark, given that agitation by internal actors in favor of irredentism is typically accompanied by claims (of a nature proscribed by this principle) by another state.

This latter ingredient makes the second principle—namely, the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter—of particular relevance to irredentist secession and perhaps more so than in state secession. One of the consequences of the inclusion of the principle in the Friendly Relations Declaration was to transform it from an obligation notionally imposed on the United Nations Organization, under article 2, paragraph 9, of the Charter, to a principle of international law of more general application, i.e., thereby establishing obligations opposable to individual states. The application of the principle would bar the lawfulness of the actions of a state, in pursuance of an irredentist policy, that encourages or supports, including through the provision of material assistance, a group of sub-national actors agitating for secession from another state.

The third principle in the Friendly Relations Declaration of particular relevance to irredentist secession is that which requires states to settle their international disputes by peaceful means. While the principle is generally applicable to all international disputes, it is nonetheless worth mentioning in the present context precisely because of the increased awareness in the post-War period of the particularly destabilizing effect of rampant irredentism and the existentialist threat it poses to the maintenance of international peace and security. Today, relatively few states actively pursue irredentist claims. Many such claims have either remained dormant, or have been resolved through peaceful settlement, including negotiation or even arbitration. For example, the Federal Republic of Germany and Poland sought to resolve the question of the border with Poland through the negotia-

tion of a 1970 treaty recognizing the Oder-Neisse line,<sup>25</sup> thereby effectively abandoning German irredentist claims to territories in former Pomerania, Silesia and Prussia.<sup>26</sup> After a brief war, which had among its root causes competing irredentist claims, Ethiopia and Eritrea submitted their territorial disputes to an international boundary commission.<sup>27</sup> Bolivia has recently sought to invoke the jurisdiction of the International Court of Justice in pursuance of its claims to the Atacama.<sup>28</sup> The Charter identifies several modes of peaceful settlement, while expressly preserving the freedom of choosing the mode.<sup>29</sup>

There is, however, some ambiguity when considering the legal obligations in question. The freedom of choice of mode of settlement is not the same as the requirement to settle disputes peacefully. While the former implies a discretion to act, the latter involves a legal obligation. The nature of that obligation is itself somewhat nuanced. It is not that states are legally required to seek to *settle* all their disputes, but rather that they do so *peacefully*. Many territorial claims lie dormant. A legal requirement that they be settled could actually generate disputes, thereby proving destabilizing. In other words, it makes little sense to ascribe legal consequences to the failure of states to seek to settle all their claims. Owing to the active pursuit of an irredentist claim, it is only once a “dispute” has arisen, for example, that the states seeking to resolve the dispute are legally required to do so by peaceful means, i.e. the option of resorting to armed force to do so is prohibited.

.....  
*Many territorial claims lie dormant. A legal requirement that they be settled could actually generate disputes, thereby proving destabilizing.*  
 .....

### *Sanctity of International Boundaries*

As part of the application of the prohibition on the threat or use of force, the Friendly Relations Declaration confirms that “[e]very 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.”<sup>30</sup> The recognition of the sanctity of international boundaries lies at the core of the prevailing system of international peace and security. It also features in several key regional security arrangements. For example, the Helsinki Accords of 1975, adopted by the Conference on Security and

Cooperation in Europe, include among the “Principles Guiding Relations between Participating States,” the “inviolability of frontiers,” under which “[t]he participating States regard as inviolable all one another’s frontiers well as the frontiers of all States in Europe and therefore they will refrain now and in the future from assaulting these frontiers.”<sup>31</sup>

While the Helsinki Accords were formally non-binding, the principle nonetheless corresponds with a general legal recognition of the sanctity of international boundaries. This is evidenced in the application of the doctrine of *uti possidetis*, by which the internal administrative boundaries of colonial empires were deemed to constitute international boundaries of the independent states which emerged from the decolonization process.<sup>32</sup> While the origins of the concept lie in Roman Law principles, they were applied to the aftermath of the collapse of the Spanish Empire in Latin America. In more modern times, these principles guided a relatively orderly decolonization process in Africa. They have also been applied in Asia,<sup>33</sup> and more recently in Europe—for example, in the context of the dissolution of Yugoslavia.<sup>34</sup>

The International Court of Justice has had occasion to confirm the general customary international law status of the doctrine, whose purpose it viewed as being “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.”<sup>35</sup> Even though the doctrine has come to be subject to limitations in practice, and its scope of application (especially in the context of the post-decolonization period) remains the subject of speculation,<sup>36</sup> it nonetheless continues to provide the basic legal reference point for the consideration of overlapping claims to territory in much of the world.

