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Part 1 The Cold War Era (1945–89), 8 The Indian Intervention in Goa—1961

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Content type: Book content**Published in print:** 17 May 2018**Product:** Oxford Scholarly Authorities on International Law [OSAIL]**ISBN:** 9780198784357**Subject(s):**

Armed conflict, international — Aggression

(p. 85) 8 The Indian Intervention in Goa—1961

I. Facts and Context

On 18 December 1961, some 30,000 Indian troops overran the district of Goa on the west coast of the Indian sub-continent, leaving the Portuguese troops stationed there—heavily outnumbered and outgunned—little choice but to surrender in the course of the next day (in spite of orders to the contrary from Lisbon).

Together with the districts of Daman and Diu—which were simultaneously taken by Indian forces—Goa was at the time of the events under Portuguese authority, as it had been since its conquest by Alfonso de Albuquerque in 1510. The presence of these Portuguese enclaves, with a joint population of c. 650,000 inhabitants, consisting mostly of ethnic Indians (primarily of the Hindu religion),¹ had long been the source of a slumbering conflict between Portugal and India. Ever since becoming independent, India, which regarded these enclaves as ethnically, geographically, historically, and legally one with the rest of India,² had indeed pressed Portugal to negotiate on the end of its colonial rule over these territories. Against this, Portugal asserted that these enclaves, known collectively as *Estado da Índia*, were no colonies but formed an integral part of Portugal, and that their transfer was non-negotiable. In line with this position, Portugal refused to periodically report to the UN on the situation in these enclaves, notwithstanding the explicit affirmation by the UNGA that ‘Goa and dependencies, called the State of India’ constituted non-self-governing territories in the sense of Article 73 of the UN Charter.³ Violent and non-violent protests against Portuguese rule within Goa were suppressed by the Portuguese authorities.

Tension between Portugal and India over the various districts increased considerably throughout the 1950s. In the summer of 1954, for instance, Indian armed activists—allegedly acting with the support of the Indian authorities—attacked the landlocked exclaves of Dadra and Nagar Haveli, which were administratively part of, but geographically separated from, the coastal district of Daman, forcing the Portuguese police forces there to surrender. When Portugal asked the Indian authorities for permission to send reinforcements to Dadra and Nagar Haveli, the request was denied, leading Portugal to initiate proceedings against India before the International Court of Justice (in the so-called *Right of Passage* case).⁴ One year later, when several thousand unarmed Indian activists attempted

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(p. 86) to enter Goa, they were violently repulsed by Portuguese police officers, resulting in more than twenty casualties⁵ and an ever-growing resentment among the Indian population against the Portuguese presence in Goa.

As the likelihood of an armed confrontation grew, various third states urged a peaceful solution to the dispute. On 10 December 1961, Indian Prime Minister Jawaharlal Nehru asserted that ‘[c]ontinuation of Goa under Portuguese rule is an impossibility’.⁶ On 18 December, Indian forces, backed by air raids, rolled into the Portuguese enclaves and took control within a span of 48 hours.

As Indian forces were entering Goa on 18 December, Portugal requested the Security Council to convene ‘immediately to put a stop to the condemnable act of aggression of the Indian Union’ and to order an immediate ceasefire and the withdrawal ‘of all the invading forces of the Indian Union’ from ‘the Portuguese territories of Goa, [Daman] and Diu’.⁷ Two meetings were held in New York later that same day, revealing a deep rift between the (then) eleven members of the Security Council.⁸ Two different draft resolutions were put to the vote, yet neither was ultimately adopted.

Remarkably, on the next day, the UNGA for its part adopted a resolution condemning Portugal for failing to comply with its obligations as an administering power under Chapter XI of the UN Charter, albeit without expressly mentioning the situation in Goa.⁹

Following the Portuguese defeat, the relation between India and Portugal long remained tense, and Portugal refused to recognize the incorporation of the districts of Goa, Daman, and Diu into the Indian Republic.¹⁰ Relations between the two states thawed only after the end of

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authoritarian rule in Portugal in 1974. In a bilateral treaty of 31 December 1974 Portugal eventually recognized Indian sovereignty over Goa, Daman, and Diu.¹¹

II. The Positions of the Main Protagonists and the Reaction of Third States and International Organizations

The Indian intervention in Goa was discussed briefly, if intensively, in two meetings of the Security Council, with the two protagonists and the eleven Council members expressing strongly divergent views on the application of the Charter, and of international law more generally.¹²

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(p. 87) India stressed that this was essentially 'a colonial question'.¹³ Referring *inter alia* to the historical, geographical, and cultural ties between Goa and India (and the geographical gap between Goa and Portugal), India emphasized that Goa was 'an inseparable part of India and it must come back to India'.¹⁴ According to India, Portugal had obtained Goa through a 'process of pure and simple conquest',¹⁵ and had continued to occupy Goa—and suppress its people—as a colonial power for 450 years. This 'vivisection of India'¹⁶ was unlawful and void *ab initio*. It was all the more illegal in light of the adoption by the UNGA of the 1960 Declaration on the granting of independence to colonial countries and peoples (Resolution 1514(XV)),¹⁷ according to which immediate steps ought to be taken, in non-self-governing territories, to transfer all powers to the peoples of those territories in accordance with the right of self-determination. India stressed that it had patiently tried to achieve a negotiated outcome with Portugal over the status of Goa and the end of colonial rule there. Yet, these overtures had been without success, as Portugal had refused to negotiate. Portugal thus did not come to the Council with 'clean hands'.¹⁸ According to India:

