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International Society, State Sovereignty, and National Self-Determination

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Abstract and Keywords

The idea of an international society of sovereign states predates the era of nationalism and the elevation of the principle of the self-determination of people to its present status as an inalienable human right (Articles 1.2 and 55 of the UN Charter). The nationalization of the sovereignty principle immediately raised the question, however, of which groups could legitimately claim the right to self-determination and state recognition? Neither in theory nor practice has this question proved easy to answer. This chapter traces the attempts to do so in the twentieth century, the emergence of an orthodox interpretation after 1945, i.e. self-determination as decolonization, the impact of the cold war, and attempts to widen the interpretation in the context of self-determination disputes in different parts of the world that have arisen since 1989. The chapter concludes that the present situation is confused and that no new consensus has unambiguously emerged.

Keywords: Sovereignty, self-determination, international society, secession, irredentism, ethnic nationalism, civic nationalism

Introduction

IT is an irony that the legal, diplomatic, and political principles and practices that define international society historically pre-date the age of nationalism, let alone the elevation of the principle of the self-determination of peoples to its present position as an inalienable right inscribed in the United Nations Charter. Originally sovereignty, the principle of supreme power and authority, was an attribute of Princes, and international law, diplomatic practice, and even the regulation of their conflicts and consolidation of their conquests through treaties and marriage settlements was essentially a personal not a collective matter, a society of states but definitely not of peoples. Only with the French and American revolutions did the concept of national self-determination enter the political lexicon. The purpose of this chapter is to explore, first, how the nationalization of the sovereignty principle both challenged and was accommodated within traditional international society during the twentieth century, and second, the extent to which this accommodation has been modified since the end of the Cold War.

International Society

Politicians—and indeed the general public—are more likely to refer to the international community than to international society, presumably because ‘community’ signifies (p. 538) human solidarity without specifying any particular rights and obligations that attach to membership. It sounds warm and offers no hostages to fortune. The most influential account of international society, on the other hand, was entitled *The Anarchical Society*,¹ introducing at the outset the essential paradox of international relations—that they are indeed social, and therefore governed by moral reasoning, whether the issue is cooperation, commercial and cultural exchange, or war, but at the same time international relations take place under conditions of anarchy in that they are between sovereigns rather than under government. It is this absence of coercive authority that has led some realists to deny the reality of any normative framework for international relations, invoking Thomas Hobbes’s dictum, ‘Covenants without the sword are but words.’²

This bleak vision does not bear scrutiny. If a Hobbesian war of all against all was all that was to be said on the matter, we could not explain, for example, the sustained growth of international organization from the end of the nineteenth century onwards, nor indeed the exponential development of public and more specialized forms of international law. The original conception of international society was what the German sociologist Ferdinand Tönnies described as a *Gesellschaft*, that is, an association primarily held together by collective self-interest, rather than the more solidarist *Gemeinschaft*, whose members share a wide range of collective mores and substantive values.³ One immediate

consequence of the nationalization of the sovereignty principle was to raise a question as to whether a *Gesellschaft* could mutate into a *Gemeinschaft*, and if so under what circumstances.

I shall return to this question in the final section of this chapter. For the moment, the point to note is that the ancestor of contemporary international society emerged from a specific historical context in one part of the world. In the sixteenth and seventeenth centuries the Christian West was shaken by two developments: the rise of several strong centralized states and a religious schism, which created a fault line between Catholic and Protestant Europe and provided a convenient *casus belli* for the rival Princes. What is today conventionally described as the Westphalian system refers to the peace settlement that brought the European wars of religion to an end in 1648. The principles on which the Peace of Westphalia was based were not new, but they were codified in a way that was to lay the foundations for modern international society. By a negotiated consensus it was agreed that henceforth the sovereign would be accepted as the final source of authority within his or her domain. The formula *cuius regio eius religio*, roughly 'to each prince his own religion', was the ancestor of the modern principle of non-intervention, without which a system of international cooperation could not have developed.⁴ It also had the desirable outcome of proscribing wars over religious faith, of raising the role of prudence, rationality, and interest in human affairs, and reducing the role of passion.

The relative stability in Europe brought about by the Treaty of Westphalia allowed the institutions of international society to take shape. The two most important were international law and the diplomatic system, which increasingly involved the establishment of resident embassies and the codification of diplomatic practice and privilege, (p. 539) the former to allow international negotiations to be conducted in a reasonably orderly fashion, the latter to bring to an end disputes over protocol and precedence amongst those granted plenipotentiary powers by their sovereigns.

The remaining three institutions commanded less than universal consent. Compared with the hierarchical structure of feudal Europe, the Westphalian system was egalitarian, since sovereigns by definition were all supreme within their own territory. They were not all equal in terms of power, so the question remained as to how the rivalries of the Princes were to be constrained in the interests of order. Religious war had been outlawed but not war itself. Indeed, sovereigns could go to war (and frequently did) for any other reason up to and including territorial conquest. The solution to this problem that was most frequently advanced in the eighteenth century was the balance of power. This concept has attracted ferocious criticism over the years, but is still accepted by most political theorists and historians as the ordering institution of international society. Since at times it required the Great Powers to partition countries or continents—for example, Poland in the eighteenth and Africa in the nineteenth centuries—in the interests of order, unsurprisingly, the principle appealed more to the strong than the weak.

