

From Humanitarian Intervention to Invasion: Conflicting Readings of Self-Determination

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Abstract

Self-determination remains a fundamental yet contentious norm in international law, simultaneously facilitating realisation of the rights of peoples and serving as a tool in geopolitical manoeuvring. Despite its historical role in dismantling colonial structures, its practical enforcement continues to be constrained by the prevailing international legal framework. Contemporary developments underscore the persistent friction between aspirations for autonomy and the imperatives of state sovereignty, particularly in disputes over territorial integrity. Examining the Russian Federation's use of self-determination to assert influence over separatist regions, this study highlights a shift from the protection of minority rights to strategic political intervention. By assessing this evolution, the analysis contributes to the broader discussion on the legal and geopolitical implications of self-determination in the contemporary international order.

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1. Introduction

In recent years, the self-determination has reemerged as a pivotal topic in international law and global politics, defying previous perceptions that considered it largely obsolete. International developments suggest that self-determination continues to inspire change within a predominantly conservative global order. Though largely aspirational and constrained by existing power structures, instances of successful claims demonstrate that self-determination can challenge imperialistic and colonial remnants within international relations. Self-determination was and remains to be a revolutionary idea embedded in a conservative order.

Unlike most utopias, the utopia of self-determination occasionally triumphs. The last few years have shown that international society has not overcome its inherent imperialism and colonialism. Yet, the recent strides in more robust enforcement of international law have shown that international law can initiate a change. Recently, for one, the United Kingdom agreed to hand over Chagos Islands to Mauritius, recognising its violations of self-determination spelled out by the International Court of Justice in its Advisory Opinion.¹ The continued presence of U.S. military base on the islands and the state of Mauritius speaking in name of Chagossians reminds of the past order indicating the limits of international law.

At the same time with self-determination of Chagossians making headlines, another long-standing international dispute over self-determination reached a new milestone. The Court of Justice of the European Union found once more that the European Union and Morocco had violated the rights of the Sahrawi people when agreeing over trade in the area of Western Sahara.² That the dispute persists five decades after the ICJ passed its Advisory Opinion on the matter shows the painstakingly slow work of justice in matters of self-determination. It is these tensions between the promise and limits of self-determination that the present article explores in the context of the myriad self-determination conflicts sprouted in the areas surrounding the Russian Federation.

Russia's approach to self-determination is marked by a fundamental contradiction: while it actively champions secessionist movements in the 'near abroad', it categorically denies the same right within its own borders. Under Vladimir Putin's regime, nostalgia for Soviet imperial power has fuelled the idea that Russia's borders remain fluid, justifying expansionist ambitions.³ Moscow has weaponised self-determination, selectively supporting separatist movements in neighbouring states while suppressing them domestically. This hypocrisy is particularly evident in Chechnya and Dagestan, where demands for independence have been met with brutal military force rather than political recognition.⁴ While Russia has invoked self-determination to justify interventions in Crimea, Donetsk, and Luhansk, it has never applied the same principle to Chechnya, Tatarstan or Dagestan. Putin's speech on the annexation of Crimea,⁵ in which he cited the right of nations to self-determination, directly contradicts Russia's actions within its own territory, violating the doctrine of estoppel through clearly inconsistent attitude to the

¹ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019, p 95.

² *Front Polisario v. European Commission and Council*, Joined Cases C-778/21 P and C-798/21 P, 4 October 2024 [GC].

³ Mark Beissinger, 'Self-Determination as a Technology of Imperialism: The Soviet and Russian Experiences' (2015) 14 *Ethnopolitics* 479.

⁴ Johannes Socher, *Russia and the Right to Self-Determination in the Post-Soviet Space* (Oxford University Press 2021).

⁵ Vladimir Putin. Address by President of the Russian Federation (*The Kremlin, Moscow*, 18 March 2014) <<http://en.kremlin.ru/events/president/news/20603>> accessed 12 October 2023.

arguably same legal situation.⁶ It is argued that, ultimately, Russia's rhetoric of self-determination serves as a geopolitical tool rather than a genuine commitment to international legal principles. This Russian practice in its 'near abroad' departs markedly from the doctrine of territorial integrity, and this divergence can be understood in two ways. On one view, Russia asserts a form of exceptionalism, whereby it imposes its own rules on neighbouring states and treats universal legal norms as inapplicable, designating its interventions as special cases. Alternatively, one might argue that Russia ostensibly upholds the same universal principles against occupation and annexation but simply disputes the factual basis upon which these principles are applied—framing events in a manner at odds with Western interpretations. Western scholars, finding both explanations untenable, often dismiss Russia's stance as hypocritical.⁷

This article explores the multifaceted nature of self-determination, tracing its evolution from a decolonization to a concept with potential to empower or constrain sovereignty. The primary focus here is an analysis of how the Russian Federation has invoked self-determination as a rationale for furthering its strategic interests, particularly in the context of separatist regions abroad. Specifically, this study investigates how Russia's approach to self-determination in separatist regions like Abkhazia reflects a possible shift from protecting minority rights to pursuing political interventions. The article is structured as follows: first, it outlines the conceptual framework of self-determination within international law; next, it assesses Russia's application of the right of self-determination in post-Soviet conflicts, specifically in Georgian Abkhazian context; and finally, it considers the implications of these actions for international legal standards surrounding sovereignty and humanitarian intervention. The article provides insight into the manipulation of self-determination as a tool for modern geopolitical objectives.

2. Secession, self-determination, and the global order

The political cartography of the international community at present is dominated by internationally recognised, independent nation-states.⁸ States are omnipresent and their number has steadily increased from a group of a few dozen to some two hundred. Yet, this dominant form of political community is a relatively recent arrival. Human communities have splintered and fused since time immemorial, but secession – creation of a new state by the withdrawal of a territory and its population, where that territory was previously part of an existing state – is a phenomenon that has emerged together with a nation state.⁹ Whether the revolutions that led to the creation of an independent United States and Haiti were some of the first modern secessions that provided a model to later practice or if they were the last of the old secessions is beside the point of the present thesis, but it is around the end of the 18th century secession also emerges as an (international) legal question. And already then, there is a colour line – a bifurcation drawn between communities of colour seeking independence and a white settler community doing so.

These early secessionist examples, especially the recognition of the United States by the international community, provided a precedent for assessment of later secessionism. Central was gaining the control over the area, and, ultimately, gaining acceptance of the

⁶ I. C. MacGibbon, 'Estoppel in International Law' (1958) 7 *International and Comparative Law Quarterly* 468.

⁷ Christer Pursiainen and Tuomas Forsberg, 'The Principle of Territorial Integrity in Russian International Law Doctrine: The Case of Crimea' in P. Sean Morris (ed.), *Russian Discourses on International Law* (Routledge, 2019).

⁸ For the emergence of states, see Natasha Wheatley, *The Life and Death of States: Central Europe and the Transformation of Modern Sovereignty* (Princeton University Press 2023).

⁹ Aleksandar Pavković and Peter Radan, *Creating New States* (Ashgate 2007) 7.

former parent state. For as long as these conditions were fulfilled, asking for other states to ‘recognise’ a state was considered an absurdity.¹⁰ A state entered the international community by acting within the international community unchallenged. But the conditions of entry to the international community were notably different with the black slave community of Haiti. As a condition for Haiti’s recognition, it had to compensate former slave owners for the loss of their property in slaves, for an amount that was ‘*five times France’s total annual budget and ten times as much as the United States paid Napoleon for the Louisiana Purchase*’.¹¹ Effective control was not enough if others refused to recognise such control. Haiti bought recognition in the shadow of the French gunboats.

These early examples of secession highlight lasting features. On the one hand, both the United States and Haiti had what modern nomenclature would call *effectiveness* regarding their control. They both had control over the area and a capable government to take care of their internal and external relations. On the other hand, they both gained recognition for statehood from the international community, which consolidated their separation from the past parent state and their emergence as a new, independent nation-state. This dual aspect—internal effectiveness and external recognition—continues to frame the debate on statehood. According to the Montevideo Convention,¹² an entity must possess a permanent population, defined territory, government, and the capacity to enter into relations with other states. While the declaratory theory of recognition maintains that recognition merely acknowledges an existing state that meets these criteria, the practical reality often diverges. The capacity to engage with other states implies a relational dynamic that depends on recognition, leading to the question of whether recognition is, in fact, a legal requisite for self-determination.¹³ Though the dominant legal view rejects this notion, a more pragmatic interpretation of international law suggests that recognition plays a constitutive role. For instance, despite satisfying many Montevideo criteria, Palestine remains unable to exercise full sovereign rights—an indication of recognition’s decisive influence. Recognition, while not a formal legal requirement, serves as a critical political mechanism that can validate or obstruct the realization of statehood. It reinforces hierarchical structures in international relations by placing the judgment of a people’s readiness for sovereignty—be it their degree of civilization, self-governance, or democracy—in the hands of existing states. Thus, the recognition granted to the United States and Haiti was not merely symbolic; it was foundational to their statehood, exemplifying how recognition continues to be a powerful force in shaping the international legal order.

