

**LEGAL ISSUES ON THE CONTINUITY OF
THE REPUBLIC OF LITHUANIA**

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I. INTRODUCTION

This year marks the 15th anniversary of the most significant event in the new history of Lithuania—the restoration of Lithuania's independence.

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On March 11, 1990 the Supreme Council (Parliament) of Lithuania declared the re-establishment of the independence of the Republic of Lithuania. After 50 years of foreign occupation Lithuania returned to the world family of free nations. Therefore, it is useful to re-examine the restoration of Lithuania's independence from the standpoint of international law. This analysis depends on the legal evaluation of Lithuania's occupation and annexation in 1940 because the legality, or illegality, of Lithuania's incorporation into the USSR has determined the legal basis on which the independence of Lithuania was restored in 1990.

Thus this article will focus on two main issues:

1. According to international law, had Lithuania ever been a legitimate part of the former Union of Soviet Socialist Republics [USSR]? (The issue of the status of Lithuania in 1940-1990); and,
2. Is the contemporary Republic of Lithuania identical to the pre-war Republic of Lithuania? (The continuity and identity of Lithuania).

II. EVALUATION OF LITHUANIA'S OCCUPATION AND ANNEXATION FROM THE STANDPOINT OF INTERNATIONAL LAW

A. Legal Assessment of the Molotov-Ribbentrop Pact

In 1989, the Commission of the Supreme Council of the Lithuanian Soviet Social Republic for the examination of the German-Soviet agreements of 1939 and their Consequences¹ concluded that the occupation and annexation of Lithuania in 1940 was a result of the implementation of the secret protocols signed by the USSR and Germany in 1939-1941. On 23 August and 28 September of 1939 Germany and the USSR signed two secret protocols that determined Lithuania's fate for the next 50 years. The Republic of Lithuania, whose independence was officially recognised by the international community of states during 1918-1922, had become a part of the Soviet sphere of interests.

The Molotov-Ribbentrop Pact's provisions were inconsistent with international law because their object was territory of third states. In accordance to the secret protocols, the USSR and Germany decided to take special measures to protect their interests in the territory of third states.

In fact, the implementation of the Molotov-Ribbentrop Pact resulted in acts of aggression against third states, their occupations and annexations. Therefore, upon concluding and implementing the secret protocols of the

¹ See the 21 August 1989 "Conclusions of the Commission of the Supreme Council of the Lithuanian SSR for the examination of the German-Soviet agreements of 1939 and their consequences", Lithuanian newspaper *Tiesa*, 22 August 1989.

Molotov-Ribbentrop Pact, Germany and the USSR had violated several legal obligations to third countries (including Lithuania) and the international community in general.

Firstly, on 24 December 1989 the Congress of People's Deputies of the USSR in its Resolution on the Political and Juridical Appraisal of the Soviet-German Non-aggression Treaty of 1939² noted, "territorial divisions into Soviet and German 'spheres of influence' ... from the standpoint of international law were in conflict with the sovereignty and independence of several third countries." Here the Congress was referring to Latvia, Lithuania, Estonia, Poland and Finland. Therefore, the Molotov-Ribbentrop Pact's provisions contradicted the obligation to respect and preserve against external aggression the territorial integrity and political independence of the states as stipulated in Article 10 of the Covenant of the League of Nations.

Secondly, the Pact's provisions contravened the 1928 Paris Treaty on the Renunciation of a War as a Means of National Policy (the Briand-Kellogg Pact) due to the fact that Germany and the USSR had clear aggressive intentions towards third states. By 1939-1940, the provisions of the Briand-Kellogg Pact had already become a part of international customary law.³

Finally, Germany and the USSR violated their legal obligations to these third states undertaken by a number of bilateral treaties with the same. I will focus on the treaties concluded with Lithuania only. The USSR violated Article I of the 1920 "Peace Treaty between Lithuania and the USSR" according to which the USSR unreservedly recognised the independence of Lithuania and renounced forever all sovereign rights over the Lithuanian people and territory. The USSR also violated Article 2 of the 1926 "Non-aggression Treaty with Lithuania" that placed both parties under the obligation of "to respect in all circumstances the sovereignty and territorial integrity of each other." Moreover, Article VI of the 1939 Treaty on the Transfer of Vilnius and Vilnius District to the Republic of Lithuania and on Mutual Assistance between Lithuania and the Soviet Union according to which both parties were obliged not to participate in any coalition directed against one of them. Germany had violated its obligation under Article 4 of the 1939 "Treaty with Lithuania on the Transfer of Klaipėda" not to support any use of force against Lithuania.

From the standpoint of international law the secret protocols of the Molotov-Ribbentrop Pact were null and void, i.e. "invalid from the very

² Publication of Estonian Academy of Science *Eesti Teaduste Akadeemia Toimetised* 39(2) (1990): 198-199.

³ C.D. Wallace, "Kellogg-Briand Pact," *Encyclopedia of Public International Law* 3 (1982): 238.

moment of their signing (*ex tunc*)”.⁴ They were also declared null and void by both signatories in 1989.⁵ There are several legal grounds for the *ab initio* nullity of these secret agreements. Firstly, their conclusion and realisation contravened the main principles of international law in force by 1939⁶ and from the standpoint of modern international law are clear violations of peremptory norms *jus cogens*. Secondly, the secret protocols had destroyed the very *raison d’être* of the earlier treaties dealing with political status of territory, i.e. the conclusion of such protocols was prohibited by the earlier bilateral and multilateral treaties.⁷ Finally, the secret protocols breached “the universally recognised principle of law of treaties *pacta tertiis nec nocent nec prosunt* – a treaty does not grant rights in regard to the third party nor does it create obligations to it.”⁸ Consequently, the USSR had not obtained any sovereign rights to Lithuania from the Molotov-Ribbentrop Pact and thus there was no lawful justification for its aggression against Lithuania in 1940.

B. The Occupation and Annexation of Lithuania as an International Crime

In the course of implementing the Molotov-Ribbentrop Pact, the Soviet Union compelled Lithuania to enter into a “Treaty of Mutual Assistance” on 10 October 1939 and, in addition, by compelling it to allow Soviet military bases in her territory caused her to lose her status as a neutral power. On 14 June 1940, the USSR presented an ultimatum to Lithuania based upon false and fabricated accusations against it. The Soviet Union had also demanded immediate change of the Government of Lithuania into a more pro-soviet one, immediate prosecution of some Lithuanian officials and, most importantly, immediate permission for additional Soviet military units to enter and be situated in Lithuania’s most important centres. Having presented the ultimatum, Soviet officials made clear that, irrespective of Lithuania’s answer, Soviet troops would invade

⁴ H. Lindpere, “Evaluation of the Soviet-German Pacts of August 23 and September 28, 1939, from the Standpoint of International Law”, *Eesti Teaduste Akadeemia Toimetised*, 39(2) (1990): 106.