[t]he fact that [Portugal] has occupied [Goa] for 450 years is of no consequence, because, during nearly 425 or 430 years of that period we really had no chance to do anything because we were under colonial domination ourselves. But during the last fourteen years, from the very day when we became independent, we have not ceased to demand the return of the peoples under illegal domination to their own countrymen ...¹⁹

In sum, in India's view, the intervention in Goa was a matter of turning back the clock of colonialism and restoring its sovereignty over an 'inseparable part of India'.²⁰ Realizing undoubtedly that its line of reasoning was difficult to reconcile with the traditional reading of the UN Charter, India went a step further by asserting more fundamentally that the tenet according to which colonial powers have sovereign rights over territories which they won by conquest in Asia and Africa was no longer acceptable: 'It is the European concept and it must die. It is time, in the twentieth century, that it died.'²¹ According to India, international law was 'not a static institution', but developed constantly in response to 'the public opinion of the world', including as expressed in UNGA Resolution 1514 (XV).²²

On a different note, India also asserted that the provocation that led to the intervention came from Portugal, not from India.²³ In particular, it claimed that Portugal had fired on Indian coastal steamers and fishing boats, and that it had attacked 'Indian positions 400 yards in our territory and tried to destroy our police post at Nizampur'.²⁴

Furthermore, at one point, India appeared to frame its action as a form of self-defence:²⁵

[T]he Charter itself does not completely eschew force, in the sense that force can be used in self-defence, for the protection of the people of a country —and the people of Goa are as much Indians as the people of any other part of India.

Against this, Portugal accused India of having committed 'a fully premeditated and unprovoked aggression', in violation of the sovereign rights of Portugal and Articles 2(3) – (4) of the UN Charter.²⁶ Portugal explained how India had long harboured aggressive intentions against the 'Portuguese territories of Goa', as reflected in the 'vicious campaign of vilification against Portugal',²⁷ the massing of troops 'near the Indo-Portuguese border',²⁸ or the

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(p. 88) 'sending [of] armed men into Portuguese territory in order to have them firing into Indian territory, simulating Portuguese provocation'.²⁹ Recalling how it had previously brought the threat of Indian aggression to the attention of the Security Council,³⁰ Portugal noted how this threat had ultimately culminated, on 18 December, in the crossing of Indian troops, with tanks and artillery, supported by naval and air force units, into Goa, Daman, and Diu.³¹

Portugal categorically denied that Goa belonged to India, or that it could be labelled a 'colony'. Instead, it insisted that it was an overseas 'province' of Portugal,³² and that the people of Goa had been living peacefully 'in love of the flag of Portugal' for more than 450 years.³³ 'on a basis of equality with all the other Portuguese nationals'.³⁴ Portugal rejected allegations that it had massed troops in Goa, or engaged in some form of provocation.³⁵ It refuted India's claim that it had sought to resolve the dispute by peaceful means, as what India had 'always sought [was] annexation of the Portuguese territories'.³⁶ Furthermore, India's 'so-called peaceful' overtures were instead characterized 'by violence [and] oppression', as illustrated by the imposition of an economic land blockade, the cutting off of mail and railway services, the systematic organization of acts of terrorism and sabotage, etc.³⁷

In the end, the Indian attempt 'to annex the territories of the other sovereignties in the neighbourhood [could] not find any legal justification'.³⁸ Such attempt contravened the 'principle of sovereignty' and was therefore contrary to international law.³⁹ Responding to India's repudiation of the 'European concept' of international law, the Portuguese ambassador stressed that he was 'not aware that international law relating to sovereignty has been changed so far',⁴⁰ while warning that '[i]f the principle of sovereignty is not respected, then there is no knowing what conflicts may arise in every part of the world, when a nation decides to seize the territory of another nation under some pretext or another'.⁴¹

Four Security Council Members—Liberia, the Soviet Union, the United Arab Republic, and Ceylon (Sri Lanka)—sided with India in the debate. Like India, these countries asserted that the matter was essentially 'a colonial question'.⁴² Goa was not an integral part of Portugal, as the latter country maintained.⁴³ Rather, it had been conquered by Portugal and had since been a non-self-governing territory under colonial domination. What is more, Portugal had consistently failed to comply with its obligations as an administering power under UNGA Resolution 1514 (XV), for example by failing to report to the UN.⁴⁴ Contrary to France's position in respect of its colonial possessions in Indian territory, Portugal had categorically refused to engage in negotiations over the end of colonial rule over Goa.⁴⁵ Against this background, the United Arab Republic stressed that '[c]olonialism no longer has any place in the twentieth century. It is out of date and Goa deserves to be freed. This is not aggression and India is not an aggressive country'.⁴⁶ According to Ceylon, the action

(p. 89) taken by India was 'not action taken against another State for territorial aggrandizement, such as was envisaged in the Charter ... India's action is to liberate Indian national territory'.⁴⁷ Liberia for its part raised the question, '[i]f the Council accepts that these enclaves are non-self-governing territories, then how can we, in the same breath, agree that India has committed aggression on Portuguese territory, when these three enclaves are not part of Portuguese territory?'⁴⁸ The Soviet Union, in particular, proved a staunch ally of India in the debate. Having argued at the outset of the debate that the matter should not be included on the Security Council's agenda, since it fell 'exclusively within the domestic jurisdiction of India',⁴⁹ the Soviet Union went on to 'openly declare that we side with the people of India, with the people of Goa who are fighting to free themselves from Portugal's colonial domination',⁵⁰ while calling for sanctions against Portugal.⁵¹

