Chapter 2

PRINCIPLES OF INTERNATIONAL ORDER[i]

"War may sometimes be a necessary evil. But no matter how necessary, it is always an evil, never a good. We will not learn to live together in peace by killing each other's children."

— JIMMY CARTER
The Nobel Peace Prize Lecture

My seventh thematic report to the Human Rights Council, presented in March 2018 (A/HRC/37/63), formulated 23 principles of International order, which summarized my theoretical and practical approach to the subject in the light of the empirical experience of administering the mandate. These norms of international law and practice derive their legal basis from the Principles and Purposes of the UN Charter, key General Assembly resolutions (notably resolutions 2131 (XX), 2625 (XXV), 3314 (XXIX), 39/11 and 55/2), core UN Conventions, inter alia the Convention on the Prevention and Punishment of the Crime of Genocide, Vienna Convention on the Law of Treaties, the Vienna Convention on Diplomatic and Consular Relations and other universal treaties such as the Geneva Red Cross Conventions and Additional Protocols. They reflect the progressive development of international law as created and applied by the United Nations and its specialized agencies, and propose a vision of a peaceful, democratic and equitable international order based on the cooperation of all stakeholders – both States and non-State actors, sovereign countries, inter-governmental organizations, transnational enterprises, peoples and minorities striving for self-determination, indigenous peoples, religious institutions and civil society. Grateful for criticism and input from friends and peers, I undertook a redrafting and regrouping of the list, incorporating two additional benchmarks.

These guiding principles should be understood in a holistic way, rejecting any kind of "fragmentation" of international law into "stand alone" legal regimes in competition with each other. The authority and

i These 25 principles are updated from my 2018 report to the Human Rights Council A/HRC/37/63, containing 23 principles.

credibility of the system of international law depends on its internal coherence and on rules of interpretation that recognize a logical hierarchy as well as a horizontal mutual reinforcement. Admittedly, these standards encompass not only hard law but also soft law and general notions of ethics and justice. They are offered in the hope that a concise restatement of principles will prove useful not only for specialists in international law but also for politicians, journalists, religious leaders and all who are concerned with strengthening coherence and stability in public affairs and international order. Like Virginia Dandan's Draft Declaration on the Right to International Solidarity,[ii] the UN Declaration on the Right of Indigenous Peoples,[iii] the Commission on Human Right's Declaration on the illegality of forced population transfers,[iv] and John Ruggie's Guiding Principles on Business and Human Rights,[v] these principles on international order are not exhaustive and are intended to serve as useful criteria or standards to evaluate and better understand the complexities of the evolving international order. The reader must keep this caveat in mind: Principles and norms are not self-executing. Indeed, as the Bible has not resolved the problem of sin, and the UN Charter has not ended aggressive war and exploitation, these principles shall not eo ipso guarantee a democratic and equitable international order in the 21st century. Realistically speaking, even if all of these principles and declarations one day were to become UN treaties, they would still need political will, good faith, and an effective enforcement mechanism in order to make a difference. —AdeZ

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ii https://undocs.org/A/72/171

iii https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html

iv Annex to document E/CN.4/Sub.2/1997/23.

v https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

1. **The paramount principle of international order is Peace**. *Pax optima rerum*.[1] Peace is not the peace of cemeteries. The United Nations Charter commits all States to promoting *Peace with Justice*. The Preamble and articles 1 and 2 of the Charter stipulate that the principal goal of the Organization is the promotion and maintenance of peace. This entails the prevention of local, regional and international conflict, and in case of armed conflict, the deployment of effective measures aimed at peace-making, reconstruction and reconciliation. The production and stockpiling of weapons of mass destruction constitutes a continuing threat against peace.[2] Hence, it is necessary that States negotiate in good faith for the early conclusion of a universal treaty on general and complete disarmament under effective international control[3]. Peace is much more than the absence of war, and necessitates an equitable world order, characterized by the gradual elimination of the root causes of conflict, including extreme poverty, endemic injustice, privilege and structural violence. Already in 1933 the League of Nations entrusted Albert Einstein and Sigmund Freud with the question "Why War?" Their answers are valid today.[4] In 2017 I held up the Einstein/Freud book to the assembled delegates at the Human Rights Council and again before the Third Committee of the General Assembly, and garnered applause at the conclusion of my presentations in both occasions.[5] In order to achieve universal peace, it is necessary to create and safeguard the conditions of peace, including economic development and progressive social legislation. The motto of the International Labour Organization deserves being recognized as the universal motto for our time: *si vis pacem, cole justitiam* (if you want peace, cultivate justice). Moreover, peace must be recognized an enabling right, a pre-condition to the enjoyment of civil, cultural, economic, political and social rights.[6]

