Strasbourg, 9 December 2019 **CDL-AD(2019)030**

Opinion No. 955/2019 Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

REPORT

ON

THE COMPLIANCE WITH COUNCIL OF EUROPE AND OTHER INTERNATIONAL STANDARDS OF THE INCLUSION OF A NOT INTERNATIONALLY RECOGNISED TERRITORY INTO A NATIONWIDE CONSTITUENCY FOR PARLIAMENTARY ELECTIONS

Adopted by the Venice Commission at its 121st Plenary Session (Venice, 6-7 December 2019)

on the basis of comments by

Mr Richard BARRETT (Member, Ireland)
Ms Veronika BÍLKOVÁ (Member, Czech Republic)
Mr Iain CAMERON (Member, Sweden)
Mr Michael FRENDO (Member, Malta)
Ms Anne PETERS (Expert, Germany)

A Table of Contents

I. Introduction

1. By a letter of 27 June 2019, the Committee on Rules of Procedure, Immunities and Institutional Affairs of the Parliamentary Assembly of the Council of Europe requested the Venice Commission to examine the compliance with the Council of Europe and other international standards of national parliamentary elections organised in a State's nationwide constituency which is not within internationally recognised borders.

2. Mr Richard Barrett, Ms Veronika Bílková, Mr Iain Cameron and Mr Michael Frendo, as well as Ms Anne Peters (expert, Germany) acted as rapporteurs for this report.

3. This report was drafted on the basis of comments by the rapporteurs. It was approved by the Council for Democratic Elections at its meeting on 5 December 2019; it was examined by the Sub-Commission on international law on 5 December 2019 and subsequently adopted by the Venice Commission at its 121st Plenary Session (Venice, 6-7 December 2019).

4. This report deals with elections in nationwide constituencies as opposed to elections of parliamentarians who represent specific electoral districts.

II. Background of the request

5. The Russian Federation is entitled to 18 representatives and 18 substitutes to constitute its delegation to the Parliamentary Assembly. Under Art. 25 of the Statute of the Council of Europe, "[e]ach representative must be a national of the member whom he represents". The representatives of the members of the Council of Europe are "elected by its parliament from among the members thereof or appointed from among the members of that parliament". The 2016 parliamentary elections in Russia were held according to a mixed system: 225 deputies were elected in single-member constituencies (including 4 constituencies in Crimea) and 225 deputies on party lists in a nationwide constituency also including the territory of Crimea.

6. On 25 June 2019, the Russian Federation sent the credentials of the members of its delegation to the Parliamentary Assembly. The Committee on Rules of Procedure, Immunities and Institutional Affairs was seized by the Assembly with a report on the challenge, on procedural grounds, of the credentials of the delegation of the Russian Federation.[1] One of the grounds of the challenge related to the fact that the delegation was appointed by a parliament whose legitimacy might have been compromised by incorporation of a part of the Ukrainian sovereign territory into Russian federal constituencies. The credentials of the Russian delegation remain challenged on procedural grounds until the opening of the 2020 session, when all member States will have to submit the credentials of their new delegations.

7. Pursuant to Rule 7.2 of PACE Rules of Procedure, "*if the Committee concludes that the credentials should be ratified, it may submit an opinion to the President of the Assembly, who shall read it out in the plenary sitting of the Assembly or the Standing Committee, without debate. If the Committee concludes that the credentials should not be ratified or that they should be ratified but that some rights of participation or representation should be denied or suspended, the Committee's report shall be placed on the agenda for debate within the prescribed deadlines"*.

[1] The credentials of the Russian delegation were also challenged on substantive grounds; the matter was referred to the Monitoring Committee, which adopted a report concluding that the credentials should be ratified: see Monitoring Committee, Report on: Challenge, on substantive grounds, of the still unratified credentials of the parliamentary delegation of the Russian Federation, 26 June 2019, http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=28016&lang=en

III. International Rules and Practice

A. General remarks

8. The rules applicable to elections and the concrete modalities of the exercise of the right to vote are primarily enshrined in national law. International law however sets certain limits on this regulation. Such limits flowing from international law also apply to elections taking place in territories outside internationally recognized borders (occupied/annexed or other territories). Such elections, in fact, are a rather rare phenomenon. Usually, territories whose international legal status and borders are controversial or not internationally recognised present themselves as independent States.[2]

B. Prohibition of annexation under general International Law

9. The prohibition of the use of force is enshrined in Article 2(4) of the UN Charter. It is also part of customary international law. The International Court of Justice has itself recognised this principle both as a 'cornerstone of the United Nations Charter',[3] and as a rule of customary international law.[4] The prohibition on the use of force is also generally accepted as a norm of *ius cogens.*[5]

10. Annexation is a unilateral act through which a State seeks to extend its territory by proclaiming its sovereignty over a foreign territory (territory of another State, part of the territory of another State, international territory, or the like). The term "Annexation" being a normative one, its use does not in any way legitimise the illegal seizure of territory, nor acknowledge its irreversibility.

11. Annexation typically stems from an unlawful use of force. As such, it is prohibited by general international law. In its resolution on the definition of aggression, the UN General Assembly expressly denotes annexation *"by the use of force of the territory of another State or part thereof"* as an act of aggression.[6] Annexation also violates the principles of territorial integrity of States

---

[2] The inclusion of a not internationally recognised *territory* into a nationwide constituency must be distinguished from the inclusion of voters residing abroad. Many States allow citizens residing outside their recognised borders to vote from abroad. Yet, in these cases, their participation in the elections is based on the principle of personality: those voting abroad are citizens of the State, and their place of residence is irrelevant. Their participation is not based on the principle of territoriality (those voting outside internationally recognized borders are enfranchised because the live in an occupied/ annexed territory) which is the subject of this opinion.

[3] ICJ, *Case Concerning the Armed Activities in the Territory of the Congo* (Democratic Republic of the Congo v Uganda), Judgment of 19 December 2005, ICJ Reports 2005, 168, para. 148.