The institutional status of the Great Powers considered as a collective, with special rights to correspond to their responsibilities for managing the balance of power, was also never wholeheartedly endorsed by the smaller and weaker states—the involuntary consumers of Great Power order—although it has lived on into the contemporary period in terms of the veto-wielding Permanent Five members (P5) of the UN Security Council. Finally, war itself was not considered to be a breakdown of international society, which is how we would tend to see it today, but as an institution, the mechanism to be employed for bringing about change after all legal and diplomatic efforts had been exhausted. The theoretical justification for this view is to be found in the logic of sovereignty. In most societies there are legal and customary ways of settling disputes, but where existential interests are involved, which affect the honour of the disputants, the law will not suffice. In such cases the duel, a trial of physical strength, was originally used within European society to settle the matter, the right going to the victor. And since sovereigns were originally individuals, even though they could command armies, the same logic applied within international society.

The Impact of Nationalism

The spread of nationalism after the French and American revolutions challenged this traditional conception of international society in three respects. First, the nationalists challenged the hierarchical notion that had supported both absolute monarchy and the right of a privileged aristocratic class to rule. The idea of popular sovereignty implied that the state belonged to the people, even if most early nationalist intellectuals had a fairly restricted idea of who they meant by people. Second, it followed that nationalists (p. 540) opposed the special privileges that the Great Powers arrogated to themselves. Dynasticism, the governing principle in most European states before the revolutions, might accidentally reflect national identity but it often did not. Third, the idea that territory, which nationalists regarded as the sacred national patrimony, could be traded or regarded as one of the legitimate spoils of war, was anathema to the nationalist spirit. But these early challenges were largely defeated after the fall of Napoleon Bonaparte. At the Congress of Vienna in 1815 the old order was restored. The nationalist challenge went underground for a time, resurfaced in the form of the southeast European revolt against the Ottoman Empire from the 1820s, was taken over by the *ancien régime* at the time of Italian and German unification ending in 1870–1, and finally returned to centre stage in the form of demands for a fundamental makeover of international society at the Versailles Conference following the First World War.

The story of what happened next has been told many times, but by no one better than the historian Alfred Cobban, whose *National Self-Determination* was first published in 1945.⁵ President Woodrow Wilson had taken the United States into the First World War in April 1917 in order that ‘the world be made safe for democracy’. The following January he delivered the speech to the United States Congress in which he outlined the ‘Fourteen

Points' on which he believed the post-war settlement should be based. These principles are in fact less vague than they are frequently represented as being—they did not for example offer the principle of national self-determination as a universal human right—but they nonetheless were widely accepted by nationalists beyond Europe as applying in principle to themselves as well as to the citizens of the Hapsburg and Ottoman Empires whose dynastic rulers were about to be overthrown.⁶ Even the European states, to which they were immediately addressed, were unable to implement them, and, in Cobban's view, the liberal doctrine of national self-determination, which implied freedom of choice, was transformed into an illiberal doctrine of national determinism under which political identity was determined by nationality. Even more worrying, it proved impossible to redraw the political map so that each national group would have its own state. The reason was simple: the long period of European dynasticism, in which both boundaries and populations shifted many times, meant that however the map was redrawn the new states were likely to include minorities, most of whom would view the new dispensation with suspicion, and might actively seek to break away and join a neighbouring state in which they would be part of the majority.

The solution that eventually emerged was to make entry into the new League of Nations—the creation of which was Wilson's fourteenth point—dependent on the governments of the Hapsburg successor states, where the problem of fixing national boundaries with ethnically mixed populations was most intense, providing guarantees that minority rights would be respected.⁷ This solution was always unpopular in eastern Europe, since it seemed to create a kind of second-class international citizenship: neither Britain nor France were ethnically homogenous, yet there was never any question of them being required to provide guarantees to the Welsh, Scots, Bretons, or Basques. The governments of both countries could quite reasonably insist that there (p. 541) was a difference; that British and French nationality was defined by citizenship rather than by ethnic origin, but while true, this was not an argument that was likely to cut much ice with Czechs, Slovaks, or Hungarians. So they tried to avoid their obligations whenever it was convenient for them to do so, and when the Third Reich used alleged discrimination of ethnic Germans as a justification for its eastern expansion, the principle of collective minority rights fell into disrepute.

Since the US Senate refused to ratify the Versailles Treaty and the Bolsheviks also refused to join the new world body, the League did not in any case establish the central authority over the course of world politics that Woodrow Wilson, its chief architect, had intended. It was the war that destroyed the old international order, not Wilson's dream of what should replace it. But not even his harshest critics could deny that as a mobilizing inspiration, Wilson's vision of a national, democratic world order was a triumphant success. Although dynasticism survives here and there—as in Saudi Arabia, Morocco, Bhutan, Swaziland, and until recently Nepal—the legitimacy of hereditary rule ended in 1919. From then on the nation state rather than the multicultural empire was to be the dominant political form. The European powers with overseas empires would refuse to

accept this conclusion for as long as they could, but since they were constitutional democracies that claimed the right of self-determination for themselves, their leaders recognized that the writing was on the wall and that all they could do was to play for time.⁸

Self-Determination as Decolonization

The United States again played the lead role in shaping the new world order after 1945. Indeed, its war aims—including the opening of world markets, support for democracy, and an end to European imperialism, set out in both the Atlantic Charter of 1942 and the Lend Lease Agreements—bore a striking resemblance to the Wilsonian scheme. The most obvious difference lay in the American resolve to use its power in support of these values. The failure to pay proper attention to enduring realities of power politics had been ruthlessly exposed in 1939 in E. H. Carr's *Twenty Years' Crisis*, one of the most influential books of the period.⁹ When representatives of fifty-one states met in San Francisco in 1945 to draw up the Charter of the United Nations Organization, they were faced therefore with the need to balance the requirements of order, as the concept was understood by the victorious grand alliance, and the demands of justice in which the US for the most part made common cause with the small states and those who wanted an end to empire, sometimes against the more conservative interests of the European imperial powers.

