In recent years there has been an increasing interest among IR theorists in ‘practice’. Yet the concept has been employed to mean and investigate different phenomena. It is contended here that this should not be surprising – the term has no single correct meaning but rather multiple legitimate uses. Rather than exerting too much energy on definitional matters, perhaps a more fruitful approach is to ask: Which among the manifold uses of the term are pertinent for students of international relations, and why? This paper suggests that there is a key meaning of practice in international relations: a purposive and rule-governed social activity. It argues that only by studying practice or practices so understood can IR scholars fully ascertain the norms and concepts made up of them - embedded in the international social sphere. This sphere is unique because it lacks central government. In contrast to domestic society, where the exact substance of most, if not all, governing standards can be extracted from legislative, executive and judicial texts, international society defines the precise content of norms and concepts by virtue of generally applicable texts, such as multilateral treaties, in only a handful of technical, "non-political" areas such as civil aviation, postal service and commercial shipping. If we want to uncover the exact content of international norms and associated concepts, we have to analyze

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1 "Norms" are understood in the broadest sense in this paper - as prescriptive statements delineating appropriate conduct. As such, they encompass legal rules, shared moral and diplomatic principles and standards, rules of etiquette, and tacit rules of the game.
their use by relevant agents in concrete situations over time. The paper demonstrates this thesis by examining the practice of ‘territorial integrity’, which is generally considered to be a fundamental norm of international relations and law.

The next section briefly surveys the recent theoretical debate on practice. The paper then connects that debate with the seemingly separate literature on norm dynamic and evolution, by both IR scholars and academic international lawyers. Whereas most writings on norms in IR concentrate on how norms emerge, diffuse internationally and become internalized domestically, this scholarship focuses on what happens to the same norms over time. The third and largest section illustrates the argument that the substance of international norms and concepts manifests itself in the meaning assigned to them in international practice by examining the content of the norm of territorial integrity. That content has been strenuously disputed since the 2008 major-power crises surrounding, first, the US-led recognition of Kosovo’s independence and then, several months later, the Russian-led recognition of independence of Abkhazia and South Ossetia, including in the principal global security and judicial institutions, the UN Security Council and the International Court of Justice. This suggests that in addition to any scholarly value, understanding the link between international norms/concepts and practice is also of utmost policy relevance.

The 'Practice Turn' in IR

One of the most noteworthy current developments in IR has been the steadily growing interest in ‘practice’. While it would have previously been very difficult to find scholars of IR who did not employ the term somewhere in their work, very few of them had devoted much theoretical
attention it. The meaning and importance of ‘practice’ had been assumed rather than explicitly interrogated, even in the case of authors (Keens-Soper 1978) or approaches - notably the English School (Bull 1977) - that appeared to put a lot of emphasis on it. Driven by a number of outstanding IR theory issues, such as the relationships between agency and structure and between the ideational and material worlds, and influenced by developments in social theory, constructivist theorists have begun a concerted effort to unpack the notion of practice and practices. In perhaps the most influential constructivist treatment so far, Emanuel Adler and Vincent Pouliot (2011: 4-5) define practices as "socially meaningful patterns of action, which in being performed more or less competently, simultaneously embody, act out, and possibly reify background knowledge and discourse in and on the material world...[They] are patterned actions that are embedded in particular organized contexts and, as such, are articulated into specific types of actions and are socially developed through learning and training.” In their work, Adler and Pouliot concentrate primarily on competent performance or skill and what they take to be frequent tacit background knowledge behind practices. In this broad vein, constructivist Ted Hopf (2010) explores what he regards as a significant habitual character of many international practices.

In contrast, Cornelia Navari (2010) distinguishes between causal and telic conceptualizations of practice, the former associated with the work of Adler, Pouliot and Hopf and the latter with the English School. A causal notion is a patterned activity caused by less than fully conscious convictions or habits. A telic notion, on the other hand, is a purposive activity seeking a goal "which is conceived as a result of following certain general principles of procedure." Navari (2010: 626) quotes Walter Gulick who observes that "a person engaging in a
Telic practice is *guided* by its standards rather than being *caused* to perform them in some manner, and the practice is directly accessible to empirical investigation (emphases in original)." The telic notion is also emphasized by constructivists Friedrich Kratochwil (2000), Nicholas Onuf (2010) and Oliver Kessler (2010) and other scholars such as John Rawls (1955: 3) and Robert Keohane (1988: 384-5). Navari, Kratochwil and Onuf all point to its old pedigree in political theory, going back to Aristotle and Kant.

Despite Adler's and Pouliot's ambition to provide an overarching theoretical account of practice, it is evident that there are different notions of it. This should not be surprising. According to the Merriam-Webster thesaurus, there are three main meanings of the noun: 1) a private performance or session in preparation for a public appearance; 2) a usual manner of behaving or doing; and 3) something done over and over in order to develop skill. Acceptable synonyms or related words, according to the thesaurus, include: drill, exercise, training, routine, pattern, regimen, habit, custom, convention, ritual and usage. Navari (2010) and Richard Little (2011), following Hedley Bull (1977), bring up another related term: institution. Simply put, there are multiple meanings of 'practice' in everyday language and several of them are pertinent in analyzing international relations. A good way to interrogate practice is to focus on the latter question: Which among the manifold uses of the term are relevant for students of international relations, and in what way? One can safely assert that both causal and telic notions of practice are relevant. There are varied needs to understand habitual, performative as well as purposive aspects of practice or practices.

This paper seeks to contribute to the exploration of the telic notion of practice, understood as a purposive and rule-governed social activity. This notion encompasses practice
in general - repeated purposive doings by agents - as well as a specific practice to which we attach specific labels, such as diplomacy and war. It also includes activity that is less than always fully conscious at the level of individual agents. As Robert Jackson\(^2\) notes, one can engage in a purposive, rule-governed activity - in his words, "play a game" - without necessarily being able to wholly comprehend or explain its rules. The paper contends that if we want to uncover the exact content of international rules and concepts, we have to analyze how "the game is played" over time, that is the shared normative understandings informing the actions and interactions of relevant international actors in actual cases of the same phenomenon.

