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Territorial Integrity Narrowly Interpreted: Reasserting the Classical Inter-State Paradigm of International Law

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Abstract

Paragraph 80 of the *Kosovo* AO reflects a very traditional conception of international law. By insisting on the inter-state character of the principle of territorial integrity, the Court refused to challenge the classical argument of the 'neutrality' of international law in regard to secession. The Court also refused any reinterpretation of Article 2(4) of the UN Charter. As already stated in the *Wall* Advisory Opinion, the prohibition of the use of force is only applicable between states. It does not apply between states and non-state actors, whether secessionist or not. Similarly, the Court refused the argument of 'remedial secession', at least as far as it would imply a right to violate the principle of territorial integrity of a state by a secessionist group. Indeed, if the latter principle is not applicable in such situations, it logically cannot be violated and there is therefore no *right* to infringe it. Finally, the Court refused to consider Kosovo as a 'special case' or a *sui generis* situation. According to the Court, this situation must be governed by the traditional rules of general international law. This implies that Kosovo did not violate international law by proclaiming independence. But this also implies that a declaration of independence by a secessionist group *inside* Kosovo would not be contrary to international law. Moreover, it can be pointed out that if Kosovo is not a state (a hypothesis perfectly compatible with the advisory opinion), then general international law would not preclude Serbia from invoking the argument of 'legal neutrality' to support such a secessionist group.

Key words

legal neutrality; non-use of force; remedial secession; self-determination; territorial integrity

In the part of the judgment dedicated to general international law,[1] the Court insisted on the inter-state character of the principle of territorial integrity. According to Paragraph 80 of the opinion:

> 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.

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1 ICJ, *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, 22 July 2010 (hereafter *Kosovo* AO), paras. 79–84.

> 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:
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> '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.[2]

The aim of this paper is not to determine whether the Court was 'right' or 'wrong' in its interpretation of existing international law.[3] Rather, I will attempt to assess the legal consequences of this paragraph. It will be shown that this section of the advisory opinion reflects a very traditional conception of international law. Indeed, the Court refused:

- first, to challenge the classical argument of the 'neutrality' of international law in regard to secession;
- second, to extent Article 2(4) of the UN Charter beyond relations between states;
- third, to weaken the principle of territorial integrity by accepting the argument of 'remedial secession',
- and, fourth, to assert limitations to the means that the parties of a secessionist conflict may use.

1. Insisting on the classical argument of 'legal neutrality'

Traditionally, international law remains neutral in regard to secession: it neither prohibits nor authorizes it.[4] Secession itself is regulated by national, not international, law, even if human rights law (and possibly the law of armed conflict) is applicable in

2 *Kosovo* AO, para. 80, emphasis added.

3 See, e.g., O. Corten, 'Are There Gaps in the International Law of Secession?', in M. Kohen (ed.), *Secession: International Law Perspectives* (2006), at 231–54; and Th. Christakis, *Le droit à l'autodétermination en dehors des situations de décolonisation* (1999), at 190–259.

4 See, e.g., v° 'sécession', in J. Salmon (ed.), *Dictionnaire de droit international public* (2001), 1022; R. Higgins, *The Development of International Law through the Political Organs of the United Nations* (1963), 125; Th. Christakis, *Le droit à l'autodétermination en dehors des situations de décolonisation, supra* note 3, at 74; J. Salmon, 'Le droit des

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such situations.[5] During the proceedings before the Court, the supporters of Kosovo's independence insisted on this 'legal-neutrality' argument.[6] By contrast, some other states contended that the principle of territorial integrity had recently been applied in secessionist conflicts.[7] They referred to several Security Council resolutions, not only in the Serbia/Kosovo case, but also in those of Georgia/Abkhazia and South Ossetia, Bosnia–Herzegovina/Republika Srpska, Azerbaïjan/Nagorno-Karabakh, and other similar conflicts. They also asserted that the application of the principle of territorial integrity to non-state groups or to individuals had been recognized in various GA resolutions,[8] treaties,[9] or regional instruments.[10]

By insisting on the strictly inter-state character of the territorial-integrity principle, the Court refused to challenge the 'legal-neutrality' thesis.[11] This latter expression is not mentioned as such by the Court. Yet this thesis clearly appears in paragraph 79 of the opinion, in which the Court considers that there is no emerging customary prohibition of secession.[12] This reflects a strong reluctance of the Court to admit the emergence of a new customary rule. It appears that according to the Court, Security Council resolutions and other conventional or non-conventional instruments in which territorial integrity was applied to non-state actors are not sufficient to establish an evolution of custom in this area.[13] It seems that these texts were too ambiguous, and that some of them were only applicable in the situations at stake.[14] This very strict methodology must be emphasized. The controversies over the

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peuples à disposer d'eux-mêmes: Aspects juridiques et politiques', in *Le nationalisme, facteur belligène: Etudes de sociologie de la guerre* (1972), 364 ff.