[4] ICJ, *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. United States), Merits, Judgment of 27 June 1986, ICJ Reports 1986, 14, para. 188 *et seq.*

[5] ILC, 'Draft Articles on the Law of Treaties with Commentaries', *Yearbook of the International Law Commission,* 1966, Vol II, Commentary to Draft Article 50, para. 1. See also 'Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries', *Yearbook of the International Law Commission* (2001), vol. I, Part II, Commentary to Draft Article 26, para. 5 where the prohibition of 'aggression' is included as an example of a norm of *ius cogens* under international law. ICJ, *Nicaragua* (note 4), para. 190. There has been some debate as to whether the *Nicaragua* court endorsed the *ius cogens* qualification espoused by the ILC. See First Report on i*us Cogens* by the Special Rapporteur (Dire Tladi), UN Doc. A/CN.4/693, 8 March 2016, para. 46. See in scholarship in favour of the peremptory character Alexander Orakhelashvili, 'The Impact of Peremptory Norms on the Interpretation and Application of United Nations Security Council Resolutions', *European Journal of International Law* 16 (2005), 59-88 (63); Randelzhofer/Dörr, 'Article 2(4)' in Bruno Simma et al (eds), The Charter of the United Nations: A Commentary (Oxford OUP 2012), 203 and 231; James Green 'Questioning the Peremptory Status of the Prohibition of the Use of Force', *Michigan Journal of International Law* 32 (2011), 215-57 (215).

[6] UN Doc. A/RES/3314 (XXIX), *Definition of Aggression*, 14 December 1974, para. 3 lit. a).

and of non-interference in matters within the domestic jurisdiction of another States.[7] Attempts by States to incorporate foreign territory have been repeatedly condemned by States and international organisations, including the United Nations.[8]

12. Due to the normative importance of the legal principles that an (attempted) annexation violates, this act not only gives rise to the responsibility of the annexing State but also entails specific legal obligations for all other States. Article 41(2) of the International Law Commission (ILC) Articles on State Responsibility provides that "No State shall recognize as lawful a situation created by a serious breach [of a peremptory norm] … nor render aid or assistance in maintaining that situation". The same obligation of non-recognition is foreseen in the Draft Articles on Responsibility of International Organizations, 2011, Article 42. The ILC contented itself with noting that this rule "finds support" in international practice and decisions of the International Court of Justice (ICJ). There may be less support in state practice for the ILC's formulation of this "duty of non-recognition" to cover *all* peremptory norms, such as the prohibitions of slavery and the slave trade, genocide, torture, and the like,[9] and for the even broader approach of the ICJ, asking for non-recognition of breaches of international legal norms of "importance".[10] However, there is no doubt that there *is* a duty of non-recognition of territorial changes resulting from a violation of the peremptory norm forbidding the change of territory through the use of military force.[11] This norm is one of the most basic rules of the international legal system. The ICJ has stated clearly, inter alia, in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) that all States were under an obligation not to recognise the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around Jerusalem, and not to render aid or assistance in maintaining the situation created by such construction.[12]

13. As to whether this obligation arises automatically as soon as the illegal act occurs, or whether it depends on a determination of illegality by some authoritative body, such as the Security Council or the ICJ, there seems to be some disagreement.[13] When it comes to alleged serious

---

[7] See UN Doc. A/RES/2625 (XXV), *Declaration on Principles of International Law Concerning Friendly Relations And Co-Operation Among States In Accordance With the Charter of the United Nations,* 24 October 1970.

[8] See, e.g, the condemnation of the Israeli occupation of Palestine territories in SC Res. 242 of 22 Nov 1967; SC Res. 660 of 2 August 1990, condemning the invasion of Kuwait by Iraq.

[9] See, e.g. S Talmon, 'The Duty Not to "Recognize as Lawful" a Situation Created by the Illegal Use of Force or Other Serious breaches of a Jus Cogens Obligation: An Obligation without Real Substance?', in C Tomuschat, JM Thouvenin (eds), The Fundamental Rules of the International Legal Order: Jus Cogens and Obligations Erga Omnes*,* Martinus Nijhoff 2005, pp. 99-125, at p. 113.

[10] ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, 136, para. 159.

[11] See for pronouncements of the obligation of non-recognition of unlawful territorial changes: UNSC Res 216 of 12 November 1965 (Rhodesia); UNSC Res 402 of 22 December 1976 (Transkei); UNSC Res 541 of 18 November 1983 (Northern Cyprus).

[12] ICJ, *Legal Consequences of the Construction of a Wall* (note 10) para. 159. See also the earlier ICJ Advisory Opinion, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970),* where the Court not only found that the continued presence of South Africa in Namibia was illegal and that South Africa was under an obligation to withdraw its administration immediately but also that all UN member States were under an obligation to recognise the illegality of South Africa's presence in Namibia and the invalidity of its acts on behalf of or concerning Namibia, and to refrain from any acts implying recognition of the legality of, or lending support or assistance to, such presence and administration (ICJ Reports 1971, p. 58, para. 133).

[13] The ICJ *Namibia* opinion (note 12), paras 120-121 and its judgment in the *East Timor* case (ICJ, *East Timor case* (East Timor (Portugal v. Australia), ICJ Reports 1995, p. 90) have been read by some as requiring a triggering determination by an organ of the UN. This view was put forward by Australia in its pleadings in the East Timor affair to support its own case. The opposing view is that "the obligation not to recognize a situation created by the unlawful use of force does not arise only as a result of a decision by

breaches of peremptory norms committed by permanent members of the Security Council or their close allies, it is illusory to expect the Security Council to adopt a binding (Chapter VII) resolution. As effectively noted, and argued,[14] while in practice a collective response is often coordinated through the competent organs of the UN, this is not a prerequisite for the obligation of non-recognition to arise. Many, if not most, of the calls for non-recognition have been made in non-binding resolutions of the General Assembly and in statements of the President of the Security Council. These can neither authoritatively determine the existence of a serious breach nor *create* an obligation not to recognize a situation as lawful. Also the wording of Article 41 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts (DARS), referring to the "particular consequences of a serious breach", not to the particular consequences of a UN resolution, supports such an approach. The ILC considers non-recognition to be the "minimum response" to a serious breach that is called for on the part of *all* States, independently of more extensive measures which may be taken by States through international organisations. It may argued accordingly that "[t]he obligation of non-recognition thus arises for each State as and when it forms the view that a serious breach of a jus cogens obligation has been committed, and each State will bear responsibility for its decision."[15] The International Law Association has also noted that "[a]part from Security Council-mandated non-recognition of certain unlawfully created situations, there is a widespread practice – whether or not understood to be obligatory – of non-recognition of entities deemed to have been unlawfully created".[16]