**Norm/Concept Evolution through Practice**

When seeking to identify the substance of an international norm or concept, IR scholars and international lawyers commonly look for texts that defines it. I argue that, in most cases, this is necessary, but not sufficient. Applying insights of authors such as Wayne Sandholtz (2009) and Friedrich Kratochwil (1989, 2000), I contend that the substance of all but narrow technical norms or concepts is not fixed at their adoption but rather continually evolving. Individual norms are typically worded broadly and their relationship to other norms is seldom well-defined. Their general character and fuzzy boundaries make their precise content often unclear or indeterminate in particular situations: it has to be interpreted by the agents invoking them. This frequently leads to divergent interpretations, which in turn set off arguments and disputes. The contention that most norms or concepts do have unambiguous application in every contingency and can conflict with one another is no less true of domestic than international norms, even taking into

\(^2\) Locate the source.
account the outsized historical importance of unwritten, customary norms in international relations (Nardin 1998: 29). Domestically, there are highly formalized and universally binding procedures to resolve uncertainty over the substance of specifically legal norms, encompassing executive and legislative acts, and, in the last instance, rulings of courts with compulsory jurisdiction. However, no international executive, legislature or courts with compulsory jurisdiction exist, although the operation of legal norms in a small number of issue areas, such as trade law under the World Trade Organization, has come to approximate the domestic system.

How is uncertainty over norm/concept content settled internationally? In an anarchic system without central government, this is done in nearly all cases by states themselves through bilateral and multilateral argumentation when a norm is invoked to rationalize, demand, defend, contest or resist particular actions. The consequence of this communicative process is an impact on the content of a norm, whether by reaffirming it in light of precedents, by modifying it to fit new or exceptional circumstances, by clarifying the parameters of its applicability, or by obscuring it in case of persistent differences. Crucially, in the absence of an authority to adjudicate differing understandings of the same norm, the argumentation outcome in one situation - what Sandoltz (2009: 8) calls a "cycle" of norm argumentation - has a direct bearing on norm interpretation in subsequent situations. Cycles of norm change are linked forward and backward in time: "Previous cycles establish the context of norms and precedents in which new disputes arise; the outcome of those new disputes alters the context of norms and precedents for subsequent controversies (Stiles and Sandholtz 2009: 336)."

What a particular norm or concept is thus cannot be known apart from its application in and across concrete cases, that is, its practice. Put differently, the exact substance of self-
defense, non-intervention, self-determination, diplomatic immunity, legitimate military targeting, free trade, refugee protection and countless other norms/concepts will not be revealed by a mere perusal of international documents that define or articulate them. Because, as Kees van Kersbergen and Bertjan Verbeek (2007: 222) write, "norm practice reveals to the actors involved what affected parties actually intend the norm to mean," the precise content of a norm can be determined only by considering the specific situations in which it is evoked. What Kratochwil (1989: 19) says of international law can be said of all international norms and concepts:

"The law"...[cannot] be understood...as a static system of norms...Rather the law is a choice-process characterized by the principled nature of the norm-use in arriving at a decision through reasoning. What the law is cannot be therefore decided by a quick look at statutes, treaties or codes (although their importance is thereby not diminished), but can only be ascertained through the performance of rule-application to a controversy and the appraisal of the reasons offered in defense of a decision (italics in original).

How does one get from the “performance of rule-application” by states and other relevant agents to norm/concept change, and what factors contribute to this change? Above all, what prevents the process of norm/concept application by different international actors from turning into infinite self-serving interpretations of a norm’s meaning? While self-serving claims can never be ruled out, a fundamental reality facing all actors - one that is nearly always willingly accepted - is that they have to convince the rest of international society of the reasonableness of their interpretation. Whatever their actual motivations, they need to persuade others that their understanding is within the bounds of the prevailing international normative context; demonstrating either that 1) there is a compatibility with previous understandings and relevant precedents of the norm/concept or 2) that there are compelling reasons for a novel interpretation based on the circumstances of the case and other pertinent normative considerations. If the novel

3 See also Krook and True (2012:105) and Venzke (2012: 4-5).
interpretation is broadly accepted - or at least not opposed – internationally, then one can speak of a shift in the content of a norm or concept. According to Sandholtz (2009: 11), the greatest shift is most likely to occur in the wake of major disruptions, especially wars, or major political and technological changes. On the other hand, questionable interpretations - including those put forth by powerful countries - tend to clarify or reaffirm rather than to blur or undermine the prior conception of the norm/concept if they elicit widespread disapproval (Badescu and Weiss 2010).

The Case of Territorial Integrity

The year 2008 witnessed two interlinked crises in major power relations. Each revolved around foreign recognition of a unilateral secessionist bid internationalized by prior external intervention. In February, a US-led coalition of primarily Western countries acknowledged the independence of Kosovo from Serbia. The move was contested by the so-called BRICS powers (Brazil, Russia, India, China, South Africa) and a host of other countries on the grounds that it violated Serbia’s territorial integrity. In August, Russia, followed by a handful of smaller countries, invoked Kosovo as a precedent and recognized the independence of Abkhazia and South Ossetia from Georgia. Curiously, the very same US-led coalition that championed Kosovo spearheaded the censure of Russian-led recognition of Abkhazia and South Ossetia as a breach of Georgia’s territorial integrity.