5 See generally J. Crawford, *The Creation of States in International Law*, 2nd edn (2006).

6 Albania (WS), at 25–6, para. 43, at 27, para. 47, at 38–9, para. 73; (WC), at 27–30, paras. 46–53; Frowein, CR 2009/26, 2 December 2009, at 13–15, paras. 19–30; Austria (WS), at 14–15, paras. 23–24, at 21–2, paras. 37–38; Tichy, CR 2009/27, 3 December 2009, at 8–9, paras. 10–13; Bulgaria, Dimitroff, CR 2009/28, 4 December 2009, at 24, paras. 23–24; Czeck Republic (WS), at 6–8; Denmark, Winkler, CR 2009/29, 7 December 2009, at 65; Estonia (WS), at 4; Finland, Koskenniemi, CR 2009/30, 8 December 2009, at 59–60, para. 18; France (WS), at 36, para. 2.4, at 37–8, para. 2.6; Belliard, CR 2009/31, 9 December 2009, at 16, para. 18; Forteau, ibid., at 19–20, para. 9; Germany (WS), at 27–32; Ireland (WS), at 5–7, paras. 18–22; Japan (WS), at 2–3; Jordania, Al Hussein, CR 2009/31, 9 December 2009, at 48–50, paras. 21–26; Switzerland (WS), at 14, para. 55; (WC), at 2, para. 5; United Kingdom (WS), at 86–7, paras. 5.8–5.10; Crawford, CR 2009/32, 10 December 2009, at 53, para. 26; USA (WS), at 50–1; (WC), at 16–20; Koh, CR 2009/30, 8 December 2009, at 30; see also Authors of the Declaration (WS), at 146, para. 8.19; (WC), at 60 ff.; Müller, CR 2009/25, 1 December 2009, at 39 ff.

7 Argentina (WS), at 30–2, paras. 75–82, at 47, para. 121; (WC), at 20, para. 39; CR 2009/26, Ruiz Cerutti, 2 December 2009, at 42–3; Azerbaijan (WS), at 5, paras. 26–27; Mehdiyev, CR 2009/27, 3 December 2009, at 20–1, paras. 20–27; Bolivia, Calzadilla Sarmiento, CR 2009/28, 4 December 2009, at 8, paras. 6–7; Brazil (WS), at 2; Denot Medeiros, CR 2009/28, 4 December 2009, at 15, para. 4; China, Xue Hanqin, CR 2009/29, 7 December 2009, at 33–4, paras. 14–17; Iran (WS), at 4–6, paras. 3.1–3.6; Cyprus (WS), at 19, para. 80; (WC), at 7–9, paras. 15–19; Libya (WS), at 1; Serbia (WS), at 155 ff., paras. 431 ff.; (WC), at 15–16, paras. 15–16, at 110 ff., paras. 253 ff.; Shaw, CR 2009/24, 1 December 2009, at 66–7, paras. 8–11; Spain (WS), at 20–37, paras. 29–55; (WC), at 3–4, para. 4; Slovakia (WS), at 2, para. 7; Venezuela, CR 2009/32, 10 December 2009, at 10–11, paras. 18–19.

8 See, e.g., GA Res. 47/9, 28 October 1992 (Comores) or United Nations Declaration on the Rights of Indigenous Peoples (GA Res. 61/295, Art. 46(1)).

9 See Art. 8(3) of the International Criminal Court Statute or Art. 21 of the Framework Convention for the Protection of National Minorities.

10 See, e.g., European Charter on Regional or Minority Languages, Art. 5.

11 See ICJ, Judge Cançado Trindade, Separate Opinion, *Kosovo* AO, para. 208. See also the contribution of Anne Peters and Théodore Christakis in the present symposium.

12 In this paragraph, the Court states that 'The practice of States ... does not point to the emergence in international law of a new rule prohibiting the making of a declaration of independence in such cases' (*Kosovo* AO, para. 79).

