MAXIM ALLEGANS CONTRARIA NON EST AUDIENDUS, JUNADAGH, JAMMU AND KASHMIR*

Maxim Allegans Contraria non est Audiendus, Junadagh, Jammu ve Keşmir

Mehmet Şükrü GÜZEL**

Abstract

On 5 August 2019, the Indian Government announced the revocation of Article 370 of the Constitution, which grants the state of Jammu and Kashmir considerable political autonomy. Article 370 allowed Jammu and Kashmir to have its own constitution, a separate flag and independence over all matters except foreign affairs, defence and communications. The Government says this is an internal affair of India, subject to Article 2.7 of the UN Charter even if the United Nations Security Council defines Jammu and Kashmir as disputed territory. This Article examines the dispute of Jammu and Kashmir within the UN system of decolonization, and analyzes whether there exits any international legal obligation for India arising from the decolonization of Junagadh for Jammu and Kashmir within the principle of maxim allegans contraria non est audiendus.

Keywords: *Jammu and Kashmir, Decolonization, Junagadh, Indian Constitution Article 370, UN.*

Öz

5 Ağustos 2019 tarihinde Hindistan hükümeti, Jammu ve Keşmir eyaletine kayda değer siyasi özerklik kazandıran Anayasanın 370. Maddesinin iptal edildiğini duyurdu. 370. Madde, Jammu ve Keşmir'in dışişleri, savunma ve haberleşme dışındaki tüm konularda kendi anayasasına, ayrı bir bayrağa ve bağımsızlığına sahip olmasını sağlamakta idi. Hindistan hükümeti, Jammu ve Keşmir'in Birleşmiş Milletler Güvenlik Konseyi tarafından tartışmalı bölge olarak tanımlamasına rağmen, Hindistan Anayasasının 370. Maddesinin Birleşmiş Milletler SözleşmesI`nin 2.7 Maddesi kapsaminda Hindistan'ın bir iç meselesi olduğunu iddia etmektedir. Bu makale, Birleşmiş Milletler dekolonizasyon sistemi içerisinde Jammu ve Keşmir sorununu, Hindistan'ın Junagadh'ın Eyaleti`nin dekolonizasyon süreci ile mukayeseli olarak inceleyerek, maxim allegans contraria non est audiendus prensibi çerçevesinde Hindistan`in Jammu ve Keşmir icin uluslararasi bir yükümlülüğünün olup olmadığını analiz etmektedir.

Anahtar Kelimeler: *Jammu ve Keşmir, decolonizasyon, Junagadh, Hindistan Anayasası 370. Madde, BM.*

---

* Received on: 01.10.2019 – Accepted on: 18.12.2019.

** Prof. Dr. h.c., Switzerland Representative of Ankara Center for Crisis and Policy Studies, e-mail: guzelmehmetsukru@gmail.com, ORCID: 0000-0002-4179-3102.

Introduction

On 5 August 2019, the Government of India revoked the special status granted to Jammu and Kashmir by Article 370 of its Constitution. Article 370 allows Jammu and Kashmir to have its own constitution, a separate flag and independence over all matters except foreign affairs, defence and communications.

Since the *Maharaja* (Ruler) of *Jammu* and *Kashmir* did execute an Instrument of Accession (IOA) in favour of India in 1947, India considers all questions relating to Kashmir, including to hold a referendum or plebiscite in the state to decide its future, as falling within its domestic jurisdiction.[1] The eventual stand taken by India before the United Nations (UN) Security Council for the Jammu and Kashmir dispute is that following the princely British Indian state of Jammu and Kashmir's accession to the Dominion of India, India's commitment to hold the plebiscite to decide the state's future – after peace was to be restored. According to India, such commitment does not constitute an "international obligation" but is merely an "engagement" that falls within the domestic jurisdiction of India. Any question regarding that princely Indian state, having acceded to the dominion of India, should logically fall within the domestic jurisdiction of India and be excluded from discussion at the UN or other international fora. [2]

The provisions of Article 2.7 of the UN Charter which prohibit the UN from intervening in matters which are essentially within the domestic jurisdiction of any state or from requiring the members to submit such matters to settlement under the UN Charter. The UN Charter is part of a world constitutional instrument. As a constitution, the Charter is the formal basis of an international rule of law. One of its primary purposes is to constrain sovereign behaviors inconsistent with its key precepts.

1 Aman Hingorani, *The Kashmir Issue: Differing Perceptions*, Swiss Federal Institute of Technology Zurich, Zurich 2007, p. 5.
2 Hingorani, *op.cit.* p. 10.

The UN Charter Article 2.7 is the Charter's reference to sovereignty. The UN Charter Article 2.7, shifts the focus from the analytical and normative to the empirical. It provides a short overview of continuing problems in exploring the nature of sovereignty. It stipulates that nothing in the Charter authorize the UN to intervene in matters, which are "essentially within the domestic jurisdiction of any State"[3]

In its Advisory Opinion on the Tunis and Morocco Nationality Decrees of 1923, the *Permanent Court* of International Justice (PCIJ) on citizenship stated that whether a certain matter is or is not solely within the domestic jurisdiction of a State is an essentially relative question; it depends on the development of international relations of the State. The PCIJ said that while nationality issues were, in principle, within domestic jurisdiction, States must, nonetheless, honour their obligations to other States as governed by the rules of international law.

One of the basic principles governing the creation and performance of international legal obligations for the States, whatever their source, is the principle of good faith. Just as the rule of *pacta sunt servanda* in the law of treaties is based on good faith, has the same binding character of an international obligation assumed by unilateral declarations or acts of any state.

In its Judgment in the Nuclear Test cases, the International Court of Justice (ICJ) said:

> *"It is well recognized that declarations made by way of unilateral acts, concerning legal or factual situations, may have the effect of creating legal obligations."*

When British India was decolonized, a choice between two dominions, namely India and Pakistan had given to the 565 Princely States by the Indian Independence Act (IIA). The choice of

3 Winston P. Nagan-Aitza M. Haddad, "Sovereignty in Theory and Practice", *San Diego International Law Journal*, 2012, p. 462.

the Muslim Nawadh (Ruler) of Junagadh was in favour of Pakistan where %80 of the population were Hindus. India opposed the choice of the Nawadh of Junadagh and asked for the verdict of the peoples. On the other hand, the Hindu Maharaja (Ruler) of the State of Jammu and Kashmir was in favor to India where %75 population were Muslim. This article examines the revocation of Article 370 of the Indian Constitution from the historical background of the decolonization process of the British India, subject to the discussions during the UN 264th Security Council meeting of 8 March 1948 with in the principle of maxim allegans contraria non est audiendus[4] and questions whether unilateral declarations and actions of India regarding to Junadagh created any international obligations to Jammu and Kashmir, subject to the verdict of the peoples of Jammu and Kashmir.