‘Territorial integrity’ is one of the most invoked phrases in world affairs. Innumerable global and regional documents affirm it – in both general and country-specific contexts – as a fundamental norm of international relations and law. In broad terms, territorial integrity in the international sphere embodies the twin ideas that (1) the settled territorial limits of a sovereign
state cannot be altered against the will of its government, and (2) the protection of those limits is not just a national, but an international responsibility.⁴ Yet the two crises and the subsequent proceedings in the *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo* case (henceforth *Kosovo* case) in 2009/2010 before the principal global court of law, the International Court of Justice (ICJ),⁵ revealed profound disagreement about its scope. Countries which contested the legitimacy of Kosovo’s independence have argued that the norm applies to intrastate and not just interstate relations, thus excluding unilateral secession of a territory from its parent state and recognition of that territory as an independent state by third parties. By contrast, the United States, Britain, France and a number of other countries which formally acknowledge the Balkan territory have claimed that the norm applies exclusively to interstate relations and thus does not protect states against internally attained territorial changes, only against those brought about by direct external force, which is how these countries construed Russia’s military action and post-ceasefire deployment in South Ossetia and Abkhazia just prior to their recognition. The ICJ majority sided with the latter general argument in its advisory opinion, but one judge embraced explicitly the former argument in a dissenting opinion.

The unresolved disputes about the purview of territorial integrity have raised critical questions. Under what, if any, circumstances can a sovereign state incur a legitimate valid loss of a part of its territory without the consent of its government? Most urgently, can it justifiably shrink as the result of unilateral secession? The conflicting interpretations in the Balkans, the Caucasus and at the ICJ not only raise the empirical question of what the norm has been, but also

⁴ See Akweenda 1989; Zacher 2001; Corten 2011.
⁵ For all written and oral submissions as well as the text of the ICJ Kosovo advisory opinion, see [http://www.icj-cij.org](http://www.icj-cij.org).
beg the normative question of what it ought to be. While the developments since 2008 have generated modest commentary on the latter topic, the former has been left largely unaddressed. Employing the norm-practice nexus argument from the previous section, I seek to establish the precise substance of territorial integrity.

I argue that territorial integrity was originally designed to shield states against involuntary loss to external actors and thus apply only in interstate relations; however, since decolonization of the early 1960s states and intergovernmental organizations have in practice invoked it to extend that protection to intrastate relations against involuntary loss to internal actors, i.e. against unilateral secession. Although this assertion is at odds with the interpretation of territorial integrity by multiple countries which recognized the unilateral secession of Kosovo and by the ICJ, it also suggests that the interpretation by countries opposing that recognition requires historical refinement.

The paper also seeks to tackle the obvious question of why were there divergent interpretations of the norm/concept of territorial integrity recently in the first place. The easiest answer would be provided by the realist tradition which is skeptical of the robustness of norms in international relations. That tradition suggests that states pursue, first and foremost, national interests and, not being bound by any government above them, tend either to construe norms so as to justify independently-decided courses of action or to disregard them altogether. This paper suggests, however, that the reason behind the recent divergent interpretations of territorial integrity has to do with two distinct approaches to interpreting norms. The doctrinal approach, which is embraced by many international lawyers, privileges textual analysis of legal documents such as treaties, judicial decisions and of writings of eminent legal scholars. This approach can
be discerned in the positions of numerous countries in the ICJ Kosovo proceedings – formulated by their international legal advisers – as well as of the court majority itself. In contrast, the state practice approach concentrates on the understandings of norms displayed in executive decisionmaking and decisions. The rationale for this approach is that it is normally the responsibility of governments’ executive branch to apply international norms, whether on behalf of their states individually or through appropriate intergovernmental organizations. These different approaches manifested themselves not only between, but also within, countries in the developments scrutinized here. Most importantly, while the US, UK or France maintained doctrinally before the ICJ that territorial integrity does not prohibit unilateral secession, their recognition of Kosovo was justified as an exceptional, unique case which creates no precedent for other situations, thus implying that unilateral secession as such is not normally legitimate. Although Russia’s general position on territorial integrity prior to August 2008 was in line with state practice, it adopted the latter argument to justify its otherwise incongruous recognition of the unilateral secession of South Ossetia and Abkhazia.

Consistent with its main argument, the paper makes the case for the state practice approach in norms scholarship because it is better in capturing the substance of norms and concepts in actual situations in which they are applied. It will show that state practice, though not entirely without ambiguities, has been strikingly consistent: whereas prior to the 1960s territorial integrity could legitimately applied only in interstate relations, since then it has been employed - indeed routinized - also in intrastate relations. In fact, if taken as two "cycles" of argumentation, Kosovo, South Ossetia and Abkhazia have not, for all their contentiousness, marked a shift in the basic post-decolonization character of the norm. Not only were the major
recognizing powers adamant that the three entities represent one-time exceptions which create no precedent for other secessionist conflicts around the world; they also, subsequently, continued to rely on the post-decolonization norm as a framework for settling those other conflicts.

The evolution of the norm/concept of territorial integrity

Although there were several informal, diplomatic strictures on forcible territorial change in Europe and Latin America in the 19th century, territorial integrity as a general legal norm had its origin in the League of Nations Covenant (1919), specifically Article 10 by which the League members undertook “to respect and preserve as against external aggression the territorial integrity and existing political independence of all members of the League.” Whatever the shortcomings of the League of Nations and its membership in upholding this article during the 1930s, the United Nations founding conference in 1945 more or less reproduced the covenant’s provision on territorial integrity. Article 2(4) of the UN Charter stipulated, “All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.”

6 Similar stipulations found their way into the founding and other binding documents of regional organizations, including the Arab League (1945), the Organization of American States (1948), the Organization of African Unity (1963), the Association of Southeast Asian Nations (1967) and the Conference for Security and Cooperation

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6 Some authors casually consider any forcible intrusion or presence of one country in another as a violation of territorial integrity. This is likely because states opposed to such intrusion or presence often invoke the broader language of Art. 2 (4). However, such a broad interpretation cannot be true: the UN Security Council has authorized - and states and international organizations have supported - plenty of cases of the use of force, military occupation, peacekeeping and international administration. What has not been accepted is involuntary change of territorial title from one sovereignty to another and its recognition by third parties.
in Europe (1975). At the global level numerous UN resolutions subsequently reiterated inadmissibility of forcible territorial change and UN General Assembly Resolution 2625 (1970) declared that no such change shall be recognized by UN members as legal.

