Grim Prospects for Sovereignty?

This year, we celebrate the 350th anniversary of the Peace of Westphalia, a peace which symbolically marks the beginning of the existence of modern sovereign States. Since 1648, the principal actors in international relations have been sovereign and equal subjects with a territorial basis. It is no coincidence that sovereignty and territory are inextricably linked terms: the events that led to the emergence of the modern State had as their mainstay the territorial basis of the exercise of power.

It is therefore appropriate, on this celebration, to consider the validity of the notion of sovereignty. Today, it suffers from a rather poor reputation. Globalisation, inter-dependence and integration are contemporary phenomena which supposedly render this traditional concept obsolete. Indeed, more and more powers which pertained to States not so long ago, are today vested in international institutions. Moreover, sovereignty is often perceived as the last rampart to which authoritarian regimes refer in order to prevent the implementation of human rights and other contemporary values, if not to conceal atrocities and preclude their judgement and condemnation. Thus, those who persist in their attachment to the notion of sovereignty are considered as swimming against the tide of history.1

In addition, some authors have undertaken the task of "deconstructing" the idea of sovereignty, by affirming its significance on the domestic plane, that is to say, within the limits of the State, whilst marginalising its role in the realm of international relations. Thus, "internal" or "national" sovereignty would, according to this view, still be a useful tool of political science to designate the organ having the plenitude of power. "External" or "international" sovereignty, on the contrary, would be an idea condemned to the shelves of history, in view of the fact that the limitations on the freedom of action of States now touch their most vital interests.2 Some scholars go even further, and refer to a new notion, "inter-sovereignty", in order to explain the relinquishment of sovereignty by States in fields of common interest, where the decisions are shared with the other members of the international community.3
There is a great misperception about sovereignty, due perhaps to the early definition given to it by the theorists who first used the term. Thus, Bodin defined sovereignty as "la puissance absolue et perpétuelle d'une République"\(^4\), or "summa in cives ac subditos legisbusque soluta potestats".\(^5\) This led some to consider that the power held by States, called "sovereignty", was absolute. Yet, from the outset, this was not the original idea. Sovereignty has never been absolute, but subordinated to international law. Sovereignty simply means no dependence to any other power. As Vattel clearly stated in his well known definition: "Toute Nation qui se gouverne à elle-même, sous quelque forme que ce soit, sans dépendance d'aucun étranger, est un Etat souverain" (Each Nation which governs itself without any dependence upon a foreign power, is a sovereign State).\(^6\) In a society composed of sovereign States, the law that regulates their relations is above them.\(^7\) Needless to say, the evolution of international society, especially in the last decade, has led to an even greater interdependence of its members, having as its corollary a decrease in the number of questions which until recently fell to the domestic jurisdiction of States.

It is not the purpose here to deny these important phenomena, which have changed considerably the power of States and their interplay in international relations. These changes, irrespective of the importance they certainly have, do not however imply the disappearance of the notion of sovereignty.\(^8\) What is repeatedly called the relinquishment or "abandon" of sovereignty should be perceived as an exercise of it: States are free to limit their jurisdiction, and to transfer part – even substantial parts- of their powers to other institutions. As the Permanent Court of International Justice stated in its first judgement, "The Court declines to see in the conclusion of any treaty by which a State undertakes to perform or refrain from performing a particular act an abandonment of its sovereignty. No doubt any convention creating an obligation of this kind places a restriction upon the exercise of the sovereign rights of the State, in the sense that it requires them to be exercised in a certain way. But the right of entering in international engagements is an attribute of State sovereignty".\(^9\) Thus, the transfer of sovereign powers and their relinquishment must be distinguished. The clue to that distinction lies in the State’s capacity to recover them, or put another way, whether the transfer is permanent or not. An independent State which decides to become a member of a federal State consents to the permanent loss of part of its powers (i.e. defence, foreign affairs) in favour of the central government. It cannot recover them, unless it successfully secedes. On the contrary, an independent State, member of an integration institution, such as the European
Union, or more generally any international organisation, always retains the possibility to withdraw, recovering at the same time the powers it had previously delegated.