What is more, while the application of the doctrine of *uti possidetis* is envisaged primarily in the context of state secession (in the form of independence), its effects have been understood to extend to subsequent attempts at territorial shifts. In other words, it does not merely regulate the position on the day after independence, but, outside the context of consent (as discussed above), also regulates subsequent attempts at changes in international boundaries. This reflects a general policy bias in international law towards stability over change.

This bias is also reflected in other rules of international law, such as in the special status granted, under the law of treaties, to treaties establishing boundaries. The Vienna Convention on the Law of Treaties of 1969 bars the invocation of the doctrine of *rebus sic stantibus*, i.e., the fundamental change of circumstances “[a]s a ground for terminating or



withdrawing from a treaty establishing a boundary.”<sup>37</sup> Similarly, under the Vienna Convention on Succession of States in respect of Treaties of 1978,<sup>38</sup> boundaries established by treaty survive (are not affected) by a succession of States, nor are the “obligations and rights established by a treaty and relating to the regime of a boundary” affected by the succession.<sup>39</sup> The effect of the prominence given to the stability of international boundaries, especially when established by treaty, is to, in a significant way, limit the scope for irredentist secession, for which the goal is precisely the shifting of existing boundaries.

***Prohibition on Forceful Territorial Acquisition***

A further consequence of the prohibition of the threat or use of force is the prohibition on territorial acquisition through violence. According to the Friendly Relations Declaration:

“[t]he 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 recognized as legal.”

The prohibition, which is addressed both to the conquering state, and to third states (not to recognize the legality of the acquisition), lies at the heart of the contemporary Charter-based system of peace and security. It is also a fundamental legal concept, .....  
 barring the automatic application of the traditional rules on the acquisition and transfer of territory, and constraining the discretion of third states to recognize the lawfulness of the new *status quo*. Few concepts in international law have as much history behind them. ....

*Irredentist secession as an outcome of the resort to force is not easily tolerated in modern international law.*

Irredentist secession as an outcome of the resort to force is not easily tolerated in modern international law. Transfer of sovereignty in such circumstances can only, if at all, occur in exceptional cases where there is valid consent as understood by international law in the form of agreement by the former state, and recognized as such by the international community.<sup>40</sup>

**CONCLUSION**

This essay has sought to demonstrate that, despite a significant degree of overlap, irredentism as an outcome of the journey of secession can be distinguished from that seeking statehood. Such outcomes have also varied

in terms of their respective prospects for success. While state secession has been tolerated in international law to some degree, the cumulative effect of the above described international legal framework is to significantly constrain the scope for irredentist secession as a legal (and political) phenomenon. While not prohibited under international law *per se*, irredentist secession has come to be limited to the circumstance of consent between the parties and operates within the parameters of the general obligation to resolve disputes through peaceful means.<sup>f</sup>

## ENDNOTES

- 1 The views expressed herein do not necessarily reflect those of the United Nations.
- 2 See *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, p. 403
- 3 See Naomi Chazan (ed.), *Irredentism and International Politics* (Boulder: Lynne Rienner, 1991), p. 139 (“[i]rredentism...refers to attempts by existing states to annex adjacent lands and the people who inhabit them in the name of historical, cultural, religious, linguistic or geographic affinity”).
- 4 See Leah Brilmayer, “Secession and Self-Determination: A Territorial Interpretation”, *Yale Journal of International Law*, vol. 16, p. 177 (1991).
- 5 Markus Kornprobst, *Irredentism in European Politics: Argumentation, Compromise and Norms* (Cambridge: Cambridge University Press, 2008).
- 6 See Milena Sterio, “Self-Determination and Secession Under International Law: The New Framework”, *ILSA Journal of International and Comparative Law*, vol. 21, pp. 293–306.
- 7 See James Crawford, *The Creation of States in International Law*, 2nd ed. (Oxford: Clarendon, 2006), 19–22; John Dugard, *The Secession of States and Their Recognition in the Wake of Kosovo* (Den Haag: Hague Academy of International Law, 2013), 35–64.
- 8 See John Dugard, *Recognition and the United Nations* (Den Haag: Grotius Publications, 1987).
- 9 *Articles on the Responsibility of States for Internationally Wrongful Acts*, UN General Assembly resolution 56/83, December 12, 2001.
- 10 Convention on the Rights and Duties of States, *League of Nations Treaty Series* (December 26, 1933), 19.
- 11 See, e.g., International Court of Justice, *Land and Maritime Boundary between Cameroon and Nigeria* case (Judgment, I.C.J. Reports, 2002), 303, in which the Court’s decision that Cameroon enjoyed sovereignty over the Bakassi peninsula resulted in the transfer of control from Nigeria.
- 12 United Nations, Vienna Convention on the Law of Treaties, *Treaty Series*, vol. 1155, May 23, 1969, 331 (“[a] treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.”). See Mark E. Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties* (Leiden: Nijhoff Publishers, 2009), 638–651.
- 13 *Articles on the Responsibility of States for Internationally Wrongful Acts*, UN General Assembly Resolution 56/83, December 12, 2001, Article 23.
- 14 *Articles on the Effects of Armed Conflicts on Treaties*, UN General Assembly Resolution 66/99, December 9, 2011, Annex Article 15.