14. As regards the content of the duty, it is framed to cover both express and implied recognitions of the "situation".[17] Exceptions tend to be made for the benefit of individuals as regards recognition in other states of certain "non-political" official acts in the annexed territory concerning

---

the Security Council ordering non-recognition. The rule is self-executory." (ICJ, East Timor case (East Timor (Portugal v. Australia), Judgment, ICJ Reports 1995, p. 90, dissenting opinion of Judge Skubiszewski, pp. 224 et seq., para. 125. In her separate opinion to the Israeli Wall opinion (note 10), p. 207 et seq., para. 38). Judge Higgins referred to a finding of the UN Security Council and to a pronouncement of the ICJ, but her opinion also highlighted the "self-evident" character of the duty of non-recognition (ibid.). For a discussion, see A. Pert, The "Duty" of Non-recognition in Contemporary International Law: Issues and Uncertainties, Sydney Law School Legal Studies Research Paper No. 13/96, December 2013, http://ssrn.com/abstract=2368618; Enrico Milano, The non-recognition of Russia's annexation of Crimea: three different legal approaches and one unanswered question, Questions of International Law, Zoom out I (2014), 35-55.

[14] Talmon (note 9) pp. 113 and 121-122.

[15] Talmon (note 9), at 122, referring to Report of the International Law Commission on the Work of its 48th Session, GAOR, 51st Session, Supp. No. 10 (A/51/10), 1996, pp. 169-170.

[16] Resolution 3/2018 Committee on Recognition And Non-Recognition In International Law, 78th Conference of the International Law Association, held in Sydney, Australia, 19–24 August 2018.

[17] This is confirmed by the General Assembly Resolution on Crimea which calls upon States, international organizations and specialised agencies "to refrain from any action or dealing that might be interpreted as recognizing any [...] altered status [of Crimea]" (GA Res 68/262 of 27 March 2014, para. 6). For example, the acceptance by the UK of certificates on the origin of products issued by customs offices of the unrecognised "Turkish Cypriot Republic" constituted an unlawful implied recognition of the illegal territorial situation (Court of Justice of the European Union, *Anastasiou I, The Queen v Minister of Agriculture, Fisheries and Food,* Case C-432/92, 1994 ECR 3087, ILEC 090, judgment of 5th July 1994, paras 34-41). See also CJEU (GC), Case C-363/18, *Organisation juive européenne et al v. Ministre de l'Economie et des Finances*, judgment of 12 November 2019, esp. paras 33-59 on the obligation to mention the occupation by Israel in the certificate of origin for products stemming from occupied territories. The omission of such mentioning would mislead consumers who might have ethical reservations against buying the products, because these products come from "colonies" which have been established in violation of international law (ibid., para. 56). See also CJEU (GC), case C-266/16, judgment of 27 February 2018, *Western Sahara campaign UK v. Commissioners for Her Majesty's Revenue and Customs et al*, judgment of 27 February 2018, esp. at paras 63, 71-73 interpreting a Fisheries Partnership between Morocco and the EU as not covering waters adjacent to the territory of Western Sahara, occupied by Morocco: Including these waters in the scope of the agreement would be contrary to international law because they do not fall under the sovereignty or jurisdiction of the Kingdom of Morocco.

resident individuals' status, who can find themselves in a legal limbo (registration of births, deaths, marriages, inheritance).[18]

15. The obligation not to recognize either explicitly or implicitly an annexation extends to international organisations.[19]

16. The outcomes of the violation of a peremptory norm of international law can never be redressed or normalised ex post facto (the principle *ex injuria jus non oritur*). Such a violation thus "taints" any act that would stem from it.

17. The issue of state responsibility for breaches of human rights treaties and international humanitarian law also arises in this context. Specific obligations (and some rights) follow from the legal regime applicable in the situation of belligerent occupation. Moreover, the ECtHR in its established case law finds responsibility under Article 1 ECHR for states in effective control over disputed territory, without in any way implying recognition of the administrating state's sovereignty over the disputed territory.[20]

C. The obligation to hold free and fair elections

18. Elections are among the main instruments that help create and sustain a democratic society. The right to participate in universal, free and fair elections is also one of the most important political human rights, which is enshrined in all major human rights instruments.[21] The Vienna

[18] Cf. ICJ, *Namibia* opinion (note 12), para. 125 on official acts of an internationally unlawful administration which are normally illegal and invalid. But "this invalidity cannot be extended to those acts, such as, for instance, the registration of births, deaths and marriages, the effects of which can be ignored only to the detriment of the inhabitants of the Territory."

[19] With regard to the annexation of Kuwait by Iraq, Security Council, Resolution 662 of 9 August 1990, para. 2, called upon "all States, *international organizations and specialized agencies* not to recognize that annexation, and to refrain from any action or dealing that might be interpreted as an indirect recognition of the annexation" (emphasis added). Another example is the EC's 1991 Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union, stating: "*The Community* and its member States will not recognize entities which are the result of aggression." (emphasis added). See generally ICJ, Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, ICJ Rep. 1980, 72, para. 37: an international organization and hence an international legal person is, generally speaking, "bound by any obligations incumbent upon [it] under general rules of international law". Kristina Daugirdas, 'How and why international law binds international organizations' (2016) 57 Harvard Journal of International law 325–381.

[20] See, e.g., ECtHR, *Case of Loizidou v. Turkey* (merits), Judgment of 18 December 1996, application no. 15318/89) para. 52; ECtHR (GC): *Al-Skeini v. UK*, judgment of 7 July 2011, paras 138-140; *Jaloud v. The Netherlands*, Judgment of 20 November 2014, para. 142.