⁵ The Federal Republic of Germany declared this on the 50th anniversary of the outbreak of World War II. See D.A. Loeber, “Consequences of the Molotov-Ribbentrop Pact for Lithuania of Today: International Law Aspects”, *Lithuanian Foreign Policy Review* 4 (1999): 104). The Soviet Union made an analogous step in the 24 December 1989 Resolution of the Congress of People’s Deputies of the USSR on the Political and Juridical Appraisal of the Soviet-German Non-aggression Treaty of 1939.

⁶ *Supra* note 1.

⁷ V. Vadapalas & V. Žalys, “Secret Protocols to the Soviet-German Treaties of 1939 and the Problem of Prescription in International Law”, *Eesti Teaduste Akadeemia Toimetised* 39(2) (1990): 130.

⁸ R. Müllerson, “Soviet-German Agreements of 1939 in the Light of International Law”, *Eesti Teaduste Akadeemia Toimetised* 39(2) (1990): 116.

the next day. After some hesitation, the Government of Lithuania accepted the ultimatum.

On 15 June 1940, the Soviet armed forces occupied Lithuania. As of that day the Republic of Lithuania lost her independence. A new Lithuanian government was formed under the direction of high Soviet officials. Thus, this “people’s government” became an instrument of Soviet policy. Soon thereafter, the government was ordered to organise elections to the “People’s *Seimas*” (the Parliament). The elections were held under the occupation with only communist candidates being allowed. The results and outcomes were both fabricated and pre-ordained. Thus, the newly elected parliament did not reflect the will of Lithuanian people but rather was an obedient tool of the Soviets and their interests. On 21 July 1940, the “People’s *Seimas*” proclaimed the establishment of “Soviet Lithuania” and requested its admission as a republic of the USSR. On 3 August 1940, the Supreme Soviet of the USSR adopted a special law on the incorporation of Lithuania into the Soviet Union, thus concluding the annexation of Lithuania under *Soviet* law.

Due to the illegality of the Molotov-Ribbentrop Pact, it would be logical to treat all its consequences as illegal ones, including the occupation and annexation of Lithuania. However, the most contested issue is whether the threat of force used in 1940 against Lithuania by the USSR was illegal. For instance, Russian legal scholar S.V. Chernichenko concludes that the Baltic States had not been occupied by the Soviet Union since there was no state of war.⁹ He argues that, according to the Briand-Kellogg Pact, the term *war* should be understood only in its most narrow meaning, i.e. as declared war or as the direct use of military force by one state against another. The ultimatum presented by the USSR to the Republic of Lithuania would, under his argument, only be duress constituting a threat of force rather than the use of force. Therefore, he concludes, that, *at the time*, the annexation of the Baltic States was legitimate under international law. Along these lines, on 9 June 2000 the Ministry of Foreign Affairs of the Russian Federation issued the Statement on the Draft Law of Lithuania Concerning the Damage Resulting from the Occupation by the USSR that declared that the Soviet troops were brought into Lithuania in 1940 “with the consent of the leadership of that State which had been received within the limits of international law of that time”.

This position contains serious contradictions. Firstly, it is inconsistent with the nature of law and state practice. The main objective of any system of law, including international law, is to ensure that the actions of countries and the international community are based on justice. Keeping this principle in mind it becomes obvious that the term *war* used in the

⁹ See: Черниченко С. В., “Континуитет, идентичность и правопреемство государств”, Российский ежегодник международного права, 1996-1997 (Санкт-Петербург: Россия-Нева, 1998), p. 9-41.

1928 Paris Treaty is to be interpreted in a broader sense to include any use or threat of force. For instance, in 1934, the International Law Association suggested that the Pact covered armed force and *threat of war*.¹⁰ It is factually impossible to treat the threat of the use of force and the use of force differently in that they are interrelated coercive actions: the former usually, but not always, preceding the latter. Any other interpretation would allow a state to, simply by disguising force, escape international legal responsibility for threatening its use. This would be immoral and unjust since it leads to treating *belligerent* occupation on the different legal footing as *pacific* occupation, which occurs, when the coerced consent of the occupied state is given. Thus, this kind of occupation should be considered the same as the use of force and the same norms of international law should apply as in the case of classic military occupation.¹¹ To sum up, a consent made under duress is not a consent, and this violence constitutes a violation of international law.¹² The invalidity of such consent is confirmed by practice: for instance, in 1973 Czechoslovakia and the Federal Republic of Germany declared the 1938 Munich Agreement null and void as it was imposed onto Czechoslovakia by threat of force.

At the time of occupation, state practice confirmed this point of view. Many states (Western European, American and some Asian and African countries) considered Lithuania's occupation and annexation as illegal and thus did not recognise the incorporation of Lithuania into the USSR.¹³ The United States, for example, expressed its opinion on 23 July 1940:

The people of the United States are opposed to predatory activities no matter whether they are carried on by the use of force *or by the threat of force*. The United States will stand by these principles, because of the conviction of the American people that unless the doctrine in which these principles are inherent once again governs the relations between nations, *the rule of reason, of justice, and of law – in other words, the basis of modern civilisation itself – cannot be preserved*.¹⁴

¹⁰ T. Hillier, *Public International Law* (London: Cavendish Publishing Ltd., 1994), 266.

¹¹ M. Bothe, "Occupation, Pacific", *Encyclopedia of Public International Law* 4 (1982): 67-69.

¹² Vadapalas & Žalys, *supra* note 7, 129.

¹³ W. J. H. Hough, III, "The Annexation of the Baltic States and Its Effect on the Development of Law Prohibiting Forcible Seizure of Territory", *New York Law School Journal of International and Comparative Law* 6, no. 2 (1985): 391-446; J. Šatas *Lietuvos tarptautinis pripažinimas: praeitis ir dabartinės realijos* (Vilnius: Žinijs, 1991), 38-39.

¹⁴ *Latvian-Russian Relations: Documents* (Washington: the Latvian Legation, 1978), 209.

During this period, the same criteria were applied in that other closely analogous situations such as the annexation of Austria, Czechoslovakia, Ethiopia and Poland were also not recognised. Some of them, Austria and Czechoslovakia, were annexed without serious military resistance. The reaction of the international community to the annexation of the Baltic States and of the other mentioned countries was a clear manifestation of the Stimson doctrine under which any situation, treaty, or agreement contradicting the Covenant of the League of Nations and the 1928 Paris Treaty should not, because they cannot, be recognised.¹⁵ The Assembly of the League of Nations confirmed the principles of that doctrine in 1932.

The Statute and practice of the Nuremberg International Criminal Tribunal also supports the argument that the occupation and annexation of Lithuania is a wrongful act. The Tribunal decided that the serious violations of Article 10 of the Covenant of the League of Nations and of Article 1 of the Briand-Kellogg Pact made by Germany in 1938-1941 were international crimes. Indeed, there are no reasons to treat differently the analogous actions of the Soviet Union of 1940. If we took an opposite view, we would deny the legal nature of international law. Under any system of law it is impossible to qualify analogous acts made under the same circumstances differently, i.e. we cannot treat an action made by one state as an international crime and the same action made by another state as a legitimate act.