Order generally triumphed over justice, when the two principles came into conflict, most notably in the lead role given to the Security Council in matters of war and peace, and more particularly by the decision to have permanent members, with the power of veto, in addition to those who would be elected to serve a two-year term. But from very early on the question of who was to have the right to self-determination arose as a major political and legal problem within the world body. There was at this stage no agreed consensus on this question, but one would have to be reached as the newly established Trusteeship Council required the administering powers of the territories for which they had been given responsibility under the League Mandate system, not merely to account for their stewardship to the UN but also to prepare the territories for independence.¹⁰ The assumption that these trusteeships were temporary and had been earmarked for sovereign status had an inevitable spillover effect within the wider colonial world, even though the European powers refused to acknowledge that the UN had any rights or influence over their colonial policies.

The UN Charter affirms twice (Articles 1.2 and 55) the support for the principle of 'equal rights and self-determination of peoples'. But who exactly were these peoples? This was a new question. It is true that the majority of South American countries had achieved independence from Spain and Portugal in the early 1800s, that Greece seceded from the Ottoman Empire in 1829 and Bulgaria did so in 1908, but although outside powers were involved directly or indirectly in these events, they did not lead to any multilateral attempt to revise international law, let alone to establish the right of self-determination as a constitutive principle of international society. The logic of the duel, to which I referred earlier, continued to apply: international recognition followed the successful assertion of sovereignty and the ability of the new rulers to demonstrate empirically their territorial

and juridical control. By asserting a right of self-determination it became necessary, at least in theory, to identify the right holders in advance of the fact.

The original Wilsonian solution to the problem was the plebiscite. It failed, not merely because of the irreconcilable national and territorial claims in central and eastern Europe after the First World War, nor because the Great Powers had no intention of testing their legitimate title in their own possessions by this method, but also because it regarded the identity of the population to be polled as self-evident. As Ivor Jennings, a British judge on the World Court, famously put it in 1956: 'on the surface it seemed reasonable: let the people decide. It was in practice ridiculous because the people cannot decide until someone decides who are the people.'¹¹ Plebiscites were nonetheless used in two UN Trusteeship territories—Togo (1956) and Cameroon (1961)—where the former German colonies had been divided between France and Britain under the League Mandate system, in the case of the Cameroons leading to the reunification of part of the territory that had been administered by the British within eastern Nigeria.

It seems likely that the use of the word 'peoples' rather than 'nation' in the UN Charter was chosen deliberately to avoid the claims and counter-claims that had bedevilled interwar politics in Europe and to make it clear that the reference was to the entire population of a discrete and already existing territory. It was not a great improvement. If it is impossible, objectively, to establish the identity of a nation, it is not immediately obvious that the problem can be solved by a change of language.

(p. 543) At the end of the Second World War it was still not clear how the problem would be resolved. In Asia in particular there was a fair amount of post-colonial tidying up and territorial consolidation. No one paid much attention to theories of self-determination at this time.¹² In India the formula agreed with the British for partitioning the subcontinent and deciding the fate of the Princely states came unstuck, first in Kashmir when Pakistan attempted to reverse the Maharajah's decision to join India, and then when India mounted a police action to reverse the Nizam's decision to join Hyderabad to Pakistan. India also subsequently 'liberated' Goa from Portuguese rule in 1961. In West Irian the Dutch had to be pressured by the Americans into surrendering the territory to the Indonesians, and even in Africa Julius Nyerere flirted with the idea of forging a union with Katanga after the province had unilaterally seceded from the Congo in 1960, but before he had become president of an independent Tanganyika.

Territorial revisionism was not widely advocated by the leaders of new states. Indeed, it was in Africa during the 1960s that a conventional interpretation of the political meaning of the principle of self-determination emerged. The subversive potential of the principle—the implied invitation to aggrieved minorities to rebel—quickly became as evident to new states as to those long established. The difficulty in Africa was that prior to independence African nationalists had frequently complained about the 'Balkanization' of the continent at the time of the Berlin Conference and the need for rebuilding it in line with African interests and identities after independence.

The most vocal advocate of this wholesale rejection of the colonial legacy was Kwame Nkrumah, the first president of Ghana. His proposals for Pan-African political unification alarmed most African leaders and fuelled the political warfare that dominated West African politics in the early 1960s. The bickering over the meaning of African Unity, a principle to which all African leaders professed to be committed, only ended with the establishment of the Organization of African Unity (OAU) in 1963. The OAU Charter was influenced by Latin American legal experts who were brought in to advise on the drafting and revived the principle of *uti possidetis juris* (roughly 'you hold what you possess') to secure the agreement of all African governments to the territorial boundaries bequeathed to them at independence, and to put an end to the threat of secessionist and irredentist claims.¹³

Although it was never the subject of a UN Resolution, the African solution to the self-determination problem quickly established itself as the conventional interpretation within the wider international society. The peoples who were to enjoy 'equal rights and self-determination' were the undifferentiated populations of existing colonies; in other words no attention was to be paid to ethnic or religious affiliations. State succession was a once and for all event tied in time and space to European decolonization. No further secessions would be countenanced, unless of course they were freely agreed in negotiations between a sovereign government and a separatist movement or subordinate government. In this latter case the matter would be regarded as falling solely within the internal affairs of the country in question and the world body would have no role to play prior to admitting the new state as a member.