Although accompanied from the very beginning by disputes about the exact machinery of its enforcement, the basic original purpose of the norm was clear in 1919 – to do away with the right of conquest in interstate relations. It was to shield sovereign states against involuntary loss of territory to external challengers, whether directly, through forcible annexation by a foreign state, or, as established in the practice of the 1930s, indirectly, through a puppet state proclaimed in the aftermath of territorial seizure by a foreign state. There were two essential justifications for this norm. According to its most important proponent, US President Woodrow Wilson at the end of World War I, the right to conquest (1) violated the right of peoples to determine freely their political status; and (2) enabled and legitimized resort to interstate wars, which frequently had a territorial dimension. Removing forcible territorial revisionism as a valid option was to help encourage peaceful – and avert armed – settlement of disputes. Underlying this reasoning was the deep-seated belief that the interstate use of force had grown too destructive and needed to be radically restricted by legal and institutional measures.

These understandings continued to be professed after 1945, and by any measure, the post-1945 order has been very successful at suppressing forcible interstate change of international boundaries. There was a marked decline in such endeavors. If they were not overturned by the attacked country, instances of such change tended to meet with formal non-recognition of the

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7 The crucial case for this indirect application as well as for the articulation of the obligation by third parties not to recognize the results of the violation of the norm was the declaration of the "State of Manchukuo" in 1932 following Japan's invasion and occupation of China's Manchuria. This occurred in a policy known as the Stimson Doctrine, first articulated on behalf of the US by Secretary of State Henry Stimson, but promptly adopted by the League of Nations. For more details, see Langer 1947.
UN Security Council or General Assembly, as in the case of the annexations of Western Sahara (1975), East Timor (1976), East Jerusalem (1980), the Golan Heights (1981) as well as of the proclamation of the “Turkish Republic of Northern Cyprus” (1983) following Turkey’s invasion and occupation of northern Cyprus, and with diplomatic and other international attempts to reverse them on the ground, as in the case of Iraq’s annexation of Kuwait (1990).

In the opinion of many, territorial integrity as a norm against forcible territorial change from outside has been one of the most robust standards of international conduct. If anything, the ongoing crisis over the attempt to change the title to Crimea following Russia's military takeover of the territory has corroborated this view: no country or intergovernmental organizations has endorsed this annexation and many, including the UN GA, have explicitly condemned it. However, since about 1960, there has been a wholly new additional facet to territorial integrity. The norm came to be invoked not only in interstate but also intrastate relations – as a safeguard against involuntary loss of state territory to the internal challenge of unilateral secession.

The central development behind this sweeping expansion of the norm’s purview was, consistent with Sandholtz's argument, an instance of major global political change: decolonization. The new, broadened norm/concept of territorial integrity emerged in two distinct phases: (1) in relation to the newly decolonized states (often the term was used interchangeably with uti possidetis juris); (2) in relation to all other existing states. Uti possidetis juris came to circumscribe the right of self-determination, the declared basis of independence of colonial territories from overseas powers. Resolution 1514 (1960), the landmark UN General Assembly (UNGA) text on decolonization, postulated that “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. (italics added)” At the time – and in the aftermath – of a colony’s independence, no territorial change was permitted without the consent of its government, regardless of what the popular wishes in its constituent parts might have been. That an ex-colony cannot lose territory against its will – not just from outside, but also from inside – came to encompass later all existing UN member states in UNGA Resolution (UNGAR) 2625 (1970). Whatever the right to self-determination meant outside the colonial context – it became typically interpreted as an “internal” right consisting of the right to political participation and minority rights since the citizens of existing sovereign states came to be deemed to have had their “external” right to independence already realized⁸ – it excluded the right to non-consensual secession from the territory of a sovereign state.

The beliefs underpinning the post-colonial version of territorial integrity and its opposition to unilateral secession were complex. They formed gradually in response to potential or actual secessionist cases - with the Congo crisis of 1960-3 being paradigm-shifting - and came to include the concerns about the domino effect of never-ending secessionist bids given tripling in the number of states and the heterogeneous demographic reality of most ex-colonies, the fear of violence and instability inherent in non-consensual situations involving questions of legitimate statehood and boundaries, the perceived lack of conclusive resolutions to previous sovereignty conflicts involving antagonistic majorities and minorities (Ireland, India, Palestine), and the professed preference by the overwhelming majority of governments for inclusive civic nationalism which represents all citizens of existing state territories as opposed to exclusive ethnic nationalism which represents merely a particular group within them. Whatever the actual

⁸ Western countries, for instance, appeared to embrace the conviction that diverse people could coexist, or learn to coexist, within any given boundaries if they had the right constellation of democracy and human and minority rights. See Pomerance 1982: 38; Ratner 2002: 251, 273-4.
external beliefs in any specific case, states and intergovernmental organizations construed the independence claims not falling within the new decolonization paradigm as a *prima facie* infringement of the territorial integrity of their parent states. Beginning with the watershed UNSC Resolution (UNSCR) 169 (1961), which affirmed the Congo’s territorial integrity at the time of no real remaining threats from external authorities and which rejected “completely” Katanga’s claim that it was a “a sovereign independent nation’,” each change in the international status of a territory had to be blessed by the sovereign government in question. No post-colonial sub-state entity has been able to carve out an internationally legitimate new state without such consent\(^9\) except Bangladesh, which garnered widespread, if not universal, recognition thanks to the eventual great power acquiescence to the disabling of Pakistani authority in East Pakistan by India’s military intervention in 1971. The global taboo against unilateral secession persisted irrespective of the reason given for, or the demonstrated ability to carry out, particular secessions.

