
RECENT INTERNATIONAL ADVISORY OPINION

INTERNATIONAL LAW — UNILATERAL SECESSION — INTERNATIONAL COURT OF JUSTICE CONCLUDES THAT KOSOVO'S UNILATERAL DECLARATION OF INDEPENDENCE DID NOT VIOLATE INTERNATIONAL LAW. — Accordance with International Law of Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion (July 22, 2010), <http://www.icj-cij.org/docket/files/141/15987.pdf>.

That each state's territorial integrity is inviolable and that all peoples have a right to self-determination are bedrock principles of international law enshrined in the U.N. Charter.¹ Yet these two principles conflict when an oppressed minority seeks to achieve self-determination by seceding from an existing state. Such a conflict emerged when Kosovo declared independence from Serbia on February 17, 2008.² Recently, the International Court of Justice (ICJ) issued an advisory opinion, *Accordance with International Law of Unilateral Declaration of Independence in Respect of Kosovo*,³ concluding that Kosovo's declaration of independence did not violate international law.⁴ However, the ICJ refused to address the consequences of that declaration, particularly the question of whether Kosovo is entitled to statehood.⁵ This unnecessarily narrow opinion failed to clarify the boundaries of the right to self-determination, while also weakening the principle of territorial integrity by giving separatist movements around the world legal license to declare independence. The ICJ should have affirmed Kosovo's right to secede on the grounds that it suffered repression and denial of fundamental rights, thereby distinguishing Kosovo's claim from weaker separatist claims.

Kosovo is a former autonomous province of Yugoslavia contained within Serbia⁶ with a population consisting of approximately ninety percent ethnic Albanians.⁷ In 1989, Serbia revoked Kosovo's autonomy,⁸ leading Kosovo to declare independence and various armed

¹ See U.N. Charter art. 1, para. 2; *id.* art. 2, para. 4.

² G.A. Res. 63/3, ¶ 3, U.N. Doc. A/RES/63/3 (Oct. 8, 2008).

³ Advisory Opinion (July 22, 2010), <http://www.icj-cij.org/docket/files/141/15987.pdf>.

⁴ *Id.* ¶ 123.

⁵ *Id.* ¶ 51.

⁶ Raymond Detrez, *The Right to Self-Determination and Secession in Yugoslavia: A Hornets' Nest of Inconsistencies*, in CONTEXTUALIZING SECESSION 112, 115 (Bruno Coppieters & Richard Sakwa eds., 2003).

⁷ MARC WELLER, CONTESTED STATEHOOD: KOSOVO'S STRUGGLE FOR INDEPENDENCE 25 (2009).

⁸ *Kosovo*, ¶ 44 (separate opinion of Judge Cançado Trindade), <http://www.icj-cij.org/docket/files/141/16003.pdf>.

groups to launch attacks under the banner of the Kosovo Liberation Army.⁹ In response, the Serb government initiated repressive actions and policies — including employment discrimination, arbitrary detention and torture, rape, summary executions, and ethnic cleansing — leading to a vast refugee crisis.¹⁰ In 1999, NATO intervened with a bombing campaign against Serbia, which resulted in the Serb government withdrawing security forces and Security Council Resolution 1244 bringing Kosovo under U.N. and NATO administration.¹¹

That resolution demanded an end to violence and empowered the U.N. Secretary General to establish “an interim administration for Kosovo” that would “[p]romot[e] the establishment . . . of substantial autonomy and self-government in Kosovo,”¹² yet the resolution reaffirmed the United Nations’ commitment to “the sovereignty and territorial integrity of the Federal Republic of Yugoslavia.”¹³ Following seven years of U.N. administration, U.N. envoy Martti Ahtisaari led final status negotiations between Kosovo and Serbia in 2006, but when negotiations failed, he authored a report recommending independence for Kosovo.¹⁴ After Serbia rejected that plan, and further negotiations failed, Kosovo declared independence on February 17, 2008.¹⁵ On October 8, 2008, the General Assembly requested an advisory opinion from the ICJ to answer the question: “Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?”¹⁶

The ICJ unanimously found that it had jurisdiction to give an advisory opinion, decided to comply with the request by a nine-to-five vote, and concluded by a ten-to-four vote that Kosovo’s declaration of independence “did not violate international law.”¹⁷ Writing for the

⁹ HERIBERT FRANZ KOECK ET AL., FROM PROTECTORATE TO STATEHOOD 36 (2009).