(p. 544) The Impact of the Cold War

The conventional interpretation suited the vast majority of governments, regardless of their ideological colouring. A few revisionist governments were unreconciled. Irredentist claims were seldom abandoned during the Cold War, but the ambitions of the governments that harboured them—such as Spain to Gibraltar, the Philippines to Sabah, Morocco to Mauretania, the Republic of Ireland to Ulster, the Argentine to the Falkland Islands—faced formidable practical obstacles. They were prohibited under international law from using force as an instrument of foreign policy to redeem their 'lost' territories; it was virtually impossible to generate diplomatic support for their cause within the General Assembly or other international organizations; they were unable to gain support from either superpower. Somalia, whose Constitution pledged the state to reunite all five centres of Somali population (in other words the Ogaden region of Ethiopia, Djibouti, and the North East Province of Kenya, in addition to the former Italian colony and British Protectorate, which had united to form the Somali Republic in 1960) tried to achieve this objective by allying itself in turn with the Soviet Union and the United States, but failed each time.¹⁴

There is also something anachronistic about irredentist claims since they generally invoke ancient land rights, or claims of suzerainty and the right to exact tribute.¹⁵ These relate more to an age when social relations were organized on a hierarchical basis rather than according to the theoretically egalitarian principle of popular sovereignty. Opposition to irredentism preceded the Cold War and indeed survived its end. It is difficult to think of an irredentist claim that is likely to challenge the international order seriously unless it is the Chinese claim to Taiwan. This is a special case, however, since the KMT (Kuomintang—the Nationalist Party expelled by the Chinese communists from the mainland in 1949), which for most of the Cold War period was in power in Taiwan, claimed to be the legitimate authority within mainland China. The People's Republic itself claimed that Taiwan was an integral part of China, and in the face of US support for Taiwan, a tacit acceptance of the status quo emerged on both sides of the Straits under which Taiwan enjoyed *de facto* but not *de jure* independence. This situation survived the Cold War. Were it to break down it would almost certainly be because of a victory at the polls by the Democratic Progressive Party (DPP) followed by a unilateral declaration of independence. The risks involved in such a policy would be very great and it is unclear under what circumstances the DPP would be prepared to take them.

The main challenge to the interpretation of self-determination as decolonization during the Cold War came from secessionist movements. They were, after all, precisely those who took the principle seriously and who understandably drew the conclusion that if self-determination was an inalienable human right, it should apply to them. Of the three Cold War secessionist crises that boiled over onto the world stage—Katanga (1960–3), Biafra (1967–70), and Bangladesh (1971)—only the Biafran case was seriously (p. 545) debated in terms of the substantive meaning of self-determination. The reintegration of the Katanga into the Congo was the price that the Kennedy Administration in the US was prepared to pay to marginalize the influence of the Soviet Union in the UN peacekeeping operation in the Congo. Bangladesh gained its independence at the hands of the Indian army, which defeated and expelled the Pakistan army, so its admission into international society followed the traditional pattern of recognizing a *fait accompli* rather than any acknowledgement of a right of secessionist self-determination. Indian intervention in the crisis followed a period of intense diplomatic activity, the climax of which was the signing of an Indo-Soviet Treaty of Friendship and Cooperation. This had the intended consequence of forestalling any chance of the Americans coming to the aid of Pakistan, with whom they were officially allied.

Biafra's bid for independence collapsed because the Biafrans failed to secure a powerful external patron who was prepared to defy the international consensus in favour of the territorial status quo. France came close but in the end President Charles de Gaulle indicated that he would be guided by African opinion. By 1969 four African states—Ivory Coast, Gabon, Tanzania, and Zambia—had recognized Biafra, and several others were rumoured to be sympathetic to its cause. At the annual OAU summit in 1969, President

Nyerere of Tanzania circulated a memorandum to his fellow Heads of State arguing the case for recognition.¹⁶

Nyerere's argument was straightforward. Colonial borders, he suggested, had been accepted for practical reasons—to facilitate interstate cooperation, minimize opportunities for conflict, and release energies that could more fruitfully be devoted to development. Nonetheless the right of governments to rule rested on their ability to serve the population as a whole. When a government could no longer protect the lives of all its citizens, and when a particular group believed itself to be threatened by genocide, that government forfeited its legitimacy. The same political considerations that had led Nyerere to accept existing territorial arrangements could now (and in his view should) be advanced in support of Biafra's secession.

This attempt to establish internal standards of accountability and good government as criteria for international recognition in a conflict over self-determination failed. Not only did the presidents for life and military dictators who headed the majority of African governments in the 1960s have no interest in lowering their sovereign guard to accommodate international criticism, but the Biafrans could neither appeal to international law nor dent the recognized government's monopoly of the symbols of nationalism at the United Nations. The Cold War exercised only a minimal influence on the Nigerian civil war. As the former colonial power the British government faced intense pressure at home from supporters of both the secessionists and the Federal government, primarily over the issue of arms supplies. Its solution was to suspend arms sales to both sides, a policy that led the Lagos authorities to turn to the Soviet Union. Moscow prevaricated until such time that the Americans had made it clear that they regarded the conflict as a West African civil war, in which they would remain neutral, after which the USSR did indeed sell arms to the Federal Nigerian government.

(p. 546) The lasting significance of Nyerere's failure is that in the argument over the exercise of the right to self-determination and international recognition the Cold War was irrelevant. As we shall see, his essential point—that sovereignty is conditional on the ability of the government to protect the population as a whole and promote its welfare—has been revived in the post-Cold War world by both lawyers and diplomats in their efforts to reconstruct international society after the collapse of communism. The fact that Cold War considerations did not determine the outcome in the 1960s, however, should perhaps have been taken as a warning that attempts to redraw the international map on the basis of 'genuine' self-determination would face formidable obstacles under any circumstances.

