



“Local Authorities’ Extraterritorial Rights and Duties : Applying the Law and Political Will to Achieve Human Rights Locally, as well as Globally”

Joseph Schechla, *Coordinator*, Housing and Land Rights Network – Habitat International Coalition



General Outline

- Local authorities' obligations under international law;
- Relevant principles of international law and human rights;
- Nonrecognition and noncooperation with illegal situations, crime;
- Good practice examples.



International Covenant on Civil and Political Parties (1966)



Article 50:

“The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.”

Local Authorities' Obligations under International Law and Human Rights



Local Authorities' Obligations under International Law and Human Rights

- CESCR General Comment No. 4: “[the right to housing](#)” (1991), para. 12;
- HRC General comment No. 25: Article 25 ([Participation in public affairs and the right to vote](#)) (1996);
- HRC General comment No. 27: Article 12 ([Freedom of movement](#)) (1999), para. 17;
- CESCR General Comment No. 11: “[Plans of action for primary education](#)” (art. 14)” (1999), para. 7;
- General comment No. 12: “[The right to adequate food](#)“ (art. 11) (1999), paras. 22, 25;
- CESCR General comment No. 15: “[The right to water](#) (arts. 11 and 12 of the Covenant)” (2002), para. 51;
- HRC General comment No. 31: “[The Nature of the General Legal Obligation Imposed on States Parties to the Covenant](#)” (2004), para. 4;
- CESCR General Comment No. 16: “[The equal right of men and women to the enjoyment of all economic, social and cultural rights](#) (art. 3)” (2005), para. 42;
- “[Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific targeted documents,](#)” HRI/MC/2005/3, 1 June 2005, para. 50;
- CESCR General comment No. 19: “[The right to social security](#)” (art. 9) (2007), para. 73;
- “[UN Basic principles and guidelines on development-based evictions and displacement,](#)” Annex I of the Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, A/HRC/4/18, 5 February 2007;
- “[Guidelines on Treaty-Specific Documents to be Submitted by States Parties under Articles 16 And 17 of the International Covenant on Economic, Social and Cultural Rights,](#)” E/C.12/2008/2, 24 March 2009;
- UNHRC-AC, “[Preliminary research-based report on local government and human rights,](#)” A/HRC/AC/13/CRP.4 (2014).

States and local governments: shared and complementary duties to respect, protect and fulfil human rights

“the conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central government or of a territorial unit of the State”



International Law Commission

[Draft articles on Responsibility of States for internationally wrongful acts, A/56/10 \(2001\) and Commentaries.](#)



Relevant principles of international law

- State sovereignty and territorial integrity (Law of Nations)
- Consequences for affected persons and groups (Human Rights & IHL)
- Discrimination
- Denying self-determination
- Forced displacement & expulsion (outward)
- Implanting settlers / settler colonies (influx) “demographic manipulation”

uti possidetis iuris



uti possidetis iuris

- **In South America, since 1810**
- **In Central America, since 1821**

Treaty of Confederation, Congress of Lima (1847)

“When any foreign nation occupies, or tries to occupy any portion of land that is within the limits of any of the Confederated Republics, or uses force to steal [usurp] such territory and dominion of the Republic, whatever the claimed pretext, the Confederate Republics guarantee, mutually and in the most explicit and solemn terms, to uphold the mastery and dominion of all the territory that is included within the [Confederated Republics’] respective limits, and do not acknowledge, and will not recognize the right of any foreign nation, or any Indian tribe, to dispute [their] domain and dominion.” (Article 2, para. 1)

U.S. Intervention in Mexico, 1846–48



Non-recognition and non-cooperation with illegal situations, crime



“Victory confers no rights” (1870)



Article 3(g) OAS Charter (1948)

First American Conference(1890): “Law of Conquest”

“The principle of conquest is eliminated from American Public Law” (Article 1)



First American Conference(1890): “Law of Conquest”

“The principle of conquest is eliminated from American Public Law” (Article 1)

No territory is without an owner and any possession contrary to this legal principle is considered usurpation.

Kellogg-Briand Pact (Pact of Paris) – 1927



League of Nations &
Stimson
Doctrine -
1932

Convention of Montevideo on the Rights and Duties of States, 7th International American Conference (1933)

Stated in Article 11:

- The inviolability of the territory of the State;
- The inadmissibility of the acquisition or occupancy of territory by military force *or other means of force*, not even on a temporary basis.