[21] Article 21(3) of the UDHR provides that *"the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures"*; see also Art. 29(2) UDHR. Article 25 of the ICCPR stipulates that *"every citizen should have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: […] (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors".* In its General Comment No. 25, the UN Human Rights Committee confirmed that *"Article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant"* (UN Doc. CCPR/C/21/Rev.1/Add.7, General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25), 12 July 1996, para. 1. Cf. also UN Human Rights Committee, Communication No. 760/1997, Diergaardt et al. v. Namibia (views adopted on 25 July 2000), para. 10.3. on the link between the right to democratic elections and the right to self-determination under Art. 1 ICCPR). Article 3 of the Protocol to the ECHR enshrines the right to free elections, obliging *"the High Contracting Parties […] to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature".* In *Mathieu-Mohin and Clerfayt v. Belgium,* the

Human Rights Conference of 1993 highlighted that 'Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing.'[22]

19. The UN General Assembly recognised that "Member States are responsible for ensuring transparent, free and fair elections, free of intimidation, coercion and tampering with vote counts, and that all such acts are sanctioned accordingly".[23] The UN GA also recognised "that Member States are responsible for *respecting the will of the voters* as expressed through genuine, periodic, free and *fair* elections, which shall be by universal and equal suffrage".[24]

20. The United Nations[25] and regional organisations such as the OSCE,[26] the European Union, and the Council of Europe's Parliamentary Assembly[27] regularly *assist, monitor* and observe national election processes.[28] Such involvement can only operate with the consent of the concerned states.[29] This practice, in combination with the international standards on the right to free and fair elections, shows that the procedures for democratic elections are not completely

---

ECtHR held that *"according to the Preamble to the Convention, fundamental human rights and freedoms are best maintained by 'an effective political democracy'. Since it enshrines a characteristic principle of democracy, Article 3 of Protocol No. 1 is accordingly of prime importance in the Convention system"* (ECtHR, *Mathieu-Mohin and Clerfayt v. Belgium*, Application No. 9267/81, 2 March 1987, para. 47). Article XX of the American Declaration on the rights and Duties of Man runs: " Every person having legal capacity is entitled to participate in the right to vote and to participate in government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free." Art. 23 of the Inter-American Convention on Human Rights prescribes: "1. Every citizen shall enjoy the following rights and opportunities: a. to take part in the conduct of public affairs, directly or through freely chosen representatives; b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and c. to have access, under general conditions of equality, to the public service of his country. (2) The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings." The Inter-American Commission on Human Rights has frequently noted the close relationship between representative democracy and the protection of human rights (Inter-American Commission on Human Rights, Report Nº 137/99, Case 11,863, Andres Aylwin Azocar et al. v. Chile, 27 December 1999, para. 31). Art 13(1) of the African Charter on Human and Peoples' Rights (1981) stipulates: "Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law."

[22] Art. 8 of the Vienna Declaration and Programme of Action, World Conference on Human Rights of June 14-25, 1993 (UN Doc A/CONF.157/23) of 12 July 1993.

[23] UN General Assembly, "Strengthening the role of the United Nations in enhancing periodic and genuine elections and the promotion of democratization" of 19 Dec. 2017 (UN Doc. A/RES/72/164 (2017)), preamble.

[24] Id., emphasis added.

[25] Id.

[26] See OSCE Parliamentary Assembly, 2012 Monaco Final Declaration, Resolution on improving election observation in OSCE participating states (in OSCE Doc. AS(12)DE, at p. 73)

[27] Since 1974 the Assembly has been instrumental in introducing institutionalised parliamentary observation of elections in Europe, http://www.assembly.coe.int/nw/Page-EN.asp?LID=ElectionObservation.

[28] See Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers, commemorated October 27, 2005, at The United Nations, New York, endorsed by UN, OAS, AU, European Commission and Others. See also International Institute for Democracy and Electoral Assistance (International IDEA), International Electoral Standards Guidelines for reviewing the legal framework of elections (2002).

[29] UN Doc. A/RES/72/164 (2017), Preamble: "Reaffirming that Member States are responsible for organizing, conducting and ensuring transparent, free and fair electoral processes and that Member States, in the exercise of their sovereignty, may request that international organizations provide advisory services or assistance (...)." Similarly, the Parliamentary Assembly of the Council of Europe observes elections upon invitation only.

inside the *domaine réservé* of states. *If* a state holds elections, *then* international standards become relevant.

21. The Venice Commission has identified[30] the main principles underlying the European electoral heritage. These principles include the requirements of universal, equal, free, secret and direct suffrage. Elections, moreover, must be held at regular intervals. There is a discretion left to national authorities to decide whether the right to vote is accorded to citizens living abroad. The Venice Commission has also identified three general conditions which have to be met to make compliance with the underlying principles possible. Those are: a) respect for fundamental human rights, especially freedom of expression, assembly and association; b) stability of electoral legislation and its protection from political manipulation; c) procedural guarantees such as organisation of elections by an impartial body, election observation, an effective system of appeal, funding or security.[31]

22. Elections must secure the free expression of the will of the people in the choice of the legislature. Even if tainted by certain irregularities, the outcome of an election may nonetheless reflect the will of the voters. Under such circumstances, an annulment of the elections would be unnecessary and could do lasting harm to public confidence in elections. Indeed, the Venice Commission's Code of Good Practice in Electoral Matters provides that elections should only be annulled "where irregularities may have affected the outcome"[32] i.e. affected the distribution of seats.[33]

23. In its 2017 Report on Constituency Delineation and Seat Allocation, the Venice Commission criticized the practice of unduly re-drawing electoral boundaries and of gerrymandering.[34] In the same vein, the UN Human Rights Committee, in its General Comment No. 25, noted that "[t]he drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely". The Inter-American Commission of Human Rights likewise held that "[t]he delimitation of electoral districts and the method of allocating votes should not distort the distribution of voters or entail any discrimination against any group, nor unreasonably exclude or restrict citizens' right to freely elect their representatives."[35]

24. Article 3 of Protocol 1 to the ECHR relating to the right to free elections provides that "[t]*he High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature*." As far as Council of Europe members are concerned, Article 3 of Protocol 1 provides only for a right to participate in elections to the "legislature. Nor does it entail, even