International Society Revisited

The warning was not heeded. In the euphoria that accompanied the collapse of the communist regimes of Eastern Europe and then the disintegration of the Soviet Union, there was an understandable tendency for minority leaders and other would-be revisionists to fantasize that an open season had been declared for secessionist self-determination. It did not take long for the major powers to construct a road block against any such radical development. When, in March 1990, the Lithuanian Parliament voted democratically to seek independence from the Soviet Union, Western governments withheld recognition and urged the nationalists to reach an accommodation with Moscow. As Misha Glenny noted at the time, initially, the West ‘understood self-determination to mean the right of east European countries to leave the Soviet bloc’, not the right of the Soviet Republics to secede from the Union itself.¹⁷ When it eventually became clear that the centre could not hold, both the Soviet government and the major outside powers treated the disintegration of the USSR into its constituent parts as a case of decolonization, thus leaving the conventional interpretation of self-determination intact. The Russians then established the Commonwealth of Independent States (CIS) to maintain their influence in their ‘near abroad’, and perhaps also to cope with the psychological shock of the loss of empire, rather as the British had done in the then British Commonwealth when its own empire began to break up with its withdrawal from South Asia, in 1947.

Even if the West had won the Cold War by default, it had still won. In the aftermath of this largely unexpected victory there was a mood of triumphalism and a temptation to conflate Western ideology with international society. It is worth reiterating, therefore, that this conflation was invalid. The East-West confrontation had often strained the institutions of international society to near breaking point, but the value of a minimal framework of coexistence proved too valuable for either side to abandon it. Even during the long period when the United States kept the People’s Republic of China (PRC) out of the United Nations, lines of communication were kept open through the US Embassy in Warsaw. The periodic frustration of both superpowers (p. 547) with the UN also did not stop them using it, both to deal with otherwise unsolvable problems, where Soviet and Western interests conflicted, at the start of the Cold War, such as the disposal of the Italian colonies, and later as a mechanism for bringing the Cold War to a close. In other words, the essential characteristic of international society was pluralist, an association based on the self-interest of its member states, not on any particular formulation of the good life.

A counter-argument has existed, at least since the Versailles Peace Conference of 1919, that international society should be reformed to reflect human solidarity rather than to protect the interests of governments. As noted at the beginning of this chapter, the nationalization of sovereignty gave a strong impetus to this wish to transform international society, first through the League and then the UN, into a genuine *Gemeinschaft*. On this view, first the rise of fascism and Nazism in Europe, and then the Cold War, delayed the realization of this vision rather than proving it unrealizable. Indeed the success of the first Gulf War in 1991—and even more its aftermath—encouraged solidarists in their conviction that a structural reform of international society was not only necessary but imminent. Operation Desert Storm was mounted to end Iraq’s

occupation of Kuwait on the basis of a Chapter VII Resolution of the Security Council, with the full support of all five permanent members and of all but one of Iraq's regional neighbours (Jordan). It was the nearest thing to the Security Council operating in the way and for the purposes for which it had been designed.¹⁸

Shortly after achieving victory in the Gulf, President George Bush (Sr.) made a speech in which he called for a New World Order (NWO), under which there would be respect for the rule of law and the weak would be protected as much as the strong. For the first time the Security Council convened at the summit and the then Secretary General, Boutros Boutros-Ghali, was commissioned to write a report on the role of the UN system in delivering the NWO. Operation Desert Storm was not the result of a dispute over self-determination, nor was it a humanitarian intervention. Although Saddam Hussein used a border dispute as a pretext for his annexation of Kuwait, the UN was reversing an aggression by one member of the Organization against another.

Nonetheless, Boutros-Ghali's *Agenda for Peace*¹⁹ acknowledged that the issue of self-determination could not be ignored altogether. The immediate background was the humanitarian intervention by the Western powers to support the Kurds, whose rebellion following the war had been brutally suppressed by Saddam Hussein. The Kurds—divided between Iran, Iraq, Turkey, and Russia—are the largest stateless nation in the world. Their national aspirations had been recognized by the victorious Allies after the First World War, but the French and British then reneged on their promise of a homeland for the Kurds when Kemal Ataturk refused to surrender any territory following the Turkish Revolution. Since then there has never been any question of Kurdish independence, partly because the Kurds themselves have always been divided but mainly because the states in which they reside as a minority would not countenance it. None of the outside powers involved in the Iraq crisis favoured partition, but the result of the humanitarian catastrophe in northern Iraq was nonetheless the creation of an autonomous Kurdistan, protected from Saddam Hussein's forces from the air. (p. 548) Implicitly, the oppression of the Kurds also raised the kind of question about the right of tyrannical governments to claim sovereignty over those they oppress, which Julius Nyerere had raised in his memorandum to the OAU summit in 1969.

The *Agenda for Peace* did not endorse what international lawyers refer to as the theory of constitutional self-determination,²⁰ but it shuffled in that direction, mindful as always to balance the conflicting demands of order and justice. In his discussion of the new international context Boutros-Ghali made three statements that seemed to hint at a process of managed constitutional reform for international society. First he argued that while the state must remain as the foundation stone, its authority was not absolute. 'Respect for its fundamental sovereignty and integrity are crucial to any common international progress. The time of absolute and exclusive sovereignty, however, has passed; its theory was never matched by reality.' Second, he insisted that the United Nations had not closed its doors to new members but that 'if every ethnic, religious or linguistic group claimed state-hood, there would be no limit to fragmentation, and peace, security and economic well-being for all would become ever more difficult to achieve'.

Finally, he suggested that the way to resolve the rival claims of sovereignty and self-determination was through respect for human rights, particularly the rights of minorities, on the one hand, and democratization on the other. 'Respect for democratic principles at all levels of social existence is crucial: in communities, within states and within the community of states.'²¹

This rather bland attempt to reformulate the criteria for the exercise of self-determination and state recognition has been tested on at least ten occasions. It would be difficult to claim that either international law or state practice have established a new interpretation to replace the conventional interpretation of self-determination, but nor is it clear that the conventional interpretation has survived unscathed.