- 15 James Crawford, *Brownlie's Principles of Public International Law*, 8th ed. (Oxford: Oxford University Press, 2012), 210.
- 16 Concluded by the Soviet Union, the United Kingdom, the United States, France and Austria, on 15 May 1955, United Nations, *Treaty Series*, vol. 217, p. 223, art. 4(1). ('[t]he Allied and Associated Powers declare that political or economic union between Austria and Germany is prohibited. Austria fully recognizes its responsibilities in this matter and shall not enter into political or economic union with Germany in any form whatsoever.').
- 17 Crawford, *Brownlie's Principles*, 243 (doubts the existence of any requirement of support among the inhabitants of the territory for its transfer).
- 18 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, UN General Assembly Resolution 2625, October 24, 1970.
- 19 *Ibid.*, para. 3 (by its own terms, the Declaration confirms that "[t]he principles of the Charter which are embodied in this Declaration constitute basic principles of international law.")
- 20 *Ibid.*, para. 2.
- 21 *Ibid.*, para. 1.
- 22 *Ibid.*, Art. 2(4).
- 23 See *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, 101-103.
- 24 *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion*, I.C.J. Reports 2010, 403, 437.
- 25 United Nations, Agreement between the Polish People's Republic and the Federal Republic of Germany concerning the basis for normalization of their mutual relations, *Treaty Series*, vol. 830 (December 7, 1970), 331; United Nations, Treaty concerning the demarcation of the established and existing Polish-German state frontier, *Treaty Series*, vol. 1708, (November 14, 1990) p. 383 (confirmed the territorial settlement).
- 26 See Polish-German state frontier treaty, art. 3 ('[t]he Contracting Parties declare that they have no territorial claims against each other and will advance none in the future.').
- 27 See Statement by the Eritrea-Ethiopia Boundary Commission, *Reports of International Arbitral Awards*, vol. XXVI (November 27, 2006), 771-799.
- 28 See *Obligation To Negotiate Access To The Pacific Ocean (Bolivia v. Chile)*, Application to the International Court of Justice, April 24, 2013.
- 29 Charter of the United Nations, art. 33 ('...seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice').
- 30 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, UN General Assembly Resolution 2625 (October 24, 1970), para. 1.
- 31 Helsinki Accords, Declaration on Principles Guiding Relations between Participating States, Principle III, ILM, vol. 14 (August 1, 1975), 1294.
- 32 See Malcolm Shaw, *International Law*, 6th ed. (Cambridge: Cambridge University Press, 2008), 525-528; and Crawford, *Brownlie's Principles*, 238-239.
- 33 See, e.g., Case concerning the Indo-Pakistan Western boundary (*Rann of Kutch*) between India and Pakistan, UNRIAA, vol. XVII (February 19, 1968) 446-449.
- 34 See Opinion No. 2 of the Yugoslav Arbitration Commission, ILR, vol. 92, 168 ('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').

- 35 *Burkina Faso v. Republic of Mali*, *ICJ Reports 1986*, 565. See also Yugoslav Arbitration Commission, Opinion No. 3, *ILR*, vol. 92, 170 ('*Utī possidetis*...is today recognized as a general principle...').
- 36 See, e.g. in the criticism of the treatment of the principle by the Yugoslav Arbitration Commission. See John Dugard, *The Secession of States and Their Recognition in the Wake of Kosovo*, (Den Haag: Hague Academy of International Law, 2013), 273–275.
- 37 United Nations, Vienna Convention on the Law of Treaties, *Treaty Series*, vol. 1155, May 23, 1969, Art. 59(2)(a).
- 38 United Nations, Vienna Convention on Succession of States in respect of Treaties, *Treaty Series*, vol. 1946, August 23, 1978, 3.
- 39 *Ibid.*, art. 11.
- 40 Shaw, 500–502; but see Crawford, *Brownlie's Principles*, 242–243.