Also, other latent elements of more contemporary secessionism are on display here. First, both are overseas to their parent state. There is little geographical continuity between newly found states and their former parent states. A sea or a country in between the seceding state and the parent state has been an element of most recognised secessions up to the present. Second, there is a difference between a secession and a secession that cannot be explained by legal norms if those norms are presumed to apply universally. There is an element of politics that is not easily reducible to any precise norms. It has made for inconsistent outcomes for secessionism.

¹⁰ CH Alexandrowicz, ‘The Theory of Recognition “in Fieri”’ (1958) 34 *British Yearbook of International Law* 176, 182.

¹¹ Liliana Obregón, ‘Empire, Racial Capitalism and International Law: The Case of Manumitted Haiti and the Recognition Debt’ (2018) 31 *Leiden Journal of International Law* 597, 610.

¹² League of Nations, Montevideo Convention on Rights and Duties of States, December 26, 1933, L.N.T.S. 3802.

¹³ Martin Clark, ‘A Conceptual History of Recognition in British International Legal Thought’ (2017) 87 *British Yearbook of International Law* 18.

Legally, secession gained a newfound provenance at around the time of the end of First World War in a contest between different visions – liberal and socialist – for internationalism that both, at the time, succumbed to imperialism.¹⁴ The liberal vision of national self-determination associated with Woodrow Wilson, the social to Vladimir Lenin. They both marked a radical departure from European imperialism that justified domination through Europe's civilizing mission, but Wilson's and Lenin's visions stressed different ideals. While both visions of self-determination opposed domination, they opposed it for different reasons and to different extents.

At around the time of the Paris Peace Conference, President Woodrow Wilson introduced his ideas for the concept of self-determination, advocating the right of all peoples, including those in colonies, to determine their political future according to their own will.¹⁵ This idea promised recognition of numerous new states, representing a significant departure from the previous perception of colonial peoples and territories as dependent on European guidance.¹⁶ However, the process of recognition encountered challenges and delays, as Wilson's doctrine lacked adequate domestic support and a concrete implementation plan.¹⁷ As his Secretary of State at the time argued, '*[w]ithout a definite unit which is practical, application of this principle is dangerous to peace and stability. [...] The phrase is simply loaded with dynamite*'.¹⁸

Wilson's rhetoric had a powerful impact during the postwar negotiations, especially among groups under foreign control. They interpreted his calls for '*consent of the governed*'¹⁹ as validation of their desire to form independent nation-states based on ethnic identity. Wilson's notion of self-determination offered encouragement to those resisting colonial rule, but interpretations varied and were often shaped by local ambitions rather than Wilson's own understanding of representative governance.²⁰

While Wilson's words sparked an intense resonance, particularly in the hearts of those dwelling in colonial territories, embodying the promise of self-governance and illuminating a path to autonomous decision-making. However, the aftermath of the Paris Peace Conference produced a different outcome from the anticipated decolonisation. Within Europe, the disruptive effects of self-determination were defused through protection of minorities, whereas the colonial territories of Germany and the Ottoman Empire were rebranded as Mandate Territories, and the grip of dependency was enforced with even greater vigour. The establishment of the League of Nations in 1920 introduced

¹⁴ Deborah Whitehall, 'A Rival History of Self-Determination' (2016) 27 *European Journal of International Law* 719.

¹⁵ World War I Document Archive. '11 February 1918: President Wilson's Address to Congress, Analyzing German and Austrian Peace Utterances'. (*World War I Document Archive*, 12 July 1997) <www.gwpda.org/1918/wilpeace.html?fbclid=IwAR2W_4TGTsIqDrgCuE5WPzmqgfmWVz36LXo0zxHWMJ7zzjd6JIIf0dkFT2s>, accessed 12 October 2023.

¹⁶ Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge University Press 1995) 19; Harold William Vazeille Temperley, *A History of the Peace Conference of Paris: The Settlement with Germany* (Frowde and Hodder & Stoughton 1920); Thomas D Musgrave, *Self-Determination and National Minorities* (Oxford University Press 2000); Anthony Whelan, 'Wilsonian Self-Determination and the Versailles Settlement' (1994) 43 *International and Comparative Law Quarterly* 99; Michla Pomerance, 'The United States and Self-Determination: Perspectives on the Wilsonian Conception' (1976) 70 *American Journal of International Law* 1.

¹⁷ Pomerance (n 16) 2; Jan Klabbers, 'The Right to Be Taken Seriously: Self-Determination in International Law' [2006] *Human Rights Quarterly* 186.

¹⁸ Robert Lansing, *The Peace Negotiations: A Personal Narrative* (Houghton Mifflin 1921) 86.

¹⁹ Woodrow Wilson. 'Address to the Senate of the United States: "A World League for Peace"'. (The American Presidency Project, 22 January 1917) <www.presidency.ucsb.edu/documents/app-attributes/the-senate?page=7> accessed 18 July 2025.

²⁰ Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge University Press 1995) 19.

the Mandate System,²¹ placing upon Mandatories – advanced nations aspiring to ‘civilize’ the colonised – the responsibility for the well-being and development of colonial peoples.²²

The League Covenant presented the civilization of the colonized as a sacred duty, a responsibility that the mandates had to uphold on behalf of the League of Nations. The Mandate System had the intention of guiding dependent nations towards eventual self-governance, although they continued to be seen as subordinate to their European counterparts. The categorisation of mandates into A, B, and C established a hierarchy of statehood based on developmental criteria, reinforcing a structured arrangement. While resembling colonies in some respects, mandates often had differing conditions. Carefully detailed agreements between mandates and mandate territories outlined specific duties and obligations. The Permanent Mandates Commission was tasked with overseeing these agreements. Despite these mechanisms, the Mandate System did not consistently amplify the voices of all colonized peoples or fully acknowledge their right to complete independence.²³ Nevertheless, amid the intricacies of this system, Iraq's attainment of independence from the United Kingdom in 1932 served as a prime example of self-governance and progress.²⁴ This case illustrated that although the journey was challenging, the destination was possible, reaffirming the potential of self-determination even within the confines of the Mandate System.²⁵

In comparison to legally and institutionally compromised Wilsonian self-determination, the ideas espoused and partly codified by Vladimir Lenin appeared much more transformative. Lenin wrote in 1913 that his vision for self-determination entailed a right to secede, which was later codified on the constitutional level of most socialist countries.²⁶ According to Lenin, self-determination encompassed the entitlement of each nation to determine its state allegiance, as well as its internal political, economic, social, and cultural affairs. Lenin's analysis focused on three key dimensions of self-determination: its application in allowing ethnic or national groups to shape their destiny, its role as a guiding principle for territorial allocation post-conflicts, and its utilization as an anti-colonial principle for emancipating colonial nations.²⁷ Lenin's stance was that self-determination should predominantly manifest through secession.²⁸ Nonetheless, he underscored that secession must arise from a democratic expression of the populace's will, eschewing coercive measures. In instances involving territorial adjustments, self-determination could be executed through mechanisms like plebiscites or referendums. Furthermore, colonised communities held the right to employ armed resistance in pursuing self-determination, implying political autonomy and international recognition.²⁹

²¹ League of Nations, ‘Covenant of the League of Nations’. (*Refworld*, originally written 28 April 1919) <<https://www.refworld.org/docid/3dd8b9854.html>> accessed 15 November 2023.

²² Mark Mazower, *Governing the World: The History of an Idea* (Allen Lane 2012).

²³ Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press 2007); James Thuo Gathii, ‘Promise of International Law: A Third World View (Including a TWAAIL Bibliography 1996–2019 as an Appendix)’ (2020) 114 *American Society of International Law. Proceedings of the Annual Meeting* 165.

²⁴ See, in general for the process, Susan Pedersen, ‘Getting out of Iraq-in 1932: The League of Nations and the Road to Normative Statehood’ (2010) 115 *American Historical Review* 975.

²⁵ Of concessions made to gain this independence, see ICJ, *Anglo-Iranian Oil Co.* (United Kingdom v. Iran).

²⁶ Stanley Page, ‘Lenin and Self-Determination’ (1950) 28 *The Slavonic and East European Review* 342.

²⁷ Vladimir Ilich Lenin, ‘Draft Theses on National and Colonial Questions for the Second Congress of the Communist International’ [1920] *Lenin's Collected Works* 144–151; Vladimir Illich Lenin, ‘The Revolutionary Proletariat and the Right of Nations to Self-Determination’ (1915) 21 *Collected Works* 407.

²⁸ *Ibid.*

²⁹ Frank Przetacznik, ‘The Basic Collective Human Right To Self-Determination of Peoples and Nations as a Prerequisite for Peace’ (1990) 8 *New York Law School Journal of Human Rights* 49, 53.