**Territorial Sovereignty**

As a consequence of the alleged loss of relevance of the idea of sovereignty, the notion of territorial sovereignty naturally endures the same criticism. Were territorial sovereignty obsolete, this classical term of art would be no more than a purely symbolic manifestation of identity, void of its original meaning. Moreover, territorial sovereignty is traditionally confined to one particular status: the State's spatial sphere of jurisdiction. This definition does not take into account other statuses, which today would be more relevant.

At the outset, the concept of territorial sovereignty must be recalled. The Arbitral Award of 7 September 1910 in *The North Atlantic Coast Fisheries Case* between Great Britain and the United States, dealing with the right to regulate fishing in conformity with the Anglo-American Treaty of 1818, roughed out the relationship between sovereignty and territory by stating: "Considering that the right to regulate the liberties conferred by the Treaty of 1818 is an attribute of sovereignty, and as such must be held to reside in the territorial sovereign, unless the contrary be provided; and considering that one of the essential elements of sovereignty is that it is to be exercised within territorial limits, and that, failing proof to the contrary, the territory is co-terminous with the Sovereignty".\(^{10}\) More celebrated, the Arbitral Award of 4 April 1928 in the *Island of Palmas Case* between the Netherlands and the U.S.A. contains a more elaborated description of the notion of territorial sovereignty: "(...) sovereignty in relation to a portion of the surface of the globe is the legal condition necessary for the inclusion of such portion in the territory of any particular State. Sovereignty in relation to territory is in the present award called 'territorial sovereignty' (...) Territorial sovereignty (...) involves the exclusive right to display the activities of a State. This right has as corollary a duty: the obligation to protect within the territory the rights of other States (...) Without manifesting its territorial sovereignty in a manner corresponding to circumstances, the State cannot fulfil this duty".\(^{11}\)

Although these definitions serve to circumscribe the idea, they do not explain what actually characterises territorial sovereignty. It is the plenitude of State jurisdiction upon a given territory, which includes the capacity to dispose of it. To sum up, sovereignty is the highest degree of jurisdiction of a State upon a given space.\(^{12}\) Viewed from another perspective,
territory is the only space where sovereignty can be applied. The scope of territory is often commonly understood as comprising only the emerged surfaces of the globe. Yet, territory also embraces the internal waters, the territorial sea and the air space above them. Other spaces, like the EEZ, the continental shelf, the high seas, the deep sea-bed and outer space escape the possibility of being submitted to sovereignty.

In addition, the actual display of State power over a territory is normally the main manifestation of sovereignty. However, this display is not the main characteristic of sovereignty. A State can control a territory without being its sovereign. The German doctrine uses the term Gebietshoheit (in French suprématie territoriale) in order to designate the display of State power over territory, to be distinguished from territoriale Souveranität, i.e., the capacity to dispose of the territory in last resort. This distinction is sometimes referred to as that between sovereignty and the exercise of sovereignty, yet the terminology can lead to confusion. Only the State that has title to the territory can dispose of it. The assumption that the State which actually displays State power over a territory is its sovereign, is indeed, the common situation. The other hypotheses are thus rather exceptional. Moreover, they can still be distinguished according to whether or not they are in conformity with international law.

Examples of the former were the American and British Gebietshoheit over respectively the Canal Zone and most of Hong-Kong. Panama and China had transferred the display of State power to the U.S.A. and Britain, without nevertheless losing their sovereignty. What China recovered last year was its control over the “New Territories” of Hong-Kong, not its sovereignty. Similarly, Panama will recover the administration over the Canal Zone at the end of the century. An example of the latter was the illegal presence of South Africa in Namibia after the termination of the mandate by the United Nations.