A majority of the Security Council nonetheless denounced the conduct of India.⁵² On the one hand, most of these states did not as such pronounce on the merits of the territorial dispute between India and Portugal⁵³—although some (notably (nationalist) China, Chile, and Ecuador) did sympathize with India's position that colonial possessions were illegal under modern international law and that Portugal therefore did not have valid title to Goa.⁵⁴ Nor did these states seek to justify Portugal's presence in Goa or its treatment of the people of Goa—several even expressed sympathy for the strong feelings in India at the continuance in the Indian subcontinent of small areas still under foreign rule.⁵⁵

On the other hand, these states affirmed that what was at stake in the case concerned, was not colonialism, but rather the application of the prohibition on the use of force and the obligation to settle disputes through peaceful means.⁵⁶ More specifically, the majority view was that the Indian intervention contravened the principle that force should not be used to settle territorial disputes, and accordingly gave rise to a breach of Article 2(4) of the UN Charter.⁵⁷ Several states expressed regret in particular that India had refused to heed appeals, including from the United States and the United Kingdom, and from the UN Secretary-General, to refrain from the use of force and negotiate.⁵⁸ Suggestions that Portugal had provoked the Indian intervention and/or that India was acting in self-defence were dismissed. Thus, in the words of France: '[i]n view of the obvious disproportion of

(p. 90) the forces concerned, can anyone really assert that the Indian Union was threatened or provoked?'⁵⁹

The United States in particular proved a vocal critic of the Indian intervention—which it regarded as 'a blow to international institutions, such as the [UN]'⁶⁰—and of the justification put forward by India in support—which it regarded as opening Pandora's box.⁶¹ UN Ambassador Adlai Stevenson forcefully rejected the idea that the Charter somehow obliged states to settle their international disputes by peaceful means 'except in cases of colonial areas'.⁶²

As a matter of obvious fact and international law, [Goa] is under Portuguese authority. This being the case, India cannot lawfully use force against Goa especially when the peaceful methods in the Charter have not been exhausted. And the claim that Portugal is the aggressor and not India, because it has not followed the recommendation of resolution 1514(XV), requires an even greater exertion of the imagination ... [R]esolution 1514(XV) does not authorize the use of force for its implementation. It does not and it should not and it cannot, under the Charter. If it did, the resolution would lead to international chaos, not to national progress. Resolution 1514(XV) does not and cannot overrule the Charter injunctions against the use of armed force.

In the end, two draft resolutions were put to the vote.⁶³ A first resolution, sponsored by the United States, the United Kingdom, France, and Turkey, 'recalled' the prohibition of Article 2(4) of the UN Charter and 'deplor[ed] the use of force by India'. At the same time, it called for an immediate cessation of hostilities and a withdrawal of Indian forces. The second resolution, sponsored by Ceylon, the United Arab Republic, and Liberia, instead 'recalled' Resolution 1514 (XV), while 'deciding' to 'reject the Portuguese complaint of aggression against India' and 'calling upon' Portugal 'to terminate hostile action and to cooperate with India in the liquidation of her colonial possessions in India'. Neither resolution was ultimately adopted. The second resolution was rejected by 7 votes to 4. The first resolution obtained 7 votes in favour and 4 against, but was blocked by a Soviet veto.

An overview of international reactions compiled by the *Keesing's Record of World Events* reveals a similar rift as the one in the Security Council, with western states such as the United Kingdom, the United States, Australia, Canada, France, Germany, the Netherlands, New Zealand, and Spain deploring or condemning India's recourse to force, and countries such as Ceylon, Communist China, Indonesia, Ghana, Yugoslavia, the Soviet Union, Poland, Czechoslovakia, Hungary, Romania, Bulgaria, Eastern Germany, the United Arab Republic, Morocco, and Tunisia all expressing support for India's action in Goa.⁶⁴

Eventually, the day after the debate within the Security Council, the UNGA on 19 December adopted a resolution on the 'non-compliance of the Government of Portugal with Chapter XI of the Charter of the United Nations and with General Assembly Resolution 1542 (XV)'.⁶⁵ The resolution was adopted with a vote of 83 against 3 (Spain,

(p. 91) Portugal, and South Africa) with 2 abstentions (Bolivia and France). Although the resolution contains no reference to the situation of Goa, its adoption carries considerable symbolic weight nonetheless. It illustrates the isolated diplomatic position in which Portugal found itself in the face of a large anti-colonial majority in the UNGA⁶⁶ and can be seen as implicitly legitimizing the Indian intervention that was launched the day before. In the end, even if several states (including a majority of the UNSC) disagreed with the way in which India had sought to (re-)assert control over Goa, few regretted the *outcome*. The general feeling appeared to be that the proper destiny of the non-self-governing territory of Goa consisted of its absorption by India.⁶⁷ Even if the wishes of the Goans themselves had not been ascertained as such, this outcome was generally deemed to be in accordance with the requirements of self-determination.⁶⁸

III. Questions of Legality

If we test the Indian intervention in Goa against the *jus contra bellum* as it stood at the time of the events, one can hardly escape the conclusion that it amounted to a breach of the prohibition on the use of force in the sense of Article 2(4) of the UN Charter (which was also the position taken by a majority of the Security Council members).⁶⁹

Article 2(4) of the UN Charter indeed prohibits the recourse to force between states in their international relations, including for purposes of settling territorial disputes. This fundamental tenet of the *jus contra bellum* has been confirmed on numerous occasions, including in the 1974

Friendly Relations Declaration,⁷⁰ or, more recently, by the Ethiopia-Eritrea Claims Commission,⁷¹ and finds support in state practice.⁷² Thus, whenever a state engages in forcible action in breach of established demarcation lines or armistice lines, or otherwise disrupting the existing territorial status quo, Article 2(4) applies.⁷³

If the Indian intervention clearly fell within the scope of Article 2(4) of the UN Charter—in spite of implicit or explicit suggestions to the contrary by some Security Council members (see above)—could it nonetheless be justified? On the one hand, it is clear that there was, at the time, no decision of the UNSC (nor, for that matter, a recommendation of

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(p. 92) the UNGA) 'authorizing Indian action against Portugal in Goa'⁷⁴—nor did India suggest otherwise.