¹⁰ *Kosovo*, ¶¶ 98–105, 119, 150 (separate opinion of Judge Cançado Trindade).

¹¹ KOECK ET AL., *supra* note 9, at 37.

¹² S.C. Res. 1244, ¶¶ 10, 11(a), U.N. Doc. S/RES/1244 (June 10, 1999).

¹³ *Id.* at pmbl. The Secretary General implemented the resolution by creating the United Nations Interim Administration Mission in Kosovo (UNMIK); subsequent UNMIK regulations created Provisional Institutions of Self-Government in Kosovo and mandated that those institutions abide by the provisions of Security Council Resolution 1244. *Kosovo*, Advisory Opinion, ¶¶ 61–62.

¹⁴ See U.N. Secretary-General, *Report of the Special Envoy of the Secretary-General on Kosovo’s Future Status*, ¶¶ 1, 3, 5, U.N. Doc. S/2007/168 (Mar. 26, 2007) [hereinafter Ahtisaari Report].

¹⁵ *Kosovo*, Advisory Opinion, ¶¶ 72–74. World opinion has been divided on Kosovo’s declaration; as of June 2010, 69 out of 192 U.N. member states had recognized Kosovo. *The Case for Kosovo*, U.S. DEP’T OF STATE, <http://www.state.gov/p/eur/ci/kv/c24701.htm> (last visited Jan. 8, 2011).

¹⁶ G.A. Res. 63/3, *supra* note 2, ¶ 6.

¹⁷ *Kosovo*, Advisory Opinion, ¶ 123. The ICJ had jurisdiction to issue an advisory opinion because the U.N. Charter allows the General Assembly to request an advisory opinion on “any legal question.” *Id.* ¶¶ 18–28 (citing U.N. Charter art. 96). The court rejected arguments that it

court, President Owada of Japan stated that the question was “narrow and specific”; it asked only whether the declaration of independence was in accordance with international law and not about the legal consequences of the declaration.¹⁸ Therefore, it was unnecessary to address whether Kosovo had achieved statehood or the validity of other states’ recognition of Kosovo.¹⁹ The court concluded that it needed to decide only “whether . . . international law *prohibited* the declaration,” not whether a “positive entitlement” to independence existed.²⁰

To determine whether the declaration violated international law, the court first looked to “general international law.”²¹ The court considered history and state practice, noting that some unilateral declarations of independence over the past three centuries resulted in new states, while others did not.²² Although the Security Council had condemned certain declarations of independence, those situations all involved clear violations of international law, such as the unlawful use of force.²³ Noting the inconclusiveness of state practice and Security Council actions, the court concluded that general international law contains no prohibition of declarations of independence.²⁴

The court next addressed whether the declaration violated Security Council Resolution 1244 or the Constitutional Framework created thereunder.²⁵ The court stated that the resolution “remained silent on the conditions for the final status of Kosovo,” so the declaration could not have violated the resolution “because the two instruments operate on a different level.”²⁶ The declaration also did not violate the Constitutional Framework because that framework governs the Provisional Institutions of Self-Government of Kosovo, and the court determined that those institutions did not issue the declaration.²⁷ Therefore, the court concluded that the declaration “did not violate any applicable rule of international law.”²⁸

should decline to offer an opinion to avoid adverse political consequences or because this matter concerned the Security Council rather than the General Assembly. *Id.* ¶¶ 35–48.

¹⁸ *Id.* ¶ 51.

¹⁹ *Id.*

²⁰ *Id.* ¶ 56 (emphasis added).

²¹ *Id.* ¶ 78.

²² *Id.* ¶ 79.

²³ *Id.* ¶ 81 (noting Security Council resolutions condemning declarations of independence by Southern Rhodesia, Northern Cyprus, and Republika Srpska).

²⁴ *Id.* ¶ 84.

²⁵ *Id.* ¶ 85.

²⁶ *Id.* ¶ 114.