Notwithstanding his advocacy for self-determination, Lenin did not view the achievement of national or communal independence as the ultimate objective. He cautioned against the potential pitfalls division, fragmentation, and formation of diminutive states would pose, while highlighting the benefits of larger states and federations. While no one should be subject to colonial domination, Lenin argued, for the workers living in the new-found states liberated from imperialism, workers' federation under one banner would benefit their class cause. Due partly to the staunch criticism of the state form by Marx, Lenin saw self-determination and state-formation only as stepping stones towards the future union and the upcoming internationalism of socialist. He also held a strong belief that once independent, the oppressed minorities and colonies would join the newly formed Soviet Union of their own free wills. Thus, self-determination only served as a way to break the shackles of capitalist oppression.³⁰

This duality of Lenin's advocacy for secession and self-determination was warped in the actual policies of the Soviet Union. After an initial wave of independence for many regions of the former Russian empire in the aftermath of the events of 1917, as the Bolsheviks managed to consolidate their power, the Soviet Union started a gradual expansion through military means. Even in the first instance, the Bolsheviks held the power to determine the feasibility of establishing new states, creating a varied landscape where secession for some regions, such as Finland, was relatively uncomplicated, while challenging elsewhere, such as in Georgia. And while Soviet interference in the Finnish Civil War of 1918 and throughout the first years of Finland's independence remained modest, the First Georgian Republic was greeted with greater hostility, leading eventually to military occupation and overthrow of its government in 1921.³¹

The right to secede that was recognised as part of the Soviet Constitution was equally illusory as the respect for self-government. Throughout the existence of the Soviet Union, all opposition movements were quelled with force rather than embraced as signs of desire to self-govern. As such, Lenin's formulation of self-determination and, ultimately, a right to secede was in equal measures as illusory as that of Wilson's. The *realpolitik*, the disruptive force of the idea, or the belief that those under colonial or other imperial control were incapable of governing themselves neutralised self-determination for the whole interwar era.

Although self-determination and secession faced significant obstacles during the interwar years, the concept of statehood became more firmly established. In 1933, the Montevideo Convention on the Rights and Duties of States, signed by American nations, offered a clear legal definition of what constitutes a state—a definition that would become part of customary international law. According to its first article, statehood requires four elements: a stable population, defined borders, a functioning government, and the ability to engage in relations with other states.³² The Convention broke from earlier practices by rejecting the necessity of recognition by other states (Article 3) and affirming the legal equality of all states regardless of power or status (Article 4). This framework emphasized the actual exercise of authority and governance as the basis of statehood, rather than dependence on approval from existing states. In essence, a territory with a permanent population and effective government qualified as a state, regardless of outside acceptance.³³

³⁰ Lenin (n 27) 407.

³¹ V. I. Lenin, 'Finland and Russia'. In Isaacs Bernard (eds), *Lenin Collected Works* (Progress Publishers, 1964) 335-338.

³² Martin Dixon, *Textbook on International Law* (7th edn, Oxford University Press 2013); James Crawford, *The Creation of States in International Law* (2nd edn, Oxford University Press 2006).

³³ Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press 2000); Martin Clark, 'A Conceptual History of Recognition in British

The interwar period thus represented a dual break with previous norms. Ideologically, it saw liberal internationalism adopt self-determination in response to socialist ideals, even if neither Wilsonian nor Leninist models led to tangible transformation. Yet the aspiration for independence endured. On the legal front, the Montevideo Convention codified a modern understanding of statehood, discarding earlier notions tied to civilization. All states were now considered equal under international law if they met the criteria of effective control. Still, it was only after World War II that these principles began to be widely implemented.

In August 1941, wartime leaders of the United States and the United Kingdom concluded a Charter outlining their joint goals and aspirations for the future international order once the war ceased. The third paragraph of this Atlantic Charter states that:

The United States and the United Kingdom] respect the right of all peoples to choose the form of government under which they will live; and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them.³⁴

The leaders of the Allied forces based ‘their hopes for a better future of the world’ yet again on an idea of self-determination, as Woodrow Wilson had done after the First World War. Akin to Wilson’s calls for self-determination, the Atlantic Charter made the lives of those who had to apply the articulated policies more complicated and the rights of colonial people no less illusory.³⁵

At the end of the Second World War, the world lay in ruins. Where Woodrow Wilson had failed to lead the United States to League of Nations membership, Harry Truman’s U.S. chose internationalism over isolationism.³⁶ And the Atlantic Charter that had guided the vision of the Allied forces during the War was consolidated as part of the new world order in the Charter of the United Nations. The solemn declaration of the UN Charter in its first article states that the purpose of the United Nations is ‘[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples’.³⁷ The principle of self-determination was, as forcibly argued during the negotiations of the Charter, the liberal version promoted by Wilson, and it did not entail the right of secession.³⁸

Yet, there were substantive changes to the status of colonies emanating from the proclaimed principle of self-determination. The replacement of the Mandate System,³⁹ with

International Legal Thought’ (2017) 87 *British Yearbook of International Law* 18; Martti Koskenniemi, ‘What Is International Law For?’ in Malcolm D Evans (ed), *International Law* (3rd ed., Oxford University Press, USA 2010).

³⁴ *The Atlantic Charter* [1943] (United States) <<https://web.ics.purdue.edu/~wggray/Teaching/His300/Handouts/Atlantic-Charter.pdf>> accessed 15 November 2023.

³⁵ Mark Willis, ‘Undermining Self-Determination: Robert Murphy and the Atlantic Charter in Tunisia, 1943’ (2012) 17 *Journal of North African Studies* 595; Bonny Ibhawoh, ‘Testing the Atlantic Charter: Linking Anticolonialism, Self-Determination and Universal Human Rights’ (2014) 18 *International Journal of Human Rights* 842.

³⁶ Elizabeth Spalding and Daniel Margolies, ‘The Truman Doctrine’, *A Companion to Harry S. Truman* (Wiley-Blackwell 2012).

³⁷ United Nations, *Charter of the United Nations* (adopted 26 June 1945, entered into force 24 October 1945) <<https://www.refworld.org/docid/3ae6b3930.html>> accessed 15 November 2023, art 1.

³⁸ United Nations Information Organization. ‘Documents of the United Nations Conference on International Organization’. (Volume VI, San Francisco, 1945) 296.

³⁹ See generally, Nele Matz, ‘Civilization and the Mandate System under the League of Nations as Origin of Trusteeship’ (2005) 9 *Max Planck Yearbook of United Nations Law* 47.

the Trusteeship System, saw the establishment of a roster of non-self-governing territories,⁴⁰ with the express objective of advancing them toward self-rule and autonomy. Despite clear alignment with the purported goal of the Allied leaders, the Trusteeship System suffered from similar institutional deficiencies as the Mandate System before. While some of the former Mandates directly received their statehood and others were placed on the list of non-self-governing territories, the Mandate System itself outlasted the League of Nations by more than two decades.⁴¹ The institutional weaknesses of the Trusteeship System were clearly on display in the case of South West Africa (Namibia), which occupied the International Court of Justice from the 1950s to 1970s.⁴² The Court found, *inter alia*, that while the Trusteeship System provided a suitable solution for the problem, South Africa as a Mandatory had no obligation to place South West Africa under the list, leading to no international institutional supervision of the area for decades, and stalled self-determination of the Namibian people.⁴³ The continued existence of a list of non-self-governing territories is an acute reminder of how, still today, unfulfilled the promise of the Atlantic Charter is.

Even though the promise of self-determination was made by the powerful nations of the global North, the gradual move towards the realisation of this promise was guided by the leaders of colonies and former colonies. As Adom Getachew notes, '*[t]he inclusion of colonies within the purview of the UN Charter marked a shift from the league*',⁴⁴ but as '*self-determination was not referenced in relationship to either non-self-governing territories or the new trusteeship system*',⁴⁵ the shift was modest at best. A right to self-determination that made true the promise of the principle of self-determination embraced by the wartime leaders was '*a contested and contingent reinvention*',⁴⁶ rather than an inevitable outcome of the UN Charter's language. The change in perception of self-determination from a loose principle to a right emerged through framing '*the problem of empire as one of enslavement*',⁴⁷ and mobilising the then-negotiated human rights Covenants to promote the cause.

Seeing the active role of the anticolonial movement in transformation of self-determination from a principle to a right alters the understanding of self-determination and its inherent limitations as well as introduces new paradoxes to the realisation of that right. The movement that emerged already at the interwar period and gained momentum during and after the Second World War made self-determination a precondition for realisation of human rights.⁴⁸ Understanding anticolonial movement's role in transformation of self-determination from a principle to a right at international level, alters narrative still entertained widely in international law scholarship during the most recent heyday of self-

⁴⁰ GA Resolution 1541 defines a non-self-governing territory as 'a territory, which is geographically separate and is distinct ethnically and/or culturally from the country administering it'.