Test Cases and New Theories

That nationalism continues to exercise a major influence on world politics is indicated by the admission of thirty-six new members to the United Nations between 1989 and 2006. Of these no fewer than twenty were successor states of the Soviet Union and Yugoslavia, and a further ten were ex-European colonies. A review of these cases points to three broad conclusions. The first is that most governments shared Boutros-Ghali's fear of runaway fragmentation. More particularly they remained deeply attached to territorial integrity as an attribute of sovereignty, and consequently opposed to the idea of secessionist self-determination. Second, they continued to support the principle of *uti possidetis* or some analogue of it. Third, in cases where the establishment of a new state reflected the outcome of a conflict over self-determination, they would only contemplate recognition after there had been some sort of democratic test to establish its legitimacy. Let us consider each of these conclusions in turn.

(p. 549) Territorial Integrity

The insistence in the UN Charter on territorial integrity as an entailment of sovereignty reflects the proscription in international society of unilateral secession, not secession per se. There has never been any objection, in principle, to the break-up of existing states, providing the divorce is consensual and the result of negotiation, as it was between Norway and Sweden in 1905, the Irish Free State and the United Kingdom in 1921, Malaysia and Singapore in 1965, the Czech and Slovak Republics in 1993, and Serbia and Montenegro in 1996. Nonetheless, while such negotiation may open a pathway to international recognition, even democratic governments are reluctant to invite peaceful territorial challenges to their authority.

The one major change in the debate about self-determination since the end of the Cold War is that it is no longer plausible to argue that strategic necessity rules out territorial change. This may seem a small change but it opens the floodgates, an illusion of stability

giving way to an equally illusory sense of almost infinite flux and possibility. It was against this background that in 1996 the Canadian government sought to head off at the pass the secessionist challenge that has been periodically advanced by the Parti Quebecois (PQ). It asked the Supreme Court for a ruling on whether there was anything in the Canadian Constitution or international law that would permit Quebec to secede unilaterally, and second, in the event of a conflict between the Constitution and international law on this issue, which should take precedence. The Supreme Court endorsed the view of the two international experts whom the Federal government had consulted. They had concluded that 'outside the colonial context, there is no recognition of a right to unilateral secession based on a majority vote of a sub-division or territory, whether or not that population constitutes one or more "peoples" in the ordinary sense of that word'. It is true that both experts hedged their bets by suggesting 'that there may be developments in the principle of self-determination according to which not only colonialism but also flagrant violations of human rights or undemocratic regimes could lead to a right of unilateral secession', although they made it clear that none of these developments applied to Quebec.²²

This opinion remains the most authoritative statement on self-determination. It has not been put to the test in an established democracy but, as we shall see, the qualification with which the Opinion concludes, and the possibility of remedial and constitutional self-determination, at which it hints, have featured in a number of disputes over self-determination in the Balkans and elsewhere.

Uti Possidetis

The conservative bias of international society was illustrated by the preference of the major powers in the early post-Cold War period for the territorial status quo in Yugoslavia as well as in the Soviet Union. When it became clear that disintegration (p. 550) was inevitable, the solution that was adopted was to recognize the existing borders of the Federal and Soviet Republics as the new international borders. In terms of the clear purpose of this strategy, in other words to preserve the conventional interpretation of the principle of self-determination, it was only partially successful. This was because it had the unintended consequence of reinforcing the ethnic definition of the nation rather than the civic version implied in the view that it is the entire population of a territory that enjoys the right to self-determination. Joseph Stalin's nationalities policy had resulted in the creation of predominantly ethnic Republics in the territories that the Bolsheviks had taken over from the Tsarist Empire, so that the transition was reasonably smooth in most of them, although the presence of Russian minorities, the result of Soviet-era migrations, represented a continuing hostage to fortune.

The first international involvement in the break-up of Yugoslavia was by the European Union (EU), acting through and alongside UN peacekeeping forces. The Badinter Commission was appointed to ensure that democratic practices had been put in place prior to the recognition of the successor Republics and that they should be defined in the

same way, and with the same boundaries, as had existed before the break-up. The EU proved powerless to prevent the ethnic cleansing that dominated the wars of Yugoslav succession. In the end the Bosnian crisis was only ended when the Americans intervened forcefully to change the balance of power on the ground between the Serb, Croat, and Bosniak armies, and force them to the negotiating table at Dayton, Ohio, in 1995. The Americans had no wish to endorse a new principle of ethnic self-determination and were determined to maintain, however fictitiously, the twin myths that force could not be used to change the political map and that Bosnia must remain a multi-ethnic country. They were also prepared to invest heavily, both financially and in terms of diplomatic effort, to secure this outcome. From this point of view, the Dayton Accords of 1995 could be seen as a victory for the conventional interpretation since they preserved the pre-existing borders of Bosnia, recreating the country as a confederation and skating over the fact that the political geography of the country had been changed as a result of the ferocious inter-ethnic fighting.

Similarly, the 1999 agreement under which NATO forced President Milosovic to withdraw the Yugoslav army from Kosovo, constitutionally an integral part of the then Yugoslav Republic, was careful to avoid support for the Kosovo Liberation Army's (KLA) secessionist ambitions. Admittedly in both cases provision was made for democratic elections, but since it was unclear how, in countries that remained deeply divided along ethnic lines, democracy would necessarily ensure territorial integrity, it is difficult to avoid the conclusion that in both cases the powers were hoping, Micawber-like, that something would turn up.