For instance, it is very useful to look at the Nuremberg Tribunal's conclusion that Germany's 1938 annexation of Austria was an act of aggression. The Austrian and Lithuanian situations being virtually identical in that under the threat of force the Government of Austria had been changed into a pro-Nazi government which requested that the Nazi Germany send in occupation troops and declared an intent to be annexed. The Tribunal rejected arguments relating to the will of the Austrian people to join Germany on the grounds that these arguments were not persuasive in that "the methods used to achieve this purpose (the annexation of Austria) had been the *methods of aggression*. The crucial factor had been the military power of Germany which would be inevitably used in the case of any resistance."¹⁶ In 1938, the USSR regarded the *Anschluss* as "the breach of international obligations proceeding from the Covenant of the League of Nations and that of the Treaty of Paris (Kellogg-Briand Pact)"¹⁷ thus constituting an international crime. At the time of the *Anschluss*, the Soviet delegate to the League of Nations stressed that neither the direct seizures and

¹⁵ V. Vadapalas, *Tarptautinė teisė: bendroji dalis* (Vilnius: Eugrimas, 1998), 95.

¹⁶ Нюрнбергский процесс над главными немецкими военными преступниками (Москва: Госюриздат, 1961), том 7, р. 336.

¹⁷ Lindpere, *supra* note 4, 104.

annexations of other people's territory, nor those cases where such annexations are camouflaged by the setting-up of puppet "people's" governments could be recognised as legal.¹⁸ The subsequent occupation and annexation of Lithuania is classical illustration of the latter. Finally, the Nuremberg Tribunal had also determined that the German occupations of Belgium, the Netherlands and Luxembourg, even though they had met no military resistance were, nevertheless international crimes, i.e. acts of aggressive war. The most important is that, as it follows from the jurisprudence of the Nuremberg Tribunal, consent of the injured state with the use of force against it has no legal force and cannot, as such, to preclude wrongfulness under international law.

These parallels also support the conclusion that the occupation and annexation of the Republic of Lithuania are properly considered international crimes. According to the Statute of the Nuremberg Tribunal, an aggressive war should be treated as a crime against peace. Indeed, "the Soviet Union's occupations and annexation of the Baltic States after a successful threat of an armed attack was equivalent to a war of aggression."¹⁹ The invasion of the Soviet army after the threat of the ultimatum, and irrespective of the answer of Lithuania, meets the definition of the term "act of aggression" as defined in paragraph 2 of Article II of the Convention for the Definition of Aggression between Lithuania and the USSR.²⁰ It was an "invasion by armed forces, with or without a declaration of war, of the territory of another state." As one can see, no actual state of war was required in order to establish the fact of aggression.

This bilateral Convention was similar to the multilateral London Convention for the Definition of Aggression signed in 1933 by the USSR and 9 other states, including Estonia and Latvia. The Convention was also based on the Briand-Kellogg Pact, which according to the parties to the Convention, "prohibits all aggression." Therefore, it is clear that the Soviet Union had violated Article I of the Pact. The USSR also breached Article 3 of its 1926 Non-aggression Treaty with Lithuania that obliged the parties "to sustain from any act of aggression," and Article III of the above mentioned bilateral Convention for the Definition of Aggression under which no political, military, economic or other considerations could serve as an excuse or justification for the aggression.

By way of its 24 December 1989 Resolution on the Political and Juridical Appraisal of the Soviet-German Non-aggression Treaty of 1939, the Congress of People's Deputies of the USSR acknowledged that

¹⁸ Hough, *supra* note 13, 390.

¹⁹ L. Hannikainen, "The Molotov-Ribbentrop Pact and Imperative Norms of International Law," *Eesti Teaduste Akadeemia Toimetised* 39(2) (1990): 136.

²⁰ Vadapalas & Žalys, *supra* note 7, 131.

in implementing the Molotov-Ribbentrop Pact the Soviet Union had violated its legal obligations towards the Baltic States under the 1920 peace treaties and the 1926-1933 non-aggression pacts. Therefore, one is compelled to draw the conclusion that the USSR itself recognised the fact of the 1940 aggression against Lithuania, because it is the only logical way to explain the said provision of the 1989 Resolution. It is obvious that to violate both a peace treaty and a non-aggression pact by the same token also means to commit an aggression.

In addition to breaching the obligation to respect the sovereignty and territorial integrity of other states and not to resort to war, the occupation and annexation of Lithuania was inconsistent with several other principles of international law. Firstly, the USSR breached the principle of peaceful resolution of disputes. This was the obligation contained in Article II of the Briand-Kellogg Pact of all states to settle by peaceful means all disputes and conflicts between them. A similar obligation was also imposed by Article 5 of the bilateral Non-aggression Treaty between Lithuania and the Soviet Union. Secondly, the principle of non-interference in the domestic affairs of other states was violated. Article VII of the 1939 Treaty on Mutual Assistance between the USSR and Lithuania imposed this obligation. Thirdly, it may be concluded that the USSR violated the principle of the self-determination of all nations which it had recognized in the Lithuanian people in Article I of the 1920 Peace Treaty with Lithuania.²¹ Fourthly, it is reasonable to treat the annexation of Lithuania as a flagrant violation of clause 2 of the Atlantic Charter, according to which no territory may be transferred without the free will and consent of the inhabitants concerned.²² Finally, it is clear that the Soviet Union breached the principle *pacta sunt servanda*.

C. Application of the principle ex injuria non oritur jus

Every legal system tries to prevent actions that do not comply with its principles and provisions. International law thus cannot recognise the legal effects of acts that are destructive of the fundamentals of the international community. Undoubtedly, aggression and illegal annexation are some of the most dangerous international crimes. According to the fundamental principle of law *ex injuria non oritur jus* (this principle is common to all legal systems); no legal benefit can be derived from an illegal act.

In the case of the illegal occupation and annexation of Lithuania, the application of the principle *ex injuria non oritur jus* leads to the conclusion that the Soviet Union never had any sovereign rights in or

²¹ P. Kūris, "Lietuvos nepriklausomos valstybės atkūrimas ir tarptautinė teisė", Lithuanian legal journal *Teisės problemos* 1 (1998): 10.

²² K. Marek, *Identity and Continuity of States in Public International Law* (Geneve: Librairie E. Droz, 1954), 405.

over Lithuania's territory. Thus, according to international law, Lithuania was never *legitimately* part of the USSR. The Lithuanian SSR established in the territory of the Republic of Lithuania by the occupying forces of the Soviet Union should be considered as nothing more than a puppet creation²³ that obtained no sovereign rights to Lithuania's territory. So, from the standpoint of international law, it is impossible to speak about Lithuania's secession from the USSR. One cannot secede from something one was never a part of. Neither the Soviet constitution nor any other Soviet laws could have been applied to Lithuania in the course of the restoration of its independence because the USSR had always been a foreign State to Lithuania.