On the other hand, the right of self-defence does not provide a credible legal basis for the operation either. While India cursorily made reference to the right of self-defence, it failed to provide much clarity as to the application of this right, for example by clearly identifying an 'armed attack' triggering such right. According to Wright, India seemed to suggest 'that military defense was permissible: (1) to defend Indian territory outside of Goa attacked by Portuguese forces; (2) to defend the Goan people within Goa against Portuguese oppression; and (3) to defend buildings within Goa from destruction by mines.'⁷⁵

Yet, upon closer scrutiny, there appears to be no authoritative evidence that any deliberate attack authorized by Portugal took place⁷⁶ (or was even imminent). The Indian Government itself provided no details of any Portuguese aggressive action outside of Goa, but merely referred to a number of incidents which it had itself described as trivial.⁷⁷ Furthermore, inasmuch as the emphasis on the protection of the people of Goa should be read as an implicit reference to the 'protection of nationals' doctrine,⁷⁸ it must be recalled that: (i) this doctrine was (and still remains) highly controversial among states and legal scholars;⁷⁹ and that (ii) the people of Goa were in any case not Indian nationals at the time of the intervention, but rather citizens of a non-self-governing territory under Portuguese control. Invoking 'protection of nationals' as a justification for the Indian intervention would thus—as Wright correctly observed—have presupposed an 'extension of the concept of self-defence [that had] no basis in international law'.⁸⁰

The Indian self-defence claim—ambiguous though it would seem—also appears to suggest that India deemed itself competent to 'defend' Goa itself against Portuguese attacks/aggression. The underlying reasoning appears to be that the initial conquest of Goa by Portugal constituted the relevant 'armed attack', and that this attack continued to justify Indian action in self-defence some 450 years after the initial events. According to India '[t]he fact that [Portugal] has occupied [Goa] for 450 years is of no consequence, because, during nearly 425 or 430 years of that period we really had no chance to do anything because we were under colonial domination ourselves'.⁸¹ Clearly, the qualification of Portugal's conquest and de facto possession of Goa as a continuing armed attack against India justifying Indian action in self-defence is fundamentally at odds with the traditional understanding of the *jus contra bellum* in the Charter era. On the one hand, the argument overlooks the fact that the prohibition of territorial conquest (and the concomitant doctrine of non-recognition of territorial conquest) 'was not the law in 1510, when Albuquerque conquered Goa'.⁸² On the other hand, it ignores the fact that, pursuant to the necessity criterion, for action in self-defence to be lawful, there should in principle be a close proximity in time between the start of the latter attack and the response in self-defence.⁸³ The basic idea behind the need for such temporal link (also known as the (p. 93) requirement of 'immediacy') is to avoid self-defence being available to sanction countless past acts of aggression or conquest.⁸⁴ The 'immediacy' aspect thus serves as an important factor to distinguish lawful self-defence and unlawful armed reprisals and makes clear that hostilities may not be re-opened at a much later stage without the occurrence of a new *casus foederis*.⁸⁵ In the words of Wright:⁸⁶

A state that neglects to defend its frontiers against hostile encroachments soon loses its right to do so, and can rely only on negotiation or action by the United Nations to restore its rightful possession ... While this period of time might vary according to the accessibility of the boundary in question or other circumstances, it seems clear that a concept of continuing aggression by Portugal against Goa beginning in 1510 and giving India a right to engage in defense of the territory, even though that right had not been exercised for 450 years, has no legal merit.

It follows that the Indian self-defence claim must be dismissed: either there was (in 1961) no 'armed attack' triggering the right of self-defence to begin with, or there was no attack justifying anything going beyond limited on-the-spot reaction by Indian forces. Put differently: either India was not entitled to act in self-defence, or its action was grossly disproportionate to alleged provocations from the Portuguese side. Similar positions discarding India's self-defence claim were voiced in the course of the Security Council debates by France, China, and the United States (see above).

As mentioned above, four Security Council members—including, most notably, the Soviet Union—nonetheless accepted India's argument that the colonial context fundamentally altered the situation, and rendered the intervention lawful. The precise legal basis was not, however, elaborated in any detail by the states concerned, thus making it difficult to distill much in terms of *opinio juris* from the Security Council debate. Inasmuch as it is accepted that the immediacy requirement is an integral part of the right of self-defence and that the recovery of territory which is unlawfully occupied by another state is in principle fully covered by the scope of the prohibition on the use of force, two options would seem to remain at least theoretically available. First, it could be claimed that the recovery of territory under colonial domination was not caught by Article 2(4) of the UN Charter, since it did not *contravene* 'the purposes of the United Nations', but rather sought to *achieve* these purposes (which include, under Article 1(2) UN Charter, the principle of self-determination). Alternatively, one could (theoretically) claim the emergence of a new exception to the prohibition on the use of force under customary international law, permitting the forcible recovery of (contiguous?) territory under colonial domination. It is clear, however, that both interpretations constituted, at the time of the events, a radical departure of the existing *jus contra bellum* framework.

