THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF LATVIA

JUDGMENT
ON BEHALF OF THE REPUBLIC OF LATVIA
Riga, November 29, 2007
in case No. 2007-10-0102

The Constitutional Court of the Republic of Latvia, composed of the Chairman of the Court session Gunārs Kūtris, Justices Kaspars Balodis, Aija Branta, Juris Jelāgins, Kristīne Krūma, Uldis Ķinis and Viktors Skudra,

having regard to the application of twenty-one members of the 9th Saeima [*Parliament*] of the Republic of Latvia - Arturs Krišjānis Kariņš (the first person having signed the application), Solvita Āboltiņa, Silva Bendrāte, Ingrīda Circene, Ilma Čepāne, Ina Druviete, Uldis Grava, Sandra Kalniete, Artis Kampars, Ausma Kantāne, Sarmīte Ķikuste, Gunārs Laicāns, Ainars Latkovskis, Visvaldis Lācis, Linda Mūrniece, Jānis Reirs, Einars Repše, Ingūna Rībena, Anna Seile, Kārlis Šadurskis and Dzintars Zaķis,

according to Article 85 of the Satversme [*Constitution*] of the Republic of Latvia (hereinafter – the Satversme) and Article 16 (1) and (2), Item 3 of the first part of Article 17 (1) (3) and Article 28.1 of the Constitutional Court Law,

on October 30, 2007, in the Court Session examined the following case in written proceedings,

"On Compliance of the Law "On Authorisation to the Cabinet of Ministers to Sign the Draft Agreement between the Republic of Latvia and the Russian Federation on the State Border between Latvia and Russia Initialled on August 7, 1997" and the Words "Observing the Principle of Inviolability of Borders Adopted by the Organization of Security and Cooperation in Europe" of Article 1 of the Law "On the Republic of Latvia and the Russian Federation Treaty on the State Border of Latvia and

Russia" with the Preamble and Article 9 of the Declaration of May 4, 1990 of The Supreme Council of the Republic of Latvia "On Restoration of Independence of the Republic of Latvia" and Compliance of the Treaty of March 27, 2007 of the Republic of Latvia and the Russian Federation of the State Border of Latvia and Russia with Article 3 of the Satversme of the Republic of Latvia".

The Constitutional Court has established:

1. On February 8, 2007 the Saeima (Parliament) of the Republic of Latvia (hereinafter – the Saeima) passed the Law "On Authorisation to the Cabinet of Ministers to Sign the Draft Agreement between the Republic of Latvia and the Russian Federation on the State Border between Latvia and Russia Initialled on August 7, 1997" (hereinafter – the Law on Authorization).

The Law provides: "According to the Constitutional Law of the Republic of Latvia "On the Statehood of the Republic of Latvia" passed by the Supreme Council of the Republic of Latvia on August 21, 1991, as well as taking into account the internationally recognized continuity of the Republic of Latvia, the Cabinet of Ministers shall be authorized to sign the draft treaty initialled on August 7, 1997 between the Republic of Latvia and the Russian Federation on the State border of Latvia and Russia".

2. On March 19, 2007, the Cabinet of Ministers passed Order No. 151 "On Signing of the Draft Agreement between the Republic of Latvia and the Russian Federation on the State Border between Latvia and Russia".

The Order provides that under the Law on Authorization, "as well as respecting the principle of inviolability of frontiers adopted by the Organisation for Security and Co-operation in Europe, [..] the draft Agreement shall be signed by Prime Minister, Aigars Kalvitis, on behalf of the Republic of Latvia".

3. On March 27, 2007, The Prime Minister of the Republic of Latvia Aigars Kalvītis and the Chairman of the Government of the Russian Federation Mihail Fradkov signed the Republic of Latvia and the Russian Federation Treaty on the State Border of Latvia and Russia (hereinafter – the Border Treaty).

The Border Treaty was signed "in mutual respect for the other State's sovereignty and independence, equality and territorial integrity, confirming the adherence to the principles of the UN and OSCE, recognising the beneficial effect of the treaty law statement of the State

border of the Republic of Latvia and the Russian Federation for the further development of good neighbourly relations" and „on the basis of the good will of the parties".[1]

4. On May 29, 2007, the Saeima ratified the Border Treaty by passing the Law "On the Republic of Latvia and the Russian Federation Treaty on State Border of Latvia and Russia" (hereinafter – the Ratification Law).

Article 1 of the Ratification Law provides that the Border Treaty "is accepted and approved observing the principle of inviolability of frontiers established by the Organization of Security and Cooperation in Europe".

5. The Applicant – **twenty-one members of the Saeima** – asks the Constitutional Court:

1) to recognize the Law on Authorization and words "observing the principle of inviolability of border established by the Organization of Security and Cooperation in Europe" of the Ratification Law as not being in compliance with the Preamble and Article 9 of the Declaration of May 4, 1990 of the Supreme Council of the Latvian Soviet Social Republic (Latvian SSR) "On Restoration of Independence of the Republic of Latvia" (hereinafter – the Declaration of Independence);

2) to recognize the Border Treaty and the Ratification Law as not being in compliance with Article 3 of the Satversme of the Republic of Latvia.

5.1. It is stated in the Application that the Declaration of Independence is a constitutional provision in substantive terms, because it establishes the scope of activity and mutual relations of two other constitutional foundational documents – the Satversme and the Constitution of the Latvian SSR. Since the provisions of the Declaration of Independence could be effective only in the case if the provisions of the Declaration of Independence have at least the same force as that of the abovementioned constitutional acts, in the hierarchy of legal norms, then the Declaration is of a constitutional rank, i.e. it is a norm of constitutional rights also in formal terms.

The Satversme, when becoming effective in full, has not "covered" the entire area of regulation of the Declaration of Independence. Therefore, in the Applicant's view, the provisions of the Declaration of Independence that are in force belong to the norms of Latvian

[1] The Final Clause of the Border Treaty provides that the treaty is drafted in Latvian and Russian, both texts being equally authentic. At the date of the translation, the Border Treaty has not been submitted to the United Nations Treaty Series. While every effort has been made to translate the relevant provisions of the Treaty as accurately as possible, the translation given here is not authentic in the meaning of the Vienna Convention.

constitutional provisions both in substantive and formal terms. However, the Declaration of Independence has a lower legal force than the Satversme.

The Applicant regards the Preamble and Articles 1, 2, 8 and 9 of the Declaration of Independence as being in force. The norms of the Declaration of Independence together with the Satversme form the "written Constitution" in force of Latvia.

5.2. Two facts follow from the Declaration of Independence – that Latvia was occupied in 1940, and that its independence was restored in 1990, i.e. the Preamble provides for continuity of the statehood of Latvia.

Article 9 of the Declaration gives the authority to the government to settle Latvia's relations with the USSR and the main directions of the authorization. This Article of the Declaration of Independence also applies to the legal continuator of the USSR – the Russian Federation. Until the Article 9 of the Declaration of Independence is repealed, Latvia can form its treaty relations with Russia only in the manner that none of the newest treaties would conflict with the Peace Treaty of August 11, 1920 between Latvia and Russia (hereinafter – the Peace Treaty).

5.3. By means of the Law on Authorization, the Saeima authorizes the Cabinet of Ministers to sign the Border Treaty, but it is in conflict with the Peace Treaty by amending the State border of Latvia and Russia established in the Peace Treaty.

In the Applicant's view, in the Law on Authorization the Saeima has amended the authorization for formation of relationships with the Russian Federation that is established in Article 9 of the Declaration of Independence. Since the Law on Authorization has a lower legal force and Article 9 of the Declaration of Independence is not amended, the Law on Authorization is in conflict with Section 9 of the Declaration of Independence.

It is also indicated in the application that the Law on Authorization does not state the doctrine of State continuity in a clear enough manner. Due to this reason, the Law is in conflict with the Preamble of the Declaration of Independence.

5.4. Article 3 of the Satversme establishes the State territory of Latvia. In order to determine the procedure of change of the State territory of Latvia, it is necessary to use the preparatory materials of the Satversme. One should take into account the opinion of a member of the Constitutional Assembly of Latvia Fricis Menders that the Satversme cannot allow giving a part of Latvia to a foreign power. The Applicant also emphasizes the opinion of the Chairman of the Satversme Commission Marģers Skujenieks that Article 3 of the Satversme does not provide for a possibility to change the border of Latvia by way of international treaties.

The Applicant considers that the State border established in Article 3 of the Satversme can not be changed by international agreements after enactment of the Satversme. On the day of enactment of the Satversme, Latvia had already concluded agreements with Estonia, Russia and Lithuania, which specifically stated the external border of Latvia. This border cannot be changed after enactment of the Satversme, Giving any territory of Latvia to other states, according to the Applicant, would be in conflict with the objective of creation of the State of Latvia – to unite all inhabited territories inhabited by Latvians into a unified country.

The Application contests that Article 3 of the Satversme could have been passed with the aim to prevent possible separation of Latgale form Latvia. The historical decisions passed in the Latgale Congress (April 26 – 27, 1917) regarding unification with the rest of Latvia, as well as the programmes of Latgalian political parties do not manifest any real claim for the separation of Latgale.

5.5. By means of the Peace Treaty, Russia has waived for all time its sovereign rights to the territory of Latvia, including the Pitalovo railway station and other territories of the Pleskava province that were given to Latvia.

Latgale, within the meaning of Article 3 of the Satversme, according to the Applicant, consists of the districts of Daugavpils, Rēzekne, Ludza and Jaunlatgale (Abrene).

The Border Treaty establishes the State border of Latvia and Russia taking into account the changes that were made to the State territory in 1994 by the government of the Latvian SSR and that are not binding on the Republic of Latvia.

Since Article 3 of the Satversme does not provide for a possibility to change the State border after enactment of the Satversme, the Border Treaty is in conflict with Article 3 of the Satversme.

5.6. Since the Saeima has confirmed the Border Treaty by passing the Ratification Law, the constitutionality of the Border Treaty cannot be considered separately from the compliance of the Ratification Law with Article 3 of the Satversme.

Article 3 of the Satversme does not provide for a possibility to change the border of Latvia by international treaties. Since the Border Treaty does change the border, it is in conflict with the Satversme.

The Ratification Law conflicts also with the Satversme, since thereby the Saeima has undertaken such international obligations that the Satversme prohibits it to undertake, namely, the Saeima has confirmed the change of the territory of the State which is prohibited by Article 3 of the Satversme.

5.7. By means of the words “observing the principle of inviolability of frontiers established by the Organization of Security and Cooperation in Europe” included in Article 1

of the Ratification Law, the Saeima has recognized the official Russian interpretation of the Helsinki Final Act and ignored actual content of this Act. The principle of inviolability of borders does not preclude the once occupied Baltic States from renewing their independence and restoring their sovereignty within the borders as they existed in 1940.

Reference to the OSCE principle of inviolability of frontiers according to the official Russian interpretation of this principle puts in doubt the reestablishment of the State of Latvia and is to be considered as an action conflicting with the doctrine of legal continuity of the State.

Therefore, according to the Applicant, the words "observing the principle of inviolability of frontiers established by the Organization of Security and Cooperation in Europe" included in Article 1 of the Ratification Law are in conflict with the Preamble of the Declaration of Independence.

Similarly, the abovementioned words of the Article 1 of the Ratification Law are in conflict with Article 9 of the Declaration of Independence, since, by this reference, the territorial changes of 1944 are recognized as legal.

6. The institution that passed the Law on Authorization and the Ratification Law – **the Saeima** – states in its reply that the Law on Authorization complies with the Preamble and Article 9 of the Declaration of Independence, whereas the Ratification Law complies with the Preamble and article 9 of the Declaration of Independence, and with Article 3 of the Satversme.

The Saeima states in its reply note that it has no doubt that the Declaration of Independence is a document of a constitutional rank being in force.

6.1. The Preamble of the Declaration of Independence established the basis of the doctrine of legal continuity of the State of Latvia. Any action of public institutions which would be in conflict with the above doctrine is to be considered as a violation of the Declaration of Independence and hence an illegal action.

The Law on Authorization does not contradict the doctrine of State continuity, but, just to the contrary emphasizes and develops it. The legislator has included an express reference to continuity of Latvia in the text of the Law on Authorization. Similarly, when discussing the Law on Authorization in the Saeima debates, it was clearly stated that it complies with the acts of a constitutional rank passed in 1990 – 1991 and develops propositions established therein.

Neither the authorization of the Saeima to the Cabinet of Ministers to sign the Border Treaty, nor conclusion of the Border Treaty *per se* endangers the doctrine of continuity of the

State of Latvia, since the Law on Authorization has not departed from the doctrine of continuity of the State, but it has consistently and clearly recognized it once more.

6.2. Article 9 of the Declaration of Independence does not contain a reference to Article 3 of the Peace Treaty that establishes the border between States, i.e. Latvia and Russia. The Saeima indicates that the text of Article 9 of the Declaration of Independence is related to Article 2 of the Peace Treaty and is coordinated with Article 5 of the Declaration. These three norms altogether have formed a common regulation on May 4, 1990: during the transitional period (that is provided for in Article 5 of the Declaration of Independence) independence of the Republic of Latvia has to be *de facto* restored by settling the issue by means of negotiations with the USSR and on the basis of the refusal by Russia from Latvia for all time, which is established in Article 2 of the Peace Treaty.

When assessing Section 9 of the Declaration of Independence, one has to take into account the Preamble of the Constitutional Law "On the Statehood of the Republic of Latvia" passed on August 21, 1991 (hereinafter – the Constitutional Law). The Supreme Council declared in the Preamble of the Constitutional Law that the constitutional legislative and executive institutions of the U.S.S.R. have ceased to exist and it is not possible to implement Article 9 of the Declaration on the restoration of independence of the Republic of Latvia by means of negotiation.

Even though Article 2 of the Constitutional Law declares void only Article 5 of the Declaration of Independence, the Preamble of this Law and the transcripts of the meetings of the Supreme Council clearly show the view of the Supreme Council that Article 9 of the Declaration of Independence only defines the mechanism of enforcement of Article 5.

6.3. Article 9 of the Declaration of Independence does not make the Peace Treaty absolutely non-amendable and does not impose and obligation on Latvia not to depart from the norms of the Peace Treaty. The reference to the Peace Treaty in Article 9 of the Peace Treaty is to be considered only as a normative framework of a thesis on the independence of Latvia.

Similarly Article 9 of the Declaration of Independence provides for the obligation to form relationships according to the Peace Treaty. This Article does not require full observance of the norms of the Peace Treaty in each particular issue under consideration. The Declaration of Independence outlines the general strategy of negotiations, giving broad discretion in separate cases.

The Saeima draws attention to the fact that the Peace Treaty has already been renewed in 1944 by the adoption of the Latvian – Byelorussian Border Treaty. The border described in the Treaty in the area from the Daugava River to the point of border intersection of Latvia,

Byelorussia and Russia complies with the border established in Article 3 of the Peace Treaty, which constitutes approximately 30 percent of Latvian-Russian border established in 1920. Hence one can consider that Article 3 of the Peace Treaty has lost its force in the respective part.

6.4. When assessing compliance of the Ratification Law with the legal norms of a higher legal force, the Saeima states: this Law has been adopted in the wording which was submitted by the Cabinet of Ministers. A representative of the Ministry of Foreign Affairs, when informing members of parliament on the submitted draft law, had emphasized that the submitted draft Ratification Law has been prepared in accordance with the Law "On International Agreements of the Republic of Latvia" and the requirements of the Satversme. Whereas, the representative of the Prime Minister's Office has stated that the compliance of the Border Treaty with Article 3 of the Satversme has been assessed and no contradiction has been found.

The Cabinet of Ministers, in the framework of the initiated case in the Constitutional Court, has submitted a reply that exhaustively considers the content of Article 3 of the Satversme, the Declaration of Independence and the Helsinki Final Act. Since the Saeima, when passing the Ratification Law, based itself on the legal assessment of the Border Treaty by the Cabinet of Ministers, it adopts the views of the Cabinet of Ministers expressed in the reply regarding compliance of the Border Treaty with Article 3 of the Satversme.

7. The institution, the authorised representative of which signed the Border Treaty – **the Cabinet of Ministers** – asks in its reply the Constitutional Court to recognize the Law on Authorization as being in compliance with the Preamble and Article 9 of the Declaration of Independence, whereas the Border Treaty – with Article 3 of the Satversme.

7.1. The Declaration of Independence entails a description of the way of acquisition and loss of Latvian independence, as well as the judicial assessment thereof. The doctrine of State continuity follows thereof.

The Law on Authorization is not in conflict with the historical facts mentioned in the Preamble of the Declaration of Independence. Therewith, according to the Cabinet of Ministers, it has to be assessed, whether the Law on Authorization comes in conflict with the doctrine of legal of Latvia.

The doctrine of legal continuity of Latvia is again clearly and plainly repeated in the Law on Authorization, and this Law consistently confirms the continuity of Latvia.

Article 9 of the Declaration of Independence should be interpreted in connection with Article 5 of this Declaration. Since Article 5 of the Declaration is annulled by the

Constitutional Law, there is no longer any necessity to conduct negotiations with the USSR on restoration of independence of Latvia. Hence the Constitutional Law also annuls Article 9 of the Declaration as the mechanism of execution of Article 5.

Article 9 of the Declaration of Independence should not be interpreted as it is done in the Application. Article 9 contains a reference only to Article 2 of the Peace Treaty, but not to Article 3 of this Treaty. Similarly, Article 9 does not provide for an absolute obligation to fully attain the restoration of the regulation provided by the Peace Treaty because an obligation to negotiate does not imply an obligation to reach an agreement.[2]

7.2. The principle of inviolability of frontiers established in the Helsinki Final Act recognizes the *status quo* frontiers as inviolable. However, it is unanimously acknowledged that frontiers that have been established by violating international law are not protected by the principle of inviolability of frontiers.

The Cabinet of Ministers emphasizes in particular that, by referring to the principle of inviolability of frontiers, it has not agreed to the interpretation of the above principle by the Russian Federation. Reference to the Helsinki Final Act also means a reference to declarations of the Western States that were made along with adoption of the Helsinki Final Act and that emphasized the rights of the Baltic States to restore their statehood.

7.3. Article 3 of the Satversme, according to the Cabinet of Ministers, comprises three elements:

First, realization of the then-existing political objectives, i.e. creation of Latvia as a unified body of four ethnographic regions (inhabited by the Latvian nation).

Second, the condition that none of the regions would have a special status.

Third, methodology for establishing the external borders of these regions, i.e. they should be established using the instruments of international law – treaties.

The Cabinet of Ministers indicates that Article 3 of the Satversme was adopted in order to prevent (encumber) possible separation of Latgale from Latvia. Article 3 of the Satversme does not include a constitutional prohibition for Latvia to change State's borders, since, according to international law, it is not possible to factually ensure non-changeability of borders. Similarly, the borders of the State of Latvia were changed after enactment of the Satversme both during the interwar period and after restoration of independence.

When elaborating the Satversme, the Constitutional Assembly had taken into account that during the passage of the Satversme, the issues regarding borders would not be fully

[2] The Cabinet of Ministers referred to Railway Traffic Between Lithuania and Poland, PCIJ, Ser. A/B no.42 116 as authority for this proposition.

solved with all neighbouring countries, and therefore it provided for a possibility to conclude other international agreements in future to regulate the State border.

Article 3 of the Satversme provides only for a general methodological principle for establishing borders by referring to the Satversme rules regarding concluding of international treaties (Article 68 (1) and Article 73 of the Satversme).

Article 3 of the Satversme, as recognised by the Cabinet of Ministers, has to be interpreted dynamically, since the Constitutional Assembly could not predict the Second World War, the Cold Was and geo-political changes of the world map following from these events. In the 90s of the XX century, the main priority of Latvia was restoration of independence of the State of Latvia and strengthening thereof, not the restoration of the previous borders. By joining the NATO and the European Union, Latvia had confirmed that it had no territorial claims against the neighbouring states.

7.4. The Border Treaty is not in conflict with Article 3 of the Satversme, since it does not create an interstate border that changes the borders established in Article 3 of the Satversme in 1922, but records, in the form of a written international treaty, the border of Latvia and Russia according to the borders of both states that exists *de iure* at the moment of the conclusion of the agreement.

In international law interstate borders and territorial changes can take place not only by written treaties between the States, but also by pronouncement of will expressed in other forms. Territorial changes of a State can be established also by oral agreements, long-term State practice and unilateral declarations of States.

The Russian federation since 1992 has consistently and clearly claimed that the Republic of Latvia must waive the claims of territorial sovereignty to the town of Abrene and adjacent civil parishes. The Republic of Latvia, in the time period from beginning of 1996 up to the end of 1997 has accepted, by its action, this claim of the Russian Federation. This position was consistently confirmed by Latvian highest officials in their public statements from 1997 to 2005. These statements caused the title of territorial sovereignty to Abrene and adjacent civil parishes to be given to the Russian Federation.

8. When providing additional explanations regarding the response note, the Cabinet of Ministers states that the negotiations with the Russian Federation lasted from 1992 to 1997, and during the negotiations period, the mandate of negotiations given to the delegation of the Republic of Latvia had changed. At the beginning of the stage of negotiations, Latvia had raised a clear claim regarding restoration of interstate border of June 16, 1940. However, this mandate of negotiations did not follow from Article 9 of the Declaration of Independence and,

taking into account the position of the Russian Federation, it was changed during the negotiations.

The mandate given during the meeting of the Cabinet of Ministers of December 17, 1996 is considered to be the last mandate given to the delegation of the Republic of Latvia. It authorised the delegation to conduct negotiations, draft and agree upon (authenticate) a technical agreement regarding the present borderline between both states and, in the case if it is not possible, not to include a reference in the agreement to the Peace Treaty, as well as not to allow inclusion of issues unrelated to the delimitation into the treaty.

The Cabinet of Ministers emphasises in its additional observations that the Law on Authorization had been passed with a view to observe the requirements of provisions of Articles 3, 4 and 7 of the Law "On International Agreements of the Republic of Latvia". Similarly, the Law on Authorization fulfils a particular political function – its passage has confirmed the political support of the majority of the Saeima regarding signing of the Border Treaty, as well as has ensured the doctrine of continuity of the State.

The Cabinet of Ministers admits that the border described in Annex 1 of the Border Treaty is a permanent border. The Treaty does not include norms that would allow considering this border as temporary, terminable or unilaterally changeable.

Article 77 of the Satversme can be applied if Article 3 of the Satversme is amended either textually or substantively. Giving away Latvian territory to a foreign State, provided that this action does not affect any of the historical regions in general or at least it does not concern a sufficiently large part of the region, due to which this region would cease existing *de facto*, should not be regarded as fundamental change of the statehood of Latvia, regarding which a national referendum is to be organized.

9. The assistant professor of the Department of Legal Theory and History of the Faculty of Law of the University of Latvia, Dr.iur. **Jānis Neimanis** states in his opinion that it is not completely safe to rely on the results of historical interpretation when identifying the content of Article 3 of the Satversme. The content of the legal norm may considerably change after its passage due to different reasons that could not have been foreseen by the historical legislator.

The opinion expressed by the Saeima and the Cabinet of Ministers regarding the content of Article 9 of the Declaration of Independence is contestable. Article 9 of the Declaration of Independence is to be interpreted together with the Preamble of the Declaration, where it is stated that the Satversme has never lost its legal force and the treaties concluded with the USSR during the occupation period have not been lawful. The Peace

Treaty consists of several chapters and hence there is no reason to restrict the meaning of Article 9 of the Declaration of Independence to only one of the chapters of the Peace Treaty. If one considers what is established in the Preamble, namely, that on June 17, 1940 the sovereignty of Latvia was eliminated, then legal acts, wherewith Abrene was given to the USSR, is in conflict with the Peace Treaty, and Article 9 of the Declaration of Independence requires the Latvian legislative constitutional institutions to adopt such decisions that would allow regaining of the territory.

J. Neimanis emphasizes in particular that Article 9 of the Declaration of Independence cannot be interpreted as the mechanism of execution of Section 5 of the Declaration. Should that be the case, then Article 9 of the Declaration of Independence would have been annulled by the Constitutional Law.

A preamble of a normative act is a part of the normative act. It is confirmed by subordination of the text of the Preamble to the title of the normative act, as well as to the textual belonging of the normative act. The Preamble of the Declaration of Independence is not only a description of historical events that would be only of a declarative or political character. This preamble has also a legal character, since it provides that the Satversme has had legal force for the whole time the Republic of Latvia has existed and continues to exist as a subject of international law.

Legal consequences of the Preamble of the Declaration of Independence manifest themselves in the sense that all State constitutional institutions have an obligation to take into account the historical facts, as well as judicial assessment thereof established by the Preamble of the Declaration.

10. A doctoral candidate at the Oxford University, Mārtiņš Paparinskis, when analyzing incorporation of Latvia and other Baltic States into the USSR, emphasizes that this issue is to be considered by taking into account the international obligations binding on Latvia and the USSR that were effective at that time. For legal assessment of the events of 1940 one can not apply the norms of international law that were not yet or no longer effective at that point in time.

To assess lawfulness of the conduct of the USSR, one may rely on rules of international treaty law that imposed obligations on the USSR to act towards Latvia in a certain manner. These treaties are the following ones: the Peace Treaty, the Kellogg-Brian Pact of 1928, the Non-Aggression Treaty signed in Riga, February 5, 1932, between Latvia and the USSR (hereinafter – the Nonaggression Treaty), Convention Defining Aggression, singed in London, 1933 (hereinafter – the London Convention) and the Mutual Assistance

Pact between Latvia and the USSR signed on October 5, 1939 (hereinafter, the Assistance Pact). Similarly, for the analysis of the events of 1940, one may also need to use customary international law.

M. Paparinskis states: possible wrongfulness of the events of 1940 does not follow from the mere fact of the loss of independence, but from the manner in which it took place. International law does not prohibit any state to renounce its independence. Wrongfulness may result from the fact that the loss of independence did not take place voluntarily.

Considering the factual circumstances of the events of 1940, M. Paparinskis suggests considering the time period form June 16 to August 5, 1940 as aggression of the USSR (with subsequent unlawful occupation) and intervention in Latvia's internal affairs, whereas the period after August 5, 1940 - as annexation of Latvia.

Article 3 of the London Convention and its Annex *expressis verbis* excludes the reasons of action mentioned by the USSR in the ultimatum of June 16, 1940 of the USSR as justification for the aggression. Similarly, the Article 2 (2) of the London Convention does not require that, in the case of aggression, war should always have been declared.

Taking into consideration judgments of the Nuremberg Tribunal and other post-war tribunals, it is possible to conclude that a military invasion is not an obligatory prerequisite in order to qualify action of a State as aggression. Similarly, lack of resistance by one State against another State does not necessarily mean that no invasion takes place.

The government of Kārlis Ulmanis has agreed to the entry of the USSR troops in the territory of Latvia under the influence of treats to use force, and for this reason the consent is not valid in the meaning of international law.

The demanded of the USSR to form a USSR-friendly government, which would ensure implementation of the Assistance Pact, breaches Article 5 of the same Pact. This claim affected the sovereign right of Latvia to freely choose its government that was guaranteed by Article 5 of the Assistance Pact. The USSR had intervened in internal affairs of Latvia, breaching the norms of international treaties.

The concept of annexation is used in international law to describe forcible joining of one state to another, especially in the result of a military conflict. M. Paparinskis emphasizes: according to the principle *ex injuria ius non oritur*, annexation carried out as the result of an unlawful use of an force cannot be internationally lawful. After the aggression of the USSR and intervention in the internal affairs of Latvia, elections of the People's Saeima took place and also, according to the request of the newly elected People's Saeima, Latvia was accepted to the USSR. Changing the territorial status in favour of the aggressor State after aggression

and intervention in international affairs is internationally wrongful whatever is the form and procedure that the aggressor State has chosen.

Legal continuity of the State of Latvia is the consequence of the unlawful events of 1940 – the State of Latvia ceased to exist *de facto*, but not *de iure*. The international community had not recognized occupation of Latvia and unlawful annexation, with rare exceptions it maintained this non-recognition policy during the years of annexation and has confirmed restoration of independence of Latvia *de facto*.

Concerning the recent practice of Latvia, it has to be noted that international law does not prohibit the states to change their viewpoint regarding their legal identity, specifically by waiving a claim to be regarded as a continuation of another State. Hence it is necessary to consider whether Latvia, by signing the Border Treaty, has waived its legal continuity.

No such waiver has taken place *expressis verbis*, since the claim of continuity has always been emphasized in the parliamentary discussions concerning passage of the Law on Authorization and also subsequently.

When signing the Border Treaty, no indirect refusal from the doctrine of continuity has taken place as well, since Russia questions only the continuity of Latvia. Since Russia does not question existence of the State of Latvia, the Border Treaty as such does not affect continuity of the State of Latvia, unless Latvia *expressis verbis* waives it in the treaty.

When assessing the reference to the principle of inviolability of frontiers established in the Helsinki Final Act included in the Ratification Law, M. Paparinskis states: *prima facie* such a reference, taking into account the speeches of the Prime Minister A. Kalvītis and the Minister of Foreign Affairs Artis Pabriks in the discussions of the Saeima regarding the Law on Authorization, could support a waiver of the doctrine of continuity, since recognition of the illegally established *de facto* borders as lawful is incompatible with this doctrine.

The Cabinet of Ministers in its reply has officially explained its actions regarding authorization of A. Kalvītis to sign the Border Treaty, as well as including the reference to the principle of inviolability of frontiers in the Ratification Law. According to this reply, the Cabinet of Ministers understands the principle of inviolability of frontiers established by the Helsinki Final Act as nothing more than the obligation established by Article 2 (3) of the UN Charter to settle territorial disputes peacefully.

The text of the Border Treaty and not the pronouncements in the parliaments of both States are of primary significance for the interpretation of the Border Treaty. The Preamble of the Border Treaty, when declaring adherence to the principles of the UN and the OSCE, does not particularly point out the principle of inviolability of frontiers. The main principle of the UN and the OSCE, which has acquired the character of *ius cogens*, is the prohibition of

unlawful use of force. Since the Latvian claim of continuity follows from this norm, the Preamble of the Border Treaty *expressis verbis* reinforces it.

By including a reference to the principle of border inviolability in the Ratification Law, the legislator has referred to the objective content of the norm, but not the subjective opinions of the parties regarding the content of the norm. Interpreting the Helsinki Final Act in all its authentic languages, M. Paparinskis concludes that Article 3 of the Helsinki Final Act, which states the principle of inviolability of frontiers, repeats the prohibition of use of an unlawful force in a rather awkward manner without "crystallising" the borders of states in any other meaning.

Article 10 of the Helsinki Final Act provides that all the principles set forth in the Act are of primary significance and accordingly have to be applied in a way that they do not exclude each other. The reference included in the Ratification Law to the principle of inviolability of frontiers means a reference by Latvia also to other principles included in the Helsinki Final Act, established in Articles 1, 2, 4 and 6 thereof. The Preamble of the Border Treaty also refers to these Articles.

According to M. Paparinskis, Article 4 (2) of the Helsinki Final Act is particularly important – it establishes the principle of non-recognition of all annexations whenever they had taken place. This norm, underlines the consequences of breach of international law by the USSR are emphasized in the Helsinki Final Act. These conclusions regarding the content of the Helsinki Final Act are confirmed in the declarations of the leaders of the Westerns States quoted by the Applicant and the Cabinet of Ministers, where they explained the effect of the Helsinki Final Act on the issue of the Baltic States.

Article 3 of the Satversme prohibits the State of Latvia to establish its borders in unilateral acts. Similarly, the statements of the State officials indicated by the Cabinet of Ministers cannot confirm with absolute certainty the thesis of the Cabinet of Ministers that the State border is not legally established by the Border Treaty, but already prior to the Treaty – by unilateral declarations of Latvian State officials. M. Paparinskis particularly emphasizes that Abrene and the adjacent civil parishes *de iure* belong to Latvia, and Latvia, by the Border Treaty, cedes them to the Russian Federation thus establishing the State border that differs from that established by the Peace Treaty.

11. The Associate Professor of International and European Law of the University of Tartu, Dr.iur. **Lauri Mälksoo** indicates in his opinion submitted to the Constitutional Court that the parties of the Peace Treaty, namely, Latvia and Russia, have different points of view regarding validity of the above Treaty, and the issue must be solved by activities of both

parties. If Latvia agrees to the Russian view that the Peace Treaty is not in force, no third State will insist that it is.

The border issue and the issue of legal continuity of the Republic of Latvia are mutually related. At least the Russian Federation considers them as being inter-related with each other. Latvia would erode its State continuity claim if the ratification took place without any further statement regarding State continuity and continued relevance of the Peace Treaty. If Latvia wishes to maintain its State continuity doctrine, its institutions need to make a statement that would be much stronger than the declaration made by the Prime Minister and the Ministry of Foreign Affairs on April 26, 2005.

The Peace Treaty is relevant to Latvia due to several reasons. First, Russia, on the basis of the rights of the Latvian People to self-determination, has recognized Latvia's statehood for all time. Second, the fact that the 1920 Peace Treaty (minus borders described therein) continues to be valid, emphasizing the State continuity principle.

L. Melkso indicates that the principle of inviolability of frontiers precludes States from claiming back territories that have been illegally conquered from them. However the principle *ex injuria ius non oritur* is not an absolute dogma in international law, and States always look for compromises in its application. It is not impossible to argue that such a compromise would *a priori* breach international law.

12. The Associate Professor of the Department of International and European Union Rights of the Faculty of Law of the Vilnius University, Dr.iur **Dainius Žalimas** states in his opinion that he has given the answers to the Constitutional Court basing on the basis of a firm presumption of legal continuity of the Republic of Latvia.

Continuity of the statehood according to its traditional notion implies continuity of international legal personality of the State, i.e. continuity of its international legal rights and obligations. Therefore one has to use the presumption of validity of the Peace Treaty unless it is proved that the Treaty has lost its validity. D. Žalimas emphasizes: it is not possible to find any convincing and well-grounded evidence that the Peace Treaty would have lost its validity under international law.

Although Russian Federation considers that the Peace Treaty had expired upon entering of Latvia into the Soviet Union, it cannot be accepted that the Latvian State had become extinct upon its annexation in 1940. Since USSR annexed Latvia and the other Baltic States in 1940 in breach of international law, in accordance with the principle *ex injuria jus non oritur* the USSR could not derive any legal benefit from this breach, namely, it had no right to declare extinction of the Latvian State and the termination of the Peace Treaty. The

fact that actions of 1940 in the Baltic States were unlawful has been established in the judgment of the Grand Chamber of the European Court of Human Rights in the case of March 16, 2006, *Zdanoka v. Latvia*, judgment of the European Court of Human Rights in the case of January 17, 2006, *Kolk and Kislyiy v. Estonia* and judgment of January 24, 2006, *Penart v. Estonia.* One should also take into account the resolution of December 24, 1989 of the Congress of People's Deputies of the USSR regarding the Soviet-German Non-aggression Treaty of 1939, whereby the aggression towards the Baltic States is recognized, which was prohibited by the second part of Article 2 of the London Convention.

The fact that the Peace Treaty is still valid does not mean that the Parties cannot agree to change its rules by signing new international treaties. The Border Treaty does not affect validity of the Peace Treaty, since the Peace Treaty will remain in force to the extent that it is not replaced by any subsequent treaty.

The Republic of Latvia has declared its legal continuity, and this claim of continuity has been recognized by the international community. This, for instance, is stated in the Resolution of the Parliamentary Assembly of the Council of Europe No. 189 (1960) and the Resolution of the European Parliament of January 13, 1983 regarding the Baltic States. The opposite opinion of one state cannot affect continuity of the State of Latvia. In this aspect, D. Žalimas indicates that one has to take into account the fact that the Russian Federation preserves the international legal status of the USSR and has taken over international obligations of the USSR, that follow from the responsibility for the aggression of 1940 against the Baltic States and their illegal annexation to the USSR. Hence, according to D. Žalimas, the Russian Federation has an obligation not only to recognize that annexation of Latvia was illegal, but also to cease internationally wrongful acts and provide pay to Latvia. Russia also has a duty to give the unlawfully acquired territory of Abrene back to Latvia.

Signing the Border Treaty with the Russian Federation cannot affect legal continuity of the State of Latvia, unless Latvia itself waives it. Change of the border, according to D. Žalimas, cannot affect continuity of Latvia, since, under international law, State continuity can not be affected by minor territorial changes or loss of minor territories.

In order to assess the principle of frontier inviolability, it is necessary to investigate the precise content of this principle. D. Žalimas emphasizes that no international right principle can be interpreted grammatically or taken separately from other principles and rules of international law. The nature and precise content of each legal principle or rule, can be determined only within the framework of the entire system of international law and in relation with other principles and rules of international law.

The principle of inviolability of frontiers established by the Helsinki Final Act should be interpreted in the light of other principles included in this Act. Taking into account the prohibition to use force against other States and the principle of territorial integrity, one can conclude that the principle of inviolability of frontiers protects the lawful borders, namely, the borders established according to international law. The principle of inviolability of frontiers does not protect *de facto* demarcation lines between the States that were formed in the result of aggression and the subsequent occupation and annexation. In the Helsinki Final Act the Western States rejected the attempts of the USSR to define the principle of inviolability of frontiers in the way that would make annexation of the Baltic States lawful.

The principle of inviolability of frontiers, according to the opinion of D. Žalimas, protects the State border between Latvia and Russia established in the Peace Treaty, rather than the borderline that was partly *de facto* established in the USSR occupation years that separates Russia from Latvia.

The reference included in the Ratification Law regarding the principle of inviolability of frontiers makes one to conclude that the Latvian government considers as inviolable the *de facto* borderline between Latvia and Russia, rather than the *de iure* border established by the Peace treaty. This could serve as the basis for the conclusion that Latvia prefers the principle *ex factis ius oritur*, rather than the principle *ex injuria ius non oritur*. Thus Latvia considers as legal and inviolable the *de facto* borderline that was partially established by the USSR and Russia when carrying out unilateral unlawful acts.

The reference to the principle of inviolability of borders included in the Ratification Law is erroneous, misleading and unnecessary. Such a reference in the Ratification Law could serve as a good tool for Russia to argue that Latvia has denied its continuity at least regarding its border issues.

13. The Associate Professor of the Department of Public Law of the School of Business Administration "Turība", Dr.hist. **Valdis Blūzma**, when analysing the policy of the Latvian SSR, indicates: the Latvian SSR carried out a merger of Kurzeme, Vidzeme and Latgale into one territorial entity in 1919. The Pitalovo issue was not relevant to the Latvian SSR, since the Latvian SSR considered itself not as a sovereign State, but rather as a political autonomy of the Soviet Russia. Since a close relation with the Soviet Russia had been preserved, the Latvian SSR did not consider it necessary to request inclusion of the Pitalovo territory into the territory of the Latvian SSR in order to ensure more convenient traffic.

According to V. Blūzma, the ethnographic borders of Latvia during the conclusion of the Peace treaty can be best illustrated by means of the Memorandum of June 11, 1919 of the

Declaration of Latvia presented in the Paris Peace Conference. It follows from the Memorandum that the ethnographic border of Latvia in the Eastern part of the territory exceeded the administrative division borders of that time, but it did not include the entire territory given to Latvia after concluding the Peace Treaty.

V. Blūzma indicates: the argumentation for the necessity to include Pitalovo into the territory of Latvia followed from economical and traffic considerations, since it was necessary to organize railway traffic between Vidzeme and Latgale through the territory of Latvia. The text of the Memorandum addressed to the Paris Peace Conference could manifest that the Pitalovo region does not pertain to the territory of Latvia.

This conclusion could also be justified by the name given to Pitalovo after its inclusion into the territory of Latvia – Jaunlatgale [*New Latgale*]. Pitalovo was a new territory that was added to the cultural and historical region of Latvia, while being outside the ethnographic borders of Latvia.

Since elections of the Constitutional Assembly took place before conclusion of the Peace Treaty, Latvia did not have a legal basis for organization of elections of the Constitutional Assembly in the newly acquired territories, including the Pitalovo region, because they were occupied at that time, but not yet incorporated into the State of Latvia.

Article 22 of the Law on Elections of the Constitutional Assembly prohibited electing a new Constitutional Assembly before freeing the territory of Latgale. Since in the newly acquired territories in the Eastern Latvia, no elections of the Constitutional Assembly take place, V. Blūzma assumes that at that time territories were not considered as a territorial part of the cultural and historical region of Latvia.

14. The professor of the Department of Philosophy of the Faculty of Humanities and Law, Dr.hab.hist. **Kārlis Počs** emphasizes that in the First Latgale Congress that took place on April 26 – 27, 1917, and in the Second Latgale Congress that took place on December 16 – 17, 1917, the representatives of the districts and civil parishes of Latgale declared their will to join the other regions of Latvia. No claim was traced in the Resolution of the above congresses to include Pitalovo or other provinces of Pleskava into the territory of Latvia, and the participation of the Latvians from Pitalovo or other provinces of Pleskava in the Latgale Congress has also not been traced.

K. Počs indicates that during the peace negotiation between Latvia and Russia, the studies and a map regarding Latvian ethnographical borders in the Eastern part of Latvia prepared by Augusts Bīlenšteins were used. However, in the studies that were carried out by

the historians living in exile, the ethnographic border was moved by about 20 – 50 kilometres deeper into the territory of Russia.

The territory of Abrene certainly was a region inhabited by ancient Latgalians, lost by Livonia in the XV century. Then colonization of regions took place, and at the beginning of the XX century, the majority of the inhabitants were certainly not Latvians. However, had Latvia not been occupied in 1940, Abrene could have become a Latvian district.

15. The professor of the Department of the History of Latvia of the Faculty of History and Philosophy of the University of Latvia, Dr.hist. **Aivars Stranga** doubts that in November 18, 1918, anybody could have determined the ethnographical borders of Latvia with perfect clarity. At that time one considered that the borders of the three districts of Latgale are very close to the ethnographic borders of Latvia at the Eastern frontier. This opinion was based on the researches of August Bīlenšteins, however Jānis Endzelīns has argued that the border between Latvia and Russia should be established even more to the East that it is established by the Peace Treaty.

Latvia demanded incorporation of the Pitalovo region into Latvia during the negotiations of the Peace Treaty by referring to the arguments of economic nature and the historical fact that Pitalovo is an ancient territory inhabited by the Latgalians, which was in the possession of Livonia until 1470. Latvia also mentioned arguments of ethnic nature, namely, that the Latvians inhabited territories that were located even more to the East, however A. Stranga considered this argument to be the weakest.

The reason why no elections of the Constitutional Assembly were carried out in the Pitalovo region cannot be explained with certainty, since until now, no materials that would establish the respective reasons have been found.

16. After having got acquainted with the case materials, the Cabinet of Ministers submitted a written opinion regarding them.

The Cabinet of Ministers once more indicates: the Republic of Latvia has never considered the principle of inviolability of frontiers as a norm that would preclude restoring the Latvian-Russian Border in accordance with Article 3 of the Peace Treaty. During the border negotiation, the delegation of Latvia had repeatedly rejected the view of Russian delegation that the principle of inviolability of frontiers prohibits restoring the interstate border in accordance with its status of June 16, 1940.

The Cabinet of Ministers emphasizes: the concluded Border Treaty does not affect the continuity doctrine of Latvia. Similarly, the doctrine of the statehood of Latvia is repeatedly strengthened by the Law on Authorization.

Considering the opinion of M. Paparinskis regarding appropriateness of the use of the notion of occupation in relation to the events of 1940 in the dispute where the use of precise and legally correct terminology is very significant, the Cabinet of Ministers recognizes the Constitutional Court as the most competent institution that could facilitate usage of legally correct terminology in Latvia by revealing both the content of such concepts, as well as the legal nuances of their application.

The Cabinet of Ministers in its opinion regarding the case materials expressed a hope that the judgment of the Constitutional Court in the case No. 2007-10-0102 will both strengthen the doctrine of continuity of Latvia that is fundamentally important to Latvia, and will confirm the of Latvia as an honest and good faith partner in international relations.

The Constitutional Court holds that:

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17. On November 18, 1918 the Latvian People's Council proclaimed the Republic of Latvia as an independent and autonomous State. The Latvian People's Council [*Latvijas Tautas Padome*] in the Proclamation Act concluded the stage of preparation for the statehood of Latvia, which was initiated in the XIX century along with the national awakening when the Latvians became conscious of themselves as a full-fledged European nation. During this period, the claim of the Latvian people for broader rights developed into the idea of a national State.