[30] See in particular the 2002 Code of Good Practice in Electoral Matters, the 2011 Report on Out-of-Country Voting, the 2012 Report on Measures to Improve the Democratic Nature of Elections in Council of Europe Member States, and the 2017 Report on Constituency Delineation and Seat Allocation. For references to the numerous country-related opinions in this area see: Compilation of Venice Commission Opinions and Reports Concerning Electoral Systems, CDL-PI(2019)001.
[31] Venice Commission, *Code of Good Practice in Electoral Matters* (note 30)*,* para. 58.
[32] Ibid.
[33] This principle is indeed applied in the electoral laws of numerous countries. See for Germany, e.g., Federal Constitutional Court BVerfGE 85, 148-164, order of 12 Dec. 1991 – 2 BvR 562/91. The leading case is BVerfGE 4, 370-374, order of 21 Dec. 1955 – 1 BvC 2/54. See for Switzerland, e.g., Federal Tribunal, BGE 145 I 1 of 29 Oct. 2018.
[34] Venice Commission, Report on constituency delineation and seat allocation, CDL-AD(2017)034, paras. 87-89.
[35] Inter-American Commission on Human Rights, Report Nº 137/99, Case 11,863, *Andres Aylwin Azocar et al. v. Chile*, 27 December 1999, para. 21.

impliedly, a right for the population to be represented in an international organisation.[36] The right to participate in elections is not an absolute right. Although Article 3 of Protocol 1 does not contain an express limitation clause, the ECtHR has repeatedly held that there is room for "implied limitations". Generally speaking, all "implied" limitations to the fundamental right to participate actively or passively (by voting or standing as a candidate) in elections must satisfy a three-prong test: The measure must pursue a legitimate objective, it must not be disproportionate, and it may not impair the essence of the right.[37] The Court also made clear that any interference with the right to vote: a) must meet the criteria of non-arbitrariness and proportionality; and b) must not interfere with the free expression of the opinion of the people.[38] Importantly, the Court also emphasised that any state measure in the context of democratic elections "must reflect, or not run counter to, the concern to maintain the integrity and effectiveness of an electoral procedure aimed at identifying the will of the people through universal suffrage".[39]

25. The right to vote and to be elected, at least at the national level, is often subject to the condition of nationality. It is for the domestic law of each state to determine who, and who is not to be considered its national under its own law. The conferral of nationality is in the reserved domain (*domaine réservé*) of states. For all internal purposes, the determination of a person's nationality will be made only according to domestic law. As the ICJ put it in the *Nottebohm* judgment: "[I]t is for every sovereign State, to settle by its own legislation the rules relating to the acquisition of its nationality, and to confer that nationality by naturalization granted by its own organs in accordance with that legislation."[40]

26. However, the effects of this unilateral act as against other states occur on the international plane and are therefore to be determined by international law. Put differently, the jurisdiction of a state to grant its nationality, seen from the outside as a unilateral act by the state, is limited by rules of international law. The limitations imposed by international law are not static, they change with evolving international relations and with the development of international law. An attribution of nationality overstepping these limits (however defined) results in an exorbitant nationality. An exorbitant nationality need not (or perhaps even must not) be accepted or recognised by other states. The Iran-US Claims Tribunal explained the duality of nationality and the secondary role of international law regarding nationality as follows: "International law … does not determine who is a national, but rather sets forth the conditions under which that determination must be recognized by other States."[41]

27. The inhabitants of an annexed territory do not automatically, for the purposes of international law, obtain the nationality of the annexing and occupying state even if they are given this nationality.[42] It may be the case that residents decide to acquire the nationality of the occupier or decide not to opt out of an *ex lege* conferral of nationality by the annexing and

---

[36] The case is different when an international organisation has law-making powers so that its representative body may qualify as a "legislature" within the meaning of Article 3 of Protocol 1 ECHR (see ECtHR, Matthews v. UK (Application no. 24833/94), Grand Chamber judgment of 18 February 1999).

[37] ECtHR, *Žd*anoka *v. Latvia* (Application no. 58278/00), Grand Chamber judgment of 16 March 2006, para. 104.

[38] ECtHR, *Žd*anoka *v. Latvia,* para. 115 lit. c).

[39] ECtHR, *Žd*anoka *v. Latvia,* para. 104.

[40] ICJ, *Nottebohm Case (second phase) (Liechtenstein v. Guatemala*), ICJ Reports 1955, 20.

[41] Iran-US Claims Tribunal, *Iran v. United States*, *Case No. A/18*, 5 Iran-US Claims Tribunal Reports 251, at 260 (1984).

[42] *Paul Weis*, Nationality and Statelessness in International Law (2nd ed. Sijthoof & Noordhoff: Alphen aan den Rijn 1979), 110-112; Anne Peters, "Extraterritorial Naturalizations: Between the Human Right to Nationality, State Sovereignty and Fair Principles of Jurisdiction", German Yearbook of International Law 53 (2010), 623-725, at 691-701.

occupying state, and such individual decisions are accepted by international law.[43] But when an aggressor imposes its nationality to the inhabitants of the territory, *they remain nationals of the other state in the eyes of international law*.[44] It is only on humanitarian grounds that for travel and visa purposes that the imposed nationality will be tolerated.[45] It should be emphasized that in accordance with Art. 45 of the 1907 Regulations Respecting the Laws and Customs of War on Land , "it is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile power", while under Art. 51 of the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War "an occupying power may not compel protected persons to serve in its armed or auxiliary forces". These provisions clearly include the prohibition to impose nationality of an occupying power on nationals of the state whose territory has been occupied; they also guarantee the continuity of nationality of the latter State. Therefore, it is only on humanitarian grounds that for travel and visa purposes that the imposed nationality will be tolerated.

28. There are no rules or case-law relating explicitly to the effects on the right to vote of the extension of an electoral constituency beyond the internationally recognized borders of a State.[46] However, Art. 49 of the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War, according to which "[t]he Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies", should be taken into consideration. That means that nationals of an occupying state cannot be considered and treated as habitual legal residents of an occupied territory for the purposes of any elections.