Not surprisingly *uti possidetis* proved less problematic in the cases of state recognition that arose in the former colonial world than in Europe, although even here there was not complete consistency. Both Eritrean and East Timorese (Timor Leste) nationalists had always claimed to be supporting the conventional interpretation of self-determination as decolonization, not rejecting it.²³ Eritrea had been colonized by the Italians and then administered by the British during the Second World War, only being (p. 551) attached to Ethiopia by the General Assembly when the Great Powers could not agree among themselves about the fate of the former Italian colonies. Its status had then been changed unilaterally by Ethiopia in defiance of the agreement with the UN, leading to the protracted civil war that was finally brought to an end in the closing stages of the Cold War. East Timor also claimed the right to self-determination as decolonization on the grounds that it was a former Portuguese colony, not a Dutch colony like the rest of Indonesia. On this view the Indonesian annexation of 1974 was illegal.

Two observations should be made about these relatively recent cases of colonial self-determination. The first is that both required a democratic test of opinion prior to international recognition. The majorities in favour of independence were impressive in both cases, but in view of the turmoil that characterized the early years of their independent statehood, whether they should be regarded as a rite of passage or as evidence for a democratic world order is an open question. The second observation is that the decisive issue was not the legal and political arguments about democratic consent but

the enabling international environment, which created the opportunities for change: the decision of the two superpowers to cooperate in closing down regional conflicts after the Cold War in the first case; the Asian financial crisis, which precipitated the fall of the Indonesian president, Suharto, in the second.

Had the intellectual debate been decisive, it would presumably have led to the recognition of the Republic of Somaliland, whose leaders can and do make exactly the same case as the Eritreans and East Timor but to no effect. This is not to say that these debates will have no influence on future conflict resolution in disputes over self-determination. Indeed, in two recent cases—the Sudan and Papua New Guinea—where self-determination disputes were the subject of international mediation, there was a deliberate attempt to resolve the conflict by constitutional means. The relative weight of legal theory and international norms as against power-political considerations has recently been tested in South Sudan, which voted in January 2011 by over 98 per cent to secede from the Republic of Sudan in July 2011, although several intractable issues remain unresolved. It is due to be tested again if and when the agreed referendum on the secession of Bourganville from Papua New Guinea is allowed to go ahead.

Democracy and Self-Determination

It was Anthony Lake, President Clinton's first National Security Advisor, who proposed enlargement—by which he meant democracy and open-market economics—as the new grand strategic framework for international society.²⁴ It was intended to replace George Kennan's idea of containment that had governed Western strategic thought throughout the Cold War. Its implementation faced formidable obstacles from the start, not least in relation to the attempt to reformulate the criteria for exercising self-determination and securing admission to international society.

(p. 552) The problem is one of logic, not of constructive imagination or even political will. Ivor Jennings's observation quoted earlier remains as true in 2012 as when he wrote it in 1956. A democratic test requires a population to be polled within an established and demarcated territory in which they reside. It also raises the question as to which dissatisfied groups should theoretically be entitled to a democratic test on their political affiliations. There was no serious international pressure on Russia to entertain the possibility of secession in Chechnya, or on Indonesia in relation to Aceh, yet in the first instance the substantive case was not obviously different from those Soviet Republics that had been allowed to secede, or in the second from East Timor. Democratization, in other words, cannot reach deep inside an established state whose legal personality is not in doubt. China is unlikely to put its sovereignty over Tibet to the test, and even democratic India is not expected to honour its fifty-year-old pledge to hold a plebiscite in Kashmir in the foreseeable future.

In his polemical essay *The Return of History* Robert Kagan identified the return of Great Power nationalism as one of the defining contours of the new international landscape.²⁵ He argues persuasively that three of the Great Powers—Russia, China, and India—do not seem at all likely to favour any change in the existing interpretation of self-determination, except where a change in the political map happens to coincide with their national interests. Nor is it clear that either the United States or the European Union will actively seek to reopen so contentious a question, even though it is amongst Western international lawyers and political analysts that there has been the most vigorous debate on the issue.

In support of this conclusion let us briefly review the events of 2008, first in relation to the unilateral declaration of independence by Kosovo in February, and second, Russia's intervention in Georgia in August and subsequent recognition of the breakaway provinces of South Ossetia and Abkhazia. The question of whether the 1999 NATO intervention in Kosovo was justified need not detain us here. Suffice it to say that lawyers and political analysts remain divided over whether it was legal, illegal but morally justified, or immoral because illegal. After the United Nations had established its transitional protectorate, it was hoped that by working with moderate Kosovar Albanians and Serbs the territory would settle into a pattern of stable inter-ethnic coexistence, and that the UN would then be able to steer the province into an accommodation with Belgrade, under which the prospect of EU membership would be sufficient to persuade Serbia from any attempt to reassert its hegemony, or alternatively arrange for a peaceful divorce on the Czech/Slovak model.

None of this worked out, so that the UN, which had originally intervened to prevent the Serb army ethnically cleansing the majority, found itself effectively presiding over the ethnic cleansing of the Serb minority. By 2007 frustration within the UN was building rapidly and both the United States and the EU were impatient with Russia, which had made it clear that it would veto any attempt by the Security Council to recognize the independence of Kosovo. Kosovo's unilateral declaration of independence was effectively (p. 553) orchestrated by the Western Powers, even though some of them such as Spain, facing potential secessionists of their own, were far from happy.

Kosovo's supporters were able to mobilize over fifty states to support its independence but, in the face of Russian opposition, this was largely academic. Moreover, when the Georgians unwisely attempted to enforce their control of the breakaway province of South Ossetia, the Russians invaded Georgia itself and, following a ceasefire and withdrawal brokered by the then French president, Nicolas Sarkozy, recognized the independence of South Ossetia and Abkhazia, the Black Sea provinces of Georgia, whose inhabitants have been in rebellion against Tbilisi since the disintegration of the Soviet Union. Both the Russians and Kosovo's Western supporters argue that these are all special cases, which do not establish a precedent, but that, of course, remains to be seen.