In the Proclamation Act, the Latvian People's Council declared: "Latvia – united within the ethnographic borders (Kurzeme, Vidzeme and Latgale) – is an independent, democratically-republican State, the Constitution and relations with the foreign States of which shall be established by the Constitutional Assembly in the immediate future that is to be summoned on the basis of general, direct, equal, secret and proportional ballot by both genders" (*Latvijas pilsoņiem! // Pagaidu Valdības Vēstnesis, December 14, 1918, No.1).*

A member of the Latvian People's Council, Atis Ķeniņš emphasized at the ceremonial meeting in honour of proclamation of Latvia: "Nations occupy their ancient territories and establish the States within their ethnographic borders on the basis of unification and self-determination. This permits the Latvians from Kurzeme, Vidzeme and the long-awaited

Latgale to join hands in the middle of united Latvia. Hence we receive our independence flag not from the power, but from the hands of the goddess of justice" *(Transcript of the ceremonial Independence Proclamation Act of Latvia by the Latvian People's Council, November 18, 1918).*

18. The State of Latvia was proclaimed by implementing the principle of self-determination of people. The idea of self-determination of people appeared already during the independence fights of the Colonies of Great Britain in the North America, as well as during the Great French Revolution. During the years of the World War I, this idea was widely recognized and, in the course of time, it became a relevant norm of international law *(see: Cassese A. Self-Determination of Peoples. A Legal Reappraisal. Cambridge: Cambridge University Press, 1995, pp. 11 – 66*).

18.1. In the interwar period, the principle of self-determination of people was defined as a political claim, according to which inhabitants are to be conferred the rights to freely decide on national identity of the territory that they inhabited *(see*: *Giese F. Der Verfassung des Deutschen Reiches. Berlin: Karl Henmanns Verlag, 1931, pp. 43*).

The content of the principle of self-determination of people comprises three elements: the right to self-determination, the right to self-organization and the right to self-governance.

The right to self-determination of people as an element of the principle of self-determination means the rights of people to freely and independently decide on their political status, joining another State on the basis of autonomy or separating from a certain State and founding an independent state according to norms of national law.

The right to self-organization of people is the right to independently establish the State regime in the Constitution that is passed by a national referendum or the Constitutional Assembly.

The right of people to self-governance is the right to implement the State power according to the provisions of the Constitution (*Dišlers K. Tautu pašnoteikšanās principa tiesiskais saturs. Rīga: Latvijas Universitāte, 1932, pp. 134 – 135*).

But the Professor Frīdrihs Gīze considered that the claim of self-determination has not become a norm of domestic law or a principle of international law, but it has remained a policy postulate (*see: Giese F. Der Verfassung des Deutschen Reiches, pp. 43*). Some scientists defined the principle of self-determination as a claim of political justice that a State could voluntarily recognize as binding onto itself (*see: Anschütz G. Die Verfassung des Deutschen Reichs vom 11. August 1919. Berlin, Zürich: Verlag Gehlen Bad Homburg V. D. H., 1968, pp. 46*). However, other scientists were confident that the principle of self-

determination of people has become a legally binding principle: "The principle of self-determination of people is recognized and observed not only, so to say, from above, only from the part of the League of Nations. This modern principle of political and legal life has even stronger positive basis: it is recognized by the States themselves, and as a positive legal principle it is incorporated in the legal acts – resolutions, declarations and even constitutions – of the leaders of the States. The principle of self-determination of people is to be included into the list of those general legal principles recognized by the civilized nations that are used by the Permanent Court of International Justice along with the positive rights and international conventions (*Dišlers K. Tautu pašnoteikšanās principa tiesiskais saturs, pp. 102. – 103*).

18.2. The idea of self-determination of people considerably developed during the World War I. Until then, the states were created on the basis of rights of conquest, not on the principle of self-determination of people. "The long acute problem of the rights of people to self-determination was brought forward and developed on the agenda of the day of global politics and it was declared as the objective of international right and justice. The World War acquired its own political and legal ideology – protection of the rights of people. The idea of the rights of people to self-determination became one of the motives, whereby both groups of warring States attempted to strengthen the will of nations to fight during the lengthy war (*Seskis J. Latvijas valsts izcelšanās pasaules kara notikumu norisē. Atmiņas un apcerējumi (1914 – 1921). Riga: Balta, 1991, pp. 145 – 146).*

The principle of self-determination of people was particularly widely used by the Entente States in order to enfeeble the multi-national empires – the Austro-Hungarian Empire and Turkey. "The hopes and expectations [of the people incorporated in these empires] were not hidden from the leading politicians of the allied countries. Therefore they acted for the protection of the suppressed nations and publicly declared the principle of self-determination of people that had two recognised tasks: first, to meet the justified claims for freedom and independency of nations, and, second, to diminish the threat of future wars by creating a more just political system" (*Dišlers K. Tautu pašnoteikšanās principa tiesiskais saturs, pp. 101*).

The viewpoint of the Entente States regarding the principle of self-determination of people was expressed most fully by the President of the US, Woodrow Wilson. W. Wilson did not mention *expressis verbis* the principle of self-determination of people in 14 Points regarding provisions of peace with the Triple Alliance and formation of international relations formulated in January 18, 1918. However, it follows from Points 9, 10, 13 and 14, which require the establishment of the borders of Italy according to its ethnographic borders, autonomy for the nations of the Austro-Hungarian Empire, restoration of the State of Poland

and foundation of the League of Nations (see*: Dišlers K. Tautu pašnoteikšanās principa tiesiskais saturs, pp. 101 – 102*).

But, in the speech of July 14, 1918, W. Wilson emphasized even more clearly the significance of the principle of self-determination of people in the post-war Europe: "The settlement of every question, whether of territory, of sovereignty, of economic arrangement, or of political relationship, upon the basis of the free acceptance of that settlement by the people immediately concerned, and not upon the basis of the material interest or advantage of any other nation or people which may desire a different settlement for the sake of its own exterior influence or mastery." (*Seskis J. Latvijas valsts izcelšanās pasaules kara notikumu norisē, pp. 154*).

"The right to self-determination was also recognized during the peace negotiations of Brestlitovsk by Russia, Germany and the Austro-Hungarian Empire. [..] The right to self-determination proclaimed by the professor Wilson was later approved by all Entente States" (*Šulcs L. Atskats uz Latvijas valstiskās idejas izveidošanos // Tieslietu Ministrijas Vēstnesis, 1926, No. 5/6, pp. 213*). According to this principle and addressing the Entente States, the nations of the Austro-Hungarian Empire and then also later those of the Russian Empire made their claims. To a great extent, self-determination of these people was facilitated by the results of the World War I and revolutions, namely, collapse of the Austro-Hungarian, Germany and Russian Empire.

Prior to establishing the rights to self-determination in the UN Charter in 1945, the question about the legal nature of self-determination rights did not have a clear answer (*see: Woolsey T. W. Self-Determination // American Journal of International Law, 1919, pp. 302 – 305*). Regarding Latvia, the opinion of the Committee of Rapporteurs of the League of Nations in the so-called Aland Case is relevant. The Committee recognized *expressis verbis* that Finland is a nation that would accordingly have had rights to secede from the Russian Empire. (*see: Cassese A. Self-Determination of Peoples, pp. 27 – 31*). *Mutatis mutandis*, Latvia, too, was a subject of the right to self-determination having rights to secede from the Russian Empire.

18.3. Like the majority of European nations, the Latvian people also started becoming aware of themselves during their first Awakening in the second half of XIX century. In the course of time, basing on the rights of people to self-determination, it started to claim more persistently its rights to freely decide its destiny.

In July, 1917, the board of the Vidzeme Provisional Land Council [*Vidzemes pagaidu zemes padome*] summoned a conference to discuss the issue of autonomy of Latvia. 50

delegates from ten most important non-governmental organizations participated in the Conference. They passed a resolution that provided: "The Latvian people, just like all other nations, have a right to full self-determination" (*Dišlers K. Ievads Latvijas valststiesību zinātnē. Rīga: A. Gulbis, 1930, pp. 56 – 57*).

In the first session of the Latvian Provisional National Council [*Latviešu pagaidu nacionālās padome*] on December 16-19, 1917 in Valka, several acts regarding the future of Latvia were passed. In the statement to foreign countries, the Latvian Provisional National Council stated: "Considering the long-held aspirations of the Latvian people to political freedom and autonomous Latvia, which was particularly manifested by the freedom struggles of 1905, and basing on the principle of self-determination of people, the Latvian Provisional National Council strongly protests against any division of Latvia and particularly against annexation or joining of Kurzeme or entire Latvia to Germany, and hence it declares that Latvia that consists of Vidzeme, Kurzeme and Latgale is an autonomous State entity, the status of which, foreign relations, as well as the internal structure shall be determined by its Constitutional Assembly and plebiscite of the nation (*Dišlers K. Ievads Latvijas valststiesību zinātnē, pp. 58*). Latvian Provisional National Council also established the first diplomatic contacts when trying to achieve favour of other, especially the Entente States for its political efforts (*see: Lerhis A. Latvijas Republikas ārlietu dienests. 1918 – 1941. Riga: Latvijas vēstures institūta apgāds, 2005, pp. 47 – 60*).

In the second session of the Latvian Provisional National Council, that took place in Petrograd on January 15 – 18, 1918, the decisive step was made on the way to independence of Latvia. After many discussions, a resolution was adopted, wherein the Latvian Provisional National Council, "founding itself on the rights of people to self-determination recognized and declared by all the democracies of the world", recognized that "Latvia has to be an independent democratic republic that would comprise Kurzeme, Vidzeme and Latgale" (*Šulcs L. Atskats uz Latvijas valstiskās idejas izveidošanos // Tieslietu Ministrijas Vēstnesis, 1926, Nr. 7/8, pp. 288 – 291*).

On October 23, 19198 the Secretary of State for Foreign Affairs of Great Britain Arthur James Balfour , when meeting with the representative of the Latvian Provisional National Council, Zigfrīds Anna Meierovics, declared verbally that the government of Great Britain views with sympathy the efforts of the Latvian people to get rid of the German yoke and to declares the Latvian Provisional National Council as *de facto* independent institution until the moment when the Peace Conference ultimately solves the issue regarding Latvia. On November 11, 1918, A. J. Balfour drew up the declaration in a written form upon the request

of Z. A. Meierovics (*see: Andersons E. Latvijas vēsture. 1914 – 1920. Stokholma: Apgāds Daugava, 1967, pp. 324*).

The tasks of the Latvian Provisional National Council were overtaken by the Latvian People's Council formed on November 17, 1918, which proclaimed Latvia on November 18 of the same year.

"Proclamation of the State of Latvia was undoubtedly a revolutionary act. For the first time in the history of Latvia, the Latvian people joined into one State and became the master in its own territory, which had been in its possession since immemorial times and where it still formed the great majority among other inhabitants. The State was founded on the basis of the principle of self-determination of people at the time when the High Powers had left it for a short period of time to its own destiny. [..] Estonia and Lithuania have already proclaimed their independence – like Finland, Poland, Byelorussia, Ukraine and the Caucasus States. Latvia was the last member in the long list of new States" (*Andersons E. Latvijas vēsture, pp. 355*).

18.4. The principle of self-determination of people was also recognized by the Soviet Russia. On December 2, 1917, equality of the people of Russia and rights of the people of Russia to free self-determination including the rights to separate and find an independent State were proclaimed in the Declaration of the Rights of the Nations of Russia by the Russian National Commissar Council (*see: Миллер В. О. Первое суверенное государство латышского народа. Рига: Авотс, 1988, pp. 3 – 6*).

On the basis of the rights of people to self-determination, in Article 2 of the Peace Treaty, the Soviet Russia recognized independence of Latvia: "Pursuant to the declaration by the Russian Socialist Federative Soviet Republic that all nations shall have the right to free self-determination not excluding even a complete secession from the State to which they presently belong, and observing the will for an independently existing State as firmly expressed by the Latvian State, Russia recognizes without any objection the independence, freedom and sovereignty of the Latvian State and renounces for all time all sovereign rights held by Russia in relation to the Latvian people and territory on the basis of the previous State legal regime as well as any international agreements, all of which lose their force and effect for all future time as herein provided" (*Miera līgums starp Latviju un Krieviju // Likumu un valdības rīkojumu krājums, September 18, 1920, No. 7*).

19. The Latvian Provisional National Council was formed following an appeal of the members of the Russian State Duma Jānis Goldmanis and Jānis Zālītis by uniting in a common of the most important self-government and non-governmental organizations of the

time – civil delegates of Vidzeme Land Council [*Vidzemes zemes padome*], Latgale Land Council [*Latgales zemes padome*] and Kuzeme Land Council [*Kurzemes zemes padome*], the Central Committee of Latgale Refugees in Petrograd [*Latviešu bēgļu centrālkomiteja Petrogradā*], Committee of Catering for Baltic Refugees [*Baltijas bēgļu apgādāšanas komiteja*] in Riga, Latgale Assistance Committee for War Victims [*Latgales palīdzības komiteja kara upuriem*] in Petrograd and Rēzekne, Riga Agriculture Central Society [*Rīgas lauksaimniecības centrālbiedrība*], Latvian Peasant Association [*Latviešu zemnieku savienība*], National Democratic Party [*Nacionāldemokrātu partija*, Radical Democratic Party [*Radikāldemokrātu partija*], Democratic Party [*Demokrātu partija*], National Association of Latvian Soldiers [*Latviešu karavīru nacionālā apvienība*] and Vidzeme Land Organizational Committee [*Vidzemes zemes ierīcības komiteja*]. Social democrats and Bolshevik organizations (Executive Committee of Latvian Workers', Soldiers' and Landless Peasants' Deputy Council, Moscow Cultural Bureau, Landless Peasants' Congress Executive Committee, communist wings of the Vidzeme Land Council and Kurzeme Refugee Congress) refused to work in the Latvian Provisional National Council (*see*: *Dunsdorfs E. Kārļa Ulmaņa dzīve. Ceļinieks. Politiķis. Diktators. Moceklis. Riga: Zinātne, 1992, pp. 76*).

Along with the Latvian Provisional National Council, the Democratic Bloc was founded and led by politicians who remained in German occupied Riga, including social democrats. The Democratic Bloc, at the end of 19197, drafted a resolution addressed to the government of Germany, wherein they demanded a republican, neutralized and undivided Latvia in the form of an "interstate autonomy" (*See: Dunsdorfs E. Kārļa Ulmaņa dzīve, pp. 79 – 81*).

The Latvian People's Council was formed on the basis of the Latvian Provisional National Council and Democratic Bloc by uniting representatives of Latvian political parties. In the Latvian People's Council, the participants were delegates from Latvian Peasants' Association, Latvian Social Democratic Workers' Party, Latvian Democratic Party, Latvian Radical Democratic Party, Latvian Revolutionary Socialist Party, National Democratic Party, Republican Party and Latvian Independence Party. A definite number of seats was reserved for delegates of minorities and Latvian regions where no political parties existed at that time, namely Kurzeme and Latgale (*Transcript of the Act of Proclamation of Independence of Latvia, November 18, 1918 by the Latvian People's Council).*

19.1. Latvia, like other new states after the World War I, was created in the circumstances of revolution or war. In such condition "it is impossible to carry out general elections or a formal referendum; therefore public trust organs of a simpler kind are created, committees or councils consisting of delegations of non-governmental organizations that,

basing themselves on the general public sentiment, take the floor and act on behalf of the people" (*Dišlers K. Tautu pašnoteikšanās principa tiesiskais saturs, pp. 128. – 129*).

One of the most important and closest objectives of such temporary organs is "the creation of real nationally authorized organs in the form of an elected National Assembly or Constitutional Assembly, which then is entitled to decide on the further political status of the people or to submit the issue to a referendum by the people themselves" (*Dišlers K. Tautu pašnoteikšanās principa tiesiskais saturs, pp. 129*).

19.2. Both the Latvian Provisional National Council and the Latvian People's Council declared, as one of their primary objectives, convening the Constitutional Assembly to decide on the destiny of Latvia.

The Latvian People's Council already recognized the necessity to summon the Constitutional Assembly which would pass the Satversme (Constitution) and establish relations with foreign countries already in the Proclamation Act. In the first provisional constitution of the Republic of Latvia – the political platform of the Latvian People's Council – attention was paid to the issue of the Constitutional Assembly indicating that "the Constitutional Assembly of Latvia shall be summoned as soon as possible" (*Pagaidu Valdības Vēstnesis, December 14, 1918, No. 1*).

However, it became possible to elect the Constitutional Assembly of Latvia only on April 17 and 18, 1920 – after the battles of the Latvian war of independence had been fought. On May 1, 1920, the Constitutional Assembly of Latvia started its activities.

Self-determination of the Latvian people took place in 1918 – 1920 in the form of a chain of subsequent events that was initiated by the proclamation of the Republic of Latvia on November 18, 1918 and was concluded by passage of the Declaration on the State of Latvia on May 27, 1920 by the Constitutional Assembly of Latvia. At this time the new State of Latvia received a wide support of the society and foreign States, as well as defended its rights to exist as a State in the Freedom battles. One can agree to assessment of a member of the Supreme Council, Rolands Rikards, that "self-determination of the Latvian people was carried out in a classical way, first of all defended Latvia by armed force in 1919 and at the beginning of 1920. Then it was succeeded by legal self-determination by means of the Constitutional Assembly. This legal self-determination was expressed in the Declaration of May 27, 1920 on the State of Latvia by the Constitutional Assembly" (*Transcript of the evening plenary meeting of the Supreme Council of the Latvian SSR, May 4, 1990).*

The necessity of passing the Declaration on the State of Latvia was justified by M. Skujenieks: "Still, sometimes groundless objections are made that those persons and parties that declared independence of Latvia on November 18, 1918 were not authorized to do that. In

order to settle any doubts, to make it clear what is the will of Latvian people, this decision must be made, the representatives elected by the Latvian people must say what the Latvia they want to see and construct, and only after making such a decision no one will be able to raise objections that the will of Latvia has not been expressed clearly enough" *(Transcript of the 5th meeting of the first session of the Constitutional Assembly of Latvia, May 27, 1920).*

When passing the Declaration on the State of Latvia, the Constitutional Assembly elected by the Latvian people accepted on behalf of the Latvian people the work done by the previous organs regarding the creation of the State of Latvia on behalf of the Latvian people.

II

20. One of the main tasks of the new State was to establish borders with the neighbouring States.

Latvia was created by merging into one State all historically ethnographic regions that were inhabited by the Latvians into one entity. Due to this reason, at the moment of the creation of the State of Latvia it was possible to establish the new State borders sufficiently clearly.

20.1. The basis of the desirable borders of the State of Latvia was the external ethnographic borders of the territories inhabited by the Latvians, and they were well-known.

In the official edition of the Latvian Provisional National Council, the following description of the desirable border of the State of Latvia was given: "The inseparable territory Latvia that shall be unified is – Kurzeme, Vidzeme, Latgale and those border provinces of Kauņa and Pleskava [provinces] that are inhabited by the Latvians, as well as the Kursian territory and the Kursian Spit further than Southern Kurzeme that was given to Prussia" (*Ziņas par Latviju. Rakstu krājums, June, 1918, No. 4*). Whereas a member of the Latvian Provisional National Council, Arvids Bergs, emphasized that "the land or territory of Latvia includes three separate parts – Kurzeme, Vidzeme, i.e. Riga, Valmiera, Cēsis un Valka districts, and Latgale, i.e. Daugavpils, Rēzekne and Ludza districts in the Vitebsk province that are known as Inflantija" (see*: Latvijas valsts pasludināšana 18. novembrī 1918. g. Rakstu vainags H. J. sakopots. Riga: apgādniecība „Astra", 1918, pp. 5*).

M. Skujenieks expressed a similar opinion: "The ethnographic borders of the Latvian people occasionally do not correspond to the borders of present administrative divisions, although one can state in general terms that Latvians inhabit Kurzeme, the Southern part of Vidzeme (four districts) and Latgale (three districts of the North-Western part of the Vitebsk

province). Hence the Latvians densely inhabit 17 districts [..]. There are places where the density of population of Latvians is high, but these districts are located outside the above borders, and the territories of the neighbouring nations elsewhere exceed the borders of districts that fall within the territory of Latvia" (*Skujenieks M. Latvija. Zeme un iedzīvotāji. Ar J. Bokaldera nodaļu par lauksaimniecību. Riga: 1920, pp. 1 – 2*).

20.2. Joining the Baltic States in to international relations was unimaginable without the decisions by the Paris Peace Conference. The authorized delegation of the Latvian Provisional government in the Paris Peace Conference first of all tried to explain the necessity of creation of the independent State of Latvia and to provide information on Latvia to the participants of the Paris Peace Conference. Hence the opinion of Latvia regarding the desirable State borders was most fully reflected in the Memorandum composed at the Paris Peace Conference by the Latvian delegation.

This Memorandum was submitted to the Baltic Commission of the Paris Peace Conference on June 10, 1919. In the declaration of the Latvian delegation that supplemented the Memorandum, a claim to recognize sovereign, independent and inseparable Latvia was included, as well as the basic principle for dealing with the border issues:

"The borders that separate Latvia from the neighbouring States – Estonia, Great Russia, Byelorussia and Lithuania – are to be established on the national-ethnographic basis, with some modifications, if required by economic considerations, to be made, on the basis of mutual compensation. One can state *a priori*, that the already partially solved border issue will be settled without any difficulties" (*Latvijas delegācijas deklarācija, iesniegta Baltijas komisijai Parīzē // Valdības Vēstnesis, August 2, 1919, No. 2*).

The first part of the Memorandum submitted to the Paris Peace Conference by the Latvian delegation is devoted to description of the territories inhabited by the Latvians:

„From ancient times, the Latvians inhabit the coastline of the Baltic Sea, beginning from the Ainaži port, along with the seacoast of the Gulf of Riga up to Palanga, which is the furthermost border point between Prussia and Kurzeme.

The Latvians inhabit:

In Kurzeme – 27023.3 sq kilometres, in four districts of Vidzeme (Riga, Cēsis, Valmiera and Valka district) – 22570.9 sq kilometres and in Latgale in the North-Western par of the Vitebsk province – 13704.8 sq kilometres of territory, which consists of three districts – Daugavpils, Rēzekne and Ludza [..].

In general the borders of Latvia coincide with the administrative borders of the provinces and districts of the former Russian State. To the West and partially to the North, the border is the Baltic Sea, particularly, the Gulf of Riga. 519 km of the entire 1777 km border is

the maritime border. The Southern border coincides with the administrative borders of Kurzeme. The Eastern border is the administrative border of Ludza district, and in the North – the border of Valka and Valmiera districts, where they meet on Pērnava, Vilande and Verova districts.

In the North, Latvia has Estonia as its neighbour for 308 km; in the East, through the Pleskava province Latvia touches Great Russia for 169 km; in the South-East, there is a 177 km border with the Byelorussia and in the West, there is a 605 km border with Lithuania.

The ethnographic borders of Latvia exceed the administrative borders in the following parts:

1) to the North from Ainaži, along the coastline of the Baltic sea for a small territory;
2) to the North from Ope, along the railway Valka-Alūksne-Stukmaņi, where Jaunroze district is inhabited by the Latvians;
3) Lucenieki district in Verova district to the East from Jaunroze is inhabited by the Latvians;
4) the Latvians inhabit a narrow spit of land in the Pleskava province along with the border of Vidzeme, to the East from Baltinava, between the border of Ludza district and the railway Petrograd-Warsaw, between the railway stations of Korsovka and Pitalovo;
5) the Latvians inhabit the Kauņa province in the Aknīši district, that spreads into Kurzeme between Ilūkste and Jaunjelgava districts;
6) the Latvians inhabit the region to the South from Kurzeme, between Mēmele, the district of Jaunjelgava and the corner of the territory where Mūsa enters Kurzeme;
7) the Latvians also inhabit 4 – 9 km wide land strip in the Kauņa province, along the border of Kurzeme between Žagare and Piķele villages;
8) the Latvians inhabit the Kūra (Kurische Nehrung) spit in Prussia, the territory constituting 40 km.

The ethnographic territories of the neighbouring nations enter the territory of Latvia in the following locations:

1) the Estonians inhabit the Northern part of Valmiera district about 100 sq kilometres to the North from Maizekule;
2) the Estonians inhabit the region to the North-East from Valka, in the locality of Liellugaži estate;
3) in Ilūskte district, the Lithuanians and the Byelorussians inhabit the South-Eastern part of the district, the border between Latvian and Lithuania stretches slightly more to the South from the railway Daugavpils-Panevēža;

4) the Lithuanians inhabit the area of Palanga to the South-West from Kurzeme, although this district is inhabited by a considerable number of the Latvians.

The abovementioned districts cannot cause conflict between the Latvians and the neighbouring nations, since ethnographic borders are strictly drawn and the difference between the ethnographic and administrative borders is negligible.

The districts with mixed populations are as follows:

1) Valka, the town located close to the Estonian border and naturally includes the inhabitants of Estonian nationality. However, Valka must belong to the territory of Latvia, because:
    a) the majority of inhabitants are the Latvians; the last census (1897) showed that there were 4453 Latvians and 3594 Estonians in Valka; in 1917, the Latvians had the majority of votes in the town elections, which proves the majority of the Latvians in the town;
    b) Valka is the main town of a generally Latvian district (93,2 percent of the total number of the inhabitants);
    c) Valka is located in the district that has belonged to Latvia from time immemorial, and the adjacent territories is inhabited by the Latvians;
    d) three out of five railways that meet in Valka cut across Latvian territory;
    e) in 1917, when the government of the Grand Duke Ļvov divided the province between the Estonians in the North and the Latvians in the South, Valka was passed to Latvians, but the Latvians and the Estonians decided to settle the dispute in a referendum when the conditions are more peaceful.
2) along the Eastern border on the both sides of the administrative border, districts are inhabited by mixed Latvians, Byelorussians and Russians.
3) in the middle of Ilūkste district, there are civil parishes that are inhabited by the Latvians and the Lithuanians.

The State of Latvia is declared within the Latvian ethnographic borders, but in some cases economical circumstances and traffic convenience require modifications of some ethnographic and administrative borders. Taking it into account, Latvia requires adding to its territory:

1) the station Mažeiķio (Murajevo) in the Kaunas province because at this station the Riga, Jelgava, Liepāja and Romni lines of the railway meet. This is the only railway line that connects Liepāja to the rest of Latvia. By joining to Latvia the station Mažeiķi with the piece of the railway up to the border of Kurzeme in the direction of Liepāja and drawing the demarcation line along the neighbouring

rivers, a district approximately 90 sq km large would be joined to Latvia, in which both Latvians and Lithuanians live, but in which the Lithuanians are the majority.

2) Pitalovo in Pleskava province needs to be joined to Latvia. It is an area that is located nine kilometres from Latgale. It is an ancient Latvian land, although the majority of inhabitants here are the Russians. Connection to Latvia of this station is necessary because Latvian railway lines Riga-Ramocki-Sita-Pitalovo and Daugavpils-Rēzekne-Pleskava meet here, and if Pitalovo is attached to Russia, the traffic between Vidzeme and Latgale will be interrupted.
3) The railway line Stukmaņi-Alūksne-Valmiera stretches between Valka and Ope towards the border of Latvia and Estonia, and it is preferable to include this whole strip into the territory of Latvia in order to maintain direct traffic between the South Vidzeme and Valka.
4) The Runo Island in the Riga Gulf has to be joined to Latvia. This island covers 9 sq kilometres, it is inhabited by 250 Swedes. Since the island is located in the territorial waters of Latvia and the wireless telegraph station and the lighthouse must be at the disposition of Riga shipping during winter and spring, it has to be included into the territory of Latvia. This island is included into Ārensburga district. Earlier it was a part of Riga district or it was again attached to Kurzeme, from which it is not far." (*Memorandum on Latvia, presented to the Peace conference by the Latvian delegation // Valdības Vēstnesis, August 1 – 10, 1919. No. 1-9).*

20.3. Political documentation produced during the period of creation of the Republic of Latvia and the studies carried out manifest that the founders of the State of Latvia had a clear idea of what territories must be included into the territory of Latvia.

The documents of that time testify that the ethnographic borders of the territories inhabited by the Latvian people only in separate cases exceeded the borders of the administrative division of the Baltic districts of the times of the Russian Empire. In all cases the territories that were located outside the borders of the administrative divisions, but were demanded to be incorporated into Latvian territory, are clearly specified. Similarly, these documents also include justifications for the fact why the respective territory is necessary for the State of Latvia.

However, the neighbouring States, first of all Estonia, Lithuania and Poland, also had certain objections regarding their desirable borders. Therefore Latvia had to agree with these States as well as with the Soviet Russia regarding the State borders, and it had to conclude international treaties on this issue. Even though during the border negotiations all States based

themselves on the ethnographic principle as the main grounds for establishing the borders, certain sections of borders were dictated by considerations of economic and historical nature (*see: Andersons E. Latvijas vēsture, pp. 601*).

21. In the framework of this case, it is necessary to investigate, the manner how the State border between Latvia and Soviet Russia was established. The issue on the State border during negotiations was discussed simultaneously with the issue on cessation of war between Latvia and Russia and recognition of independence of Latvia, as well as return of refugees and evacuated material values to Latvia and other important issues.

21.1. Latvia was the third Baltic State to conclude the Peace Treaty with the Soviet Russia, because the Peace Treaty of Estonia and the Soviet Russia was signed on February 2, 1920, but the Peace Treaty of Lithuania and the Soviet Russia – on July 12, 1920. "Latvia was the third Baltic State that the Soviet Russia recognized as a sovereign republic "for all time", and Latvia was the third country in the world that recognized the Soviet Russia" (*Andersons E. Latvijas vēsture, pp. 582*).

The border issue in these peace treaties between the Baltic States and the Soviet Russia was one of the most difficult to be dealt with, and it was determined by the historical, as well as international and military situation of the time. The Baltic States feared that the Soviet Russia could attack them in the future, and therefore they tried to gain strategically advantageous defensive positions. A similar concern was felt also by the Soviet Russia. According to the characterization of the situation by a diplomat of the Soviet Russia, Adolf Joffe: "We cannot take into consideration solely the ethnographic principle and self-determination of people" [..] We need such strategic borders that would guarantee our security" (*see: Stranga A. Ceļā uz mieru. Krievijas – Latvijas 1920. gada 11. augusta miera līgums // Pretstatu cīņā. Latvija 1917. – 1950. Rīga: Avots, 1990, pp. 115 – 116*).

21.2. To gain advantage in the negotiations with the Soviet Russia, Latvia carried out a broad military operation before initiation of the negotiations, in the result of which Latvia liberated Latgale and reached the ethnographic borders of Latvia. It was necessary for Latgale not to be under the control of the Soviet Russia, so that the Soviet Russia could not raise claims against Latgale, which would endanger the creation of singe Latvia (*see: Transcript of the meeting 28 of the first session of the Latvian Constitutional Assembly, September 2, 1920).* On January 19, 1920, the President of the Latvian People's Council, Jānis Čakste, declared in the meeting of the National Council that "the integral Part of Latvia, Latgale, has been liberated. This step has been a tremendous success due to our brave army" (*Transcript of the first meeting of the seventh session of the Latvian People's Council, January 19, 1920).*

The Latvian army during the Latgale deliberation operation captured also the Pitalovo railway station and other parts of the Pleskava province. This circumstance during the peace negotiations was the basis for broad discussions between the representative of the Soviet Russia, A. Joffe, and the representative of Latvia, A. Zēbergs, namely, discussions whether the Latvian army has not violated the declared ethnographic borders. Similarly, the results of this offensive served as the main grounds for the conclusions that certain parts of Pleskava province had fallen within the ethnographic borders of Latvia (*see: Latvijas atbrīvošanas kara vēsture. II. Rīga: Literatūra, 1938, pp. 332*). However, in view of the Constitutional Court, in the interpretation of this question one has to use the assessment by Pēteris Radziņš, the Chief of the Commander-in-Chief's headquarters of the Latvian army of that time. General P. Radizņš wrote: "The aim of the operation – to capture and hold the entire territory, which we consider inhabited by the Latvians. In order to conveniently control and protect the captured territory, the offensive has to be carried out beyond the ethnographic borders. An advantageous line of defence where to stop and consolidate the position is to be found beyond the ethnographic borders of Latvia. [..] The defence, stopping line was to be found basing only on the military perspective. [..] As an advantageous protection line could be considered the Siņaja River and the adjacent marshes, this means that the centre, the target border is the Siņaja River; [..] Hence: the Osveja Lake, Siņaja River and the line of Grivi – Ovisče – Muravina – Kačanovo was determined as the final target of the operation; it was decided to stop on this line" (*Radziņš P. Latvijas atbrīvošanas karš. II daļa. Rīga, 1922, pp. 134 – 135*).

Such opinion of the Chief of the Commander-in-Chief's Headquarters of the Latvian army of that time shows that the Latvian Army during the Latgale liberation operation deliberately exceeded the Latvian ethnographic borders.

21.3. Both ethnographic and economic and military-strategic considerations formed the basis of the claims raised by Latvia regarding the State border.

The headquarters of the Latvian army suggested "to try to achieve that the State border line is established on the nature-formed border line in order to obtain the advantageous conditions not only for protection of the borders during the peace-time, but also in the case of a war" (*Archive of the History of the State of Latvia, 1313. f. 2. apr. 36. l. pp. 316*).

On the other hand, the instruction of the Latvian government required the delegation of peace negotiations to achieve that "Russia recognizes without reservations independence, autonomy and sovereignty of the State of Latvia within its ethnographic borders that comprise Kurzeme, Latvian part of Vidzeme and Latgale". Similarly, the delegation was required to establish such a border with the Soviet Russia that the ethnographic border of Latgale would

be reflected in natural borderlines as far as possible. (*see: Archive of the History of the State of Latvia, 1313. f. 2. apr. 35. l. pp. 2*).

During the peace negotiations, the Chairman of the delegation, the Deputy Minister of Foreign Affairs, Aurēlijs Zēbergs, when announcing the claims of Latvia regarding the border issue, declared that Latvia had guided itself by ethnographic and economic considerations and consideration that the borders should be as natural and straight as possible (*see: Mieriņa A. Latvijas valsts robežas (1918 – 1940) // Latvijas zemju robežas 1000 gados. Rīga: Latvijas vēstures institūta apgāds, 1999, pp. 186*]. Together with Daugavpils, Ludza and Rēzekne districts, Latvia also demanded from the Soviet Russia the territory of Ostrovo (Ostrava) district of the Pleskava province with the railway junction in Pitalovo, a small part of Opočka and Sebeža districts up to the Zeplinska River in the middle part, as well as a small territory in Drisa district up to the entry of the Sarjanka River in the Daugava River, in the Southern part (*see: Mieriņa A. Latvijas valsts robežas, pp. 186*).

The leader of the delegation of the Soviet Russia, A. Joffe, while declaring the rights of all people to self-determination and even complete separation from the State, in the territory of which they are included, still considered that the border line with Latvia has to be established along the administrative border of Ludza, Rēzekne and Daugavpils districts. A. Joffe stated that the claim of Latvia for the parts of Ostrovo, Opočka, Sebeža and Drisa district is determined not by ethnographic considerations, since the Latvians are in the minority in there regions, but by aggressive and military-strategic objectives, since Latvia wants to establish the borders in its favour in order not to protect itself, but to be able to attack (*see: Mieriņa A. Latvijas valsts robežas, pp. 187)*.

21.4. The Cabinet of Ministers, in the meeting of May 14, 1920 authorised the Latvian delegation to agree that the border with Opočka and Sebeža district is established not along the Zeplinga River, but along the Ludza River up to the Pitela Lake, as the Soviet Russia wanted (*sww: Mieriņa A. Latvijas valsts robežas, pp. 187*).

On the other hand, the delegation of the Soviet Russia made concessions regarding the issue of the Ostrova district. As A. Joffe announced in the sixth meeting of the peace negotiations of April 27, 1920: "Russia has made concessions to the economic claims of Latvia regarding the so called Pitalovo railway junction, which is the region inhabited by non-Latvians, just like the other disputed districts. Non-incorporation [of the above junction] would cause Latvia such consequences that the Latvian railway would be broken and railway traffic between separate parts of Latvia would be impossible until construction of new roads. Guiding by its consistent wish to support the natural needs of self-determined small people in all possible ways, the Russian government considers that it is possible to make an exception

from the principle of self-determination and to concede this part of its territory" (*see: Archive of the History of the State of Latvia, 1313. f. 2. apr. 35. l. pp. 42*). When justifying this position, A. Joffe also quoted the Memorandum of the Latvian delegation for the Paris Peace Conference, where the claim for incorporation of the Pitalovo railway station into Latvia was related to economic considerations. A. Zēbergs did not object to such jusitification of A. Joffe for leaving a part of Ostrovo district to Latvia (*see: Archive of the History of the State of Latvia, 1313. f. 2. apr. 35. l. pp. 42*).

The largest discussions during the peace negotiations were caused by the claims of Latvia to a part of Drisa district. The final agreement regarding this issue was achieved only on August 9, 1920, namely, the smallest Western part of the district was joined to Latvia, while the largest part in the East was preserved by Russia. Pokrovo parish of Ostrovo district was given to Latvia as compensation for conceding the Drisa question (*see: Mieriņa A. Latvijas valsts robežas, pp. 188)*.

The Peace Treaty was signed in Riga on August 11, 1920. "The Latvian-Russian border that existed after [..] the Peace Treaty was established not only according to the ethnographic principle, but also the economic factor was taken into consideration, and this was a relevant circumstance when Latvia separated itself from the previous single economic body of Russia" (*Stranga A. Ceļā uz mieru, pp. 118 – 119*).

21.5. During the discussions on ratification of the Peace Treaty in the Latvian Constitutional Assembly, the Rapporteur F. Menders, emphasized that: "In my opinion and according to a unanimous conclusion of the Commission of Foreign Affairs, one could not conclude a more advantageous treaty on August 11. [..] Article 3 establishes borders that in general coincide with the ethnographic borders of Latvia and includes some mother important railway junctions, e.g. Pitalovo" (*Transcript of the 28th meeting of the first session of the Latvian Constitutional Assembly, September 2, 1920).* The Peace Treaty was similarly evaluated by Fēlikss Cielēns regarding the State borders: "The State of Russia recognizes the principle of self-determination of people in respect of Latvia. Recognition of the above principle manifests itself through recognition of Latvia *de iure* and recognition of that territory of the State of Latvia, which coincides with the national territory of the Latvian people. [..] The Peace Treaty in this respect is advantageous because it assigns to us even such territories that are not inhabited mainly by the Latvians, e.g. Pitalovo district and the territory in the Vitebsk province, Drisa district" (*Transcript of the 28th meeting of the first session of the Latvian Constitutional Assembly, September 2, 1920*).

The National Commissar of Foreign Affairs of the Soviet Russia, Georgy Chicherin, in the meeting of the All-Russian Central Executive Committee on June 17, 1920, when

reporting on the peace negotiations with Latvia, indicated that the Soviet Russia, under the ethnographic principle, held that the State border must coincide with the administrative borders of Ludza, Rēzekne and Daugavpils districts. Taking into account the economic needs of Latvia regarding the railway traffic, the Soviet Russia agreed that the Pitalovo railway junction is to be incorporated into Latvia (*see: Opinion of K. Počs, case materials, Vol. 10, pp. 130 – 131*).

One can conclude that Latvia, in the negotiations with the Soviet Russia, achieved a favourable establishment of the State border by acquiring a part of Ostrovo district of the Pleskava province and a part from Drisa district of the Vitebsk province in addition to Ludza, Rēzekne and Daugavpils districts of the Vitebsk province.

21.6. When assessing the Peace Treaty, the issue of whether the borders established therein comprise all territories inhabited by the Latvians in the East was rather widely discussed.

Professor Edgars Dunsdorfs held that the Latvian Eastern border in general coincided with the ethnographic border inhabited by the Latvians (*see: Dunsdorfs E. Vai Latvijas austrumu robeža bija pareizi noteikta? // Laika Mēnešraksts, 1955, Nr. 3, pp. 87 – 89; Dunsdorfs E. Drauds Latgales vēsturei // Laika Mēnešraksts, 1956, Nr. 2, pp. 60 – 61*). Other authors expressed the view that the established Latvian border was unjustified and it was necessary to establish it more to the East (*see: Stalšans K. Latvijas robeža austrumos // Latvju Žurnāls, 1952, Nr. 11, pp. 1 – 2; Rupainis A. Patiesība nenoveco // Laika Mēnešraksts, 1955, Nr. 8, pp. 251 – 253; Puisāns T. Latvijas austrumu robežas jautājums // Dzimtenes kalendārs 1986. gadam, pp. 92 – 104*).

On the other hand, professor Edgars Andersons, when assessing the State border with the Soviet Russia, has concluded: "The established border included some entirely Russian districts, but a further border would have included even more territories inhabited by the Russians. Castle mounts of the ancient Latvians could not make the inhabitants more Latvian. One had to take into consideration the real circumstances." (*Andersons E. Latvijas vēsture, pp. 582 – 583*).

The Minister of Foreign Affairs of the Republic of Latvia, Z. A. Meierovics made the most apt comment about the objection that some more territories inhabited by the Latvians in the East had been abandoned without reason: "The ethnographic principle is fully observed" because "one could not insist that all colonists are included, because then the colonists are to be included that live in Russia and Siberia" (*Transcript of the 28th meeting of the first session of the Latvian Constitutional Assembly, September 2, 1920).*

21.7. With the Peace Treaty Latvia, in addition to Ludza, Rēzekne and Daugavpils districts of the Vitebsk province, also acquired Piedruja and Paustiņa (later – Robežnieku) parishes of Drisa district of the Vitebsk province, as well as three civil parishes of Ostrovo district of the Pleskava province – Višgoroda, Tolkova and Porkova (later – Kačanova) parishes (*see: Mieriņa A. Latvijas valsts robežas, pp. 193*).

Višgorod, Tolkova and Pokrova parishes were incorporated into the Ludza district, whereas Piedruja and Pustiņa parishes – into Daugavpils district.

Tolkova, Višgorod and Kacēnu (Kačanovas) parishes were divided into six civil parishes – Linvava, Purvmala, Augšpils, Gauru, Kacēnu and Upmale parishes (*see: Mieriņa A. Latvijas administratīvais iedalījums (1918 – 1940) // Latvijas zemju robežas 1000 gados. Rīga: Latvijas vēstures institūta apgāds, 1999, pp. 224 – 225).*

With the Law on Territorial Division of Latvia into Districts of June 26, 1924, Jaunlatgale (Pitalovo) district was established, and it included the Augšpils (Višgoroda), Gauri, Linava (Tolkova) and Kacēnu (Pokrova, later – Kačanova) parishes from the former Ostrova district of the Pleskava province, and Blatinava, Balvi, Domopole (Bērzpils), Kokareva (Tilža), Liepna, Rugāji and Viļaka parishes from the former Ludza district of the Vitebsk province (*see: Mieriņa A. Latvijas administratīvais iedalījums, pp. 217*).

Jaunlatgale, on June 9, 1933, was conferred the rights of a town, whereas on April 1, 1938, it was renamed as Abrene (*see: Mieriņa A. Latvijas administratīvais iedalījums, pp. 229*).

III

22. On August 23, 1939, the Chairman of the USSR People's Commissar's Council and the People's Commissar of Foreign Affairs, Viacheslav Molotov, and the Minister of Foreign Affairs of Germany, Joachim von Ribbentrop, signed the Treaty of Non-Aggression Treaty between Germany and the USSR. A secret additional protocol was attached to the Non-Aggression Treaty.

The text of the secret protocol shows that the authorized representatives of both States discussed the issue "on distinguishing the spheres of interests of both parties" and "territorially political rearrangements" in the Eastern Europe. According to it, the territory of Latvia was included in the sphere of interest of the USSR.

22.1. Germany recognized the Molotov – Ribbentrop Pact as void on September 1, 1989 (*see: Loeber D. A. Legal Consequences of the Molotov – Ribbentrop Pact for the Baltic States on the Obligation „to Overcome the Problems Inherited from the Past" // Baltic*

Yearbook of International Law. Volume 1, 2001. The Hague / London / New York: Kluwer Law International, 2002, pp. 131). On December 24, 1989, the Second USSR People's Representatives' Congress passed a Resolution "On Political and Legal Assessment of the Treaty of Non-Aggression of Germany and USSR of 1939".