2. **The UN Charter takes priority over all other treaties** (Article 103, known as the "supremacy clause"[7]). There is a hierarchy of international norms which places the United Nations Charter at the top of the system, as a kind of world constitution. States have a duty to ensure that all treaties and conventions are in conformity with the purposes and principles of the United Nations as laid down in articles 1 and 2 of the Charter. Concretely, this imposes a responsibility on States to adopt effective domestic legislation and concrete measures to promote the Purposes and Principles of the United Nations, and

an *erga omnes* obligation on all States to safeguard the coherence of the system of collective security, development and human rights.

3. **Resolutions and decisions of the UN Security Council are legally binding.** Pursuant to article 25 of the Charter, "the members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter." But the Security Council itself is not above international law, and in discharging its duties, it "shall act in accordance with the Purposes and Principles of the United Nations" (Article 24), i.e. the Security Council cannot adopt decisions or resolutions incompatible with the core principles of peace, human rights and development.[8] Such decisions would be *ultra vires* and would lack legitimacy. In a specific case, the International Court of Justice, the highest judicial instance of the United Nations, would have the competence to investigate and make pertinent findings in an Advisory Opinion pursuant to article 65 of the ICJ statute. Understanding that the Security Council is not omnipotent and must act in conformity with its terms of reference resolves the fundamental rule of law question *quis custodiet ipsos custodes?*[9]

4. **International law and human rights law must be applied uniformly and in good faith.** The arbitrary interpretation or selective application of international law, double-standards and selectivity undermine the authority of the law and frustrate its function to ensure stability and predictability (*Rechtssicherheit*).

5. **International humanitarian law and international human rights law are mutually reinforcing legal regimes, grounded in the principles of respect for human dignity and justice.** According to paragraph 25 of the 1996 Advisory Opinion of the International Court of Justice on Nuclear Weapons: "The Court observes that the protection of the International Covenant on Civil and Political Rights does not cease in times of war, except by operation of Article 4 of the Covenant, whereby certain provisions may be derogated from in a time of national emergency. Respect for the right to life is not, however, such a provision. In principle, the right not arbitrarily to be deprived of one's life applies also in hostilities."[10] Similarly, the UN Human Rights Committee has repeatedly reaffirmed that international humanitarian law cannot be invoked to weaken the international human rights treaty regime.[11]

6. **States must respect not only the letter of the law, but also the spirit of the law** (Montesquieu, *De l'Esprit des lois, 1749*), which is the core and *raison d'être* of the rule of law, what enables the legislator to codify specific norms, which are not immutable, but always subject to progressive development. Blind positivism (*dura lex, sed lex*) frequently destroys the spirit of the law, *summum jus, summa injuria* (law taken to the extreme results in injustice, Cicero *De officiis* 1, 10, 33).

7. **General principles of law (Statute of the International Court of Justice, Article 38, para 1(c)) inform the interpretation and guide the application of international law**. Among general principles of law we recognize good faith, estoppel, reciprocity, proportionality, *ex injuria non oritur jus* (a breach of law does not give rise to new law), the prohibition of the abuse of rights, *sic utere tuo ut alienum non laedas* (use your rights but do not encroach on others), the prohibition of contracts or treaties that are *contra bonos more*s (against good morals), the impartiality of judges, non-selectivity, the principle of non-intervention in the internal affairs of States[12], *audiatur et altera pars (all sides must be heard)*, *actori incumbit onus probandi (plaintiff carries the burden of proof),* presumption of innocence, the customary rule that domestic law cannot be invoked to undermine international treaties,[13] and the "unwritten laws" of humanity.[14]

8. **International law is dynamic and progresses with the adoption of new treaties and conventions by the United Nations and its specialized agencies, with inter-State practice and the adoption of treaties within the framework of regional inter-governmental organizations, as well as with the binding resolutions of the Security Council, General Assembly, and the jurisprudence of the International Court of Justice, the International Criminal Court and the UN human rights treaty bodies**. International law doctrine recognizes that certain principles may advance to the category of peremptory norms (*jus cogens*), as for instance the right of self-determination of peoples, the prohibition of the use of force, and the prohibition of torture. Article 53 of the Vienna Convention on the Law of Treaties establishes that a treaty that is contrary to peremptory norms is null and void. Article 64 stipulates that when a new norm of *jus cogens* emerges, treaties must be in conformity with it.