Historical Background

The British Empire reached its greatest extent after the First World War[5], by which time it covered one quarter of the earth's surface and governed a similar proportion of the world's population. Yet between 1947 and 1964, Britain granted independence to most of its colonies. British decolonization is usually associated with the period after 1945 but the 1931 Statute of Westminster had already granted independence to the white Dominions of Australia, Canada, Eire (Irish Free State), Newfoundland, New Zealand, and South Africa. [6] Unlike other empires in history – such as the Roman, Byzantine, Ottoman, or Habsburg – the collapse of the British Empire was based on the UN decolonization system.

4 Legal maxim and Latin for one making contradictory statements is not to be heard. It is a principle of good faith that a person should not be allowed to testify hot and cold at different times about the same event, denying today, affirming tomorrow. It is a concept of common sense and used to bring cross examination to an abrupt end, *The Law Dictionary*, https://dictionary.thelaw.com/allegans-contraria-non-est-audiendus/ (Date of Accession: 03.10.2019).

5 For more information about the effects of the First World War on colonisation: Mehmet Seyfettin Erol-Oktay Bingöl, "Birinci Dünya Savaşı'nın Afrika'ya ve Sömürgeciliğe Etkileri." *Gazi Akademik Bakış* 7(14), 2014, p. 182-193.

6 Carl P. Watts, "British Decolonization", https://www.academia.edu/2002497/British_Decolonization, (Date of Accession: 03.10.2019).

During the interwar period the League of Nations Mandate system introduced the idea of accountability into colonial administration, suggesting that imperial powers had a responsibility to develop territories for the benefit of the colonial population. The Second World War gave great hope to colonial nationalist movements. The Atlantic Charter of August 1941 suggested inter alia that territorial adjustments after the War must accord with the wishes of the people in those territories, which colonial peoples thought applied to them as well as the population of occupied territories in Europe. In 1941-42, Japanese military success against the British and other European empires in the Far East shattered the image of white racial superiority that underpinned imperialism. After the War, the UN provided a critical forum for anti-colonial pressure. Chapter XI of the UN Charter established the principles that guided the UN decolonization efforts, whilst Chapters XII and XIII established the International Trusteeship System and Trusteeship Council that succeeded the League of Nations Mandate System.[7]

British imperialism in South Asia built on a dual system. On the one hand, the British fully annexed territories, primarily in the late 18th and early 19th century, that thereby came to be directly governed, whereas it—as its presence in the region progressed and stabilised in terms of challenges to its hegemony—increasingly committed to a policy of indirect rule over a considerable array of polities, large and small. [8] The Indian States comprised the native principalities which entered into treaties and agreements with the British East India Company and later with British Crown.[9]

The 565 Princely States in British India, covered an area of 715,964 square miles out of the total area of 1,581,410 square miles under British rule; that is, about 45 percent of the total Indian territories. [10] During the British Raj the princely states were

7 *Ibid.*
8 Ted Svensson, "A Federation of Equals? Bringing the Princely States into United India", *Stance Working Paper Series*; 9, 2016, p. 9.
9 Attiya Khanam, "An Historical Overview of the Accession of Princely States", *Journal of Historical Studies,* 2(1), January-June 2016, p. 85.
10 Hingorani, *op. cit.*, p. 6.

not directly controlled by the British government but rather by a royal ruler under the law of indirect rule. The policy of British in the early part of 19th century tends towards the annexation of the states after observing the role of states in the battle of 1857. The East India Company rule was supplanted by direct British rule under a Royal Proclamation of 1858. Most of Muslim India which had been subjugated by the British and the administration of which was assumed by the British Crown in 1858, came to be termed as British India. The remaining territories, ruled by the native princes, were allowed to stay as autonomous units under the treaties and agreements entered into by them with the British Government. These units were known as Indian States. [11] Paramountcy was a special system concerning the relationship of the states with the British government. The states had to cooperate with the government on matters of all-India policies in respect of railways, post and telegraphs, and defense. The crown representatives sometimes used to station an army, construct railways on a part of the states, and used to take the administrative control of the area. [12]

Decolonization of British India

The Indian National Congress, defining her policy for the accession of the 565 Princely States as early as 1931 had already announced that all the Princely States, would, at the withdrawal of the British from the area, become part of the Indian Union. [13] Prior to 1947, the constitutional law in force in colonial India was the Government of India Act of 1935 enacted by the British (Imperial) Parliament. [14] The Cabinet Mission Plan of 16 May, 1946 gave a clear picture of the transfer of power and the position of the native states in the new set up of free India. The British Cabinet in their statement of May 1946 pronounced that paramountcy could neither be retained by British Crown nor transferred to any new government in India. The state

11 Khanam, *op. cit.*, p. 86.

12 Santoshkumar M. Katke, "A Study on Contributions of Sardar Vallabhbhai Patel in Consolidating Social Elements in New India after Independence", *International Journal of Creative Thoughts*, 3(1), March 2015, p. 206.

13 Kausar Parveen, "Nature of Indian Politics Before 1947", *Center for South Asian Studies*, 14, 2013, p. 147.

14 Hingorani, *op. cit.*, p. 7.

released from the obligation of paramountcy would work out their relationship with the succession state. Theses policy formulations were somewhat ambiguous in that they did not define the precise status of the states after British colonial rule in India had come to an end. [15] The end of colonial rule in the Indian subcontinent marked the birth of two nations- India, and Pakistan. According to the plan the provinces of Punjab and Bengal were to be divided to create a separate state-East Pakistan and West Pakistan. On July 4th, 1947 the Indian Independence Act (IIA) was introduced in the British Parliament and was passed The Act formulated on 18 July, made provision for the Partition of the sub-continent into two sovereign states. Pakistan celebrated Independence on 14 August 1947, and India on 15 August. Thus came to an end, the more than 200 years of colonial rule in the subcontinent. The provinces which were formerly administered directly by the British are attached to one or other of these two states, depending on whether the majority of the population is Hindu or Muslim. The princely states are free to decide whether they belong to Pakistan or India. [16]

The main provisions of IIA 1947 were as under:

1. The British government will leave India on 15th August, 1947.

2. India will be divided into two sovereign states of India and Pakistan and both these states will become sovereign on this very day.

3. The powers previously exercised by the British government in India will be transferred to both these states.

4. Paramountcy of Britain over Indian states and tribal areas was to come to an end on 15th August, 1947. In their case power was not to be transferred to dominions, but it was left to the states to decide whether they would like to join India or Pakistan.

15 Khanam, *loc. cit.*

16 "Indian Independence Act (1947)", *CCVE*, https://www.cvce.eu/content/publication/2015/6/30/b95cc09b-eb90-400d-848d-266e2346a603/publishable_en.pdf (Date of Accession: 03.10.2019).