⁴¹ Karen Knop, *Diversity and Self-Determination in International Law* (Cambridge University Press 2002).

⁴² Michla Pomerance, 'The ICJ and South West Africa (Namibia): A Retrospective Legal / Political Assessment' (1999) 12 *Leiden Journal of International Law* 425.

⁴³ Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), Advisory Opinion of 21 June 1971.

⁴⁴ Adom Getachew, *Worldmaking after Empire: The Rise and Fall of Self-Determination* (Princeton University Press 2019) 71.

⁴⁵ *Ibid.*

⁴⁶ GA Resolution 1541 defines a non-self-governing territory as 'a territory, which is geographically separate and is distinct ethnically and/or culturally from the country administering it'.

⁴⁷ See in general, Michael P. Scharf, *Earned Sovereignty: Juridical Underpinnings*, 31 *Denv. J. Int'l L. Pol'y* 373, 375 (2003); Paul R Williams & Francesca Jannotti Pecci, *Earned Sovereignty: Bridging the Gap Between Sovereignty and Self-Determination*, 40 *Stan. J. Int'l L.* 347, 350 (2004).

⁴⁸ Cyra Akila Choudhury, 'From Bandung 1955 to Bangladesh 1971' in Luis Eslava, Michael Fakhri and Vasuki Nesiah (eds), *Bandung, Global History, and International Law: Critical Pasts and Pending Futures* (Cambridge University Press 2017).

determination in the 1990s. While then many argued that decolonisation was a foregone conclusion already by the 1960s, the shaping of self-determination to a (human) right by the postcolonial leaders shows the important limitations to the right of self-determination they had and were partly willing to make, for example, in the context of settler colonies.⁴⁹ These antinomies are acutely at display in most of the contested claims for self-determination even at present.

The evolution of the right of self-determination indicates how these antinomies persistent to this day emerged.⁵⁰ During the negotiations of the human rights covenants in the 1950s, the postcolonial states forcefully argued for a nexus between individual's enjoyment of human rights and dignity with peoples' right to self-determination. In the common first article of the Covenants, this is declared in absolute language – '*All peoples have the right to self-determination*'.⁵¹ Yet, the realisation of this unconditional right remains subject to gradualism as all states '*shall promote the realization of the right of self-determination [...] in conformity with the provisions of the Charter of the United Nations*'.⁵² Also, the content of the right of self-determination was limited to realisation of human rights, forcing the postcolonial states '*to abandon the more radical demand of permanent sovereignty over natural resources*'.⁵³

A more radical vision for the right of self-determination was articulated in a General Assembly resolution 1514 (XV) on 'Declaration on the Granting of Independence to Colonial Countries and Peoples'.⁵⁴ While the Declaration retains no gradualism for realisation of the rights of dependent people to independence, it upholds the respect for 'national unity and the territorial integrity' as the cornerstones of international law. As such, it is mindful of the intricate balancing act between the disruptive effects of self-determination and the demands for the stability of the international community. Even though '*[i]nadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence*',⁵⁵ the state that emerges through the use of self-determination was a whole national unit, whose integrity should not be challenged. The borders of a postcolonial state were to be of equal permanence to those of other states.

In the 1960s, more and more former colonies asked and fought for and eventually gained independence. Especially in the African continent, the number of independent states grew notably as they emerged out from former colonies. Many of the new states contained within them minorities or regions that were dissatisfied being part of a new postcolonial state and voiced an independent claim for self-determination. These secessionist calls within new states had a profound impact on the development of international law in general and on the development of self-determination and secession in particular. For example, the early secessionist government of Katanga (1960-63) marked a watershed moment in transformation of the United Nations.⁵⁶ While Katangan secession

⁴⁹ Martti Koskenniemi, 'National Self-Determination Today: Problems of Legal Theory and Practice' (1994) 43 *International and Comparative Law Quarterly* 241.

⁵⁰ See in general, Helen Quane, 'The United Nations and the Evolving Right to Self-Determination' (1998) 47 *The International and Comparative Law Quarterly* 537.

⁵¹ International Covenant on Civil and Political Rights (adopted 19 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 1; International Covenant on Economic, Social and Cultural Rights (adopted, entered into force 3 January 1976) GA Res 2200A XXI, art 1.

⁵² ICCPR (n 51).

⁵³ Adom Getachew, *Worldmaking after Empire: The Rise and Fall of Self-Determination* (Princeton University Press 2019) 71.

⁵⁴ Declaration on the Granting of Independence to Colonial Countries and Peoples (adopted 14 December 1960) GA Res 1514 XV.

⁵⁵ *Ibid*, para 3.

⁵⁶ Anne Orford, *International Authority and the Responsibility to Protect* (Cambridge University Press 2011).

has been traditionally framed as an attempt to continue white settler domination,⁵⁷ the secessionist demands of Biafra from Nigeria more clearly illustrate the antinomies of the right of self-determination in the form that it had emerged in human rights covenants and GA resolution 1514 (XV).⁵⁸

In October 1960, Nigeria gained independence from the United Kingdom. The borders of newly found state of Nigeria were reflective of treaties concluded by the former colonisers. These borders were not particularly reflective of any 'traditional' idea of nationalism but rather a sign of European metropolises' projection of power. The borders lay where the European powers had agreed them to be in agreements concluded for the most part by the 1930s, and these conventional titles were transferred to newly established states as borders irrespective of control over area or communal ties.⁵⁹ In Nigeria, these communal ties turned into a point of contention relatively soon after the independence. In January 1966, army officers assassinated country's political leadership and took power into the hands of military and political leaders consisting mostly of the eastern Igbo people. But already in July of the same year, a military countercoup ousted the Igbo leadership, leading to waves of violence against Igbos especially in the Northern Region. This violence, widely narrated amongst Igbo people as genocide, played a central role in eventual claims for independence of the Igbo people and establishment of the republic of Biafra.⁶⁰

The short-lived Republic of Biafra clearly exemplifies the dilemma of the right to self-determination embodied in the GA Resolution 1514 (XV).⁶¹ The unconditional right, on the one hand, to self-determination belongs to all peoples, and '[t]he subjection of peoples to alien subjugation [...] constitutes a denial of fundamental human rights',⁶² which, through its wording, ought to also include the Igbo people. Further still, '[a]ll armed action [...] against dependent peoples shall cease' while respecting 'the integrity of their national territory'.⁶³ If Igbo people had an unconditional right to self-determination, then the Federal Republic of Nigeria did constitute an alien subjugation that through recourse to force violated the integrity of their national territory. On the other hand, the very same resolution calls for respect of 'the national unity and the territorial integrity of a country'.⁶⁴ The people under alien subjugation were entitled to self-determination, but in case of the former colonies the 'alien' for many referred to overseas metropole.⁶⁵ Thus, when Igbo people were demanding for a right to self-determination, they were breaking with the national unity rather than asking for respect to the integrity of their national identity.

To legally overcome this apparent dilemma of self-determination, international lawyers, and eventually also international tribunals, relied on the principle of *uti possidetis juris*. The principle dictated that former colonial territories should inherit the colonial borders as their conventional title. Thus, for example with Nigeria, the borders were to be

⁵⁷ See also, Colin Hendrickx, 'Tshombe's Secessionist State of Katanga: Agency against the Odds' (2021) 42 *Third World Quarterly* 1809.

⁵⁸ See in general, See in general, SK Panter-Brick, 'The Right to Self-Determination: Its Application to Nigeria' (1968) 44 *International affairs* 254; Declaration on the Granting of Independence to Colonial Countries and Peoples (n 54).

⁵⁹ To this effect, see, ICJ in Cameroon v Nigeria; for the claim, see *Frontier Dispute (Burkina Faso v. Republic of Mali)*, 22 December 1986, ICJ, Judgment, para. 63; See also, JG Merrills, 'Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria:: Equatorial Guinea Intervening), Merits, Judgment of 10 October 2002' (2003) 52 *The International and Comparative Law Quarterly* 788.

⁶⁰ Douglas Anthony, "'Ours Is a War of Survival": Biafra, Nigeria and Arguments about Genocide, 1966-70' (2014) 16 *Journal of Genocide Research* 205.

⁶¹ Declaration on the Granting of Independence to Colonial Countries and Peoples (n 54).

⁶² *Ibid*, para 1.

⁶³ *Ibid*, para 4.

⁶⁴ *Ibid*, para 6.

⁶⁵ Ali Mazrui, *Towards a Pax Africana: A Study of Ideology and Ambition* (University of Chicago Press 1967).

found in treaties concluded between France and England or England and Germany – ultimately in the division of Africa between the European powers in the Berlin Conference of 1884.⁶⁶ And while many former colonies have challenged these borders in disputes before the International Court of Justice, these same states have been reluctant to admit internal challenges to them. While interpretation of border treaties between states and claims over effective, if not necessarily legal, control over area have been commonplace, attempts to secede have not been perceived through the same legal lens. Yet, it is precisely the ill-conceived and arbitrary borders drawn by the European powers that created or exacerbated tensions within the boundaries of many postcolonial states, laying the foundation for a multitude of secessionist movements within these former colonial territories.