Terminology

- “population transfer,”
- “forced removal,”
- “forced eviction”
- “forced transfer”
- “deportation,”
- “expulsion,”
- “ethnic cleansing,”
- “removal”
- “relocation” and
- “resettlement”

World War II

- Allied Declaration on German War Crimes (1942)
- Polish Cabinet in Exile decree (1942)
- Charter of the International Military Tribunal (1945)
- International Military Tribunal at Nuremburg (1945–46)
- International Military Tribunal for the Far East at Tokyo (1946–48)





Victims and Protected Persons



Victims and Protected Persons

Fourth Geneva Convention relative to the Protection of Civilians in Time of War of 12 August 1949

- **Article 49: Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive....
The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.**
- **Article 147: unlawful deportation or transfer as “grave breach”**



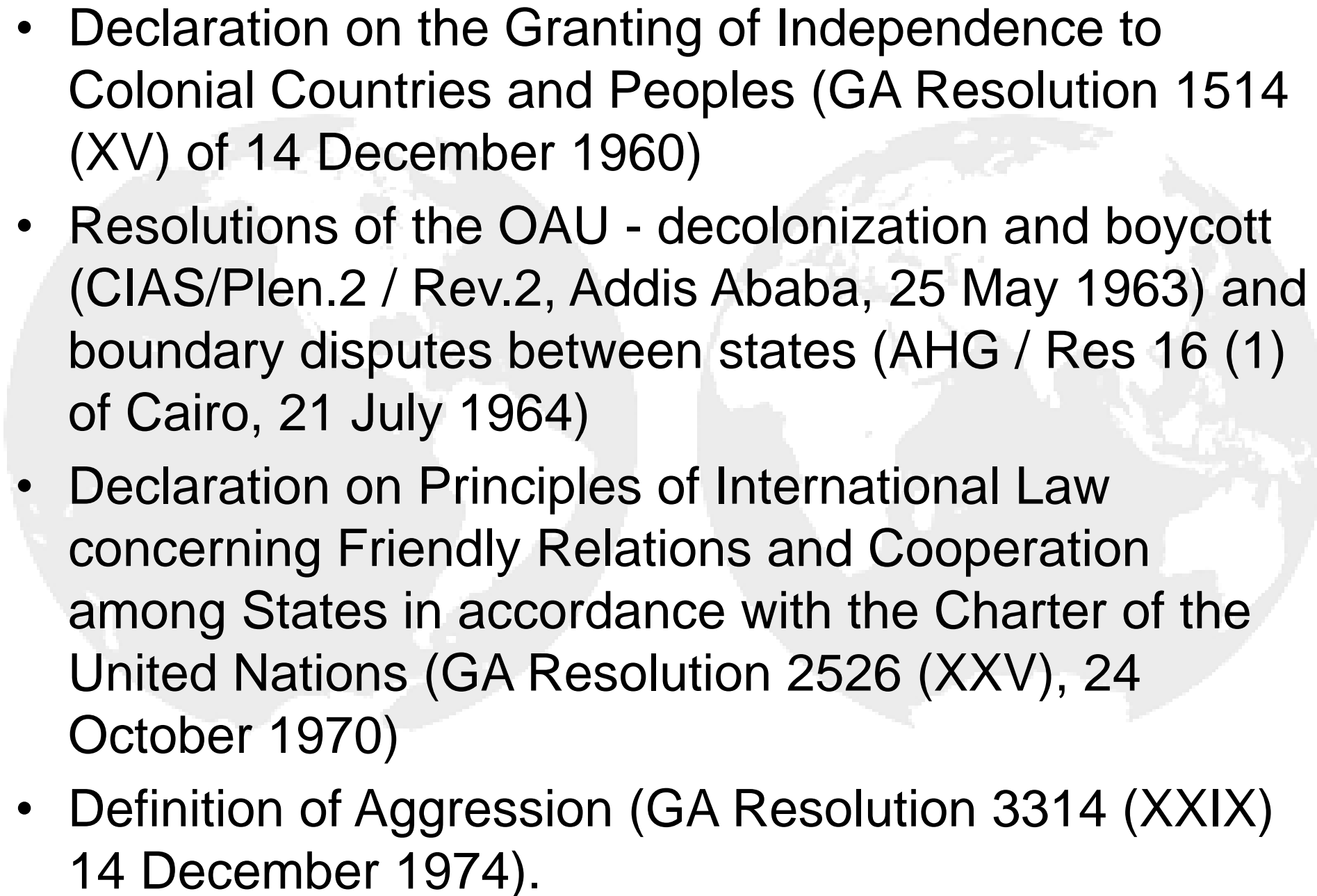
United Nations Charter

Three purposes of the Organization:

- Peace and security
- Forward development
- Human rights

Two chartered Human Rights principles :

- **self-determination**
- **non-discrimination**

- 
- Declaration on the Granting of Independence to Colonial Countries and Peoples (GA Resolution 1514 (XV) of 14 December 1960)
 - Resolutions of the OAU - decolonization and boycott (CIAS/Plen.2 / Rev.2, Addis Ababa, 25 May 1963) and boundary disputes between states (AHG / Res 16 (1) of Cairo, 21 July 1964)
 - Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (GA Resolution 2526 (XXV), 24 October 1970)
 - Definition of Aggression (GA Resolution 3314 (XXIX) 14 December 1974).

UN Declaration on the Granting of Independence to Colonial Countries and Peoples

General Assembly resolution A/1514 (XV), 14 December 1960

5 elements consists of colonial character:

- (1) violations of the territorial integrity of occupied territory;
- (2) depriving the population of occupied territory of the capacity for self-governance;
- (3) integrating the economy of occupied territory into that of the occupant;
- (4) breaching the principle of permanent sovereignty over natural resources in relation to the occupied territory; and
- (5) denying the population of occupied territory the right freely to express, develop and practice its culture.



Population Transfer:

“...a crime of this nature could be committed not only in time of armed conflict, but also in time of peace...

could occur wholly within the frontiers of one and the same State...

to alter a territory's demographic composition for political, racial, religious or other reasons, or transfers made in an attempt to uproot a people from their ancestral lands.”

(Draft Code on Crimes against the Peace and Security of Mankind and Commentary, Art. 21)



International Law Commission

(1954–91)

“...it is a crime to establish settlers in an occupied territory and to change the demographic composition of an occupied territory...