The question remains whether all this theoretical construction is still valid today. To our mind, nothing in the very important changes which have occurred in recent years allows one to challenge it. States have probably transferred more powers to international institutions in the last decades than ever before, but in so doing, they have not abandoned them and remain therefore, sovereign. What falls today under the scope of the notion of international concern is also wider than before, but the notion of domestic jurisdiction has nevertheless not disappeared. The exercise of power, whether "national" or "supra-national", remains essentially a territorial one. Laws continue to be adopted in order to be applied over a given territory, the Executive continues to take decisions applicable within the limits of its territorial jurisdiction, judges are competent to deal with cases only if they have territorial jurisdiction.
Even "supranational" decisions taken by organs of the European Union are applicable only to the extent of the territorial limits designated by its member States. Hence, territory continues to mark the sphere of jurisdiction of States and international institutions. It is enough to mention the example of the strong opposition to the Helms-Burton law (Cuban Liberty and Solidarity (LIBERTAD) Act of 1996) by the rest of the world, when the United States claimed jurisdiction over acts of foreign companies and individuals performed outside the American territory. In addition, recent phenomena reunited under the heading of "globalisation", in the field of communications, economics in general and trade in particular, environment, etc., are leading to a great level of interdependence but, as Michel Virally pointed out more than twenty years ago, the contrary of independence is not interdependence, but dependence. Sovereignty and interdependence do not exclude each other.\(^{17}\)

The distinction between Gebietshoheit and territorial sovereignty also continues to be useful. Effectiveness alone does not enable the one who actually displays State activity over a territory to become its sovereign.\(^{18}\) On the contrary, recent events go in the opposite direction: the more international law develops, the less the mere control over territory is decisive for the establishment of sovereignty. The judgement of the International Court of Justice in the matter of the Aouzu Strip transparently illustrates this assertion.\(^{19}\)

**Other Territorial Statuses**

Territorial sovereignty is but one of the forms that the relationship between a subject of international law and a given territory may take. It is often neglected that other legal statuses are also possible, including administration, autonomy, condominium, trusteeship, non self-governing territories, as well as special international regimes such as that applying to Antarctica.\(^{20}\) The difference among the legal territorial statuses lies in the extent of the prerogatives, rights and obligations of a State or another subject of international law upon a given territory.

The question is whether territorial statuses other than sovereignty have a predominant role today. The emergence of more than twenty new independent States, the struggle of some peoples for statehood, who thereupon acquire sovereignty over their territories, clearly show that territorial sovereignty remains essential. Furthermore, this is not a "peripheral" event. Even "old" States remain attached to this idea. For instance, it is worth noting that during the negotiations for the establishment of an all-European mechanism for the settlement of
disputes in the framework of the CSCE/OSCE, the United Kingdom strongly insisted on the need to include a clause in the now Stockholm Convention on Conciliation and Arbitration within the (then) CSCE, allowing States Parties to exclude from the scope of those procedures "disputes concerning a State's territorial integrity, (...) title to sovereignty over land territory, or competing claims with regard to jurisdiction over other areas".21

Mandates and trusteeships are regimes of the past. The last trusteeship came to an end in 1994,22 and the resurrection of this system is not foreseeable, since they were conceived in the UN Charter as a means of preparation for the future independence of the peoples concerned.

At present, the case of Bosnia and Herzegovina resembles one of a trusteeship, taking into account the fundamental role of international organisations and their representatives in the decision-making and the supervision of the implementation of the Dayton/Paris Agreement. Sovereignty, however, has been preserved, by the existence of Bosnia and Herzegovina as an independent State with its own authorities. Today, there does not appear to be a conflict to which this system could be applicable.

International administration by definition cannot be but an interim arrangement, decided upon by the United Nations, until the final decision by the interested parties is reached. This applied to Irian Jaya more than thirty years ago, in which case the decision concerned the future international status of the territory, as well as to Cambodia, in which it was a question of solving an internal conflict.

The so-called "Non self-governing territories" also constitute a remnant of the colonial past, and are therefore condemned to disappear in a near future. Realising this, present British government decided to transform its "Dependent territories" into "Overseas territories", as France had done half a century ago.