The right to self-determination of all peoples turned out to be precisely that dynamite Robert Lansing had claimed it to be with no end on sight.⁶⁷ To prevent the powder keg from exploding, international lawyers and postcolonial leaders used their craft to defuse its immediate threat to stability of international order. While the postcolonial states emerged as new states, they were largely seen as successor states of the entities that had existed within the same territory. This was so in terms of concession agreements, but also, and more importantly for development of international law on self-determination and secession, for the border agreements.⁶⁸

As the conflict in and the existence of Biafra was about to end, the international law on colonial self-determination and secession was about to receive its ultimate formulation. The Friendly Relations Declaration, long in the making, was adopted by the General Assembly of the United Nations in 1970.⁶⁹ The Declaration underlined the difference between a colonial and non-colonial secession by declaring that '*[t]he territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it*'.⁷⁰ Thus, while the Declaration underscored the importance of territorial integrity, such territorial integrity did not exist between a metropole and a colony, wherefore a right to self-determination for peoples living in colonies did constitute a right to secede for which '*such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter*'.⁷¹ While States should abstain from interfering on internal matters of other states in the name of their sovereign equality, such limitations should not constrain aid and support to a colony using its right to self-determination.⁷²

The language of the Declaration and its unreserved support for the rights of dependent peoples can be understood through the context of its emergence. First, by the time of the Friendly Relations Declaration, the number of colonial territories had seen a drastic reduction and most of the European metropolises had little to no colonies outside the Portuguese colonies in Africa and island states part of the British Commonwealth. This had increased the relative strength of the non-aligned countries at the United Nations and reduced the vested interests of European countries to oppose. There were few supporters

⁶⁶ Ratner R Steven, 'Drawing a Better Line : UTI Possidetis and the Borders of New States' (1996) 90 *American Journal of International Law* 590; Ieuan Griffiths, 'The Scramble for Africa: Inherited Political Boundaries' (1986) 152 *The Geographical Journal* 204.

⁶⁷ Robert Lansing, *The Peace Negotiations: A Personal Narrative* (Houghton Mifflin 1921) 86.

⁶⁸ Matthew Craven, *The Decolonization of International Law* (Oxford University Press 2007).

⁶⁹ Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (adopted 24 October 1970) GA Res 2625 XXV.

⁷⁰ *Ibid*, 124.

⁷¹ *Ibid*.

⁷² Samuel Moyn and Umut Özsu, 'The Historical Origins and Setting of the Friendly Relations Declaration' in Jorge Vinuales (ed), *The UN Friendly Relations Declaration at 50* (Cambridge University Press 2020).

of colonisation remaining, while many wanted to support the independence of the remaining dependent peoples. Second, as the Biafran conflict had shown, there was a widely shared consensus concerning territorial integrity of independent states. This called for a distinction between different forms of secessionism. A demand for right to secede in a territorially continuous state was an internal affair, whereas a demand by geographically disconnected peoples and territories was not. This difference justified the support by other states of the demands of the latter, whereas the support of the former was seen as a violation of state sovereignty.

The emergence of the state of Bangladesh holds a key role in understanding the uneasy balance between legal and supported secessionism within the colonial context and the uncalled-for secessionism outside colonialism. To understand this intricate balancing, a comparison between Biafra and Bangladesh is instructive. Bangladesh and Biafra were both parts of a territory of a postcolonial state. Bangladesh was a part of Pakistan that had gained its independence in 1947 from the United Kingdom. The partition of Indian colony was motivated by religious consideration and a concern over Hindu suppression of the dominantly Muslim population of colony's eastern and western parts.⁷³ Therefore, the former Indian colony was divided into two, marking a departure from the *uti possidetis juris* doctrine: India stood in the middle while Pakistan stood on both its eastern and western side without a shared land border between the two parts of the Pakistani state. While the East Pakistan – that is the present-day Bangladesh – was more populous, West Pakistan emerged as the political and economic centre, distinct from East Pakistan in geography and culture, resulting in tensions exacerbated by economic inequalities and perceived discrimination.⁷⁴

In 1970, in the first free national elections of Pakistan, a political party called the Awami League, led by Sheikh Mujib-ur Rahman, triumphed in the national elections. The party had been calling for greater autonomy for the East Pakistan for years, and now with a democratic mandate to fulfil its promise, it sought to do so. However, party's negotiations with the first party of West Pakistan, the Pakistani People's Party, over government were inconclusive, which left the power in the hands of the military junta led by General Yahya Khan. Khan dismissed the civilian government, which left the people in East Pakistan feeling betrayed by the politics. In response, they stormed the streets. To quell the protests, on 25 March 1971, Khan ordered a launch of a military operation to repress and silence the demands for greater autonomy of East Pakistan called for by the Awami League. The brutal military operation transformed the internal crisis of Pakistan into an international one as millions fled from East Pakistan to India. In July 1971, the Secretary-General of the United Nations in his memorandum to the President of Security Council called attention to '*the appalling and disruptive problem of caring [...] for millions of refugees, whose number is still increasing*'.⁷⁵

⁷³ Cyra Akila Choudhury, 'From Bandung 1955 to Bangladesh 1971' in Luis Eslava, Michael Fakhri and Vasuki Nesiah (eds), *Bandung, Global History, and International Law: Critical Pasts and Pending Futures* (Cambridge University Press 2017). M Rafiqul Islam, 'Secessionist Self-Determination: Some Lessons from Katanga, Biafra and Bangladesh' (1985) 22 *Journal of Peace Research* 211; MG Nayar, 'Self-Determination beyond the Colonial Context: Biafra in Retrospect' (1975) 10 *Texas Journal of International Law* 321; Gerry J Simpson, 'The Diffusion of Sovereignty: Self-Determination in the Post-Colonial Age' (1996) 32 *Stanford Journal of International Law* 255.

⁷⁴ E Wayne Nafziger and William L Richter, 'Biafra and Bangladesh: The Political Economy of Secessionist Conflict' (1976) 13 *Journal of Peace Research* 91; Gerry J Simpson, 'The Diffusion of Sovereignty: Self-Determination in the Post-Colonial Age' (1996) 32 *Stanford Journal of International Law* 255.

⁷⁵ Report of the Secretary-General [on the situation along the borders of East Pakistan] [1971] S/10410 UN, 2.

India's response to the eruption of brutalities in East Pakistan was initially to classify it as a domestic affair, while being clearly sympathetic to the cause of East Pakistani people and their calls for autonomy⁷⁶. The sympathy extended to providing support for the training of East Pakistan's *Mukti Bahini* fighters, while India formally refused to partake the hostilities. But as the number of refugees grew, so did the outright calls for direct military involvement of India. The escalating humanitarian crisis together with the inaction of the international community provided a justification for India's military intervention in East Pakistan. India became more directly involved in the warfare waged by *Mukti Bahini*, which eventually led to them gaining control over small enclave in East Pakistan in November 1971.⁷⁷ When Pakistani military attacked Indian airbases on 3 December 1971, India formally declared a war on Pakistan. Due to India's months long clandestine preparation for the military intervention, Indian troops quickly gained an upper hand. By 16 December 1971 the Pakistan Eastern Command surrendered, and Bangladesh de facto seceded from Pakistan. The state of Bangladesh was quickly recognised by dozens of states and, in 1976, by Pakistan as well.⁷⁸

Was there a normative change triggered by the Friendly Relations Declaration that could explicate the difference in outcome between Biafra and Bangladesh? Arguably, there was no such alteration. The fact that the Friendly Relations Declaration gave a right for dependent peoples to seek and receive support for their attempt to use right to self-determination does not, strictly speaking, apply any more to Bangladesh than it does to Biafra. Also, a claim for self-defence by East Pakistan is a contradiction in terms, as there hardly can be a self-defence against your own government, which makes it also questionable whether Indian government could rely on aid to East Pakistan's right to self-defence as a justification for its military intervention. India could effectively refer to nearly ten million refugees within its territory as a threat to peace and security, but purely in normative terms, such threat does not legitimise use of military power, as the only legal ground outside a mandate provided by the Security Council is based on Article 51 of the UN Charter. Triggering said Article requires, however, an occurrence of an armed attack. Nothing in this basic nexus of statehood, sovereignty, self-determination, and secession changed in the years that separate Biafra from Bangladesh.