It is important to emphasize that, with the exception of the abortive undertaking of the Holy Alliance of absolute monarchies to guarantee the territorial possessions of “legitimate” dynasties against internal revolutions in the early 19\(^{th}\) century, the concept of territorial integrity had never been understood to encompass international protection against unilateral secession. In 19\(^{th}\)-century Latin America *uti possidetis juris* was to shield newly established states exclusively against territorial encroachment by their neighbors. It was not designed to shelter, nor did it actually shelter, any entity – either at or subsequent to independence from Spain and Portugal –

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\(^9\) Such consent was extremely hard to come by. Only one ex-colony granted it peacefully – Malaysia to Singapore in 1965. Two other post-colonial states, Ethiopia and the Sudan, bestowed the right hold a referendum on independence to their secessionist territories, Eritrea (1991) and South Sudan (2005), after decades of extremely destructive civil wars.
from internal acts of separation. At independence, *uti possidetis juris* did not keep Uruguay and Paraguay under the government in Buenos Aires despite the fact that both had been previously ruled by it as colonial jurisdictions. After independence, territorial integrity did not inoculate Mexico and Colombia against the respective secessions of Texas and Panama. From an external perspective, secessionist bids occurred within the domestic jurisdiction of states and to the extent that outsiders were not directly harmed, the norm of non-intervention in the internal affairs applied. If a bid resulted in the establishment of a *de facto* independent state, then for third parties non-intervention gave way to recognition of that new state regardless of whether the parent state’s consent was given (Fabry 2010, chs. 2-4). What after 1960 became routine - public statements by states and international organizations affirming territorial integrity of countries facing only an internal threat - simply did not exist prior to decolonization: not only did sovereign states not have their territorial integrity protected against challenges from their own population, but a territorial group from within that population could legitimately break away from the parent state by establishing itself as an effective independent state.

The post-Cold War developments, in fact, solidified the territorial integrity norm settled in the 1960s and early 1970s, and extended it beyond the ex-colonial world. Buttressed by new global\(^\text{10}\) and regional documents such as the Charter of Paris (1990) and the Copenhagen Document (1990),\(^\text{11}\) international society continued to preclude secession without the consent of

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\(^{10}\) There have been new global documents reaffirming that territorial integrity applies to intrastate relations. Art. 46 (1) of UN GA resolution 61/295 (2007), the UN Declaration on the Rights of Indigenous Peoples, stipulates: “Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.”

\(^{11}\) Both documents were adopted under the auspices of the Conference for Security and Co-operation in Europe (CSCE), in 1994 renamed the Organization for Security and Co-operation in Europe (OSCE). While the Helsinki Final Act can be interpreted as affirming the principles of inviolability of frontiers and territorial integrity of states
the sovereign government in question as a legitimate way of altering existing state territories. The break-ups of the Soviet Union in 1991 and Czechoslovakia in 1992 might have commenced as separatist bids by some of their constituent units, but foreign recognition of the successor states came only once the respective central governments had agreed to the dissolution of the unions.\(^\text{12}\) During the initial phase of the Yugoslav collapse, which also started as a series of secessionist undertakings by its constituent republics, foreign authorities publicly supported the territorial integrity of the Socialist Federal Republic of Yugoslavia (SFRY). That position changed only after a majority of Yugoslav republics had ceased to be represented in the highest federal institution, the presidency, under highly contentious circumstances in early October 1991. The withdrawal of the majority of the population and territory from a federal state was a historically unprecedented occurrence, but one to which third states as well as relevant international organizations found a speedy solution that no actor besides Serbia and Montenegro opposed: they came to regard what was occurring in the SFRY as a case of dissolution legally equivalent to the consensual dissolution of the USSR or Czechoslovakia.\(^\text{13}\) Only after this judgment did the individual republics become eligible for recognition.

As during decolonization, all the successor states became safeguarded, as a matter of international right, against external territorial designs as well as against unilateral secessions only in the context of interstate relations, the Charter of Paris explicitly extends it to intrastate relations, acknowledging “the equal rights of peoples and their right to self-determination in conformity with the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of states.” The Copenhagen Document goes even further: it stipulates that persons belonging to national minorities do not have “any right to engage in any activity or perform any action in contravention of... the principle of territorial integrity of states.” The Copenhagen formulation subsequently found its way into Art. 5 of the European Charter for Regional or Minority Languages (1992) and into Art. 21 of the Framework Convention for the Protection of National Minorities (1995).

\(^\text{12}\) The 2006 dissolution of the Union of Serbia and Montenegro also falls into this category.

\(^\text{13}\) This position was consistent with the findings of the Badinter Commission, an advisory panel of jurists created by the European Community to consider legal questions arising from SFRY disintegration. See its Opinion No. 1 of November 29, 1991 and Opinion No. 8 of July 4, 1992.
even prior to their recognition.\textsuperscript{14} This was made evident in the consistent non-recognition policies towards those who challenged the territorial integrity of Azerbaijan, Moldova, Georgia, Croatia, Bosnia and Herzegovina and what became the Federal Republic of Yugoslavia (FRY). In the wake of the North Atlantic Treaty Organization (NATO) humanitarian interventions in Bosnia and Herzegovina in 1994-95 and the FRY in 1999, the principal external actors went so far as to insist on interim international administration within their territories rather than to sanction separation of their respective secessionist entities. There can be little doubt that in the post-Cold War period territorial integrity continued: (1) to be protected normatively against involuntary changes from inside as well as outside; and (2) to circumscribe the right to self-determination of peoples in positive international law.\textsuperscript{15}

**Recognition of Kosovo, South Ossetia and Abkhazia**

US-led recognition of Kosovo represented a culmination of the lengthy external involvement in that territory. The key developments in that involvement were the NATO military intervention, which removed the Yugoslav military and Serb police from Kosovo, and the subsequent adoption of UNSCR 1244 (1999), which authorized a UN-led international administration of the territory. UNSCR 1244, as previous UNSCRs concerning Kosovo, affirmed the territorial integrity of the Federal Republic of Yugoslavia (FRY),\textsuperscript{16} even as it envisaged a negotiating

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\textsuperscript{14} The Badinter Commission explicitly invoked the *uti possidetis juris* of decolonization in Opinions no. 2 and 3 of January 11, 1992. Opinion No. 2 noted: “…whatever the circumstances, the right to self-determination must not involve changes to existing frontiers at the time of independence (*uti possidetis juris*) except where the states concerned agree otherwise.”