In this Resolution, the Congress established that in the Secret Protocol of August 23, 1939 a separation of the "spheres of interests" between the USSR and Germany and other activities that, "from the legal point of view, were in conflict with sovereignty and independence of several third states" were established. The Congress noted that at that time "the relations of the USSR with Latvia, Lithuania and Estonia were regulated by a system of treaties. According to the peace treaties of 1920 and the non-aggression treaties concluded of 1926 - 1933, the parties undertook in all conditions to mutually respect the sovereignty and territorial integrity and inviolability of each other".

Taking into account the above-established, the Congress disapproved the fact that a "secret additional protocol" was signed with Germany, and recognized this protocol as legally unsubstantiated and invalid as of the day of signing it.

It was indicated in the Resolution of the Congress that "protocols did not create any new legal basis for mutual relations of the Soviet Union with the third States, however Stalin and his confederates relied on them in order to present ultimate to other States and to pressure them with force, hence violating the legal obligations it owed to them" (*Второй съезд народных депутатов СССР. Стенографический отчет. Том IV. Москва, 1990. pp. 612 – 614*).

Alexaner Jakovlev, the chairman of the Commission that prepared the draft of the abovementioned resolution of the People's Representatives' Congress indicated in his report to the Congress: for Josiff Stalin "[t]he main motivation [to conclude the Non-Aggression Treaty] was not the Treaty itself, but the issue that became the subject of the Secret Protocol, namely, a possibility to bring armed forces into the Baltic States, Poland and Bessarabia, and potentially even in Finland. In other words, the main motivation drew from the imperial ambitions." (*Второй съезд народных депутатов СССР, pp. 269*).

The Commission lead by A. Jakovlev concluded it its resolution that J. Stalin used the ultimate and threats especially in relation to small neighbouring States (*see: Второй съезд народных депутатов СССР, pp. 271*).

With this resolution, the USSR recognized that in 1940 it has violated Treaties signed between the USSR and these States.

22.2. The President of the Russian Federation Vladimir Putin has repeatedly explained that the question regarding the Molotov – Ribbentrop Pact has been considered in the

Resolution of the USRS People's Representatives' Congress. Russia considers this question as decided and does not intend to return to it (*see, e.g.: Кузьмин В. Саммит Россия – ЕС завершился // Российская газета, №3766 от 11 мая 2005 г.*). V. Putin as the President of Russia *ex officio* expresses the viewpoint of Russia in matters of international law (*see: ILC 2006 Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations, with Commentaries Thereto // Yearbook of the International Law Commission, 2006, vol. II, Part Two, http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_9_2006.pd, pp. 372, Principle 4*). Moreover, the opinion expressed by the USSR People's Representatives' Congress regarding unlawfulness of the consequences of the Molotov – Ribbentrop Pact is binding also on the Russian Federation as a State continuity of the USSR (*see: Ziemele I. State Continuity and Nationality: the Baltic States and Russia: Past, Present and Future as Defined by International Law. Leiden: Martinus Nijhoff Publishers, 2005, pp. 45 – 62, 66 – 68, 69, 72 – 75, 82 – 84, 87, 90, 92 – 94; Crawford J. Creation of States in International Law. 2nd ed. Oxford: Oxford University Press, 2006, pp. 671*).

22.3. A similar assessment regarding the Molotov-Ribbentrop Pact was given by the European Court of Human Rights:

"On 23 August 1939 the foreign ministers of Germany and the Union of the Soviet Socialist Republics ("USSR") signed a non-aggression treaty (the "Molotov-Ribbentrop Pact"). The treaty included a secret additional protocol, approved on 23 August 1939 and amended on 28 September 1939, whereby Germany and the Soviet Union agreed to settle the map of their "spheres of influence" in the event of a future "territorial and political rearrangement" on the territories of the then-independent countries of central and eastern Europe, including the three Baltic States of Lithuania, Latvia and Estonia. After Germany's invasion of Poland on 1 September 1939 and the subsequent start of World War II, the Soviet Union began exerting considerable pressure on the governments of the Baltic States with a view to taking control of those countries pursuant to the Molotov-Ribbentrop Pact and its additional protocol. (*Ždanoka v. Latvia [GC], no. 58278/00, para. 12, ECHR 2006*).

The European Court of Human Rights has made similar conclusion in other cases as well (*see: Kolk and Kislyiy v. Estonia, App. Nos. 23052/04 and 24018/04, ECHR, Decision, 17.01.2006; Penart v. Estonia, App. No. 14685/04, ECHR, Decision, 24.01.2006*).

23. Inclusion of the Baltic states into the "sphere of interests" of the USSR was initiated by conclusion of the Mutual Assistance Pact (*see: Strods H. Latvijas okupācijas pirmais posms (1939. gada 23. augusts – 1940. gada sākums) // Latvijas Vēsturnieku*

komisijas raksti. Vol 10. Okupācijas režīmi Latvijā 1940. – 1959. gadā. Second edition. Rīga: Latvijas vēstures institūta apgāds, 2007, pp. 13 – 87).

23.1. Latvia concluded such a Pact (hereinafter – the Assistance Pact) on October 5, 1939. Under Article 3 of the Assistance Pact, the Republic of Latvia agreed to the deployment of USSR army in its territory, namely: "The Republic of Latvia, with the view to ensure the security of the Soviet Union and strengthen its own independence, gives the right to the USSR to establish Military Navy bases in Liepāja and Ventspils, as well as some airfields for aviation on lease for a price to be agreed upon.

[..] For the purpose of protection of the Irbe pass, the USSR shall have the right to establish military artillery bases on the seashore between Ventspils and Pitrags on the same conditions.

For the purpose of protection of Navy bases, airfields and coastal artillery basis, the USSR shall have the right to hold strictly limited amount of Soviet armed land and air forces in the districts provided for these bases and airfields on its own expense."

23.2. Negotiations on the deployment within Latvian territory of the USSR bases of armed forces began on October 2, 1939. On September 28, 1939, an agreement of a similar content had already been concluded with Estonia. During the negotiations on the conclusion of the Assistance Act, J. Stalin, when commenting upon the independence of Latvia recognized in the Peace Treaty, announced to the Minister of Foreign Affairs of Latvia, Vilhelms Munters: "What was established in 1920 cannot last forever. Already Peter the Great took care for the exit to the sea. Now we do not have the exit, and the situation as it is now cannot last forever" (*Архив Внешней политики России, ф. 38-д., оп. 1,pp. 30 – 31. Quoted from: Gore I., Stranga A. Latvija: neatkarības mijkrēslis. Okupācija. 1939. gada septembris – 1940. gada jūlijs. Rīga: izdevniecība „Izglītība", 1992, pp. 19*). Similarly, J. Stalin implicitly referred to the Molotov – Ribbentrop Pact, indicating that Germany would not object of the USSR occupies Latvia (*Архив Внешней политики России, ф. 38-д., оп. 1, pp. 30 – 31. Quoted from: Gore I., Stranga A. Latvija: neatkarības mijkrēslis, pp. 19*).

At first the USSR People's Commissar of Foreign Affairs, V. Molotov demanded consent to the fact that there would be 50 000 men located in the Soviet military bases in the territory of Latvia, i.e. twice as much men as the whole army of Latvia of that time. The Latvian government was given 48 hours to give an answer, and it was informed that otherwise the USSR "shall make responsible steps" (*Архив Внешней политики России, ф. 38-д., оп. 1, pp. 30 – 31. Quoted from: Gore I., Stranga A. Latvija: neatkarības mijkrēslis, pp. 19*). It follows from the context of negotiations that such steps would mean aggression against the State of Latvia (*see: Marek K. Identity and Continuity of States in Public International Law.*

Geneve: Librairie E. Droz, 1954, pp. 376-377). The Cabinet of Ministers of the Republic of Latvia agreed to the requirements of the USSR government.

The ambassador of Latvia in Brussels, Miķelis Valters, in his letter of January 10, 1940 to K. Ulmanis, wrote: "The Act of October 5 cannot be treated as a free treaty [..] it is imposed, and hence immoral [..] if we cannot say it, then we should at least keep silent and not praise it" (*see: Gore I., Stranga A. Latvija: neatkarības mijkrēslis, 28., pp. 261*).

24. Existence of the State of Latvia *de facto* was stopped by the USSR in summer 1940. Simultaneously, the statehood of Estonia and Lithuania was also *de facto* stopped. Following very similar procedures, the Baltic States were unlawfully transformed into Soviet Socialist Republics and included in USSR as United Republics.

Within the framework of this case, it is necessary to evaluate the compliance of these events with international obligations.

First, it is necessary to identify the international obligations that the USSR had undertaken towards Latvia.

Secondly, it is necessary to establish the development of the actual events.

Thirdly, it is necessary to consider the compliance of the acts of the USSR with its international obligations.

In order to conclude that the USSR has acted in breach of its international obligations, it is necessary to prove that, first, the respective acts are attributable to the USSR and, secondly, that these acts are in breach of the international obligations of the USSR (*see: Ago R. Le délit international // 68 Recueil des Cours de l'Académie de Droit International, 1939, pp. 450 et seq., ILC 2001 Articles on Responsibility of States for Internationally Wrongful Acts, Yearbook of the International Law Commission, 2001, vol. II, Part Two // http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf, Article 2, pp. 68 – 74*). Since the respective acts were carried by organs of the USSR, they are to attributable to the USSR according to the International Law Commission's 2001 Articles on State Responsibility, which reflect the content of customary international law both at the present moment and in 1940 (*see: ILC 2001 Articles, Article 4, pp. 88 – 92*). Consequently, the Constitutional Court has to only consider the question regarding the content of the international obligations and the existence of breaches thereof.

24.1. When considering international obligations existing between the USSR and Latvia in 1940, they must be divided into several groups.

By Article 2 of the Peace Treaty, Russia recognized independence, autonomy and sovereignty of the State of Latvia and it voluntarily and forever waived all sovereign rights to the territory of Latvia.

By Kellogg – Brian Pact, the Non-Aggression Treaty and the London Convention, the USSR undertook an obligation not to exercise aggression against Latvia. The respective international agreements also provided for an analogous international obligation of Latvia. Prohibition of the use of force also existed in the pre-War customary international law (*see: Brownlie I. International Law and the Use of Force by States. Oxford: Clarendon Press, 1963, pp. 108 – 111*). A similar obligation also followed from the Convention on Conciliation of 1930 binding on both parties.

By Article 5 of the Assistance Pact, the USSR had undertaken obligation not to interfere in the internal affairs of Latvia in connection with the fulfilment of the treaty.

The relations of the USSR and Latvia were also dealt with in the Hague Convention of October 18, 1907, which, according to the Nuremberg Tribunal, at least from 1939 defined the norms of customary international law (*see: http://www.yale.edu/lawweb/avalon/imt/proc/judlawre.htm*). This view has also been accepted by the International Court of Justice in its advisory opinion on the Legality of Threat or Use of Nuclear Weapons (*see: Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, pp. 226, 258, para. 80*).

An obligation not annex States as a result of unlawful use of force also followed from the customary international law of the time (*see: Crawford J. Creation of States, pp. 689*).

24.2. On June 16, 1940, V. Molotov submitted a note of the USSR government to the Latvian government to the ambassador of Latvia in the USSR, Fricis Kociņš. It said:

„On the basis of the factual material available to the Soviet government and also on the basis of the exchange of opinions which has taken place lately in Moscow between the chairman of the USSR People's Commissars' Council, Molotov, and the Prime Minister of Lithuania, Merkis, the Soviet government considers it as a given that the Latvian government not only has not eliminated the military union with Estonia that had been established before the signing of the USSR – Latvian Mutual Assistance Pact and that is directed against the USSR, but has even extended it by involving Lithuania in this union, as well as by attempting to involve Finland.

Until the conclusion of the USSR – Latvian Mutual Assistance Pact in autumn 1939, the Soviet government could close its eyes to the existence of such a military alliance, even though it was effectively in conflict with earlier Non-Aggression Pact signed by the USSR and Latvia. But, after concluding the USSR – Latvian Mutual Assistance Pact, the Soviet

government considers existence of military alliance between Latvia, Lithuania and Estonia that is directed against the USSR not only as impermissible and insufferable, but also as deeply dangerous and threatening to the safety of the USSR borders.

The Soviet government had assumed that after concluding the USSR – Latvian Mutual Assistance Pact Latvia would withdraw from the military alliance with other Baltic States and thus this military alliance would be eliminated. However, Latvia together with other Baltic states has worked at reviving and expansion of the abovementioned alliance, which is evidenced by such facts as convening of two secret conferences of the three Baltic States on December 1939 and March 1940 in order to formally establish an expanded military alliance with Estonia and Lithuania; expansion in the connections between the general headquarters of Latvia, Lithuania and Estonia, which is carried out secretly from the USSR; formation of a special press organ of the Baltic Military Entente on February 1940 – "Revue Baltique" that is published in the English, French and German languages in Tallinn, etc.

All these facts manifest that the Latvian government has blatantly breached the USSR – Latvian Mutual Assistance Pact that prohibits both parties "to enter into any alliances or participate in coalitions that are directed against one of the contracting parties" (Article 4 of the Pact).

This blatant breach of the USSR – Latvian Mutual Assistance Pact by Latvia takes place at the time when the Soviet Union has practised and continues practicing favourable, clearly pro-Latvian policy by scrupulously meeting all the requirements of the USSR – Latvian Mutual Assistance Pact.

The Soviet government holds that it cannot permit such a situation to continue.

The USSR government considers the following things to be fully indispensable and urgent:

1) an immediate formation of such a government of Latvia that would be able and ready to ensure an honest implementation of the USSR – Latvian Mutual Assistance Pact;
2) an immediate guarantee of free entrance of Soviet military forces into the territory of Latvia so that they could be located in the most important centres of Latvia in numbers sufficient to ensure the possibility for the implementation of the USSR – Latvian Mutual Assistance Pact and prevent possible provocative acts against the Soviet garrison in Latvia.

The Soviet government considers fulfilment of this demand as an elementary requirement, without which it is impossible to achieve honest and loyal implementation of the USSR – Latvian Mutual Assistance Pact.

The Soviet government will wait for the response of the Latvian government up to June 16, 11:00 PM. Non-sending of the answer until this deadline shall be considered as a refusal to meet the abovementioned demands of the USSR" (*Полпредыы сообщают. Сборник документов об отношениях СССР с Латвией, Литвой и Эстонией, август 1939 г. – август 1940 г. Москва: Международные отношения, 1990, с. 386 – 387. Citēts pēc: Latvijas okupācija un aneksija. 1939 – 1940. Dokumenti un materiāli. Sastādījuši I. Grava-Kreituse, I. Feldmanis, J. Goldmanis un A. Stranga. Rīga: Preses nams, 1995, pp. 340 – 342*).

The statement of the USSR government can be qualified as an ultimatum. Under international law, an ultimatum is defined as a unilateral statement, by which one State makes demands to another State by unequivocally threatening with certain consequences in the event if the requirement are not complied with in within the indicated deadline. In the note of the USSR government, the possible consequences are not specifically mentioned, however, the demand for the entry of armed forces suggest that in the case of a refusal the troops would violently cross the Latvian border (*see: Lēbers D. A. Latvijas valsts bojāeja 1940. gadā. Starptautiski tiesiskie aspekti // Latvijas valsts atjaunošana. 1986 – 1993. Rīga: Fonds Latvijas Vēsture, 1998, pp. 10*).

24.3. The Cabinet of Ministers in its the meeting of June 16, 1940 which started at 7:00 PM, heard the report of the Minister of Foreign Affairs of the Republic of Latvia V. Munters "on the Ultimatum that the Chairman of the USSR Commissar Council Submitted to the Ambassador of Latvia in Moscow on June 16, 1940, at 2:00 PM (1:00 PM Latvian time)". After discussions, the Cabinet of Ministers decided "to accept the demand of the Soviet Union's government on the deployment of additional armed contingent in Latvia" and "notify the President of the State on the resignation of the Cabinet of Ministers and consider this decision as being immediately reported to the President of the State, Kārlis Ulmanis" (*Latvijas Republikas Ministru kabineta sēžu protokoli: 1940. gada 16. jūnijs – 19. jūlijs. Sastādījuši un komentējuši I. Šneidere, A. Žvinklis. Rīga: Zinātne, 1991, pp. 9*).

24.4. On June 16, 1940, at 7:45 PM, F. Kociņš informed V. Molotov about the consent of the Latvian government (*see: Gore I., Stranga A. Latvija: neatkarības mijkrēslis, pp. 115 – 117*).

On June 17, 1940, at 5:00 AM the USSR troops began crossing the Latvian border. The troops reached the centre of Riga on June 17, 1:30 PM. In the evening of June 17, the representative of the USSR government, Andrey Vishinsky departed for Riga (*see: Gore I., Stranga A. Latvija: neatkarības mijkrēslis, pp. 122 – 134*).

24.5. A new government acceptable to the USSR was formed on June 21, 1940 under the leadership of the professor Augusts Kirhenšteins. On June 19, 1940, A. Vishinski, during

a meeting with the President of Latvia, K. Ulmanis, presented to him a list of members of this government (*see: Dunsdorfs E. Kārļa Ulmaņa dzīve, pp. 326*).

A. Bergs included in the entry of June 22, 1940 in his diary an evaluation of the process of formation of A. Kirhenšteins' government: "The Sov. State official Vishinksi came to Riga together with the troops of the Sov. Russia. [..] Hence the negotiations with Ulmanis regarding the formation of the new government were initiated. [..] The new cabinet will be nothing but a toy in the hands of the communists. [..] The intention is broadly clear: a constitution, certainly, with a communist flavour, elections, certainly, under the communist terror and then "lawful" decisions on joining the Sov. Russia and introducing communism. This then, the new programme and the prospects it holds for us!" (*Lasmanis U. Arveds Bergs. Politiskas apceres. Ceturtā grāmata. 1934 – 1941. Neizsūtīta trimdinieka piezīmes. Pēdējais vārds. Rīga: autora izdevums, 2000, pp. 318*).

25. Deployment of the USSR troops in the territory of Latvia on June 17, 1940 is to be considered as an aggression carried out by the USSR against the State of Latvia (*see: Šneidere I. The Occupation of Latvia in June 1940: A Few Aspects of the Technology of Soviet Aggression // Latvijas Vēsturnieku komisijas raksti. 14. sējums. The Hidden and Forbidden History of Latvia under Soviet and Nazi Occupations 1940 – 1991. Second edition. Rīga: Latvijas vēstures institūta apgāds, 2007, pp. 43 – 52*).

25.1. The London Convention contains the most elaborate and detailed definition of aggression is also binding on the USSR, and therefore the Constitutional Court will proceed on its basis (*see: Brownlie I. International Law and the Use of Force by States, pp. 103*).

The London Convention was one of the international agreements that was part of the system of international law established after the First World War the aim of which was to prevent international armed conflicts. According to Article II (2), of the London Convention, the aggressor in an international conflict will, with due considerations to the agreement existing between the parties involved in that conflict, will be considered the State which will be the first to commit invasion by armed forces, even without a declaration of war, of the territory of another State. Article 3 of the London Convention prohibited the use of any political, military, economic considerations or considerations of any other nature to justify aggression. In the Annex to the London Convention the States, when explaining Article 3 thereof, have enumerated the reasons that cannot justify aggression (*see: Convention Defining Aggression // American Journal of International Law Supplement, 1933, pp. 192 – 194*).

Latvia and the USSR, by the Non-Aggression Treaty, had undertaken the obligations "to refrain from any act of aggression by one against the other, and also from any violent

actions direct against the integrity or inviolability of the territory or against the political independence of the other high contracting party, irrespective whether such an attack or action is undertaken separately or jointly with other Powers, with or without declaring war (*Law on the Association of Latvia and the USSR Treaty Concluded in Riga, on February 5 // Valdības Vēstnesis, June 5, 1932, No. 146*).

Under Article 1 of the Convention of Conciliation, the contracting parts undertook "to settle disputes by means of conciliation in the Court of Conciliation and Arbitration", including disputes regarding fulfilment of agreements.

25.2. In order to consider the deployment of the USSR troops in Latvia on June 17, 1940, it is necessary to evaluate the reasons indicated in the ultimatum of the USSR government for the deployment of additional armed contingent in the territory of Latvia and the consent of the Latvian government to this act of the USSR. Similarly, one also has to take into account the fact that the USSR did not declare war with Latvia, and that after the deployment of the USSR troops, no armed conflict began.

25.3. The ultimatum of June 16, 1940 by the USSR states the reasons that make it necessary for the additional USSR military forced to be deployed and a USSR-friendly government to be created, and the most important reason is this: Latvia has, far from not eliminating the military alliance with Estonia, actually extended by attracting Lithuania and Finland. USSR considered such acts to be blatant breaches of Article of the Assistance Pact.

The norms of international law binding on Latvia and the USSR on June 16, 1940 – Article 3 of the London Convention and the Annex thereof – *expressis verbis* precluded the excuse of acts of aggression act initiated by reasons indicated in the ultimatum. Article 3 of the London Convention precludes the justification of aggression by considerations of political or military nature. The Annex of the London Convention states that aggression cannot be justified by conflicts in the sphere of economic, financial or other obligations. Even without considering the factual correctness of the matters mentioned in the ultimatum, the Constitutional Court concludes that international obligations of the USSR *expressis verbis* excluded the possibility to use these arguments as legal justification of the aggression.

It was *expressis verbis* established in Article 4 of the Kellogg – Brian Pact that "the state that threatens to use armed force [,] is responsible for the breach".[3]

25.4. The USSR army entered the territory of Latvia without a formal declaration of war.

Under the norms of international law binding upon the USSR at the time, declaration of war was no longer a mandatory requirement for finding a fact of aggression.

[3] This paragraph is puzzling because Kellog-Briand pact has only three articles.

Article 2 of the London Convention *expressis verbis* defined aggression as invasion of armed forces without a declaration of war. Similarly, Article 1 of the Non-Aggression Pact prohibited the states to attack one another with or without declaration of war.

The Constitutional Court concludes that a declaration of war in the particular conditions would have been a sufficient, but not a *sine qua non* necessary element for concluding on aggression.

25.5. The Latvian government, on June 16, 1940, accepted the ultimate of the USSR government and decided not to resist. When the USSR army entered Latvia, no direct military conflict took place and there were no large armed conflicts.

However, when applying the rules of international law to the conduct of the USSR against the Baltic States, one has to take into account the general propositions regarding the content of international law rules during the World War Two expressed by the Nuremberg Tribunal, where the also representatives of the USSR participated as prosecutors and judges (*see: Opinion of D. Žalimas in Vol. 10 of the case materials, pp. 223*). The Constitutional Court considers it permissible to apply in the particular case the legal propositions enunciated by the Nuremberg Tribunal, even though the Tribunal dealt with the individual criminal responsibility while the Constitutional Court analyses the State responsibility of USSR. The scope of aggression as an international crime committed by an individual is either identical to the scope of aggression as a wrongful act committed by a State or narrower than it, but it would be complicated to imagine the converse situation, namely, that an act that calls for individual responsibility in this sphere would be broader than the one that calls for State responsibility. For these reasons, the judgment of the Nuremberg Tribunal is *mutatis mutandis* or even *a fortiori* applicable to this situation.

Considering the conduct of the USSR against the Baltic States, one has to consider the fact that in 1938 Germany annexed Austria and part of Czechoslovakia in a broadly similar manner, with threats while without an open military conflict achieving the subjugating of these States.

The Constitutional Court concludes that the Nuremberg Tribunal has recognised that at least since 1939 a rule of such content exists, because it evaluated German conduct according to this rule.

The Nuremberg Tribunal recognised that Germany had carried out acts of aggression against the abovementioned States, even though no military conflicts took place between Germany and Austria and between Germany and Czechoslovakia. The Nuremberg Tribunal stated:

"It was contended before the Tribunal that the annexation of Austria was justified by the strong desire expressed in many quarters for the union of Austria and Germany; that there were many matters in common between the two peoples that made this union desirable; and that in the result the object was achieved without bloodshed.

These matters, even if true, are really immaterial for the facts plainly prove that the methods employed to achieve the object were those of an aggressor. The ultimate factor was the armed might of Germany ready to be used if any resistance was encountered. Moreover, none of these considerations appear from the Hossbach account of the meetings of the 5th November, 1937, to have been the motives which actuated Hitler; on the contrary, all the emphasis is there laid on the advantage to be gained by Germany in her military strength by the annexation of Austria. " (*International Military Tribunal for the Trial of German Major War Criminals judgement of 1 October 1946 // American Journal of International Law, Vol. 41, 1947, pp. 192 – 194*). Moreover, the majority of the inhabitants of Latvia did not wish Latvia to be annexed by USSR (*see: Note of K. Zarins, Latvian Envoy in London, Protesting against the Incorporation of Latvia into U.S.S.R. as being Unconstitutional and Illegal // Latvian – Russian Relations. Documents. Second printing. Lincoln: Augstums Printing Service, Inc., 1978, pp. 209 – 210*).

The Tribunal in the case *U.S. against Ernst von Weizsaëcker et al* stated: "The evidence with respect to both Austria and Czechoslovakia indicates that the invasions were hostile and aggressive. An invasion of this character is clearly such an act of war as is tantamount to, and may be treated as, a declaration of war. It is not reasonable to assume that an act of war, in the nature of an invasion, whereby conquest and plunder are achieved without resistance, is to be given more favourable consideration than a similar invasion which may have met with some military resistance. The fact that the aggressor was here able to so overawe the invaded countries does not detract in the slightest from the enormity of the aggression, in reality perpetrated." (*Trials of War Criminals before the Nuremberg Military Tribunals. United States Government Printing Office, also Judgement, 11-13 April 1949, vol. XIV, pp. 330*).

Taking into account this practice, it is possible to conclude that lack of resistance to the invasion of another State does not necessarily mean that no such invasion has taken place.

In the case of Latvia, one should still take into account that military conflict also took place. On June 15, 1940, in provocation of the Latvian government, the USSR border-guards attacked the second and the third guard of the 3dr Abrene Battalion, which is known as the so-called Masļenki incident (*see: Feldmanis I. Molotova – Ribentropa pakts un Latvija // Latvijas Vēsturnieku komisijas raksti. 1. sējums. Latvija Otrajā pasaules karā. Otrais*

izdevums. Rīga: Latvijas vēstures institūta apgāds, 2007, pp. 29 – 30). When protecting the Latvian border, Latvian border-guards and members of their family were killed. The USSR border-guards took as hostages from Masļenki district 10 border-guards and 27 private parsons (*see: Gore I., Stranga A. Latvija: neatkarības mijkrēslis, pp. 112 – 113*). These conflicts clearly characterize the generally aggressive legal and factual context of the deployment of the USSR army.

25.6. On June 16, 1940 the Latvian government agreed to the deployment of the USSR troops in the territory of Latvia. When considered the international lawfulness of the events of 1940, the legal nature of this consent is the most important and decisive question.

Deployment of armed forces in the territory of another State is one of the many concepts of international law that are in principle unlawful but that can be consented to by States. A valid consent by one State to an act by another State precludes the wrongfulness of that act in relation to the former State to the extent that the act remains within the limits of that consent (*see: Yearbook of the International Law Commission, 2001, vol. II, Part Two // http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf, pp. 173 -174*). Deploying armed forces of one State in a territory of another State is common practice often dealt with in international treaties in contemporary international law, created after *ad hoc* agreements or according to a UN mandate.

If a State has not given consent or if the given consent is not internationally valid due to some reason (invalidity of the international treaty, consent due to duress, consent given by *de facto* non-existent government), deployment of armed forces in the territory of another State is a breach of rules of international law.

Consent of one State to an act of other State must be such as to be regarded as valid. One has to take into consideration that the validity of consent is excluded by threat or other similar circumstances. To justify this thesis, the UN International Law Commission referred to the consent Austria gave to *Anschluss* of 1938 that was considered by the Nuremberg Tribunal. In its judgment the Tribunal disagreed that Austria had given consent, and declared that even had such a consent been given, it would have been a result of a threat and would not justify the annexation (*see: Yearbook of the International Law Commission, 2001, vol. II, Part Two // http://untreaty.un.org/ilc/texts /instruments/english/commentaries/9_6_2001.pdf, pp. 173 – 174*). In international legal doctrine, it is recognized that the refusal of Czechoslovakia from its independence in 1939 had taken place as a result of duress and threats and it was not valid within the meaning of international law (*see: Guggenheim P. La validité et la nullité des actes juridiques internationaux // 74 Recueil des Cours de l'Académie de Droit International, 1949, pp. 209*).

Assessment that the international law has given to actions of the Nazi Germany can be *mutatis mutandis* applied also when considering the actions of the USSR in summer of 1940.

When considering the consent of the Latvian government to the deployment of the USSR troops, one has to take into account the historical context of this consent. Shortly before ultimatum, the USSR has used force against Poland and Finland. The USSR troops were simultaneously deployed in Lithuania, without any consent of its President (*see: Ziemele I. State Continuity and Nationality, pp. 20 – 21*). The USSR simultaneously demanded the change of government and consequently breached its treaty obligations not to intervene in the internal affairs of Latvia. One also has to keep in mind the subsequent simultaneous annexations of the Baltic States in June and August of 1940, as well as deportations as crimes against humanity in June 1941. The conduct of the USSR against Lithuania is a particularly persuasive argument to support the view that the refusal to consent to the ultimatum of the USSR by the Latvian government would not have stopped the deployment of the USSR troops in Latvia. The President of Lithuania, Antans Smetona, left the country without giving consent to the deployment of the USSR troops; however, this did not change in the least the course of events regarding Lithuania (*see: Vol. 11of the case materials, PP. 67).* It is generally recognized in the doctrine that in June 1940, an aggressive war (in breach of the concluded international treaties) against the Baltic States took place, the USSR army invading them occupying them militarily (*see: Cassese A. Balancing the Prosecution of Crimes against Humanity and Non-Retroactivity of International Criminal Law // Journal of International Criminal Justice, 2006, pp. 410, 414; Marek K. Identity and Continuity of States, pp. 389 – 391; Stern B. La succession d'États // 262 Recueil des Cours de l'Académie de Droit International, 1996, pp. 45*).

The European Court of Human Rights also did not consider this consent to be valid within the meaning of international law (*Ždanoka v. Latvia [GC], no. 58278/00, Para. 13, ECHR 2006*).

Considering the factual and legal context in which the consent was given, the Constitutional Court agrees to evaluation of the European Court of Human Rights that the consent was given as a result of duress and as such invalid within the meaning of international law.

Consequently the USSR unlawfully used its force against Latvia, i.e. committed aggression in breach of international treaty rules.

26. On June 16, 1940 the USSR government, demanded in the ultimatum to Latvia to change the government in order to ensure "the fair fulfilment of the Assistance Pact in practice". This demand is in breach of Article 5 of the Assistance Pact.

Article 5 of the Assistance Pact provided that "the implementation of this pact cannot in any way affect the sovereign rights of the parties to the treaty especially their State structure, economic and social system, and military activity".

Article 5 of the Assistance Pact provided for treaty rules in a narrower field, that was later extended and became a rule of customary common law, namely, prohibition to interfere in the internal affairs of other States.

The ultimatum of the USSR with the demand to create a new USSR-friendly government was in breach of the sovereign right of Latvia to freely choose its government – that being a restriction to choose a State regime, is one of the examples *expressis verbis* given in the Assistance Pact.

Consent of Latvia to the demanded of the USSR was given under duress and therefore it is to be regarded as not valid (*see: Para 25.6 of this judgment).*

The USSR intervened in the internal affairs of Latvia, in breach of international treaty rules.

27. The aggression of the USSR against Latvia was followed by the occupation of Latvia (*see: Feldmanis I. Latvijas okupācija: vēsturiskie un starptautiski tiesiskie aspekti // Latvijas Vēsturnieku komisijas raksti. Vol. 15. Totalitārie režīmi Baltijā: izpētes rezultāti un problēmas. Second edition. Rīga: Latvijas vēstures institūta apgāds, 2007, pp. 225 – 235*).

The Constitutional Court has already established that in June 1940 the USSR committed an act of unlawful aggression against the Republic of Latvia and unlawfully interfered in the internal affairs of Latvia. If the occupation of the USSR was created as a result of an unlawful use of force, this occupation *per se* is unlawful and in breach of rules of international law. A Judge of the International Court of Justice Phillip Kooijmans expressed the view that unlawfulness of occupation follows from the unlawfulness of the use of force in terms of *ius ad bellum*, rather than from the existence of occupation itself, it effectively being a neutral *ius in bello* concept [*see: Separate Opinion of Judge Kooijmans, Armed Activities on the Territory of Congo (Congo v Uganda) // http://www.icj-cij.org/docket/files/116/10463.pdf*]. This systemic aspect of international law has to be taken into account in the international State practice of Latvia. Consequently, it may be concluded that the USSR aggression against Latvia was the main breach of international law, and the unlawfulness of occupation by the USSR followed from it.

Also the international law scholars closely relate the occupation by USSR with the circumstances of the use of force and threat to use force: "They, however, occupied and annexed by the Soviet Union in 1940 in circumstances involving the use of force and duress" (*Crawford J. Creation of States, 2006, pp. 393*).

Within the meaning of international law, the events of 1940 in Latvia are to be qualified as "the occupation of all or part of the territory of a State without the previous consent of the government, but also without causing the outbreak of an armed conflict with that State. Usually it is because the invader has made an implicit or explicit threat to use force, and military resistance against invasion appears hopeless, that is invasion is militarily unopposed. Such interventions have been quite common in the twentieth century and have occurred in a variety of circumstances" (*Roberts A. What is a Military Occupation? // British Yearbook of International Law, 1984, pp. 274*).

Consequently, the USSR carried out an unlawful occupation of the State of Latvia following from the unlawful aggression.

28. After the creation of government lead by Augusts Kirhenšteins on June 21, 1940, the next step towards incorporation of Latvia into the USSR was elections of the Saeima, so that the people could seemingly express their "free" will to join with "the brotherly Soviet republics of the USSR". Identical processes took place also in Estonia and Lithuania.

28.1. The dates of elections of the Saeima were coordinated with Moscow – the elections took place on July 14 and 15, 1940, on the same days when elections of the parliaments took place in both similarly occupied Baltic States – Estonia and Lithuania (*see: Gore I., Stranga A. Latvija: neatkarības mijkrēslis, pp. 200*).

On July 4, 1040, the Cabinet of Ministers passed the Saeima Election Law (*Valdības Vēstnesis, July 5, 1940, No. 149*). One has to take into account that the procedure of the Saeima elections was established by the Saeima Election Law of June 9, 1922 (*Valdības Vēstnesis, June 20, 1922, No. 141*). Since this Law had not been repealed, it was still effective and the Saeima elections should have been carried out under the provisions of this Law.

The procedure of the Saeima elections established by the new Saeima Election Law violated the requirements of the Satversme, particularly regarding the short term for submission of the lists of candidates and the very close Election Day. Under Article 14 of this Law, voters had the right to submit the lists of candidates up to July 10, 1940, 8:00 PM. Since the Law was announced on July 5, 1940, only a few days were left to this process.

28.2. The USSR plans did not include elections where voters would have any choice whatsoever. It was fully permissible that only one list took part in the elections – Working

People's Block [*Darba tautas bloks*]. The Central Election Committee refused to register lists submitted by other voters (*see: Latvijas okupācija un aneksija, pp. 436 – 498*). One of the leaders of social democrats Klāvs Lorencs wrote: "[Nothing] could and did not allowed to justify the arbitrarily unlawful conduct, impermissible in any whatsoever lawful State and deeply undemocratic, that was carried out by the Central Election Committee and governmental institutions in respect to this, the so-called list of candidates of Democratic Latvian Association. The submitted list of candidates was unlawfully rejected, all candidates to the last one were put under arrest and almost all of them forever disappeared in the Siberian tundra. [..] When it became known that a second list would be submitted to the Committee and that the Committee was going to discuss the issue of its registration, [..] A. Višinskis intervened. [The chairman of the Central Election Committee, Ansis] Buševics was sternly reprimanded and was given a new task – to immediately prepare a "legally and juridically well-justified" rejection of the second list of candidates" (*Lorencs K. Kāda cilvēka dzīve. Klāva Lorenca atmiņas. Rīga: apgāds Zelta grauds, 2005, pp. 331 – 332*).

On July 11, 1940, the Central Election Committee announced that "five lists of candidates comply with the requirements of the Law – one list per each election district. The accepted list of candidates for all districts is the list of the Working People's Block (*Latvijas darba tautas bloks*)" (*Daugavas Vēstnesis, July 11, 1940*).

28.3. On June 14 and 15, 1940, elections of the so-called People's Saeima took place. Materials of the Central Election Committee show that the official results for the People's Saeima elections were announced before the Commission received the election protocols and other election materials from Kurzeme, Latgale and Vidzeme election districts (*see: Gore I., Stranga A. Latvija: neatkarības mijkrēslis, pp. 222 – 223*).

Serious offences took place in the course of elections and counting of the votes. Instructions of the course of elections were changes during elections, and voters were subject to pressure. Appearance of voters in the ballot centres was in many places organized and supervised by the government of A. Kirhenšteins and Latvian Communist (Bolshevik) Party (*Latvijas Komunistiskās (boļševiku) partija*) (*see: Gore I., Stranga A. Latvija: neatkarības mijkrēslis, pp. 218 – 222*). "The results of elections were widely falsified; the residents were subject to moral pressure, which was turned very threatening due to the presence of the Soviet troops and their participation in the organisation of the elections. The results of the elections – according to the practice already accepted in the Soviet Union – were close to 100 percent for the only submitted list (in Kuldīga – 100 percent exactly!)" (*Latvijas vēsture. 20. gadsimts. Second supplemented edition. Rīga: Jumava, 2005, pp. 222*).

28.4. The unlawfully elected People's Saeima on June 21, 1940 convened its first meeting and passed several significant documents, among them the Declaration on the State Power and the Declaration on Latvia's Joining the Union of Soviet Socialist Republics.

In the Declaration on the State Power, the National Saeima declared: "By passage of this Declaration, Latvia is declared to be a Soviet Socialist Republic. The decision becomes effective immediately."

But the Declaration on Latvia's Joining the USSR stated:

"Having regard to the unanimously expressed will of the Latvian people, the Saeima decides:

To ask the Supreme Council of the Union of Soviet Socialist Republics to admit the Latvian Soviet Socialist Republic to the Soviet Union as a united republic on the same conditions as the Ukrainian Soviet Socialist Republic, Byelorussia and other United Soviet Socialist Republics are part of the Soviet Union."

No referendum took place regarding these resolutions of the People's Saeima; it was declared that they had been passed unanimously. When passing these resolutions, the People's Saeima exceeded the boundaries of its competence. The decision on the foundation of the Soviet Socialist Republic changes the requirement in Article 1 of the Satversme that Latvia is to be a democratically lawful state. The decision on joining the USSR changes the requirement of the same article on Latvia to be an independent State.

Under Article 77 of the Satversme, such decisions can be adopted only by a national referendum. No referendum took place neither when deciding on creation of the soviet regime, nor Latvia's joining the USSR. One also has to take into account that these decisions were passed under the circumstances of Soviet occupation. The Parliament that voted for the passage of such decisions was elected in breach of the democratic principles of elections, and the results of the elections were blatantly. The Saeima, when passing the resolutions of July 21, 1949, did not express the sovereign will of the Latvian people, but the will of the USSR to annex the State of Latvia to the USSR and include it as its part.

On August 5, 1940, the Supreme Council of the USSR adopted a decision to admit Latvia to the USSR. Simultaneously, a similar decision was taken in respect to the Estonian SSR and the Lithuanian SSR regarding their admission to the USSR.

29. Taking into account the way how Latvia "joined" the USSR, as well as the almost identical procedures implemented in Lithuania and Estonia, one has to agree to the opinion that "the Baltic States of Estonia, Latvia and Lithuania were incorporated into the Soviet Union in 1940 as a result of procedures which had the superficial appearance of a voluntary

union, but which in reality amounted to a forced absorption by the Soviet Union, scarcely distinguishable from annexation" [*Jennings R., Watts A. (eds.) Oppenheim's International Law. 9th ed. Vol. I. London: Longman, pp. 193*].

According to international law, every country is free to renounce its independence. Similarly, according to international law, each country must respect the independence of other countries, but it is not forbidden to agree to another State's voluntarily renouncing its independence in its favour [*see: Opinion of a justice of the International Court of Justice, Dionisio Anzillot, in the case, "Customs Regime between Germany and Austria", P.C.I.J., Series A/B, No 41 // http://www.icj-cij.org/pcij/serie_AB/AB_41/02_Regime_douanier_Opinion_Anzilotti.pdf*].

On the other hand, an act of a State when this state makes the other state give up from its independence and join it, namely, acquiring the territory of the other State in a forcible way, is to be considered as annexation (*see: Binschedler R.L. Annexation // Encyclopaedia of Public International Law. Amsterdam: Elsevier, 1922, Vol. 1, pp. 168*). In order to legally complete annexation, it is necessary for the annexed State and the international community to recognise this annexation. In the case when the annexed State and the international community object to the annexation that has taken place, indicating breaches of rules of international law, annexation is to be considered as existing as a result of a *de facto* unlawful conduct does not produce any legal consequences.

29.1. Annexation implies forceful incorporation of the territory of one State into another State. At the beginning of the XX century, international law did not restrict the right of States to use military force against other States and then to annex them. The international legal regime regarding the legality of the use of force changed during the period between the two World Wars by limiting the right of the States to use force in bilateral or multilateral treaties, as well as in customary international law (*see: Brownlie I. Principles of Public International Law. 6th edition. Oxford: Oxford University Press, 2003, pp. 697 – 715; Brownlie I. International Law and the Use of Force by States, pp. 51 – 111*).

According to the general legal principle *ex iniuria ius non oritur* (unlawful acts cannot produce rights), annexation carried out as a result of an unlawful use of force could not enjoy international legality (*see: Lauterpacht H. Recognition in International Law. Cambridge: Cambridge University Press, pp. 416 – 421*).

Initially being developed in the form of the so-called Stimson doctrine, the principle along with its application was recognized also in other situations (*Crawford J. Creation of States, pp. 689 – 690*). The USA State Secretary, H. Stimson, when protesting against the occupation of Manchuria carried out by Japan, indicated in his note that the USA government

cannot admit the legality of any situation *de facto* nor does it tend to recognise any treaty or agreement which may be brought about by means contrary to the Kellog-Brian Pact. By accepting the note of H. Stimson, the League of Nations on March 11, 1932 declared that the infringement of the territorial integrity of a and the change of political independence of any Member of the League of Nations brought about in disregard of Article 10 of the Covenant ought not to be recognised as valid (*McNair A. The Stimson Doctrine of Non-Recognition // British Yearbook of International Law, 1933, Vol. 14, pp. 65 et seq.; Hough III W. J. H. The Annexation of the Baltic States and its Effect on the Development of Law Prohibiting Forcible Seizure of Territory // Journal of International and Comparative Law, 1985, Vol. 6, No. 2, pp. 327 – 329*).

The Stimson doctrine was confirmed by the Rio de Janeiro Convention of October 10, 1933. Therein the States undertook not to recognize any territorial arrangements which are not obtained by peaceful means. By this convention, the member states proclaimed as invalid any occupation or acquisition of a territory brought about by armed force (*see: Hough III W. J. H. The Annexation of the Baltic States, pp. 330*).

The doctrine on non-recognition of illegally annexed territories was also supported by the USSR. Its Commissar of Foreign Affairs, Maksim Litvinov, when protesting against the conduct of Italy in Ethiopia declared in the meeting of the League of Nations: "Among the means for combating aggression and defending its Members which the League of Nations has at its disposal, non-recognition does not by any means play a conspicuous part [..] It must be clear that the League of Nations has no intention of changing its attitude whether to the direct seizure and annexation of other people's territory, or to those case where such annexations are camouflaged by the setting-up of puppet "national" governments, alleged to be independent, but in reality serving merely as a screen for, and an agency of, the foreign invader [*League of Nations, O.J. 340 (1938). Quoted from: Bojārs J. Vai spēks rada tiesības // Literatūra un Māksla, July 15, 1989*]. In the Constitutional Court's view, it is hard to find another, clearer legal assessment of the rules applicable also to the conduct of the USSR in the Baltic States in 1940, especially taking into account that the opinion was expressed by the Commissar of Foreign Affairs of the USSR who *ex officio* represented the USSR. Moreover, in March 1939, the USSR protested against the incorporation of Bohemia in the territory of Germany and indicated: "It is hard to accept that any nation could voluntarily agree to the destruction of its independence and to its incorporation into the territory of another State" (*Lēbers D. A. Molotova – Ribentropa pakta juridiskās sekas Baltijas valstīs // Likums un Tiesības, Vol. 4, 2002, No. 11, pp. 337*).