²⁷ *Id.* ¶ 121. Because the original Albanian text did not refer to the Assembly of Kosovo, and the President of Kosovo (who is not a member of the Assembly) signed the declaration, *id.* ¶ 107, the court concluded that the declaration’s authors acted not as the Assembly but as “representatives of the people of Kosovo outside the framework of the interim administration,” *id.* ¶ 109.

²⁸ *Id.* ¶ 122.

Nine judges appended separate opinions, declarations, or dissenting opinions. Judge Simma of Germany, Judge Sepúlveda-Amor of Mexico, Judge Yusuf of Somalia, and Judge Cançado Trindade of Brazil concurred in the result, but each wrote separately to argue that the court's approach was too narrow. Judges Simma, Sepúlveda-Amor, and Yusuf argued that the court should have addressed Kosovo's claim to secession and clarified the scope of Kosovo's right to self-determination.²⁹ Judge Cançado Trindade explicitly affirmed Kosovo's right to "supervised independence," as recommended in the Ahtisaari Report.³⁰ Vice President Tomka of Slovakia, Judge Koroma of Sierra Leone, Judge Skotnikov of Russia, Judge Keith of New Zealand, and Judge Bennouna of Morocco dissented from the court's decision to issue an advisory opinion; each of those judges except Judge Keith also dissented from the conclusion that the declaration did not violate international law.³¹

Kosovo's secession presents a fundamental conflict between the right of peoples to self-determination and the right of states to territorial integrity. The court sidestepped this conflict by focusing solely on the seemingly technical question of the legality of the *declaration* of independence, avoiding comment on Kosovo's entitlement to independence. This approach managed to do disservice to each right: while

²⁹ *Id.* ¶ 6 (declaration of Judge Simma), <http://www.icj-cij.org/docket/files/141/15993.pdf>; *id.* ¶ 35 (separate opinion of Judge Sepúlveda-Amor), <http://www.icj-cij.org/docket/files/141/15997.pdf>; *id.* ¶ 17 (separate opinion of Judge Yusuf), <http://www.icj-cij.org/docket/files/141/16005.pdf>. Judge Yusuf asserted that Kosovo's declaration "is the expression of a claim to separate statehood," so the question before the court therefore included the matter of whether Kosovo was entitled to statehood. *Id.* ¶ 2 (separate opinion of Judge Yusuf). Judge Simma criticized the court for considering only whether international law prohibited the declaration; he wrote that "the Court's approach reflects an old, tired view of international law, which takes the adage, famously expressed in the '*Lotus*' Judgment," that what is not prohibited by international law is permitted. *Id.* ¶ 2 (declaration of Judge Simma) (citing S.S. "*Lotus*" (Fr. v. Turk.), Judgment, 1927 P.C.I.J. (ser. A) No. 10, at 18 (Sept. 7)). Judge Simma argued that the court should have addressed the full range of "possible degrees of non-prohibition, ranging from 'tolerated' to 'permissible' to 'desirable.'" *Id.* ¶ 8.

³⁰ *Id.* ¶ 232 (separate opinion of Judge Cançado Trindade) (internal quotation marks omitted). Judge Cançado Trindade's opinion also included a lengthy discussion of Kosovo's humanitarian crisis. *See id.* ¶¶ 35–52, 97–168.

³¹ *Id.*, Advisory Opinion, ¶ 123 (listing judges' votes on each question); *id.* (declaration of Vice President Tomka), <http://www.icj-cij.org/docket/files/141/15989.pdf>; *id.* (dissenting opinion of Judge Koroma), <http://www.icj-cij.org/docket/files/141/15991.pdf>; *id.* (dissenting opinion of Judge Skotnikov), <http://www.icj-cij.org/docket/files/141/16001.pdf>; *id.* (separate opinion of Judge Keith), <http://www.icj-cij.org/docket/files/141/15995.pdf>; *id.* (dissenting opinion of Judge Bennouna), <http://www.icj-cij.org/docket/files/141/15999.pdf>. Vice President Tomka argued that the court should have declined to rule on the matter because Kosovo's status is a concern of the Security Council rather than of the General Assembly, and the court's opinion could hinder the Security Council in addressing the situation. *Id.* ¶¶ 2–9 (declaration of Vice President Tomka). Judge Koroma argued that the territorial integrity of states is inviolable, *id.* ¶ 21 (dissenting opinion of Judge Koroma), and "[n]ot even the principles of equal rights and self-determination . . . allow for the dismemberment of an existing State without its consent," *id.* ¶ 22.

failing to affirm the right to self-determination, the decision also damaged the right to territorial integrity by broadly asserting that declarations of independence do not violate international law. The court should have affirmed Kosovo's right to secede by emphasizing Kosovo's unique historical status as a former autonomous federal unit that had suffered severe repression and denial of fundamental rights.