Establishing settlers in an occupied territory constitutes a particularly serious misuse of power, especially since such an act could involve the disguised intent to annex the occupied territory. Changes to the demographic composition of an occupied territory seemed to the Commission to be such a serious act that it could echo the seriousness of genocide.”

(Commentary, Art. 22(b))

UN Sub-Commission on Prevention of Discrimination and Protection of Minorities (1993–97)

...implies purpose in the act of moving a population; however, it is not necessary that a destination be predefined. The State's role in population transfer may be active or passive, but nonetheless contributes to the systematic, coercive and deliberate nature of the movement of population into or out of an area. Thus, an element of official force, coercion or malign neglect is present in the State practice or policy. The State's role may involve financial subsidies, planning, public information, military action, recruitment of settlers, legislation or other judicial action, and even the administration of justice....Transfer can be carried out *en masse*, or as "low-intensity transfers" affecting a population gradually or incrementally.

[“The Human Rights Dimensions of Population Transfer, including the implantation of settlers and settlements,”](#) E/CN.4/1993/17

Rome Statute on the ICC (1998)

Article 7.1(d) defines “deportation or forcible transfer of population” as forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, [displaced] without grounds permitted under international law.

Article 8.2 (vii) Occupying Power transferring parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory.

Obligations in Situations of Violations and Breaches

4. **All armed action or repressive measures** of all kinds directed **against dependent peoples shall cease** in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.
5. **Immediate steps** shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, **to transfer all powers to the peoples of those territories**, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.
6. **Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible** with the purposes and principles of the Charter of the United Nations.
7. **All States shall observe faithfully and strictly the provisions of the Charter** of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, noninterference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity.“

Namibia Doctrine

“... the subsequent development of international law in regard to non-self-governing territories, as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to all of them”...“the termination of the Mandate and the declaration of the illegality of South Africa’s presence in Namibia [were] opposable to all States in the sense of barring *erga omnes* the legality of a situation which is maintained in violation of international law [...].”