13 See the contribution of Théodore Christakis in the present symposium.

14 *Kosovo* AO, para. 81.

conditions of evolution of the rules enshrined in the UN Charter are well known.[15] On the one hand, some authors use an extensive approach; they contend that a limited practice (especially if supported by major states) is sufficient to establish an evolution of the rule.[16] On the other hand, others promote a far more restrictive method, by requiring a general practice and an *opinio juris* shared by all UN members.[17] The *Kosovo* AO confirms that the Court clearly prefers the latter approach, which is the classical one.[18] And it is not surprising that, using this method, the Court refused to admit some new and extensive interpretations of the existing law.

2. Reaffirming the inter-state character of the rule set forth in Article 2(4) of the UN Charter

Traditionally, the scope of Article 2(4) of the UN Charter is considered as confined only to states.[19] By contrast, military operations led by – or directed against – non-state actors are supposed to be governed by the domestic law of the state concerned. Since the early 2000s, this classical conception is challenged in the name of the necessity to adapt the law to new political realities.[20] According to scholars following this new way of thinking, the increasing threat posed by terrorist or other non-state groups should lead to a new interpretation of the rule prohibiting the use of force, which should be extended beyond inter-state relations. Article 2(4) of the Charter should therefore be rewritten, or at least reinterpreted, in order to meet the new realities of a post-national world. Against this background, it is significant that the Court strongly insists on the inter-state character of this provision. After quoting Article 2(4) *in extenso*, and after insisting on the inter-state character of the rule prohibiting the use of force as reflected in Resolution 2625 (XXV) and in the Helsinki Final Act, the Court concludes that 'Thus, the scope of the principle of territorial integrity is confined to the sphere of relations between States'.[21] Paragraph 80 of the advisory opinion appears therefore incompatible with any attempts to 'denationalize' or 'privatize' Article 2(4). During the proceedings, most states explicitly or implicitly confirmed that this article only applies in 'international relations', namely between states.[22] And,

15 O. Corten, 'The Controversies over the Customary Prohibition on the Use of Force: A Methodological Debate', (2005) 16 EJIL 803.

16 See, e.g., Th. Franck, *Recourse to Force: State Actions against Threats and Armed Attacks* (2002).

17 See, e.g., C. Gray, *International Law and the Use of Force* (2008).

18 See *North Sea Continental* Shelf, Judgment, 20 February 1969, [1969] ICJ Rep. 4, at 44; *Military and Paramilitary Activities in and against Nicaragua*, Judgment, 27 June 1986, [1986] ICJ Rep. 14, at 98, para. 186.

19 See, e.g., P. Klein, 'Le droit international à l'épreuve du terrorisme', (2006) 321 RCADI 371; O. Corten, *The Law against War* (2010), Chapter 3; A. Nollkaemper, 'Attribution of Forcible Acts to States: Connections between the Law on the Use of Force and the Law of State Responsibility', in N. Blokker and N. Schrijver (eds.), *The Security Council and the Use of Force: A Need for Change?* (2005), at 133–71.

20 See, e.g., T. Franck, 'Terrorism and the Right of Self-Defense', (2001) 95 AJIL 840; S. D. Murphy, 'Terrorism and the Concept of "Armed Attack" in Article 51 of the UN Charter', (2002) 43 Harv. ILJ 50; C. Tams, 'Swimming with the Tide or Seeking to Stem It? Recent ICJ Rulings on the Law on Self-Defence', (2005) 18 RQDI 275; N. Schrijver, 'The Future of the Charter of the United Nations', (2006) 10 MPYUNL 21.

21 *Kosovo* AO, para. 80 (see the complete paragraph above).

22 See, e.g., Albania (WC), at 27, para. 46; Austria, Tichy, CR 2009/27, 3 December 2009, at 9, para. 14; Bulgaria, Dimitroff, CR 2009/28, 4 December 2009, at 25, para. 26; Germany, Wasum-Reiner, CR 2009/26, 2 December

interestingly, no state contended that *jus contra bellum* should be extended to non-state actors.[23]

It could certainly be argued, of course, that the '*Kosovo* case' was not a case about the use of force, but a case about secession, and that the Court wanted to focus on the 'territorial-integrity' principle, not on the general prohibition on the use of force. This might be true, but it is nonetheless obvious that the Court makes (in paragraph 80) a very clear and express reference not only to Article 2(4), but also to other famous international law instruments, as containing an obligation incumbent upon *states* to refrain from using force against other sovereign *states*. The inter-state character of the rule prohibiting the use of force is thus confirmed in a very clear, although indirect, way. By contrast – and this would have been possible if it had wished to limit the effect of its statement – the Court did not:

- specify that this analysis was limited to relations between a state and a secessionist group, and could not apply to non-secessionist groups, such as terrorists;
- refer to the principle of territorial integrity in a general and abstract way, but chose to tie it to Article 2(4) of the UN Charter.