29. No source of international humanitarian law,[47] which is the main international legal regime applicable to occupied territory,[48] refers specifically to elections. It was most likely assumed that

---

[43] *Yael Ronen*, Option of Nationality, Max Planck Encyclopaedia of Public International Law (Oxford University Press online 2009).

[44] See for example with regard to the non-recognised "Turkish Republic of Northern Cyprus" (TRNC) which was created upon military invasion and occupation: With regard to an applicant for asylum claiming to be a national of the TRNC, the Australian Refugee Review Tribunal, did "not accept that the TRNC can be regarded as his 'country of nationality'", but opined "that he remains a citizen of Cyprus." Australian Refugee Review Tribunal, case N95/07552 [1996] RRTA 1496 of June 12 1996. In scholarship: *Georg Dahm/Jost Delbrück/Rüdiger Wolfrum*, Völkerrecht, vol. I/2 (2nd ed. De Gruyter: Berlin 2002), 52: Collective naturalisations forced upon populations in an occupied territory violate the international legal prohibition on annexation.

[45] Cf. ICJ, *Namibia* opinion (note 12), para. 125; ECtHR, *Cyprus v. Turkey* [GC], no. 25781/94, ECHR 2001-IV), paras. 93-98.

[46] There exists case-law of the European Court of Human Rights on the (different) question of out-of-country voting. For instance, in *Melnychenko v. Ukraine*, the ECtHR held that a residence requirement for voting may be justified on the grounds of "(1) the assumption that a non-resident citizen is less directly or continuously concerned with, and has less knowledge of, a country's day-today problems; (2) the impracticability for and sometimes […] of parliamentary candidates presenting the different electoral issues to citizens living abroad so as to secure the free expression of opinion; (3) the influence of resident citizens on the selection of candidates and on the formulation of their electoral programmes, and (4) the correlation between one's right to vote in parliamentary elections and being directly affected by the acts of the political bodies so elected": see ECtHR, Melnychenko v. Ukraine (Application no. 17707/02, judgment of 19 October 2004, para. 56.

[47] The Hague Regulations respecting the Laws and Customs of War on Land (Annex to the Convention on the Laws and Customs of War on Land of 18 Oct. 1907), the 1949 Geneva Convention IV, the 1977 Additional Protocol I and the rules of customary IHL (as compiled in J.-M. Henckaerts, L. Doswald-Beck (eds.), *Customary International Humanitarian Law*, *Volume I: Rules, Volume II: Practice,* Cambridge University Press, 2005).

[48] International humanitarian law (IHL) applies not only "to all cases of declared war or of any other armed conflict which may arise between two or more [States]" but also to "all cases of partial or total occupation of the territory of a [State], even if the said occupation meets with no armed resistance" (Common Article 2 of the 1949 Geneva Conventions. By virtue of Article 42 of the 1907 Hague Regulations concerning the Laws and Customs of War on Land, "[t]erritory is considered occupied when it is actually placed under the authority of the hostile army". The case-law of the International Court of

the state of occupation would typically make part of an ongoing armed conflict and then, no elections would be held (as was the case during WWII). In case of a long-lasting occupation or an occupation not accompanied by active hostilities, elections might and, indeed, should be held. In accordance with the general rules governing the state of occupation, the occupied territory should be treated as a territory which does not form part of the national territory of the occupying State and which is subject to only a *temporary* authority of this State. The legal regulation in force prior to the occupation should be applicable to the extent possible. If there is no such regulation available, special legal acts applicable only to the elections in the occupied territory should be adopted, ideally by the legislative (norm-creating) body operating within this territory (regional or local parliaments) and for the purpose of the elections to such a body. The occupier should avoid making any important institutional changes.[49]

IV. Analysis

30. The Venice Commission has previously had the occasion to stress the need for any acquisition by a State of a new territory to be in full compliance with the principle of territorial integrity, state unity and/or indivisibility of the state, which ranks among the most fundamental principles recognised both under international law and in the domestic legal orders of the vast majority of the members of the Council of Europe.[50] Annexation violates these principles. It violates the prohibition of the use of force,[51] and is thus contrary to peremptory norms of international law (*jus cogens*) (see above para. 9) All States are under the obligation to cooperate to bring this violation to an end, which means that in addition to non-recognising the annexation as lawful, they must not render aid or assistance in maintaining that situation (see above paras. 12-14).

31. The question arises of how this obligation may be discharged by the States within the framework of an international organisation such as the Council of Europe, which is strongly committed to the principles of democracy, the rule of law and respect for human rights. International organisations are themselves under the same obligation not to recognise an annexation either explicitly or implicitly (see above para. 15). The question is what this obligation entails in connection with the ratification of the credentials of the delegation of a State whose elections have been organised in a nationwide constituency comprising the territory of the annexed state. The answer depends on the consequences of annexation for the voting rights of the inhabitants of the annexed territory.

A. The exercise of voting rights by the inhabitants of an annexed territory

32. As far as members of the Council of Europe are concerned, to the extent that the annexing State exercises effective control over the annexed territory within the meaning of Article 1 ECHR, the State is under the obligation to secure the inhabitants' rights under the European Convention on Human Rights. These rights in principle include the right to free and fair elections (Art. 3 of Protocol 1 to the ECHR). This right is not absolute but may be restricted on the basis of the law

---

Justice and the resolutions of the UN General Assembly confirm that the law of occupation remains fully applicable in case of long-stating occupation of a foreign territory. Whether the State considers the territory in question as its own, seeking to annex it, is irrelevant due to the unlawful nature of annexation under current international law. The same applies to situations when the foreign State behaves as a "benign" occupier and its presence in the territory is actually welcome by the local inhabitants.

[49] Cf. Articles 54 and 64 of GCIV; Article 43 of the Hague Regulations (note 47).

[50] See Opinion on Whether Draft Federal Constitutional Law No. 462741-6 on Amending the Federal Constitutional Law of the Russian Federation on the Procedure of Admission to the Russian Federation and Creation of a New Subject within the Russian Federation is compatible with International Law, CDL-AD(2014)004.