\textsuperscript{15} The Canadian Supreme Court summarized this state of affairs well in *Reference Re Secession of Quebec* (1998): “the general state of international law with respect to the right to self-determination is that the right operates within the overriding protection granted to the territorial integrity of ‘parent’ states.”

\textsuperscript{16} In 2003 the FRY transformed into a Union of Serbia and Montenegro only to dissolve into independent Serbia and Montenegro in 2006, with Serbia becoming the successor state to the union.
process for settling the final status of Kosovo. This process, led by the UN but shaped to a considerable degree by the Contact Group,\(^{17}\) began in 2006 but no agreement was found as the Serb negotiators insisted on a status within Serbia and the Kosovo Albanians rejected anything but independence. Following a year of abortive talks the UN Special Envoy overseeing the process, Martti Ahtisaari, reported to the UNSC in March 2007 that, in his view, the status quo in Kosovo was unsustainable and that the only viable solution assuring peace and stability was the territory’s independence, to be initially supervised by the international community.\(^{18}\) This recommendation was supported by the Kosovo Albanians and the Western powers in the Contact Group, but rejected by Serbia and Russia. After several more months of fruitless talks – this time co-mediated by the EU, the United States and Russia – the Kosovo Albanians declared unilateral independence in February 2008. Despite strong resistance and warnings about a dangerous precedent and harm to international law and order by Serbia and Russia as well as opposition from China, India, Brazil, South Africa, Indonesia, Argentina, Spain and numerous other countries, the Kosovo Albanians gained recognition of all major Western powers and dozens of other countries.

The opposition to Kosovo’s unilateral independence was grounded in the view that it constituted a breach of Serbia’s right of territorial integrity and UN Security Council Resolution 1244, both of which were said to prohibit the territory’s departure without Serbia’s consent.\(^{19}\) Those supporting the Ahtisaari report and then Kosovo’s independence, by contrast, contended

\(^{17}\) The Contact Group on the Former Yugoslavia was an informal, policy-coordinating group of six countries: the United States, Russia, Britain, France, Germany and Italy. It was formed in May 1994 during the war in Bosnia and Herzegovina.


\(^{19}\) See, for example, the statements of Serbia, Russia, China, Indonesia, South Africa and Vietnam when Kosovo’s UDI was discussed in the UNSC in UN Document S/PV.5839, February 18, 2008.
that a final settlement of Kosovo’s status did not actually require agreement between the two parties, thus implying that Resolution 1244 affirmed Serbia’s territorial integrity only until a final settlement.\(^20\) However, this interpretation of Resolution 1244 did not appear prior to the Ahtisaari-led process: no country or intergovernmental organization had publicly suggested before 2006 that Kosovo could gain independence from Serbia without the latter’s consent; indeed, the United States publicly opposed Kosovo’s independence as an option as late as 2001. In fact, the US-led coalition appeared to accept that recognition of unilateral secession is normally not to be accepted as they went to great lengths to emphasize the point made first publicly in the Ahtisaari report that the acceptance of Kosovo’s unilateral secession constitutes a one-time, *sui generis* exception, not to be applied to any other secessionist cases. The statement of US Secretary of State Condoleezza Rice was typical and reiterated countless times by the Western governments that recognized Kosovo:

> The unusual combination of factors found in the Kosovo situation – including the context of Yugoslavia’s breakup, the history of ethnic cleansing and crimes against civilians in Kosovo, and the extended period of UN administration – are not found elsewhere and therefore make Kosovo a special case. Kosovo cannot be seen as a precedent for any other situation in the world today.\(^21\)

The argument that the supposedly unique mixture of the disintegration of the SFRY, serious human rights abuses, and UN rule justifies Kosovo’s independence without Serbia’s consent has not been broadly accepted, even though the territory’s independence has at the time of this writing been acknowledged by about 50% of UN membership. In fact, to the surprise of

\(^20\) See, for instance, the statements of Belgium, the United Kingdom and the United States in Ibid. The point that Resolution 1244 affirmed Serbia’s territorial integrity only until a final settlement was later explicitly argued by numerous countries that recognized Kosovo before the ICJ.

\(^21\) “US Recognizes Kosovo as Independent State,” US Department of State, February 18, 2008. The EU as a whole saw the Kosovo situation as *sui generis* too, and this was reflected in the decisions of most members opting for recognition. See Presidency Conclusions, December 14, 2007, para. 69.
the US-led coalition that spearheaded Kosovo’s recognition, doubts raised by the case led, in October 2008, to the passing of UNGAR A/RES/63/3 which endorsed Serbia’s request to submit the question of the legality of Kosovo’s unilateral declaration of independence for an advisory opinion of the ICJ. The proceedings before the ICJ gave a prominent platform for countries opposed to Kosovo’s unilateral secession.