The mere fact that it was a lengthy occupation does not serve to grant the USSR any rights to Lithuania since international law does not recognize any general term of prescription.²⁴ This is confirmed by the fact that many members of the international community never recognised the incorporation of Lithuania into the USSR.²⁵ Moreover, it would be problematic to argue that Lithuania was a *de jure* constituent part of the Soviet Union, since such an argument would endow law-making power to illegal acts that are also among the most dangerous crimes for the international community. The Nuremberg International Criminal Tribunal stressed that an aggressive war is the most dangerous international crime.²⁶

Illustrating the application of the principle *ex injuria non oritur jus* is the decision – just a month before the restoration of the Independence of the Republic of Lithuania – of the Supreme Council of the Lithuanian SSR on the 1939 German-Soviet Treaties and the Liquidation of Their Consequences for Lithuania which was adopted on 7 February 1989.²⁷ The Council condemned the aggression against Lithuania, its occupation, and annexation, as international crimes committed by the USSR. After noting that in 1989 the USSR had itself recognised the nullity of the secret protocols of the Molotov-Ribbentrop Pact, the Council declared unlawful and invalid the 21 July 1940 Declaration of the People's *Seimas* of Lithuania regarding Lithuania's entry into the USSR. The Council also stated that the 3 August 1940 Soviet Law on the Admission of

²³ *Id.*, 396.

²⁴ Vadapalas & Žalys, *supra* note 7, 132.

²⁵ I. Ziemele, *State Continuity and Nationality in the Baltic States*, Ph. D. Dissertation (Cambridge: University of Cambridge, 1998), 159-161; D. Žalimas, *Lietuvos Respublikos nepriklausomybės atkūrimas: pagrindiniai klausimai pagal tarptautinę teisę* (Vilnius: Rosma, 1997), 110-118.

²⁶ *Supra* note 16, 327.

²⁷ Lithuanian official journal *Lietuvos TSR AT ir Vyriausybės žinios* (1990), No. 8-182.

Lithuania into the USSR was both unlawful and non-binding upon Lithuania.

The unlawfulness of the annexation was reaffirmed in the Declaration on the Powers of the Deputies of the Supreme Council of the Lithuanian SSR adopted on 11 March 1990 and confirmed in the laws of the Republic of Lithuania.²⁸ For instance, the 11 March 1990 Law on the Reinstatement of the 12 May 1938 Constitution stresses that this Constitution had been suspended since 15 June 1940 by the Soviet aggression against independent Lithuanian State and the annexation of the latter.²⁹ Subsequently, the 23 January 1997 Law on the Legal Status of the Participants of the Resistance to the 1940-1990 Occupations states that “since 15 June 1940 Lithuania had been occupied, and the forced occupation regimes were illegal.”³⁰

III. THE CONTINUITY AND IDENTITY OF THE REPUBLIC OF LITHUANIA

A. The International Legal Status of Lithuania in 1940-1990

The most important point is that according to the principle *ex injuria non oritur jus*, even though the USSR had occupied all the territory of Lithuania, the Republic of Lithuania continued to exist as a subject of international law. This continuity was also recognised by major Western powers and other democratic states around the world and was maintained by the Lithuanian legations in foreign states. Representatives of Lithuania were considered to be representatives of the Republic of Lithuania appointed by the last government prior to the military occupation of the country. As stated in the preamble of the 23 January 1997 Law of the Republic of Lithuania on the Legal Status of the Participants of the Resistance to the 1940-1990 Occupations, until 1990 “the (Lithuanian) State had been officially represented in the Western States by the Lithuanian diplomatic service.” Despite the occupation and annexation, the Lithuanian embassies and consular agencies continued to work in the USA, the United Kingdom, France, Germany, Brazil, Canada, Argentina, Uruguay, Vatican, Colombia and Switzerland. Although during and after the World War II most of them were closed, diplomatic representation of Lithuania was maintained in the USA and the Vatican State until the restoration and recognition of Lithuania’s independence.³¹

²⁸ Lithuanian official journal *Lietuvos Respublikos Aukščiausiosios Tarybos ir Vyriausybės žinios* (1990), No. 9-220.

²⁹ *Id.*, No. 9-223.

³⁰ Lithuanian official journal *Valstybės žinios* (1997), No. 12-230.

³¹ J. Šatas, *Lietuvos tarptautinis pripažinimas: praeitis ir dabartinės realijos* (Vilnius: Žinija, 1991), 37-38.

Lithuanian passports and other official documents issued by the operating Lithuanian embassies and consular agencies were considered valid by the states recognising the continuity of Lithuania. Therefore, the continuity of the Republic of Lithuania was an open and obvious fact.³² It would be absurd to recognise operating embassies and consular agencies as well as the citizenship and passports of a non-existing state.

Thus, the Republic of Lithuania was treated as an occupied State the rights and obligations of which were not impaired by foreign occupation. Lithuania preserved all of its sovereign rights including the legal title to its territory although it could not effectively exercise these rights until independence was restored in 1990.

It is also worth noting the role of the right of self-determination in the solution of problems of continuity.³³ In this respect, the determination of the Lithuanian people to preserve their statehood and to restore the independence of the State was clear even *during the occupation*. As noted, after the fact, in the preamble of the 23 January 1997 Law of the Republic of Lithuania on the Legal Status of the Participants of the Resistance to the 1940-1990 Occupations, during the period of “1940-1990 Lithuania’s resistance to the occupation authorities of the USSR and Germany under various forms – military and political – had taken place.” The Law further noted that the armed uprising in Lithuania of 22-23 June 1941 “allowed resistance to both occupants [directed towards] restoring the independence of the State and forming the Provisional Government,” and that “the military resistance of Lithuania’s people took place in 1944-1953 in the form of guerrilla warfare against the occupation army of the Soviet Union and the structures of the occupation regime.” Lithuania’s partisan leadership was recognised as the highest legal political and military authority of Lithuania of that time.

A similar provision appears in the 12 January 1999 Law of the Republic of Lithuania on the February 16, 1949 Declaration by the Council of the Movement of the Struggle for Freedom of Lithuania.³⁴ The preamble of the Law states that:

the armed uprising of June 22-23, 1941 by Lithuania and the June 23, 1941 Appeal by the Provisional Government of Lithuania, [expressed] the will of the nation to restore an independent State”, and that “a universal, organised, armed resistance namely, self-defence, by the Lithuanian State,

³² About the continuity of Lithuania see D. Žalimas, *Lietuvos Respublikos nepriklausomybės atkūrimas: pagrindiniai klausimai pagal tarptautinę teisę* (Vilnius: Rosma, 1997), 75-83.

³³ W. Fiedler, “Continuity”, *Encyclopedia of Public International Law* 10 (1987): 67.