With regard to the princely Indian states, Section 7 of the 1947 Act declared that as of 15 August 1947 "the suzerainty of His Majesty over the Indian States lapses." The amended Government of India Act of 1935 provided in Section 6 that "a princely Indian state shall be deemed to have acceded to either of the dominion on the acceptance of the IOA executed by the Ruler thereof." [17]

The Standstill Agreement and the Instruments of Accession

Two key documents were produced for the Princely States. The first was the Standstill Agreement, which confirmed the continuance of the pre-existing agreements and administrative practices. The Standstill Agreement was also used as a negotiating tool, as the States Department categorically ruled out signing a Standstill Agreement. The second was the IOA, by which the ruler of the princely state in question agreed to the accession of his kingdom to independent India, granting the latter control over specified subject matters. The nature of the subject matters varied depending on the acceding state. The states which had internal autonomy under the British signed an IOA which only ceded three subjects to the government of India— defence, external affairs, and communications, each defined in accordance with List 1 to Schedule VII of the Government of India Act 1935. Rulers of states which were in effect estates or talukas, where substantial administrative powers were exercised by the Crown, signed a different IOA, which vested all residuary powers and jurisdiction in the Government of India. Rulers of states which had an intermediate status signed a third type of Instrument, which preserved the degree of power they had under the British.[18]

The IOA implemented a number of other safeguards. Clause 7 provided that the princes would not be bound to the Indian constitution as and when it was drafted. Clause 8 guaranteed their autonomy in all areas that were not ceded to the Government of

17 Hingorani, *op. cit.*, p. 5-7.
18 Katke, *op.cit.*, p. 214.

India. This was supplemented by a number of promises. Rulers who agreed to accede would receive guarantees that their extra-territorial rights, such as immunity from prosecution in Indian courts and exemption from customs duty, would be protected, that they would be allowed to democratize slowly, that none of the eighteen major states would be forced to merge, and that they would remain eligible for British honours and decorations.[19]

Junagadh

The Nawab of Junagadh, a princely state located on the south-western end of Gujarat and having no common border with Pakistan, chose to accede to Pakistan on 15 September 1947. The rulers of two states that were subject to the suzerainty of Junagadh—Mangrol and Babariawad—reacted to this by declaring their independence from Junagadh and acceding to India In response, the Nawab of Junagadh militarily occupied the states The rulers of neighboring states reacted angrily, sending their troops to the Junagadh frontier and appealed to the Government of India for assistance A group of Junagadhi people, led by Samaldas Gandhi, formed a government-in-exile, the Aarzi Hukumat (temporary government).[20]

After Pakistan announced that it had accepted the accession of Junagadh on 16 September 1947, India proposed that the future of the state be determined by the people via a referendum or plebiscite. India pointed out that the state was 80% Hindu, and called for a plebiscite to decide the question of accession India rejected on 26 October, the Nawab and his family fled to Pakistan following clashes with Indian troops. On 7 November, Junagadh's court, facing collapse, invited the Government of India to take over the State's administration The Government of India agreed.[21]

A plebiscite (referendum) was conducted on 20 February 1948, which went almost unanimously in favour of accession to India.[22]

19 Katke, *op. cit.* p. 211.
20 *Ibid*
21 *Ibid*
22 Katke, *op. cit*¸ p. 212.

When India brought the Jammu and Kashmir problem to the UN Security Council, during the debates, the problem of the status of Junadagh was also included into the discussions for the future of Jammu and Kashmir.

During the 264th meeting of the UN Security Council on 8 March 1947, Mr. Gopalaswami Ayyangar , representative of India stated that as early as 21 August 1947 "when India come to know that Junagadh proposed to accede to Pakistan, the ministry of the Government of India concerned with this matter wrote to the High Commissioner of Pakistan in New Delhi and particularly stressed this claim as: [23]

> *"An important decision like this cannot surely be taken by its Ruler without regard to the wishes of its peoples,"*

Mr. Gopalaswami Ayyangar informed the UN Security Council that on 11 September 1947 Prime Minister of India sent a telegraph to the Prime Minister of Pakistan. In the course of the telegram, it is said that:[24]

> *"The dominion of India would be prepared to accept any democratic test in respect of the accession of Junagadh state to either of the two dominions. They would accordingly be willing to abide by a verdict of its people in this matter, ascertained under joint supervision".*

Mr. Gopalaswami Ayyangar, informed the UN Security Council during the 264th meeting about the communications of India with Pakistan and India`s political point of view on the final decolonization process of Junadagh in his speech as:

By a telegraph dated 21 September 1947, sent from the Prime Minister of India to the Prime Minister of Pakistan. In the course of this telegram, it is written that:[25]

23 UN Security Council 8 March 1948 264th Meeting, UN Document, S/Agenda 264, p.51.
24 UN Security Council 8 March 1948 264th Meeting, *op. cit.*, p.52.
25 *Ibid.*

> *"As regards accession of Junadagh to Pakistan, your attention is invited to our telegram addressed to Prime Minister Pakistan and delivered personally at the Government House, Karachi by Lord Ismay on 12 September, explaining fully the Government of India's position regarding Junadagh."*
>
> *"The Government of India are, however, still prepared to accept the verdict of the people of Junadagh in the matter of accession, the plebiscite being carried out under supervision of Indian and Junadagh Governments"*

By a telegraph dated 2 October 1947, from the Foreign Affairs of New Delhi to the Foreign Affairs in Karachi, drew the attention to this situation in the following words: [26]

> *"This will relieve the present tension and enable us to proceed towards finding an amicable solution in consonance with the wishes of the people of the territories effected"*

By a telegram form India dated 5 October 1947, it is written that:[27]

> *"The only basis on which friendly negotiations can start and be fruitful is reversion in Junadagh, Bariawad and Mangrol to the status quo preceding, the accession of Junadagh to Pakistan. The alternative to negotiation is a referendum or plebiscite by the people of Junadagh"*

By a telegram on 7 October, the Prime Minister of India had written that:[28]

> *"In our opinion it is essential to reach a settlement of this fundamental issue Fust. We are glad that*

26 *Ibid.*
27 UN Security Council 8 March 1948 264th Meeting, *op. cit.*, p. 53.
28 *Ibid.*

> *you are agreeable to our discussing conditions and circumstances under which a plebiscite or a referendum should he held to ascertain the wishes of the people. Once this is settled in Junagadh, it would be comparatively an easy matter to dispose of the subsidiary issues of Mangrol and Babriawad."*

By a telegram on 10 November 1947, the day after the administration of Junadagh was taken over from the Dewan and Council of Ministers, sent to Prime Minister of Pakistan form India, it is written that:[29]

> *"We have pointed out to you previously that final decision should be made by means of referandum or plebiscite"*

By a telegram on 17 November, from Foreign Ministry of India sent to Foreign Ministry of Pakistan, it is written that:[30]

> *"To stabilize the situation swiftly and promptly is therefore the essence of the Government of India`s policy, and for this purpose we wish to settle the issue with the least possible delay by a plebiscite, as already conveyed to you in my telegram dated 10 November. This seems to us the only way in which this issue settled satisfactorily."*

Mr. Gopalaswami Ayyangar stated the policy of India on the decolonization of Junadagh with the following sentences:

> *"No doubt, the ruler, as the head of State has to take action in respect of accession. When he and his people are in agreement as to the new Dominion, to which they could accede, he applies for accession to that Dominion. However when he takes one view and his people take another view, the wishes of the people have to be*

29 *Ibid.*
30 *Ibid.*

ascertained. When so ascertained, the Ruler has to take action in accordance with the verdict of the people. That is our position."[31]

"In fact, I make claim that there has been no case within my knowledge where, in the case of such conflict of view between the Ruler and his people, India has contended that the Ruler`s view should prevail."