Other international regimes, such as the International Sea-Bed Authority set up by the UNCLOS' Part XI in order to administer the "Area", or the regime applicable to Antarctica, which originated in the 1959 Treaty of Washington and has since been developed by numerous other agreements, deserve consideration. It is known that Part XI of the UNCLOS could only be implemented by the adoption of a further agreement on 28 July 1994, which amounted in practice to a modification of Part XI, in order to satisfy the interests of the developed countries, particularly the United States. Now that the system begins to work, it must be said that it is an extraordinary change in the management of spaces and their resources. Indeed, for the first time, a permanent international authority will entirely control a given space, on behalf of mankind. This revolutionary regime, the "common heritage of
mankind", appears to be applicable only to what one could call "new" spaces, such as the above mentioned "Area" or outer space. States have decided not to appropriate them under sovereignty or even sovereign rights, as they did for other "new" maritime spaces born in the last half of this century, such as the continental shelf or the EEZ. To establish such a regime for territory in general, and particularly inhabited areas, would require the consent of its sovereign (or the parties to a dispute). It is difficult to find any reason why States would be ready to make such a concession.

The case of Antarctica is different, and one might add, unique. As is well known, States have different perceptions as to the legal status of Antarctica. The discussion even involves the question of whether Antarctica is a territory in the legal sense of this term, and then whether or not it is open to effective occupation as a means of appropriation. Although all Parties to the Treaty of Washington have reserved their legal position, a new international regime has been implemented since 1959. This regime is a successful one and bound to last in the long run. The lack of permanent population, the difficulties inherent in its location and the impossibility to insure adequately actual display of power, explain its unique character and the unlikely possibility of this regime being applied to other regions of the world.

Autonomy is a particular regime that is not self-contained. It is meant by that, that autonomy is always connected to a higher regime. This is the case of decentralised States, the case of Greenland, the Aaland (Ahvenanmaa) islands and others, and recently the case of Scotland, Wales and Northern Ireland. Autonomy is not a substitute for sovereignty, it is in fact subordinated to it. That is why some disputes often consist in determining whether the applicable regime to some regions must be one of autonomy, or the admission of a new sovereign State (or again, the application of no special regime at all). Among the examples, one can mention the two entities composing Bosnia and Herzegovina, Kosovo or Kurdistan. The case of the Palestinian Authority is special. In this case, autonomy is a temporary regime, pending the final settlement of the conflict, in accordance with the so-called Oslo Agreements.

**A "post-sovereignty" means of solving territorial disputes?**

The interest in the different regimes depicted above is due to the current temptation to solve disputes concerning sovereignty by attributing to the territory in question another legal status, by, for example, agreeing to a form of joint administration, "shared sovereignty", autonomy
or internationalisation. In those circumstances, sovereignty would not be attributed to either of the parties. Co-operation instead of confrontation seems to be the catchword. This appears reasonable: instead of contesting what is viewed as "nominal" sovereignty, parties to a dispute should try to solve it by dealing directly with the actual exercise of power. In short, the parties should focus upon Gebietshoheit, not on sovereignty. It is interesting to study whether these are effective solutions or, on the contrary, merely attempts to avoid or postpone final settlement of disputes.

Recent State practice shows that joint administration was used as an interim arrangement between Namibia and South Africa for Walvis Bay. "Shared sovereignty", for its part, is currently invoked by the present Spanish and Argentine Governments for its application to Gibraltar and the Falkland Islands (Islas Malvinas). One could also wonder whether such complicated territorial disputes as those concerning the Spratly and the Senkaku Islands could not be solved by some form of joint control.

The example of Walvis Bay is significant. This former British enclave in the former German Colony of South West Africa, annexed to the Cape Colony in 1884, was claimed by Namibia as part of its territory. In 1992, South Africa and Namibia agreed to establish a Joint Administrative Authority as an interim arrangement pending a final settlement of the dispute. This interim joint administration did not last very long: by the treaty of 28 February 1994, Walvis Bay was "incorporated/integrated" into the Republic of Namibia the following day.