The Court preferred to quote this provision *in extenso* by insisting in general terms on its 'inter-state' character. This aspect of the *Kosovo* AO sounds like a reminder of its previous case law. In the *Wall* Advisory Opinion,[24] as in the *Congo–Uganda* decision,[25] the Court already refused to apply *jus contra bellum* to non-state actors. At that time, the Court was criticized by some judges in their separate opinions. By contrast, in the *Kosovo* AO, no judge contested, nuanced, or mitigated the general statement made by the Court on the inter-state character of Article 2(4).[26] To this extent, the opinion can be viewed as another precedent against any reinterpretation of Article 2(4) of the UN Charter. And, as it will be demonstrated in the next section, this opinion cannot be invoked in support of another attempt yet at extending another classical rule of international law.

3. Challenging the 'remedial-secession' doctrine

The 'remedial-secession' argument[27] was invoked by several states in their written or oral observations before the Court.[28] This argument is mainly based on an *a contrario*

2009, at 27, paras. 11–12; Jordania, Al Hussein, CR 2009/31, 9 December 2009, at 35, para. 30; Switzerland (WS), at 14, para. 55; (WC), at 2, para. 5; United Kingdom (WS), at 86, para. 5.8; (WC), at 19, para. 39; Crawford, CR 2009/32, 10 December 2009, at 49, para. 13; USA (WS), at 69; (WC), at 16; see also Authors of the Declaration (WC), at 60–2, paras. 4.05–4.07; Müller, CR 2009/25, 1 December 2009, at 43, para. 26.

23 See Romania (WS), at 25–6, paras. 70–80; Russia (WS), at 27, para. 77; Slovakia (WS), at 1, para. 4; Spain (WC), at 3, para. 3; Vietnam, Nguyen Thi Hoang Anh, CR 2009/33, 11 December 2009, at 18, para. 6; see also Argentina (WS), at 47, paras. 123–124; Ruiz Cerutti, 2 December 2009, at 46, para. 27; Serbia (WS), at 154, para. 430; (WC), at 110–13, paras. 253–260.

24 ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Territories*, 9 July 2004, [2004] ICJ Rep. 136, at 62, para. 139.

25 *Armed Activities on the Territory of the Congo (DRC v. Uganda)*, ICJ Rep. (2005), at 53, paras. 146–147.

26 See Judge Koroma, Dissenting Opinion, *Kosovo* AO, para. 21.

27 See Ch. Tomuschat, 'Secession and Self-Determination', in Kohen, *supra* note 3, at 38–42; Th. Christakis, *Le droit à l'autodétermination en dehors des situations de décolonisation*, *supra* note 3, at 296–7.

28 Albania (WS), at 42–3, para. 81; (WC), at 31–4, paras. 55–60; Gill, CR 2009/26, 2 December 2009, at 18–22; Estonia (WS), at 5–11; Finland (WS), at 3–7, paras. 6–12; Germany (WS), at 34–5; Ireland (WS), at 8–10,

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interpretation of the 'saving clause' contained in General Assembly Resolution 2625 (XXV):

> 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.[29]

According to some states, the Kosovan people would have been the victim of a serious violation of their internal right to self-determination, mainly in the late 1990s. They would therefore be entitled to invoke an external right to self-determination, which would provide a legal basis for their declaration of independence. However, this view was contested by numerous other states.[30] According to these, the 'remedial-secession' thesis cannot be deduced either from GA Resolution 2625 (XXV) or from international practice.[31] It should therefore not be accepted and, even if it were, it would not be applicable to the situation of Kosovo at the time of the unilateral declaration of independence, in 2008.