"If there is one thing which is clear above everything else in the Junadagh case, it is that the people of this State by an overwhelming majority of both its leaders and its rank and file were in favour of accession to India, while the Ruler favoured accession to India, while the Rulerfavoured accession to Pakistan. And the principle is conceded – as the representative of Pakistan has stated – that, in the case of a disputed accession of that sort, the verdict of the people should be the final determinant in deciding the question to which Dominion the State want s accede."[32]

Jammu and Kashmir

Before the partition of British India, the Princely State of Kashmir was an autonomous state under the paramountcy of British rule with the Treaty of Amritsar, 16 March 1846. Under the terms of Article 9 of the treaty, Kashmir was in fact a protectorate of the British. Article 9 of this Treaty clearly stated that "the British Government will give its aid to the Maharaja in protecting his territories from external enemies".[33]

Kashmir had consolidated power (reflected in its constitution Jammu and Kashmir Constitution Act 1939) general laws, and the numerous treaties that Kashmir signed with the British and

31 UN Security Council 8 March 1948 264th Meeting, *op. cit.*, s. 50-51.
32 *Ibid.*
33 UN Security Council 18 February 1948 250th Meeting, UN Document, S/Agenda 250, p. 185.

the neighboring states. Kashmir had its own rules for citizenship, which were framed into law by the State Subject Definition Notification of 20 April 1927.[34]

In preparation for British India's decolonization, the IIA 1947 (IIA) under Section 7(1) (b), clarified the British Government's potion, which was that "paramountcy is not transferable in any circumstances" and would simply lapse. However, Section 7(1) (a) of the IIA did mention that the British Government was not responsible to the "government of any of the territories which, immediately before that day (15 August 1947), were included in British India".

The intention of the Maharaja of Kashmir to remain independent became obvious when he sought to enter into the Standstill Agreements with both India and Pakistan, in accordance with the IIA 1947. The Maharaja sent identical telegrams to both the dominions on 12 August 1947.The text is as follows:

> *"Jammu and Kashmir Government would welcome Standstill Agreements with India/Pakistan on all matters Ion which these exist at present moment with outgoing British India Government. It is suggested that existing arrangements should continue pending settlement of details."*

The reply from Government of Pakistan sent on August 15th 1947, it is written that:

> *"Your telegram of the 12th. The Government of Pakistan agrees to have a Standstill Agreement and Kashmir for the continuance of the existing arrangements pending settlement of details and formal execution."*

34 Fozia Nazir Lone, "Historical Title", *Self-Determination and the Kashmir Question*, Brill Nijhoff, Leiden 2018, p. 173.

The reply from Government of India, it is written that:

> *"Government of India would be glad if you or some other Minister duly authorized in this behalf could fly to Delhi for negotiating Standstill Agreement between Kashmir Government and India dominion. Early action desirable to maintain intact existing agreements and administrative arrangements."*[35]

Pakistan agreed to a Standstill Agreement on 15 August 1947. The Standstill Agreement was a settlement pending any accession and the formal execution of new agreements. As far as India was concerned, she was in the process of negotiating such an agreement, but it was never signed. The execution of the Standstill Agreement with Pakistan and the negotiation of such an agreement with India clearly meant that none of the dominions were entitled to exercise any paramountcy over Kashmir.[36]

On 24 October, the rebels in Poonch declared independence as Azad Kashmir and the Pathans advanced to within 30 miles of Srinagar. They met with little resistance from the Jammu and Kashmir State forces, many of whom were Muslims from Poonch who changed sides. However, the Kashmiri Muslims did not rise in support of the invaders - at least in part because of the gross misbehavior of the Pathans in Baramulla, which they treated as a conquered rather than a liberated town. On the same day, the Maharaja asked for Indian military assistance. The Indian Government insisted on the Maharaja signing the Instrument of Accession before sending help. The Maharaja signed the Instrument on 26 October and sent it to Lord Mountbatten as Governor-General of India at the time. On 27 October, Mountbatten replied to the Maharaja in a letter accepting the accession and containing the following words: "...consistently with their policy that in the case of any State where the issue of accession has been the subject of

35 Jammu and Kashmir in Legal Perspective, *The European Foundation for South Asian Studies,* https://www.efsas.org/EFSAS-Jammu%20and%20Kashmir%20in%20Legal%20Perspective.pdf, (Date of Accession: 03.10.2019).
36 Lone, *op.cit.*, p. 183.

dispute, the question of accession should be decided in accordance with the wishes of the people of the State, it is my Government's wish that as soon as law and order have been restored in Kashmir and her soil cleared of the invader the question of the State`s accession should be settled by a reference to the people".[37]

The Maharaja of the State of Jammu and Kashmir signs the IOA on 26 October, acceding the 75% majority Muslim region to the Indian Union. Indian troops were airlifted into Srinagar on the morning of 27 October. They quickly established the situation and by about the middle of November had recaptured the rest of the Valley of Kashmir.

The form of the IOA executed by the Ruler of the State is the same as that of the Instruments executed by the Rulers of other acceding States. Legally and constitutionally therefore the position of this State is the same as that of the other acceding States.

The Government of India, in their White Paper on Indian States book openly expressed their point of view that it's the people to determine their own political future as: [38]

> *"No doubt, stand committed to the position that the accession of this State is subject to confirmation by the people of the State. This, however, does not detract from the legal fact of accession. In view of the special problems arising in respect of this State and the fact that the Government of India have assured its people that they would themselves finally determine their political future, the following special provision has been made in the Constitution."*

The UN was formally introduced to the Kashmir problem on 30 December, 1947 when the Government of India announced its decision to bring the dispute before the Security Council

37 International Commission of Jurists, Human Rights in Kashmir, Report of a Mission, ICJ, Geneva 1995, p. 12-13.
38 Government of India, White Paper on Indian States, Delhi 1950, p. 111.