Cognizant of this fact, India and the Security Council members supporting it, placed considerable emphasis on the 'Declaration on the granting of independence to colonial countries and peoples' (Resolution 1514 (XV)) adopted by the UNGA in December 1960, and on the failure of Portugal to comply with its duties under Chapter XI of the UN Charter as the administering power of Goa. Yet, even leaving aside the non-binding

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(p. 94) nature of UNGA resolutions and leaving aside the short time span that had elapsed since the adoption of Resolution 1514 (XV), the simple fact remains that the resolution did not—as US ambassador Stevenson was keen to point out⁸⁷—authorize the use of force for its implementation. No indication to the contrary could be found in the text. What is more, it is highly probable that the resolution would never have been adopted if it had been drafted otherwise.⁸⁸ This is also borne out by the fact that a majority of the Security Council members

resisted such reading of the resolution. Again, in the words of Wright:⁸⁹

The United Nations undoubtedly recognizes the duty of administering Powers to emancipate their colonies and the moral right of the inhabitants of these colonies to self-determination, but it has never suggested that an outside state, on its own initiative, could invade a colony and annex it. In fact, the explicit assertion in Article 73 [UN Charter] that obligations concerning non-self-governing territories are 'within the system of international peace and security, established by the present Charter' seems to prevent such an interpretation.

It follows that the Indian intervention was manifestly unlawful under the international legal framework governing the use of force as it stood at the time of the events. Whether it nonetheless contributed to a modification, or erosion, of that legal framework is a different matter altogether—one we must now turn to.

IV. Conclusion: Precedential Value

The Indian intervention in Goa received only limited attention in legal doctrine at the time of the events, and has, more recently, largely fallen into oblivion. In spite thereof, the evening air in New York on 18 December 1961 was swollen with a sense of history in the making (and law in the breaking (or at least changing)). Indeed, while the discussions pertained to a small-scale (if not tiny) enclave on the Indian subcontinent, the members of the Security Council felt this was a historical case nonetheless. The US ambassador to the UN, Adlai Stevenson, who was also present at the birth of the UN, felt compelled to 'add a word of epilogue to this fateful discussion, by far the most important in which I have participated since this Organization was founded sixteen years ago'.⁹⁰

Tonight we are witnessing the first act in a drama which would end with the death of the Organization. The League of Nations died, I remind you, when its members no longer resisted the use of aggressive force ... [W]e have witnessed tonight an effort to rewrite the Charter, to sanction the use of force in international relations when it suits one's own purposes. This approach can only lead to chaos and to the disintegration of the United Nations.

The Soviet ambassador objected to Stevenson's 'dramatic statement' as follows:⁹¹

Today saw, not the beginning of the end of the United Nations, but the expression of the will to defend colonial countries and peoples and their right to life, freedom and independence. The fact that the Council rejected proposals aimed at supporting the colonial Powers, at supporting their colonial right to oppress, proves the merit of the Council, not its weakness.

In many respects, the Indian intervention in Goa effectively presented itself as a game-changer for the UN and for international law in general. For the first time since its inception, the Security Council failed to condemn a case of territorial annexation in manifest breach of the prohibition on the use of force.⁹² What is more, several members of the

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(p. 95) Security Council explicitly approved the intervention. Even more significant perhaps is the implicit support for the intervention from the UNGA which, a mere day after the start of the intervention, adopted Resolution 1699 (XVI), condemning the continuing non-compliance of Portugal with its obligations under Chapter XI of the UN Charter in respect of the non-self-governing territories under its control. Even states that disagreed with the way in which India had (militarily) (re-)asserted control over Goa appeared to acknowledge that the *outcome* was not completely undesirable, as the intervention had 'rectified an injustice, by eliminating a vestige of colonialism'.⁹³

The case revealed the dominant role which the developing and socialist states had come to occupy in the UN, in particular in the UNGA. It moreover revealed the deep and fundamental rift (largely) between the west and the rest⁹⁴ on the application of the Charter framework on the prohibition of force in the colonial context, with India and the Soviet Union leading the assault against what many regarded as an outdated concept of international law imposed upon the world by the European colonial powers. As Wright notes, the significant feature of the Goa situation was 'that many of the new states, and also the Soviet Union, felt that colonialism was such an evil that the use of force to eliminate it should be tolerated'.⁹⁵ In a radical departure from the pre-existing international legal framework, it was ostensibly deemed 'just', in the view of these states, to nullify the possession of overseas (as opposed to contiguous) territories controlled by the colonial powers as soon as the opportunity arose.⁹⁶ American and European opinion in turn were left shocked by the degree of sympathy, or even outright support, for an action that was so diametrically opposed to the prohibition on the use of force and the obligation to settle disputes by peaceful means. Echoing Adlai Stevenson's 'word of epilogue', Flory prophesized that the Goa incident, far from being an isolated case, would leave its mark on the UN system and serve as a precedent in other regions of the world.⁹⁷

Did this fear materialize? In retrospect, the Indian intervention in Goa certainly gave prominence to the concept of colonialism as a 'continuing aggression'. It was one of the first clashes in a debate that would dominate the UNGA and the Security Council throughout the 1960s and 1970s. A distinction is nonetheless in order between the permissibility for third states to provide support to national liberation movements, on the one hand, and the use of force to recover 'pre-colonial title', on the other hand.