One can agree to the evaluation given in the doctrine that in the late 30s of the XX century, an international obligation of non-recognition of acquisition of a territory as a result of unlawful use of force had developed in international law from different international treaties and State practice (*Brownlie I. International Law and the Use of Force by States, pp. 418 – 419: Lauterpacht H. Recognition in International Law, pp. 416 – 426*).

29.2. The People's Saeima acted as an agent or an instrument of the USSR by fulfilling the tasks of this State and operating in its interests. Even if one admits that the People's Saeima operated as constitutional institution of the Latvian legislature, it did not express the free will of the Latvian people (*see: Lēbers D. A. Latvijas valsts bojāeja 1940. gadā, pp. 27 – 29*). It is recognized in international law a request for annexation or intervention made by the puppet government of an admitted State is without international validity. The events that took place in the Baltic States in 1940 are to be considered from this perspective (*Crawford J. Creation of States, pp. 80*).

Changes of the territorial status after the unlawful aggression and unlawful intervention in the internal affairs of State country in favour of the aggressor-state are internationally unlawful, whatever the form and procedure that the aggressor-state has chosen.

Consequently it is possible to conclude that the USSR in 1940 committed an act of aggression against the Republic of Latvia (and subsequent unlawful occupation of the Republic of Latvia), unlawfully intervened in the internal affairs of the Republic of Latvia, as well as unlawfully annexed the Republic of Latvia, ignoring the rules of international law and fundamental rules of domestic law of Latvia. A similar opinion has also been expressed in the most recent studies by historians [*see: Feldmanis I. Molotova – Ribentropa pakts un Latvija // Latvijas Vēsturnieku komisijas raksti. Vol. 1. Latvija Otrajā pasaules karā. Second edition. Riga: Latvijas vēstures institūta apgāds, 2007, pp. 30; Stranga A. PSRS politika Baltijā (1938 – 1940) // Latvijas Vēsturnieku komisijas raksti. Vol. 1. Latvija Otrajā pasaules karā. Second edition. Riga: Latvijas vēstures institūta apgāds, 2007, pp. 47*].

30. Just as unlawfully, the USSR deprived Latvia of a part of its territory by giving it over to the Russian SFCR in 1944. Already when discussing the Assistance Pact, J. Stalin introduced the idea to "deprive [Latvia] of the territory with the Russian minority" (*Архив Внешней политики России, ф. 38-д., оп. 1, с. 30 – 31. Quoted from: Gore I., Stranga A. Latvija: neatkarības mijkrēslis, pp. 20. See also: Feldmanis I. Molotova – Ribentropa pakts un Latvija // Latvijas Vēsturnieku komisijas raksti. Vol.1. Latvija Otrajā pasaules karā. Second edition. Riga: Latvijas vēstures institūta apgāds, 2007, pp. 28*).

30.1. On August 23, 1944, the Executive Council of the USSR Supreme Council passed a Decree "On Formation of the Pleskava District in the Territory of the RSFSR". Together with the parts of the territory of the RSFSR, parts of the territory of the Estonian SSR and the Latvian SSR were included in this district.

Višgorod, Kačanovo and Tolkovo parishes from the territory of Latvian SSR were included into Pleskava district of the Russian SFSR. Such decision had been made in response to repetitive requests of the residents of these parishes and the resolution of the Executive Council of the Latvian SSR Supreme Council [*see: Об образовании Псковской области в составе РСФСР // Сборник законов и указов Президиума Верховного Совета. 1938 – 1975. Vol. 1. Москва: 1975, pp. 93 – 94*].

30.2. Formally the Executive Council of the Latvian SSR Supreme Council declared its request to separate Višgorod, Kačanovo and Tolkovo parishes on August 22, 1944. However, the reality of the request of the Executive Council has been questioned, since it was not appropriately executed, and the historical sources contain no evidence that on that day, a meeting or a telephone survey of the Executive Council of the Supreme Council would have taken place (*see: Transcript of the morning and evening sessions of the Supreme Council of the Republic of Latvia; Pelkaus E. Latvijas robežas un 1920. gada miers // Latvijas Avīze, February 15, 2005*).

On September 7, 1944, the Executive Council of the Supreme Council of the Latvian SSR, on the basis of survey, passed the Decree "On Joining of Višgorod, Kačanovo and Tolkovo parishes to the Russian Soviet Federative Socialist Republic". In this Decree, by referring to requests of the inhabitants of the respective parishes, the Executive Council of the Supreme Council decided to ask the Latvian SSR Executive Council of the Supreme Council to incorporate Višgoroda, Kačanova and Tolokva parishes of the Latvian SSR to the Russian SFSR (*see: case materials, Vol. 7, pp. 33).*

In the third session of the Latvian SSR Supreme Council that took place on October 6 – 7, 1944 in Daugavpils, there was a decision made regarding confirmation of the Decrees of the Executive Council of the Supreme Council that were passed during the break between the second and the third session, among them the Decree of September 7, 1944 (*see: case materials, Vol. 7, pp. 30. – 31*).

30.3. These acts of the executive councils of the Supreme Councils of the Latvian SSR and the USSR served as the basis for the incorporation of the town of Abrene and the six parishes – Kacēni, Upmale, Linava, Purvmala, Augšpils and Gauri (hereinafter – the Abrene area) – into the Russian SFSR. One also has to bear in mind that neither the Latvian SSR, nor the Supreme Council of the USSR used the names of the administrative-territorial entities of

that time. Instead they used the names of the administrative-territorial entities of the Russian Empire, whereby they were incorporated in Latvia under the Peace Treaty.

IV

31. Article 2 of the Satversme provides that the sovereign power of the State of Latvia is vested in the people of Latvia. This provision of the Satversme established the principle of national sovereignty (*see: Transcript of the meeting of the Latvian Constitutional Assembly, Meeting 1 of Session IV, September 20, 1921*).

31.1. Under the principle of national sovereignty, the Latvian people are the only subject of sovereign power. Not the public constitutional institutions, but the Latvian people are the source of public power and carrier of the sovereign power of the State. National sovereignty is the right of people to decide their own fate, also by forming an independent state. Consequently one of the most important rights of the Latvian people as a carrier of sovereign power of the State of Latvia is the constitutional power conferred to it (*see: Dišlers K. Konstitūcija un satversmes vara // Tieslietu Ministrijas Vēstnesis, 1921, No. 1 – 3, pp. 1 – 10*).

The Satversme divides the power of Satversme among the body of Latvian citizens and the Saeima, however it guarantees the exclusive rights to deal with the fundamental norms of the Satversme of the Latvian people, namely, to repeal the constitution or to establish a new constitutional order. Moreover, Article 76 of the Satversme delegates to the Saeima only the power to review the Satversme, which differs from the constitutional power of the Latvian people since it is related to constitutional fundamental principles. The Saeima is authorized to make constitutional amendments within the framework of the existing constitution, but the Saeima as a constitutional institution of the State power cannot be authorized to change the basis of the constitutional order or to give up the existence of the State, since only the people as the carrier of the constitutional power can decide on this issue. A similar opinion has been expressed in constitutional law doctrine (*see: Cipeliuss R. Vispārējā mācība par valsti. Rīga: AGB, 1998, pp. 46 – 47*).

31.2. Article 2 of the Satversme, by granting the sovereign power to the Latvian people, takes into account the fact that it is possible that the sovereign rights of the Latvian people to decide on the fundamental principles of the constitutional order and existence of the State can be usurped, in the case of coup d'etat by certain persons or in the case of invasion – by another State (*see: Dišlers K. Latvijas pagaidu konstitūcija. Vispārīgas piezīmes // Tieslietu Ministrijas Vēstnesis, 1920, No. 2/3, pp. 52*).

Article 77 of the Satversme, when providing for the right of the unity of the Latvian citizens to change the constitutional basis of the State of Latvia, prohibits changing it any way other than through a free referendum. In the case if these principles have been changed in the result of a coup d'etat or invasion of another State, the Latvian people do not lose the rights to decide on existence of the state and its constitutional order.

Article 2 of the Satversme not only confers the rights to the Latvian people and each citizen of Latvia, but also imposes obligations. First of all, the obligation not to recognize as effective such changes of the constitutional regime that have taken place by ignoring the procedure established by the Satversme. Each citizen also has a duty to resist those who try to destroy by the use of force the constitutional order, territorial integrity or independence.

The Satversme prohibits the destruction, in an anti-constitutional way, of the independence of the State of Latvia or the democratic legal State established therein. If the constitutional order of the state is changed in breach of the procedure established by the Satversme, Article 2 of the Satversme is one of those Articles of the Satversme that *de iure* remains effective during the entire period of existence of the anti-constitutional regime, hence ensuring the rights of the Latvian people to freely decide on their future.

The Latvian people have rights and obligation to restore the State of Latvia in the manner required by the constitutional legal basis of the State of Latvia. This obligation is imposed also upon each member of the Latvian people – citizens of Latvia, disregarding the fact whether he or she has been born before or after the establishment of the anti-constitutional regime.

31.3. Article 2 of the Satversme is closely related to Article 1 of the Satversme, which establishes what the State of Latvia should be, wherein the Latvian people exercise their sovereign power, namely, Latvia has to be an independent democratic republic.

Article 1 of the by requiring Latvia to be an independent State, provides for the rights of Latvia to participate in the international community. Already in the platform of the Latvian People's Council, a claim was made in respect to a united, autonomous and independent Latvia in the League of Nations. Latvia as a small country is aware of its relative prospects to restore its independence and democratic regime in the State on its own if it were liquidated in an anti-constitutional manner, and therefore sees the guarantee for its independence in a just international system. Guaranteeing of independence of each State is one of the basic functions of international law (*see: Lēbers D. A. Molotova – Ribentropa pakta juridiskās sekas Baltijas valstīs // Likums un Tiesības, Vol. 4, 2002, No. 11, pp. 334*).

Consequently the rights of the Latvian people to restore their unlawfully interrupted statehood guaranteed in Article 2 of the Satversme are closely related to regulation of international law of this field.

32. The state continuity doctrine is the result of development of international law after the WW I. Until then it was generally accepted, regarding the issue of the way when and how states become sovereign, that "all questions with respect to the origin of States belong to the province of political philosophy, rather than that of international law" [*se: Baker G.S., Ducquer M.N. (eds.) Halleck's International Law. 4th ed. London: Kegan Paul, Trench, Truber &Co. Ltd., 1908, pp. 80*]. One could even assume that initially international law did not regulate the creation and termination of a State by emphasising that existence of a State is a fact that cannot be legally justified (*see: Dišlers K. Negotiorum gestio publisko tiesību novadā // Tieslietu Ministrijas Vēstnesis, 1935, No.1, pp. 8 – 17*). Later it was recognized that the sovereign person of the States in international law was determined by its relations with other States and capacity to act on its own behalf. The legal thought of the XX century identified the main elements of the statehood, namely, territory, permanent population, effective government and the capacity to enter into international relations that were included in the Convention on the Rights and Duties of States (hereinafter – the Montevideo Convention) for their development. They were recognized as a part of the customary law (*see: Lauterpacht H. Oppenheim's International Law. 5th ed. Vol. I London: Longman, Greens, 1937, pp. 121*). However, in practice, including during the interwar period, it was recognized that interpretation and application of these principles was not determinative, because other circumstances in particular cases had to be taken into account, as well as rules and processes in the framework of general international legal procedures. Consequently the principle *ex facti ius oritur* was no longer decisive (*see: Crawford J. Creation of States, pp. 37 – 95*). As the principle of self-determination of people, as well as prohibition of the unlawful use of force or threat thereof developed, additional legal criteria crystallised in international law in accordance with the principle *ex injuria ius non oritur*. The effect of these rules could be different. Sometimes the principle *ex injuria ius non oritur* precluded the existence of a State in the cases when although the Montevideo criteria were met other important rules of international law were violated (e.g. in respect to observance of the rights of self-determination, racial discrimination and unlawful use of force) (*see: Crawford J. Creation of States, pp. 131 – 155*). In other cases the principle *ex injuria ius non oritur* meant the existence or continued existence of a State when it did incompletely fulfill the Montevideo criteria (e.g. in respect to exercising the rights of self-determination or unlawful annexation)

(*see: Crawford J. Creation of States, pp. 689 – 699*). Consequently the claim of the statehood and its recognition are important elements of the international legal process, and the questions is about the rules and procedures regarding the claim and its recognition in different situations (*se: Ziemele I. State Continuity and Nationality, pp. 99 – 101*).

32.1. For the determination of the identity of the State, one has to take into account the claim to recognize that an illegal annexation of a State or a part thereof to the territory of another State has no legal consequences. The principle *ex injuria ius non oritur* imposes obligations on subjects of international law not to recognize unlawful situations, including unlawful annexation of territories to other states if the annexation has taken place in breach of rules of international and domestic law or by force. The abovementioned principle raises the obligation of the international community to at least react to the illegal annexation of a State or its part to the territory of another State and not to recognize such changes as legally complete (the so-called collective non-recognition duty) (*see: Opinion of D. Žalimas, case materials, Vol. 10, pp. 228.; International Court of Justice Advisory Opinion of 9 July 2004 „Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory", Para. 159 // http://www.icj-cij.org/docket/files/131/1671.pdf*). This means that the international community has recognized: law regulates not only the mutual relations of States as existing subjects of international law, but also the creation and termination of States. It is particularly important in the cases when a State or its part is annexed to the territory of another State in breach of the rules of international and domestic law. Under the principle *ex injuria ius non oritur*, States and parts thereof can be annexed to the territory of other states on voluntary basis and by observing the procedures established in international and national law.

The international community does not recognize illegal annexation of a State or a part thereof to the territory of other state as accomplished. It means that the unlawfully destroyed state *de iure* continues existing and there consequently also exists a legal possibility to restore the respective state *de facto* in accordance with the rules of international law. If such state is *de facto* restored, it does not form a new State but continues its *de facto* interrupted statehood. This is the essence of the doctrine of legal continuity in international law that follows from the use of force or threat of the use of force according.

32.2. State continuity is characterised by the continuity of a State as a legal person or its identity in international law. State continuity describes the continuity or identity of States as legal persons in international law. The basis of State continuity is subject to relevant claims and recognition of those claims determined, in principle, in accordance with the applicable international law rules or procedures when statehood is at issue (*see: Ziemele I. State*

Continuity and Nationality, pp. 118). Continuity is first of all a legal concept, rather than a historical fact or an arbitrary choice (*see: Application for Revision of the Judgment of 11 July 1996 in the Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Preliminary Objections 2003, Para 70 – 71*). "Where a State retains substantially the same territory and the same structure or system of government over a period of time there is clearly no change of personality. The presumption of continuity is particularly strong where the constitutional system of the State prior to acquisition or loss continues its force." (*Crawford J. Creation of States, pp. 672 – 673*).

Both Latvia regarding the Latvia of 1940 and the Russian Federation regarding the USSR are placed in the position of continuity. If a state, independence of which has been illegally terminated, restores its statehood, it can under the doctrine of continuity recognize itself as the same State which had been illegally terminated. In this case it is necessary that the state itself establishes its continuity and acts in accordance with the claims of this doctrine both in international relations and domestic policy, and it is also necessary that such self-assessment of the state is accepted by the international community. The continuity of the same state ('sameness' of a new State with an old one) seems to derive primarily from relevant rules and/or procedures of international law, applied in a given factual context having regard to the intangible but nonetheless real notion of the continued existence of a people (*see: Ziemele I. State Continuity and Nationality, pp. 129*). A State may be said to be the 'same' State (with the consequence that the same legal rules, including conventional rules, continue to apply) where it is continuous in the sense defined or where after temporary suppression, an entity with substantially the same constituent features is re-established and its claim to continuity is accepted (*see: Crawford J. Creation of States, pp. 671*).

Rights and duties of a state follow from its legal identity. One can agree to the opinion expressed already in 1924 that "the fact of personality of a state is the key to the answer [about its rights and obligations]" (*Higgins P. Hall's International Law. 8th ed. Oxford: Clarendon Press, 1924, pp. 114*). First of all, it is necessary to identify the legal relationship of the State with earlier State formations and only then rights and duties will follow from the statehood.

It is not necessary for the State to restore its independence in the same territory with the same citizens and the same constitutional order, as it was before the *de facto* illegal termination of the independence of the state. It is necessary to take into account that, in the course of time, the body of residents of a State will change, and the territory and constitutional order may also change. The doctrine of continuity accepts that such change may have taken place in the state whose independence is being restored. Namely, the State, when

restoring its independence may, if necessary, change its constitutional order, territory and body of citizens. But in this case the State has to act in accordance with the doctrine of continuity and these changes are to be made not *tabula rasa*, but on the basis of the previous constitutional regulation. International law does not require a restitution of international rights and obligations of the State, but instead to carry out their re-evaluation on the basis of an *a priori* existence, through *ad hoc* agreements on the necessity to terminate, amend them or by concluding their invalidity as a result of the *rebus sic standibus* doctrine. In other words, changes have to take place within the framework of the doctrine of continuity, rather than outside it.

As a result of such fundamental changes, not only the self-assessment of the State is important, but also the reaction of the international community; the international community is entitled not to recognize the position of the State regarding its continuity.

32.3. The doctrine of state continuity directly influences action of the State not only in international law where it continues to fulfil the international obligations undertaken before the *de facto* termination of independence and it does not take over the international obligations of that state the part which it had unlawfully been, but also in the internal affairs. The acts of the illegally established public authorities of the other State in the field of public law are not binding on the State that has re-established its independence. The State that has restored its independence on the basis of the doctrine of continuity is entitled to decide itself on all necessary issues regarding existence of the State under its constitutional regime and legal rules. In separate cases, considering the claims of the fundamental personal rights, it has to respect consequences of the action of illegal authority in the field private law, for instance, regarding family law. The boundaries to the State's conduct after the restoration of independence are established not only by fundamental rights, but also by general legal principles, *inter alia* the principle of justice. "When restoring the legal system of independent Latvia, the legislator, by observing the principle of the rule of law, had to take measures in order to as far as possible diminish also the losses caused by the previous regime and restore justice" (*see: Judgment of the Constitutional Court of March 25, 2003 in the case No. 2002-12-01, Para 1 of the Concluding Part*).

33. The presumption of State continuity is employed when there is both the will of the State concerned and general acceptance of the international community (*Ziemele I. Is the Distinction between State Continuity and State Succession Reality or Fiction? The Russian Federation, the Federal Republic of Yugoslavia and Germany // Baltic Yearbook of*

International Law. Volume 1, 2001. The Hague / London / New York: Kluwer Law International, 2002, pp. 220).

33.1. Latvia has never recognized the conduct of the USSR against Latvia in 1940 as lawful (*see: Šilde Ā. Latvijas valsts // Šilde Ā. Trimdinieka raksti. 1944 – 1990. Minstere: apgāds Latvija, 1991, pp. 50 – 55*).

Ambassador of Latvia in London, Kārlis Zariņš, on July 23, 1940 submitted a memorandum to the Foreign Office of the Great Britain, wherein he indicated that he will continue representing interests of the Republic of Latvia and qualified the conduct of the USSR as illegal. K. Zariņš *inter alia* indicated that the People's Saeima, when joining the USSR, had violated Article 1 of the Satversme that can be possibly amended only by a referendum. K. Zariņš also expressed his view that the decision to join the USSR cannot be regarded as an act of a free and independent government, moreover, in the elections of the People's Saeima, the citizens of Latvia could not freely express their will. The ambassador justified this opinion by facts. K. Zariņš wrote: "The Latvian people have struggled hard for their independence, also against the troops of the Soviet Russia. The spirit of the independence fights is still alive, and any disinterested observer would recognise it impossible that Latvians would freely sacrifice their independence that they have fought for so hard and cherished" (*Note of K. Zarins, Latvian Envoy in London, Protesting against the Incorporation of Latvia into U.S.S.R. as being Unconstitutional and Illegal // Latvian – Russian Relations, pp. 209 – 210*).

The Latvian ambassador in Washington, Alfrēds Bīlmanis, also protested against annexation of Latvia to the USSR, that took place in breach of Articles 1, 76 and 77 of the Satversme by means of brutal force (*see: The Latvian Minister in Washington does not Recognize Incorporation of Latvia into the Soviet Union // Latvian – Russian Relations, pp. 211*). In a letter of July 27, 1940 to the Foreign Office of Great Britain, K. Zariņš indicated that Latvia has become a victim of an unlawful aggression, the USSR has violated obligations undertaken by the Assistance Pact, elections of the People's Saeima have been carried out under pressure, in the presence of foreign troops and under supervision of high-ranking foreign officials, whereas the decision of the People's Saeima on joining the USSR is anti-constitutional (*see: Lerhis A. Latvijas Republikas ārlietu dienests, pp. 257*).

The protests of these ambassadors of Latvia expressed the official viewpoint of Latvia, because the government of the Republic of Latvia terminated its work as a result of the aggression and occupation by the USSR. Having regard to these reports, Latvian diplomatic and consular agencies in foreign States continued their activities up to the restoration of independence of the Republic of Latvia without recognizing the annexation of Latvia to the

USSR and by representing interests of the Republic of Latvia as organs of the State (*see: Lerhis A. Latvijas Republikas ārlietu dienests, pp. 224 – 286*). The Latvian citizens in exile supported the necessity to cease the illegal conduct of the USSR and to restore independence of the State of Latvia.

In an article published in 1947, "For Commemoration of the 25th Anniversary of the Satversme of Latvia", its author wrote: "The Satversme of Latvia has never been repealed. [..] Our homeland has been and still is occupied, but it will never destroy Latvia and it still continues existing. [..] Our embassies, consultants, the Red Cross and other institutions continue working under the laws passed according to order established by the Satversme" (*Vonogsalīts A. Latvijas satversmes 25 godu atcerei // Latgola, 1947, No. 40, pp. 3*).

On March 13 and April 3, 1948 exiled judges of the highest judicial institution of Latvia – senators of the Latvian Senate – Jānis Balodis, Rūdolfs Alksnis, Pēteris Stērste, Augusts Rumpeteris and Maksis Ratermanis submitted opinion on assessment of the questions put by the acting Deputy Chairman of the Latvian Saeima, the bishop Jāzeps Rancāns regarding "whether the Satversme of 1922 is in force" and "what State institutions provided for in the Satversme still exist in law and in fact". Senator Mintauts Čakste later joined this opinion.

The opinion of the Senators states:

"Similarly there is no law that would have had annulled the Satversme of Latvia, there is no international act (at least such that would have been recognized by the large Western democracies), with which the existence of the democratic republic of Latvia would be terminated from an international point of view. Of course, the Resolution of August 5, 1940 by the Supreme Council "On Democratic Latvia's" joining to the USSR cannot be recognised as such because it is based only on a non-democratic and anti-constitutional decision of the pseudo saeima that has no sanction conferred by a referendum.

Finally, as regards the occupation of Latvia initiated on June 17, 1940, as such it is only an act of brute force of the Soviet Union, which was carried by unilaterally breaching the treaties concluded with the State of Latvia, among others the Peace Treaty of August 11, 1920 and the Non-Aggression Treaty of February 5, 1932, according to which the USSR had undertaken to observe the inviolability of the Latvian territory and sovereignty of the State "for all time". The act of power, having no international sanction, cannot terminate the existence of the democratic Republic of Latvia. It was approved by the US government in its declaration of July 23, 1940 and confirmations submitted to the ambassador of Latvia in Washington, wherein the US does not recognize the incorporation of Latvia into the USSR and emphasizes that the relations of the US and Latvia, as well as their concluded treaties are

not affected by the conduct of the regime that has taken power in Latvia in 1940. Hence, when the territory of Latvia is occupied by an alien power and the citizens are subordinated to the occupant power, but there is no international act that would cease the existence of Latvia, its existence is manifested particularly by its legal structure. The latter is determined and characterized by the abovementioned basic laws", namely the declaration "On the State of Latvia" passed on May 27, 1920 by the Latvian Constitutional Assembly and the Satversme (*see :Opinion of senators // May 4 . Rakstu, atmiņu un dokumentu krājums par Neatkarības deklarāciju. Rīga: Fonds Latvijas Vēsture, 2000, pp. 383*).

33.2. The struggle of the citizens of Latvia for the restoration of the statehood of Latvia began soon after the occupation of Latvia. This struggle for their own state, as well as the conduct of the USSR in Latvia is reflected in the Declaration "On Latvia's Occupation" passed on August 22, 1996 by the Saeima of the Republic of Latvia:

"The regime of occupation destroyed innocent people, repeatedly carried out deportations of residents and other repressions, cruelly punished those who by force or in any other manner supported the restoration of independence of Latvia, illegally and without compensation deprived the residents of Latvia of their property and suppressed freedom of opinion. The USSR government purposefully let thousands of immigrants in Latvia and with their help attempted to destroy the identity of the Latvian people. In the result of this policy the proportion of the Latvians as the main nation decreased from 77 percent to 52 percent.

Ten years after the end of the World War Two, armed resistance against the USSR continued in Latvia. In the resistance movement, more than 30 000 national partisans and their supporters took part. After is suppressions, disregarding the repressions of the soviet regime, resistance was carried on in other forms."

A similar assessment of events was included in the declaration of May 12, 2005 by the Saeima "On Condemnation of the Totalitarian Communist Occupation Regime Implemented in Latvia by the Union of Soviet Socialist Republics".

The inhabitants of Latvia did not accept the imposition of the Soviet power. In the territory of Latvia, a large movement of national partisans was formed, and more than ten years armed people fought for the restoration of independence of Latvia. The USSR suppressed the national partisan movement by cruel repressions (*see: Šilde Ā. Bez tiesībām un brīvības. Latvijas sovjetizācija 1944 – 1965. Kopenhāgena: Imanta, 1965, pp. 157 – 179; Strods H. Resistance in Latvia 1944 – 1991 // Latvijas Vēsturnieku komisijas raksti. Volume 14. The Hidden and Forbidden History of Latvia under Soviet and Nazi Occupations 1940 – 1991. Second edition. Rīga: Latvijas vēstures institūta apgāds, 2007, pp. 286 – 298*).

During the following years, the resistance against the USSR regime and efforts to restore the statehood expanded, and later turned in to the Third National Awakening. This movement involved almost all residents of Latvia and was concluded by the passage of the Declaration on Independence on May 4, 1990 and passage of the Constitutional Law on August 21, 1991.

By exercising the rights of citizens of Latvia, established in Article 2 of the Satversme, to decide on restoration of independence of the State and on the basis of the doctrine of continuity established in international law, 138 members of the Supreme Council of the Latvia SSR voted for independence of Latvia. "Even though a part of them had earlier been members of the Communist Party, it no longer played any important role. Now they stand under the red-white-red flag and showed no doubt when voting for independence of Latvia. [..] When passing this Declaration, on May 4, 1990 Latvia fully politically decided to separate itself from the Soviet Union, it decided to restore the Republic of Latvia of November 18" (*Apsītis R. Neatkarības deklarācijas pieņemšanas gadadienā // Jurista Vārds, May 3, 1005, No. 16*).

The Declaration on Independence establishes the *de facto* renewal of the Latvian independence of the Republic of Latvia, confirming the doctrine of Latvian State continuity. "The State continuity of Latvia [..] is the backbone of the entire body of Latvian constitutional law" (*Endziņš A. Latvijas konstitūcijas apskats, kas rada šaubas un jautājumus // Jurista Vārds, May 1, 2005, No. 8*). Similarly, the modern construct of the Latvian State is also based on the State continuity of Latvia (*see: Ziemele I. Piezīmes pie sagatavotā lēmuma projekta // Jurista Vārds, January 30, 2007, No. 5*).

The restored Republic of Latvia identifies itself with the pre-war Latvia. The constitutional institutions of Latvia justify their position with the fact that after the events of 1940 Latvia as a subject of international law had not lost its status. After restoration of independence, Latvia continues its statehood (*integratio ad integrum*) (*see: Lēbers D. A. Latvijas valsts bojāeja 1940. gadā, pp. 30*).

34. Continuity of Latvia has also been recognized by the international community. Initially this recognition manifested itself as non-recognition of the illegal incorporation of Latvia into the USSR, but after restoration of independence of Latvia it turned into recognition of continuity of the State of Latvia, namely, the international community recognized the State restored on May 4, 1990 to be the same State, independence of which had been unlawfully terminated in 1940.

34.1. The policy of non-recognition of annexation of the Baltic States was started by the US. Sumner Welles, the US Deputy State Secretary on July 23, 1940 in his note on the issue of occupation of the three Baltic States precisely defined the American position regarding the Soviet occupation in the Baltic by condemning in strict terms the devious processes and methods that the USSR had used to annihilate the independence of the Baltic states, the processes that were rapidly moving to their conclusion (*see: Statement of Undersecretary of State, the Hon. Sumner Welles // Latvian – Russian Relations, pp. 209*). This important document created the precedent to many other notices and declarations that the US, most States of the world and several international organizations (including the Council of Europe and the European Parliament) made regarding the soviet annexation of the Baltic States. Unlawful annexation of the Baltic States to the USSR were not recognised, along with the US, by the FRG, France, Italy, Canada, Japan and more than 50 other States of the world (*see: Hough III W. J. H. The Annexation of the Baltic States, pp. 391 – 446; Zunda A. Baltijas jautājums 20. gadsimta 60. gadu starptautiskajās attiecībās // Latvijas Vēsturnieku komisijas raksti. Vol. 20. Latvija un Austrumeiropa 20. gadsimta 60. – 80. gados. Rīga: Latvijas vēstures institūta apgāds, 2007, pp. 17 – 29; Zunda A. Baltijas jautājums un Rietumvalstis: 40. gadu otrā puse – 50. gadu sākums // Latvijas Vēsturnieku komisijas raksti. Vol. 21. Latvijas vēsture 20. gadsimta 40. – 90. gados. Rīga: Latvijas vēstures institūta apgāds, 2007, pp. 271 – 304*).

The US declaration was very important for the efforts of Latvia, Estonia and Lithuania to regain freedom and independence, as well as for the development of international law regarding non-recognition of territorial changes that they had not taken place in accordance with the free will expressed by the inhabitants. The US applied the principles of the Stimson doctrine also to the Baltic States and the doctrine of non-recognition of conquests – to territorial acquisitions of the USSR, as it had previously related it to the acquisitions of Japan, Germany and Italy. Such practice of the US only strengthened the position of the principle of non-recognition of illegal conduct in international law, and it was very much necessary to the representatives of the Baltic States. This declaration determined the US policy in the issue of the Baltic States for several decades and thus it ensured continuation of diplomatic representation of the Baltic States in the US. Since passage of the Declaration of July 23, 1940, the USA did not recognize annexation of the Baltic States to the USSR neither *de facto* nor *de iure*.

On August 9, 1940, Great Britain formalizing the continued official recognition of the Baltic diplomats. On September 5, 1940, the Prime Minister Winston Churchill declared officially that Great Britain will not recognize any territorial changes carried out during the

War in Europe and the question regarding their lawfulness is to be decided in the way of international agreement. The government of Great Britain decided not to recognize any territorial changes carried out during the war without free consent and will of the inhabitants themselves until the post-war Peace Conference.

The Parliamentary Assembly of the Council of Europe, in the Resolution of September 29, 1960 No. 189 (1960) on the Situation in the Baltic States on the Twentieth Anniversary of their Forcible Incorporation into the Soviet Union recognised that "Independent existence of the Baltic States is still recognised *de iure* by a great majority of the Governments of the nations of the free world". In the Resolution of January 13, 1983 Regarding the Baltic States the European Parliament indicated that: **"**most European states and the USA, Canada, the United Kingdom, Australia and the Vatican still adhere to the concept of Baltic states" (*see: Hough III W. J. H. The Annexation of the Baltic States, pp. 438 – 439*).

Consequently one can justifiably conclude that the international community did not recognize occupation and annexation of Latvia, as well as confirmed the *de facto* restoration of independence of Latvia. This position was expressed in the practice of both States and international organization, in respect to bilateral and multilateral agreements and financial and human rights obligations (*see: Ziemele I. State Continuity and Nationality, pp. 31 – 36, 63 – 94*).

Continuity of the Baltic States is also testified by international law scholars: "State practice in the period since 1930 has established, not without initial uncertainty, the proposition that annexation of the territory of a State as a result of the illegal use of force does not bring about the extinction of the State [..] The proposition that illegal annexation does not effect extinction is reinforced if it is accepted that Estonia, Latvia and Lithuania (as admitted to the United Nations in 1991) were the same States as those annexed by the USSR in 1940. [..] other States were generally content to accept the Baltic States' self-as continuators of the pre-1940 entities" (*Crawford J. Creation of States, pp. 689 – 690*).

34.2. After 1990, when the Baltic States regained their independence, most States that had never recognized their incorporation into the USSR, declared the re-establishment of their diplomatic relations. When recognizing the *de facto* restoration of independence of the Baltic States, Iceland, Belgium, Canada, Australia, Italia and the US referred to the non-recognition of the unlawful annexation. Estonia, Finland, Hungary, Rumania, Chile, Czechoslovakia and the Netherlands, in their recognition notes referred to restoration of independence of Latvia. The European Community, too, on behalf of itself and its Member States, greeted the Baltic States with the restoration of the independence and sovereignty lost in 1940.

The most important international organizations recognized the continuity of the Baltic States (*see: Lēbers D. A. Molotova – Ribentropa pakta sekas mūsdienās: starptautiski tiesiskie aspekti // Latvijas Vēsturnieku komisijas raksti. Vol. 1. Latvija Otrajā pasaules karā. Second edition. Rīga: Latvijas vēstures institūta apgāds, 2007, pp. 69 – 70*). Admittance of the Baltic States to the UN took place according to the procedure provided for in the UN Charter (*see: Resolution of the UNO General Assembly of September 17, 1991 No. A/RES/46/5 on Admission of the Republic of Latvia to the membership in the United // http://www.un.org/Depts/dhl/res/resa46.htm*). When the issue was put under consideration in the Security Council, its president referred to the regained independence of the Baltic States (*see: Ziemele I. State Continuity, Human Rights and Nationality in the Baltic States // The Baltic States at Historical Crossroads. 2nd edition. Rīga: Latvian Academy of Sciences, 2001, pp. 231*). The UN recognised in several resolutions that the Russian Federation military forces were located in the Baltic States illegally (*see: Resolution of the UNO General Assembly of November 25, 1992 No. A/RES/47/21 // http://www.un.org/documents/ga/res/47/a47r021.htm and Resolution of November 13, 1993 No. A/RES/48/18 // http://www.un.org/documents/ga/res/48/a48r018.htm*).

The Council of Europe, when examining the request of the Baltic States on their admission to the organization, confirmed that they have completely re-established their independence [*see: Parliamentary Assembly Opinion No. 183(1995) on the application by Latvia for membership of the Council of Europe // http://assembly.coe.int/Documents/AdoptedText/TA95/Eopi183.htm*].

The international society supported the claim of the Baltic States for their State continuity, which followed from the non-recognition of occupation and annexation by these States.

34.3. Foreign states repeatedly expressed their certainty about the continuity of Latvia when reacting to the statement of the State President Vaira Vīķe-Freiberga, where the opinion of Latvia regarding events of the World War Two was explained.

In her speech on the Law on Authorisation in the Saeima debates, V. Vīķe-Freiberga stated:

"The leaders of Europe and the world, in their response notes, speak of Soviet occupation and regained independence. They are: the President of Germany, the President of France, the President of the US, the President of Austria, the President of Portugal, the President of the Czech Republic, the President of Hungary, the President of Estonia, the Prime Minister of Great Britain, the Prime Minister of Canada, the Prime Minister of Denmark, the Prime Minister of the Netherlands, the Prime Minister of Ireland, the Prime

Minister of Norway, the Prime Minister of Iceland, the Prime Minister of Sweden, the Prime Minister of Belgium, the President of Croatia, the Prime Minister of Japan. The European Court of Human rights in its judgment in the so-called Ždanoka case refers to the forcible annexation of Latvia to the USSR as an incontestable historical fact.

These leaders thus clearly express the official position of their States that the inclusion of Latvia into the Soviet Union was illegal and that the present Republic of Latvia is a restored, and not a new State. More than 30 states declared in 1991 that they had recognized the restoration of independence of the Republic of Latvia. We do not have to prove to anybody that we are not a new State" (*see: Transcript of the fourth meeting of the winter session of the Saeima of the Republic of Latvia, February 1, 2007*).

V. Vīķe-Freiberga also rightly stated that continuity of the State of Latvia does not depend on the will of the Russian Federation to recognize it or not (*see: Transcript of the fourth meeting of the winter session of the Saeima of the Republic of Latvia, February 1, 2007*). International law does not require all other States to recognize the State continuity. Taking into account the factual context of the unlawful annexation, almost always at least one State will consider the situation to be lawful, and it would be absurd to confer veto rights to this State or to these states of absolute minority. Approval of state continuity claim can be established when assessing reaction of the international society in general. When assessing the practice of the states in 1940 – 1990, it is possible to identify isolated opposite or contradictory opinions of States, however it is necessary to consider these exceptions their broader legal context. The scope and content of the duty of collective non-recognition of unlawful situations has been controversial also in the later cases when it was assessed in the framework of the UN and in the International Court (*see: Crawford J. Creation of States, pp. 162 – 173*). Regarding Latvia and other Baltic States, the duty of non-recognition of unlawful situations followed largely from the customary international law and it was not concretized in the framework of international organizations, therefore the precise scope, content and way of implementation of this duty *de facto* remained in the discretion of the specific states. Taking into account the decentralized model of non-recognition, the practice of the absolute majority of States, international organizations and case law has during 50 years consistently retained the position of non-recognition, in legally essential moments confirming the non-recognition of unlawful annexation and the continuation of the statehood of Latvia, that the European Court of Human Rights also recognised in the form of a judgment.

V

35. The doctrine of State continuity of Latvia imposes obligations on the State of Latvia to solve a range of issues that follow from this doctrine.

One of them is the issue of the territory and borders of the Latvian State (*see: Lēbers D. A. Latvijas valsts bojāeja 1940. gadā, pp. 30*). This issue is particularly important regarding the Latvian and Russian State border, because the annexation of the Abrene district to Russia that took place in 1944 is illegal, from the viewpoint of the State continuity doctrine (*see: Lēbers D. A. Krievijas un Latvijas teritoriālais strīds Abrenes jautājumā // Jurista Vārds, May 24, 2005, No. 19*). From the point of view of international law, the situation of the Abrene district is identical to the situation of the Republic of Latvia, and according to the continuity doctrine, it is necessary to implement *restitutio ad integrum* into the legal borders of the Republic of Latvia of 1940.

35.1. The Declaration of Independence left the issue of Abrene legally open, because during its passage this issue was not brought up (*see: 4. maijs. Rakstu, atmiņu un dokumentu krājums par Neatkarības deklarāciju. Rīga: Fonds Latvijas Vēsture, 2000, pp. 456*).

However, at the level of policy planning, the Supreme Council was looking for a solution to this question. "The Platform for Negotiations Regarding Restoration of National Independence of the Republic of Latvia", considered in the meeting of April 4, 1990 by the Fraction of the Latvian People's Front [*Latvijas Tautas fronte*] of the Supreme Council, provided: "In the basis of relations between the Republic of Latvia and the USSR there must be the Peace Treaty of August 11, 1920 signed by the Republic of Latvia and the USSR. The Republic of Latvia is to be restored in the borders of 1940 (including Abrene area)" (May 4, pp. 399).

In the Resolution "On Activities to be Undertaken for the Restoration of the Land Frontier of the Republic of Latvia" by the Council of Ministers of the Republic of Latvia, it was established that "until the time when the question of rejoining of Abrene and its surrounding to the Republic of Latvia will be discussed and solved in the negotiations with the USSR and the RSFSR, the present border shall be established in this place" (*Resolution of the Council of Ministers Nr. 108 Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs, 1990, No. 43*).

The Law "On the Border of the Republic of Latvia" provided that "the border of the Republic of Latvia is established by interstate agreements signed and ratified by the Republic of Latvia up to June 16, 1940 and bilateral agreements subsequently concluded with the neighbouring States regarding restoration of borders" (*Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs, 1991, No. 9*).

In a decision specifically dedicated to the Abrene district, the Supreme Council recognized the acts adopted by the Latvian SSR and the USSR according to which Abrene district was passed to the Russian SFSR to be anti-constitutional, and instructed "the Republic of Latvia delegation to the interstate negotiations with the Russian Federation to resolve the Abrene issue during, including the procedures for the determination of the amount of damages and the compensation of the damages caused to the property of the State of Latvia and of the citizens of the Republic of Latvia in the town of Abrene and the six rural districts of the Abrene District" (*Resolution of the Supreme Council „On the Non-recognition of the Annexation of the Town of Abrene and the Six Rural Districts of the Abrene District" // Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs,* 1992, No. 6/7).

The Republic of Latvia, when initiating negotiations with the Russian Federation, demanded the restoration of the border of July 16, 1940 between both States (*see: Additional explanation by the Cabinet of Ministers, case materials, Vol. 10, pp. 135*). The Republic of Latvia even prepared a draft Treaty on restoration of the State border between Latvia and Russia (*see: case materials, Vol. 10, pp. 150 – 152).* However, the Russian Federation refused to restore the State border that existed on June 16, 1940, since it considered that the Abrene area had been legally joined to Russia.

35.2. The Cabinet of Ministers of the Republic of Latvia, taking into account insistence of the Russian Federation and consistently trying to achieve the conclusion of the Latvian – Russian Border Treaty, amended the mandate of negotiations in the meeting of December 17, 1996.

The delegation to negotiations with the Russian Federation was authorized to carry out negotiations, to develop and to authenticate (to initial) a technical treaty regarding the existent border line between the Republic of Latvia and the Russian Federation. The Cabinet of Ministers permitted the delegation not to include a reference to the Peace Treaty in the text of the Treaty should that be impossible, but also instructed it to avoid any references in the text of the Treaty to any other issues not directly related to delimitation of the borders (*see: case materials, Vo. 10, pp. 161 – 163*).

The Cabinet of Ministers, when commenting the mandate provided for the delegation, states that the concept of "technical treaty" means a treaty, that does not deal with the political issues of interstate relations or other issues that are not directly related to establishment of interstate border (*see: Additional explanations by the Cabinet of Ministers, case materials, Vol. 10, pp. 136*).

Within the limits of such mandate, the Border Treaty was prepared and authenticated on August 7, 1997.

35.3. The Border Treaty establishes the Latvian – Russian State border on the basis of the actually existing border, which is the former administrative border of the Latvian SSR and the Russian SFSR, thus leaving the Abrene district to the Russian Federation.

The Cabinet of Ministers rightly states that the Border Treaty establishes a permanent border. The Border Treaty includes no provisions that would permit considering this border as temporary, limited in time or changeable by unilateral means (*see: Additional explanations by the Cabinet of Ministers, case materials, Vol. 10, pp. 140*). The Russian Federation also interprets this Border Treaty as providing for a permanent border between the both States (*see: Стенограмма 209-го заседания от 19 сентября 2007 г. Совета Федерации Российской Федерации*).

Consequently, in the Border Treaty the Republic of Latvia waives its *de jure* rights to the territory of the Abrene district and with the Border Treaty passes it to Russia.

36. In its reply, the Cabinet of Ministers has argued that the Border Treaty does not change the territory of Latvia, because the Abrene district has already been given to the Russian Federation. The Border Treaty only states in a written form the Latvian – Russian border at the moment the treaty is concluded in accordance with the de *jure* existing territories of both States.

Under international law, territorial changes can take place not only by concluding written international treaties, but also in other ways, e.g. by oral treaties, long-term State practice or unilateral declarations by States. The Cabinet of Ministers considers that the Republic of Latvia has given away its rights to the Abrene district from 1995 to 2005 by Latvian officials consistently refusing any territorial claims against the Russian Federation regarding the Abrene district in unilateral declarations (*see: Response note by the Cabinet of Ministers, case materials, Vol. 4 pp. 102 – 112*).