Some have seen in India's actions in Bangladesh an early instance of humanitarian intervention that gained ground in the 1990s, but that does not alter the legal argument concerning legality of secession in Bangladesh. There was nothing in the Friendly Relations Declaration or anything preceding it that would have provided a right to another state to pierce the veil of sovereignty and aid people subject to state brutality if the people in question were not colonial subjects. And even though East Pakistani people suggested that the subjugation of the East by the West in Pakistan amount to similar relationship as one between a metropole and a colony that argument was never accepted internationally. In the end, the sole decisive fact that separates Bangladesh from Biafra might be that '*Bangladesh won the war of secession, while Biafra failed*'.⁷⁹ As such, Bangladesh's secession indicates, despite its success, the end of the line for the right to self-determination as a territorial claim. There was no legal solution to overcome sovereign prerogative to treat

⁷⁶ Sonia Cordera, 'India's Response to the 1971 East Pakistan Crisis: Hidden and Open Reasons for Intervention' (2015) 17 *Journal of Genocide Research* 45.

⁷⁷ See also, Ved Nanda, 'Self-Determination in International Law: The Tragic Tale of Two Cities—Islamabad (West Pakistan) and Dacca (East Pakistan)' (1972) 66 *The American Journal of International Law* 321.

⁷⁸ Satish Kumar, 'The Evolution of India's Policy towards Bangladesh in 1971' (1975) 15 *Asian Survey* 488.

⁷⁹ J Castellino, 'The Secession in Bangladesh in International Law: Setting New Standards?' (1997) 7 *Asian Yearbook of International Law* 83, 101.

demands for autonomy as purely domestic affairs, despite the gross violation of rights of tens of millions.

As the successful secession of Bangladesh from Pakistan shows, there was more than meets the eye in the legal constitution of the right to self-determination and its relationship to territorial integrity in international law. If anything, the secession of Bangladesh indicates the inherent limitations of peoples' claims for self-determination, if those claims are not supported by power. The system of the United Nations is constituted around nation states, and even relatively late in the decolonisation process, there were no legal means to pierce the sovereign veil. State terror towards its own citizens, even on the scale that leads to ten million refugees as in the case of Bangladesh, is not in terms of international law an effective claim for suppressed peoples' right to self-determination. Thus, despite Bangladesh's emergence as an independent state through secession, there is no law to support its secessionism neither the military intervention of India. Behind law stands—if not always at the very least in the case of Bangladesh—power. It is the success in projection of power that explicates different outcomes for Bangladesh and Biafra, not differences in interpretation of international law.

After the turbulent years at the end of the First World War, the question of secession largely disappeared outside the colonial context. Time and time again, international law and international lawyers aligned with the territorial integrity. Thus, when the heads of European states sat down in August 1975 to sign the Helsinki Final Act, any *détente* between the East and the West was conditional on non-interference and on upholding territorial integrity.⁸⁰ And even though the Final Act seemed to uphold a right for all peoples to self-determination, any assistance to such cause was categorically barred in the Final Act. In the Cold War Europe, self-determination and secession were largely the dynamite to statehood that the League had deemed it to be in Aaland Islands decision.

Yet, there were subtle changes in the politics of secessionism. Already the Committee of Jurists in the Aaland Islands case had contemplated on the impact of grave violations of rights for legal justification of separatism, but it was the violent repression of separatism in Biafra and Bangladesh that rekindled the idea of piercing the sovereign immunity for humanitarian causes. During a 1972 roundtable discussion on international responsibility and genocidal conflict, the U.S. Senator Edward Kennedy demanded interference by other states to the atrocities perpetrated against peoples seeking secession. But as Louis Henkin was quick to remind, this political urgency had limited legal support; there was no international law preventing civil war or secession, but neither there was international law that would prevent suppression of secessionism by force. There simply was no law on secession and, further still, even though secessionism might lead to genocidal violence as it had in Biafra and Bangladesh, '*foreign military intervention [...] ought to be illegal [...] as a humanitarian reason for military intervention is too easy to fabricate*'.⁸¹ Henkin did not deny the presence of a humanitarian claim, but he was fully aware of its dark sides if wielded unilaterally by any state.

But with the thawing of the Cold War through, among others, the *détente* signalled by the Helsinki Final Act, the old certainties were gradually giving way to new law and politics of secessionism. In 1990, Estonia's Foreign Minister Lennart Meri made the argument loud and clear: '*The Estonian question and the Baltic crisis are not a matter of Soviet domestic policy [...] The Estonian question and the Baltic crisis represent the unfinished business of*

⁸⁰ OSCE, Conference on Security and Co-Operation in Europe Final Act. (Helsinki, August 1975) <<https://www.osce.org/files/f/documents/5/c/39501.pdf>> accessed 14 July 2025.

⁸¹ Edward Kennedy and others, 'Biafra, Bengal, and Beyond: International Responsibility and Genocidal Conflict' (1972) 66 *The American Journal of International Law* 89, 96.

the Second World War'.⁸² And as the cataclysmic events of the collapse of the Soviet Union, dissolution of Yugoslavia, and the emergence of unipolar world order with a sole hegemon came to show, secession gained an entirely new legal status as not only a political solution but as a legal remedy to oppression – and, ultimately, a responsibility of the international community to uphold.

One of the first acts of this new order was to trample over Henkin's concerns. Even though humanitarian intervention had been intermittently used as a justification by States for use of force against another State from the 19th century onwards, it had fallen into desuetude by 1945.⁸³ There was no right to unilateral use of force against another State irrespective of the cause in the UN era. Yet, in the late 1980s and early 1990s, both the legal justifications provided for humanitarian intervention and its use in international relations exploded.⁸⁴ Rallying under the banner of human rights, democracy, and rule of law publicists and states alike saw a need to intervene in domestic matters triumphing over restraint. In a stark contrast to Henkin's concern over expansion of humanitarianism, many international lawyers saw '*[t]he need to halt the horrors of genocide [...] as sufficient justification for intervention, even if other motives may be involved*'.⁸⁵

The willingness to intervene altered the geography of secession as well. While initially the new-found humanitarianism of the post-Cold War era was to thwart annexationist desires of dictators, in quick order the responsibility to uphold rights and desires of peoples under oppression found its home in prevention of internal strife. In Africa, Asia, and Europe, the humanitarian intervention was seen as a tool to promote a right to self-determination often under the tutelage of an international authority, yet legal justification for use of international authority was hard to pinpoint. Thus, the Security Council resolution justifying collective self-defence in Iraq in 1991 was leaving for some '*the precise source of its authority unstated*',⁸⁶ while others saw 'the legal background for this kind of multi-organisational co-operation'⁸⁷ in the international administration of Kosovo to be rather weak. According to Anne Orford, the function of such imprecise legal texts was to '*make sense of the relations between military intervention and developing states in terms of a deeper narrative and flow of meaning within which intervention stories are inserted*'.⁸⁸

These stories of intervention have produced the new law of secession internationally. While much has been written about the secession of Quebec, the desire of Scotland for independence, or of Catalonia's claims for statehood, they all have been managed as matters internal to the states in question, with voices and concerns of minority protection and right to self-determination resembling much what was already accomplished by the Aaland Islands decision. Kosovar and East Timorese secessions, on the other hand, illustrate a novel internationally (and militarily) mediated processes, where the narrative for justification has been predominantly humanitarian.⁸⁹ At the same time,

⁸² Lennart Meri, 'Estonia's Role in the New Europe' (1991) 67 *International Affairs* 107, 109.

⁸³ Ian Brownlie, *International Law and the Use of Force by States* (Clarendon Press 1963).

⁸⁴ Fernando Tesón, *Humanitarian Intervention: An Inquiry into Law and Morality* (2nd edn, Transnational Publishers 1996).

⁸⁵ Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (Cambridge University Press 2003) 6.

⁸⁶ Burns Weston, 'Security Council Resolution 678 and Persian Gulf Decision Making: Precarious Legitimacy' (1991) 85 *The American Journal of International Law* 516, 526.

⁸⁷ Matthias Ruffert, 'The Administration of Kosovo and East-Timor by the International Community' (2001) 50 *The International and Comparative Law Quarterly* 613, 619.

⁸⁸ Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (Cambridge University Press 2003) 6.

⁸⁹ East Timor (Portugal v. Australia), Judgment, I. C.J. Reports 1995, p. 90. See also, UN Doc. A/53/951 Agreement between the Republic of Indonesia and the Portuguese Republic on the question of East Timor,

these mediated secessions have provided the intervening states and the international authority an opening to define themselves as an Other for the weak, developing state whose self-determination is in a need for external support and guidance.

But Henkin's warnings, even though momentarily pushed aside in the decade and some that rallied for humanitarian interventionism, have turned out to be prescient. The humanitarianism of humanitarian intervention has been a pliable standard. Nowhere else has this standard been moulded and shaped more than in and around Russia. Since the peacekeeping and humanitarian intervention missions in Russia's near abroad in early 1990s, this area has become a hotbed for secessionism internationally. It has allowed Russia to communicate domestically its strengths in opposition to corrupt weakness of its neighbouring countries. It is this specific Russian understanding of secessionism that marks the end of the line for non-colonial secession.