Joint administration reveals itself in some circumstances, as an appropriate way to prepare a final settlement. It creates a climate of confidence between the parties, facilitates an ultimate transfer of powers, which becomes to some extent a gradual one, or allows the organisation of referendums on an impartial basis.

On the contrary, "shared sovereignty" (joint ownership, co-imperium, condominium or however otherwise termed) conceived as the permanent solution of a dispute, presents many difficulties which are not easy to avoid. Primarily, the territory does not belong to any of the co-sovereigns. It would be misleading to believe that both States could consider it at the same time as part of their respective territories. Consequently, neither the legislation, administration nor jurisdiction of each of the co-sovereigns are automatically applicable to the territory; nor are the international agreements applicable to the territories of the co-sovereigns are per se extended to the "shared" territory. In the Colonial Office Reports on the New Hebrides it is stated that "It is clear that (...) the New Hebrides is neither British nor French and, though
Britain and France each reserve sovereignty over their own nationals, there is no territorial sovereignty (unless it can be said to be jointly exercised) and the natives bear no allegiance to either Power. Incidentally, for this reason, no multilateral convention applies to the New Hebrides unless it is applied as a result of joint agreement between the two Signatory Powers. In fact the Condominium is, *vis-à-vis* Britain and France, in effect, a foreign administration, because neither one nor the other controls or administers it.\(^{25}\)

Personal jurisdiction is also problematic, because of the permanent clashes that arise from two different jurisdictions being applicable to different persons over the same territory. This is because the normal arrangement would be that each State has jurisdiction over its own nationals, as was the case for the New Hebrides. On the other hand, nationality – from the point of view of international law- can only be granted by a State. Since the "shared" territory is not an independent State, the possibility of a third nationality is excluded. The situation of foreigners can also be very complicated. The example of the consequences of the existence of different personal regimes in the case of the New Hebrides, and in particular, the serious difficulties which arose soon after independence between both linguistic communities, corroborate the fact that *condominium* is not a good permanent regime for inhabited territories.\(^{26}\)

In fact, the “shared” territory would be in a legal limbo: belonging to none of the co-sovereigns, it constitutes nevertheless a sovereign territory, yet without an international independent personality. In a true *condominium*, the "holder" of the territory is the community of both States. If this is not the case, one is not in front of a *condominium*, but rather in front of an independent State governed by an organ composed of officials (or not, as is the case of the Bishop of Seu d'Urgell for Andorra) of two different countries.

"Shared sovereignty" cannot be envisaged as a solution to be adopted by an international tribunal dealing with a territorial dispute either. As the Arbitral Award in the *Lake Lannoux Case* (France/Spain) states: "sometimes, two States exercise conjointly jurisdiction over certain territories (joint ownership, *co-imperium*, or *condominium*); likewise, in certain international arrangements, the representatives of States exercise conjointly a certain jurisdiction in the name of those States or in the name of organizations. But these cases are exceptional, and international judicial decisions are slow to recognize their existence, especially when they impair the territorial sovereignty of a State".\(^{27}\) The only possible exception concerns those parts of territory composed of water: rivers, historic bays or internal waters in general.\(^{28}\)
Indeed, if one turns to the international practice, the conclusion is that the cases of *condominia* are rather rare, and generally confined to the areas just mentioned. Other *condominia* applicable to land are rather symbolic, such as the one over the Isle of Pheasants, located at the mouth of the Bidassoa River, on the Franco-Spanish border. The small size of the isle and the lack of population explain the continuation of this ancient regime. Because it constitutes a third regime, to be distinguished from both of the co-sovereigns, *condominium* applicable to inhabited regions amounts either to the creation of an independent State or lead in the long run, to the independence of the territory. Andorra, now a member of the United Nations - and irrespective of the discussion about its true nature as a *condominium*-, is an example of the former, and the New Hebrides, today the independent State of Vanuatu, is an example of the latter.