One must disagree with the view of the Cabinet of Ministers due to several reasons.

36.1. The territory of Latvia can be changed in accordance with the procedure established in the Satversme. The Cabinet of Ministers also recognises this point (*see: Response note of the Cabinet of Ministers, case materials, Vol. 4 pp. 95 – 100*).

The first part of Article 68 of the Satversme provides: "All international treaties, which settle matters that may be decided by the legislative process, shall require ratification by the Saeima."

This provision of the Satversme is concretized in the Law "On International Treaties of the Republic of Latvia". Article 7 of this Law names treaties regarding State borders of the Republic of Latvia as one of the examples of such international treaties.

The objective of Article 7 of the Law "On International Agreements of the Republic of Latvia" is "to classify, according to their subject, those treaties that are, in one way or another, related to national interests or issues particularly relevant to the State. At the same time, from the perspective of international law, these are the treaties that in the international practice are usually concluded in the general form of interstate treaties [..] all these treaties are related to the existence of the State and issues that are important to sovereignty of Latvia, e.g. border or territory issue. [..] Such issues are resolved only on behalf of the State, and therefore the involvement of the Saeima is undeniable, which is established in the next Article – Article 8" (*Ziemele I. Komentārs likumam „Par Latvijas Republikas starptautiskajiem līgumiem" // Juristu Žurnāls, 1995, No. 1, pp. 8 – 9*). Article 8 of this Law provides that the treaties on the borders of the Republic of Latvia are confirmed by a Law passed by the Saeima.

Consequently, there is reason to conclude that the national rights of Latvia prohibit the senior officials of the State from giving up a part of the Latvian territory by unilateral acts. It can be done only by written international treaties that are confirmed according to the procedure established by the Saeima.

The Constitutional Court agrees with the view expressed in the reply of the Cabinet of Ministers that, within the meaning of international law, it is possible to give up territory even if this waiver conflicts with formal requirements of domestic law. However, in the particular case, a fundamental constitutional rule manifestly requires the settlement of the border issue by applying specific methods. *Mutatis mutandis* applying the rule provided in Article 46 of the Vienna Convention on the Law of Treaties of May 23, 1969 (hereinafter – the Vienna Convention), the Constitutional Court does not exclude the possibility that the requirement to resolve border issues by international treaties provided in the Satversme, could provide grounds for contesting the validity of acts that would be in conflict with this rule (*see: ILC 2006 Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations, with Commentaries Thereto // Yearbook of the International Law Commission, 2006, vol. II, Part Two, http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_9_2006.pdf, pp. 372 – 374*).

36.2. When considering the statements of the senior officials of the State of Latvia quoted by the Cabinet of Ministers, it is possible to conclude that they are not clear enough in order to be possible to unambiguously to extrapolate the purpose and the legal consequences of these statements - waiver of the *de iure* rights to the Abrene area. These are mainly

declaratory statements that Latvia is ready to sign the Border Treaty with the Russian Federation and that is has no territorial objections against Russia.

Statement of State officials cited by the Cabinet of Ministers can be interpreted in different ways, however none of them is such that would reach the necessary standard to establish a direct waiver of rights.

Declarations of the State Presidents, the Prime Ministers and Ministers of Foreign Affairs are more likely to indicate the readiness of Latvia to ratify the Border Treaty rather than to unilaterally give up the territory of Abrene. The readiness to undertake international obligations does not *per se* mean the waiver of the rights to the object that these obligations address. Declarations that the Cabinet of Ministers points to in fact support exactly the opposite position. They evidence the understanding of Latvia of the necessity to ratify the Border Treaty as soon as possible in order to solve the legal dispute regarding the Abrene area. If the legal status of the Abrene area had already been solved, Latvia would have no need to refer to it as one of the possible obstacles on the way to Latvia's membership in the European Union and the NATO.

36.3. When considering these statements, one has to take into account that the Cabinet of Ministers has not indicated in its reply some very important statements of 2005 that considerably change the sequence of seemingly unanimous statements by State senior officials constructed by the Cabinet of Ministers.

Paragraph 2 of the Declaration "On the Republic of Latvia and the Russian Federation Treaty on the State Border of Latvia and Russia" states that Latvia considers the line established in Article 1 of the Border Treaty as the *de facto* border line. Paragraph 3 of this declaration declares that the Border Treaty does not affect the elimination of the consequences of the occupation of Latvia, as well as the rights provided by the Peace Treaty. The issue of State sovereignty of the Abrene area is closely related to both the elimination of the consequences of the occupation, as well as with rights to this territory guaranteed by the Peace Treaty.

When commenting this declaration, the Minister of Foreign Affairs A. Pabriks wrote: "The Declaration is a unilateral political document with constitutional implications, namely, it enables the State of Latvia to conclude the Border Treaty with Russia by taking note of the existing and real border between our States and simultaneously retaining our understanding that a) Latvia has been occupied and b) Abrene came to the territory of Russia as a consequence of the occupation and in breach of the Peace Treaty of 1920. [..] This Declaration means that Latvia unilaterally reserves the right to speak about the consequences

of the occupation when Russia will want it itself" (*Pabriks A. Robežlīgums nedrīkst būt „beigta ēzeļa ausis" // Diena, May 28, 2005*).

It is not possible to conclude that Latvia has lost its *de iure* rights to the Abrene area due to the unilateral acts,

36.4. The Republic of Latvia has not unilaterally waived its rights to the Abrene area. Similarly, the Russian Federation has not achieved these rights through legal means, although the Abrene area is under the *de facto* control of Russia. The rights of Russia – the continuator State of the USSR –to the Abrene area are the same rights that that the USSR had towards Latvia *in toto*, namely, lack of any rights whatsoever following from the illegal annexation. However, in principle Latvia can waive its rights to the Abrene area in favour of the continuator State of the State that committed the illegal annexation. Still, the rights to the Abrene area can be given by the Border Treaty only. This means that Latvia shall lose and Russia shall gain the *de iure* rights to the Abrene area when the Border Treaty comes into force.

Within the meaning of international law, the Border Treaty can be regarded as a treaty of cession, whereby one State passes a particular territory to the other State (*see: Brownlie I. Principles of Public International Law, pp. 128*). The fact that the other State already is in possession the territory in question and the fact that the first State does not contest this possession does not mean that cession does not take place [*see: Affaire des réparations allemandes selon l'article 260 du Traité de Versailles (Allemagne contre Commission des Réparations) (3 September 1924) // Reports of International Arbitral Awards, Volume 1, pp. 429, 443 – 444, http://untreaty.un.org/cod/riaa/cases/vol_I/429-528.pdf; Jennings R.Y. The Acquisition of Territory in International Law. Manchester: Manchester University Press, 1963, pp. 14*].

The limits of the competence of the Constitutional Court are established by the Constitutional Court Law, which does not confer the rights to the Constitutional Court to assess the political expediency of activities by other constitutional institutions of the public power (*see: Judgment of November 11, 2005 in the vase No. 2005-08-01 by the Constitutional Court, Para 9 and judgment of May 10, 2007 in the case No. 2007-10-0102, Para 10).* The Constitutional Court is not entitled to assess political expediency of ceding the Abrene area to the Russian Federation and it will not assess it within the limits of this case. The task of the Constitutional Court is to assess whether the requirements of the constitutional norms of Latvia have been observed during the process of ceding the Abrene area.

Consequently, the Constitutional Court has to assess within the limits of this case the whether *de iure* cession of the Abrene area to the Russian Federation complies with the rules of the Satversme and the Declaration of Independence.

VI

37. Article 3 of the Satversme provides: "The territory of the State of Latvia, within the borders established by international agreements, consists of Vidzeme, Latgale, Kurzeme and Zemgale".

Article 3 of the Satversme, mentions Vidzeme, Latgale, Kurzeme and Zemgale as historically ethnographic regions of Latvia that constitute the State territory of Latvia. Before passage of this Article, the claim was made for merging of Vidzeme, Latgale and Kurzeme into one State, where the term "Kurzeme" implied the Kurzeme province of that time that consisted of historically ethnographic regions of Kurzeme and Zemgale.

The Applicant and the Cabinet of Ministers, basing themselves on different sources and using different methods of legal interpretation, reach contrary conclusions regarding the content of Article 3 of the Satversme. The Constitutional Court, in its earlier case law, has never interpreted Article 3 of the Satversme. In the frameworks of this case, one has to consider sources that could persuasively explain the content of Article 3 of the Satversme, and to investigate the correctness of the arguments provided by the participants of the case.

One can agree to the Applicant who has emphasized: whatever interpretation of Article 3 of the Satversme is considered to be correct, it has to be logical, internally harmonious and justified by historical facts (*see: case materials, Vol. 1, pp. 5).*

38. At the beginning of the XX century, the historically inhabited ethnographic regions of the Latvian people – Vidzeme, Kurzeme and Latgale – still did not form a single administrative entity but were contained in three different provinces of Russia. The Kurzeme province included ten districts inhabited by the Latvians, the Vidzeme province – four Latvian and five Estonian districts, the Vitebsk province – three Latvian and eight Byelorussian and Russian districts (*see: pp. 45*). Such a division of territories inhabited by the Latvians into different provinces of the Russian Empire reflected historical struggles of High Powers about the territory inhabited by Latvians, and the order, in which these territories were joined to the Russian Empire. The Russian Empire obtained the Vidzeme province in the result of the North War from Sweden, taking official note of it in the 1721 Peace Treaty. The Latgale territory was annexed to the Russian Empire during division of the State of Poland in 1772.

The Kurzeme province was created in the territory of Kurzeme and Zemgale dukedom that was incorporated into the territory of the Russian Empire in 1795.

The claim to unite all territories inhabited by the Latvians into one territorial entity emerged even earlier than the idea of a national State.

38.1. During the 1905 revolution, for the majority of Latvian societal activists, the idea of a national State was not yet an urgent one. However, even in this period, some societal activists defined an idea regarding the necessity to form their own independent State. For instance, M. Valters, already in 1903, publicly expressed an opinion that Russia is to be divided into land organizations that would be formed according to pure principles of democracy and that would be conferred the rights of total self-organization and self-action. M. Valters saw a possibility for preservation of the Latvian people particularly in independence of Latvia from Russia. (*see: Šilde Ā. Miķelis Valters kā tiesībnieks un valstsvīrs // Šilde Ā. Trimdinieka raksti. 1944 – 1990. Minstere: apgāds Latvija, 1991, pp. 270 – 271*). However, in the first congress of the Latvian Social Democrat Alliance, at the end of 1905, only the issue of merging of the territories inhabited by the Latvians into one municipal region was discussed. In the resolution of this congress, it was concluded: "All territories inhabited by the Latvians, Kurzeme, Vidzeme, Inflantija (i.e. Latgale) merge into one municipal region of Latvia" (*Apine I. 1905. – 1907. gada revolūcija Latvijā un latviešu sociāldemokrāti. Rīga: Zelta grauds, 2005, pp. 33*).

The deputy of the second State Council of Russia, Dr. Andrievs Priedkalns, on March 12, 1912, submitted a draft law on the Baltic Territory into the State Council. It was a radical draft of a Latvian local government (autonomy) that provided for formation of united Latvia, including Latgale (*see: Apine I. 1905. – 1907. gada revolūcija Latvijā, pp. 48*).

In the work of M. Skujenieks "National Issue in Latvia" that was published the following year, its author demanded to form one administrative region of Latvia from all regions inhabited by the Latvians – Kurzeme, Vidzeme and Latgale – and the region should be provided with a wider self-government and possibilities of free development of the national culture (*see: Ģērmanis U. Ceļā uz Latviju. Raksti par mūsu vēsturi. Rīga: Memento Latvija, 1993, pp. 11*).

Also in the Ludza, Rēzekne and Daugavpils districts of the Latvian-inhabited Vitebsk province in this period a claim emerged to joining Latgale to the other provinces inhabited by the Latvians. Francis Trasuns wrote in 1916: "We all – inhabitants of Kurzeme, Vidzeme and Vitebsk – are but one inseparable nation [..]. Unification is necessary for us nationally, administratively and culturally" (*Par latviešu apvienošanu tautiskā, administratīvā un kulturālā ziņā // Trasuns F. Dzīve un darbi. Vol. 1. Rēzekne: Latgales kultūras centra*

izdevniecība, 1997, pp. 120). Another Latgalian politician, Francis Kemps, later wrote, regarding the discussions of that time: "Latgalians at that time were not some kind of a small nation somewhere in a dark corner of Russia, having no relatives or friends. Latgalians were a tribe and descendants of the great Latvian people with their own state and a king! [..] During less than ten years, Latgalians became conscious of themselves that they are a living part of the Latvian people and that a better future can be achieved only by means of mutual collaboration and by friendly joining hands above the chasm that has been created between the parts of the nation during centuries" (*see: Kemps F. Latgales likteņi. Rīga: Avots, 1991, pp. 133 – 146*).

The claim to unification of all historically ethnographic regions inhabited by the Latvia was expressed not only in political declarations and projects of reorganization of the existent regime, but also in the Latvian culture. e.g. in the poem of Rainis of 1916, "Daugava" (*see: Rainis. Daugava. Rīga: Zvaigzne ABC, 59. lpp.*).

38.2. The Russian Empire did not want to politically deal with the issue regarding unification of the Latvian-inhabited territories into one administrative entity. As the Empire became weaker in the result of the First World War, the claim of the Latvians to the unity of the nation only became stronger. After the revolution of 1917, when the tsarist government was subverted in Petrograd, the Latvian politicians and intellectuals initiated unification of the historically ethnographic regions inhabited by the Latvians prior to raising the claim of independence.

On February 18, 1917, "The Basic Principles of the Latvian Unity" were published. They *inter alia* provided that Latvia contained all Latvian-inhabited regions, i.e. Kurzeme, Vidzeme and Latgale (*Latvijas vienības pamata principi // Dzimtenes Atbalss, February 18, 1917, No. 14*).

On March 4, 1917, representatives of 48 different Latvian organizations assembled in Riga and founded the Riga Council of Non-Governmental Organisations. This Assembly also passed a resolution regarding the issue of an autonomy that included a claim that "Latvia has to be a single and autonomous province" (*Resolutions of the Riga Public Organizations' Council // Dzimtenes Atbalss, March 15, 1917, No. 21*).

On March 25 and 26, 1917, the Vidzeme Territory Assembly was convened, where about 440 delegates from towns, civil parishes, parishes and largest associations took part (*see: Ģērmanis U. Ceļā uz Latviju, pp. 34*). This Assembly established in regards to autonomy of Latvia: "Latvia (Vidzeme, Kurzeme and Latgale) has to be an autonomous and indivisible province of Russia with the rights to self-determination" (*Zemes sapulce Valmierā // Dzimtenes Atbalss, March 22, 1917, No. 23*). On April 25 – 26, 1917, the Kurzeme Territory

Assembly was convened in Tērbata where representatives of the refugees of Kurzeme took part. This Assembly passed a resolution on the autonomy of Latvia: "Latvia (Vidzeme, Kurzeme and Latgale) is an autonomous State in the Federation of the Russian States" (*Blanks E. Kurzemes zemes sapulce // Dzimtenes Atbalss, May 6, 1917, No. 35*).

The Latgale Congress of April 26 and 27, 1917 was particularly important for the unification of Latvia (*see: Bukšs M. Latvijas apvīnōšonas kongresi kai satversmes pamatu licēji // Dzeive, 1967, No. 82, pp. 3 – 11*). The decision to convene the congress was made in a special conference on April 6 and 7, 1917. In this conference, the chairman F. Trasuns appealed to reunite the nation torn apart. He emphasized that in ancient times the Latvians had been a single nation, but foreigners had split it (*see: Trasuns F. Dzīve un darbi, pp. 67*). 232 representatives from all local governments of the Latvian-inhabited districts of the Vitebsk province with voting rights and 118 guests participated in the Latgale Congress (*see: Trasuns F. Dzīve un darbi, pp. 70*).

The Latgale Congress had to decide on three possible versions of the future of Latgale – "to remain a part of the Vitebsk province as of old", "to try to form an autonomy of Latgale in Russia on its own" or to unite with the rest of the Latvians into one administration unit (*see: Trasuns F. Dzīve un darbi, pp. 71*). High-pitched debates regarding the future of Latgale took place, because a comparatively small group of delegates lead by F. Kepms demanded separation of Latgale both from Russia and Latvia. After the majority of the Congress supported the viewpoint that it was preferable to unite Latgale with Latvia, the 39 delegates that supported F. Kemps left the premises of the Congress. The remaining participants of the Congress unanimously voted for the submitted resolution "To Unite with the Latvians of Kurzeme and Vidzeme into a Single Political and Autonomous State of Russia" (*see: Kemps F. Latgales likteņi, pp. 150 – 153*).

Nevertheless, such decisions of Latvian land councils were not accepted by Russian Provisional government. On June 22, 1917, the Provisional government did not permit uniting Latgale with Vidzeme, and it remained a part of the Vitebsk province. It became clear that the Russian Provisional government would not implement unification (*see: Ģērmanis U. Ceļā uz Latviju, pp. 34*).

38.3. At the end of 1917, provisional territorial councils, political parties and non-governmental organizations formed the Latvian Provisional People's Council "for management and regulation of common affairs of the Latvian people" (*Dišlers K. Ievads Latvijas valststiesību zinātnē, pp. 57 – 59*).

In the first session of the Latvian Provisional People's Council on December 16 – 19, 1917 in Valka, several acts regarding the future of Latvia were passed. In the note to the

foreign States, the Council indicated: “Latvia that consists of Vidzeme, Kurzeme and Latgale, is an autonomous State entity” (*Dišlers K. Ievads Latvijas valststiesību zinātnē, pp. 58*).

In the second session of the Latvian Provisional People’s Council, that took place on January 15 – 18, 1918 in Petrograd, the decisive step was made towards independence of Latvia. After large discussions, a resolution was passed, wherein the Latvian Provisional People’s Council concluded: “Latvia has to be an independent and democratic republic that would unite Kurzeme, Vidzeme and Latgale” (*Šulcs L. Atskats uz Latvijas valstiskās idejas izveidošanos // Tieslietu Ministrijas Vēstnesis, 1926, No. 7/8, pp. 306 – 309*).

The Latvian Provisional People’s Council developed the claim to unite the Latvian-inhabited into one territorial entity to the idea of a national State. Creation of a national state was related to the obligation to unite into one state all regions inhabited by the Latvians. “Indivisibility of Latvia is one of the basic claims that is to be considered as the principal when considering ensuring the existence of the Latvian people and their development in future. The power of the nation lies only in its unity and community and its existence is endangered if this unity is already purely physically broken” (*Ziņas par Latviju. Rakstu krājums, No. 4, June 1, 1918, pp. 1*).

38.4. The task of creation of the State of Latvia was completed by the Latvian People’s Council. In the Act of Proclamation of the Republic of Latvia, the Latvian People’s Council established: “Latvia – united within its ethnographic borders (Kurzeme, Vidzeme and Latgale) – is an autonomous, independent, democratically-republican State”.

Unification of the nation was one of the main objectives of the Latvian Provisional Government also after proclamation of the Republic of Latvia. “The Latvian Provisional Government strives to achieve unification of all Latvian people into one state – Latvia. Until now, our nation has been divided according to their inhabited territories into different provinces: Vidzeme, Kurzeme and Latgale (the Vitebsk province) that were supervised by Russian governors. [..] The end of the World War has brought to the nations new truths and freedoms, and the Latvians also have to be united into a common entity – the State of Latvia” (*Latvijas Pagaidu valdības mērķi. Rīga: Jūlija Pētersona tipogrāfija, 1918, pp. 3 – 4*).

In this aspect, the idea of unity of Latvia is embodied by the tree stars as the symbol of Latvia. “The tree stars [..] symbolize the tree historically administrative parts (the Kurzeme province, the Latvian districts of the Vidzeme province, the Latvian districts of the Vitebsk province) from which the Republic of Latvia was created in 1918” (*Stradiņš J. Sēlijas problēma laikmetu skatījumā // Latvijas zemju robežas 1000 gados. Rīga: Latvijas vēstures institūta apgāds, 1999, pp. 271*).

39. The Cabinet of Ministers has argued that one of the objectives of Article 3 of the Satversme was to make more inconvenient the possible separation of Latgale from the rest of the territory of Latvia (*see: case materials, Vol. 4, pp. 87 – 89*).

When considering the claim for the autonomy of Latgale as an expression of Latgalian separatism, the Cabinet of Ministers concludes that by passage of Article 3 of the Satversme, the Constitutional Assembly has precluded a possible separation of Latgale from the rest of the territory of Latvia.

39.1. One cannot deny that some Latgalian politicians wanted to achieve autonomy and independence of Latgale from Russia, as well as from Latvia. However, when deciding the future of Latgale, the opinion of these politicians was not decisive. The inhabitants of Latgale had repeatedly confirmed their wish to unite with other territories inhabited by the Latvians into one territorial entity. Such decisions was made not only by the First Civil Latgale Congress of April 26 – 27, 1917, but also repeated by the Second Latgale Workers', Soldiers' and Peasants' Congress of December 16 – 17, 1917, the convening of which was proposed by Bolsheviks. Out of 345 delegates of this congress, 202 voted for joining Latvia, whereas only 74 delegates voted against (*see: Počs K. Latgales kongresa 90. gadadienu sagaidot // Conference "Identity of the Nations of Latgale, Yesterday and Today", on April 20, 2006, in Rezekne. Rēzekne: Latgales kultūras centra izdevniecība, 2006, pp. 3 – 4*).

Voting for unification of Latgale with the rest of Latvia that took place both at the beginning of 1917 in the conditions of civil democracy and in 1917 – 1919 in the conditions of Soviet power clearly confirmed the will of the inhabitants of Latgale to form their future together with the rest of regions of Latvia, rejecting the option of remaining a part of the Vitebsk province and Russia.

39.2. In the First Latgale Congress, when deciding on unification of Latgale with Latvia, the rights of Latgale to decide upon its own local governments, language, school and church affairs were demanded. This claim in particular, in the Constitutional Assembly, was included in the idea on the autonomy of Latgale, strengthening of which the deputies of the Constitutional Assembly elected from Latgale tried to achieve (*Bukšs M. Satversmes izstrādāšona un Latgolas pārstāvu uzskoti par tū // Dzeive, 1953, No. 13, pp. 25 – 27*).

This claim of these representatives of Latgale was called as separatism by other members of the Constitutional Assembly. The Cabinet of Ministers, when quoting the speeches of the deputies of the Constitutional Assembly "on Latgalian separatism", *inter alia* indicated that that "separatism, it its turn, means a desire to separate a territory or a region from the State, which rules over it" (*see: case materials, Vol. 4, pp. 87*).

Taking into account the content of the idea of the Latgale autonomy, one cannot agree to such opinion of the Cabinet of Ministers. The politician F. Trasuns submitted the justification of the claim to the Latgalian autonomy: "What exactly do the Latgalians then demand? Not a State! They demand the decisive say on officials, administration and school affairs. [..] The Latgalians support unity of the State, strengthening of the State, order in the State and welfare of the nation, everything that protects interests of the nation, however, they will still protect their own individuality. Gentlemen, this is not separatism" (*Transcript of the 2nd meeting of the IV session of the Latvian Constitutional Assembly, September 21, 1921*). F. Kemps, the most radical Latgalian politician of that time, did not demand separation of Latgale from Latvia at the Constitutional Assembly: "I will ask you, gentlemen – who was the first to start speaking of unification of the Latvian people? Was this an idea of the Baltic people or the Latgalians? If we recall our history from 1900 to 1907, we will see that the Latgalians were the first who started speaking of unification. [..] The Latgalians wrote in the Baltic newspapers and propagated the idea of unification. They were not afraid of political constraint, which was faced by those who ventured on propagating the idea. The Latgalians still hold to this idea" (*Transcript of the 8th meeting of the IV session of the Constitutional Assembly, October 5, 1921*).

One can agree to the Applicant that in the programmes of Latgalian political parties of the parliamentary Latvia contained no slogans that would manifest separatism or plans to separate Latgale from the rest of Latvia. Just to the contrary– it was characteristic for the Latgalian political parties to raise claims for strengthening of unity of Latvia. For instance, the programme of 1924 of the Latgale Democratic Party *inter alia* demanded to "facilitate mutual understanding of the parts of the nation" (*Latgaliešu politiķi un politiskās partijas neatkarīgajā Latvijā. Rīga: Jumava, 2006, pp. 56.*). The slogan of the programme of 1925 of the Latgale Latvian National Policy Party was "God and Independent Latvia" (*Latgaliešu politiķi un politiskās partijas, pp. 261*). The programme of 1932 of the Progressive Farmers' Party even included a claim to diminish social differences between the regions of Latvia (*see: Latgaliešu politiķi un politiskās partijas, pp. 289*).

39.3. The preparatory materials of the Satversme show that the issue of the rights of the self-government of Latgale was discussed separately from Article 3 of the Satversme.

First of all, in the second reading of Chapter I of the Satversme, Latgalian representatives proposed to regulate the issue in a separate article by including the following Article in Chapter I of the Satversme: "Latgale enjoys the local government rights of a region that shall be established by a separate law". This proposition did not gain the support of the

majority of the representatives (*Transcript of the 8th meeting of the IV session of the Constitutional Assembly, October 5, 1921*).

In the third reading of Chapter I of the Satversme, the Latgalian representatives suggested supplementing Article 3 of the Satversme by the following sentence regarding rights of the Latgale local government: "Latgale enjoys the local government rights that shall be established by a separate law". When speaking on behalf of the Constitutional Commission, M. Skujenieks asked to decline this proposition, because "Article 3 of our Satversme does not speak of the regions or separate entities of the territory as having particular local government rights, but it provides for the parts that form the State of Latvia" (*Transcript of the 8th meeting of the IV session of the Constitutional Assembly, February 8, 1922*). The Constitutional Assembly rejected the submitted proposition.

The suggestion regarding Latgalian local government was submitted for the third time when discussing Chapter II of the Satversme in the third reading: "Latgale enjoys large local government rights of a region, the borders of which shall be established by a separate law". This suggestion was also rejected (*see: Transcript of the 33 meeting of the V session of the Constitutional Assembly, April 4, 1922*).

One can conclude from the discussions that took place in the Constitutional Assembly that Article 3 of the Satversme does not regulate the issue of the local government or autonomy rights neither of Latgale, nor the other territorial entities. In order to confer such rights, the legislator is entitled to decide without making amendments to Article 3 of the Satversme.

Although the Constitutional Assembly rejected the claim of the Latgalians to the rights of a decentralized State administration and the local government rights of the Latgale region, this did not make the Latgalian politicians and the society to review relations of Latgale with Latvia. "Disregarding the fact that the Latgalians in the Constitutional Assembly, so to say, were given a beating and the Latgalians abstained from voting when passing the Satversme of Latvia thus protesting against betrayal of their interests and ensuring their free hand in future, the Latgalians still have been and will always remain loyal to the State, as well as its constitution" [*see: Bukšs M. Satversmes sapulce un Latvijas Satversme (Sakarā ar I tautas vālātō parlamenta 50 godim) // Dzeive, 1970, No. 100, pp. 6*].

40. Article 3 of the Satversme carries out the historical claim of the Latvian people for a single Latvia by uniting Vidzeme, Kurzeme and Latgale [*see: Vanags K. Latvijas valsts satversme. L. Rumaka apgāds Valkā (DP nometnē Vācijā), 1948, pp. 15*]. The claim included in this Article and that has emerged during the period of awakening of the Latvian people and

the 1905 revolution would be defined almost identically in all subsequent important decisions of representatives of the Latvian people.

40.1. The objective of Article 3 of the Satversme was to define not to much the territory of the State of Latvia but rather the principle of unity of all ethnographic regions of Latvia inhabited by the Latvians. As M. Skujenieks emphasized in the discussions of the Constitutional Assembly, "The aim of the Commission was to indicate that the State of Latvia consists of four ancient lands of Latvia: Vidzeme, Kurzeme, Latgale and Zemgale (*Transcript of the 7th meeting of the IV session of the Constitutional Assembly, October 4, 1921).*

Article 3 of the Satversme provides for self-determination of the Latvian people. This Article defines the territory within which the Latvian people have self-determined themselves, namely, within all historically ethnographic regions inhabited by the Latvians. Consequently the State of Latvia satisfies the claims of self-determination of the Latvians if its territory is constituted by Vidzeme, Latgale, Kurzeme and Zemgale. "According to Article 3 of the Satversme, the State of Latvia encircles all the land, the territory where the majority of the Latvian people live – Vidzeme, Latgale, Kurzeme and Zemgale, within the borders established by the international treaties" (*Speech of J. Purgals, transcript of the first meeting of the IV session of the Constitutional Assembly, September 20, 1921*).

40.2. Articles 1 and 3 of the Satversme are closely related to Article 1 of the Proclamation Act of the Republic of Latvia. These two articles of the Satversme reformulate Article 1 of the Proclamation Act: "Kurzeme, Vidzeme and Latgale) – is an independent, democratically-republican State". Together with the principle of the independent democratic republic, the principle of unity of all historically ethnographic regions inhabited by the Latvians is one of the basic principle of the statehood of Latvia.

Article 1 of the Declaration on the State of Latvia of May 27, 1920 provides only that "Latvia is an independent republic with a democratic State system". At that time, the Constitutional Assembly considered the idea of united Latvia as a politically completed objective. "This objective had a character of a programme in the platform of the People's Council, because thus it was necessary that Latvia, being torn apart at that time, were united into one common inseparable body. Now it is self-evident and therefore the word "united" is not included in Article 1 of the Declaration" (*Speech of M. Skujenieks, transcript of the meeting 5 of the first session of the Constitutional Assembly of Latvia, May 27, 1920).*

However, later the Constitutional Assembly again considered it necessary to establish in the text of the Satversme, along with the principles of State sovereignty and democratic republic, also the principle of unity of all historically ethnographic regions inhabited by the Latvians by providing for the same amendment procedure for these basic values of the

statehood of Latvia – only by submitting to a national referendum (Article 77 of the Satversme).

40.3. The State of Latvia was formed as a national state in the way of self-determination of the Latvian people within the territories inhabited thereof – Vidzeme, Latgale, Kurzme and Zemgale. A territorial question in a national State is a question about the essence of the State. The territory of such state is not accidental but forms a logic entity (*see: Römeris M. Lietuvos konstitucinės teisės paskaitos. I dalis. Kaunas: Vytauto Didžiojo Universiteto Teisių fakulteto leidinys, 1937, pp. 204 – 206*). A national State has to include the entire territory inhabited by the nation forming the State, and it cannot freely give away this territory to other States. Consequently in national States, territorial changes are dealt with by definite burdens of the constitutional nature (*see: Römeris M. Lietuvos konstitucinės teisės paskaitos, pp. 204 – 206*).

The text of the Satversme provides for four historical ethnographic regions that together form the State of Latvia. Consequently Article 3 of the Satversme precludes a completely free establishment of the common territory of the State of Latvia by international treaties. These treaties have to be such as to include all four historical regions of Latvia (*see: Levits E. Notes on Article 3 of the Satversme, case materials, Vol. 6, pp. 199*).

40.4. The Satversme does not establish the idea of united Latvia as forever irrevocable. Under Article 77 of the Satversme, Article 3 can be amended, namely, only the Saeima and the body of the Latvian people may decide, on the basis of a common decision, on refusal from unity of regions inhabited by the Latvians by separating any of the historically ethnographic regions from the territory of the State of Latvia. One can agree to the point of view expressed by the Cabinet of Ministers that Article 77 of the Satversme is to be applied in the case if changes in the territory of the State of Latvia affect any of the historical regions in their entirety or such a considerable part thereof that the historical region itself *de facto* ceases existing as an element of united Latvia (*see: case materials, Vol. 10, pp. 145*). Territorial changes that affect the territory of four historical regions inhabited by the Latvians, within which the self-determination of the Latvian people has took place, is to be considered according to the procedure established by Article 77 of the Satversme. Similarly, Article 77 of the Satversme does not prohibit considerably adding to the territory of the State of Latvia by joining the regions inhabited by other nations.

At the same time, this provision of the Satversme prohibits each region of Latvia from independently deciding its fate. In the course of unification of Latvia, inhabitants of each regions, through the agency of their representatives, decided, on their own account, on their fate and joining the other territories inhabited by the Latvians, but after passage of the

Satversme, the issue of abolishing of this unification falls within the competence of all Latvian people, rather than that of the inhabitants of a particular historical region.

40.5. The Constitutional Assembly has preserved in Article 3 of the Satversme, by providing for uniting of all regions inhabited by the Latvians into one common State, the historical division of the State of Latvia into Vidzeme, Latgale, Kurzme and Zemgle. When deciding on State affairs, one has to take into account that the united State of Latvia was historically formed by four regions inhabited by the Latvians.

41. In order to implement the claim of uniting all Latvian regions into one state, Latvia should include the territories of all regions inhabited by the Latvians – Vidzeme, Latgale, Kurzeme and Zemgale. Due to this reason, the Proclamation Act of the Republic of Latvia establishes one of the basic principles that Latvia is a State united within its ethnographic borders.

41.1. These regions mentioned in the Proclamation Act and Article 3 of the Satversme are, first of all, territories inhabited for a long time by the Latvian people, the borders of which have changed in the course of history (*see: Levits E. Notes on Article 3 of the Satversme, case materials, Vol. 6, pp. 199*). Also in the negotiations with Russia on conclusion of the Peace Treaty, the leader of the Latvian delegation, A. Zēlbergs, emphasized that the ethnographic border is not strictly defined and it changes in the course of time (*see: Peace negotiations between Latvian and Russia, 4th meeting, April 20, 1920, pp. 6. Archive of the history of the Republic of Latvia, fund No. 1313, case No. 31, pp. 27).* However, at the same time the ethnographic borders of Latvia were clear enough. The Constitutional Court has already taken note of the interpretation of this notion during the period of the Provisional Latvian People's Council and the Latvian People's Council (*see: Para 20 of this judgment).*

The notion of the territory of Latvia was used in the normative acts of Latvia, even before the conclusion of border treaties with the neighbouring States. For instance, Article 1 of the Law on Citizenship of August 23, 1919 clearly provides that "Citizens of Latvia shall be considered to be each resident of the previous State of Russia, without distinguishing the nationality and religion, now residing within the borders of Latvia, who comes from the regions that are included into the territory of Latvia or were pertaining to these regions before August 1, 1914 according to the laws of Russia". Whereas Section 5 of the Constitutional Assembly Law of August 19, 1919 provided for organizing Constitutional Assembly elections in Riga, Vidzeme, Kurzeme, Zemgale and Latagle. In addition to this, the note to Article 22 emphasized in particular that "election activities can be initiated only when the territory of Latgale is liberated".

41.2. The border treaties concluded with the neighbouring States of Latvia also reflected to a great extent the ethnographic borders of Latvia, however at separate sections of the borders territorial concession had taken place in favour of the other State, or Latvia has acquired new territories that exceeded its ethnographic borders.

Article 3 of the Satversme less requires uniting of Vidzeme, Latgale, Kurzeme and Zemgale into one state according to their ethnographic borders than takes note that these regions constitute the State of Latvia within those borders that were established in the international treaties with the neighbouring States. The reference to the borders established in the international treaties, which is included in Article 3 of the Satversme, takes note of the fact that the State of Latvia had not succeeded in fully uniting all the territories inhabited by the Latvians, namely, in separate cases some insignificant parts thereof have became parts of other States.

Article 3 of the Satversme prohibits interpreting the borders of the Vidzeme, Latgale, Kurzeme and Zemgale regions wider that it is established by the international treaties. The international treaties normatively establish the external borders of the four regions inhabited by the Latvians. M. Skujenieks indicated this aspect in the discussions of the Constitutional Assembly: "The Commissions recognized that, due to foundation of the State of Latvia, some of the previous provinces have changed their borders. For instance, Vidzeme does not entirely belong to Latvia, and similarly the Constitution of Estonia could also provide for Vidzeme as a part of Estonia. It is established in the Constitution that the borders provided in the international treaties are permissible" (*Transcript of the 7th meeting of the IV session of the Constitutional Assembly, October 4, 1921*).

However, in the cases when the Republic of Latvia had achieved joining thereto of separate territories that did not belong within the ethnographic borders of Latvia, Article 3 of the Satversme prohibited including these territories into any of the regions inhabited by the Latvians. Vidzeme, Latgale, Kurzeme and Zemgale had their own borders as historically ethnographic regions. The fact that Article 3 of the Satversme does not mention any territory that is beyond these four regions that constitute the State of Latvia, does not mean that there are no such territories. Similarly, Article 2 of the Constitution of Germany of August 11, 1919 provided that the territory of Germany shall be formed by the territories of its lands. This did not prohibit considering that the territory of Germany included such a region that did not pertain to any of the German lands but was directly subordinated to the central government (*see: Anschütz G. Die Verfassung des Deutschen Reichs vom 11. August 1919, pp. 43*).

42. The Applicant argues that Article 3 of the Satversme does not provides for any changes to be made to the territory of the State of Latvia established therein. The Applicant justifies its opinion by making references to the opinions expressed during the drafting process of Article 3 of the Satversme (*see: case materials, Vol. 1, pp.6).*

42.1. The statement of M. Skujenieks quoted by the Applicant that Article 3 of the Satversme "is not intended for the international treaties to change the borders of the State of Latvia" (*Transcript of the 7th meeting of the IV session of the Constitutional Assembly of October 4, 1921)* should be considered in the context of the debates that M. Skujenieks commented when expressing these thoughts.

The Constitutional Assembly was discussing the propositions put forward by A. Bergs and A. Buševics to make editorial amendments to Article 3 of the Satversme proposed by the Constitutional Commission because it followed from the wording submitted by the Commission ("The territory of the State of Latvia is composed of Vidzeme, Latgale, Kurzeme and Zemgale within the borders established in the international treaties") that the international agreements would establish not only the external borders of Vidzeme, Latgale, Kurzeme and Zemgale, but also their internal borders, which are the internal affairs of the State of Latvia. The members of the Constitutional Assembly of Latvia held that the internal borders of the regions of Latvia are to be established by means of legislation, rather than by the international treaties. A. Bergs, when justifying his proposition, indicated: "One cannot permit that the international treaties determine the borders of Vidzeme, Latgale, Kurzeme and Zemgale, since we cannot imagine that the international treaties would interfere with our internal border relations. [..] Our internal borders, separate regions of the State shall be established by ourselves. [..] Our internal laws will establish what our borders will be. In order to avoid any misunderstandings, I would then suggest to put the words "in the laws of Latvia and" between the words "Zemgale" and "international treaties". Then it would mean that the borders will be established in the laws of Latvia and the international treaties. One cannot permit that only the international agreements establish our borders. Our internal laws have the parallel determination" (*Transcript of 7th meeting of IV session of the Constitutional Assembly, October 4, 1921).*

At the same time, A. Buševics objected both to the wording suggested by the Constitutional Commission and the proposition of A. Bergs: "The suggestion of Mr. Bergs does not reach what Mr. Bergs wants. The reproach that the borders of the regions of Latvia should be determined by the local laws rather than the international treaties is right. If we then accept the wording of Mr. Bergs that the borders shall be established in the laws of Latvia and the international treaties, then it appears that the international agreements also determine the

internal borders of the regions of our State. No doubt that this is not the intention. Hence I suggest having the following wording of the Article: The territory of the State of Latvia, according to the borders established by the international treaties, is composed of Vidzeme, Kurzeme, Latgale and Zemgale" (*Transcript of 7th meeting of IV session of the Constitutional Assembly, October 4, 1921).*

When commenting the suggestions of A. Bergs and A. Buševics submitted to the Constitutional Assembly regarding the wording of Article 3 of the Satversme, M. Skujenieks emphasized that the Constitutional Commission had not thought that it would be possible to change the borders of Latvia by the international treaties. However, it follows from the context of the discussions that M. Skujenieks meant changes that can be made to internal borders of Latvia, which is the issue that falls within the competence of the legislator. J. Purgals, the second reporter of the draft law of the Satversme made more precise remarks on this question: "For instance, one cannot raise a question whether the international treaties could establish the borders between Vidzeme, Zemgale, Latgale and Kurzeme. This is the issue of legislation, but Article 3 can be amended only in a national referendum. I think that these amendments are unnecessary, they want to define that there is freedom to establish borders between these four regions by legislation, but the legislative authorities have not been deprived of these rights, and the internal borders can be established only by the sovereign power of the State of Latvia, and other States are not entitled to interfere" (*Transcript of 7th meeting of IV session of the Constitutional Assembly, October 4, 1921*

Hence the opinion that M. Skujenieks would have declared on behalf of the Constitutional Commission that Article 3 of the Satversme prohibits changing the external borders of Latvia is unjustified.

42.2. The discussions of the Constitutional Commission regarding the wording of Article 3 of the Satversme are fragmentary and do not provide a full insight into the decisions made. A member of the Constitutional Commission, F. Menders has suggested that one cannot "voluntarily" pass a part of Latvia to a foreign power, however the protocols of the Constitutional Commission do not reflect whether that this suggestion has been accepted (*See: Transcript of the meeting of February 28, 1921 of the Constitutional Commission, Protocol No. 30).*

One can generally establish in the constitution of a State that the State territory is indivisible and inalienable, however, it has to be established *expressis verbis* and by a clearly formulated rule. For example, Article 1 of Chapter II of the France Constitution of September 3, 1791 provided for the territory of France as being indivisible. A similar norm has been included into Article 1 of the Ukraine Constitution of April 29, 1918. Whereas Article 2 of the

Lithuania Constitution of February 11, 1938 provided for a prohibition to separate those lands from Lithuania that under the international treaties were included into the territory of Lithuania.

If no prohibition to introduce changes to the State territory or borders thereof is included into the text of the constitution, one has to assume that the State borders can be changed. States have sovereign rights to change their borders; these rights follow from the principle of State sovereignty (*see: Reply note of the Cabinet of Ministers, case materials, Vol. 4, pp. 90).*

During the discussions in the Constitutional Assembly, the referent J. Purgals clearly admitted in respect to the project of Chapter I of the Satversme that "the external borders of the State of Latvia can be changed only according to the order established in the constitution" (*Transcript of 7th meeting of IV session of the Constitutional Assembly, October 4, 1921).*

One can conclude that the Satversme does not prohibit changing the external State borders, but, on contrary, it provides for the procedure of changing external borders.

42.3. The Cabinet of Ministers argues that the reference "within the borders established in the international treaties" of Article 3 of the Satversme defines the methodology for establishment of the borders of Latvia (*see: case materials, Vol. 4, pp. 96).* One cannot agree with the opinion expressed by the Cabinet of Ministers that Article 3 of the Satversme provides for the procedure of changing the state borders.

Article 3 of the Satversme, just as Article 1 and 2 of the Satversme, provides for the basic principles of the Latvian State order. These basic principles are defined in a form of abstract and conceptual axioms, and the abovementioned articles do not contain any references to the procedures of amendment or implementation thereof. Establishment of such procedures is the task of articles of other chapters of the Satversme.

The reference in Article 3 of the Satversme on the international agreements is used in order to normatively establish the borders provided for in the border treaties, but not to establish the mechanism for changing the State borders. If the claims of Latvia regarding its ethnographic borders had been fully satisfied during the negotiations for the establishment of the borders, then Article 3 of the Satversme would suffice to contain a statement that Latvia is composed of Vidzeme, Latgale, Kurzeme and Zemgale. Since Latvia repeatedly conceded to claims by Lithuania and Estonia during border establishment negotiations, by often significantly deviating from the ethnographic principle, reference of Article 3 of the Satversme to the borders established in the international treaties was indispensable in order to avoid any suggestion regarding the necessity to reconsider the established State borders and to extend it up to the ethnographic borders.

43. The procedure for the change of State borders established by the Satversme can be established by taking into account the doctrine of constitutional law.

43.1. The principle of separation of powers manifests itself in the division of the State power into the legislative, executive and judicial power that is implemented by independent and autonomous institutions [*see: Judgment of October 1, 1999 by the Constitutional Court, in the case No. Nr. 03-05(99), Para 1 of the Concluding Part*]. As this principle developed, the constitutional law started dealing with this issue regarding the order of concluding treaties with other States and making territorial changes.

Under the theory of Charles Louis de Montesquieu, implementation of international relations was included into the competence of the executive power, and only in some cases the legislator would have the rights to decide on these issues (*see: Montesquieu Ch. L. The Spirit of Laws. Book 11 // http://www.constitution.org/cm/sol_11.htm*). The practice of States was directly influenced by precisely this theory of Ch. L. Montesquieu, and conclusion of international treaties was considered to be a prerogative of the executive power, with the parliament not entitled to interfere with these matters.