3. From protection of minorities to humanitarian intervention, Russian neoimperialism

Abkhazia, South Ossetia, Transnistria, Crimea, Donetsk, and Luhansk. The list of internal conflicts with separatism in the Russia's near abroad has been remarkable. Also, Russia's involvement in those conflicts has been nothing short of notable. It has commonly acted both as a peace breaker and a peace broker. But while these regional developments and Russia's involvement in them has been notable, the legal forms that have been employed by the Russian Federation are the ones familiar from the arsenal of post-Cold War international law. To understand Russia's recurrent resort to secession, annexation, or forms thereof in its regional relations calls for attention to Russia's understanding of international law and Russia's construction of a national identity in the aftermath of the collapse of the Soviet Union.⁹⁰

Reading the first signs of something new is always difficult. There are mixed messages, conflicting signals, hopes, desires, and dreams that are all true to an extent. Russia's active uptake of peacekeeping and humanitarianism after the collapse of Soviet Union was read already early on as either an active embrace of liberal values of democracy, rule of law, and human rights or a cynical ploy to uphold its control over the former Soviet republics. In formal legal understanding, Russia actively engaged in multilateral and bilateral regionalism that promoted peace and security and resorted to international fora to formalise these institutional structures. The mixed messages between the reality of Russia's actions supporting separatism in, for example, Abkhazia in 1992, and its formal legal support for peace and stability was brushed aside as signs of internal strife between the new and the old guard.

This ambivalence is well at display in a note verbale dated 25 December 1992 from the Georgian Foreign Ministry to the Secretary-General. In an enclosed letter, the country's president Eduard Shevardnadze first notes as particularly disturbing '*the participation of the Russian troops stationed in Abkhazia on the side of Abkhaz extremists*',⁹¹ only to brush this off as clearly '*being directed by the reactionary forces ensconced within the political circles of the Russian Federation*' opposing Boris Yeltsin's government.⁹² The reality of Russian interference on Georgia's civil war in tanks, planes, and troops is pushed aside as

1999.

⁹⁰ See generally, Tero Lundstedt, 'Inherited National Questions: The Soviet Legacy in Russia's International Law Doctrine on Self-Determination' (2020) 89 *Nordic Journal of International Law* 38.

⁹¹ United Nations Security Council, Note Verbale Dated 25 December 1992 from the Ministry of Foreign Affairs of Georgia Addressed to the Secretary-General, UN. Doc. S/25026 of 30 December 1992.

⁹² *Ibid.*

a mere failure to uphold Russia's genuine intentions codified in the Moscow Agreement.⁹³ After all, according to Agreement's article 9, '*[t]he armed forces of the Russian Federation which are temporarily located in the territory of the Republic of Georgia [...] shall remain strictly neutral and shall not take part in internal disputes*'.⁹⁴ In the understanding of the Georgian head of the state, the use of force by Russian military in violation of the Agreement was an anomaly that the rightful authorities would correct in due course.

Shevardnadze's letter is clearly one of seasoned politician, and it might be that he saw beyond the legal veneer of Russia's actions but was fully aware that the Security Council would never condemn actions of one of its five permanent members. But the ambivalence towards Russia's policies was not limited to career politicians. Also scholars critical to the peacekeeping and humanitarian interventions of the Russian Federation were quick to note how '*dangerous [it is] to speak of Russia in unitary terms*', even when they saw in Russia's actions a '*bid to retrieve its former economic, military and political hegemony over the former USSR*'.⁹⁵ Many of the foreign commentators saw in Russia a fragile state in need of economic shock therapy and competent governance structures or it would succumb to tribalism between feuding factions, a role that Russian leadership seemed eager to partake. As Lilia Shevtsova noted with hindsight, '*[t]he post-Cold War world [...] created the ideal arena for Russia's game of misleading and pretending. The West's eagerness to engage Russia led it to believe the Kremlin when it paid lip service to Western values*'.⁹⁶ The price of accommodationist policy towards Russia and a belief in its liberalisation through market economy was paid by countries in its near abroad.

Many legal commentators perceived these concerns over Russia's use of the available legal forms a challenge to doctrinal purity as they:

put an intolerable burden on the international lawyer, completely unprepared to answer questions such as whether or not the people of South Ossetia in Georgia are entitled to exercise a right of self-determination by uniting with their northern kin in Russia—and whether Russian assistance for that purpose might be legitimate under the UN Friendly Relations Declaration of 1970.⁹⁷

Arguably, there never were any such rights to burden the international lawyer to begin with nor did the Friendly Relations Declaration ever justify an intervention to civil war, as clearly shown by the unease in the 1970s to situation in Bangladesh and India's military intervention. It was only a challenge to doctrinal purity in the newly minted world of humanitarian interventionism that had lowered the threshold for the use of force in international relations. Denying a right to humanitarian intervention and preventing peacekeeping missions from Russia while legalising similar missions by the U.S. would run counter to purported universalism of international law.

In the immediate aftermath of the collapse of the Soviet Union, there was also a dilution of responsibility to a wider network of institutional actors, most notably the Commonwealth of Independent States ('CIS').⁹⁸ CIS seemed at first sight a regional

⁹³ Moscow Agreement (adopted 3 September 1992) <<https://ucdpged.uu.se/peaceagreements/fulltext/Geo%2019920903.pdf>> accessed 15 November 2023.

⁹⁴ *Ibid.*, art 9.

⁹⁵ Terry McNeill, 'Humanitarian Intervention and Peacekeeping in the Former Soviet Union and Eastern Europe' (1997) 18 *International Political Science Review* 95, 98.

⁹⁶ Lilia Shevtsova, 'Forward to the Past in Russia' (2015) 26 *Journal of Democracy* 22, 23.

⁹⁷ Martti Koskeniemi, 'National Self-Determination Today: Problems of Legal Theory and Practice' (1994) 43 *International and Comparative Law Quarterly* 241, 243.

⁹⁸ See in General, Michael R. Lucas, 'Russia and the Commonwealth of Independent States: The Role of the

organisation created to promote co-operation among its Member States, drawing comparisons to other regional organisations, such as the European Union. Yet, unlike other regional organisations, '[m]uch of the problem was that the major security threat to CIS states came [...] from within the CIS itself, which, in most cases, meant from Russia'.⁹⁹ CIS provided a legal umbrella that allowed Russia to deploy its military to other CIS countries by referring to these missions as peacekeeping, humanitarian intervention, and later humanitarian cooperation.¹⁰⁰ The appearance of commonly agreed upon security apparatus or an invitation by legitimate authorities was throughout the 1990s used as a justification for deployment of Russian troops within the borders of other CIS countries.

These missions and the leading role of Russia in CIS allowed it to project an image of itself as the sole power able to restore order and provide security in the region. The appearance of the former Soviet Republics as weak and disorderly and Russia's support to them was equally much a vision for constructing the Russian nation as it was about willingness to avert escalation of crises from internal to international. In revisioning Russia after the collapse, '[t]he national patriots [...] developed an "imagined history" of the Soviet era [...] which] had the political merit of appropriating the achievements of the Soviet Union for the "Russian idea" by attributing them uniquely to the ingenuity and tenacity of the Russian people'.¹⁰¹ In the middle of a chaotic remaking of the Russian society, its capacity to uphold order in its vicinity also gave the Russian people a semblance of order—if not in absolute terms, at least in contrast to their former Soviet countrymen. Understood through the lens of Russian state- and world-making, the regionalism allowed it to assert power, while it internationally seemed to align with the triumphant liberal values of the era.

By the turn to 21st century, much of the regionalism that had shielded Russia's use of military forces in its neighbouring countries was in death throes, as CIS had failed to live up to its promise in economic, military, and political terms. Since Russia's invasion of Chechnya, 'the leaders of [CIS] countries saw [...] Russia's switching from a pro-Western and cooperative policy to a more introvert, revisionist attitude which aimed at restoring the status and borders of the former Soviet Union'.¹⁰² This did not have a notable impact on Russia's capacity to project its power in the neighbouring countries. On the one hand, Russia had markedly little need for further legal justification for the presence of its troops in the neighbouring countries. There were existing bilateral agreements that allowed permanent deployment of Russian peacekeepers, for example, in Abkhazia.¹⁰³ On the other hand, Russia had moved from tumultuous post-Soviet era to governance of some stability with an economy that was providing sought-after affordable energy to its European neighbours. In many ways, Russia was seen as an emergent power yet again, which gave it more space to manoeuvre in its immediate neighbourhood, even without a conventional basis. It had also seen that even significant use of force on its backyard would not deter its Western partners.

CSCE'. *Helsinki Monitor* 5 (1994) 5.

⁹⁹ Paul Kubicek, 'The Commonwealth of Independent States: An Example of Failed Regionalism?' (2009) 35 *Review of International Studies* 237, 242.

¹⁰⁰ Natalia Morozova, 'Resisting the West, Forging Regional Consensus: Russia's Discourse on Humanitarian Cooperation in the Commonwealth of Independent States' (2018) 23 *Geopolitics* 354.