The pro-Kosovo coalition might have been taken aback at the prospect of having to defend their policy in a court, but their reaction cannot be compared to the shock they experienced when Russia, the foremost opponent of US-led interventionism in Kosovo since 1999, employed the Kosovo case as a precedent to defend its recognition of the two breakaway Georgian territories of South Ossetia and Abkhazia in August 2008. Still, their response to the Russian decision suggests that the Kosovo exception argument, however questionable it might have been in terms of existing norms and practice, was meant sincerely.

Russia was not only the most vociferous international critic of Kosovo’s recognition without Serbia’s consent, but also of the territory’s purported exceptionality. As early as the onset of the Ahtisaari-led talks in 2006, Russian President Vladimir Putin warned publicly the other external actors involved:

[Kosovo] is an issue of immense importance for us, not only in terms of abiding by the principles of international law, but in terms also of the practical interests of the post-Soviet area…Not all conflicts in the post-Soviet area have been settled yet and we cannot allow ourselves to follow a road that would see one set of principles applied in one case and another set of principles in another. We must always keep in mind the need for a universal foundation to the decisions taken.22

In the wake of the Ahtisaari report in 2007 Putin was emphatic that:

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We are not convinced by our partners’ statements to the effect that Kosovo is a unique case. There is nothing to suggest that the case of Kosovo is any different to that of South Ossetia, Abkhazia or Transdniestria. The Yugoslav communist empire collapsed in one case and the Soviet communist empire collapsed in the second. Both cases had their litany of war, victims, criminals and the victims of crimes. South Ossetia, Abkhazia and Transdniestria have been living essentially as independent states for 15 years now and have elected parliaments and presidents and adopted constitutions. There is no difference.\textsuperscript{23}

Kosovo’s immediate recognition by major Western countries in February 2008 led promptly to renewed South Ossetian and Abkhazian calls for Russian recognition, which in turn intensified the long-standing, albeit largely frozen, conflict between them and Georgia. Although the Duma, incensed by the disregard of Russia’s objections to Kosovo’s independence, quickly endorsed these calls, the Kremlin did not. On April 15 the Russian envoy actually gave a nod to UNSCR 1808 (2008) which affirmed the territorial integrity of Georgia and explicitly referred to Abkhazia as a part of Georgia.

This relatively measured response changed in August in the wake of the sustained hostilities between the South Ossetian and Georgian armed forces, and Russia’s military intervention against the latter. Having accused Georgia of “aggression” and “genocide” against South Ossetia, including the Russian peacekeepers and citizens there, the Russian government invoked them as special circumstances which justified the abandonment of its long-standing commitment to Georgia’s territorial integrity and the acknowledgement of the unilateral declarations of independence of the two breakaway territories.\textsuperscript{24} In other startling parallels with US-led recognition of Kosovo, Russia not only presented independence of the two entities as the

\textsuperscript{23} Vladimir Putin, “Interview with Newspaper Journalists from G8 Member Countries,” Russian Presidential Executive Office, June 4, 2007.

\textsuperscript{24} See Dimitry Medvedev, “Interview with BBC Television,” “Interview with CNN” and “Interview with TV Channel Russia Today,” Russian Presidential Executive Office, August 28, 2008.
only viable way of guaranteeing future peace and stability of the conflict zone, but also as establishing no precedent for other secessionist conflicts.\textsuperscript{25}

Russia’s acknowledgment of the two territories was roundly condemned by many individual countries as well as the EU, OSCE, NATO and G8, principally on the grounds that Russia’s step violated the territorial unity of Georgia.\textsuperscript{26} US President George W. Bush declared: “The territorial integrity and borders of Georgia must be respected…In accordance with United Nations Security Council resolutions that remain in force, Abkhazia and South Ossetia are within the internationally recognized borders of Georgia, and they must remain so.”\textsuperscript{27} A US representative in the UN Security Council described the Russian government’s comparisons between the two territories and Kosovo as “specious.”\textsuperscript{28} While Russia’s arguments against recognition of Kosovo elicited evident sympathies, its recognition in the Caucasus has left it isolated, having been so far emulated only by Nicaragua, Venezuela, Nauru and Vanuatu.

The multi-stage and adversarial nature of the ICJ proceedings – written statements on the UNGA question were followed, first, by written comments, which addressed other parties’ statements, and, then, by oral argumentation – compelled countries to be specific about their understandings of various pertinent norms. Albania, Austria, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Ireland, Japan, Jordan, Kosovo (formally taking part as the “Authors of the Declaration”), Switzerland, the UK and the US argued before the court that territorial integrity applies only in interstate relations and that international law is neutral toward

\textsuperscript{25} Sergey Lavrov, “Transcript of Remarks at an Enlarged Meeting of the Federation Council International Affairs Committee,” Russian Foreign Ministry, 18 September 18, 2008.

\textsuperscript{26} See, for example, Presidency Conclusions, 1 September 2008, para. 2. This judgment was later confirmed by the EU-established Independent International Fact-Finding Mission of the Conflict in Georgia (Vol. 1, 17).

\textsuperscript{27} “President Bush Condemns Actions Taken by Russian President in Regards to Georgia,” Office of the Press Secretary, White House, August 26, 2008.

secession as such. This interpretation was grounded, above all, in the provisions of the UN Charter, UNGAR 2625 (XX) and the Helsinki Final Act. The opposing argument – that territorial integrity applies to interstate as well as intrastate relations and that secession is thus precluded by international law – was presented by Argentina, Azerbaijan, Bolivia, Brazil, China, Cyprus, Iran, Libya, Romania, Serbia, Slovakia, Spain and Venezuela. It was based on additional texts as well as instances of state practice, in particular several cases considered by the UNSC and the UNGA. Some countries in the former group then contested these cases as properly being about external use of force rather than internal secession. The advisory opinion, which found that Kosovo’s unilateral declaration of independence, as an act of promulgation, did not violate international law, steered clear of pronouncing itself on all contested general norms with the exception of territorial integrity. The court majority, citing the UN Charter, UNGAR 2625 (XX) on Friendly Relations between States and the Helsinki Final Act, concluded that “the scope of the principle of territorial integrity is confined to the sphere of relations between states” (para. 80). Interestingly, however, Judge Abdul Koroma of Sierra Leone in his dissenting opinion took a direct issue with the majority’s verdict. Citing also UNGAR 1514 (XV) on the Granting of Independence to Colonial Countries and Peoples, various international and domestic court rulings and pre-2008 state practice with respect to Kosovo he contended that “…the principle of the territorial integrity of states…does not allow for the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo”, and "the declaration of independence is therefore not in accordance with international law” (para. 9).