With regard to the former aspect, a fierce debate would effectively continue throughout the 1960s and 1970s as to whether the right of national liberation movements to 'struggle' for self-determination included 'armed' struggle, as well as whether the right of third states to provide assistance to such groups included 'military' assistance.⁹⁸ Relevant provisions in UNGA resolutions such as the 1970 Friendly Relations Declaration or the 1974 Definition of Aggression⁹⁹ were deliberately drafted in such general and ambiguous terms

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(p. 96) as to permit both sides to interpret the provisions in a completely divergent manner should the need arise.¹⁰⁰ It is noted, however, that no state ever went as far as to rely in a *specific* case on a right to engage in a direct military intervention in a war of national liberation by sending troops to support the national liberation movement concerned.¹⁰¹ In the end, the debate was never conclusively settled, but instead dwindled down as the decolonization process neared its completion and states' focus gradually shifted from self-determination to counter-terrorism in the 1980s and 1990s (and certainly after 9/11).¹⁰²

With regard to the latter aspect, history suggests that the Goa intervention was ultimately an isolated case. As Gray observes, 'India's annexation of Goa is the only instance where the UN has eventually acquiesced in the "recovery" of territory by force, despite its initial condemnation by a majority of States in the Security Council'.¹⁰³ Referring to Morocco's claim to Western Sahara, Indonesia's claim to East

Timor, Argentina's 1982 attempt to recover the Falklands/Malvinas and Iraq's invasion of Kuwait in 1990. Gray asserts that '[s]ubsequent use of this argument based on pre-colonial title has been rejected by the UN'.¹⁰⁴ In a similar vein, referring to the 1982 Falklands/Malvinas War, Korman concludes that India's successful annexation of Goa 'cannot be taken to indicate the existence of a legal right of reconquest in cases where a former colony seeks to recover what it considers to be its pre-colonial frontiers'.¹⁰⁵ In conclusion, notwithstanding the concerns expressed by Stevenson, the Indian intervention in Goa, and the reaction thereto by the international community, did not give rise to the creation in customary international law of a 'colonial exception' to the prohibition against settling territorial disputes by resort to armed force.

Footnotes:

- ¹ Sharon Korman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* (Clarendon Press 1996) 267; R K Dixit, 'Goa, Conflict' (2008) Max Planck Encyclopaedia of Public International Law [1] (referring to 60.9 per cent Hindus, 36.8 per cent Christians, and 2.2 per cent Muslims).
- ² Korman (n 1) 267.
- ³ Transmission of information under Article 73e of the Charter, UNGA Res 1542 (XV) (15 December 1960) UN Doc A/RES/1542 (XV).
- ⁴ Note the resulting judgment, adopted on 12 April 1960, affirmed Portuguese sovereignty over Dadra and Nagar Haveli. It also recognized that Portugal had a right of passage over Indian territory between the district of Daman and the enclaves of Dadra and Nagar Haveli 'in respect of private persons, civil officials and goods in general, to the extent necessary, as claimed by Portugal, for the exercise of its sovereignty over the enclaves, and subject to the regulation and control of India'. This rite of passage was found not to extend, however, to the passage of 'armed forces, armed police, and arms and ammunition'. In the end, the Court found that India had not acted contrary to its obligations under this (customary) rite of passage. *Case concerning Right of Passage over Indian Territory (Portugal v India)* (Merits) [1960] ICJ Rep 1960, 6.
- ⁵ 'Indian Volunteers Invade Goa; 21 Die; Unarmed Indians March into Goa' *New York Times* (New York, 15 August 1955).
- ⁶ Andrew J Rotter, *Comrades at Odds: The United States and India, 1947–1964* (Cornell University Press 2000) 185.
- ⁷ Letter dated 18 December 1961 from the Permanent Representative of Portugal addressed to the President of the Security Council (18 December 1961) UN Doc S/5030.
- ⁸ UNSC Verbatim Record (18 December 1961) UN Doc S/PV.987; UNSC Verbatim Record (18 December 1961) UN Doc S/PV.988. Note the Soviet Union objected to the inclusion of the matter on the Security Council's agenda. According to the Soviet Union, the matter '[fell] exclusively within the domestic jurisdiction of India, because Goa and the other Portuguese colonies in Indian territory cannot be regarded as other than temporarily under the colonial domination of Portugal': UN Doc S/PV.987 [3]. A majority of members nonetheless voted to put the Portuguese complaint on the Council's agenda: *ibid* [7].
- ⁹ Non-compliance of the Government of Portugal with Chapter XI of the UN Charter and with UNGA Resolution 1542 (XV), UNGA Res 1699 (XVI) (19 December 1961) UN Doc A/RES/1699 (XVI).
- ¹⁰ Goa, Daman, and Diu became part of India via the Constitution (Twelfth Amendment) Act 1962. Dixit (n 1) [21].
- ¹¹ Treaty on recognition of India's sovereignty over Goa, Daman, Diu, Dadra and Nagar Haveli and related matters, New Delhi, 31 December 1974, 982 UNTS 14321.
- ¹² See also, for an overview of the UNSC debate, Dixit (n 1) [11]–[20].
- ¹³ UN Doc S/PV.987 (n 8) [40].
- ¹⁴ *ibid* [43].
- ¹⁵ *ibid* [37].
- ¹⁶ *ibid* [39].
- ¹⁷ Declaration on the Granting of Independence to Colonial Countries and Peoples, UNGA Res 1514 (XV) (14 December 1960) UN Doc A/RES/1514 (XV).
- ¹⁸ UN Doc S/PV.987 (n 8) [60].
- ¹⁹ *ibid* [46].
- ²⁰ *ibid* [43].
- ²¹ *ibid* [47].
- ²² UN Doc S/PV.988 (n 8) [79].
- ²³ UN Doc S/PV.987 (n 8) [52].
- ²⁴ *ibid*.
- ²⁵ UN Doc S/PV.988 (n 8) [77].
- ²⁶ UN Doc S/PV.987 (n 8) [11].
- ²⁷ *ibid* [14].
- ²⁸ *ibid* [17], [19].
- ²⁹ *ibid* [19].
- ³⁰ See Letter dated 8 December 1961 from the Permanent Representative of Portugal addressed to the President of the Security Council (8 December 1961) UN Doc S/5016; Letter dated 11 December 1961 from the Permanent Representative of Portugal addressed to the President of the Security Council (11 December 1961) UN Doc S/5018; Letter dated 16 December 1961 from the Permanent Representative of Portugal addressed to the President of the Security Council (16 December 1961) UN Doc S/5029.
- ³¹ UN Doc S/PV.987 (n 8) [23].
- ³² UN Doc S/PV.988 (n 8) [45].
- ³³ *ibid* [48].