under Article 35 of the UN Charter. India complained that Pakistani nationals had taken part in the invasion of Kashmir and that the invaders had been actively assisted by Pakistan with equipment and supplies, training and guidance and bases within Pakistani territory from which to operate. India called upon the Security Council to take steps to prevent Pakistani nationals from participating in the attack on Kashmir and Pakistan from rendering assistance in any form to the invaders. The Security Council took up the matter for consideration on 15 January 1948. The two countries agreed to the appointment of a UN Commission to mediate between them. A resolution moved by Belgium for a three-member Commission was approved by the Security Council. The Commission was to consist of one nominee each of India and Pakistan and a third member agreed upon by both. Finding India and Pakistan unable to compose these differences, a resolution was moved on 18 April 948 in the Security Council by seven members, including the UK and the US. The resolution 47 of 21 April 1948, which was passed despite protests from both India and Pakistan, expanded the size of the UN Commission on Kashmir from three to five and directed it to place its services at the disposal of India and Pakistan to restore peace and order in Kashmir and, when this was achieved, to hold a plebiscite there to determine the wishes of the people. To this end it directed Pakistan to withdraw all her personnel in Kashmir and to deny help to the invaders; when the Commission was satisfied that the invaders had started withdrawing, India would withdraw her forces leaving behind only a minimum necessary for maintaining law and order. The plebiscite 'was to be conducted by a Plebiscite Administrator to be appointed by the U N Secretary-General.[39] It is to be noted that the resolution considered no possibilities other than the accession of the State as a whole to either India or Pakistan. In particular, the possibilities of either independence or the partition of the State between India and Pakistan were ignored.[40]

39 UN's Failure in Kashmir a Factual Survey, *EPW*, https://www.epw.in/system/files/pdf/1965_17/40/un_s_failure_in_kashmira_factual_survey.pdf , (Date of Accession: 03.10.2019).

40 Government of India, White Paper on Indian States, Delhi, 1950, p.111.

Article 1 of the Indian Constitution, adopted in January 1950, deemed the State of Jammu and Kashmir to be an integral part of India. According to Indian Government White Paper, the effect of this provision is that the State of Jammu and Kashmir, "Continues to be a part of India. It is a unit of the Indian Union and the Union Parliament will have jurisdiction to make laws for this "State on matters specified either in the IOA or by later additions with the concurrence of the Government of the State. An order has been issued under Article 370 specifying (1) the matters in respect of which the Parliament may make laws for the Jammu and Kashmir State and (2) the provisions, other than Article 1 and Article 370, which shall apply to that State. Steps will be taken for the purpose of convening a Constituent Assembly which will into these matters in detail and when it comes to a decision on them, it will make a recommendation to the President who will either abrogate Article 370 or direct that it shall apply with such modifications and exceptions as he may specify".[41]

A communication from the British Embassy in Washington to the Foreign Office in London in 1950 discussed the legality of the IOA to India and concluded:

> The Standstill Agreement ... was still in force at the time when the Maharaja of Kashmir executed an Instrument of Accession to India in October 1947 ... Kashmir's failure to consult Pakistan in advance of the Maharaja's executing an Instrument of Accession ... constituted ... breach of duty on the part of Kashmir ... the contested Instrument of Accession was not effective to settle definitely the right of the parties ... for these reasons the execution of Instrument of Accession could not finally accomplish the accession of Kashmir to either dominion ... the question of [the] future of Kashmir remained to be settled in some orderly fashion and in relatively stable conditions.[42]

By its resolution 91 on 31 March 1951, the UN Security Council affirmed that any determination of the future shape and affiliation

41 *Ibid*.
42 Government of India, *op. cit.*, p. 2080.

of Jammu and Kashmir by the proposed Constituent Assembly would not constitute a disposition of the State in accordance with the principle (embodied in the Security Councils earlier resolutions) that the final disposition of the State should "be made in accordance with the will of the people expressed through the democratic method of a free and impartial plebiscite (referendum) conducted under the auspices of the UN".[43]

The Principle of Justice

The principle of justice is linked to the principle of good faith, which is included in the very concept of *pacta sunt servanda*. As an element of the principle *pacta sunt servanda*, the principle of good faith binds subjects of international law to identify in good faith the actual circumstances and interests of states within the scope of a rule; to select the applicable rule or rules in good faith; to ensure that the application of rules is truly compatible with their letter and spirit, as well as with concepts of international law and morality and other obligations of the subjects; to define in good faith the limits on rules so as not to apply them in such a way as to cause damage to the rights and legitimate interests of other subjects; and to prevent abuse of rights. The principle of good faith fulfillment of obligations prescribes a rule of fairness, which governs the ways and means of implementing international legal norms. For example, it is inadmissible to use deception. The latter is known to be a ground for challenging the validity of treaties, as is fraud.[44]

It is well established in international law that obligations cannot be imposed by a State upon another State without its consent. For the law of treaties, this principle has been codified in article 34 of the 1969 Vienna Convention on the Law of Treaties (VCLT).[45]The

43 International Commission of Jurists, Human Rights in Kashmir, Report of a Mission, ICJ, Geneva 1995, p. 12-13.

44 Igor Ivanovich Lukashuk, "The Principle Pacta Sunt Servanda and the Nature of Obligation under International Law", *American Journal of International Law*, 83(3), 1959, p. 517.

45 "Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations, with Commentaries Thereto", *UN,* http://legal.un.org/ilc/texts/instruments/english/commentaries/9_9_2006.pdf p.379, (Date of Accession: 03.10.2019).

principle that treaty obligations must be fulfilled in good faith is one aspect of the fundamental rule that requires all subjects of international law to exercise in good faith their rights and duties under that law. In the sociopolitical sphere, this fundamental principle may be seen as manifesting the need perceived by states for an international legal system that can ensure international order and prevent arbitrary behavior and chaos. In the legal sphere, the principle is confirmation of the character of international law as law. Subjects of international law are legally bound under the principle to implement what the law prescribes. Like all other rules of international law, the principle of good faith fulfillment of obligations derives from, and is kept in force by, the general consent of states. The detailed content of the principle can also be seen to be developing on a consensual basis. Consent is the only way to establish rules that legally bind sovereign states.[46]

When a unilateral action of a state clarified its consent on s specific subject. The ICJ has found that that a State can be bound by a unilateral act alone: a public statement made by a State, with an intention to be bound, can create legal obligations, which could otherwise only be created through a treaty. In the Nuclear Tests Case, the ICJ held that:[47]

> *"One of the basic principles governing the creation and performance of legal obligations... is good faith. Trust and confidence are inherent in international cooperation, in particular in an age when this cooperation in many fields is becoming increasingly essential. Just as the very rule of pacta sunt servanda in the law of treaties is based on good faith, so also is the binding character of an international obligation. Thus interested States may take cognisance of unilateral declarations and place confidence in them, and are entitled to require that the obligation thus created be respected."*

46 Lukashuk, *op. cit.*, p.513.
47 Stevin Reinhold, "Good Faith in International Law", *UCL Journal of Law and Jurisprudence*, 2, 2014, p. 46.