³⁴ *Valstybės žinios* (1999), No. 11-241.

[took] take place in Lithuania during 1944-1953, against the Soviet occupation.

Article 2 of this Law confirmed that the Council of the Movement of the Struggle for Freedom of Lithuania (i.e. the Lithuanian partisan leadership of that time) had been “the supreme political and military structure ... the sole legal authority within the territory of occupied Lithuania.” Therefore, according to Article 3, the 16 February 1949 Declaration of this Council, appraising its significance for the continuity of the State of Lithuania (the principles of the restoration of the independence of Lithuania had been proclaimed in this Declaration), was recognised as “a legal act of the State of Lithuania”, i.e. it was once more confirmed that the said Declaration forms one of the constitutional foundations of the continuity of modern Republic of Lithuania.

*B. The Restoration of the Independence of the
Republic of Lithuania in 1990*

It is only logical that the restoration of the independence of the Republic of Lithuania was enacted on the basis of the *de jure* continuity of the State. On 11 March 1990 the Supreme Council of the Republic of Lithuania, after free elections expressing the will of the people, proclaimed the restoration of the country’s independence. The Act on the Re-establishment of the Independent State of Lithuania had clearly stated that the execution of the sovereign powers of the State of Lithuania suspended by a foreign force in 1940 had been re-established. On this basis the current Republic of Lithuania should be considered identical with the pre-war Republic of Lithuania. The same origin of statehood was identified in the following provision of this Act: the 16 February 1918 Act of Independence of the Council of Lithuania and the 15 May 1920 Resolution on the Re-established Democratic State of Lithuania of the Constituent *Seimas* had never lost their legal force and remained the constitutional basis for the Republic of Lithuania.

The Law on the Reinstatement of the 12 May 1938 Constitution was also passed by the Supreme Council of the Republic of Lithuania in order to confirm the constitutional continuity as well as the State continuity and identity of Lithuania. The last Lithuanian Constitution was reinstated, although the operation of some of its articles was immediately suspended because they regulated the status and powers of the State institutions that had not been restored as of 1990.

In discussing the restoration of the independence of the Republic of Lithuania, one cannot ignore issues of self-determination. The restoration of Lithuania’s independence is primarily based on state continuity rather than self-determination. Nevertheless, it was also a result of the self-determination of the Lithuanian nation *as the determination of the Lithuanian people to preserve their statehood and to restore the independence had never changed*. As it was stated in the 11 March 1990

Declaration on the Powers of the Deputies of the Supreme Council of the Lithuanian SSR, the deputies were entrusted by the Lithuanian people with a mandate to represent the Nation and the obligation to restore the Lithuanian State. The people's will to restore the independence of the State was reflected in the Act on the Re-establishment of the Independent State of Lithuania which was later confirmed in the plebiscite of 9 February 1991.

Therefore, Lithuanians were determined not to create a new State but, rather, to restore the independence and effectiveness of the old – the Republic of Lithuania established in 1918. Self-determination was only a subsidiary, and secondary, legal basis for the restoration of the independence of the Republic of Lithuania. But it did have political importance as it strengthened the international position of the restored Independent State of Lithuania.³⁵

In contrast to Estonia and Latvia, Lithuania declared full restoration of independence in 1990 with no transitional period.³⁶ Soon after, Lithuania took full control over its affairs, in that the Lithuanian Government was sufficiently effective to be fully independent from any other authority either internally or externally and manifested effective control by over both territory and population.³⁷ Internally, it was clear that as of 11 March 1990 Lithuanian State institutions exercised exclusive legislative, executive and judicial authority within Lithuania. Externally and internationally, the Lithuanian Government also acted independently. For instance, in 1991 Lithuania unilaterally undertook to respect and fulfil all international obligations arising from the universal treaties for the protection of human rights and from the United Nations Charter and multilateral treaties regulating diplomatic and consular affairs.³⁸ Lithuania was treated as equal party in the negotiations with the USSR in 1990-1991.³⁹

That the restoration of Lithuanian independence was not universally recognised until the August 1991 failed coup in Moscow is attributable purely to political considerations in that most states had decided to wait

³⁵ P. Kūris, "Lietuvos nepriklausomos valstybės atkūrimas ir tarptautinė teisė", *Teisės problemos* 1 (1998): 11.

³⁶ About the restoration of the independence of the Baltic States see I. Ziemele, *State Continuity and Nationality in the Baltic States*, Ph. D. Dissertation (Cambridge: University of Cambridge, 1998), 161-178.

³⁷ About these aspects in general see P. Malanczuk, *Akehurst's Modern Introduction to International Law* (London: Routledge, 1997), 77-79.

³⁸ About the position of Lithuania in 1990-1991 see: D. Žalimas, *Lietuvos Respublikos nepriklausomybės atkūrimas: pagrindiniai klausimai pagal tarptautinę teisę*. (Vilnius: Rosma, 1997), 119-131.

³⁹ *The Road to Negotiations with the U.S.S.R.* (Vilnius: State Publishing Centre, 1991).

for the final and peaceful solution of all political issues between the USSR and Lithuania. For example, in March-April 1990 the USA, Germany and France addressed both Lithuania and the Soviet Union calling for peaceful bilateral negotiations. Therefore, the 1991 recognition of the restoration of the independence of the Republic of Lithuania was, in essence, declaratory. It also had constitutive aspects in respect of the full restoration of Lithuania's bilateral relations with other states.

*C. The International Recognition of the
Identity of the Republic of Lithuania*

The continuity and identity of the Republic of Lithuania have been recognised by most states. Many foreign states have recognised the restoration of Lithuania's independence *based on the constitutional acts of 11 March 1990* without worrying about obtaining explicit consent from the USSR. This recognition by other states cannot be considered premature because Lithuania's previous incorporation into the USSR was illegal.

Iceland was the first foreign country to recognise the restoration of the independence of the Republic of Lithuania based on the *de jure* state continuity. On 11 February 1991 Iceland's *Alting* (the Parliament) passed a resolution confirming that the recognition of the independence of the Republic of Lithuania granted by the Government of Iceland in 1922 was still fully in force. Other states recognised the restoration of Lithuania's independence after the failed August 1991 coup in the Soviet Union.

The continuity and identity of Lithuania was recognised by all states that had not recognised the annexation of Lithuania. For instance, on 27 August 1991 the Member States of the European Community welcomed "the restoration of the sovereignty and independence of the Baltic States, which they lost in 1940."⁴⁰ All NATO Member States had also recognised the continuity and identity of the Baltic States: for instance, it is noted in the Alliance's 1991 Strategic Concept that "the three Baltic Republics have regained their independence."