The self-determination of peoples has become an established legal right, but its tension with the right of states to territorial integrity remains unresolved. The right to self-determination entered treaty law in the U.N. Charter, which lists as a purpose "develop[ing] friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples."³² Although the world community accepted that colonial peoples could exercise self-determination through independence,³³ states resisted secessionist claims outside the colonial context as violative of another established right of international law: the territorial integrity of states.³⁴ The General Assembly addressed the interplay between the two rights in a 1970 resolution stating that the right to self-determination should not be construed to impair the territorial integrity of states "conducting themselves in compliance with the principle of equal rights and self-determination of peoples . . . and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour."³⁵ This qualification (often referred to as the "saving clause"³⁶), while not affirmatively permitting secession, left open the possibility that minority groups who are denied fundamental rights within a state may have the right to secede.³⁷

The Supreme Court of Canada ably distilled existing international law on secession in its advisory opinion on whether international law

³² U.N. Charter art. 1, para. 2; *see also id.* art. 55.

³³ *See* ANTONIO CASSESE, SELF-DETERMINATION OF PEOPLES 71 (1995) (noting that colonial powers gave "grudging acceptance" to the right of colonial peoples to independence, such that "a wide measure of agreement evolved in the United Nations"). Seventy newly independent states — many of them former colonies — emerged between 1945 and 1979. *Id.* at 75.

³⁴ Under the U.N. Charter, "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state . . ." U.N. Charter art. 2, para. 4. The drafters of Article 1(2) were mindful of protecting territorial integrity and did not understand the provision to grant ethnic minorities the right to secede. *See* CASSESE, *supra* note 33, at 41–42.

³⁵ Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625 (XXV), at 124, U.N. Doc. A/8028 (Oct. 24, 1970).

³⁶ *E.g.*, *Kosovo*, ¶ 11 (separate opinion of Judge Yusuf); CASSESE, *supra* note 33, at 110.

³⁷ *See* CASSESE, *supra* note 33, at 119 ("[S]ince the possibility of impairment of territorial integrity is not totally excluded [in the saving clause], it is logically admitted."). *But see* Donald L. Horowitz, *A Right to Secede?*, in SECESSION AND SELF-DETERMINATION 50, 65 (Stephen Macedo & Allen Buchanan eds., 2003) (declaring it a "logical fallacy" to interpret the saving clause as creating a right to secede in some circumstances).

would permit Quebec to unilaterally secede from Canada.³⁸ Although “the right to self-determination of a people is normally fulfilled through *internal* self-determination,” meaning participation in the democracy of an existing state,³⁹ a people may exercise *external* self-determination by forming a new state when subject to colonial rule or alien subjugation.⁴⁰ The court noted that some commentators argue for the right to unilateral secession “when a people is blocked from the meaningful exercise of its right to self-determination internally,”⁴¹ but because the Quebecers were not blocked from such exercise, it was unnecessary for the court to decide if this right actually existed.⁴² The scope of the right of unilateral secession therefore remained unsettled.

In addressing the secessionist claim of Kosovo, the ICJ had an opportunity to address the previously undefined borderline between the rights to self-determination and territorial integrity.⁴³ Instead, the ICJ avoided the question, failing to affirm the right to self-determination while substantially weakening the principle of territorial integrity. The court explicitly declared that it was not addressing whether Kosovo was entitled to statehood or the scope of the right to self-determination.⁴⁴ Thus, even though Kosovo claimed victory,⁴⁵ the decision did not affirm Kosovo’s right to statehood or the right to self-determination more generally.⁴⁶

Moreover, the decision undermined the territorial integrity of states by embracing, as Judge Simma noted, the positivist principle of the

³⁸ See Reference re Secession of Quebec, [1998] 2 S.C.R. 217, paras. 109–46 (Can.).