In paragraph 83 of its opinion, the Court considers that the 'debates regarding the extent of the right of self-determination and the existence of any right of "remedial secession"' are 'beyond the scope of the question posed by the General Assembly'.[32] Officially, the Court thus did not pronounce on this matter.[33] Nevertheless, by insisting on the inter-state character of the principle of territorial integrity, the Court indirectly challenged the remedial-secession doctrine. According to this doctrine, in certain particular circumstances, international law would 'authorize' (GA Resolution 2625) a dismembering of the territory of a sovereign state. This logically

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paras. 28–32; Jordania, Al Hussein, CR 2009/31, 9 December 2009, at 36–7, paras. 35–38; Lithuania (WS), at 1–2; Maldives (WS), at 1; Netherlands (WS), at 7–8, paras. 3.5–3.7, at 13, para. 3.21; Lijnzaad, CR 2009/32, 10 December 2009, at 9–10, paras. 5–10; Poland (WS), at 25–6, paras. 6.1–6.10; Russia (WS), at 31–2, para. 88; Gevorgian, CR 2009/30, 8 December 2009, at 41–4, paras. 8–22; Slovenia (WC), at 6–7, para. 8; Switzerland (WS), at 16–18, paras. 60–68, at 26, para. 96; (WC), at 2, para. 6; see also Norway (WS), at 3; Authors of the Declaration (WS), at 157–8; (WC), at 79–82, paras. 4.39–4.46, at 133–4, paras. 6.23–6.24.

29 Emphasis added.

30 Argentina (WS), at 38–9, para. 97; (WC), at 26, para. 59; Ruiz Cerutti, 2 December 2009, at 45, para. 25; Azerbaijan (WS), at 5, para. 25; Mehdiyev, CR 2009/27, 3 December 2009, at 24, paras. 40–41; Belarus, Gritsenko, CR 2009/27, 3 December 2009, at 30–1; Bolivia (WC), at 2, para. 7; Bolivia, Calzadilla Sarmiento, CR 2009/28, 4 December 2009, at 11, para. 19; Brazil, Denot Medeiros, CR 2009/28, 4 December 2009, at 15, para. 5; Burundi, d'Aspremont, CR 2009/28, 4 December 2009, at 38–9; China (WS), at 3–7; Xue Hanqin, CR 2009/29, 7 December 2009, at 35–6, paras. 22–26; Cyprus, Lauwe, CR 2009/29, 7 December 2009, at 36–7, paras. 140–147, at 47, para. 60; Iran (WS), at 6–7, paras. 4.1–4.2; Romania (WS), at 40, para. 138; Dinescu, CR 2009/32, 10 December 2009, at 27–35, paras. 4–29; Serbia (WS), at 214 ff., paras. 598 ff.; (WC), at 142 ff.; Kohen, CR 2009/24, 1 December 2009, at 76; Spain (WS), at 17; (WC), at 5, para. 8; Escobar Hernández, CR 2009/30, 8 December 2009, at 17–19; Venezuela, Fleming, CR 2009/33, 11 December 2009, at 13–16, paras. 29–40; Vietnam, Nguyen Thi Hoang Anh, CR 2009/33, 11 December 2009, at 20, para. 13; see also Slovakia (WS), at 2, para. 6 and the ambiguous position of the United Kingdom (WS), at 87, para. 5.11, at 92, para. 5.30, at 93, para. 5.33; (WC), at 5, para. 10; Crawford, CR 2009/32, 10 December 2009, at 50, para. 30.

31 M. Kohen, 'Introduction', in Kohen, *supra* note 3, at 10; O. Corten, 'A propos d'un désormais "classique": *Le droit à l'autodétermination en dehors des situations de décolonisation*, de Théodore Christakis', (1999) XXXVI RBDI 340.

32 *Kosovo* AO, para. 83.

33 But see Judge Cançado Trindade, Separate Opinion, *Kosovo* AO, paras. 178–180; Judge Yusuf, Separate Opinion, *Kosovo* AO, paras. 10–17.

presupposes that territorial integrity must *in principle* be respected by the secessionist entity, this entity being exceptionally entitled to infringe this principle as a 'remedy' to a previous violation of its international right to self-determination. This is obviously not compatible with paragraph 80 of the opinion of the Court, which precludes any applicability of the rule between the state and the group concerned. In other words, as the state cannot invoke its territorial integrity to oppose a secessionist group, this group cannot invoke a right to infringe the territorial integrity of the state targeted. The principle of territorial integrity is simply not applicable; it can therefore not be violated and a right to violate it is not logically possible. Here, again, secession as such is not governed by international law, which remains 'neutral'.[34] Hence, the legal-neutrality thesis as reaffirmed by the Court seems incompatible with the 'remedial-secession' argument and, more generally, with any kind of 'right to secede'.

4. Avoiding condemning unilateral actions in an internal conflict

Against this background, it is clear that the Court refused to consider Kosovo as a 'special case' or a *sui generis* situation.[35] According to the Court, this case must be governed by the traditional rules of general international law. And these rules can be expressed by the legal-neutrality thesis, which must be applied in the *Kosovo* case, as in other secessionist conflicts.