There are cases in which one State party to a settlement is not willing to admit explicitly that it has relinquished its position. As a result, the use of the word "sovereignty" is avoided. This is the case of the Treaty of the River Plate and the corresponding maritime boundary, according to which the island of Martin Garcia is placed under the "jurisdiction" of the Argentine Republic, and is exclusively destined as a natural reserve. The headquarters of the Administrative Commission of the River Plate (a binational entity with its own personality) is also, according to the aforesaid Treaty, located in Martin Garcia. It is clear that by this treaty and despite its wording, Uruguay recognises Argentina's sovereignty over Martin Garcia, and at the same time, Argentina consents to restrictions on the exercise of its sovereignty over the island. This solution has then nothing to do with so-called "shared sovereignty". The example is also interesting, because the same treaty sets up a common zone for the River Plate, but establishes clear-cut provisions for the attribution of sovereignty to one or the other Party, should new islands emerge.

A true regime of *condominium* or "shared sovereignty" must consist of a more or less similar distribution of functions, or the creation of organs made up of representatives of both sides. If the so-called shared sovereignty regime vests the essential powers in one of the States and grants some limited rights to the other, one is in fact before a case similar to the one of Martin Garcia: an implicit recognition of sovereignty by one of the Parties to the other, with some limitations on its exercise. International practice contains many examples of territories under the sovereignty of one State, in which another has certain rights. These are the cases of military bases established in foreign territories (such as Diego Garcia), rights of passage, free zones, utilisation of watercourses, etc. To sum up, "shared" sovereignty would be in these
cases, simply a way to disguise the recognition by one of the parties of the sovereignty of the other.

There are however, ways to solve a territorial conflict by dealing with the sovereignty issue, by adding an element of co-operation in matters of exploitation of natural resources.\textsuperscript{31} The case of the "Neutral Zone" between Kuwait and Saudi Arabia is illustrative in this respect. The agreement of 7 July 1965 is a good example of delimitation of the then "no man's land" between the parties. It clearly states who is the sovereign of the territory, but provides for the sharing of the natural resources in the area. In fact this treaty put an end to a situation of "shared" sovereignty in which each Party had equal rights, describing the lack of regulation of the exercise of these rights as a state of affairs "of a provisional nature which entailed serious practical difficulties".\textsuperscript{32} These States thus adopted a wise solution which merits to be retained as an example: instead of confusion, they delimited what needs to be differentiated, i.e. the exercise of State authority over persons and territory, and shared what can be partaken, that is to say, natural resources.

\textbf{Conclusion}

Sovereignty still characterises the main actors of the international relations. Its critics who focus upon its use as a barrier against compliance with human rights, neglect the fact that the different endeavours to impose hegemony have been made through the idea of limiting the exercise of sovereignty. Brejnev's "limited sovereignty" doctrine, Johnson's "ideological frontiers" or Reagan's "collective self-defence" are to this extent paradigmatic. One cannot lose sight of the fact that it is the very notion of sovereignty which allows one to speak of equality among States, despite their disparities in size, military power, economic development, etc. To stress the idea of sovereignty is tantamount to affirming the equality of States from the legal point of view: equals before the law, equals in the elaboration of international legal rules.

Even those who believe that sovereignty in its external or international sense must be seen as a myth, recognise that the only exception is when the term is used to described State's title to territory.\textsuperscript{33} "Shared sovereignty", joint administration, autonomy without deciding who is the sovereign of the territory, are, at best, only policies to deal temporarily with territorial disputes, in order to create better conditions to achieve a final settlement. In a world still essentially composed of sovereign States, where nearly the whole of the emerged surface of the earth is divided and
attributed to them, the creation of such hybrid situations is misleading. At worse, they are attempts to avoid facing the problem, by begging the question of sovereignty, which is at the core of territorial disputes. Conceived of as a means of final settlement, they actually create the potential basis for new, and probably even more complicated, sources of conflict. What is presented as new ways to deal with territorial problems are in fact remnants of the past, Middle Age phenomena suited to a society in which power and control over the territory was singularly dispersed. As was stated, "condominia appear as historical relics from the age of feudal and patrimonial States or as patently inadequate anomalies. However, even during the 20th century, when the dogma of sovereignty gradually grew less rigorous, the condominium did not establish itself as anything greater than an emergency or temporary solution or a measure of last resort".34

One therefore reaches the conclusion that territorial disputes cannot avoid the crucial matter of sovereignty, on the basis that, for the time being and in the predictable future, the ultimate destiny of all territories (with the important exception of Antarctica) is to be submitted to sovereignty.