9. **The principles of humanity and human dignity are the source of all human rights**, which since their progressive codification beginning with the 1948 Genocide Convention and the 1948 Universal Declaration of Human Rights, have expanded into an international human rights treaty regime, many aspects of which have become customary international law. A just world order requires the eradication of extreme poverty,[15] the guarantee of food and water security, and a level playing field. The international human rights treaty regime necessarily has priority over military alliances, trade and other agreements (see my 2016 report to the Human Rights Council A/HRC/33/40, paras. 18–42), which must be interpreted and applied in conformity with the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of all Forms or Racial Discrimination (ICERD), the Convention Against Torture (CAT) and other pertinent treaties. Commercial agreements cannot infringe on pre-existing human rights treaty obligations undertaken by States.

10. **The right of self-determination of peoples as stipulated in the Charter and in common article 1 of the ICCPR and ICESCR is a fundamental principle of international law (*jus cogens)* and international public policy (*ordre public)***. All peoples without exception are rights-holders of self-determination. The duty bearers are all States members of the UN. The exercise of self-determination is an expression of democracy, as democracy is an expression of self determination. It attains enhanced legitimacy when a referendum is organized and monitored under the auspices of the United Nations. Although the enjoyment of self-determination in the form of autonomy, federalism, secession or union with another State entity is a human right, it is not self-executing. Timely dialogue for the realization of self-determination is an effective conflict-prevention strategy (see my 2014 report to the General Assembly, A/69/272, paras. 63–77). The United Nations has an essential mediating role between States and peoples, and should conduct self-determination referenda as a conflict-prevention measure, because self-determination grievances often develop into a threat to the peace or a breach of the peace for purposes of article 39 of the UN Charter. The right of self-determination has not only a collective but also an

individual dimension. Moreover, the right to call for and conduct a referendum is protected by article 19 ICCPR.

11. **"The scope of the principle of territorial integrity is confined to the sphere of relations between States."** Thus rules the International Court of Justice in paragraph 80 of its Advisory Opinion on the Unilateral Declaration of Independence by Kosovo.[16] Admittedly, the principle of territorial integrity is a core principle of international law, aiming at promoting international stability and strengthening the mutual respect and sovereign equality of States. Nevertheless, this principle is not absolute, having primarily external application. In other words, State A may not invade or encroach upon the territorial integrity of State B. Yet, the principle cannot be invoked internally to deny or hollow out the right of self-determination of peoples, [17] which has emerged as a norm of *jus cogens*.

12. **Statehood depends on four criteria: population, territory, government (effective control) and the ability to enter into relations with other States**. While international recognition is desirable, it is not constitutive of statehood but only declaratory. A *de facto* or *de jure* new State is bound by the principles of international order, including respect for human rights. De facto States that emerge from the exercise of legitimate self-determination claims, like Nagorno Karabagh, deserve universal recognition. De facto States that arise as a consequence of naked aggression, like the so-called Turkish Republic of Northern Cyprus, must be brought to the negotiating table and made to conform with the UN Charter and the International Covenant on Civil and Political Rights.[18]

13. **Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State,** as stipulated in numerous United Nations resolutions, the 1993 Vienna Declaration and Program of Action,[19] the 2001 Durban Declaration,[20] the Outcome Document of the 2005 World Summit.[21] Already in 1530 the Spanish Dominican Francisco de Vitoria,[22] Professor of Law in Salamanca and advocate of the Roman law concept of *ius gentium* (the law of nations), stated that all peoples had the right to govern themselves and could adopt the political regime they wanted.[23]