It is important to note the tension, if not outright contradiction, between the exceptionality argument put forward to justify recognition of Kosovo and the argument that
territorial integrity does not apply to in intrastate relations at all. On the one hand, the Western pro-Kosovo coalition reiterated in governmental statements that other secessionists could not invoke Kosovo as a precedent; on the other hand, its delegations maintained before the ICJ that secession as such is not regulated by international law. As pointed by Cyprus in its written comment to the ICJ (para. 29), if a case is not regulated by a rule, then it does not make sense to declare the case an exception. An exception can exists only in relation to an otherwise applicable rule. The exceptionality argument is clearly predicated on the general exclusion of unilateral secession as a valid method of state creation.

There was also a tension between the argument that international law does not regulate secession and the argument advanced by Albania, Estonia, Finland, Ireland, Germany, Jordan, the Netherlands, Poland, Slovenia and Switzerland that there is a “remedial” right to secession by which countries can lose sovereignty over a territory if they have committed serious violations of human rights and that Kosovo qualified for independence under this right. This alleged right was said to be provided by the following “saving” or “safeguard” clause of UNGAR 2625: “Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or color.” Apart from the fact that no government had invoked it as a justification when recognizing Kosovo, that the United States, Britain or France did not cite this right at the ICJ, or that the advisory opinion refused to confirm its existence, the reference to "any action
which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states" would appear to suggest that the norm of territorial integrity is, as a normal matter, intended to protect states against internal challengers too. If secession as such was not precluded internationally, why would it be necessary to specify the single instance of justified resort to it? As Oliver Corten (2011: 92-3) writes, if UNGAR 2625 authorizes a dismembering of the territory of a sovereign state, “this logically presupposes that territorial integrity must in principle be respected by the secessionist entity, this entity being exceptionally entitled to infringe this principle as a ‘remedy’…(italics in original)”

**Territorial Integrity after Kosovo, South Ossetia, Abkhazia and the ICJ Kosovo case**

It is clear that there were incongruities between the claims of governments extending recognition to Kosovo and the claims of their legal delegations in the ICJ Kosovo case. The latter implied that unilateral secession is not precluded by the concept of territorial integrity, whereas the former implied the very opposite. Whatever the totality of arguments made on behalf of particular countries before and during the ICJ Kosovo case, it is evident that the actual policies with respect to Kosovo, as later towards South Ossetia and Abkhazia, were formulated by the executive branches as a whole, not by international law officers responsible for the participation in the ICJ proceedings.

What have the cases of Kosovo, South Ossetia and Abkhazia and the ICJ Kosovo case implied for the concept of territorial integrity? Despite the continued contestation and divisions

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29 Russia also alluded to remedial secession before the court, but in rather general and tentative terms. While accepting that the question can arise in certain extreme circumstances – presumably South Ossetia and Abkhazia, both of which were mentioned as meeting the criteria by Russia’s foreign ministry upon their recognition – the Russian submission explicitly denied that Kosovo in 2008 was one of them.
over these three cases and despite the interest of some groups to use them as precedents for their actual or potential claims of unilateral declarations of independence – whether in Republika Srpska, Transdniestria, Nagorno-Karabakh or even the non-secessionist case of the Palestinian territories – the powers leading recognition in the three instances sought to deny their precedential value for other cases and subsequently treated other cases as if no applicable precedents had been introduced. Unless this approach changes in regards to the ongoing or prospective secessionist bids, Kosovo, South Ossetia and Abkhazia will join the case of Bangladesh as an aberration from the post-decolonization practice of state recognition. For a variety of reasons, countries, not least great powers, sometimes justify their decisions by an atypical – and disputed – interpretation of existing norms. This can have indeed considerable practical effect. There can be no question that Kosovo encouraged the aspirations of various secessionist entities and that it created a permissive environment for Russia to recognize two of them, South Ossetia and Abkhazia. However, there is a difference between individual claims of a norm-shifting precedent and its actual lasting establishment. The latter is an inherently social process. In a decentralized social system without government, such as the states system, the formation of a norm-shifting precedent depends on a consensus of the members that a particular decision constitutes an authoritative model for analogous cases. That such a consensus will be achieved can never be presumed.

Conclusion

30 For details of these post-2008 developments, see Fabry 2012.
This paper argued that a key reason to study practice in IR is to ascertain norms/concepts that inform the actions and interactions of actors in international society. Since norms/concepts cannot cover every contingency and conflicts among them are not infrequent, their precise contours are determined in specific situations in which they are invoked. Actions invoking them regularly set off arguments and the consequence of such arguments is an impact on the content of a norm/concept, ranging from reaffirming it in light of precedents, refashioning it in light of new circumstances, to obscuring it in case of continual disagreements. Crucially, in an anarchic system without any central authority to adjudicate differing understandings of the same rule/concept, the argumentation outcome in one situation has a direct bearing on norm interpretation in subsequent situations. The theoretical argument was illustrated by the case of territorial integrity, which underwent a significant expansion of its scope during a momentous global transformation: the end of colonialism. This new conception did not emerge in a single master document redefining the norm. It rather developed in practice - in the course of external responses to actual or anticipated challenges to the territorial settlement accompanying decolonization. This conception has since broadly persisted even in response to non-colonial cases.
Bibliography