- ³⁴ *ibid* [43].
- ³⁵ *ibid* [55].
- ³⁶ *ibid* [56].
- ³⁷ *ibid* [46]–[47].
- ³⁸ *ibid* [37].
- ³⁹ *ibid*.
- ⁴⁰ *ibid* [38].
- ⁴¹ *ibid*.
- ⁴² UN Doc S/PV.987 (n 8) [89] (Liberia), [110] (Soviet Union), [121] (United Arab Republic), [132] (Ceylon).
- ⁴³ See, eg, *ibid* [125] (United Arab Republic).
- ⁴⁴ *ibid* [93] (Liberia), 104 (Soviet Union), [125]–[128] (United Arab Republic).
- ⁴⁵ *ibid* [123]–[124] (United Arab Republic).
- ⁴⁶ *ibid* [129].
- ⁴⁷ *ibid* [137]–[139] (note Ceylon also stressed that the 'build-up of Portuguese forces in Goa [could not] be reconciled with peaceful intentions towards India').
- ⁴⁸ *ibid* [95].
- ⁴⁹ *ibid* [3].
- ⁵⁰ *ibid* [112].
- ⁵¹ *ibid* [118].
- ⁵² John Dugard, *Recognition and the United Nations* (Grotius 1987) 116.
- ⁵³ See, eg, UN Doc S/PV.988 (n 8) [94] (United States). But see UN Doc S/PV.988 (n 9) [6] (France: asserting that the ICJ had recognized Goa to be Portuguese in the 1960 *Rite of Passage* case).
- ⁵⁴ Korman (n 1) 272.
- ⁵⁵ UN Doc S/PV.987 (n 8) [84] (United Kingdom); UN Doc S/PV.988 (n 8) [17], [21] (China, stressing the 'evils of colonialism', while adding that 'war is an even greater evil'); [30] (Chile). According to Franck, these members 'seemed to understand that both disputants were guilty of violating fundamental norms of the Charter'. Thomas Franck, *Nation Against Nation: What Happened to the U.N. Dream and What the U.S. Can Do About It* (OUP 1985) 55.
- ⁵⁶ UN Doc S/PV.987 (n 8) [72]–[75] (United States), [101] (Turkey).
- ⁵⁷ *ibid* [72]–[76] (United States: 'Let it be perfectly clear what is at stake here; it is the question of the use of armed force by one State against another and against its will, an act clearly forbidden by the Charter. We have opposed such action in the past by our closest friends as well as by others. We opposed it in Korea in 1950, in Suez and Hungary in 1956 and in the Congo in 1960. And we do so again in Goa in 1961'); [87] (United Kingdom, 'utterly deplor[ing] the use of force by India'); [99] (Turkey: 'The resort to force for the settlement of international disputes, the transgression of frontiers by armed forces, under any pretext and for whatever reason, are actions which my Government has never condoned'); UN Doc S/PV.988 (n 8) [9] (France: referring to a 'military action contrary to the principles of the United Nations Charter'); [9]–[10] (Ecuador: agreeing with the United States that 'force should not be used to settle territorial disputes'); [17] (China: deploring 'the use of force by India against Portugal'); [27]–[29] (Chile: deploring the use of force by India).
- ⁵⁸ UN Doc S/PV.987 (n 8) [78] (United States); UN Doc S/PV.988 (n 8) [4] (France).
- ⁵⁹ UN Doc S/PV.988 (n 8) [3] (France). See also UN Doc S/PV.988 (n 8) [20] (China: 'I must confess that the plea of provocation is not impressive and could not justify the Indian armed invasion of Goa, Damão and Diu'); [89] (United States: 'And can anyone believe that huge India is acting in self-defence against this almost defenceless territory?').
- ⁶⁰ UN Doc S/PV.987 (n 8) [79].
- ⁶¹ *ibid* [77].
- ⁶² UN Doc S/PV.988 (n 8) [93]–[94].
- ⁶³ UN Doc S/PV.988 (n 8) [97]ff.
- ⁶⁴ 'International Reactions to Indian Attack on Goa—Soviet veto on western Cease-fire Resolution in Security Council' (1962) 8 *Keessing's Record of World Events* 18659.
- ⁶⁵ Non-compliance of the Government of Portugal with Chapter XI of the Charter of the United Nations and with General Assembly Resolution 1542 (XV), UNGA Res 1699 (XVI) (19 December 1961) UN Doc A/RES/1699 (XVI).
- ⁶⁶ Maurice Flory, 'Les implications juridiques de l'affaire de Goa' (1962) 8 *Annuaire français de droit international* 480–81.
- ⁶⁷ Korman (n 1) 273 ('The political separation of the enclave of Goa from the rest of India was widely held to be an arbitrary disruption of the national unity and territory integrity of India by a colonial power in the sixteenth century; and most Members of the United Nations did not regard Goa as constituting in any legitimate sense a separate territorial unit entitled to consultation by plebiscite as to its future status.').
- ⁶⁸ *ibid*.
- ⁶⁹ Consider also Flory (n 66) 478 (observing that the Portuguese position was 'solid' from a legal perspective).
- ⁷⁰ Declaration on Principles of International Law concerning Friendly Relations, UNGA Res 2625 (XXV) (24 October 1970) UN Doc A/RES/2625 (XXV) ('[e]very State has the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes and problems concerning frontiers of States').
- ⁷¹ Ethiopia-Eritrea Claims Commission, Partial Award *Jus ad Bellum*, Ethiopia Claims 1–8, 19 December 2005, reprinted in (2006) 45 *ILM* 430, [10]: 'The Commission cannot accept the legal position ... that recourse to force by Eritrea would have been lawful because some of the territory concerned was territory to which Eritrea had a valid claim ... [T]he practice of States and the writings of eminent publicists show that