The VCLT, which established the term "international community" in international law, defined it as a community of States (article 53). What is meant here is not merely the sum total of States, but a specific system that has certain attributes, including legal attributes, that are not to be found in the individual States that constitute it. It is not by chance that international legal instruments refer to the international community of States as a whole, that is, a unified entity. Acting as such, the international community has the right to adopt and amend the peremptory rules of international law (*jus cogens*) cannot fail to have-its own interests, which are not confined to the coinciding individual interests of States. Thus, one of the international community's principal tasks is to protect its own interests. The foregoing is also reflected in the practice of the International Court of Justice. In its decision in the case concerning United States Diplomatic and Consular Staff in Tehran, the Court referred to interests "vital for the security and well-being of the complex international community of the present day".[48]

Faced with the existence of the international community, the ICJ is taking account of the legal consequences arising therefrom. In particular, it has made a distinction between the ordinary international obligations of States and their obligations towards the international community as a whole, such as the obligations deriving from the norms on the prohibition of aggression and genocide, as well as from human rights norms. The obligations towards the international community are the concern of all States, they are *erga omnes* obligations.[49]

The accepted formulation is "obligations under international law." In jurisprudence the term "obligation" is not equivalent to the term "duty," since the former includes not only duties, but also relevant rights. Rights, too, should be exercised in good faith, i.e., in conformity with the purposes and principles of international law and without prejudice to the legitimate interests and rights of other

48 "International Law Commission on the Eve of the Twenty-First Century", *UN*, New York 1997, p. 53-54.
49 *Ibid*.

subjects of that law.[50] A considerable weight of authority supports the view that estoppel is a general principle of international law, resting on principles of good faith and consistency, and shorn of the technical features to be found in municipal law.[51]

Further aspects of good faith in international law, which have fairly well established private law counterparts, are the principles of estoppel. A considerable weight of authority supports the view that estoppel is a general principle of international law, resting on principles of good faith and consistency.[52] International law has long recognized the doctrine of estoppel, a principle which prevents states from acting inconsistently to the detriment of others.[53]

Estoppel

Obligations cannot be imposed by a State upon another State without its consent as well there is no reason why this principle should not also apply to unilateral declarations; the consequence is that a State cannot impose obligations on other States to which it has addressed a unilateral declaration unless the latter unequivocally accept these obligations resulting from that declaration. In the circumstances, the State or States concerned are in fact bound by their own acceptance.[54]

International law has long recognized the doctrine of estoppel, a principle which prevents states from acting inconsistently to the detriment of others. Generally, a unilateral act of a State means an unequivocal expression of will which is formulated by a State with the intention of producing legal effects in relation to the

50 Lukashuk, *op. cit.*, p. 514.
51 *Ibid.*
52 Reinhold, *op. cit.*, p. 46.
53 Alfred P. Rubin, "The International Legal Effects of Unilateral Declarations", *American Journal of International Law*, 1977, p. 12.
54 "Guiding Principles Applicable to unilateral Declarations of States Capable of Creating Legal Obligations, with Commentaries Thereto", *UN*, http://legal.un.org/ilc/texts/instruments/english/commentaries/9_9_2006.pdf , (Date of Accession: 03.10.2019).

international community.[55] Estoppel is a legal technique whereby a State is bound by its former declaration in a certain case and cannot afterwards alter its position. According to the Anglo-Saxon doctrine the principle of estoppel rise from the maxim of adversus factus suum quis venire non potest, thus it is a mechanism applicable in the international sphere which primarily deals with creating a certain amount of legal security, preventing States from acting against their own acts. Its significance in international law is embodied in its evidential and often practical importance. In international law, estoppel is a consequence of the principle of good faith which also governs the rules on the legal effects of unilateral acts. As its connection with unilateral acts it seems, that a unilateral act could give rise to an estoppel, but it is a consequence of the act and no category of acts which would constitute 'estoppel acts' seems to exist, the only link between the two categories is that, in certain circumstances, a unilateral act could form the basis for an estoppel.[38] It is not in itself a unilateral act but the consequence of such an act or acts, moreover, the most characteristic element of estoppel is not the conduct of the State, but rather the confidence created in the other State thus it serves as a mechanism that eventually validates given circumstances which otherwise would have permitted the nullification of the legal act in question. The question of estoppel can be interested in connection with the modification of unilateral acts by the State formulating them.[56]

In order to estoppel shall be revoked, it is necessary that the original act - whether it is a unilateral act or not - or the 'attitude' to which the State is bound, shall be clear and unequivocal. International estoppel requires satisfaction of three elements. First, the statement creating the estoppel must be clear and unambiguous; second, the statement must be voluntary, unconditional, and authorized; and finally, there must be good faith reliance upon the representation of one party by the other party either to the detriment of the relying party or to the advantage of

55 UN Doc. A/CN.4/525, Fifth Report on Unilateral Acts of States by Victor Rodríguez Cedeño, Special Rapporteur. 54th session. p. 51.

56 Erzsébet Csatlós, The Legal Regime of Unilateral Act of States, *Miskolc Journal of International Law*, 7(1), 2010, p. 38.

the party making the representation.[57]

In the Nicaragua case, the ICJ reaffirmed the reliance requirement:[58]

> *"Estoppel may be inferred from the conduct, declarations and the like made by a State which... [has] caused another State or States, in reliance on such conduct, detrimentally to change position or suffer some prejudice."*

What appears to be the common denominator of the various aspects of estoppel which have been discussed, is the requirement that a State ought to maintain towards a given factual or legal situation an attitude consistent with that which it was known to have adopted with regard to the same circumstances on previous occasions. At its simplest, estoppel in international law reflects the possible variations, in circumstances and effects, of the underlying principle of consistency which may be summed up in the maxim *allegana contraria non audiendus est*. Linked as it is with the device of recognition, it is potentially applicable throughout the whole field of international law in a limitless variety of contexts, not primarily as a procedural rule but as a substantive principle of law.[59] Estoppel is not dependent for its authority on acceptance of the principle of good faith. It has itself been accorded substantial recognition by States and by tribunals.[60]

Unilateral declaration can be addressed to the international community as a whole, containing *erga omnes* undertakings. , Egypt's declaration regarding the Suez Canal was not addressed only to the States parties to the Constantinople Convention or

57 Megan L. Wagner, Jurisdiction by Estoppel in the International Court of Justice, *California Law Review*, 74(5), 1986, p. 1780.
58 ML Wagner, Jurisdiction by Estoppel in the International Court of Justice, Berkeley, https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1992&context=californialawreview , (Date of Accession: 03.10.2019).
59 I.C. MacGibbon , "Estoppel in International Law", International & Comparative Law Quaterly, 7(3), 1958, p. 512-513.
60 *Ibid.*

to the States members of the Suez Canal Users' Association, but to the entire international community. Similarly, the Truman Proclamation, and also the French declarations regarding suspension of nuclear tests in the atmosphere, although the latter were of more direct concern to Australia and New Zealand, as well as certain neighbouring States were also made *erga omnes* and, accordingly, were addressed to the international community in its entirety.[61]

The Binding Character of the Declarations Made Before the Permanent Court of Justice

The PCIJ Justice has held that declarations of intention made before the court are binding. In the German Interests in Polish Upper Silesia Case of 1926, PCIJ stated that:[62]

> *"The representative before the Court of the respondent Party, in addition to the declarations above mentioned regarding the intention of his Government not to expropriate certain parts of the estates in respect of which notice had been given, has made other similar declarations which will be dealt with later; the Court can be in no doubt as to the binding character of all these declarations."*

In *The Mavrommatis Palestine Concessions Case* of 1925, the Court referred to a declaration made by the British Government, through its Representative before the Court: [63]

> *"That explicit declaration I, as such authorized representative of H.M. Government, and a member of*

61 "Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations, with Commentaries Thereto", *UN,* http://legal.un.org/ilc/texts/instruments/english/commentaries/9_9_2006.pdf , (Date of Accession: 03.10.2019).
62 "Case Concerning Certain German Interests in Polish Upper Silesia", *ICJ*, https://www.icj-cij.org/files/permanent-court-of-international-justice/serie_A/A_07/17_Interets_allemands_en_Haute_Silesie_polonaise_Fond_Arret.pdf, (Date of Accession: 03.10.2019).
63 Rubin, *op. cit.*, p. 6.