[51] Ibid. See above para.11.

in order to fulfil legitimate aims in the public interest, provided that the restriction of the right is not disproportionate (see above para. 24).

33. The obligations arising out of Article 1 ECHR in case of effective control by a State over the territory of another state may not be interpreted as covering only the mere *organisation* of elections: they cover also the *conduct* of the electoral process. International law limits the discretion of States in the electoral area by a set of standards which are both substantive and procedural in nature. This means that if elections are eventually organised, they must be "free and fair". The preconditions for meeting this principle are: a) respect for fundamental human rights, especially freedom of expression, assembly and association; b) stability of electoral legislation and its protection from political manipulation; c) procedural guarantees such as organization of elections by an impartial body, election observation, an effective system of appeal, funding and security (see above para. 21).

34. It is undisputable that the individuals residing in the annexed territory are entitled to continue to participate in the elections of the State to whom the territory lawfully belongs, whose nationality in principle they maintain from the standpoint of international law. The annexing State therefore has the primary obligation to remove the illegality of annexation and to restore the inhabitants' effective voting rights in the elections of the territorial State[52].

35. It needs to be recalled that under international humanitarian law the state of occupation is seen as temporary, and the occupying State must refrain from introducing any important institutional changes in the territory under its (provisional) control that would predetermine the future status of this territory (see above para. 29).[53] The permanent incorporation by the occupying State of the occupied territory into its own national constituency and extending to it the application of its electoral laws is likely to be seen as a measure constituting such important institutional changes. The organisation of elections for a provisional authority for the occupied territory would seem more in line with the obligations of an occupying power than including the territory in the national constituency.

36. It could be argued that a prolonged de facto situation of being under the effective control – including law-making power - of the annexing State as a result of annexation would result in effectively denying the inhabitants of that territory a meaningful right to vote and to stand for elections and thus place an obligation on the annexing State to organise elections to its own national parliament. In the Commission's view, such an obligation, assuming that it exists, would only arise a very significant time after the annexation.

37. The Commission recalls that it is a fundamental democratic principle that elections must enable the free expression of the people in the choice of its legislature. An election which departs from recognised borders and covers annexed territory may distort the will of the people by including additional votes. In some situations, however, such an election may nevertheless faithfully reflect the opinion of the voters. This is independent from the fact that the organisation of elections is an official act which can be challenged as a breach of the sovereignty of the state, whose territory was annexed unlawfully. Irregularities and violations, as serious as they may be, only call for the annulment of an election if they have an impact on the final outcome of the elections.

38. The inclusion of annexed territories in the electoral constituencies can have implications for electoral standards depending on the effect in the particular case. The election law might be

[52] See UNGA Res 68/262 of 27 March 2014.

[53] See UNGA Res 73/263 of 22 December 2018; Office of the United Nations High Commissioner for Human Rights, Report on the human rights situation in Ukraine, 16 August to 15 November 2016, paras. 177 and 178, https://www.ohchr.org/Documents/Countries/UA/UAReport16th_EN.pdf

rejected as a proper basis for democratic elections if the inclusion of territory (and voters residing therein) has the effect of distorting the electorate so that the nexus between the national body politic and the electorate lacks credibility. This problem of distortion arises from an extension of the electorate which in turn flows from an unlawful redrawing of the state boundary. The degree of distortion depends on the number of voters added thereby in comparison with the entire electorate of the annexing State. In principle, the addition of foreign territory to the territory in which elections are held may lead to distortions, whatever organisational scheme is used. Both the organisation of elections in one single nationwide constituency and elections held in local districts whose results are combined may distort the electorate, albeit possibly in different degrees.

39. Furthermore, in specific constellations, the effect of including the annexed territory might amount to an act of unlawful re-drawing of electoral boundaries and of gerrymandering. It might under this heading interfere with and risks to violate the citizens' right to freely elect their representatives.

40. If the effect of the votes of persons residing in the unrecognised territory does ultimately not breach the principle of genuine elections which reflect the free expression of the will of the people, then notwithstanding the outcome being tainted, the election results should stand. Any conclusion to the contrary would negate the voting and election rights of the inhabitants who reside within the internationally recognised territorial borders of the annexing State. This conclusion, however, does not obviate the non-recognition of the territorial change arising from illegal annexation and does not imply recognition. It is only, in extremis, if it can be conclusively shown that the outcome of the election has been determined by the votes from the territory/ies outside the borders of the State, that the legitimacy of the outcome is affected.[54]

41. The issue of including annexed territories into an electoral constituency should be distinguished from the separate issue of ex pat or out-of-country voting. The latter can also have the effect of distorting the nexus between the body politic and the electorate, but the question of borders is not central. A state might allow ex pat or out-of-country voting by voters who find themselves in territories outside the effective control of the state's authorities. In this constellation. the state in which the voters are (the host state) might consider the voting as an infringement on its sovereignty. Indeed, the organisation of elections is a sovereign act and a host state might therefore refuse permission for voting or election stations outside embassies of the other state. Also, host states might restrict campaign events for the foreign election. In contrast, in case of an (attempted) annexation, the State to which the annexed territory lawfully belongs, can for factual reasons not effectively prevent or effectively refuse to give permission to organise the elections in its territory.

42. The Commission stresses in addition that the organisation of elections in the annexed territory by the annexing State should be an act performed exclusively for the benefit of the resident individuals, and resemble those "non-political" official acts performed in disputed territories concerning the status of resident individuals (such as registration of births, deaths, marriages, inheritance).[55] It does not and cannot "cure" the illegality of the annexation. The annexation remains an illegal act of use of force. Performing certain acts including the organisation of elections for the benefit of the population does not remedy the illegality.