¹⁰¹ Wendy Slater, 'Russia's Imagined History: Visions of the Soviet Past and the New "Russian Idea"' (1998) 14 *The Journal of Communist Studies and Transition Politics* 69, 74.

¹⁰² Svante Cornell, 'International Reactions to Massive Human Rights Violations: The Case of Chechnya' (1999) 51 *Europe-Asia Studies* 85, 93.

¹⁰³ Agreement on a Cease-Fire and Separation of Forces (adopted 14 May 1994) S/1994/583; Agreement on a Cease-Fire in Abkhazia and Arrangements to Monitor its Observance (adopted 27 July 1993) S/26250; Agreement on Principles of Settlement of the Georgian – Ossetian Conflict (adopted 24 June 1992) <<https://peacemaker.un.org/sites/default/files/document/files/2024/05/ge20ru920624agreemenonprinciplesofsettlementgeorgianossetianconflict.pdf>> accessed 15 November 2023.

This shift in the regional policies alerted many of the CIS countries, Georgian therein included. As there was a growing concern over the use of military power by Russia to assert its claims, many countries in Russia's neighbourhood started to look for security and stability elsewhere. In Georgia, this meant a change of power and a realignment of country's foreign policy. An economic integration within the European Union and a security cooperation with NATO became constitutionally defined leitmotifs of new Georgian foreign policy.¹⁰⁴ For the first time since re-gaining its independence, Georgia was distancing itself politically and militarily from Russia, even though for economy Russia remained an important partner. It also meant a readjustment in Georgia's cultural alignment with Russian language and culture losing to English language and American culture. But despite these political shifts, in strictly legal terms little changed: there were no new security guarantees nor any regional co-operative organisations to replace the CIS.

For Russia this realignment of Georgia, among others, was unfortunate. In the years since the collapse of the Soviet Union, Russia had fostered an idea of its regional importance – even a sphere of influence – that seemed to be quickly eroding. Simultaneously, the 'Russian idea' that had been promoted by religious-nationalist forces in the Russia of 1990s had gained mainstream acceptance in the 21st century Russia. While the Russian Federation had since its inception been openly positioning itself as a guardian of the large Russian speaking minorities in its neighbourhood, during the first decade of the new millennium it expanded its role to a guardian of 'traditional values'. These values were targeted directly against the (liberal) European human rights regime that Russia had willingly joined some decades earlier, but they also served an important nation-making function. In 2013, when addressing the Federal Assembly, Vladimir Putin contrasted the spiritual, traditional society to 'a primitive state' trampling traditional values. Russia portrayed itself as a bulwark against degenerative forces of liberalism, wherefore Western alignment was an alignment against Russia.

The origin of this positioning against the liberal human rights in Russia predates its August 2008 war in Georgia. Russian Orthodox Metropolitan Kirill, in a speech in a panel discussion at the Human Rights Council's meeting on 18 March 2008 made it clear that the Russian Orthodox church found little good in universal aspirations of human rights.¹⁰⁵ He argued that abstract human rights violate religious sentiments and morality and are '*used by some countries as a tool for their national interests' this being 'particularly evident in the conflict regions of the planet'* such as Kosovo.¹⁰⁶ These words of Kirill were taken as a basis for three consecutive traditional values resolutions that Russia promoted at the Human Rights Council, but before any of those resolutions passed, Russia itself employed the human rights narrative much akin to the one used in Kosovo to justify its use of force against Georgia and the subsequent recognition of Abkhazia and South Ossetia as independent entities.

Russia's position with regard to its support for self-determination and secessionism in its near abroad has since the collapse of Soviet Union been marked with hypocrisy. During the 1990s the core element of this hypocritical attitude to international law was Russia's employment of peacekeeping to violate peace. Time and time again the Russian peacekeeping troops were set to a mission to prevent conflict resolution and to maintain crisis, as the weakness in its neighbourhood allowed Russia to develop its nationalist 'Russian idea' as a great power, bringing order to chaos. Due to the limited geopolitical

¹⁰⁴ Constitution of the Republic of Georgia (Georgia) art. 2.

¹⁰⁵ Human Rights Council. 'Human Rights and International Dialogue, Speaking at a panel discussion on 'Human rights and intercultural dialogue' at the 7th session of the UN Human Rights council'. (Geneva, March 18, 2008).

¹⁰⁶ *Ibid.*

interest for Caucasus and Central Asia in the 1990s, Russia's actions remained largely unnoticed or at least without consequences for Russia. In an international community shaped by greater willingness to recourse to military intervention to address humanitarian concerns, Russia was quick to note that there were no universal standards for humanitarianism. It could act without consequences behind the fig leaf of human rights.

The early interventionism to support separatism in the name of humanitarianism had been speaking to a Russian imagined history of '*Russian people as the "leading and guiding force"*'.¹⁰⁷ But for the '*Russian idea to be complete, there had to be "cosmopolitan" forces which [...] aimed to destroy the country*'.¹⁰⁸ (idem.) These forces are at clear display in Metropolitan Kirill's speech. They are '*extreme feminist views and gay attitudes*' as well as '*the active development of a commercial industry filling society with propaganda for an immoral lifestyle*'.¹⁰⁹ Human rights and their promotion were the cosmopolitan rot that was aiming to destroy the Russian nation but has not barred Russia from borrowing its nomenclature to justify its repeated incursions to the territories of its neighbouring countries. Russia protected the Russian order and the Russian, traditional values inspired understanding of human rights.

That Russia has for more than three decades been able to employ the language of international law to serve its opposite, and its capacity of hypocritical uptake of values and goals it elsewhere condemns, aligns with Rob Knox's reading of the role of hypocrisy in international law.¹¹⁰ But focusing solely on Russia's hypocrisy in its use of international law to support separatism and secessionism misses the larger point of the Russian agency, which has been geared towards a Russian world-making—in fulfilment of the imagined '*Russian idea*' of Russia as a leading and guiding force against cosmopolitan threats. It is a world-making that aims at restoring a historical past of greatness, an imperial dream. It is a world-making that sees constant threats to Russia in the other projects of world-making in its neighbourhood. But at the same time, it is a hypocritical or cynical end of the line for international law of secession in the post-Cold War era. And it is a reminder of Henkin's warning that a '*humanitarian reason for military intervention is too easy to fabricate*'.¹¹¹

4. Conclusion

Russia's approach to self-determination and regional influence demonstrates a complex and often contradictory interplay of legal rhetoric, nationalistic aspirations, and geopolitical strategy. Since the collapse of the Soviet Union, Russia has maneuvered within international law's frameworks of peacekeeping, humanitarian intervention, and self-determination to support separatist movements in neighboring territories. These interventions, framed as efforts to protect Russian-speaking minorities or uphold '*traditional values*', serve a dual purpose. They simultaneously assert Russia's regional dominance while advancing a national identity rooted in an '*imagined history*' of Russian cultural and moral superiority.

The legal justifications Russia invokes, often mirroring the humanitarian and self-determination principles championed by Western powers, expose the malleability of

¹⁰⁷ Slater W, 'Russia's Imagined History: Visions of the Soviet Past and the New "Russian Idea"' (1998) 14 *The Journal of Communist Studies and Transition Politics* 69.

¹⁰⁸ *Ibid.*

¹⁰⁹ Human Rights Council. 'Human Rights and International Dialogue, Speaking at a panel discussion on 'Human rights and intercultural dialogue' at the 7th session of the UN Human Rights council'. (Geneva, March 18, 2008).

¹¹⁰ Robert Knox, 'Imperialism, Hypocrisy and the Politics of International Law' (2022) 3 *TWAIL Review* 25.

¹¹¹ Edward Kennedy and others, 'Biafra, Bengal, and Beyond: International Responsibility and Genocidal Conflict' (1972) 66 *The American Journal of International Law* 89, 96.

international law, particularly in regions of limited strategic interest to Western states. Russia's actions highlight how international law, designed to protect rights and sovereignty, can be co-opted to reinforce hegemonic control. Through entities like the CIS, and leveraging bilateral agreements, Russia has systematically normalized its military presence in neighboring countries under the guise of peacekeeping. Yet, these peacekeeping efforts frequently served to prevent genuine conflict resolution, instead fostering enduring instability that reinforced Russia's regional influence and cultivated a vision of Russian national exceptionalism.

This pattern of selective legal adherence reveals the limitations of international law when confronted with a powerful state adept at exploiting its ambiguities. In Russia's use of humanitarian intervention as a rationale, we see a stark manifestation of Henkin's caution that humanitarian motives can be easily fabricated for interventionist ends. Ultimately, Russia's manipulation of self-determination and humanitarian principles underscores a broader struggle within international law between ideals of sovereignty and the realities of power politics. It challenges the international community to reconcile these contradictions, lest the concept of self-determination becomes a tool not for liberation but for the perpetuation of geopolitical ambitions.

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