> *it, here repeat that we intend to carry out whatever obligations, if any, the Court says are imposed upon us by the terms of the Lausanne Protocol."*

The Court said:

> *"After this statement, the binding character of which is beyond question ..."*

The Use of Estoppel in the ICJ

The ICJ has bound a state by its previous actions on four occasions. Two involved unilateral declarations, while the other two involved acquiescence. In none of these cases did the Court identify the doctrine that justified its holding. However, all four contained references to good faith, consistency, or intent to be bound, language that supports an estoppel theory.

Eastern Greenland

By 1933, the doctrine of estoppel in international adjudications had gained enough legitimacy to serve as the basis for a PCI decision. The Court held in Legal Status of Eastern Greenland that Norway could not object to a Danish claim of sovereignty over Greenland because a Norwegian official previously had made a statement inconsistent with such a claim.

Fisheries Case

In 1951, the International Court of Justice applied the principle of estoppel in the Fisheries case. The United Kingdom brought the case to the ICJ, objecting to Norway's delimitation of its coastline along the North Sea. Since the coastline serves as the baseline for measuring the territorial sea, Norway's delimitation extended its territorial sea rights into what the United Kingdom considered the high seas, open to general use by all nations. The ICJ, however, noted that "the system [of delimitation] was consistently applied

by Norwegian authorities," and that "for a period of more than sixty years the United Kingdom Government itself in no way contested it." Therefore, the Court held, Norway could enforce the system against the United Kingdom.

Temple

The Court's clearest application of estoppel was in 1962 in Concerning the Temple of Preah Vihear. The suit centered on the location of the boundary between Cambodia and Thailand. The temple, which had cultural and religious significance for both states, sat on a promontory in the Dangrek mountain range. This range generally served as the boundary in the region. The Court held that Thailand's failure to object to this map required it to abide by the boundary. It based this conclusion on the need for consistency in international relations, stating that "when two countries establish a frontier between them, one of the primary objects is to achieve stability and finality. This is impossible if the line so established can, at any moment ... be called in question.... Although again the judgment does not refer to estoppel specifically, this language evokes the general principle.

Nuclear Tests

In Nuclear Tests, the Court declined to reach the merits upon a finding of mootness. Australia had brought the case in opposition to France's atmospheric nuclear tests in the South Pacific Ocean. Before the case was heard, however, France declared that "the atmospheric tests which are soon to be carried out will, in the normal course of events, be the last of this type." The Court held that if this statement were held binding, Australia would have to regard "its objective as having been achieved."[64]

64 Wagner, *op. cit.*

Conclusion

Article 1.1 articulates the primary goal of the UN Charter, namely the maintenance of international peace and security and the peaceful settlement of disputes in accordance with international law and procedural justice. Article 2.2 requires that the UN (and its organs) respects the principle of good faith, whereas article 1.3 obliges the organisation to protect human rights. The principle of good faith as articulated in article 2.2 of the Charter is closely related to the concept of equitable (promissory) estoppel, which was initially developed in interstate relations, but also applies to international organisations as a general principle of law. Where a country or an international organisation creates the legitimate expectation that it will act in a certain manner, it is under a legal obligation to fulfil that expectation. More concretely, in light of the interaction of the principle of good faith with articles 1.1 and 1.3 of the Charter, the principle of good faith would estop the organs of the UN from behaviour that violates the rights and obligations flowing from these articles. [65]

Article 24 of the UN Charter defines functions and powers of the UN Charter. Article 24.1 mentions the primary responsibility for the Security Council for the maintenance of international peace and security whereas Article 24.2 articulates the responsibility of the Security Council to act in accordance with the Purposes and Principles of the UN Charter to achieve the duties.

The UN was formally introduced to the Kashmir problem on 30 December 1947 when the Government of India announced its decision to bring the dispute before the Security Council under Article 35 of the UN Charter. Article 35 is under Chapter VI: Pacific Settlement of Disputes of the UN Charter by which any member of the UN may bring any dispute, or any situation of the nature

65 Erika de Wet, "Holding the UN Security Council Accountable for Human Rights Violations Through Domestic and Regional Courts: A case of "Be Careful What You Wish For"", *EUI*, https://www.eui.eu/Documents/DepartmentsCentres/AcademyofEuropeanLaw/CourseMaterialsHR/HR2009/DeWet/DeWetBackgroundReading1.pdf , (Date of Accession: 03.10.2019).

referred to in Article 34, to the attention of the Security Council or of the General Assembly. Article 34 stipulates that the Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

One could argue that the Security Council is, in principle, bound to respect all human rights contained in the Universal Bill of Human Rights. This includes the United Nations Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. Although the Security Council is not a party to these treaties by means of ratification, they represent an elaboration upon the Charter's original vision of human rights found in its purposes (Article 1.3), and Articles 55 and 56.4[66] On the other hand, States are bound their unilateral declarations during the Security Council debates as a source of law within the principle of *maxim allegans contraria non est audiendus*, same as the binding character of the declarations made before the PCIJ. The ICJ has bound a state by its previous actions on four occasions, all four contained references to good faith, consistency, or intent to be bound, language that supports an estoppel theory.

Accordance with article 25 of the Charter which obliges members of the UN to accept and carry out the decisions of the Security Council. When India brought the Kashmir dispute to the UN Security Council, India accepted to carry out any decision of the UN Security Council as well as its unilateral declarations made during the Security Council meetings as an obligations arising from Article 2.2 of the UN Charter as a principle of *maxim allegans contraria non est audiendus* with in the concept of estoppel.