self-defence cannot be invoked to settle territorial disputes. In that connection, the Commission notes that border disputes between States are so frequent that any exception to the prohibition of the threat or use of force for territory that is allegedly occupied unlawfully would create a large and dangerous hole in a fundamental rule of international law.' Note this statement was quoted with approval by the Arbitral Tribunal in the *Guyana/Suriname* case. *Guyana and Suriname*, Arbitral Award of 17 September 2007, available at <<https://pcacases.com/web/sendAttach/902>>, [423].

⁷² See Olivier Corten, *Le droit contre la guerre* (2nd edn, Pedone 2014) 231–34; Robert Kolb, *Ius contra bellum: Le droit international relative au maintien de la paix* (2nd edn, Bruylant 2009) 249–50.

⁷³ In this sense, Kolb (n 72) 248.

⁷⁴ Quincy Wright, 'The Goa Incident' (1962) 56 *American Journal of International Law* 617, 628.

⁷⁵ *ibid* 620.

⁷⁶ *ibid* 621.

⁷⁷ *ibid* 622. Consider also Dixit (n 1) [6].

⁷⁸ We leave aside for present purposes the discussion as to whether the legal basis of 'protection of nationals' should be sought in the right of self-defence or in a separate customary law exception to the prohibition on the use of force, or whether (small-scale) 'protection of nationals' operations can exceptionally be beyond the reach of Article 2(4) altogether.

⁷⁹ Further, Tom Ruys, 'Armed Attack' and Article 51 of the UN Charter: *Evolutions in Customary Law and Practice* (CUP 2010) 213–49.

⁸⁰ Wright (n 74) 621.

⁸¹ UN Doc S/PV.987 (n 8) [46].

⁸² Wright (n 74) 622.

⁸³ Further, Ruys (n 79) 99–108. See also *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v US)* (Merits) [1986] ICJ Rep 1986 14, [237]. Note some authors construe the 'immediacy' of action undertaken in self-defence as a separate customary condition of self-defence next to necessity and proportionality. See, eg, Yoram Dinstein, *War Aggression and Self-Defence* (5th edn, CUP 2011) 233.

⁸⁴ Tarcisio Gazzini, *The Changing Rules on the Use of Force in International Law* (Manchester University Press 2005) 147.

⁸⁵ Oscar Schachter, 'The Lawful Resort to Unilateral Use of Force' (1984–85) 10 *Yale Journal of International Law* 292.

⁸⁶ Wright (n 74) 623–24.

⁸⁷ UN Doc S/PV.988 (n 8) [93].

⁸⁸ *ibid*.

⁸⁹ Wright (n 74) 626.

⁹⁰ UN Doc S/PV.988 (n 8) [130].

⁹¹ *ibid* [139].

⁹² Flory (n 66) 489.

⁹³ Korman (n 1) 271.

⁹⁴ It is noted that several non-western Security Council members also agreed that the Indian intervention was unlawful (see above). More generally, presenting the debate over self-determination as a split between the west and the rest is somewhat of an oversimplification, as it tends to ignore the fact that the camp of socialist and developing states was hardly homogeneous, or consistent, in its approach. It also ignores the fact that a number of western states occasionally expressed support for the legitimacy of the 'armed struggle' of national liberation movements and, conversely, that several non-western states (in particular Latin-American states) occasionally resisted any re-interpretation of the Charter framework on the use of force with respect to (support for) national liberation movements. See further, Antonio Cassese, 'Le droit international et la question de l'assistance aux mouvements de libération nationale' (1986) 19 *Revue belge de droit international* 307–26.

⁹⁵ Wright (n 74) 629.

⁹⁶ *ibid* 630.

⁹⁷ Flory (n 66) 486, 489–91.

⁹⁸ See further, eg, Heather A Wilson, *International Law and the Use of Force by National Liberation Movements* (Clarendon Press 1988) 209.

⁹⁹ Definition of Aggression, UNGA Res 3314 (XXIX) (14 December 1974) UN Doc A/RES/3314 (XXIX).

¹⁰⁰ Wilson (n 98) 99.

¹⁰¹ Corten (n 72) 220–22.

¹⁰² Further, Ruys (n 79) 419–21.

¹⁰³ Christine Gray, *International Law and the Use of Force* (3rd edn, OUP 2008) 65.

¹⁰⁴ *ibid*. See Chapter 30, 'The Falklands/Malvinas War—1982' by Etienne Henry and Chapter 38, 'The Gulf War—1990–1991' by Erika de Wet.

¹⁰⁵ Korman (n 1) 275.