14. **Peoples possess sovereignty over their natural resources**. A "people"[24] is not only the collective people of a given state but necessarily encompasses a people living under domination by another people. If a people's natural resources were "sold" or "assigned" pursuant to colonial, neo-colonial or "unequal treaties" or contracts, these agreements must be revised in the light of the UN Charter to vindicate the sovereignty of peoples over their own resources; indigenous peoples are entitled to reparation for the lands and resources that were stolen from them. Any future agreements concerning indigenous lands and resources are conditioned on free, prior and informed consent.[25]

15. **All peoples have the right to their homeland, their culture and identity.**[26] Although closely related to the right of self-determination, the right to the homeland comprises deeper psychological elements, a metaphysics of the mind. Demographic manipulations, forced population transfers, "ethnic cleansing" and other racist measures constitute war crimes and crimes against humanity pursuant to articles 7 and 8 of the Statute of Rome of the International Criminal Court. If certain conditions under article 2 of the 1948 Genocide Convention prevail, forced population transfer and "ethnic cleansing" may constitute genocide under the provisions of the 1948 Genocide Convention and pursuant to article 6 of the Statute of Rome. Such measures are contrary to the ICCPR, ICESCR and the International Convention on the Elimination of all Forms of Racial Discrimination. Refugees and expellees have a right to return to their homelands.[27]

16. **States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any other State** or in any other manner inconsistent with the Purposes of the United Nations (Charter, Art. 2 (4), OAS Charter articles 3, 19, 20). In the absence of a resolution adopted by the Security Council under chapter VII of the Charter, the use of force is illegal[28] and may amount to the crime of aggression under article 5 of the Statute of Rome of the International Criminal Court pursuant to the Kampala definition.[29] States have the duty to refrain from propaganda for war (International Covenant on Civil and Political Rights, art. 20 (1)).[30] Propaganda for war was condemned by the UN General Assembly in numerous resolutions, including 110(II) and 2625 (XXV).

17. **States have a positive duty to negotiate and settle their international disputes by peaceful means** in such a manner that international peace, security and justice are not endangered (Charter, Art. 2 (3)). Chapter VI of the UN Charter, in particular articles 33 and 34 stipulate that the Security Council may call upon States to seek solutions by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement or resort to regional agencies or arrangements. The Security Council may investigate any situation which might lead to international friction and endanger the maintenance of international peace and security.

18. **The principle of non-intervention is part of customary international law.** States may not organize or encourage the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State. No State may organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State.[31] Whereas a State may be invited by the government of another State to assist in containing an internal armed conflict, it is not permitted for any State to support financially or otherwise the insurgency in another State.[32] The fact that such interventions occur with impunity when the perpetrators are permanent members of the Security Council does not give rise to new international law (*ex injuria non oritur jus*). Such interventions constitute continuing violations of international law, which justify investigation and prosecution by the International Criminal Court, ad hoc tribunals and Peoples' Tribunals.

19. **States must refrain from interfering in matters within the internal jurisdiction of another State.**[33] No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind. Unilateral coercive measures are incompatible with the United Nations Charter. Only the Security Council can impose sanctions under Chapter VII of the Charter. Therefore, States shall refrain from imposing unilateral coercive measures, sanctions and financial blockades on other countries. When unilateral coercive measures cause widespread hunger and

death, they may amount to crimes against humanity under article 7 of the Statute of the International Criminal Court[34]. While the promotion of human rights is of legitimate international concern, and there is an *erga omnes* obligation of States parties to the ICCPR and ICESCR to ensure their enforcement, the doctrines of "humanitarian intervention" and "responsibility to protect"[35] have been demonstrably counter-productive, and harbour grave dangers of selectivity and abuse, as evidenced in the General Assembly debate on R2P in July 2009,[36] and empirically shown in the chaos visited upon the people of Libya in the name of humanitarian intervention by great power instrumentalization of Security Council Resolution 1973 not for purposes of humanitarian assistance but for purposes of inducing "regime change."[37]

20. **States have a duty to protect and preserve the natural environment and the common heritage of humankind**. The crime of ecocide[38] entails the irreversible degradation or destruction of the human environment. It constitutes a crime against humanity that must be suppressed by the international community and prosecuted under article 7 of the Rome Statute of the International Criminal Court.