The attitude of the Western States towards the identity of Lithuania has been confirmed in later treaties and political documents. For instance, in the preamble of the 1992 Treaty on Accord, Friendship and Cooperation between Lithuania and France,⁴¹ the parties confirmed their desire to further strengthen mutual relations and cooperation "in the spirit of friendship as it was in 1918-1940." In the preamble of the 1998 Charter of Partnership among the United States of America and the Republic of

⁴⁰ R. Müllerson, *International Law, Rights and Politics: Developments in Eastern Europe and the CIS* (London: Routledge, 1994), 212.

⁴¹ *Supra* note 30, No. 68-1288.

Estonia, Republic of Latvia and Republic of Lithuania,⁴² the Parties recall the friendly relations that have been continuously maintained between the United States of America and the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania since 1922. The United States have also confirmed that they had “never recognised the forcible incorporation of Estonia, Latvia and Lithuania into the USSR in 1940 but rather regards their statehood as uninterrupted since the establishment of their independence, a policy which the United States has restated continuously for five decades.”

The continuity and identity of the Republic of Lithuania has been also recognised by former Soviet satellite states from Eastern Europe and some former Soviet republics. For instance, on 26 August 1991 the Foreign Minister of Romania welcomed the proclamation of Lithuania’s independence as it abolished the injustice that had been perpetrated through realisation of the secret protocols of the Molotov-Ribbentrop Pact. On 27 August 1991 the President of Georgia announced that Georgia had recognised the independence of the Republic of Lithuania on the basis of the 11 March 1990 Act on the Re-establishment of the Independent State of Lithuania.

It is of particular interest to note that even the USSR seems to have recognised, although somewhat ambiguously, the continuity and identity of the Republic of Lithuania. On 6 September 1991 the State Council of the USSR decided to recognise the independence of the Republic of Lithuania “with reference to the concrete historical and political situation that had been existed before the entry of the Republic of Lithuania into the USSR.”⁴³ Presumably the Council had in mind the 24 December 1989 Resolution of the Congress of People’s Deputies of the USSR on the Political and Juridical Appraisal of the Soviet-German Non-aggression Treaty, which had declared the secret protocols of the Molotov-Ribbentrop Pact null and void as well as acknowledged the fact of the 1940 soviet aggression against the Baltic States. On 20 September 1991 the Ministry of Foreign Affairs of the USSR suggested to the Ministry of Foreign Affairs of the Republic of Lithuania to start negotiations concerning “the regulation of all consular relations complex [sic], arising from *the restoration of the State independence* of the Republic (of Lithuania).”⁴⁴

Russia had also recognised the continuity and identity of the Republic of Lithuania. In the preamble of the 29 July 1991 Treaty on the

⁴² *Lithuanian Foreign Policy Review* 3 (1999): 197-204.

⁴³ “Decision on the Recognition of the Independence of the Republic of Lithuania,” 6 September 1991. A copy of this document was obtained from the Archive of the *Seimas* of the Republic of Lithuania.

⁴⁴ A copy of this document was obtained from the Archive of the *Seimas* of the Republic of Lithuania.

Fundamentals of Interstate Relations between Lithuania and Russia, both parties declared that the USSR had to eliminate the consequences of the 1940 annexation which violated Lithuania's sovereignty.⁴⁵ Moreover, in Article 1 of the Treaty, Russia recognised the Republic of Lithuania as a subject of international law and a sovereign State *under its state status defined in the fundamental acts of 11 March 1990*. Due to this provision, one is compelled to draw the conclusion that Russia, like other states, had recognised both that Lithuania had been an occupied state and that the restoration of independence of the Republic of Lithuania was based on the principles of state continuity and identity embodied in the fundamental Lithuanian legal acts of 11 March 1990.

On the other hand, Russian authorities sometimes declare that they regard Lithuania and the other Baltic States as former Soviet republics, i.e. as a former legitimate part of the USSR.⁴⁶ This would imply a refusal to recognise the continuity and identity of the Republic of Lithuania. Such statements manifestly contradict the official Russian position established by the above mentioned Treaty of 1991 which is still in force. These statements may also be considered as inconsistent with the principle of *estoppel* which holds that "states deemed to have consented to a state of affairs cannot afterwards alter their position."⁴⁷ Moreover, Russia as the legal entity continuing the rights and obligations of the former USSR intends to ignore the position of the latter expressed on 24 December 1989 by the Congress of the People's Deputies of the USSR, following its Resolution on the Political and Juridical Appraisal of the Soviet-German Non-aggression Treaty. Thereafter, the USSR recognised that the secret Soviet-German protocols of 1939-1941 and their accompanying acts had violated the sovereignty and independence of some third countries. In any case, Russia's attempts not to conform to the position it expressed in its 29 July 1991 Treaty with Lithuania do not alter the real continuity and identity of Lithuania. Any recognition of Lithuania's incorporation into the USSR cannot legalise the situation because the recognition of an illegal situation does not make it lawful.⁴⁸

Finally, recognition of the restoration of the Republic of Lithuania's independence means recognition of the Government rather than of the State.⁴⁹ Since the *de jure* recognition had already been granted to Lithuania during the inter-war period and subsequently maintained by

⁴⁵ Lithuanian official newspaper *Lietuvos aidas*, 30 July 1991.

⁴⁶ For instance, such Russian position was announced on 9 June 2000 by the Ministry of Foreign Affairs of Russian Federation in its Statement on the Draft Law of Lithuania Concerning the Damage Resulting from the Occupation by the USSR.

⁴⁷ M.N. Shaw, *International Law* (Cambridge: Cambridge University Press, 1997), 351.

⁴⁸ Vadapalas, *supra* note 15, 223.

⁴⁹ *Id.*, 216.

the international community, recognition only had to be extended to the Government of Lithuania, i.e. only the legality of the new government had to be recognised. That is why, on 17 March 1990 the Supreme Council of the Republic of Lithuania appealed to world governments to recognise “the new Government of the Republic of Lithuania.”⁵⁰ In March of 1990, the USA clearly affirmed that the recognition of the restoration of the independence of the Republic of Lithuania would mean a recognition of the new government.⁵¹ Consequently, Lithuania was recognised as a State that had restored its independence rather than as a newly born entity. This is the principal difference between Lithuania and the former republics of the Soviet Union, which are regarded as new states.

*D. Some other Indicators of the Continuity
and Identity of the Republic of Lithuania*

The continuity and identity of the Republic of Lithuania could also be illustrated by other legal acts *by the Lithuanian State*. For instance, constitutional acts have consistently confirmed state continuity and identity. In the 29 October 1992 Act Concerning the Restoration of the *Seimas*,⁵² the Supreme Council of the Republic of Lithuania stressed that the newly elected *Seimas* would continue the rights and traditions of the previous parliaments of the Republic of Lithuania, and, therefore, would express “the continuity of the independent State – the Republic of Lithuania of 1918-1992.” The Supreme Council was later renamed as the Supreme Council – the Reconstituent *Seimas*. The practice of the Constitutional Court has also confirmed the continuity and identity of the Republic of Lithuania. For example, in its Decision of 27 May 1994 the Court confirmed the continuity of the legal rules concerning the right to property, arising from the 1938 and earlier Lithuanian Constitutions.⁵³ The continuity of nationality of the Republic of Lithuania was recognised in the Court’s Decision of the 13 April 1994, i.e. the Court stated that persons who had been nationals of the Republic of Lithuania before 15 June 1940 and their descendants were the citizens of Lithuania *ex officio*.⁵⁴

Relying on her constitutional acts and the international recognition of her continuity and identity, the Republic of Lithuania had resumed some of her international obligations arising from the pre-occupation treaties. For

⁵⁰ *LR AT ir LR AT Prezidiumo dokumentų rinkinys* (Vilnius: Valstybinis leidybos centras, 1991), vol. 1, p. 334.