This means, of course, that Kosovan authorities did not violate international law either by declaring independence (as expressly stated by the Court)[36] or by exercising their enforcement powers to assert their control over the territory. But, this also means that Kosovo cannot itself invoke its territorial integrity to oppose either a possible declaration of independence by a secessionist group inside its territory or the use of non-peaceful means by this same group to reach its aim.[37] Article 2(4) of the UN Charter is not applicable inside Kosovo and it is somewhat surprising that territorial integrity was invoked by those who refuse the application of the principle when invoked by Serbia.[38] What are the consequences thereof in the relations between Kosovo and Serbia?[39] If Kosovo is a state, territorial integrity and Article 2(4) of the Charter are relevant legal principles.[40] But if Kosovo is not a state – and this is far from being ruled out by the Court[41] – these principles do not apply. In the latter hypothesis, Serbia could, of course, help the Serbs living in Kosovo to resist

34 See also *Kosovo* AO, para. 79.
35 This was contested by some states in the Security Council; see, e.g., USA, S/PV.6367, 3 August 2010, at 19–20.
36 *Kosovo* AO, para. 123, §3.
37 See *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, S/2010/401, 29 July 2010, paras. 7 and 16–26.
38 See, e.g., United Kingdom, S/PV.6367, 3 August 2010, at 15–16.
39 See also A/64/L.65/Rev.1, 8 September 2010, adopted by consensus.
40 See *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, S/2010/401, 29 July 2010, para. 9.
41 *Kosovo* AO, para. 51.

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the Pristina authorities, and even to use military means to resolve the issue.[42] On the other hand, the Kosovan government would not be precluded from using force in order to establish its authority on every part of 'its' territory, or even on parts of the Serbian territories that were never situated in the province. This is, once again, a traditional application of the 'legal-neutrality' argument. The same pattern is, of course, applicable everywhere.[43] If one relies on paragraph 80 of the *Kosovo* AO, no state in the world can invoke its territorial integrity to oppose a secessionist movement. And a declaration of independence – like an official governmental declaration condemning it – cannot be declared either 'in conformity with' or 'in violation of' international law. Against this background, if the parties do not have a 'right' to use force, then they do not violate Article 2(4) of the UN Charter by using it.

Of course, these conclusions are without prejudice of a possible Security Council resolution. Acting under Chapter VII of the Charter, the Security Council can prohibit the parties to use force and can establish a peaceful mechanism to resolve the issue. Serbia and many other states asserted that SC Resolution 1244 (1999) should be interpreted as an illustration of this possibility.[44] According to these states, by referring to the territorial integrity of Yugoslavia and by establishing an international administration in Kosovo, the Security Council actually prohibited the parties to act unilaterally. Following this *lex specialis*, Kosovo could not declare its independence, whereas Serbia could not use non-peaceful means to fight the secessionist movement. The Court, however, interpreted SC Resolution 1244 in a very different way.[45] As we know, and this will be commented on in other papers in this symposium,[46] it considered that the text of this resolution (and, in particular, the reference to the territorial integrity) was too vague to entail a prohibition of secession. The Court's position seems rather surprising, as it could be seen as a license to use unilateral – and possibly non-peaceful – means, even when the Security Council has adopted resolutions founded on Chapter VII of the UN Charter. Hence, and this is another aspect of the *Kosovo* AO, it is clear that every resolution requires to be strictly interpreted.[47] Even if the Security Council affirms the necessity to respect the territorial integrity of a state, this does not mean that this principle is applicable in the relations between this state and a secessionist group. Even in this case, thus, the classical inter-state paradigm of international law still remains.

42 However, Serbia clearly excluded using non-peaceful means to resolve the crisis (see, e.g., the speech of the Serbian delegate presenting the GA draft resolution on 9 September 2010, www.un.org/News/Press/docs//2010/ga10980.doc.htm, which could perhaps be interpreted like a unilateral commitment according to general international law (cf. ICJ, *Armed Activities on the Territory of the Congo (New Application: 2002)*, Rep. (2006), para. 49).

43 See, e.g., Judge Koroma, Dissenting Opinion, *Kosovo* AO, paras. 4–5.

44 See the written proceedings and oral statements by Serbia, Russia, China, Argentina, Spain, etc.

45 *Kosovo* AO, paras. 85–121.

46 See the contributions of Marcelo Kohen and Katherine Del Mar and Marc Weller in the present symposium.

47 See, e.g., Judge Bennouna, Dissenting Opinion, *Kosovo* AO, para. 56.