ICJ Advisory Opinion on the international juridical status of Namibia, 21 June 1971, paras. 51 and 56.



The United Nations emblem, featuring a world map surrounded by olive branches, is centered in the background in a light blue color.

ICJ: Advisory opinion of the, *The International Legal Status of Western Sahara*, 16 October 1975;

**United Nations Security Council
Resolution 380, 06 November 1975**

Core International Obligations

“Intransgressible principles of international customary law”...“fundamental to the respect of humanity” [and] “elementary considerations of humanity” (*Corfu Channel*, 1949; *Legality of the threat or use of nuclear weapons*, 1996).

The Hague & Fourth Geneva Conventions
“incorporate obligations essentially of an *erga omnes* character” (*The Wall*, 2004).

International Court of Justice

“*erga omnes* obligations of humanitarian law that are fundamental to the respect of the human person and elementary considerations of humanity, as well as the right to self-determination” result in “an obligation not to render aid or assistance in maintaining the situation created by such construction” [of the wall in Palestine]. (2004)



The obligation of non-recognition “applies to situations...such as, for example, attempted acquisition of sovereignty over territory through the denial of the right of self-determination of peoples. It not only refers to the formal recognition of these situations, but also prohibits acts which would imply such Recognition.”

[Draft articles on Responsibility of States for internationally wrongful acts,](#)
A/56/10 (2001) and [Commentaries](#) on articles 40 and 41

Boycott = Policy Choice



**Nonrecognition &
noncooperation =
Self-executing obligation**



Good Practice of Local Authorities

- **The European Declaration of Urban Rights (1982) / The European Urban Charter (1992);**
- **The European Charter for the Safeguarding of Human Rights in the City (2000);**
- **City Statute of Brazil (2001),**
- **World Charter for the Right to the City (2005);**
- **Montréal Charter of Rights and Responsibilities (2006),**
- **Mexico City Charter for the Right to the City (2010);**
- **Gwangju Declaration on Human Rights City (2011).**



The European Declaration of Urban Rights (1982) / Urban Charter (1992)

18. Intermunicipal collaboration in which citizens are free and encouraged to participate directly in the international relations of their community;



Final Declaration
Local Authorities Forum
– *Free Palestine*
Canoas RS, Brazil,
December 2012

The Brazilian and Palestinian Municipalities as part of the Local Authorities Forum call for:...

6 – Demanding Brazilian local governments to commit to responsible investment by avoiding contracting with parties that support or benefit from occupation, or violate related prohibitions under international law.



CONFERENCIA INTERNACIONAL DE GOBIERNOS LOCALES Y
ORGANIZACIONES DE LA SOCIEDAD CIVIL EN APOYO DE LOS
DERECHOS DE LOS PALESTINOS

INTERNATIONAL CONFERENCE OF
LOCAL GOVERNMENTS AND CIVIL SOCIETY ORGANIZATIONS
IN SUPPORT OF PALESTINIAN RIGHTS

Seville, 2–3 December 2014

Olive Declaration

Local governments...commit to responsible investment by not contracting with parties and not twinning with cities that support or benefit from occupation or violate related prohibitions under international law.

External Actors and Contractors





Ahava (Israel)
Assa Abloy (Sweden)
Caterpillar Inc. (USA)
Cemex (Mexico)
Dexia Group (Belgium)
Elbit Systems (Israel)
G4S (Denmark, UK)
Hewlett Packard (USA)
Mehadrin (Israel)
Motorola (USA)
Riwal Group Holding (Netherlands)
Veolia Environment (France)
Volvo Group (Sweden)



Dutch water company “boycotts” Israel’s state water carrier

13 December 2013



Vitens, the largest supplier of drinking water in the Netherlands, ended its cooperation agreement with Israel’s national water company Mekorot because of its role in the theft of Palestinian water. Meanwhile, the Dutch government takes steps to prevent an Israel-Netherlands business forum being used to develop links with companies operating in illegal Israeli settlements.

“Local Authorities’ Extraterritorial Rights and Duties : Applying the Law and Political Will to Achieve Human Rights Locally, as well as Globally”