The Great French Revolution affected separation of power between the legislative power and executive power. There existed a general assumption that the States communicate by the agency of State governments, and the parliaments should not be entitled to interfere with these relations. But in some cases the parliament was conferred rights to decide on ratification of international treaties. One of such cases was giving of a part of the State territory to another State. In this case, one needed consent of the representatives of the people (*Констан Б. Принципы политики // Классический французский либерализм. Москва: Российская политическая энциклопедия, 2000, pp. 132*).

The rights of the parliament to ratify such international treaties also had theoretical justification. ""Alienation" of a part of the territory in constitutional States cannot be carried out otherwise than with the consent of representatives of the people, because alienation is directly related to the loss of validity of the laws of this state in the alienated territory". Moreover, laws can be repealed by consent of the parliament only (*see: Кокошкин Ф. Ф. Лекции по общему государственному праву. Переиздание 1912 г. Москва: Зерцало, 2004, pp. 157 – 159*).

43.2. In the constitutions passed after the First World War, the rights of the executive power to sign international treaties were preserved. At the same time, the parliament was conferred wider rights to decide on ratification of international treaties. One of the issues that the parliament had to mandatorily decide upon is related to changes of the State territory.

For instance, under the Germany Constitution of August 11, 1919, in order to make valid an international treaty that reduced the State territory of Germany needed, the consent of the legislator was required (*see: Anschütz G. Die Verfassung des Deutschen Reichs vom 11. August 1919, pp. 422*). Article 30 of the Lithuania Constitution of August 11, 1922 provided that the Seimas has to ratify the treaties concluded by the government that affected such issues as acquisition of territory, its alienation and refusal from it. A similar provision was also included into Article 49 of the Constitution of the Republic of Poland of March 17, 1921.

43.3. The Satversme, like other constitutions of its time, leaves signing of international agreements in the discretion of the Cabinet of Ministers – as the implementing authority of the executive power. However, Article 68 of the Satversme also provides for the competence of the Saeima, namely, "all international treaties, which settle matters to be decided by the legislative process, shall require ratification by the Saeima". The requirement to ratify the international treaties in the Saeima is included in the Satversme with a view to avoid such international obligations, which would regulate issues to be decided in a legislative process without the consent of the Saeima (*see: Judgment of July 7, 2004 by the Constitutional Court, Para 6 of the Concluding Part).*

One of the issues that are to be settled by means of legislative process and that requires consent of the Saeima, is change of the State borders of Latvia. Such conclusion is supported by the contemporaneous constitutional law theory of that time and the practice of other States, as well as by the parliamentary practice of Latvia. The Cabinet of Ministers rightly points to several cases when the international treaties concluded by the Cabinet of Ministers regarding change of the State borders were ratified by the Saeima (*see: response note by the Cabinet of Ministers, case materials, Vol. 10, pp. 101 – 102).*

Under Articles 23 and 24 of the Satversme, the Saeima can ratify the international treaties that change the State border, in its sitting where at least a half of the members of the Saeima participate, by making decision by an absolute majority of votes of those present.

43.4. However, one has to take into account that Article 3 of the Satversme provides for the principle of unity for the historical ethnographic territories inhabited by the Latvians. The Latvian people carried out its self-determination within the historically ethnographic regions inhabited by the Latvian people mentioned in Article 3 of the Satversme by forming their own state and providing themselves with the Satversme.

The State of Latvia does not change its essence, as long as it consists of the territories within which the Latvian people have self-determined themselves, namely, all regions mentioned in Article 3 of the Satversme. In the cases when Latvia, by concluding

international treaties, alienates any part of the State territory established in Article 3 of the Satversme, the respective territorial changes are to be considered in the order that is established for amending Article 3 of the Satversme. The question about amending the unity of Latvian historically ethnographic regions falls within the competence of the body of the citizens of Latvia, rather than that of the Cabinet of Ministers or the Saeima.

43.5. The Cabinet of Ministers has drawn attention to Article 73 of the Satversme that prohibits submission of treaties with other nations to a national referendum, and argues that the body of the citizens of Latvia can never decide on territorial changes of the State (*see: Response note of the Cabinet of Ministers, case materials, Vol. 4, pp. 96*).

When assessing the content of Article 73 of the Satversme, one has to take into account the principle of unity of the Satversme. Each norm of the Satversme has its own place in the system of the Satversme, and no norm of the Satversme can be attributed a greater significance than it is provided by the Satversme itself (*see: Judgment of October 16, 2006 by the Constitutional Court, in the case No. 2006-05-01, Para 16*).

The principle of unity of the Satversme prohibits interpreting Article 73 of the Satversme in isolation so as to conclude, based on its seemingly categorical wording, that the Satversme fully prohibits submission of an international treaty to a national referendum. Article 73 of the Satversme is systemically included after Article 72, which provides for the rights of the State President to suspend the publishing of a law should one tenth part of the voters demand organization of a referendum regarding this law. The two articles following after Article 73 of the Satversme still relate to the institute provided for in Article 72 of the Satversme. One cannot interpret Article 73 of the Satversme in isolation from the system of Articles 72 – 75 of the Satversme that form a single rule.

This conclusion is also justified by the terminology used in the Satversme. Article 73 of the Satversme provides for issues of legislation that cannot be "submitted" to a national referendum. Under Article 72 of the Satversme, only such law "shall be put" to a national referendum that the President of the State has suspended proclamation thereof if so requested by not less than one-tenth of the electorate. However, Article 77 of the Satversme does not talk about submission of laws to a national referendum. It provides that amendments to the norms of the constitutionally legal basis of the State of Latvia, in order to come into force as law, have to be submitted to a national referendum.

Article 77 of the Satversme provides for another procedure, according to which it is possible to amend the constitutionally legal basis of the State of Latvia, and the restrictions established by Article 73 of the Satversme do not concern this procedure.

43.6. Consequently one can conclude that the Satversme established two procedures, according to which territorial changes of the State are to be made, depending on whether the territory that Latvia alienates falls under the scope of Article 3 of the Satversme.

Provisions of Articles 76 and 77 of the Satversme are to applied only in the cases when by concluding the treaty regarding change of the State borders the principle of unity of four historically ethnographic regions inhabited by the Latvians, as provided for in Article 3 of the Satversme, is breached. In other cases, the respective change of the territory of the State is to be carried out according to the order established in the first part of Article 68 of the Satversme.

In order to decide, according to which procedure the territorial change of Latvia is to be confirmed, it is necessary to determine whether territory to be passed to the other State falls within the scope of Article 3 of the Satversme.

VII

44. The Applicant has contested the compliance of the Border Treaty with Article 3 of the Satversme, since the Border Treaty reduces the territory of Latvia. Unlike Article 3 of the Peace Treaty, which allocated the Abrene area to Latvia, the Border Treaty provides that the *de facto* border between Latvia and the Russian Federation existing at the moment of concluding the Border Treaty is to be preserved. This means that by the Border Treaty, the Abrene area is *de iure* given to the Russian Federation.

The Applicant holds that the Border Treaty violates Article 3 of the Satversme, since the territory of Latvia established by Article 3 of the Satversme also comprises the Abrene area, and the State borders of Latvia, after coming into force of the Satversme, cannot be changed by international treaties.

44.1. The Applicant submitted an application on compliance of the Border Treaty with Article 3 of the Satversme after the Border Treaty had been signed but not yet ratified by the Saeima. The Saeima passed the Ratification Law in the order established in the first part of Article 68 of the Satversme when the Constitutional Court was preparing for consideration the case on compliance of the Border Treaty with Article 3 of the Satversme.

Ratification of an international treaty by the Saeima is a *sui generis* legislative act, which is necessary for the international treaty to become effective and to be applicable in the legal system of Latvia.

Having regard to the fact that the Saeima, by passing the Ratification Law, has agreed to undertake the international obligations established therein, the Applicant has also requested to consider the compliance of the Ratification Law with Article 3 of the Satversme.

44.2. The request to assess compliance of the Ratification Law with Article 3 of the Satversme is closely related to the analogous request on compliance of the Border Treaty with the Satversme. The Applicant has given similar legal justification regarding non-compliance of both of these legal acts with the legal rules of higher legal power.

The arguments of the Applicant regarding non-compliance of the Border Treaty with Article 3 of the Satversme also apply to non-compliance of the Ratification Law with Article 3 of the Satversme. Also in this case, the Applicant holds that the Saeima was not entitled to ratify the Border Treaty, since the Abrene area is a part of the territory of Latvia established by Article 3 of the Satversme, and the Satversme prohibits making changes to the State borders by concluding an international treaty.

Since the Ratification Law confirms the consent of the Saeima to the change of the State borders established in the Border Treaty, compliance of the Border Treaty and the Ratification Law with Article 3 of the Satversme is to be considered in connection with each other.

45. The Applicant considers that Article 3 of the Satversme does not provide for a possibility to change the State borders. If one accepts such argumentation of the Applicant, one should conclude that both the Border Treaty and the Ratification Law do not comply with Article 3 the Satversme.

However, the Constitutional Court has already concluded that Article 3 of the Constitution does establishes the State borders of Latvia as unchangeable (*See: Para 42 of this judgment).* Since the Satversme, unlike the argumentation of the Applicant, provides for the procedure of changing the borders, one can consider that the point of view of the Applicant regarding non-compliance of the Border Treaty and the Ratification Law with Article 3 of the Satversme because of this reason is unjustified.

The Satversme provides for two procedures for changing the State borders depending on the fact whether the territory to be alienated to the other state is or is not a part of the historically ethnographic regions of Latvia provided for in Article 3 of the Satversme. If the territory to be alienated is a part of these regions, such a change of the borders is to be made according to the procedure established in Articles 76 – 79 of the Satversme. However, if the territory to alienate is not a part of any region mentioned in Article 3 of the Satversme, the

change of the borders is to be confirmed according to the procedure established in the first part of Article 68 of the Satversme.

Since the Border Treaty is ratified by observing the procedure established in the first part of Article 68 of the Satversme, it is necessary to examine whether the Saeima has applied the right procedure when changing the Latvian-Russian State border.

46. Both the Application and the institutions that have passed the contested acts, *a priori* hold that the Abrene area is a part of the territory established by Article 3 of the Satversme, namely, this area is a part of the Latgale historically ethnographic region.

The Constitutional Court has concluded that Article 3 of the Satversme does not establish the territory of Latvia in general, but it does provide as a mandatory requirement that the territory of the State of Latvia has to contain four historically ethnographic regions – Vidzeme, Latgale, Kurzeme and Zemgale. Similarly, Article 3 of the Satversme admits that separate parts of the territory of the State of Latvia are established by means of legislation, and leaves them beyond its own scope (*See: Para 40 – 41 of this judgment)*), since the objective of Article 3 of the Satversme is not to establish the entire territory of Latvia but to provide that the territory must include Vidzeme, Latgale, Kurzeme and Zemgale.

Hence it is necessary to investigate whether the Abrene area is a part of Latgale or any other historically ethnographic region of Latvia.

47. The Abrene area has been a part of the Atzele (Adzele, Adele) land of ancient Latvians (*See: Andersons E. Kā Narva, Pečori un Abrene tika iekļauta Krievijas Sociālistiskajā Federatīvajā Republikā // Latvijas Vēsture, 1991, No. 1, pp. 50 – 59*). However, development of this region differed historically from that of Vidzeme, Latgale, Kurzeme and Zemgle. In 1431, the Pleskava inhabitants invaded the Kacēni and Augšpils areas and built a strong fortress which was named Višgorod. In 1481, the united forces of Moscow, Pleskava and Novgorod conquered the rest of the parts of the Abrene Area and made the local inhabitants abandon the Catholic religion and join the Orthodox church (*see: Andersons E. Kā Narva, Pečori un Abrene tika iekļauta, pp. 56*).

Since then the Abrene area was separated not only from Kurzeme and Vidzeme, but also from Latgale. The Russians were assimilating the local inhabitants for a continuous period of time (*see: Skujenieks M. Latvijas statistikas atlass. Rīga: Valsts statistikas pārvalde, 1938, pp. 14*).

An ethnographer Augusts Bīnenšteins, whose works were used for the determination of the State border between Latvia and the Soviet Russia, based himself on the researches

carried out during the second half of the XIX century when he wrote that: "The Latvians from the Pleskava province are often and without reasons considered to be Russians. Although they have the Greek Catholic faith, dress according to the Russian custom and have beards and speak Russian with the foreigners, they clearly manifest their belonging to the Latvian people by the fact that they speak Latvian in their families. [..] They, because of political and religious separation have long lost any links to their native language and traditions, which is why they inevitably have to assimilate with their eastern neighbour more and more by each generation" (*Skujenieks M. Latvija. Zeme un iedzīvotāji. Ar J. Bokaldera nodaļu par lauksaimniecību. Third enlarged edition. Rīga: A. Gulbja apgādniecībā, 1927, pp. 266*).

When commenting on this opinion, M. Skujenieks wrote that "the prophecy of Bīlenšteins has come true after 40 years, and now we have to consider the inhabitants of the Gauri – Višgorod – Kačanovo parishes as the Russians, even though they come from the Latvians" (*Skujenieks M. Latvija. Zeme un iedzīvotāji, 1927, pp. 266 – 267*).

At the beginning of the XX century, in the Abrene area that was a part of the Pleskava province, the majority of the inhabitants were Orthodox and used the Russian language in their everyday life. Even though in the Abrene area, separate locations ("islands") inhabited by the Latvians had been preserved, this area was mainly inhabited by the Russians (*see: Skujenieks M. Latvijas statistikas atlass, pp. 14*).

The statistical data show that in 1925, in the Kacēni parish, only 17% of the inhabitants were the Latvians, in the Purvmala parish – 8%, in the Gauri parish – 4% but in the Augšpils and Linava parishes – 3%. 0.5% of the Byelorussians also lived in those parishes, but the rest were the Russians (*see: Latviešu konversācijas vārdnīca. 7th edition. Rīga: A. Gulbis, 1931 – 1932, entry 14185*).

In 1924, the State of Latvia merged the Abrene area and a part of the Ludza district of that time into the Jaunlatgale district. In the Eastern part of the Junlatgale district, there were many Russians, whereas the Western territories with the Balvi, Rugāji, Bērzpils and Tilža parishes were fully contiguous to Vidzeme and Latgale both geographically and ethnographically (the Latvian element is dominating, in Liepna – Lutherans, in other territories – Catholics) (*see: Skujenieks M. Latvija. Zeme un iedzīvotāji, 1920, pp. 230*). "The most Russian region in Latvia nowadays is the Eastern Part of the Jaunlatgale district, where 43.430 inhabitants live in the Augšpils, Linava, Kacēni, Gauri and Purvmala parishes, 39.653 of which are Russians, which constitutes 91.5% of all inhabitants" (*Skujenieks M. Latvieši svešumā un citas tautas Latvijā. Citēts pēc: Krasnais V. Kas ierosināja Jaunlatgales latvisko atmodu // Ziemeļlatgales atmoda. Rīga: Latvju nacionālās jaunatnes savienības Latgales apgabala izdevums, 1935, pp. 64*).

When uniting the areas inhabited by the Latvians, the State of Latvia based itself on the nationality of the inhabitants at the moment of establishment of the borders, rather than on the historically ethnographic borders of the previous centuries, Latvian place-names, Baltic castle mounds or other historical evidences.

48. The Constitutional Court, when assessing the historical genesis of Article 3 of the Satversme, has concluded that it is based on the claim for uniting all regions inhabited by the Latvians into a single territorial entity.

48.1. The First Latgale Congress that took place in April 1917 was of particular importance for uniting the regions inhabited by the Latvians. In this congress, the representatives of the Ludza, Rēzekne and Daugavpils districts took part, and the resolution of the Congress requested joining of only these three districts as the region of Latgale to the rest of Latvia. In the First Latgale Congress, no delegates from the Abrene area participated, and the claim of joining of the Abrene area as a part of Latgale to Latvia was not raised (*see: Trasuns F. Dzīve un darbi, pp. 63 – 73; Kemps F. Latgales likteņi, pp. 133 – 160; opinion of K. Počs, case materials, Vol. 10, pp 130*). Similarly, in the meeting of local governments and public workers that was convened on April 29 – 30, 1918, the representatives of the Ludza, Rēzekne and Daugavpils districts of the Vitebsk province took part. The following resolution was passed at the meeting: "Having regard to the resolutions of the Latgale congresses of April 26 and 27 and December 3, 1917 regarding joining of Latgale, i.e. former lands of the Order, to Vidzeme and Kurzeme, the local government meeting authorizes the Council and the Board of the local government to implement the above merging" (*Jautājums par Latgales apvienošanos ar pārējo Latviju // Ziņas par Latviju. Issue of publications, No. 4, June 1918, pp. 6*). The Abrene area was not a part of the Vitebsk province, and there was no discussion about this area as being a part of Latvia during the period when joining of Latgale to the rest of Latvia was under consideration.

One of the supporters of the idea of uniting Latvia, F. Trasuns, when raising claims on uniting of the Latvian people, talked only about uniting Kurzeme, Vidzeme and the Latvian districts of the Vitebsk province. "In the last article I provided a short description of relations of the Latvians from Kurzeme, Vidzeme and the Vitebsk province during the last 25 – 30 years. [..] Ethnographically we are a single nation, we have a common Latvian language, cultural property in the form of songs and traditions passed down by our ancestors, as well as a common historical past" (*Vēl kāds vārds par mūsu tautas daļu apvienošanu // Trasuns F. Dzīve un darbi, pp. 131*).

48.2. According to the Latvians from Kurzeme and Vidzeme, Latgale included only the districts of the Vitebsk province, Ludza, Rēzekne and Daugavpils. A. Bergs wrote in 1918: "The land or territory of Latvia consists of three separate parts: Kurzme, Vidzeme, i.e. Riga, Valmiera, Cēsis and Valka districts and Latgale, i.e. Daugavpils, Rēzekne and Ludza districts in the Vitebsk province that are also known as Inflantija (*Latvijas valsts pasludināšana , pp. 5*).

In the claim included in the Proclamation Act of the Republic of Latvia of November 18, 1918 to unite Vidzeme, Kurzme and Latgale into one state within their ethnographic borders, the notion of Latgale meant three districts of the Vitebsk province (*see: Latvijas Pagaidu valdības mērķi, pp. 3 – 4*). Such opinion, namely, that Latgale is formed by three North-West districts of the Vitebksa province, was also expressed by M. Skujenieks at that time (*see: Skujenieks M. Latvija. Zeme un iedzīvotāji, 1920, pp. 1 – 2*). Hence during proclamation of the Republic of Latvia, the notion of Latgale meant the Daugavpils, Rēzekne and Ludza districts of the Vitebsk province.

Also in the peace negotiations with the Russian Federation there were large discussions regarding the borders of the historically ethnographic regions of Latgale inhabited by the Latvians. The representative of the Soviet Russia, Ā. Joffe *inter alia* indicated: "As to the issue of Latgale, there are several notes of the Latvian government available regarding the fact that Latgale is ethnographically formed by the Ludza, Rēzekne and Daugavpils districts" (*Archive of the History of the State of Latvia, 1313. f. 2. apr., file No. 35, pp. 22*). When commenting this opinion of the Soviet Russia, A. Zēbergs admitted that the Latvian government, by mentioning Latgale as a part of Latvia in different acts, had meant the districts of Daugavpils, Rēzekne and Ludza, in order to clarify territorial dimensions of Latgale. However, this does not imply that in separate cases, under the ethnographic principle, there would be no need for concretisation of the borders of administrative-territorial entities of the tsarist Russia (*see: Archive of the History of the State of Latvia, 1313. f. 2. apr. file No. 35, pp. 33*).

49. The issue of the Abrene area became more urgent, as the peace negotiations with Russia approached. By using military-strategic measures in the Latgale front and the political situation of that time when the Soviet Russia made war in several fronts, Latvia tried to achieve the most favourable peace conditions possible. It also concerned the issue of the State borders.

49.1. The claim for joining also some of the territories of the Drisa district of the Vitebsk province and the Ostrovo district of the Pelskava province inhabited by the Latvians

was raised already in summer of 1918 (*Ziņas par Latviju. Issue of publications, June 1918, No. 4*). However, it can be surmised from the context of the claim that it was more related to correcting the administrative borders of the Russian Empire in favour of the ethnographic borders of the regions inhabited by the Latvians, rather than to joining considerable territories. "In some locations the Latvians densely inhabit regions that are situated beyond these borders, and in other places the territory of the neighbouring countries exceed the borders of districts that Latvia includes" (*Skujenieks M. Latvija. Zeme un iedzīvotāji, 1920, pp. 1 – 2*). Similarly this claim on correction of the existing administrative borders was interpreted by A. Zēbergs during peace negotiations (*see: Archive of the History of the State of Latvia, 1313. f. 2. apr. File No. 35, pp. 33*).

49.2. Territorial interests of the State of Latvia are the most fully collected in the Memorandum of the Latvian delegation to the Paris Peace Conference (*see: Para 20.2 of this judgment).* This document raises claim also about joining of the Abrene area to the territory of Latvia.

It follows from this Memorandum that the Latvian ethnographic border in the East exceeded the administrative borders of the Ludza, Rēzekne and Daugavpils districts of the Vitebsk province of that time, but did not include the entire territory that was joined to Latvia by the Peace Treaty (*see: Opinion of V. Blūzma, case materials, Vol. 11, pp. 29).* In the Memorandum to the Peace Conference, the territory adjacent to the Pitalovo railway station is characterized as "an ancient Latvian land", however "the majority of the inhabitants there are Russians" and "it is situated 9 kilometres from Latgale". One can agree to the opinion of V. Blūzma that this conclusion confirms the fact that the Abrene are was not included into the Latgale region within the meaning of Article 3 of the Satversme (*see: case materials, Vol. 11, pp. 29).*

Latvia requested joining of the Pitalovo railway station to its territory due to economic and military strategic considerations. As it was written in the Memorandum submitted to the Paris Peace Conference, "The State of Latvia is established within the Latvian ethnographic borders, but in separate cases economic conditions and traffic convenience require amendments of some ethnographic and administrative borders".

As one of these necessary amendments, the Pitalovo railway station was mentioned, which was indispensable for Latvia as an important traffic junction to link the Riga – Sita – Pitalovo and Daugavpils – Rēzekne – Pleskava railway lines. Justification regarding Pitalovo as an ancient Latvian land was also included but, as it was indicated by A. Stanga, the ethnographic argument was the weakest one (*see: case materials, Vol. 10, pp. 219 – 220).*

49.3. The Constitutional Court, when considering the process of conclusion of the Peace Treaty, has already pointed out that the Soviet Russia gave Abrene to Latvia by the Peace Treaty by referring to economic needs of Latvia as a new State (*see: Para 21 of this judgment).*

When deciding on ratification of the Peace Treaty in the Constitutional Assembly, its members emphasized several times the advantages of the established border. For example, F. Menders emphasized: "Article 3 establishes borders that mainly coincide with the ethnographic borders of Latvia and include several advantageous railway junctions, for instance, Pitalovo" (*Transcript of the 28 meeting of the I session of the Constitutional Assembly, September 2, 1920).* In the latest studies of historians, when assessing the Peace Treaty, it is written that: "Article 3 established borders between the both States. This was a compromise that, taken as a whole, corresponded to the ethnographic principle, except for the small Pitalovo (Abrene) area, where the Latvians were a minority but which Latvia wanted due to economic (railway junction) and strategic (straightening of borders) considerations" (*Treijs R. Zigfrīds Meierovics. Rīga: Jumava, 2007, pp. 51*).

In the Constitutional Assembly of Latvia, joining of the Abrene area to the territory of Latvia was also used as one of the arguments why Latgale could not be conferred the rights of self-government. Since the Abrene area was administratively included into the Ludza district, M. Skujenieks could state: "The borders of Latgale are not finally drawn. For instance, the newly-acquired territory that was joined from the Ostrovo district is still an open question, so it would not be correct to state in our constitutional law that in any case these three Eastern districts have a particular self-government" (*Transcript of the 33rd meeting of V session of the Constitutional Assembly of Latvia, April 4, 1922).* Since in the submitted proposition the Latgalians requested to confer the rights of self-government to Latgale, it follows from what M. Skujenieks said that Latgale is formed by "the three Eastern regions", whereas the Abrene area is "a newly-acquired territory".

50. The notion "a newly-acquired territory", which referred to the Abrene area, was not unintentionally uttered in the speech of M. Skujenieks in the Latvian Constitutional Assembly. It reflects the dominating view regarding the parts of the territory of Latvia after conclusion of the Peace Treaty.

50.1. It was written in the 1920 edition of the book of M. Skujenieks "Latvija. Zeme un iedzīvotāji" ("Latvia. State and People"): "The Latvians inhabit [..] Latgale (three North-West districts of the Vitebsk province) [..] In Latgale, the Latvian ethnographic border, except for the Russian colonies in the Latvian land, almost fully coincides with the administrative

border of Latgale, except for the South-East corner of the Ludza district, where the Russians are in the majority. In accordance with the draft of the Latvian – Russian Peace Treaty, the territory of Latvia is extended towards the East by transferring the border of the Ludza district 6 – 15 kilometres to the East. [..] The total area of Latvia, including the part that is covered by the large lakes (897.6 sq km) constitutes 64,196.6 sq km. When adding the parts of the Ostrovo and Drisa districts that were joined to Latvia after conclusion of the Peace treaty with Russia, the total territory of Latvia exceeds 65,000 sq. km" (*Skujenieks M. Latvija. Zeme un iedzīvotāji, 1920, pp. 1 – 5*).

It is possible to conclude from the information provided by M. Skujenieks that joining to Latvia of the parts of the Ostrovo and Drisa districts did not affect the territory of Latgale as a historically ethnographic region. The parts of the joined territories were called the territory of Latvia rather than a part of Latgale, and they were included into the total territory of Latvia separately from the territory of the Latgale region.

50.2. The following information is included in the third edition of the book of M. Skijenieks "Latvija. Zeme un iedzīvotāji":

"Latvia includes the entire land inhabited by the Latvians that consists of Vidzeme, Latgale, Kurzeme and Zemgale. [..]

Latvia consists of

1) the entire Kurzeme except for 100 sq km of the Palanga region;
2) 4 southern districts of Vidzeme (Riga, Cēsis, Valmiera and Valka), except for some parts of Northern parishes [..];
3) three North-West districts of the former Vitebsk province (Daugavpils, Rēzekne, Ludza) that are united under a single historical name – Latgale;
4) the Jaunroze district that was before a part of the Verava districts in Estonia;
5) the Augšpils, Gauri, Linava, Purvmala and Kacēnu parishes of the Ostrovo region former Pleskava province (earlier – the Višgorod, Tolkovo and Kačanovo parishes) that are now joined to the Jaunlatgale district and constitute the Jaunlatgale area;
6) the Piedruja area (former Pridruiska and Pustina parishes in the Drisa district of the Vitebska province);
7) the Aknīša (Oknīste) parish that previously was a part of the Kauņa province and stretched between the Jaunjelgava and Ilūskte districts in Zemgale in the forms of a keel;
8) when establishing the border between Kurzeme and Lithuania, 194 sq km were joined to the territory of Kurzeme from the former Kauņa province, especially

towards the South from Bauska (148.5 sq km)" (*Skujenieks M. Latvija. Zeme un iedzīvotāji, 1927, pp. 1 – 2*).

It is possible to conclude that M. Skujenieks during the peace negotiations with the neighbouring countries did not include the acquired territories into the territories of the Vidzeme, Latgale, Kurzeme and Zemgale regions. M. Skujenieks called these territorial acquisitions newly-joined territories (*see: Latvijas Satversmes sapulces vēlēšanu rezultāti. Rīga: Valsts statistikas pārvalde, 1920, pp. 4*).

50.3. Taking into account such a division of the territory of Latvia, the Constitutional Court concludes that the historically ethnographic regions of Vidzeme, Latgale, Kurzeme and Zemgale that are mentioned in Article 3 of the Satversme do not include the "newly-joined" territory. Article 3 of the Satversme speaks of the territory that had to be part of the State of Latvia so that it would correspond to the claim of self-determination of the Latvian people. At the same time, the "newly-joined" territories were acquired during the Peace Treaty negotiations due to different reasons. Their joining is mainly related to success of peace treaty conclusion negotiations rather than the historical claim of the Latvian people to unite all Latvian territories into a single administrative entity.

V. Blūzma also indicates that the Abrene area can be described as a "newly-acquired territory", which is shows by the first latvianized name of the Pitalovo station – Jaunlatgale [*New Latgale*] that was given to the station in 1925. The name of Jaunlatgale emphasises the situation that a new territory is joined to Latvia. These newly-acquired territories of the Ostrovo district, according to V. Blūzma, were mainly located outside the ethnographic borders of Latvia of the XX century, because the proportion of the Russians there constituted from 70 percent to more than 90 percent of inhabitants of different civil parishes (*see: case materials, Vol. 11, pp. 30).*

51. In the formation of the State of Latvia, elections of the Constitutional Assembly were of great importance. The inhabitants of Latvia legally self-determined themselves in these elections, thus both marking the territory of the State of Latvia and authorizing the Constitutional Assembly to establish the constitution of the State. The inhabitants of Vidzeme, Latgale, Kurzeme and Zemgale self-determined themselves as a single nation through the Constitutional Assembly.

51.1. Elections of the Constitutional Assembly were an important political event. The members of the Latvian People's Council supported the view that the elections of the Constitutional Assembly could take place only after liberation of the entire Latvian ethnographic territory, so that Vidzeme, Latgale, Kurzeme and Zemgale could simultaneously

self-determine themselves in the Constitutional Assembly. This idea was *expressis verbis* included in the note of Section 22 of the Law on the Latvian Constitutional Assembly Elections, which permitted organizing elections of the Constitutional Assembly only "when the territory of Latgale is liberated".

During the discussions regarding this draft law in the Latvian People's Council, a representative of the Latgalian fraction, Valerija Seile, indicated: "We want that the Constitutional Assembly that will be summoned to be in full composition. But it is not provided so in the draft law of the Constitutional Assembly. Mr. Valdmanis has recently said that the Bolsheviks are driven out of Latvia. But, gentlemen, we, the Latgalians can state that the Bolsheviks are not driven off, because they still are in Latgale that is under the harsh communist rule. [..] I would like to say on behalf of the Latgalian fraction that that it should be established in the draft law of the Constitutional Assembly that the Constitutional Assembly cannot be convened until the entire Latvia is liberated from the Bolsheviks" (*Transcript of the second meeting of the fourth session of the Latvian People's Council of August 13, 1919).*

51.2. Elections of the Constitutional Assembly took place on April 17 and 18, 1920. Since nobody objected to organizing election on those dates, one can consider that the requirement of Section 22 of the Law on the Latvian Constitutional Assembly Elections was fulfilled.

M. Skujenieks, when commenting on the process of the elections of the Constitutional Assembly of Latvia, writes: "The elections took place in the entire territory of Latvia, except for the regions that are occupied by Estonia and Lithuania. In the Valmiera district, the elections did not take place in the town of Ainaži and the Ainaži, Ipiķi, Platere and Mazsalaca parishes, in the Valka district – in the town of Valka, and the Laicēni, Lielie Lugaži, Omuli, Pedele, Valka and Zore parishes. In the Ilūskte district, only eight parishes participated, but 10 parishes could not take part in the elections because of them being occupied. At the same time, from the parishes newly-joined to Latvia only the Oknīste parish which was previously was a part of the Kauņa province, participated in the elections" (*Latvijas Satversmes sapulces vēlēšanu rezultāti, 1920, pp. 4*).

51.3. After the Latvian Constitutional Assembly was convened on May 7, 1029, a suggestion of several members of the Constitutional Assembly was submitted thereto: "To carry out additional elections in those parishes and towns of North-Latvia and Zemgale where they could not be organized because of occupational rule immediately after liberation of these parishes and towns. To give the task to work out a law on additional elections in the above

parishes and towns to the legal commission" (*Transcript of the 4th meeting of the I session of the Constitutional Assembly, May 7, 1920).*

On June 29, 1920, the Constitutional Assembly of Latvia ratified the Latvian – Estonian Border Convention. Whereas in the meeting of July 7, 1920, the Constitutional Assembly adopted the decision:

"According to the decision of May 7 of this year, to carry out elections of the Constitutional Assembly in those districts of the North-Latvia where no elections have so far taken place due to the circumstances of occupation by Estonia in the earliest possible date and to require the legal commissions to immediately submit a respective law for its passage to the Constitutional Assembly" (*Transcript of the 14th meeting of the Session I of the Constitutional Assembly of Latvia, July 7, 1920).*

Such a law was passed on September 14, 1920. When reporting on it, a member of the Constitutional Assembly of Latvia, Vilis Holcmanis said: "The elections took place late. They had to be postponed because a part of Latvia was located outside its borders. The elections had to be postponed because initially the third part of Latvia, Latgale, was not yet united with the rest two parts of Latvia. When Latgale was joined and we succeeded in liberation of the regions occupied by Russia, with which we were still in the state of war, even then some parts of Latvia still could not take part in the elections: they were captured from States with which we did not make war but were in the state of peace.

The North-Latvia was under the occupational rule by Estonia, and some parts of Latvia are under occupation by Estonia up to this day. Now, thanks to an arbitral tribunal, the part of the North-Latvia is again joined to Latvia, and now the inhabitants of these districts must be enabled to fulfil their main, first civil duty – send their representatives to the Constitutional Assembly of Latvia, to the sovereign power" (*Transcript of the 34th meeting of the Session I of the Constitutional Assembly of Latvia, September 14, 1920).*

In the meeting of November 25, 1920 of the Constitutional Assembly, the results of the elections in the North-Latvia districts were announced. When announcing them, the chairman of the election commission of the North-Latvia districts, Oto Nonācs, emphasized: "From now on, this high house represents the entire territory of Latvia, including the part of North-Latvia that played an important role in foundation of the State of Latvia but that could not sent its representatives to the Constitutional Assembly up to now for certain reasons" (*Transcript of the 2nd meeting of the Session II of the Constitutional Assembly of Latvia, November 25, 1920).*

51.4. The note of Section 22 of the Law on the Latvian Constitutional Assembly Elections prohibited organizing such elections before liberation of Latgale. Under the

requirements of these norms, the elections of the Constitutional Assembly of Latvia took place after liberation of the entire Latgale. According to the materials regarding the results of the elections of the Constitutional Assembly, the elections of the Constitutional Assembly had taken place in the entire Latgale region (*see: Latvijas Satversmes sapulces vēlēšanu rezultāti, pp. 80 – 85*).

Similarly in the discussions on additional elections of the members of the Constitutional Assembly, it has never been mentioned that any part of Latgale had not sent its representatives to the Constitutional Assembly. It is possible to conclude from it that the Abrene area was not regarded as a part of Latgale.

When the issue regarding additional elections of representatives in North-Vidzeme was discussed, the Peace Treaty had already been ratified and the Abrene area was legally joined to the territory of Latvia. However, also in these discussions, none of the members of the Constitutional Assembly appealed to organize elections in this territory. The deputies of the Constitutional Assembly were more concerned about election of the representatives of North-Vidzeme and the Ilūkste district into the Constitutional Assembly. No elections of the Constitutional Assembly took place in the Abrene area (*see: Latvijas Satversmes sapulces vēlēšanu rezultāti, 4, pp. 80 – 85*).

The process of the elections of the Constitutional Assembly evidence that the Abrene area was not regarded as a part of the Latgale region.

52. In an article published in exile in 1952, when commenting the annexation of the Abrene area to the Russian USSR in 1944, it was written: "The Russians has separated from Latvia and joined to the Soviet Republic of Russia a large and important part of the territory of Latvia, the six parishes and the town of Abrene. The Kacēni, Upmale, Linava, Purvmala, Augšpils and Gauri parishes were annexed to Russia. The Patseri district and the Aiznarva zone were similarly separated from Estonia. The apparent motive could be the fact that in these regions, the Russians are the majority. It seems that this issue has deeper roots. The abovementioned six parishes of Latvia, the Petseri district and Aiznarva of Estonia were joined to the territory of Latvia and Estonia only after the end of liberation struggles. In the earlier centuries, they were not a part of the Baltic province or the ancient Livonia. It is clearly amazing that the present Russian statesmen who deny any historical traditions to other nations have demonstrated such an extraordinary memory of the history. They have seen the joining of the abovementioned regions to Latvia and Estonia as a violation of integrity of Russia and they have not forgotten it from 1920 up to these days. [..] Let us have no doubt that after the defeat of the Soviet Union and collapse of Bolshevism, the Russian nationalists,

who, having emigrated, already manifest such impatience and raise such huge claims, will try to insist on the new border established by the Bolshevik rule" (*Bračs J. Krievi atņem mūsu zemi // Daugavas Vanagi, 1952, No. 19, pp. 38 – 40*).

53. There is no doubt that the Abrene historically was a territory inhabited by the ancient Latvians. It is similarly undeniable that Latvians lived in the Abrene area during conclusion of the Peace Treaty, as well as in 1944.

However, the idea of uniting the Latvian-inhabited regions that was formulated by the Latvian public workers at the beginning of the XX century requested unification only of the Kurzeme provinces and the Latvian-inhabited Vidzeme and Vitebsk provinces. These territories, with some specification of borders, were regarded as the common territory of the four Latvian historically ethnographic regions (the nucleus of the territory of the State of Latvia). The principle that this territory has to be a part of the territory of the State of Latvia is included in Article 3 of the Satversme.

Neither the political declarations of societal activists, nor the provisional constitutional acts mentioned the Abrene are as an absolutely necessary part of the State of Latvia. In formation of the State of Latvia Abrene was not a *conditio sine qua non* without which Latvia could not unite all regions inhabited by the Latvians. Also Article 3 of the Satversme, recognizing that the Peace Treaty has given the Abrene area to Latvia, neither mentions this territory. Similarly, the Constitutional Assembly did not permit the inhabitants of the Abrene area to self-determine themselves by electing their own representatives to the Constitutional Assembly of Latvia. Such an attitude towards the inhabitants of the Abrene manifests that the Constitutional Assembly of Latvia regarded this area as the territory that was acquired during successful peace negotiations rather than a Latvian-inhabited territory. Legal doctrine of that time recognized that the principle of self-determination of people cannot be applied to the territories that states acquire in the result of a successful war by a peace treaty, and the inhabitants of such territories do not have to be asked regarding their desirable nationality (*see: Anschütz G. Die Verfassung des Deutschen Reichs vom 11 August 1919, pp. 47*).

By using the concept of Latgale, Article 3 of the Satversme describes the districts of Ludza, Rezekne and Daugavpils of the Vitebsk province. On the other hand, Abrene is to be regarded as a newly-acquired territory that Latvia joined to its territory after coming into force of the Peace Treaty.

Consequently, when concluding the Border Treaty, Article 3 of the Satversme is not breached.

54. Since the State border established in the Border Treaty does not breach the territory of the State of Latvia established in Article 3 of the Satversme, the Border Treaty is to be ratified as an international treaty that settles matters that may be decided by the legislative process, namely, in the order established in the first part of Article 68 of the Satversme. The State border established by the Border Treaty is not be submitted to a national referendum under the provisions of Articles 3 and 77 of the Satversme.

The Ratification Law in general has been passed observing the requirements of the first part of Article 68 of the Satversme. The Constitutional Court does not establish any such deviations from the rules of the Satversme and the Saeima Rules of Procedure, which might serve as the basis for recognition of the Ratification Law as being in conflict with the Satversme. The Ratification Law has been passed without any breach of the procedure and the Saeima, according to the order established by the Satversme, has undertaken international obligations regarding the new Latvian – Russian border that partly change the border of the States established by the still effective Peace Treaty by passing the Abrene area to the Russian Federation.

The Border Treaty and the Ratification Law comply with Article 3 of the Satversme.

VIII

55. The Applicant requests to consider the compliance of the words of Article 1 of the Law on Authorization and the Ratification Law "observing the principle of inviolability of borders established by the Organization of Security and Cooperation in Europe" with the Preamble and Article 9 of the Declaration of Independence.

Article 16 of the Constitutional Court Law does not provide *expressis verbis* for the rights of the Constitutional Court to evaluate the compliance of laws with the norms of the Declaration of independence. The Panels of the Constitutional Court, when deciding on institution of proceedings, have assessed the claims on compliance of the contested provisions with the norms of the Declaration of Independence in the context of Article 16 (1) of the Constitutional Court Law (*see: Decision of the Third Panel of the Constitutional Court of April 26, 2007 on institution of proceedings and Decision of the Second Panel of the Constitutional Court of July 17, 2007 on institution of proceedings).*

Article 16 (1) of the Constitutional Court Law provides that the Constitutional Court shall review the cases regarding compliance of laws with the Satversme. When deciding on institution of proceedings after the Application of the Applicant, the Panel of the

Constitutional Court established: "Article 16 (1) of the Constitutional Court Law, if interpreted together with the principles of a democratic and rule of law State, provides that it is the competence of the Constitutional Court not only to review cases regarding compliance of laws with the Satversme in a narrow sense, namely, with the particular document "The Satversme of the Republic of Latvia", but also cases on compliance of laws with the Satversme in a broader sense, namely, cases regarding compliance of laws with each norm of a constitutional nature (rank, level)" (*Decision of the Second Panel of the Constitutional Court of Lujy 17, 2007 on institution of proceedings, Para 3).* Moreover, the Panel of the Constitutional Court indicated that since there were doubts regarding validity of the Declaration of Independence and its place in the hierarchy of normative legal acts, this issue is to be finally resolved by a judgment of the Constitutional Court when the case in considered on its merits (*see: Decision of the Second Panel of the Constitutional Court of July 17, 2007 on institution of proceedings, Para 3).*

Hence one has to investigate whether the Declaration of Independence is included in the wider sense of the concept of "the Satversme", as used in Article 16 (1) of the Constitutional Court Law.

56. The place of a legal norm in the hierarchy of legal acts is determined by the legal power of the legal norm.

The legal power of a legal norm depends on the institution that has passed the legal norm and the procedure that has been established for passage of the legal norm. The higher the level of democratic legitimacy of the institution that has passed the legal norm is and the more qualified the procedure of passage of the legal norm, the highest legal power the relevant legal norm has.

56.1. Article 64 of the Satversme provides that "The Saeima, and also the people, have the right to legislate, in accordance with the procedures, and to the extent, provided for by this Constitution"

Article 64 of the Satversme includes both the simple legislative rights and constitutional separation of legislation between the Saeima and the body of the citizens of Latvia (*see: Dišlers K. Latvijas Republikas Satversmes grozīšanas kārtība // Tieslietu Ministrijas Vēstnesis, 1929, No. 7/8, pp. 227 – 228*). This implies that the Satversme separates the legislative power and the constitutional power, namely, the right to pass and amend the Satversme.

56.2. Under Articles 23 and 24 of the Satversme, the Saeima is entitled to pass simple laws by an absolute majority of votes of the members present at the sitting if at least half of

the members of the Saeima participate in the sitting. However, under Articles 74 and 79 of the Satversme, the body of the citizens of Latvia is entitled to exercise its legislative rights if the number of voters is at least half of the number of voters that participated in the previous Saeima election. In this case the will of the body of the citizens of Latvia is determined by the majority of votes.

For making amendments to the Satversme, i.e. for exercising of the constitutional power, the Satversme provides for stricter requirements. Article 76 of the Satversme provides that the Saeima may amend the Constitution in sittings at which at least two-thirds of the members of the Saeima participate. The amendments are to be passed in three readings by a majority of not less than two-thirds of the members present. However, under Article 79 of the Satversme, an amendment to the Constitution submitted for national referendum is deemed adopted if at least half of all the voters entitled to vote have voted in favour.

Hence the laws that are passed according to the procedure established in Articles 76 – 79 of the Satversme whereby the Satversme is amended, have a higher legal power than that of simple laws.

56.3. Laws, with which the Saeima or the body of the citizens of Latvia amend the Satversme, have a constitutional rank if they are passed by observing the requirements of the procedures established in the Satversme.

Article 24 of the Satversme provides that the Satversme exhaustively provides for the cases when the Saeima can make decisions by a qualified majority of votes. Consequently one can conclude that the Saeima cannot pass acts of a constitutional rank unless the procedure of passage of such an act is established in the Satversme.