2 E. Lauterpacht, Sovereignty – Myth or Reality?, International Affairs 73, 1 (1997), 137-150.
4 Les six livres de la République, 1576, bk. I, ch. VIII
5 De Republica, 1586, bk. I, ch. VIII.
6 Le droit des gens, 1758, bk. I, ch. I, § 4
7 In his separate opinion appended to the advisory opinion on the Customs Régime between Germany and Austria, Judge Anzilotti stated that independence "is really no more than the normal condition of States according to international law; it may also be described as sovereignty (suprema potestas), or external sovereignty, by which is meant that the State has over it no other authority than that of international law" (1931, P.C.I.J., Series A/B, N° 41, 57)
9 S.S." Wimbledon", judgements, 1923, P.C.J.I., Series A, N° 1, 25
10 UNRIAA, vol. XI, 180
11 Ibid., vol. II, 838-839
13 See Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgement, I.C.J. Reports 1986, 14, at 111, para. 212


17 M. Virally, *op. cit.* (note 8), at 192.


20 We put aside military occupation, which by definition presupposes an interim and *de facto* situation.


22 See UNSC Resolution 963 of 29 November 1994 on the American trusteeship of Palaos. Palaos is an independent State associated with the USA and a member of the UN.


24 Text in *I.L.M.*, 1994, vol. 33, 1528. The expression "incorporation/integration" was used in this treaty in order to safeguard the positions of the parties: according to South Africa, it was a case of transfer of sovereignty, for Namibia, on the contrary, it was the restoration of its territorial integrity.


28 As was the case of the Gulf of Fonseca, considered as a *condominium* among the riparian States by the Central American Court of Justice in 1917 and confirmed more recently by a Chamber of the ICJ in the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras; Nicaragua intervening)*, *I.C.J. Reports* 1992, 596-602


31 On this topic, see L. del Castillo de Laborde, *Soberanía y recursos naturales. Modo de solución de controversias referidas a recursos naturales pertenecientes a más de un Estado*, in *La soberanía en las relaciones internacionales* *op. cit.*, note 26), vol. III, 131-158


33 E. Lauterpacht, *op. cit.* (note 2), at 149.


Because the right has never been defined, the notion of self-determination typically embraces several different meanings, none of which addresses the central issue of how to respond to a national or other identity group’s aspirations for control over the lives of its members. Without a doubt, any new definition of self-determination must include customary human rights standards (e.g., respect for individual and minority rights) and the right of an appropriate body to enforce those standards. The notion of jurisdiction is essentially territorial. Ideas of territorial integrity and the ownership of territory are very strong. Scots emerged as some of the great imperial administrators, they explored the unknown, as soldiers they crushed native opposition and made territorial gains. A territorial dispute, by its nature, is liable to arouse nationalistic sentiment. We shall respect the independence, sovereignty and territorial integrity of all our neighbours. The Republic of Fiji Military Forces was established to defend the nation's territorial sovereignty. However, the crossing of borders by refugees, often illegally, blurs this clear territorial cut. Therefore, one might ask: to what extent the concept of borders is becoming obsolete in light of refugee waves? At the heart of realism, the notion of sovereignty is attributed several key characteristics. One of the most crucial is a state’s ability to control its own borders. Again, we have seen how this might come in the way of liberal institutionalism in section 1 above. However, refugee waves are premised on the crossing of borders both legally and illegally by those who do not ordinarily...