Some international lawyers have argued that there is no comparison, and that the recognition of Kosovo's declaration of independence is justified on at least three grounds. It is justified, in their view, firstly because it meets the criterion of remedial self-

determination, in view of the massive human-rights abuses suffered by the Albanian population in the past; secondly it meets the criterion for constitutional self-determination, namely that the Serbian government (in its previous incarnation as the Federal Republic of Yugoslavia) had forfeited its claim to be the protector of the entire population through its policy of ethnic cleansing; and thirdly it is justified by Kosovo's international administration as an entity separate from Serbia, thus making its situation analogous to a former European colony.²⁶

These are all compelling arguments, even if they are also open to the charge of special pleading. The jury is quite literally out on whether they will convince the majority of uncommitted members of the United Nations to recognize Kosovo. In 2009 the Serbs succeeded in obtaining General Assembly approval by a large majority for an Advisory Opinion from the World Court on the legality of Kosovo's unilateral secession. The Court's Advisory Opinion was delivered in July 2010. It did not rule on the substance of the question before it, but by a majority of ten to four found that the text of Kosovo's declaration of independence was not itself illegal because 'international law contains no prohibitions on declarations of independence'. The number of states that have recognized Kosovo rose to seventy-four by March 2011, but two of the five permanent members of the Security Council, China and Russia, still oppose recognition and have argued for continued negotiation between the parties. It is not clear when, or even if, Kosovo will obtain formal admission into international society.

The impasse over the recognition of Kosovo, South Ossetia, and Abkhazia provides a fitting note on which to end this survey of the ways in which the principle of national self-determination has been accommodated within international society. There are strong voices in favour of linking self-determination to democratic choice but the conservatism of both the Great Powers and the small ones on this issue should not be underestimated. It is difficult to say with any certainty, therefore, to what extent the conventional interpretation has been modified since the end of the Cold War.

Suggested Further Reading

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Notes:

(1) H. Bull (1977) *The Anarchical Society: A Study of Order in World Politics*, London, 23–52.

(2) T. Hobbes, *Leviathan* (numerous editions), ch. 21.

(3) F. Tonnies (2001) *Community and Civil Society*, trans. Jose Harris and Margaret Hollis, and ed. Jose Harris, Cambridge.

(4) J. Mayall (2000) *World Politics: Progress and its Limits*, Cambridge, 11–12.

(5) A. Cobban (1945) *National Self-Determination*, London, revised as (1969) *The Nation-State and National Self-Determination*, London.

(6) The text of this speech is published electronically by Fordham University's Modern History sourcebook, <<http://www.fordham.edu/halsall/mod/1918wilson.html>>. For its wider appeal, see also, E. Manela (2007) *The Wilsonian Moment and the International Origins of Anti-Colonial Nationalism*, New York.

(7) J. Jackson Preece (1998) *National Minorities and the European States System*, Oxford, 1–198.

(8) The Bolsheviks were caught in the same dilemma but they postponed the reckoning by adopting a different tactic, reconstituting the Tsarist Empire as a Union of Soviet Soviet Republics all of which in theory were based on acts of self-determination.

(9) E. H. Carr (2001) *The Twenty Years' Crisis, 1919–1939*, Basingstoke: an introduction to the study of international relations.

(10) J. Mayall (1990) *Nationalism and International Society*, Cambridge, 46.

(11) W. I. Jennings (1956) *The Approach to Self-Government*, Cambridge, 56.

(12) J. Mayall (2000) 'Nationalism and the International Order: The Asian Experience', in M. Leifer (ed.) *Asian Nationalism*, London, 187–96.

(13) The nineteenth-century revival of the concept was intended to prevent European powers from re-entering Latin America after the departure of the Spanish and Portuguese in search of *terra nullius* (a concept that was no longer relevant in the 1960s) and to prevent a rash of irredentist claims leading to conflict. This was the main parallel with Africa, although of course it did not prevent the terrible war (1866–70) between Brazil, Uruguay, and Paraguay that decimated the Paraguayan population in particular.

(14) I. M. Lewis (ed.) (1983) *Nationalism and Self-Determination in the Horn of Africa*, London.

(15) Mayall, *Nationalism and International Society*, 58–9.

(16) 'Tanzania's Memorandum on Biafra's Case'; for text see, A. H. M. Kirk-Greene (ed.) (1971) *Crisis and Conflict in Nigeria: A Documentary Sourcebook, Vol 2, July 1967–January 1970*, Oxford, 429–39.

(17) M. Glenny (1992) *The Fall of Yugoslavia*, Harmondsworth.

(18) See Chapter 28 by Richard Caplan.

(19) B. Boutros-Ghali (1993) *Agenda for Peace*, text in A. Roberts and B. Kinsbury (eds.) *United Nations, Divided World: The UN's Roles in International Relations*, Oxford, appendix A, 468–98.

(20) M. Weller (2008) *Escaping the Self-Determination Trap*, Leiden, 46–58.

(21) *Agenda for Peace*, paragraph 19.

(22) Department of Justice, Canada, Backgrounder, 37 February 1997.

(23) Mayall, 'Nationalism and the International Order: The Asian Experience', 71–2 and 139–42.

(24) 'From Containment to Enlargement', speech delivered at Johns Hopkins University, 21 September 1993, <<http://www.fas.org/news/usa/1993/usa-930921.htm>>.

(25) R. Kagan (2008) *The Return of History and the End of Dreams*, New York, 10–53.

(26) B. Stankovski (n.d.) 'Implications of Kosovo Independence on the Doctrine of Constitutional Self-Determination', unpublished MPhil thesis, University of Cambridge.

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International Society, State Sovereignty, and National Self-Determination

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