21. **State sovereignty is superior to commercial and other agreements.**[39] The principle *pacta sunt servanda* is not absolute and presupposes that the agreements are not contrary to *ordre public* and the general welfare of the population. The principle of non-retrogression[40] in human rights prevents a State from entering into commercial agreements that would prevent it from fulfilling its obligations under ICCPR and ICESCR. Non-State actors have not only rights but also duties under international law and States are obliged to ensure that enterprises registered and/or operating under their jurisdiction do not adversely impact human rights. The ontology of States is to legislate in the public interest. The ontology of capitalism, investment and business enterprises is to take risks to generate profit. It is axiomatic in the nature of business that enterprises sometimes win, but sometimes they lose; profit cannot be privatized while losses are socialized and born by the State. Any treaty that provides for one-way protection for investors and establishes arbitration commissions that circumvent the public courts system and encroach on the regulatory space of States is by nature

contra bonos mores, as incompatible with the ontological functions of every State. Experience has shown that the investor-State dispute settlement mechanism (ISDS) lacks transparency and accountability and constitutes a frontal attack on fundamental concepts of the rule of law. ISDS cannot be reformed; it must be *abolished*.[41] Free trade agreements and bilateral investment treaties that contain *contra bonos mores* provisions must be revised and such provisions must be eliminated pursuant to the principle of severability, otherwise known as the doctrine of separability.

22. **Everyone has the right to international solidarity as a human right.**[42] Pursuant thereto States have the duty to cooperate with one another, irrespective of the differences in their political, economic and social systems, in order to maintain international peace and security and to promote international economic stability and progress. To this end, States are obliged to conduct their international relations in the economic, political, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and non-intervention. States should promote a culture of dialogue and mediation.

23. **The right to know and the right to access reliable information is an essential component of the national and international democratic order,** and finds its legal basis *inter alia* in article 19 ICCPR. Government and private sector secrecy rules and covers-up are enemies of the democratic order. Hence, whistleblowers are necessary human rights defenders, because they disclose information about crimes and omissions of governments, transnational corporations and other non-State actors. Transparency and accountability are crucial to every democratic society and the rule of law. A Charter of Rights of Whistleblowers is urgently needed, as I proposed in my reports to the Human Rights Council and General Assembly. The right of freedom of opinion and expression necessarily encompasses the right to publish research contrary to mainstream conceptions, and entails the right to be wrong. Penal laws that are enacted to suppress dissent and so-called "memory laws,"[43] which pretend to crystalize history into a politically correct narrative are totalitarian, offend academic freedom and endanger not only domestic but also international democracy (see my 2013 report to the Human Rights Council A/HRC/24/38, para. 37). The

right to truth was recognized by the UN Commission for Human Rights Resolution 2005/66, which determined that there was an "inalienable and autonomous right" to truth,[44] in the United Nations Principles to Combat Impunity (2005), and in General Assembly Resolution 60/147. In 2011 the Human Rights Council created the function of a UN Special Rapporteur on the Promotion of Truth, Justice and Reparation.[45] While modern technology can advance the right to truth, it can also frustrate it. Access to information is already being manipulated in the digital world. Indeed, algorithms and artificial intelligence applications have become a critical part of the information environment. We encounter them throughout the internet, on digital devices and in technical systems, in search engines, social media platforms, messaging applications, and public information mechanisms. While algorithms are potentially useful to facilitate access to information, they are already being misused, particularly by search engines that give visibility primarily to mainstream narratives and frequently suppress non-conforming views.[46]

24. **Violations of international law and international human rights law by powerful States and/or permanent members of the Security Council do not create legal precedents, change the UN Charter, or result in a "new international law."** Such violations, however, weaken the integrity of the UN system and the cohesion of the international order. They constitute on-going violations until an international tribunal like the ICJ or ICC becomes seized of the matter and suppresses them. Impunity does not sanctify the crime, it only manifests the absence of effective UN enforcement mechanisms.