Such passage of acts of a constitutional rank is provided by Articles 76 and 77 of the Satversme (for the body of the citizens of Latvia – respectively, Articles 77 and 78 of the Satversme). By amendments of May 8, 2003, Article 68 of the Satversme provides for one more kind of acts of a constitutional rank. The Saeima may ratify international agreements, in which a part of State institution competencies are delegated to international institutions with the purpose of strengthening democracy, in sittings in which at least two-thirds of the members of the Saeima participate, and a two-thirds majority vote of the members present is necessary for ratification

Consequently, acts of a constitutional rank can be passed only in the cases established in the Satversme.

57. Before enactment of the Satversme, the so-called Second Provisional Constitution of Latvia – the Declaration on the State of Latvia passed by the Latvian Constitutional Assembly on May 27, 1920 and the Provisional Rules of the Latvia State Regime of June 1, 1920 - was in force (*see: Dišlers K. Ievads Latvijas valststiesību zinātnē, pp. 72*).

Whereas, before validity of the Satversme was restored to its full extent after restoration of independence of the Republic of Latvia, the Supreme Council has passed two acts of a constitutional rank of a transitional period – the Declaration of Independence and the Constitutional Law.

The Satversme does not provide for the order of passage or amendment of these acts of a constitutional rank.

Taking into account the lack of clear regulation by the Satversme, an opinion has been expressed in the legal writing that "after the Satversme becoming effective to full extent on July 7, 1993, it is the only constitutional norm in Latvia. It follows from it that no other legal norms that would formally have a constitutional nature exist alongside" (*Answers to the Questions of the Members of the UN Human Rights Committee, Human Rights Journal, 1996, No. 2, pp. 78*).

In order to review the correctness of such statements, it is necessary to study the practice of application of acts of a constitutional rank that were passed before the enactment of the Satversme.

58. In conformity with general principles of law, a legal rule loses its force if the time limit or condition that limits the rule's force in time has taken place, if the rule is repealed or if another rule, dealing with the very same issues and with the same or higher legal force of law comes into force[*see: Judgment of May 7, 1997 by the Constitutional Court in the case No. 04-01(97), Para 2 of the Concluding Part*].

Consequently one has to assess whether the constitutional acts that were passed before enactment of the Satversme are valid and how enactment of the Satversme has affected their validity.

59. The Satversme of the Republic of Latvia that was passed on February 15, 1922 does not provide for any legal rules that would regulate validity of the provisional constitution. Such legal norms were not included in the Law "On Enactment of the Satversme of the Republic of Latvia"

Consequently, the Constitutional Assembly of Latvia did not *expressis verbis* repeal the rules of the second provisional constitution with the enactment of the Satversme.

59.1. After the convening of the Constitutional Assembly of Latvia there was a need to draft a provisional constitution before passage of the Satversme, which would regulate the basic issues regarding the State regime. Drafting of the provisional constitution was the first task of the Constitutional Commission.

In the meeting of the Constitutional Commission of the Constitutional Assembly of May 26, 1930, a decision was made to submit the Draft Law on the Form and the Sovereign Power of the State of Latvia to the Constitutional Assembly separately, i.e. without the draft law on the provisional constitution (*see: Protocol No. 5 of the meeting of May 26, 1920 of the Constitutional*). The Draft Law on the Form and the Sovereign Power of the State of Latvia was submitted to the Constitutional Assembly in the form of the Declaration on the State of Latvia.

When reporting, in the Constitutional Assembly, on the content of this Declaration, the chairman of the Constitutional Commission, M. Skujenieks, admitted that "the Commission decided to separate the issue regarding the form and the sovereign power of the State of Latvia from the project on the State regime because these conditions are fundamental. They, as it is expected, will not have a provisional character" (*Transcript of the 5th meeting of the Session I of the Constitutional Assembly of Latvia, May 27, 1920*). Such interpretation was supported by the legal writings of that time: "The Declaration on the State of Latvia does not have a provisional character. This is a basic law that is passed for an indefinite period of time or, as it is sometimes put, "for all times". Only a reactionary revolution within the State or an attack of a hostile power from the outside could destroy the democratic principles established in the Declaration. The principles established in the Declaration can be amended in a peaceful, legal way only by a national referendum" (*Dišlers K. Latvijas pagaidu konstitūcija. Vispārīgas piezīmes // Tieslietu Ministrijas Vēstnesis, 1920, No.2/3, pp. 52*).

As the Satversme became effective, the Declaration on the State of Latvia did not loose its legal power. Such an opinion regarding the Satversme of the Republic of Latvia was expressed by a reporter of the Constitutional Commission J. Purgals: "This Declaration is to be considered as the basic law of the State of Latvia. It does not have a provisional character, it is a basic law that is passed for all times" (*Transcript of the 1st meeting of Session IV of the Constitutional Assembly of Latvia, September 20, 1921).*

The Senators of Latvia have also regarded the Declaration on the State of Latvia as a valid constitutional norm that exists along with the Satversme. It is indicated in the opinion of 1948 by the Senators of Latvia: "An indispensable element of every modern but in particular democratic republic is its legal structure that is established by its constitutional i.e. basic laws and that characterises it as a respective legal subject in the international field. These

constitutional laws that are passed by the freely elected Constitutional Assembly on the basis of which Latvia has existed as a sovereign and equal state in the international field during the entire period of independence, are the Declaration of May 27, 1920 on the State of Latvia and the Constitution of the Republic of Latvia of February 15, 1922" (*Opinion of the Senators // May 4, pp. 382*).

Consequently, the Declaration on the State of Latvia is a valid act of a constitutional rank.

59.2. The Provisional Rules of the Regime of the State of Latvia of June 1, 1920 included in themselves the condition for becoming invalid. According to the title of this act, these were "provisional rules" that would lose their legal force at the moment when the basic State law became effective and the Constitutional Assembly ceases its activities, as provided in Article 2 of the Rules.

Such opinion was expressed in the Constitutional Assembly of Latvia also by the reporter of the Constitutional Commission, J. Purgals: "The Provisional Rules of the Regime of the State of Latvia have a provisional character, i.e. they are effective up to the date when the constitution is elaborated and passed, in the final form, by the Constitutional Assembly" (*Transcript of the 1st meeting of the Session IV of the Constitutional Assembly of Latvia, September 20, 1921*).

However, the case law of the Senate of Latvia shows that the Provisional Rules of the Regime of the State of Latvia did not became invalid automatically to full extent, but only insofar as the norms of the provisional rules were substituted by the legal norms included in the Satversme.

Article 9 of the Provisional Rules of the Regime of the State of Latvia provided: "Inviolability of persons and lodging, freedom of press, speech, conscience, strike, meeting and association, inviolability of correspondence exist in Latvia and shall be ensured and established by the respective laws". The list of the basic rights was not included in the Satversme on November 7, 1922 when it became effective.

The Administrative Department of the Senate of Latvia, in the Judgment of November 20, 1929 No. 64 that was made in a case on registration of trade unions, started the list of the valid legal norms by the norm of a constitutional rank – Article 9 of the Provision Rules of the Regime of the State of Latvia that provided for freedom of association. The Administrative Department of the Senate also indicated that "the slogan of a deductive nature" included in Article 9 of the Provisional Rules "can only be interpreted in the sense that manifestation of this freedom cannot come in conflict with the existent laws" [*Judgments of the Senate of Latvia (1918 – 1940). Vol. 3, Judgments of the Administrative Department of the Senate*

(1926 – 1930). Rīga: Latvijas Republikas Augstākā tiesa, Senatora Augusta Lēbera fonds, 1997, pp. 1200].

Consequently, the Provisional Rules on the Regime of the State of Latvia became invalid in the moment when the issues dealt in these Rules was regulated in norms of another act of a constitutional rank.

60. The Constitutional Law and the Resolution of the Saeima of July 6, 1993 on Full Enactment of the Satversme does not regulate the issue regarding validity of the acts of the transitional period of a constitutional rank.

Similarly, neither the Declaration of Independence, nor the Constitutional Law established a precise time limitation or condition, after the fulfilment of which these acts would become invalid.

Consequently, one has to consider, to what extent the enactment of the Satversme has affected the validity of the acts of a constitutional rank of the transitional period.

60.1. The Supreme Council of the Latvian SSR passed the Declaration of Independence as an act of a constitutional rank by observing the provisions of the Constitution of the Latvian SSR of 1978.

The Declaration of Independence regulates the most essential basic issues of constitutional law, thus it is to be recognized as a norm of constitutional rights in the substantive sense (*see: Levits E. 4. maija Deklarācija Latvijas tiesību sistēmā // 4. maijs. Rakstu, atmiņu un dokumentu krājums par Neatkarības deklarāciju. Rīga: Fonds Latvijas Vēsture, 2000, pp. 52*).

The Declaration of Independence since the moment of its passage up to the restoration of validity of the Satversme fully dealt with the scope of action and mutual relations of two constitutional acts – the Satversme and the Constitution of the Latvian SSR. Such regulation of applicability of two constitutional acts can be effective only if the Declaration of Independence has at least the same legal power as that of the Satversme and the Constitution of the Latvian SSR. Therefore the conclusion is justified that the norms of the Declaration of Independence are of a constitutional rank, i.e. these are norms of constitutional law also in the formal sense (*see: Levits E. 4. maija Deklarācija Latvijas tiesību sistēmā, pp. 52 – 53*). The Saeima has also indicated in its reply that the status of the Declaration of Independence as a valid constitutional document cannot be contested (*see: case materials, Vol. 1, pp. 150).*

Since the Declaration of Independence has been passed as an act of a constitutional rank, one has to deal with the issue of the validity of the norms of the Declaration after the full restoration of validity of the Satversme.

It is possible to establish, in the framework of this case that in the legal writings the Preamble and Article 9 of the Declaration of Independence are to be regarded as still valid legal norms of a constitutional rank.

The Constitutional Court has several times referred to the legal norms included in the Declaration of Independence to support its judgments [*see, e.g.: Judgment of March 11, 1998 by the Constitutional Court in the case no. 04-05(97), Para 3, of the Concluding Part, Judgment of April 20, 1999 by the Constitutional Court in the case No. 04-01(99), Para 1.1. of the Concluding Part, Judgment of June 26, 2001 by the Constitutional Court in the case No. 2001-02-0106, Para 1 of the Concluding Part, Judgment of March 7, 2005 by the Constitutional Court in the case No. 2004-15-0106, Para 12, Judgment of May 13, 2005 by the Constitutional Court in the case No. 2004-18-0106, Para 5 of the Concluding Part*].

Consequently, the norms that are included in the Declaration of Independence are valid legal norms.

60.2. The Supreme Council of the Republic of Latvia passed the Constitutional Law when reacting to the coup d'etat of the USSR of August 19, 1991, and declared *de facto* restoration of independence of the Republic of Latvia (*see: transcript of the plenary meeting of August 21, 1991 of the Supreme Council of the Republic of Latvia*).

Article 2 of the Constitutional Law recognized Article 5 of the Declaration of Independence as valid. In order to make such amendments, it would be necessary for the Constitutional Law to have the same legal power as that of the Declaration of Independence. Since the Declaration of Independence is an act of a constitutional rank, the Constitutional Law has the same legal power as it *expressis verbis* follows from its title.

The Preamble of the Constitutional Law is of great importance for strengthening the doctrine of continuity of the Republic of Latvia. "The Constitutional Law also confirmed the concept of State continuity to a full extent" (*Apsītis R. Neatkarības deklarācijas pieņemšanas gadadienā // Jurista Vārds, May 3, 2005, No. 16*).

A reference to the Constitutional Law as a valid act of a constitutional rank is also included in the Law on Authorization that is contested by the Applicant. It was also repeatedly emphasized during the Saeima discussions regarding the Law on Authorization that the Constitutional Law strengthens the doctrine of continuity and other states have recognized the restoration of independence of the State of Latvia precisely based in this Law (*see: Transcript of the fourth meeting of the winter session of the 9th Saeima of the Republic of Latvia, February 1, 2007*).

Consequently, the Constitutional Law is a valid act of a constitutional rank.

61. When considering the Declaration of Independence and the Constitutional Law, it is necessary to take into account the fact that both of these acts were passed by the institution that was founded based on the Constitution of the Latvian SSR.

61.1. In a democratic state, elections are to be free, namely, they must ensure expression of free will of voters. Article 1 of the Satversme, as well as rules of international law – Article 25 of the UN International Covenant on Civil and Political Rights and Article 3 of the First Protocol of the European Convention of Human Rights – provide for the positive duty of the State to ensure free elections. Free elections include formation and expression of a free will of electors by voting [*see: Opinion of the Ombudsman of the Republic of Latvia of March 28, 2007 regarding the draft law "Amendments to the Political Party Financing Law" // http://www.vcb.lv/index.php?open=viedoklis&this=280307.282*].

In the elections of the Supreme Council, not only the citizens of the Republic of Latvia took place, but also the citizens of the USSR that lived in the territory of the Latvian SSR. The persons belonging to the occupational army also participated in the elections in the occupied territory. Furthermore, the procedure of nominating candidates was established so that it was possible to block nomination of undesirable candidates, whereas the regulation of election campaigns, especially in the national television, did not ensure equality of all political powers [*see: Levits E. Valsts atjaunošanas koncepcijas attīstība (personiskas piezīmes) // May 4. Rakstu, atmiņu un dokumentu krājums par Neatkarības deklarāciju. Rīga: Fonds Latvijas Vēsture, 2000, pp. 275*].

61.2. The Supreme Council of the Latvian SSR was elected in partially free elections. It expressed the will not only of the citizens of Latvia, but also that of the other inhabitants of the Latvian SSR. As an organ of the Latvian SSR, the Supreme Council formally was the institution of the unlawfully created Latvian SSR and could not pass normative acts binding upon the Republic of Latvia.

However, it has to be taken into account that that effectively the elections of the Supreme Council of the Latvian SSR of March 18, 1990 constituted one of the stages of restoration of independence of Latvia that was initiated by the dissident movement and continued by the Latvian National Independence Movement and the Latvian People's Front. "The Latvian People's Front based on its success in the elections of 1989 of the Congress of People's Deputies of the USSR and local councils, was determined to follow the "parliamentary" route. This meant an active participation in the elections and acquisition of the majority of votes in the Supreme Council, preferably the 2/3 majority, and then using of this institution of the supreme power of the Latvian SSR as an instrument for achieving independence of the State" (*Levits E. Valsts atjaunošanas koncepcijas attīstība, pp. 276*).

The Latvian People's Front formulated its claim to restoration of independence of Latvia in its second programme: "Having regard to the rights of Latvia and the will of the people, the Latvian People's Front sets an objective to restore national independence of Latvia by forming a democratic parliamentary republic that would continue the democratic traditions of the Republic of Latvia" (*Programme of the Latvian National Front // Atmoda, November 4, 1989*). The Latvian People's Front clearly defined in its election platform of the Supreme Council of the Latvian SSR that its representatives as members of the Supreme Council will vote for independence of Latvia: "This is the moment of making the decision. In the elections on March 18 we will clearly express our will – to live in a free, independent and democratic Latvia! Indifference, idleness or coincidence cannot decide our future. Our objective - an independent State of Latvia that would continue and develop the democratic and parliamentary traditions of the Republic of Latvia." (*Platform of the Latvian National Front for the Elections of the Supreme Council // Atmoda, February 13, 1990*).

The election of the Supreme Council was a vote for the independence of Latvia where, despite imperfections of the voting system, the supporters of independence of Latvia clearly prevailed. Having regard to the objectives set in the election platform of the Latvian People's Front and the will of the majority of the inhabitants of Latvia, as clearly established by the process of the Third Awakening, to live in a free and independent State, members of the Supreme Council were authorized in the elections to decide upon restoration of independence of the State of Latvia.

61.3. When making the decision on restoration of independence of the Republic of Latvia, the Supreme Council based itself on the legal platform of the Republic of Latvia of November 18, 1918. At the moment of adoption of the Declaration of Independence, the Supreme Council as the supreme authority of the Latvian SSR declared the Proclamation Act of November 18, 1918 of the Republic of Latvia as binding upon itself and undertook the duty to carry out the factual restoration of independence of the Republic of Latvia.

The Supreme Council worked in the interests of the Republic of Latvia by restoring its sovereign and effective State power up to the moment when the institutions of the State power provided for in the Satversme, to which the Supreme Council could pass its authority, were elected in democratic elections (*see: Levits E. Valsts atjaunošanas koncepcijas attīstība, pp. 278*).

The policy of restoration of the statehood of Latvia implemented by the Supreme Council received the support of the inhabitants of Latvia already on March 3, 1991 when the Latvian nationwide poll took place. As one of the leaders of the Latvian National From, Dainis Īvāns, writes in his memoirs: "– Do you support a democratic and independent Latvia?

– This was the question, and 73.6 percent of the members of the plebiscite of the 87.6 percent of the registered voters of Latvia answered affirmatively. Only 24.7 percent voted "against", which we regarded as a fantastic manifestation of the loyalty of multinational society to the Republic of May 4. Even in Daugavpils with its only 13 percent of the Latvian inhabitants, 63.4 percent voted "for"." (*Īvāns D. Gadījuma karakalps. Rīga: Vieda, 1995, pp. 350*).

In the elections of the 5th Saeima on June 5 and 5, 1993, the earlier work of the Supreme Council was accepted as consistent with the interests of the Republic of Latvia and its people. In these elections that were consistent with the requirements of Article 6 of the Satversme and standards of democratic elections, the Latvian people did not contest the necessity of restoration of independence of the Republic of Latvia and elected one hundred of its representatives, thus authorising them to continue the process of restoration of the State.

Under the norms of the Satversme, the elected 5th Saeima took over the authority of the Supreme Council. By taking over the authority from the Supreme Council, the 5th Saeima, on behalf of the Latvian people, also accepted as legally binding the activities of the Supreme Council that is had carried out since the adoption of the Declaration of Independence in the interests of the Republic of Latvia.

Consequently, one can conclude that the Declaration of Independence and the Constitutional Law are legally binding, even though these acts were not passed in accordance with the procedure established in the Satversme.

62. The constitutional regulation of the State of Latvia is broadly summarized in the Satversme, however the Declaration on the State of Latvia of May 27, 1920, the Declaration of Independence and the norms of the Constitutional Law have preserved their legal force alongside it. Legal writings suggest that the valid acts of a constitutional rank alongside the Satversme are the Proclamation Act of the Republic of Latvia of November 18, 1918, Declaration on the State of Latvia of May 27, 1920, the Declaration of Independence and the Constitutional Law (*see: Kusiņš G. Kā pilnveidot mūsu valsts Satversmi // Satversmes reforma Latvijā: par un pret. Rīga: Institute of socio-economic researches „Latvija", 1995, pp. 39*).

Since the Preamble and Article 9 of the Declaration of Independence are valid norms of a constitutional rank, the Constitutional Court is entitled to consider the compliance of the laws contested in this case with the norms of the Declaration of Independence.

IX

63. In order to consider the compliance of the words of Article 1 of the Law on Authorization and the Ratification Law "observing the principle of inviolability of borders established by the Organization of Security and Cooperation in Europe" with the Preamble and Article 9 of the Declaration of Independence, it is necessary to determine the content of these valid norms of the constitutional rank.

64. The Preamble of the Declaration of Independence consists of an extended description of historical facts and their legal assessment. Such a description of the historical facts was included in the Preamble of the Declaration by its drafters to explain to the reader the political motivation of the Latvian people to restore independence of their State and draw attention to the facts, legal assessment of which leads to the conclusion that the Republic of Latvia that was founded on November 18, 1918 still exists, and that the Supreme Council restores the sovereign power of this State (*see: Levits E. 4. maija Deklarācija Latvijas tiesību sistēmā, pp. 54 – 55*).

64.1. The first paragraph of the Preamble of the Declaration of Independence describes the process of creation of the Republic of Latvia by particularly emphasizing the Proclamation Act of the Republic of Latvia of November 18, 1918, election of the Constitutional Assembly of Latvia and adoption of the Satversme, as well as the international recognition of the Republic of Latvia and its admission as a member of the League of Nations.

The second paragraph of the Preamble of the Declaration of Independence is dedicated to the events of June 1940. The Preamble takes note that the note of ultimatum by the USSR government led to the change of the government of the Republic of Latvia. In this paragraph, the Supreme Council qualifies the ultimatum note by the USSR and the aggression of the USSR against the Republic of Latvia as an international crime, in the result of which the sovereign State power of the Republic of Latvia was abolished.

In the third paragraph of the Preamble, the Supreme Council assesses the National Saeima elections of July 14 and 15, 1940. The Supreme Council indicates that these elections took place in a State that was occupied by the troops of other state in the conditions of political terror, based on the rules of an anti-constitutional law on elections that had been illegally adopted. In addition to this, the Supreme Council also emphasized that only one list of candidates - "Working People's Bloc" – was allowed to participate in the elections, and it also concluded that the results of the elections were falsified.

The fourth paragraph of the Preamble is devoted to the decision of the People's Saeima to abolish the independence of the Republic of Latvia and to join the USSR. The

Supreme Council indicates that the People's Saeima was not expressing the will of the Latvian people and it did not have any constitutional rights to decide upon the issues regarding change of the State regime and abolishment of State sovereignty of Latvia. By indirectly referring to Article 77 of the Satversme, the Supreme Council emphasised that only the Latvian people were entitled to decide on these questions, but no national referendum was organized regarding the accession of Latvia to the USSR.

On the basis of the historical facts established in the previous four paragraphs of the Preamble, the Supreme Council concludes in the fifth paragraph of the Preamble that the incorporation of the Republic of Latvia into the USSR is invalid from the point of view of the international law. Similarly, the Supreme Council emphasizes that the Republic of Latvia *de jure* exists as a subject of international law, and it is recognized by more that 50 States of the world.

64.2. The rules included in the Declaration of Independence concretize the doctrine of State continuity of Latvia, which is provided by Article 2 of the Satversme in accordance with the rules of international law (*see: Para 31 of this judgment*). This is the official opinion of the Republic of Latvia on the issue that the Republic of Latvia that was founded on November 18, 1918, despite the aggression and occupation by the USSR that took place in 1940, has continued its uninterrupted existence (*see: Levits E. 4. maija Deklarācija Latvijas tiesību sistēmā, pp. 56*).

One can agree to the opinion of the Cabinet of Ministers that the request to assess compliance of the contested laws with the Preamble of the Declaration of Independence means a request to assess compliance of these laws with the doctrine of continuity of the Republic of Latvia (*see: case materials, Vo. 4, pp. 75).* The Preamble of the Declaration of Independence imposes the obligation on the authorities of the Republic of Latvia to observe the doctrine of continuity of the Republic of Latvia and not to derogate from it. In all juridically important circumstances the State organs of the Republic of Latvia have to base their action in the doctrine of continuity formulated in the Preamble. Similarly, the description of the historical facts included in the Preamble and its legal assessment that justifies the continuity doctrine is binding on the organs of the Republic of Latvia (*see: Levits E. 4. maija Deklarācija Latvijas tiesību sistēmā, pp. 56 – 57*).

The Preamble of the Declaration of Independence strengthens the continuity doctrine of the State of Latvia.

65. Article 9 of the Declaration of Independence provides: "To develop relations between Latvia and the USSR in accordance with the Peace Treaty between Latvia and Russia

of 11 August 1920, which is still in force and which recognizes the independence of Latvia for all time. To establish a Government Commission for conducting negotiations with the USSR."

The Saeima and the Cabinet of Ministers have expressed an opinion that Article 9 of the Declaration of Independence has lost its legal force.

65.1. The institutions that passed the contested acts justify their opinion by reference to Article 9 of the Declaration of Independence as being closely related to Article 5 of the Declaration that provided for a transition period for the re-establishment of the *de facto* independence of the Republic of Latvia. Both of these norms form a singe regulation: "During the transitional period, it is necessary to re-establish *de facto* independence of the Republic of Latvia by dealing with the issue by means of negotiations with the USSR and based on refusal of Russia from Latvia for all time." With Article 2 of the Constitutional Law, Article 5 of the Declaration of Independence was recognized as invalid, whereas Article 9, which is a rule closely linked to Article 5, is declared as invalid in the Preamble of the Constitutional Law (*see: case materials, Vol. 1, pp. 151 – 152 and Vol. 4, pp. 78 – 79*).

65.2. Article 2 of the Constitutional Law recognizes Article 5 of the Declaration of Independence that provided for a transitional period for restoration of *de facto* independence of Latvia to be invalid. However, the Preamble of the Law *inter alia* recognised: "On August 19, 1991, as a consequence of the coup, constitutional structures of state power and government of the USSR have ceased to exist, Article 9 of the Declaration of the Independence of the Republic of Latvia, adopted on May 4, 1990 on the restoration of the Republic of Latvia's independent statehood by way of negotiations cannot be implemented."

Even though it could indeed follow from the Preamble of the Constitutional Law that Articles 5 and 9 of the Declaration of Independence form uniform rule that becomes invalid by adoption of the Constitutional Law, one can agree to the opinion expressed by J. Neimanis that such approach would be too simplistic. If the Constitutional Law had been intended to repeal also Article 9 of the Declaration of Independence, it would have been *expressis verbis* so indicated in Article 2 of the Constitutional Law. One has also take into account that Article 9 of the Declaration of Independence deals with several legal issues, only one of which is conducting of negotiations with the USSR (*see: case materials, Vol. 11, pp. 117 – 118).*

Article 5 of the Declaration of Independence was a compromise norm that emerged in the final stage of elaboration of the Declaration of Independence and did not really fit in the context of the Declaration. "The content of Section 5 of the Declaration is a foreign body in the document that one should get rid of in shortest time possible" (*Apsītis R. Neatkarības deklarācijas pieņemšanas gadadienā // Jurista Vārds, May 3, 2005, No. 16*).

Preparatory materials of the Declaration of Independence evidence that its Article 5 was formulated only in the draft of April 28, 1990 (*see: May 4, pp. 485).* The reference to the transitional period was indirectly included in the "minimum" version of the Declaration of Independence that was prepared for examination in the meeting of March 28, 1990 of the fraction of deputies of the People's Front of the Supreme Council of Latvia. The respective norm in this document was put as follows: "The Supreme Council shall continue negotiations with the USSR on restoration of state independence of Latvia" (*May 4, pp. 468).*

At the same time, the first sentence of Article 9 of the Declaration of Independence in the draft law of March 24, 1990 provides: "Relations with the USSR shall hereinafter be regulated by the Peace Treaty of August 11, 1920 between Latvia and Russia that provides for friendly relations and collaboration with the USSR" (*May 4, pp. 465).* During the further process of elaboration of the Declaration of Independence, this norm underwent editorial changes and concretisation to its content, but still preserved its place in the text of the Declaration.

One can conclude that Article 9 of the Declaration of Independence, during the process of its elaboration, had been formulated considerably earlier than Article 5. Consequently, Article 9 of the Declaration of Independence cannot be regarded only as the mechanism of implementation of Article 5. It has its own content and meaning in the system of the Declaration.

65.3. One has to take into account that Article 9 of the Declaration of Independence consists of two sentences. Since the draft law of March 24, 1990, the first sentence of Article 9 was an integral element of the Declaration. The wording of the second sentence of Article 9 of the Declaration of Independence regarding negotiations with the USSR appears in the "minimum version" of the draft declaration on March 28, 1990 in the form of an idea of a transitional period (*see: May 4, pp. 468*). At the same time, both sentences were merged into Article 9 only in the draft law of April 12, 1990 (*see: May 4, pp. 476).*

In the Preamble of the Constitutional Law, the Supreme Council established that it was impossible to restore *de facto* independence of the Republic of Latvia by conducting negotiations with the USSR. One can conclude therefore that the second sentence of Article 9 of the Declaration of Independence could serve as an indirect reference to the fact that independence of the Republic of Latvia is to be restored gradually, providing a unified regulation with Article 5 of the same Declaration. The second sentence of Article 9 of the Declaration of Independence provides for a gradual transition to the *de facto* restoration of independence. Namely, Latvia as an independent State on the basis of mutually equal bases by means of negotiations will deal with, , all issues related to the transitional period. At the

same time, the first sentence of Article 9 of the Declaration of Independence has an independent meaning that is only partially related to the transitional period established in the rest of the text of the Declaration for restoration of independence.

A similar opinion has been expressed in the legal writings: "The Law of August 21, 1991 "on the Statehood of the Republic of Latvia" [..] establishes that it is impossible to implement Article 9 of the Declaration "on the restoration of independence of the Republic of Latvia by means of negotiation". This part of the Preamble of this Law is to be understood in the sense that it concerns only that part of Article 9 that speaks of formation of the Government Commission for conducting negotiations with the USSR, and that the principled position regarding the Peace Treaty of 1920 has not been changed by the Law of August 21, 1991" (*opinion of March 14, 2005 by Ineta Ziemele to the Cabinet of Ministers regarding signing and ratification of the Republic of Latvia and the Russian Federation Treaty on the State border of Latvia and Russia, case materials, Vol. 6, pp. 214).*

Consequently, Article 9 of the Declaration of Independence has not fully lost its legal validity.

66. The Applicant, by referring to the opinion of E. Levits, holds that from the first part of Article 9 of the Declaration of Independence follows a specific treatment of the issue of State border of Latvia and Russia with a norm of a constitutional rank (*see: case materials, Vol. 1, pp. 11 – 12).*

E. Levits writes: "Article 9 of the Declaration provides that relations of Latvia with the USSR are to be formed on the basis of the Peace Treaty of 1920. This Article, of course, is also related to the legal continuator of the USSR – Russia. This means - until this Article of the Declaration has been repealed, Latvia can form all treaty relations with Russia only in the manner that would ensure that the later treaties are not in conflict with the 1920 Peace Treaty. Article 9 is particularly important for solving the issue of Abrene." (*Levits E. 4. maija Deklarācija Latvijas tiesību sistēmā, pp. 64*).

One can agree to the views expressed by the Cabinet of Ministers that such an explanation of Article 9 of the Declaration of Independence by E. Levits does not comply with the object and content of Article 9 of the Declaration (*see: case materials, Vol. 6, pp. 78).*

66.1. First of all, one has to take into account that E. Levits is the only scholar who, when commenting the content of the Declaration of Independence, has drawn attention to such a close relation of Article 9 of the Declaration of Independence to the issue of the State borders of Latvia and Russia and the issue of Abrene. For instance, R. Apsītis in his

commentary to the Declaration of Independence interprets its Article 9 in a less far-reaching manner: "Article 9 of the Declaration provides that relations of Latvia with the USSR shall be formed in accordance to the 1920 Peace Treaty between Latvia and Russia. Nowadays, when the USSR no longer exists, the wording of Article 9 applies to the legal continuator of the USSR – Russia" (*Apsītis R. Neatkarības deklarācijas pieņemšanas gadadienā // Jurista Vārds, May 3, 2005, No. 16*). R. Apsītis does not *expressis verbis* relate the restoration of the State border of Latvia and Russia according to the Peace Treaty and the issue of Abrene with Article 9 of the Declaration of Independence. Also in the first draft law of the Declaration that was elaborated in the form of theses on March 20, 1990, it was indicated: "The Abrene issue remains open in legal terms, but in the present situation it should not be politically activated" (*May 4, pp. 456).*

One also has to take into account that during the adoption of the Declaration of Independence, a certain part of the residents contested the right of the Latvian people to be independent, and these people had still to be persuaded about the necessity to restore independence of the State. The main objective of the Declaration of Independence was full restoration of the statehood of Latvia. Therefore the Declaration of Independence established only the main basic principles, ideas and directions of activities for restoration of independence of the State of Latvia. The Declaration of Independence generally sketched the most important aspects of restoration of the statehood of Latvia. No detailed regulation for separate issues of restoration of *de facto* independence was included in the Declaration of Independence. Specific treatment regarding the State border of Latvia and Russia would not correspond to the structure of the Declaration of Independence.

66.2. One should also take into account the fact that E. Levits, in his commentary, quotes Article 9 of the Declaration of Independence close to the text that had been accepted in the versions of March 24 and April 3, 1990 of the Declaration (*see: May 4, pp. 473*). E. Levits points out in his memoirs regarding adoption of the Declaration of independence that "I participated in the working groups of the Declaration until my departure on April 10" (*Levits E. Valsts atjaunošanas koncepcijas attīstība, pp. 293*).

However, the preparatory materials of the Declaration of Independence show that its Article 9 was considerably changed during the meeting of the group of members of the Latvian People's Front of the Supreme Council on April 12, 1990. Article 9 of the draft declaration of April 9, 1990 prepared by the working group provided: "To develop relations between the Republic of Latvia with the USSR in accordance with the still valid Peace Treaty of August 11, 1920 between Latvia and Russia". After the meeting of the group, this sentence was supplemented by a subordinate clause "in which the independence of Latvia has been

recognised for all time", and it itself was later supplemented by the second sentence with the following wording: "To establish a Government Commission for conducting negotiations with the USSR" (*May 4, pp. 476*).

Consequently, it is possible to conclude that Article 9 of the Declaration of Independence was substantively amended by modifying the initial treatment provided therein.

66.3. The reference to the Peace Treaty included in Article 9 of the Declaration of Independence by the supplement adopted on April 12, 1990 was narrowed down in respect to one particular issue, namely, the fact that Russia, in the Peace Treaty, had recognized independence of Latvia for all time.

The regulation on recognition of Latvia for all time is included in Article 2 of the Peace Treaty. Hence, taking into account the history of elaboration of Article 9 of the Declaration of Independence, one cannot conclude that it is related to other norms of the Peace Treaty, *inter alia*, Article 3 that establishes the State border between Latvia and Russia. One should rather agree to the opinion expressed in legal writings that "the reference to the Peace Treaty is to be read in the context of the following sentence that emphasizes the circumstance that the Peace Treaty recognizes independence of the State of Latvia. Consequently, the Peace Treaty, in this particular case, is to be regarded only as a normative framework for one thesis – regarding independence of the State of Latvia" (*Paparinskis M. Maisot tiesisko „spageti" bļodu: Robežlīgums, Satversme un starptautiskās tiesības // Jurista Vārds, January 30, 2007, No. 5*).

The first sentence of Article 9 of the Declaration of Independence together with its Preamble are to be interpreted as the justification for the main question incorporated in the Declaration, namely, the restoration of the statehood of Latvia. Enumeration of historical facts and their legal assessment in the Preamble of the Declaration of Independence, as well as the reference to the Peace Treaty in Article 9 are first of all included with the purpose of justifying the rights of Latvia to an independent State. The first sentence of Article 9 of the Declaration of Independence particularly emphasizes the fact that the Soviet Russia has recognized independence of Latvia for all time already in 1920. It is also emphasized that independence of Latvia is restored by the Declaration of Independence, namely, no new State is founded.

The first sentence of Article 9 of the Declaration of Independence concretizes the duty of the authorities of Latvia, which is established in the Preamble of the Declaration, to base themselves on the doctrine of continuity and never derogate from it in the Latvian relations with the USSR and Russia.

66.4. E. Levits has expressed a view that the treatment of the mutual relations of Latvia and Russia follows from Article 9 of the Declaration of Independence; while Article 9 of the Declaration has not been repealed, Latvia is entitled to form its treaty relations with Russia only by ensuring that the later treaties are not in conflict with the 1920 Peace Treaty (*see: Levits E. 4. maija Deklarācija Latvijas tiesību sistēmā, pp. 64*).

However, Article 59 of the Vienna Convention contains the general principle *lex posterioris derogat legi priori*, according to which a later treaty relating to the same subject matter replaces the earlier treaty. This general principle would not relate to international treaties only in those cases if they are in a hierarchical relationship, for instance, the earlier treaty is declaratory of rules of *ius cogens* or the priority of this treaty has been expressly provided for (*see: 2006 Conclusions of the work of the Study Group on the Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law // http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/1_9_2006.pdf, Paras 31 – 36*).

The Peace Treaty is a "simple" international treaty, and neither Latvia nor Russia have conferred it a particular legal force. Consequently, the parties to this Treaty in accordance with international law can conclude new bilateral treaties, which would fully or partially replace the Peace Treaty.

The opinion regarding effect of Article 9 of the Declaration of Independence on the force of the Peace treaty *vis a vis* the later treaties between Latvia and Russia does not comply with the treatment of Article 59 of the Vienna Convention. It could be permissible only in the case if the constitutional norm would *expressis verbis* indicate a special status of the Peace Treaty.

However, the Declaration of Independence does not *expressis verbis* provide for such restrictions to the rights of the State of Latvia to conclude new international treaties with Russia regarding the issues dealt with in the Peace Treaty.

66.5. The Declaration of Independence is a carefully elaborated document that was discussed, improved and edited for a long period of time. In order to be able to consider that the objective of the Declaration of Independence is to regulate the State border of Latvia and Russia and to impose the obligation on Latvia to necessarily restore the border established in the Peace Treaty, one should need clear indications regarding the existence of a legislative purpose. The Constitutional Court has not been able to find such indications during the preparation of the case.

Had the authors of the Declaration of Independence wanted to regulate the State border of Latvia and Russia in a particular way, they would have had to include a rule with a

respective content into the text of the Declaration, just like it was done with the reference to Article 2 of the Peace treaty in Article 9 of the Declaration of Independence. No such norm is included in the final wording of the Declaration of Independence. Similarly, the process of elaboration of the Declaration does not show that the authors wanted to include such norm therein.

An indirect indication about the lack of such treatment in the Declaration of Independence is also provided by the motives of the Supreme Council when passing the resolution of January 22, 1992 "On the Non-recognition of the Annexation of the town of Abrene and the Six Rural Districts of the Abrene District". When reporting on the draft resolution, a member of the Supreme Council Rolands Rikards *inter alia* indicated: "But in this draft resolution we insist on putting it in legal terms: "The border shall be established by Article 3 of the 1920 Peace Treaty". We express our official opinion. The rest can be negotiated." (*Transcript of the morning plenary meeting of January 22, 1992 by the Supreme Council of Latvia*). If such treatment had already been established in the Declaration of Independence, it would not be necessary on January 22, 1992 to establish it or the respective fact could be established by referring to Article 9 of the Declaration of Independence.

One can conclude that Article 9 of the Declaration of Independence does not include any treatment of the State border of Latvia and Russia. The first sentence of Article 9 of the Declaration of Independence imposes an obligation on the Republic of Latvia not to derogate from its continuity doctrine in the negotiations with the Russian Federation.

The first sentence of Article 9 of the Declaration of Independence prohibits Latvia from derogating from the continuity doctrine of Latvia when concluding international treaties with Russia.

X

67. The Applicant has requested to assess the compliance of the Law on Authorization with the Preamble and Article 9 of the Declaration of Independence. Having regard to the conclusions already made by the Constitutional Court, it is necessary to assess whether the Law on Authorization complies with the doctrine of State continuity. It means that it is necessary to determine whether the action of the Saeima, when passing the Law on Authorization, was not in conflict with the State continuity doctrine.

67.1. In the Law on Authorization, the Saeima has authorized the Cabinet of Ministers to sign the Border Treaty. The Saeima provided this authorization "based on the Constitutional Law of August 21, 1991 of the Republic of Latvia passed by the Supreme

Council of Latvia "on the Statehood of the Republic of Latvia", as well as having regard to the internationally recognized State continuity of the Republic of Latvia".

Article 68 of the Satversme provides for the rights of the Saeima to ratify international agreements signed by the Cabinet of Ministers that deal with issues to be settled by means of legislation. The Satversme does not provide that the Saeima is to authorize the Cabinet of Ministers to sign international treaties; however, similarly no prohibition of doing so is included in the Satversme.

"In parliamentary States, the government is subordinated to the parliament and is responsible to it. Therefore, it is logical that the parliament not only controls the government, but also instructs it both regarding the general course of policy and establishing activities of certain departments" (*Dišlers K. Ievads Latvijas valststiesību zinātnē, pp. 151*). The Latvian Senate has also admitted that the Saeima is authorized to give instructions and binding orders to the Cabinet of Ministers [*Judgments of the Latvian Senate (1918 – 1940). Vol. 3. Judgments of the Administrative Department of the Latvian Senate (1926 – 1930). Rīga: Latvijas Republikas Augstākā tiesa, Senatora Augusta Lēbera fonds, 1997, pp. 922*].

The Saeima is entitled to authorize the Cabinet of Ministers to perform certain activities in international law in order not only to sign but also to prepare a treaty with a foreign State that in Saeima's view is necessaryfor Latvia. Article 3 of the Law "On International Treaties of the Republic of Latvia" established such rights for the Saeima. It provides that the Saeima "is entitled to make the decision regarding conclusion of any international treaties by nominating persons responsible for concluding the respective agreement and extent and context of authorization of these persons in the decision".

Consequently, the Saeima, when authorizing the Cabinet of Ministers, has not exceeded its competence established by the Satversme.

67.2. In the cases when the Cabinet of Ministers has planned to prepare and sign the international agreements that affect issues that are relevant for the State, a preliminary consent by the Saeima to such action of the Cabinet of Ministers, by authorizing the Cabinet of Ministers to elaborate and sign such law by means of a law, confers an additional legitimacy to the action of the Cabinet of Ministers and shows to the other contractor that not only the Latvian government, but also the Parliament shall accept the signed treaty and shall not object against its enactment.

The text of the Satversme of Latvia was mainly elaborated on the basis of the Germany Constitution of August 11, 1919. In commenting rules of this constitution, it has been admitted in the German legal writings: in the cases when the executive power has planed to decrease the State territory by means of an international treaty, the parliament can manifest

its consent not only by ratifying the already signed international treaty, but also by a preliminary authorisation of the President to sign such a treaty (*see: Giese F. Der Verfassung des Deutschen Reiches, S. 200; Anschütz G. Die Verfassung des Deutschen Reichs vom 11. August 1919, pp. 422*).

When passing the Law on Authorization, the Saeima discussed in broad debates the content of the Border Treaty and the political necessity for its signing. The will of the Saeima, by authorizing the Cabinet of Ministers to sign this Treaty, suggests that the Saeima has accepted signing of such agreement and is ready to undertake the international obligations established therein (*see: Transcript of the fourth meeting of the winter session of the 9th Saeima of the Republic of Latvia, February 1, 2007 and the fifth meeting, February 8, 2007).*

68. As the Cabinet of Ministers indicates, the drafting of the Law on Authorization had several objectives.

First, Law on Authorization was drafted by observing the requirement to confirm the authorization of the highest State officials to conclude important international treaties included in the second part of Article 3 of the Law "On the International Treaties of the Republic of Latvia".

Second, the Law on Authorization fulfils a certain political function, namely, the Saeima, when passing it, expresses its political support for signing of the Border Treaty.

Third, the Law on Authorization is passed with the objective to ensure the continuity doctrine of the Republic of Latvia (*see: additional explanations by the Cabinet of Ministers, case materials, Vol. 10, pp. 138 – 140*).

68.1. In addition to this, it is possible to agree to the Applicant that limits of authorization are included in the Law on Authorization (*see: case materials, Vol. 1, pp. 12).*

The Saeima has authorized the Cabinet of Ministers to conclude the Border Treaty by observing the Constitutional Law and not affecting the State continuity doctrine by its action. As the chairman of the Commission of Foreign Affairs of the Saeima, Andris Bērziņš, indicated during the Saeima discussions: "The prepared draft law under consideration provides for limits of authorization to the government, which are precisely established by the Constitutional Law of the Republic of Latvia" (*Transcript of the fifth meeting of the winter session of the 9th Saeima of the Republic of Latvia, February 8, 2007).*

Consequently, one can conclude that the Law on Authorization provides for the limits of authorization of the Cabinet of Ministers.

68.2. When restricting the activities of the Cabinet of Ministers by the Law on Authorization, the legislator required it to observe the Constitutional Law and the continuity doctrine of the Republic of Latvia.