⁵¹ V. Landsbergis, *Laisvės byla* (Kaunas: Spindulys, 1992), 40-41.

⁵² *Supra* note 28, No. 33-1013.

⁵³ *Valstybės žinios* (1994), No. 42-771.

⁵⁴ *Id.*, No. 29-524.

instance, by the 30 June 1992 Resolution Concerning the Accession of the Republic of Lithuania to the Geneva Conventions on Bills of Exchange and Cheques the Supreme Council of the Republic of Lithuania resolved “to restore the accession of the Republic of Lithuania to the Geneva Convention Providing a Uniform Law for Bills of Exchange and Promissory Notes signed in 1930, and to the Geneva Convention Providing a Uniform Law for Cheques signed in 1931.”⁵⁵ On 12 May 1990 the Baltic States decided “to renew the 12 September 1934 Geneva Treaty and Declaration on Good Understanding and Cooperation between Estonia, Latvia and Lithuania which had been illegally cancelled in 1940.”⁵⁶ In the preamble of the 1994 Treaty on Friendship and Cooperation between the Republic of Lithuania and the Republic of Turkey the Parties expressed their determination “to follow the principles embodied in the 17 September 1930 Treaty on Friendship between the Republic of Lithuania and the Republic of Turkey.”⁵⁷

The Republic of Lithuania has also restored her membership in some international organisations. For instance, on 3 April 1992 the Government confirmed “its accession of 21 October 1931 to the International Agreement for the Creation of an Office of Epizootics made in Paris on 25 January 1924”⁵⁸ and re-established its membership in the Office. In January of 1992 the Republic of Lithuania restored her membership in the Universal Postal Union and was re-included in the General list of UPU member countries and of territories included in the Union as a member of UPU since 1 January 1922.⁵⁹ On 4 October 1991 the Republic of Lithuania was admitted to the International Labour Organisation. Upon re-joining the ILO, the Lithuanian Government made a special statement concerning Lithuania’s membership in the ILO prior to 1940, which was accepted by the ILO. Therefore, the application for membership in the ILO was understood to not imply recognition by the Government of Lithuania “of the legality of the situation resulting from the foreign occupation of the Republic of Lithuania in the period between 1940-1990.”⁶⁰ The International Labour Organisation

⁵⁵ *Supra* note 28, No. 26-776.

⁵⁶ The “Declaration Concerning Good Understanding and Cooperation between the Republic of Lithuania, the Republic of Latvia and the Republic of Estonia”, *LR AT ir LR AT Prezidiumo dokumentų rinkinys* 1 (1991): 327.

⁵⁷ *Supra* note 30, No. 29-680.

⁵⁸ A copy of this document was obtained from the Archive of the Ministry of Foreign Affairs of the Republic of Lithuania.

⁵⁹ See the official website of the Universal Postal Union:
<http://www.upu.int/members/en/members.html>

⁶⁰ The 21 October 1991 Letter of the ILO Director-General to the Prime Minister of Lithuania. A copy of this document was obtained from the Archive of the Ministry of Foreign Affairs of the Republic of Lithuania.

Conventions that had been ratified by Lithuania in 1931 and 1934 were considered as valid for Lithuania. For example, on 30 June 1998 the *Seimas* of the Republic of Lithuania denounced ILO Convention No. 4 on Night Work of Women of 1919, which had been ratified by the *Seimas* on 19 June 1931.⁶¹

Finally, gold that had been deposited in foreign countries before occupation was returned to Lithuania after the restoration of her independence. For instance, following the 27 March 1992 Exchange of Notes Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Lithuania Concerning the Transfer of Gold From the Government of the United Kingdom of Great Britain and Northern Ireland to Lietuvos Bankas (the Bank of Lithuania) and the Settlement of Other Bilateral Claims Matters,⁶² the Great Britain returned the gold held on behalf of the Bank of Lithuania by the Bank of England on 14 June 1940.

E. Modified Continuity and Identity of the Republic of Lithuania

Restoration of the independence of the Republic of Lithuania did not mean a full *restitutio in integrum*; it had become impossible to re-establish the situation that had existed 50 years earlier in 1940. After all, there is no such requirement under international law. On the contrary, international law is based on general legal principles common to all legal systems, one of which well known from Roman law, is that no law may require “impossible things” (*ad impossibile nemo tenetur*). The continuity and identity of the Republic of Lithuania are therefore modified by the impact of previous legal norms and the actual situation of the previous fifty years.⁶³ Such a modification is unavoidable for justice and effectiveness to be reconciled within the framework of international law. For example, while restoring its independence, Lithuania could not neglect the principles of the inviolability of frontiers that occurred during the time of its occupation. Thus, the Act on the Re-establishment of the Independent State of Lithuania states that “the State of Lithuania stresses its adherence to universally recognised principles of international law, recognises the principle of inviolability of borders as formulated in the Helsinki Final Act of the Conference on Security and Co-operation in Europe of 1975, and guarantees human, civil, and national minorities rights.”

On the other hand, it was impossible for Lithuania to ignore the actual situation in the country. For that reason, the inter-war Lithuanian laws

⁶¹ *Valstybės žinios* (1998), No. 63-1801.

⁶² A copy of this document was obtained from the Archive of the Ministry of Foreign Affairs of the Republic of Lithuania.

⁶³ Žalimas, *supra* note 25, 93-100.

(with the exception of the 1938 Constitution) were not made valid again and the laws of the Soviet period were left in force as long as they did not contradict the Temporary Fundamental Law of the Republic of Lithuania.⁶⁴ Even the operation of the 1938 Constitution was suspended on the day it was reinstated in order to allow time to harmonise its provisions “with the altered political, economical and other social relations.”⁶⁵ Subsequently the 1938 Constitution lost its force after the adoption of the new 1992 Constitution. On 13 November 1997 the *Seimas* of the Republic of Lithuania adopted the Law on the Annulment of All Legal Acts That Had Been Adopted by 11 March 1990 and Were Still in Force.⁶⁶ The Law annulled nearly all the legal acts of the Soviet period except some few that were temporarily prolonged.