43. Finally, the Commission underlines that elections held in the territories beyond the internationally recognized borders would have difficulties to comply with many of the applicable standards (distortion of the results of the elections by the participation of persons who would not have the right to vote under normal circumstances; lack of respect for fundamental human rights;

[54] See for the electoral principle of "relevancy" for the election results the Venice Commission's Good Practice Code and national case law in notes 31-33.
[55] ICJ, Namibia opinion (note 12), para. 125.

absence of electoral observers; failure to abide by certain procedural guarantees etc.). Furthermore, it is difficult to determine whether the inhabitants of the territory which was unlawfully annexed have validly acquired the nationality of the annexing State, i.e. whether their nationality is opposable to third states on the international plane. This fact casts doubts on their eligibility for participation in national elections and might contribute to the distortion of the electorate.[56]

44. In the absence of respect for the preconditions for meeting the principle of free and fair elections (see paras. 21 and 33 above), the organisation of elections in an annexed territory not only does not cure the illegality of the annexation, but also fails to meet the obligation to secure the enjoyment of the right to free and fair elections of the population of the annexed territory.

B. The obligation by an international organisation and by states within the framework of an international organisation not to recognise an annexation implicitly

45. States are bound not to recognise, even implicitly, an annexation. International organisations are under the same obligation (see above para.15). The extent of this obligation - not to recognise implicitly - is however not clearly defined. States enjoy a (wide) margin of manoeuvre to fulfil this obligation while preserving peaceful diplomatic relations between States and in the interest of the individuals residing in the annexed territory. So do international organisations.[57]

46. The Parliamentary Assembly as an organ of the Council of Europe is therefore bound not to recognise implicitly an annexation. The discharge of this obligation may include *inter alia* the verification of the credentials of the delegation of the annexing State.

47. When verifying the credentials of MPs who have been elected in elections in a nationwide constituency which covers a territory that may not be recognised as forming part of the organising state, the impact of the inclusion of the annexed territory on the final results of the election should be examined (see above para. 22). The Parliamentary Assembly should consider this impact paying due regard to the principle of proportionality and determine whether the credentials should be ratified or refused.

48. In the Commission's view, in discharging its obligation of non-recognition of an unlawful annexation, the Parliamentary Assembly has a margin of appreciation. Non-recognition does not necessarily entail the obligation to deny credentials to the delegation of the annexing State. It should also be noted that the rules of procedure of the Parliamentary Assembly provide for different options ranging from non-ratification or ratification with denial or suspension of "*some rights of participation or representation".*

[56] Art. 3 of Prot. 1 guarantees the right to free elections only to the nationals of the state obliged by this provision.

[57] For example, OSCE/ODIHR EOM did not observe elections on the territory of the Crimean Peninsula as there was "no consensus among OSCE participating States concerning its status". https://www.osce.org/odihr/elections/russia/290861?download=true, footnote page 11. Also, in February 2015, the OSCE Parliamentary Assembly rejected the credentials of a member of Russian Federation Council: the Credentials Committee came to the conclusion that the Member does not represent a Russian territorial entity in the Russian Federation Council and cannot be accepted as a Member of the PA. The Bureau followed the recommendation of the Credentials Committee unanimously (OSCE Parliamentary Assembly (February 2015), Report and Recommendation of the Credentials Committee regarding the Russian Federation's Designation of Ms. Olga Koviditi as a Member of the OSCE PA).

.

V. Conclusion

49. The Venice Commission has reached the following conclusions:

50. Annexation is an illegal act which violates the prohibition on the use of force and the principles of territorial integrity of States and of non-interference in matters within the domestic jurisdiction of another State. As such, it is contrary to peremptory norms of international law *(ius cogens*).

51. Thus, there exists a clear obligation under international law for all States not to recognise an annexation, either explicitly or implicitly. This obligation exists also for international organisations such as the Council of Europe, which is based on respect for democracy, the rule of law and human rights.

52. To the extent that the annexing State exercises effective control over the annexed territory within the meaning of Article 1 of the European Convention on Human Rights, it is under the obligation to secure the inhabitants' rights under the Convention. In principle, this comprises the right to free and fair elections. The primary obligation of the annexing State is to restore the inhabitants' voting rights in the elections to the parliament of the State to which the territory lawfully belongs. At any rate, under international humanitarian law, the state of occupation is seen as temporary, and the occupying State must refrain from introducing any important institutional changes in the territory under its (provisional) control that would predetermine the future status of this territory. The organisation of elections for a provisional authority for the occupied territory seems more in line with these obligations than including the territory in national elections to the parliament of the occupying State. In any event, the organisation of elections in the annexed territory does not and cannot remedy the annexation.

53. An election organised in a constituency which comprises territory beyond internationally recognised borders may still constitute a valid reflection of the opinion of the voters. Irregularities and violations, as serious as it may be, only call for the annulment of an election if they have had an impact on the outcome of the elections.

54. The obligations stemming from Article 1 of the ECHR and Article 3 of Protocol 1 to the ECHR cover not only the organisation, but also the conduct of such elections. If elections are organised, they must be "free and fair". If they fail to respect the preconditions of a) respect for freedom of expression, assembly and association; b) stability of electoral legislation and its protection from political manipulation; c) procedural guarantees such as organization of elections by an impartial body, election observation, an effective system of appeal, funding and security, they fail to meet the obligation for the annexing State to secure the enjoyment of the right to free and fair elections of the population of the annexed territory. These preconditions appear difficult to meet for elections organised in an occupied territory.

55. The extent of the obligation for States and international organisations not to recognise implicitly an annexation is not clearly defined. States and international organisations therefore enjoy a margin of manoeuvre to fulfil this obligation while preserving peaceful diplomatic relations between States and in the interest of the individuals residing in the annexed territory.

56. The obligation of the Parliamentary Assembly not to recognise an annexation implicitly has an impact on its verification of the credentials of the delegation of the annexing State. When deciding on the credentials of an MP who has been elected by a nationwide constituency which comprises a territory that is not recognised on the international plane, and which - as a matter of international law - may not be recognised as forming part of the annexing state, the impact of the inclusion of the annexed territory on the final results of the election should be examined.

57. As concerns nationwide constituencies, therefore, the Venice Commission is of the view that the obligation under international law for the Parliamentary Assembly not to recognise an

annexation does not necessarily entail the obligation to deny credentials to the whole delegation of an annexing State. Other options are possible. The Parliamentary Assembly might consider increasing the range of such options for the future.

58. The Venice Commission remains at the disposal of the Parliamentary Assembly for further assistance in this matter.