As the parliamentary discussions show, the objective of the legislator was not to confer rights to the Cabinet of Ministers by the Law on Authorization to act against the continuity doctrine of the Republic of Latvia or to denounce it. A. Bērziņš has emphasized in particular that the Law on Authorization does not affect the continuity doctrine of the Republic of Latvia and does not repeal any of the other earlier acts that establish the doctrine or expresses the viewpoint of Latvia regarding its illegal annexation into the USSR. "The construction of the draft law does not restrict any of the treaty parties regarding their interpretation of the history. It is clear that Latvia has and will have a different opinion regarding what and how happened with our independence during the previous century" (*Transcript of the fourth meeting of the winter session of the 9th Saeima of the Republic of Latvia, February 1, 2007).*

In order to emphasize the continuity doctrine of the Republic of Latvia, the legislator included into the Law on Authorization not only the reference to it, but also drew the attention to the Constitutional Law. "The Constitutional Law is the most important legal document" that includes all aspects necessary for ensuring the continuity doctrine of the Republic of Latvia, because it "sketched the history of the Republic of Latvia up to 1940 and simultaneously fully restored the Republic of Latvia", the Prime Minister A. Kalvītis stated in his speech (*see: Transcript of the fourth meeting of the winter session of the 9th Saeima of the Republic of Latvia, February 1, 2007).*

68.3. The declaration of May 4, 1990 of the Supreme Council of the Latvian SSR "On Renewal of the Independence of the Republic of Latvia" was adopted on the basis of the State continuity doctrine. The Constitutional Law is closely related to the restoration of independence of the Republic of Latvia and fully confirms continuity of the State of Latvia (*see: Apsītis R. Neatkarības deklarācijas pieņemšanas gadadienā // Jurista Vārds, May 3, 2005, No. 16*).

The Preamble of the Constitutional Law contains a reference to the Declaration of Independence, emphasising that this law has been passed by observing the basic propositions of the Declaration. It particularly follows from Article 3 of the Constitutional Law, wherein the Supreme Council has emphasized the duty to liquidate the occupation and annexation of the State of Latvia, which plainly draws attention to the State continuity doctrine as the basis for the regulation of the Constitutional Law.

One can agree to the Saeima that the Law on Authorization complies with the Preamble of the Declaration of Independence. Law on Authorization contains no facts that would not correspond to the historical facts mentioned in the Preamble of the Declaration of Independence, as well as their legal assessment. Similarly, the Law on Authorization is not in conflict with the continuity doctrine of the State of Latvia, but just on the contrary – the fact of continuity of the State of Latvia is particularly emphasized in the Law on Authorization as the basis for authorisation to sign the Border Treaty (*see: case materials, Vol. 1, pp. 150 – 151).*

68.4. When commenting the draft law of the Law on Authorization, professor Ineta Ziemele stated: "The draft decision prepared by the government is sufficiently considerate in the abovementioned legal context with one basic precondition – if the government and the Saeima continue the position that has been expressed in different legal and political forms regarding the issue of continuity of the State of Latvia and questions related thereto with all consequences following from that" (*Ziemele I. Piezīmes pie sagatavotā lēmuma projekta // Jurista Vārds, January 30, 2007, No. 5*).

According to the Constitutional Court, neither the Law on Authorization, nor the opinions of the highest State officials expressed during the Saeima discussions regarding the adoption of the Law on Authorization show that Latvia waives its continuity doctrine by means of this Law.

The Law on Authorization established the scope of authority of the Cabinet of Ministers for signing the Border Treaty. The authorization included in the Law concretizes the requirements of Article 9 of the Declaration of Independence regarding the Border Treaty and obliges the Cabinet of Ministers to ensure observation of these requirements, namely, to ensure that the State of Latvia would not act contrary to the continuity doctrine when signing the Border Treaty and undertaking international obligations provided there.

The Cabinet of Ministers has signed the Border treaty without affecting the continuity doctrine of the State of Latvia, as well as without waiving it.

Consequently, the Law on Authorization complies with the Preamble of the Declaration of Independence.

69. The Applicant has argued that the Law on Authorization does not comply with Article 9 of the Declaration of Independence because it provides for a contrary authorization. According to the Applicant, Article 9 of the Declaration of Independence imposes an obligation to achieve the renewal of the State borders of Latvia and Russia established in the Peace Treaty, while the Law on Authorization confers the rights to the Cabinet of Ministers to

sign the Border Treaty that changes the State border established in the Peace Treaty (*see: case materials, Vol. 1, pp. 11 – 12).*

69.1. The Constitutional Court has already established that Article 9 of the Declaration of Independence does not impose an obligation on the State of Latvia to restore the State border with Russia, as established in the Peace Treaty. It follows from Article 9 of the Declaration of Independence that the obligation of Latvia is not to act against the State continuity doctrine during negotiations with Russia.

The State continuity doctrine does not prohibit the State of Latvia to deal with its own territory. The State of Latvia is entitled, in compliance with the procedure established in the Satversme, both to enlarge and diminish its territory (*see: Ziemele I. Is the Distinction between State Continuity and State Succession, pp. 215 – 216*). In this case one has to take into account that the State of Latvia by means of the Border Treaty does not accept the position of the Russian Federation that incorporation of the Abrene area into the territory of Russia is lawful, but rather gives to Russia by the use a procedure accepted in international law the territory that *de facto* is under the control of the Russian Federation but *de iure* is a part of the territory of the State of Latvia.

Scholars of other States have also expressed the view that loss of the Abrene area does not affect State continuity of Latvia (*see: Taube C. Constitutionalism in Estonia, Latvia and Lithuania. A Study in Comparative Constitutional Law. Uppsala: Iustus Förlag, 2001, pp. 33 – 44*).

69.2. When giving the Abrene area to Russia by the Border Treaty, Latvia has acted according to the order established in Satversme. One also has to take into account that the Latvian government in the Border Treaty has dealt only with the issues related to the State border, but has not touched the issues of inter-State political relations, *inter alia*, the issue regarding the legal status of Latvia (*see: Additional explanations by the Cabinet of Ministers, case materials, Vol. 10, pp. 136*).

The Constitutional Court has no doubts that the State of Latvia, by means of the Border Treaty, has not disclaimed its State continuity, but just on the contrary – it has repeatedly expressed its opinion regarding this issue and the Cabinet of Ministers has signed the Border Treaty based on the Law on Authorization that established a clear framework of action for it. Since the representative of the Russian Federation, when signing the Border Treaty, had to be aware of the content of the mandate of the Latvian representative and he did not object against the fact that the Prime Minister of the Republic of Latvia signed the Border Treaty by observing the State continuity doctrine of Latvia, one can consider that the State of Latvia has acted in accordance with the requirements of this doctrine.

Moreover, as the Constitutional Court has already established, territorial changes made by means of the Border Treaty have been carried out according to the order established by the Satversme. The State continuity doctrine prohibits neither changing the State territory in accordance with the order established in the Satversme, nor the Saeima authorizing the Cabinet of Ministers to sign a respective treaty. The international law doctrine also expresses the view that change of the State borders does not affect continuity of this State. Under the general international law, a State as a legal person remains unaffected also in the case if it changes its territory. State continuity is not affected by minor territorial changes or loss of separate territories (*see: Marek K. Identity and Continuity of States, pp. 15–126, 551–587; Kunz J. L. Identity of States under International Law // American Journal of International Law, Vol. 49, 1955, pp. 72-7373; O'Connell D. P. The Law of State Succession. Cambridge: Cambridge University Press, 1956, pp. 31*). "Latvia is entitled to cede Abrene to Russia like France is entitled to cede Alsace to Germany, and neither Latvia, nor France would loose their Statal identity as a result" (*Paparinskis M. Maisot tiesisko „spageti bļodu": Robežlīgums, Satversme un starptautiskās tiesības // Jurista Vārds, January 30, 2007, No. 5*).

Consequently, the Law on Authorization complies with Article 9 of the Declaration of Independence.

XI

70. Article 1 of the Ratification Law provides that the Border Treaty is passed and ratified "observing the principle of inviolability of borders passed by the Organization of Security and Cooperation in Europe".

The Applicant considers that these words do not comply with the Preamble and Article 9 of the Declaration of Independence. In order to consider it, it is first of all necessary to investigate the content of the principle of inviolability of borders, as well as whether the Saeima has observed the requirements of the Satversme that follow from Article 68 when including these words into the Ratification Law.

71. The principle of inviolability of borders is defined in Article 3 of the Helsinki Final Act. It provides: "The participating States regard as inviolable all one another's frontiers as well as the frontiers of all States in Europe and therefore they will refrain now and in the future from assaulting these frontiers. Accordingly, they will also refrain from any demand for, or act of, seizure and usurpation of part or all of the territory of any participating State."

71.1. When considering the principle of inviolability of borders, one has to take into account the fact that the Helsinki Final Act is not an international treaty within the meaning of the Vienna Convention. The Helsinki Final Act includes a clause that it is not eligible for registration under Article 102 of the UN Charter. Since all international agreements have to be registered according to this procedure, the *a contrario* argument would seem to sufficiently accurately reflect the objective of the authors of the Act (*see: Aust A. Modern Treaty Law and Practice. Cambridge: Cambridge University Press, 2000, pp. 26, 280*).

The Helsinki Final Act is not binding *per se*, but it can be used to determine the content of the principles of international law. The Republic of Latvia has recognized the OSCE principles as binding, *inter alia*, Article 10 of the Helsinki Final Act that requires the principles to be equally applied.

71.2. Article 3 of the Helsinki Final Act consists of two sentences. When interpreting the text of these sentences, it is necessary to point out that the first sentence apparently consists of two rules, namely, that the participating States regard as inviolable all one another's frontiers and therefore will refrain now and in the future from assaulting these frontiers.

Considering the structure of this sentence, it can be concluded that the first part of the sentence does not claim any independent normative character but only forms the framework for the second part and explains its rationale. The linking word "therefore" does not permit any other conclusion. Inviolability of borders *per se* does not cause any other legal consequences but those mentioned after the word "therefore". The second part of the first sentence of the Article indicates the actions that the States undertake to refrain from. Description of these activities is very important, for these are the words that reveal the scope of the first sentence.

The text of Article 3 of the Helsinki Final Act differs in its original languages (English, French, German, Russian, Italian and Spanish). In the text in English, French, German, Italian and Spain, the concepts with the meaning "to assault" are used (respectively "*assaulting"*, "*attentat*", "*Anschlag*", "*dall'attaccare*", "*atacar*"), whereas in the Russian versions, a term used that can be understood in a wider sense as "to claim" („*посягательств*").

In the five languages, the first sentence limits the consequences of the border inviolability to the impermissibility of an armed assault, whereas in the Russian language it could also be related to claims of other nature. If one prefers the texts in English, French, Italian, Spanish and German, then the principle of inviolability of borders provided here is not at all different from the *ius cogens* rule established in Article 2 (4) of the UN Charter

regarding the prohibition of use of force. If one prefers the text in the Russian language, then wider and legally more ambiguous consequences could follow from it.

71.3. The second sentence of Article 3 of the Helsinki Final Act supports the interpretation of the English, French, Italian, Spanish and German texts. This sentence explains the content of the first sentence by one, apparently the most obvious example, starting with one and the same word in all versions – "accordingly".

In such case, if the text in the English, French, Italian, Spanish and German languages is correct, the second sentence should address armed conflicts. On the other hand, if the unclear and wider meaning that follows from the Russian version is correct, the meaning of the second sentence should exceed the use of armed force and should explain this meaning.

The second sentence provides for abstention of parties from any actions that are directed towards "seizure and usurpation of part or all of the territory". The nature of these concepts is not completely clear, however it seems what is meant is armed seizure and annexation. The second sentence definitely does not correspond to the wider notion indirectly included in the first sentence of the Russian version.

One can conclude that the textual scope of Article 3 of the Helsinki Final Act does not generally address anything more than a repeated prohibition of the unlawful use of force.

72. When applying the principles included in the Helsinki Final Act, *inter alia* the principle of inviolability of borders established in its Article 3, States have to take into account Article 10 of this Act, which *inter alia* provides: "All the principles set forth above are of primary significance and, accordingly, they will be equally and unreservedly applied, each of them being interpreted taking into account the others." In the Border Treaty, both Latvia and Russia have undertaken to apply all OSCE principles together.

72.1. By including such a reference into the Preamble of the Border Treaty, the treaty parties make a reference not only to the principle of inviolability of borders, but also to other principles of the Helsinki Final Act.

The principle of sovereign equality established in Article 1 of the Helsinki Final Act provides that the participating States agree on changes of borders. This norm reaffirms the restriction of the principle of border inviolability to the prohibition of the unlawful use of force, without denying rights to change borders by other means and as a result of action of other rules of international law.

The principle of refraining from force or threat of use of force that is established in Article 2 of the Helsinki Final Act provides that the participating States shall refrain from the threat or use of force against the territorial integrity or political independence of any State, or

in any other manner inconsistent with the purposes of the United Nations and with the Helsinki Final Act. The rules included in these documents are substantively identical to the obligations to refrain from aggression established in the London Convention and treaties concluded by the USSR and binding upon it in 1940. Hence it follows from the Helsinki Final Act that the aggression of 1940 against the Baltic States is an inadmissible violation of international law.

The principle established in Article 6 of the Helsinki Final Act, namely, the principle of non-intervention in internal affairs of other States, provides that the participating States shall refrain from intervention in internal affairs of other States, similarly as it was provided in the Assistance Pact between Latvia and the USSR. Consequently, the Helsinki Final Act emphasizes that the conduct of the USSR – intervention in the internal affairs of Latvia and other Baltic States carried out in 1940 – is impermissible as a breach of international law.

The principle of territorial integrity of States established in Article 4 of the Helsinki Final Act provides that the participating States shall refrain from making each other's territory the object of military occupation and no annexation will be recognized as legal. The first part of this Article (on carrying out annexations) is related to the future, whereas the second part (on non-recognition of annexations) does not limit the non-recognisable annexation to annexations possible only in the future and thus strengthens the principle of non-recognition of unlawful annexation whenever they have taken place. This principle consequently emphasizes the legal consequences for the breach of international law carried out by the USSR. (*see: Russel H. S. The Helsinki Declaration: Brobdingnag or Lilliput? // American Journal of International Law, 1976, pp. 265 – 266*).

72.2. Such conclusions regarding the content of the Helsinki Final Act and its pertinence to the Baltic States are also confirmed by the historical interpretation. The leader of the US delegation to the negotiations of the Helsinki Act Harold Russell pointed out that:

"The single issue in the [Helsinki] Declaration to attract the greatest amount of public attention has been the question of recognition of existing frontiers and thereby Soviet supremacy in its Eastern Empire, including the Baltic States. [..] It is the author's view, as well as that of all the Western negotiators, that the USSR failed in large part to achieve the kind of language [of the Act] it originally sought and that the document does not depart materially from previous international arrangements on frontiers and does nothing to recognize existing frontiers in Europe.

A principal, if not in fact the main, objective of the USSR at the CSCE [negotiations] was to obtain general Western acceptance of existing frontiers in much the same terms as had been obtained in the treaties concluded by the FRG with the USSR and Poland concerning

normalization of borders. The initial Soviet proposal for a principle on frontiers was a careful distillation of the essential elements of the Warsaw [FRG - Poland] and Moscow [FRG - USSR] treaties - an independent principle not explicitly related to or derived from the principle of non-use of force; mention of the inviolability of "present" or "existing" frontiers; renunciation of territorial claims; and language implying immutability of the *status quo*. [..] During the course of these negotiations the Soviet representatives grudgingly gave ground inch by inch until in the final analysis they were willing to accept language which departs substantially from their initial draft and omits all of its essential elements.

[..] Western negotiators generally were pleased with the result, which made it possible for them to interpret the principle as meaning no more and no less than prior statements of international law on frontiers [..] To protect the balance between the inviolability principle and the formulation on peaceful changes of frontiers and to inhibit the Soviet proclivity to proclaim the inviolability principle as the most important achievement of the CSCE, Western delegations insisted on a statement that all the principles are of equal significance" (*Russel H.S. The Helsinki Declaration, pp. 249 – 253*).

As to the principle of territorial integrity, "the second sentence [of the last paragraph] to the effect that no such occupation or acquisition will be recognized as legal can and should be read to refer not only to future occupations and acquisitions but also to those which may have taken place in the past. Accordingly, this paragraph may be read as supporting the U.S. position that the forceable incorporation of Latvia, Lithuania, and Estonia into the Soviet Union is not recognized as legal" (*Russel H.S. The Helsinki Declaration, pp. 265 – 266*).

72.3. After the signature of the Helsinki Final Act, the Western States (the US, France, Great Britain, Belgium etc.), in order to emphasize in an even clearer manner that the Helsinki Final Act does not apply to the Baltic States, explained in several declarations that the Helsinki Final Act did not imply recognition of illegal annexation of the Baltic states, and that after signing of this act, the Western states would still continue the non-recognition policy (*see: Dokumenti par Latvijas valsts starptautisko atzīšanu, neatkarības atjaunošanu un diplomātiskajiem sakariem. 1918 – 1998. Rīga: Nordik, 1999, pp. 159 – 160*).

The US President Gerald Ford announced that the US government had not recognized annexation of the Baltic States as legal before, and alos with the Helsinki Final Act it does not modify this position. Similarly, the President of France, Valéry Giscard d'Estaing emphasized that the text of the Helsinki Final Act does not in any way affect the non-recognition of unlawful territorial changes. Whereas the Prime Minister of Great Britain, Margaret Thatcher, in the parliamentary discussions on the Helsinki Final Act pointed out that the Western States have never recognized annexation of the Baltic States and that the Helsinki Final Act does not

make the present borders lawful (*see: Mälksoo L. Illegal Annexation and State Continuity: The Case of the Incorporation of the Baltic States by the USSR. Leiden / Boston: Martinus Nijhoff Publishers, 2003, pp. 123 – 125*).

72.4. An opinion has been expressed in the legal practice of the Russian Federation and reflected in the legal writings that an approval of lawfulness of even unlawful annexations follows from the principle of inviolability of borders. Such opinion is usually declared *ipse dixit*, based only on the title of Article 3 of the Helsinki Final Act and without entering into the interpretation of this Article (*see: Стенограмма заседания от 5 сентября 2007 г. Государственной Думы Федерального Собрания Российской Федерации*). The Helsinki Final Act - with the condition that its norms are interpreted according to the requirements of its Article 10 and that the respective declarations of the Western States are taken into account, confirmed the unlawfulness of the USSR conduct of 1940 in the international law of 1975 and repeatedly pointed out the duty not to recognize earlier unlawful annexations.

From the impermissibility of breaches of law and recognition of such breaches simply cannot follow the acceptance of the consequences of earlier breaches. Even though the Russian Federation has used such a conclusion, the reference to the UN and OSCE principles included in the Border Treaty means a reference to the objective normative content of these principles, and thus structures and confirms the legal position and status of continuity of Latvia. The opinion of Russia regarding the content of the Helsinki Final Act does not affect its objective content.

72.5. It is possible to conclude that the principle of inviolability of borders does not provide for protection of illegally established borders by international law. One also has to take into account the fact that along with the principle of inviolability of borders, the Helsinki Final Act declares the principle of self-determination that was not observed when the Baltic States were unlawfully annexed to the USSR. In addition to this, one has to take into consideration that not only the text of the Helsinki Final Act but also declarations of the Western States regarding this declaration have to be relied upon in identifying the content of the OSCE principles, and the opinion of these States on the issue of the Baltic States is clearly reflected in these declarations (*see: Paparinskis M. Maisot tiesisko „spageti" bļodu: Robežlīgums, Satversme un starptautiskās tiesības // Jurista Vārds, January 30, 2007, No. 5*).

The Cabinet of Ministers has also indicated in its reply that the State of Latvia, when referring to the principle of inviolability of borders, has made a reference to the content of this principle that is established in the Helsinki Final Act by also taking into account all other OSCE principles and declarations of the Western States regarding the issue of the Baltic

States, rather than to the content of this principle in the Russian interpretation (*see: case materials, Vo. 4, pp. 79 – 81).*

Such an opinion was expressed during the preparatory stages of the Ratification Law. The State Chancellery has indicated it its opinion: "The Helsinki Final Act (whereto an indirect reference is made in the submitted [..] project) is not interpreted, in international law, as recognising the forcible changes of territory of the Baltic States carried out after World War Twp (*case materials, Vol. 7, pp. 103).* Also, the head of the Prime Minister's Bureau (at present – the Minister of Foreign Affairs) Māris Riekstiņš expressed his view during the meeting of the Foreign Affairs Committee of the Saeima that "the indicated references to the principle of inviolability of borders established by the Organization of Security and Cooperation in Europe (OSCE) [in the draft Ratification Law] provide for inviolability of borders in a forcible way but theoretically permit changing borders by means of negotiation. Theoretically, if Latvia wants to conduct negotiations on the change of borders, this then is permitted by this principle" (*Protocol of the meeting of April 20, 2007 of the Foreign Affairs Commission of the Saeima, case materials, Vol. 6, pp. 34).*

72.6. The Republic of Lithuania in the border treaties with the Republic of Poland and the Republic of Byelorussia has referred to and based itself on the Helsinki Final Act, and this has not affected the State continuity of the Republic of Lithuania (*see: Žalimas D. Lietuvos Respublikos Nepriklausamybės atkūrimo 1990 m. kovo 11 d. tarptautiniai teisiniai pagrindai ir pasekmės. Vilnius: Demokratinės politikos institutas, 2005, pp. 302 – 311*). Similarly, the Republic of Latvia reached an agreement with the Republic of Byelorussia regarding the common border between the States by *inter alia* referring to "objectives and principles of the UN Charter, the Final Act of the Conference on Security and Cooperation in Europe, and other documents of cooperation of the European States" (*Līgums par valsts robežas noteikšanu starp Latvijas Republiku un Baltkrievijas Republiku // Latvijas Vēstnesis, November 12, 1994, No. 133*). In this case as well, the reference to the Helsinki Final Act with the principle of inviolability of borders included therein cannot affect the State continuity of Latvia.

73. The Saeima has widely considered the interpretation of the principle of inviolability of borders during the discussions regarding the Border Treaty.

73.1. When the Saeima was deciding on the Law on Authorization, a suggestion was made to include the reference to the OSCE principles in the Law on Authorization, particularly to the principle of inviolability of borders. When justifying this suggestion, the MP Valērijs Buhvalovs mentioned that the Helsinki Final Act "*inter alia* provides for the

immutability of the post-war borders and is of a particular importance for ensuring stability in Europe. We suggest making a reference to this Article in the draft law, which would mean a categorical waiver from any territorial claims against Russia" (*Transcript of the fifth meeting of the winter session of the 9th Saeima of the Republic of Latvia, February 8, 2007).*

The majority of the Saeima rejected the proposition to include such reference. A deputy Jānis Eglītis particularly emphasized: "The text of the draft law is clear and concise enough, and in the previous votes we have refrained from including any additional formulations. Hence I appeal not to support this proposition. Moreover! After having heard out the interpretation of the opponents regarding their understanding of it, this proposition is not acceptable" (*Transcript of the fifth meeting of the winter session of the 9th Saeima of the Republic of Latvia, February 8, 2007).*

Whereas the chairman of the Foreign Affairs Commission of the Saeima, A. Bērziņš, stated that "the opinion of the Commission is as follows: a reference to the standards of the United Nations and the standards or basic principles of the OSCE is made in Article 1 of the Treaty, therefore it is not necessary here, in the Law" (*Transcript of the fifth meeting of the winter session of the 9th Saeima of the Republic of Latvia, February 8, 2007).*

When deciding on the Law on Authorization, the Foreign Affairs Commission of the Saeima held that the reference to the UN and OSCE principles is not necessary in the Law, because such a reference was already incorporated in the text of the Border Treaty. The Saeima shares this viewpoint.

In addition to this, one can conclude that the objective of the Saeima MPs who suggested including such reference in the Law on Authorization was to achieve recognition of the border of Latvia and Russia unlawfully established in 1944 as lawful, thus derogating from the State continuity doctrine of the Republic of Latvia. As the deputy Jakovs Pliners indicated: "There is a phrase in the text of the Draft Law that we offer to cross out (I quote): "Having regard to the recognized State continuity of the Republic of Latvia""(*Transcript of the fifth meeting of the winter session of the 9th Saeima of the Republic of Latvia, February 8, 2007).*

73.2. Although previously the majority of the Saeima had rejected the necessity to make a reference to the principle of inviolability of borders, the Cabinet of Minister still included such reference in the Ratification Law.

The chairman of the Foreign Affairs Committee of the Saeima, A. Bērziņš, indicated when justifying such reference: "Let us not be surprised that such references can be found in the ratification documents that are under consideration today. I want to say that the Helsinki agreement is a sort of political framework – that political framework, with which Europe lives

without wars for already the 62nd year, disregarding our opinion on this agreement, including the principle of inviolability of borders established therein that most probably was a ground of a political decision for the Latvian government when signing the Latvian – Russian Border Treaty" (*Transcript of the fifth meeting of the winter session of the 9th Saeima of the Republic of Latvia, February 8, 2007).*

When deciding on the adoption of the Ratification Law, a suggestion was made to exclude the reference to the principle of inviolability of borders therein. This suggestion was justified by the deputy Māris Grīnblats: "In our view, the reference to the Organization of Security and Cooperation in Europe is ungrounded and unacceptable. [..] Already in winter there were large discussions regarding the reference to the OSCE, when the government was authorized, by the majority of the Saeima deputies, to sign the Treaty. At that time all right-wing parties rejected the reference to the OSCE as being unacceptable, whereas the left-wing groups supported it. What has changed during these tree or four months? We would like to hear these arguments. However, in our view, this reference is inappropriate because it is often precisely Russia that makes references to the OSCE in every case when they need to intervene in this way or another within the internal affairs of the Baltic States" (*Transcript of the sixth meeting of the spring session of the 9th Saeima of the Republic of Latvia, May 17, 2007)*

73.3. The Prime Minister A. Kalvītis and the Minister of Foreign Affairs A. Pabriks, during the Saeima discussions have expressed their views regarding the content of the principle of inviolability of borders.

The Prime Minister indicated: "Our allies are the participating States of the OSCE and have signed the 1975 Helsinki Final Act that clearly states that the borders in Europe shall not be revised. It also has to be noted that Latvia, when becoming a Member State of the OSCE in 1991, joined also this principle of inviolability of borders – without reservation or objections. Moreover, Latvia has applied these principles also in Latvia, because we have agreed on the application of these principles after the restoration of independence when signing the Border Treaty with Lithuania. Moreover – a direct reference to the principles of inviolability of borders declared by the OSCE is mentioned in the 1994 Border Treaty between Latvia and Byelorussia, where a part of the border coincides with the 1920 Peace Treaty" (*Transcript of the fourth meeting of the winter session of the 9th Saeima of the Republic of Latvia, February 1, 2007).*

Whereas A. Pabliks indicated: "In 1991, when becoming a Member State of the OSCE, Latvia agreed to all OSCE principles without reservations by *inter alia* joining to the Helsinki Final Act that recognized the principle of inviolability of borders. This means that Latvia has agreed to the borders of Europe that were established after the Second World War.

Of course, these borders were often established in an unjust manner, but this is already another issue" (*Transcript of the fourth meeting of the winter session of the 9th Saeima of the Republic of Latvia, February 1, 2007).*

73.4. An opposite opinion was expressed by the Saeima member Uldis Grava (during the Helsinki Conference – chairman of the Baltic World Conference (*Pasaules baltiešu apvienība*)): "The invoked 1975 Helsinki document is totally out of place because it seemingly builds up an argument that we have an obligation to sign the Border Treaty. Because actually it confirms, in the Helsinki agreement, the interpretation that was initially put forwards by Leonid Brezhnev when he said that, look, the border has to be established for all times in the treaty, which means – the spoils of the Second World War have to be confirmed [..] In the course of time, after signing of the Helsinki agreement, almost all participating States of the Helsinki agreement have confirmed in one way or another the fact that they do not recognize occupation of the Baltic States. There were respective reports of the governments and resolutions of the parliaments, as well as speeches of the ministers of foreign affairs. But the main issue is that it is necessary to again and again repeat the meaning of the Helsinki agreement. We cannot accept what is proposed by the party "Saskaņas Centrs" that the Helsinki agreement requires us to sign such a border treaty. The Helsinki agreement does not legitimize the spoils of Abrene. Just on the contrary – it draws attention to the fact that changes of borders are possible even after the end of Second World War. And why should we derogate from it?" (*Transcript of the fifth meeting of the winter session of the 9th Saeima of the Republic of Latvia, February 8, 2007).*

"The original document includes such words: "No such occupation or acquisition will be recognized as legal." The borders frozen by Brezhnev melted as soon as 35 presidents of European and the Northern American States signed the Helsinki agreement in 1975!" (*Transcript of the sixth meeting of the spring session of the 9th Saeima of the Republic of Latvia, April 26, 2007).*

74. The principle of inviolability of borders can not be interpreted in the manner that the illegal annexation of the Baltic States to the USSR should be recognized as legal under this principle. As a lawyer and societal worker of the Latvian exile, Ādolfs Šilde, once wrote: "We were preparing for the Helsinki Conference for two years. [..] We were afraid that we could loose everything – including the legal grounds that still existed for the basis of the State of Latvia. Despite the diplomatic acrobatic of the Helsinki Conference and massive efforts of Moscow, we have not lost everything. We have turned from a subject of rights into an object of rights after the Helsinki Conference. [..] The Baltic States even after the Helsinki

Conference is like a bone stuck in the throat of the Soviet imperialism" (*Šilde Ā. Helsinki un mēs // Latvija, August 16, 1975)*

Under Article 10 of the Helsinki Final Act, all the principles of this act are to be applied as a singe regulation, and therefore the principles of the Helsinki Final Act cannot be interpreted as such that would recognize incorporation of the Baltic States into the territory of the USSR in 1940 and would not admit the continuity doctrine of the Baltic States (*see: Meissner B. The Right of Self-Determination after Helsinki and its Signification for the Baltic Nations // Journal of International Law, Vol. 13, 1981, No 2*). Just to the contrary – these principles structure and confirm the opinion of Latvia regarding the unacceptability of breaches of international law and non-recognition of the consequences of unlawful annexation.

Consequently, the principle of inviolability of borders together with other principles of the Helsinki Final Act is not in conflict with the continuity doctrine of the State of Latvia.

75. The first part of Article 68 of the Satversme provides that all international treaties that settle matters that may be decided by the legislative process shall require ratification by the Saeima, *inter alia* the Border Treaty. Consequently, the first part of Article 68 of the Satversme provides for the order of undertaking international obligations.

75.1. Validity of rules of international law, as well as the rights and duties of States that undertake international obligations are dealt with by international law itself, and in the first instance by the Vienna Convention and the rules of customary international law (*see: judgment of May 13, 2005 by the Constitutional Court in the case No. 2004-18-0106, Para 8.1 of the Concluding Part).* Article 27 of the Vienna Convention provides that states may not invoke the provisions of the internal law as justification for its failure to perform a treaty. This means that the States, in the international relations, must primarily comply with the rules of international law, but the rules of domestic law are to be applied only insofar they are permitted by international law.

Consequently, one has to conclude that the first part of Article 68 of the Satversme imposes an obligation on the authorities of the State of Latvia, *inter alia* the Saeima, to observe in the international relations not only the requirements of the rules of Satversme and other domestic legal rules, but also rules of international law.

If the organs of the State of Latvia, when undertaking international obligations, have not observed the rules of international law for the drafting, signature and ratification of

international treaties, then the first part of Article 68 of the Satversme has also not been complied with.

75.2. "Article 18 of the Vienna Convention provides that the State has a duty of abstaining from activities, which are directed against the object and aim of the agreement, if the State has signed a treaty subject to ratification. [..]

From the moment of ratification, the international treaty with all the rules included in it, becomes binding and may be directly applied to legal relations within the State, provides that the State, at the time of ratification has not expressed reservations." (*Judgment of May 13, 2005 of the Constitutional Court in the case No. 2004-18-0106, Para 8.1 of the Concluding Part).*

The Border Treaty also has provisions regarding its ratification. Hence, in the time period between signing of the Border Treaty and up to its ratification, with which this Treaty will become effective, the first part of Article 68 of the Satversme requires that the Saeima observes the rules of customary international law and the Vienna Convention that are related to treaties of such nature.

75.3. The Constitutional Assembly of Latvia, by incorporating the first part of Article 68 into the Satversme, has not assumed that the State of Latvia could fail to perform its international obligations. The Constitutional Assembly has followed the presumption that international obligations "settle" issues and that they have to be complied with (*see: Judgment of July 7, 2004 of the Constitutional Court in the case No. 2004-01-06. Para 6 of the Concluding Part).* If the State President, the Prime Minister or the Minister of Foreign Affairs have expressed the will on behalf of Latvia to undertake international obligations, the obligation of the Saeima is to take into account the expectation of the international community and the other party to the fact that Latvia will undertake these obligations.

However, this does not mean that the Saeima always has to ratify those treaties that are signed by the State President, the Prime Minister or the Minister of Foreign Affairs. The first part of Article 68 of the Satversme provides for the right of the Saeima to decide on ratification of these treaties, namely, the right to assess the compliance of the respective treaties with the national interests of Latvia and the necessity of ratification of such treaties. The Saeima is entitled to refuse to ratify an international treaty or to ratify an international treaty by changing its content or applicability in Latvia. However, the limits of the freedom of action of the Saeima is such situations are determined by the rules of international law, namely, the Saeima has to make the decision by observing the rules of international law binding on Latvia that regulate this procedure.

Such action of the Saeima that would be directed to non-fulfilment of international obligations or would change its scope contrary to the requirements of the rules of international law would be in conflict with the first part of Article 68 of the Satversme.

76. The Saeima has included the following words in Article 1 of the Ratification Law: "observing the principle of inviolability of borders established by the Organization of Security and Cooperation in Europe".

In order to consider whether these words comply with the first part of Article 68 of the Satversme, it is necessary to determine what the aim of the legislator was when supplementing the Ratification Law with these words.

76.1. In the Preamble of the Border Treaty, Latvia and Russia, when agreeing on the State border, confirm their loyalty to the UN and OSCE principles.

Preambles of international treaties are very important in the interpretation of the international treaties. Under the first part of Article 31 of the Vienna Convention, a treaty shall be interpreted in good faith and in the light of its object and purpose. The objectives and purposes of a treaty are usually reflected in its preamble.

Consequently, in the cases when it is necessary to determine the content of the international obligations included in the treaty and object and purpose of the parties concluding the treaty, the rules of the concluded treaty are to be interpreted by taking into account the entire text of the Treaty, as well as its preamble (*see: Brownlie I. Principles of Public International Law, pp. 605*).

The preamble of a treaty usually forms a separate part of the treaty and serves for the interpretative aims of its rules. Therefore recourse may be had to the statement of the object and purpose of the treaty in the preamble of the treaty in order to interpret a particular provision *(see: ILC Draft Articles on the Law of Treaties with commentaries // Yearbook of the International Law Commission, 1966, Vol. II, pp. 221 // http://untreaty.un.org/ilc/texts/instruments/english/commentaries/1_1_1966.pdf*).

76.2. The reference to the UN and OSCE principles included in the preamble of the Border Treaty suggests that the respective treaty has been concluded by considering these principles. Hence the norms of the Border Treaty are to be applied in accordance with them. In cases when there emerges a dispute regarding the scope of international obligations provided for in the Border Treaty, the rules of this treaty are to be interpreted by taking as the basis the purpose of both parties to observe the UN and OSCE principles.

The UN and OSCE principles can be regarded to be the basic principles of modern international law, and their content is authoritatively stated in the Declaration of 1970 on the Principles of International Law and the Helsinki Final Act.

77. In the Ratification Law, the Saeima, when undertaking the international obligations established by the Border treaty, has referred not to all the UN and OSCE principles but only to the to the OSCE principle of inviolability of borders as the grounds for ratification of this Treaty.

This reference by the Saeima in Article 1 of the Ratification Law differs from the Preamble of the Border Treaty. In the view of the Constitutional Court, this could manifest the purpose of the Saeima to create the possibility of a different interpretation of the rules of this Treaty.

77.1. A characteristic trait of the Satversme is its laconism, which also determines the use of the respective legal technique by defining its articles as precise and short as possible. Such was the practice established by the members of the Constitutional Assembly regarding the text of the law that ratifies the international treaty. In the cases when the purpose of the legislator has not been to modify the imposed obligation in the field of international law, the text of the law has been precise, laconic and has contained no colourful declarations of a political nature. This approach corresponds to the stylistic requirements of the normative acts (*see: Krūmiņa V., Skujiņa V. Normatīvo aktu izstrādes rokasgrāmata. Rīga: Valsts kanceleja, 2002, pp. 10*). The ratification laws passed today have the same laconic character.

77.2. International law does not prohibit States from making reservations when undertaking international obligations by amending specific rules of the treaty, as well as by attaching interpretative declarations or unilateral statements of different nature.

In accordance with Article 2 (d) of the Vienna Convention, "reservation" means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.

The UN International Law Commission has indicated that a reservation is formed by two components. The substantive element of a reservation is the will of the State to exclude or to modify the legal effect of certain provisions of the treaty. Whereas the formal element of a reservation is the procedure of making it, namely, a reservation is a unilateral statement given at the moment when the State expressed its consent to be bound by the treaty (*see: Yearbook of the International Law Commission, 1998, Volume 1, United Nations, A/CN.4/SER.A/1998, pp. 162*).

International law permits that States attach interpretative declarations to the treaties. Interpretative declarations, according to the definition provided by the International Law Commission, unilateral statement, however phrased or named, made by a State or by an international organization whereby that State or that organization purports to specify or clarify the meaning or scope attributed by the declarant to a treaty or to certain of its provisions. (*see: Reservations to Treaties // Report of the International Law Commission on the work of its fifty-first session, 3 May-23 July 1999, Official Records of the General Assembly, fifty fourth session, supplement No.10, pp. 97 // http://untreaty.un.org/ilc/documentation/english/A_54_10.pdf*).

Both reservations and interpretative declarations are the instruments of international law, with which a State can affect the international obligations that it itself undertakes in a favourable manner, provided that the respective amendments or explanations do not come into conflict with the object and purpose of the specific treaty. Similarly, these instruments are to be used not in the way that the State itself wants but by observing the rules of international law of treaties and customary law.

77.3. Any unilateral statement whereby a State indicated the manner in which it intended to implement the treaty as a whole should be viewed as a reservation. Any such statement would be subject to the reservations regime and must therefore be compatible with the object and purpose of the treaty. (*see: Yearbook of the International Law Commission, 1998, Volume 1, United Nations, A/CN.4/SER.A/1998, pp. 203*).

The reference to the principle of inviolability of borders made in Article 1 of the Ratification Law narrows the Preamble of the Border Treaty, which refers to the UN and OSCE principles.

In the view of the Constitutional Court, such a reference in Article 1 of the Ratification Law can have the character of a reservation.

78. Expression of such a separate position that does not coincide with the position of the other State established in the Ratification Act and is not coordinated with the text of the concluded Border Treaty can considerably affect the fulfilment of the obligations undertaken in the particular Treaty and the international law opinion of the other party (*see: Melkso L. Igaunijas un Krievijas robežlīgumi un debates par valstu pēctecību // Jurista Vārds, March 4, 2006, No. 11*).

78.1. The reference to the UN and OSCE principles included in the Preamble of the Border treaty is not specified by any indication that the parties have had their own understanding of them, different from the content of these principles as objective legal rules.

Similarly the Latvian delegation, during the Border Treaty negotiations, was forbidden to deal with a larger scope of issues than the question of concluding a technical agreement about the State border (*see: Additional explanation of the Cabinet of Ministers, case materials, Vol. 10, pp. 136).*

In addition to this, the Law on Authorization that serves as the basis for the rights of the Prime Minister to sign the Border Treaty imposed the obligation to observe the continuity of the Republic of Latvia when undertaking the obligations provided for in the Border Treaty.

The Saeima, when ratifying the Border Treaty with the reference to the principle of inviolability of borders has created such an influence to the Border treaty that it could have not had according to the will of both parties. One also has to take into account the requirement established by Article 9 of the Declaration of Independence that the State of Latvia has to act so in its relations with Russia, that continuity of the Republic of Latvia would not be endangered. The Saeima discussions regarding the principle of inviolability of borders are contradictory, and it is possible to interpret them so that as if they had accepted the border changes of 1944 as lawful (*see: Para 73 of this judgment).* Doubts regarding the real content of the principle of inviolability of borders could be used as justification for the argument that Latvia, by the reference to this principle in the Ratification Law, has unilaterally expressed its will to recognize that the USSR had lawfully changed the borders in 1994.

Since the reference included in the Article 1 of the Ratification Law could have the effect of a reservation, one should take into account: reservations can concern a specific provision or provisions, , as well as the treaty as a whole by indicating the way how the State has intended to apply the treaty. International law recognises that there exist reservations that are not related to particular provisions of the treaty but to the treaty as a whole. By means of such reservations, a State can specify the circumstances under which a State would or would not apply a treaty, or certain categories of persons to whom it denied the benefits of the treaty. (*see: Yearbook of the International Law Commission, 1998, Volume 1, United Nations, A/CN.4/SER.A/1998, pp. 200*). Attachment of such unilateral reservations to international treaties has been criticized because they cause uncertainty in international law, namely, the other parties to the treaty would never know by what obligations the States formulating the reservations would be bound (*see: Yearbook of the International Law Commission, 1998, Volume 1, United Nations, A/CN.4/SER.A/1998, pp. 201*).

78.2. International law does not permit formulating reservations to all international treaties. The Vienna Convention, as its preparatory materials show, deals with formulating reservations to multilateral international treaties (*see: Yearbook of the International Law*

Commission, 1999, Vol. II, pp. 121 // http://untreaty.un.org/ilc/documentation/english/A_54_10.pdf).

It is not possible to formulate reservations that affect the content or application of bilateral international treaties (*see: Reuter P. Introduction of the Law of Treaties. London / New York: Kegan Paul International, 1995, pp. 78*). If a State still decides to do it, this means that it does not agree to the concluded treaty and proposes to reopen the negotiations (*see: ILC Draft Articles on the Law of Treaties with commentaries // Yearbook of the International Law Commission, 1966, Vol. II, pp. 203 // http://untreaty.un.org/ilc/texts/instruments/english/commentaries/1_1_1966.pdf*).

International law raises even stricter requirements regarding some bilateral international treaties. The nature of some international treaties *per se* excludes the possibility that the concluding States could later unilaterally denounce them or withdraw from them, as well as disagree with the content of the obligations undertaken. These treaties are to be regarded as such treaties that are concluded for all time and no unilateral action by the contracting States can be permitted in their respect (*see: Ziemele I. Komentārs likumam „Par Latvijas Republikas starptautiskajiem līgumiem" // Juristu Žurnāls, 1995, No. 1, pp. 13*). Treaties fixing a territorial boundary are examples of such treaties (*ILC Draft Articles on the Law of Treaties with commentaries // Yearbook of the International Law Commission, 1966, Vol. II, pp. 250 // http://untreaty.un.org/ilc/texts/instruments/english/commentaries/1_1_1966.pdf*).

78.3. The contested words included in Article 1 of the Ratification Law can affect interpretation of the content and scope of the Border Treaty in future.

Since the Russian Federation has ratified the Border Treaty in the scope that it was signed, one can conclude that the Saeima has performed a unilateral act that is in conflict with the Vienna Convention and the rules of customary international law. Consequently, the requirements of the first part of Article 68 of the Satversme have not been observed.

Consequently, the words "observing the principle of inviolability of border established by the Organization of Security and Cooperation in Europe" included in Article 1 of the Ratification Law are in conflict with the first part of Article 68 of the Satversme.

The Substantive Part

Under Articles 30 – 32 of the Constitutional Court Law, the Constitutional Court

holds:

1. The Law "On Authorization to the Cabinet of Ministers to Sign the Draft Border Treaty between the Republic of Latvia and the Russian Federation on the State Border of Latvia and Russia Initialled on August 7, 1997" complies with the Preamble and Article 9 of the Declaration of May 4, 1990 by the Supreme Council of the Latvian SSR "On the Renewal of the Independence of the Republic of Latvia".

2. The Republic of Latvia and the Russian Federation Treaty on the State Border of Latvia and Russia complies with Article 3 of the Satversme of the Republic of Latvia.

3. The Law "On the Republic of Latvia and the Russian Federation Treaty on the State Border of Latvia and Russia" complies with Article 3 of the Satversme of the Republic of Latvia.

4. The words "observing the principle of inviolability of borders established by the Organization of Security and Cooperation in Europe" included in Article 1 of the Law "On the Republic of Latvia and the Russian Federation Treaty on the State Border of Latvia and Russia" do not comply with the first part of Article 68 of the Satversme of the Republic of Latvia and invalid from the day of publishing of the judgment.

The Judgment is final and not subject to appeal.

The Judgment takes effect as of the day of publishing it.

The Presiding judge G. Kūtris