³⁹ *Id.* para. 126.

⁴⁰ *Id.* paras. 132–33.

⁴¹ *Id.* para. 134.

⁴² *Id.* paras. 134–36; see also *Katangese Peoples’ Congress v. Zaire*, Comm. No. 75/92, para. 6 (Afr. Comm’n on Human & Peoples’ Rights 1995), http://www.achpr.org/english/Decision_Communication/DRC/Comm.%2075-92.pdf (denying Katanga’s right to secede from Zaire “[i]n the absence of concrete evidence of violations of human rights to the point that the territorial integrity of Zaire should be called to question and in the absence of evidence that the people of Katanga are denied the right to participate in government”).

⁴³ The case generated widespread interest beyond the Balkan Peninsula because of its implications for the many separatist movements around the world; several states facing such movements within their own borders participated in the proceedings and strenuously opposed Kosovo’s declaration. See, e.g., Written Statement by the Russian Federation, *Kosovo*, at 39–40 (Apr. 16, 2009), <http://www.icj-cij.org/docket/files/141/15628.pdf>; Written Statement of the Kingdom of Spain, *Kosovo*, at 56 (Apr. 14, 2009), <http://www.icj-cij.org/docket/files/141/15644.pdf>; Written Statement Submitted by the Republic of Cyprus, *Kosovo*, at 49–50 (Apr. 3, 2009), <http://www.icj-cij.org/docket/files/141/15609.pdf>.

⁴⁴ *Kosovo*, Advisory Opinion, ¶¶ 51, 82–83.

⁴⁵ *Prime Minister Thaçi: The ICJ Opinion Has Sealed the Kosovo’s Independence*, THE REPUBLIC OF KOSOVO: THE OFFICE OF THE PRIME MINISTER (July 26, 2010), <http://www.kryeministri-ks.net/?page=2,9,1483>.

⁴⁶ Cf. *Kosovo*, ¶ 17 (separate opinion of Judge Yusuf) (criticizing court for “fail[ing] to seize this opportunity . . . to clarify the scope and normative content of the right to external self-determination”).

case of the S.S. “*Lotus*,”⁴⁷ that international law permits whatever it does not prohibit.⁴⁸ The court implicitly adopted this principle by reframing a question of whether the declaration was “in accordance with international law” into a question of “whether or not the applicable international law *prohibited* the declaration of independence.”⁴⁹ The court thus avoided recognizing a positive entitlement to independence, but this very evasion led to a result that could have broad and harmful effects. By holding that declarations of independence do not violate general international law,⁵⁰ the court gave legal license to separatist movements worldwide to declare independence. It is therefore unsurprising that several separatist groups quickly used the decision to justify their cases for independence.⁵¹

The court could have and should have recognized that not all secessionist movements are created equal, affirming Kosovo’s right to secede while distinguishing Kosovo’s strong case for secession from weaker claims.⁵² Ample scholarship and sources of international law have confirmed that claims for secession are strongest when a group is denied fundamental rights and democratic participation. The saving clause of the *Friendly Relations* declaration implies that secession may be warranted when a state does not “conduct[] [itself] in compliance with the principle of equal rights and self-determination of peoples.”⁵³ Likewise, *Reference re Secession of Quebec*⁵⁴ lays out a category of groups that may secede “as a last resort” when “blocked from the meaningful exercise of their right to self-determination internally.”⁵⁵

⁴⁷ S.S. “*Lotus*” (Fr. v. Turk.), Judgment, 1927 P.C.I.J. (ser. A) No. 10 (Sept. 7).

⁴⁸ *Kosovo*, ¶ 2 (declaration of Judge Simma) (citing S.S. “*Lotus*,” 1927 P.C.I.J. at 18). The ICJ’s embrace of the *Lotus* principle represented a shift in the court’s jurisprudence. See Hugh Handeyside, Note, *The Lotus Principle in ICJ Jurisprudence: Was the Ship Ever Afloat?*, 29 MICH. J. INT’L L. 71, 73 (2007) (“[I]n the few instances in which the Court has addressed the *Lotus* principle . . . directly, its reasoning can logically be construed as repudiating the principle’s basic premises.”).

⁴⁹ *Kosovo*, Advisory Opinion, ¶¶ 1, 56 (emphasis added).