The international community accepted the concept of modified continuity and identity of Lithuania. Most “treaties concluded more than fifty years ago by the Baltic States [had] become obsolete”.⁶⁷ Consequently, after the restoration of independence Lithuania, concluded new bilateral treaties rather than reviving the old ones. For example, in the preamble of the above mentioned 1994 Treaty on Friendship and Cooperation between the Republic of Lithuania and the Republic of Turkey, the Parties expressed their willingness to supplement the 17 September 1930 Treaty on Friendship by entering into “new agreements corresponding to today’s requirements”. According to Article 13 of the 1997 Treaty between the Government of the Republic of Lithuania and the Swiss Federal Council on the Mutual Abolition of Visa Regime, the parties agreed to annul all earlier bilateral treaties concerning the same subject except the 1995 Treaty concerning the abolition of the visa regime for persons having diplomatic and special passports.⁶⁸ Therefore, the Parties annulled the 1929 bilateral Agreement concerning the abolition of visas for their citizens application of which had been renewed by Lithuania unilaterally in 1994.

The concept of classified or modified state continuity and identity is well known in international law. Professor Ian Brownlie states that the continuity and identity of states that restored their independence shortly after the World War II was modified. He also asserts that even in the

⁶⁴ See the 11 March 1990 “Law on the Reinstatement of the 12 May 1938 Constitution” and the 11 March 1990 “Law on the Temporary Fundamental Law of the Republic of Lithuania”, *Lietuvos Respublikos Aukščiausiosios Tarybos ir Vyriausybės žinios* (1990), No. 9-223, 224.

⁶⁵ “Law on the Temporary Fundamental Law of the Republic of Lithuania,” *Lietuvos Respublikos Aukščiausiosios Tarybos ir Vyriausybės žinios*, (1990), No. 9-224.

⁶⁶ *Supra* note 30, No. 108-2729.

⁶⁷ R. Müllerson, *International Law, Rights and Politics: Developments in Eastern Europe and the CIS* (London: Routledge, 1994), 146.

⁶⁸ *Supra* note 61, No. 3-47.

cases of clear state continuity and identity, it is necessary to take into consideration concrete circumstances, with applicable principles of law and good policy dictating the decisions only in part pre-determined by state continuity.⁶⁹

IV. PRINCIPAL LEGAL AND POLITICAL CONSEQUENCES OF THE RESTORATION OF LITHUANIA'S INDEPENDENCE

The continuity and identity of the Republic of Lithuania have some important international legal and political consequences. Firstly, the Republic of Lithuania is not a successor State of the USSR because the latter had never obtained any sovereign rights over Lithuanian territory. A succession of states may take place only when the sovereignty of a State over a given territory is replaced by the sovereignty of another State. Due to the illegality of the annexation of Lithuania in 1940, the Republic of Lithuania had never lost its sovereign rights and legal title to its territory. Consequently, Lithuania only resumed the rights and obligations that were suspended during the period of occupation. Thus it is not possible to conclude that Lithuania is responsible for the debts of the Soviet authorities or for any damage done by the USSR to other states. This position was clearly expressed by the Presidents of Latvia, Lithuania, and Estonia in the 16 March 1992 Statement of the Council Baltic Sea States: "The Baltic States are not states-successors to the former USSR and they can not therefore be responsible for the facilities and repayment of the foreign debt of the USSR."⁷⁰

Secondly, Lithuania is entitled to reparations for the damage caused by its illegal occupation. Russia as the State continuing the rights and obligations of the former USSR must compensate all losses sustained by Lithuania in 1940-1993. This period comprises the entire Soviet occupation and the subsequent illegal presence of the Russian army in Lithuania's territory after the restoration of the independence of Lithuania in 1990 and before its complete withdrawal in 1993. On 13 June 2000 the *Seimas* of the Republic of Lithuania adopted the Law on Compensation for Damage Resulting from the Occupation by the USSR. Article 2 of the Law obliges the Government of Lithuania to "initiate negotiations and constantly seek that the Russian Federation compensate the Lithuanian people and the State of Lithuania for the damage caused by the USSR occupation" as well as to seek the support of the United Nations, the Council of Europe and the Member States of the European Union when solving questions relating to compensation for damage caused by Lithuania's occupation by the USSR. It is worth mentioning here that the president of the Russian Federation did not object to the Interpretative Statement of the Lithuanian Delegation concerning Article

⁶⁹ I. Brownlie, *Principles of Public International Law* (Oxford: Clarendon Press, 1990), 83.

⁷⁰ *LR AT ir LR AT Prezidiumo dokumentų rinkinys* 5 (1992): 439.

15 of the CSCE Helsinki Summit Declaration of 10 July 1992, according to which the issue of compensation for damage to Lithuania arising from the occupation should remain on the agenda after the withdrawal of Russian troops from Lithuania.⁷¹

However, it seems that the responsibility of Russia will long remain an unresolved issue. In this sense, justice still cannot be accomplished thoroughly. It would be useful here to remember that Russia has no intention of fulfilling even its minor international obligations to the Baltic States or to the Council of Europe; despite the request of the Council of Europe upon admitting Russia in 1996, the latter has neither returned to the Baltic States either certain real estate, consisting of embassy buildings in third countries, nor cultural and historical property which had been taken by force by the USSR.⁷² Nor has a plan been worked out concerning special repatriation and compensation programmes for assistance to persons deported from the occupied Baltic States or their descendants.

Legal assessment of the restoration of Lithuania's independence has also played a role in some significant political issues, such as Lithuania's admission to NATO. For instance, on 12 January 1999 the *Seimas* of Lithuania adopted a special Memorandum to the Parliaments of the Member States of the North Atlantic Alliance, which pointed out Russia's inability to hamper Lithuania's integration into NATO on the grounds that Lithuania is a former republic of the USSR.⁷³ The *Seimas* stressed the fact that from the standpoint of international law the Republic of Lithuania had never been a constituent part of the USSR.

V. CONCLUSION

The restoration of the independence of the Republic of Lithuania as well as of the other Baltic States has been a unique phenomenon in contemporary international law and state practice. There are no other examples of restoration of independence after so long a period of occupation. The norms and principles of international law preserved the continuity and identity of the Republic of Lithuania for fifty years, and therefore the restoration of the Republic of Lithuania's independence could be considered a clear manifestation of the basic aim of that law, founded on the idea of justice. According to Professor Romain

⁷¹ A copy of this document was obtained from the personal archive of a member of the Lithuanian Delegation to the 1992 CSCE Helsinki Summit Mr. Č. Stankevičius.

⁷² *Parliamentary Assembly of the Council of Europe*, Opinion No. 193 (1996) on Russia's request for membership of the Council of Europe.

⁷³ *Supra* note 53, No. 7-144.

Yakemtchouk, it was a nice victory for international law, which successfully passed a long 50-year political and moral test.⁷⁴

⁷⁴ R. Yakemtchouk, "Les republics baltes en droit international: Echec d'une annexion operee en violation du droit des gens", *The Baltic Path to Independence* (New York: William S. Hein & Co., 1994), 261.