25. **Wherever there is a violation of international law or human rights law, there is a State obligation to provide prompt, adequate and effective remedies** (*ubi jus, ibi remedium*[47]). Enforcement of international judgments and other commitments frequently presupposes the existence of national enabling legislation that confer domestic legal status to international obligations. Enforcement depends on political will and international cooperation, entailing a balancing of vital interests, geopolitics and *opinio juris*. Enforcement must not be confused with punishment or with the imposition of sanctions. The UN Security Council can impose arms embargoes

so as to facilitate dialogue and peace-making. On the other hand, economic sanctions and other coercive measures can result in greater injustice, as happened with the UN sanctions regime against Iraq 1991-2003, with an estimated one million deaths, affecting the most vulnerable.[48] Enforcement of international law commitments must build on international consensus, international solidarity and the good offices of the United Nations and its specialized agencies, which are always ready to furnish advisory services and technical assistance. Enforcement is the measure of international order. Such enforcement is furthered by a strengthening of the regional human rights courts system and by the establishment of an international court of human rights equipped with a monitoring and implementation mechanism[49]. The rule of *pacta sunt servanda* (treaties must be implemented),[50] is particularly relevant to the enforcement of the UN Charter.

Endnotes

1 Peace is the highest good (motto of the Peace of Westphalia, 1648. Alfred de Zayas, "Westphalia, Peace of" in Rudolf Bernhardt (ed.), *Encyclopaedia of Public International Law*, Elsevier, Amsterdam, 2000, Vol. IV, pp. 1465–1469.

2 The UN Human Rights Committee regularly issues "general comments" to elucidate the scope of its provisions. See General Comments Nr. 6 and 14 on the right to life, which condemn the production and stockpiling of weapons of mass destruction that may destroy life on Earth. https://www.refworld.org/docid/453883f911.html https://www.refworld.org/docid/45388400a.html

3 See my 2014 report to the Human Rights Council A/HRC/27/51, paras. 6, 16, 18 and 44. The United Nations Treaty on the Prohibition of Nuclear Weapons entered into force on 22 January 2021. https://www.un.org/disarmament/wmd/nuclear/tpnw/ https://news.un.org/en/story/2020/10/1076082

4 Albert Einstein, Sigmund Freud, *Why War*, International Institute of Intellectual Cooperation, League of Nations, Geneva, 1933. https://en.unesco.org/courier/may-1985/why-war-letter-albert-einstein-sigmund-freud

5 There is a general practice according to which there can be no applause during debates in the Human Rights Council debate. This relates to the role of the Chairperson in maintaining order in the room. See rule 106 of the HRC's rules of procedure. Were applauses to be accepted, this would trigger a race towards those speakers attracting the most applauses and reciprocally those who attract booing. Hence, if delegations or ngo's were to applaud, which is extremely rare, the Chairperson is supposed to interrupt them. In my case the applause was not interrupted. It is the only instance I have experienced of a rapporteur being applauded.

6 Alfred de Zayas, "Peace" in William Schabas (ed.), *Cambridge Companion to International Criminal Law*, Cambridge 2016, pp. 97–116.

7 Prof. Robert Kolb gave a lecture at the Hague Academy of International Law in 2014 under the title "L'article 103 de la Charte des Nations Unies," Collected Courses of the Academy, Vol. 367, 2014.

8 See "Views" of the UN Human Rights Committee in a case concerning UN Security Council sanctions *Sayadi v. Belgium*, Case Nr. 1472/2006, U.N. Doc. CCPR/C/94/D/1472/2006 (HRC 2008), in particular the separate concurring opinions of Sir Nigel Rodley and of Yuyi Iwasawa (new Japanese member of the International Court of Justice) http://www.worldcourts.com/hrc/eng/decisions/2008.10.22_Sayadi_v_Belgium.htm

9 Juvenalis, *Satires*, 6, 347.

10 https://www.icj-cij.org/public/files/case-related/95/095-19960708-ADV-01-00-EN.pdf, p. 240.

11 The Human Rights Committee's General comment Nr. 29 on derogations stipulates: "The Covenant requires that even during an armed conflict measures derogating from the Covenant are allowed only if and to the extent that the situation constitutes a threat to the life of the nation." https://www.refworld.org/docid/453883fd1f.html, para. 3. https://www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf

12 General Assembly Resolutions 2131 (XX), 2625 (XXX), 3314 (XXXIV), 36/103

13 Art. 27 of the Vienna Convention on the Law of Treaties

14 It is not only the written law that must be applied, but also the broader principles of natural justice as already recognized in Sophocles' *Antigone*, affirming the unwritten laws of humanity, and the concept of a higher moral order that prohibits taking advantage of a

weaker party as happens with "unequal treaties," which may be considered as economic neo-colonialism or neo-imperialism.