⁵⁰ *Id.* ¶ 84.

⁵¹ Sergei Bagapsh, president of Abkhazia, stated that the decision “once more confirms the right of Abkhazia and . . . South Ossetia to self-rule.” *Reaction in Quotes: UN Legal Ruling on Kosovo*, BBC NEWS (July 22, 2010, 1:55 PM), <http://www.bbc.co.uk/news/world-europe-10733837>. Aitor Estaban, a Basque member of the Spanish parliament, stated, “[T]he main consequence is that Spain cannot keep saying that the international rules don’t allow for a split of the country for a new Basque independent country into the European Union.” *Id.* Dusanka Majkic, a Serb member of Bosnia’s parliament, said that Republika Srpska “now has all it needs to follow the same road Kosovo took.” *World Reacts to ICJ Advisory Ruling on Kosovo*, DIASPORA POST (July 24, 2010), <http://www.thediasporapost.net/2010/07/world-reacts-to-icj-advisory-ruling-on.html>.

⁵² See WELLER, *supra* note 7, at 270 (noting historical factors making Kosovo’s case for secession stronger than most other separatist groups’ claims).

⁵³ G.A. Res. 2625 (XXV), *supra* note 35, at 124.

⁵⁴ [1998] 2 S.C.R. 217 (Can.).

⁵⁵ *Id.* para. 134.

Scholars have also argued that denial of rights internally can give rise to a right to secede.⁵⁶ Kosovo clearly has suffered a denial of fundamental rights that serves as a foundation of a strong case for secession. Kosovo enjoyed a history of substantial autonomy in a federation that subsequently dissolved,⁵⁷ but Serb authorities revoked that autonomy and denied the Kosovar people the right to participate in their own government; years of brutal repression justified the Kosovars' fear that they could never enjoy safety, let alone political participation, under Serb rule.⁵⁸ A U.N. envoy concluded that years of U.N. administration over Kosovo created an "irreversible" shift such that Kosovo could never be integrated back into Serbian rule.⁵⁹ Thus, the court would have had a strong foundation to affirm Kosovo's right to secede while distinguishing groups like Kosovo from groups like the Quebecers⁶⁰ that have had more success exercising internal self-determination.

It would be easy to question the relevance of the ICJ's nonbinding advisory opinion, as the success of secessionist movements is ultimately determined by the political process of recognition by other nations.⁶¹ Nonetheless, interpretations by organs such as the ICJ often lead to the internalization of new international norms that the global community comes to view as binding.⁶² The intense interest this case drew⁶³ suggests that the ICJ could have played a particularly prominent role in the norm-internalization process regarding self-determination. An opinion affirming Kosovo's right to statehood while distinguishing the Kosovars from other groups would have had two positive effects. First, it would have affirmed the self-determination of the Kosovars, a people that has suffered brutal repression and denial of political rights within Serbia. Second, by clarifying that unilateral secession will be permitted if and only if a group suffers repression, it would have incentivized states to increase the rights of minority groups so that those groups would not have the legal right to secede. Unfortunately, the court missed an opportunity to affirm Kosovo's self-determination while buttressing the territorial integrity of states that treat their minority groups less like the Kosovars and more like the Quebecers.

⁵⁶ See, e.g., KOECK ET AL., *supra* note 9, at 81; Diane F. Orentlicher, *International Responses to Separatist Claims: Are Democratic Principles Relevant?*, in SECESSION AND SELF-DETERMINATION, *supra* note 37, at 19, 25 (arguing that the right to democracy implies a right for groups to secede if necessary to achieve self-government).

⁵⁷ WELLER, *supra* note 7, at 270–71.

⁵⁸ *Kosovo*, ¶¶ 98–105, 119, 150 (separate opinion of Judge Cañado Trindade).

⁵⁹ Ahtisaari Report, *supra* note 14, ¶ 7.

⁶⁰ See *Quebec*, [1998] 2 S.C.R. paras. 135–36 (noting that Quebecers have full civil and political rights and have achieved positions of power and success in Canada).

⁶¹ See *id.* para. 106.

⁶² See Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106 YALE L.J. 2599, 2646 (1997) (book review).

⁶³ See *supra* notes 43, 51.