India proposed that the future of the Junagadh to be determined by the people via a referendum or plebiscite. India pointed out that

66 Erika de Wet, "Human Rights Limitations to Economic Enforcement Measures under Article 41 of the United Nations Charter and the Iraqi Sanctions Regime", *Leiden Journal of International Law*, 14, 2011, p. 284.

the state of Junagadh was 80% Hindu, and called for a plebiscite to decide the question of accession. India repeated its point of view that an important decision cannot surely be taken by the Ruler of the Princely State without regard to the wishes of its people in the 250th and 264th meeting of the Security Council. India mentioned the principle of the verdict of people for the decolonization process of the Princely States and according to India an important decision like this cannot surely be taken by its Ruler without regard to the wishes of its people. Indian`s declarations on Junadagh during the UN Security Council meetings are one of the legal background of the resolution 91 of 31 March 1951 of the UN Security Council that any determination of the future shape and affiliation of Jammu and Kashmir "be made in accordance with the will of the people expressed through the democratic method of a free and impartial plebiscite (referendum) conducted under the auspices of the UN".

On 5 August 2019, when the Indian Government suddenly announced the revocation of Article 370 of the Constitution, which grants the state of Jammu and Kashmir considerable political autonomy, India acted against the principle of *maxim allegans contraria non est audiendus*. The Maharaja of the State of Jammu and Kashmir signed the IOA, acceding the 75% majority Muslim region to the Indian Union which was vice versa the situation of the Princely State of Junadagh. As long as, the principle of justice is linked to the principle of good faith, which is included in the very concept of *pacta sunt servanda*. As an element of the principle *pacta sunt servanda*, the principle of good faith binds subjects of international law to identify in good faith the actual circumstances and interests of states within the scope of a rule in the international community, and India is in fact bound by its own acceptance of the principle of the verdict of the people of Jammu and Kashmir. As in the Advisory Opinion on the Tunis and Morocco Nationality Decrees of 1923, the PCIJ stated that whether a certain matter is or is not solely within the domestic jurisdiction of a State is an essentially relative question; it depends on the development of international relations of the State. By its unilateral declarations during the meetings of the UN Security Council, India entered the international obligation to respect to the verdict of the peoples of

the Jammu and Kashmir as the verdict of the peoples of Junadagh. The revocation of Article 370 of the constitution by the Indian government means that in fact India is acting against its own acts.

References

"For", *EUI*, https://www.eui.eu/Documents/DepartmentsCentres/AcademyofEuropeanLaw/CourseMaterialsHR/HR2009/DeWet/DeWetBackgroundReading1.pdf, (Date of Accession: 03.10.2019).

"Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations, with Commentaries Thereto", *UN*, http://legal.un.org/ilc/texts/instruments/english/commentaries/9_9_2006.pdf , (Date of Accession: 03.10.2019).

"Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations, with Commentaries Thereto", *UN*, http://legal.un.org/ilc/texts/instruments/english/commentaries/9_9_2006.pdf p.379, (Date of Accession: 03.10.2019).

"Indian Independence Act (1947)", *CVCE*, https://www.cvce.eu/content/publication/2015/6/30/b95cc09b-eb90-400d-848d-266e2346a603/publishable_en.pdf, (Date of Accession: 03.10.2019).

"Jammu and Kashmir in Legal Perspective", *The European Foundation for South Asian Studies*, https://www.efsas.org/EFSAS-Jammu%20and%20Kashmir%20in%20Legal%20Perspective.pdf, (Date of Accession: 03.10.2019).

"UN's Failure in Kashmir a Factual Survey", *UN*, https://www.epw.in/system/files/pdf/1965_17/40/un_s_failure_in_kashmira_factual_survey.pdf , (Date of Accession: 03.10.2019).

CSATLÓS, Erzsébet, "The Legal Regime of Unilateral Act of States", *Miskolc Journal of International Law*, 7(1) , 2010, p. 33-60.

EROL, Mehmet Seyfettin-Oktay Bingöl, "Birinci Dünya Savaşı'nın Afrika'ya ve Sömürgeciliğe Etkileri." *Gazi Akademik Bakış* 7(14), 2014, p. 177-196.

Government of India, *White Paper on Indian States*, Delhi 1950.

HINGORANI, Aman, *The Kashmir Issue: Differing Perceptions*, Swiss

Federal Institute of Technology Zurich, Zurich 2007.

International Commission of Jurists, Human Rights in Kashmir, Report of a Mission, *ICJ*, Geneva 1995 p.12-13.

International Law Commission on the Eve of the Twenty-first Century, *UN,* New York 1997, p. 53-54.

KATKE, Santoshkumar M, "A Study on Contributions of Sardar Vallabhbhai Patel in Consolidating Social Elements in New India After Independence", *International Journal of Creative Thoughts*, 3(1), March 2015, p. 202-215.

KHANAM, Attiya, "An Historical Overview of the Accession of Princely States", *Journal of Historical Studies,* 2(1), January-June 2016, p. 84-103.

LONE, Fozia Nazir, *Historical Title, Self-Determination and the Kashmir Question*, Brill Nijhoff, Leiden 2018.

LUKASHUK, Igor Ivanovich, "The Principle Pacta Sunt Servanda and the Nature of Obligation under International Law", *American Journal of International Law*, 83(3), 1959, p. 513-518.

NAGAN, Winston P.-Aitza M. Haddad, "Sovereignty in Theory and Practice", *San Diego International Law Journal*, 2012, p. 429-520.

PARVEEN, Kausar, "Nature of Indian Politics Before 1947", *Center for South Asian Studies*, 2013, 14, p. 130-182.

REINHOLD, Stevin, "Good Faith in International Law, *UCL Journal of Law and Jurisprudence*, 2, 2014, p. 40-62.

RUBIN, Alfred P., "The International Legal Effects of Unilateral Declarations", *American Journal of International Law*, 1977, p. 1-30.

SVENSSON, Ted, "A Federation of Equals? Bringing the Princely States into United India"*, Stance Working Paper Series*; 9, 2016,

The Law Dictionary, https://dictionary.thelaw.com/allegans-contraria-non-est-audiendus/ (Date of Accession:

03.10.2019).

UN Doc. A/CN.4/525, Fifth Report on Unilateral Acts of States by Victor Rodríguez Cedeño, Special Rapporteur. 54th session.

UN Document, S/Agenda 250, UN Security Council 18 February 1948 250th Meeting.

UN Document, S/Agenda 264, UN Security Council 8 March 1948 264th Meeting.

WAGNER, ML, Jurisdiction by Estoppel in the International Court of Justice, Berkeley, https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1992&context=californialawreview, (Date of Accession: 03.10.2019).

WATTS, Carl P., "British Decolonization", *Academia*, https://www.academia.edu/2002497/British_Decolonization, (Date of Accession: 03.10.2019).

WET, Erika de, "Holding the UN Seuciry Council Accountable for Human Rights Violations Through Domestic and Regional Courts: A Case of "Be Careful What You Wish For", *EUI,* https://www.eui.eu/Documents/DepartmentsCentres/AcademyofEuropeanLaw/CourseMa

WET, Erika de, "Human Rights Limitations to Economic Enforcement Measures Under Article 41 of the United Nations Charter and the Iraqi Sanctions Regime", *Leiden Journal of International Law*, 14, 2011, p. 277-300.