15 In 2012 the Human Rights Council adopted Guiding Principles on Extreme Poverty and Human Rights, https://www.ohchr.org/EN/Issues/Poverty/Pages/DGPIntroduction.aspx. See Joseph Wronka, *Human Rights and Social Justice*, Sage Publications, 2017.

16 https://www.icj-cij.org/public/files/case-related/141/141-20100722-ADV-01-00-EN.pdf. "Several participants in the proceedings before the Court have contended that a prohibition of unilateral declarations of independence is implicit in the principle of territorial integrity. The Court recalls that the principle of territorial integrity is an important part of the international legal order and is enshrined in the Charter of the United Nations, in particular in Article 2, paragraph 4, which provides that: 'All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.' In General Assembly resolution 2625 (XXV), entitled 'Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations,' which reflects customary international law (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America*), Merits, Judgment, I.C.J. Reports 1986, pp. 101–103, paras. 191–193), the General Assembly reiterated '[t]he 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.' This resolution then enumerated various obligations incumbent upon States to refrain from violating the territorial integrity of other sovereign States. In the same vein, the Final Act of the Helsinki Conference on Security and Co-operation in Europe of 1 August 1975 (the Helsinki Conference) stipulated that '[t]he participating States will respect the territorial integrity of each of the participating States' (Art. IV). Thus, the scope of the principle of territorial integrity is confined to the sphere of relations between States."

17 See my 2014 report to the General Assembly, A/69/272, paras. 21, 28, 69 and 70, https://undocs.org/A/69/272.

18 Security Council Resolutions 365, 367, 541, 544, 550.

19 https://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx

20 https://www.un.org/WCAR/durban.pdf

21 https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf

22 See http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1325&context=ilj.

23 See www.academia.edu/7222085/The_Foundations_of_Human_Rights_Human_nature_ and_*jus_gentium*_as_articulated_by_Francisco_de_Vitoria. See also the Outcome Document of the 2005 Millennium plus 5 Summit, General Assembly Resolution 60/1, paragraphs 22 and 135: "We reaffirm that democracy is a universal value based on the freely expressed will of people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives. We also reaffirm that while democracies share common features, there is no single model of democracy, that it does not belong to any country or region, and reaffirm the necessity of due respect for sovereignty and the right of self-determination. We stress that democracy, development and respect for all human rights and fundamental freedoms are interdependent and mutually reinforcing."

24 See the definition of "peoples" by Justice Michael Kirby. https://www.michaelkirby.com.au/images/stories/speeches/1990s/vol24/906-Peoples%27_Rights_and_Self_Determination_-_UNESCO_Mtg_of_Experts.pdf

See also my 2014 report to the General Assembly, para. 4, https://undocs.org/A/69/272.

25 Declaration on the Rights of Indigenous Peoples, articles 9, 10, 28, 29, 32.

26 Alfred de Zayas, *Heimatrecht ist Menschenrecht*, Universitas, Munich, 2002. de Zayas, "Ethnic Cleansing: Applicable Norms, Emerging Jurisprudence, Implementable Remedies" in John Carey (ed.) *International Humanitarian Law: Origins*, New York: Transnational Press, 2003, pp. 283–307.

27 Alfred de Zayas "Forced Population Transfers" in Rüdiger Wolfrum (ed.), *Max Planck Encyclopaedia of Public International Law*, Oxford, 2012, Vol. IV, pp. 165–175. See also UN Declaration on the illegality of forced population transfers, Sub-Commission document E/CN.4/Sub.2/1997/23.

28 http://news.bbc.co.uk/2/hi/middle_east/3661134.stm https://www.nytimes.com/2004/09/16/international/annan-says-iraq-war-was-illegal.html

29 https://www.icc-cpi.int/NR/rdonlyres/2054CCC9-4FB7-4839-B847-292206BF6E16/283357/12052011_TheCrimeofAggressionafterKampala.pdf https://academic.oup.com/ejil/article/31/3/1176/6055180 http://www.internationalcrimesdatabase.org/upload/documents/20131030T045349-ICD%20Brief%201%20-%20Boas.pdf

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