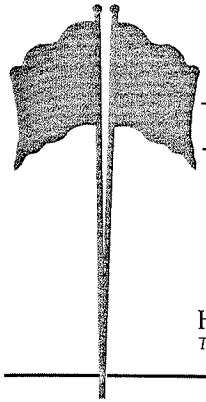

INTERNATIONAL LAW

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GLOSSARY

customary international law An unwritten body of law binding on all states that do not object to its formation. The two elements necessary to identify a norm of customary international law are the actual practice of states and a sense of legal obligation to comply with the norm.

ethnicity A set of objective characteristics found in a group or community that shares attributes such as physical traits, actual or believed common ancestry, and culture, but that lacks the subjective sense of political identity that would lead to the group's designation as a nation.

indigenous peoples Self-identified groups with historical, institutional, and other ties to preinvasion societies that fell under the political dominance of invaders, exemplified by Indian nations in the Western Hemisphere. The degree of cultural and social differentiation between indigenous and surrounding dominant societies is often greater than that between minority and majority societies.

minority A nondominant, self-identified group with certain shared characteristics, such as ethnicity, culture, religion, or language, which constitutes a numerical minority within a state.

nation A self-identified group with certain shared characteristics, such as ethnicity, culture, religion, or language, and a sense of political identity.

nationalism A political philosophy that holds that the nation should be the prime determinant in defining and creating political institutions, particularly states.

sovereignty Constitutional or legal independence from any other authority, subject to the restrictions imposed by international law and domestic constitutional arrangements.

state A territorial-political entity recognized by international law as sovereign and therefore possessing international legal personality. The classic definition of a state requires a permanent population, a defined territory, a government, and the capacity to enter into relations with other states.

Insofar as nationalism leads either to the creation of states or to international recognition of the "national" rights of particular groups, it is a phenomenon that is affected by international law as well as international politics. This article surveys the major historical and contemporary influences of international law on nationalism and related issues, such as self-determination and minority rights.

Encyclopedia of Nationalism, Volume 1

I. THE INTERNATIONAL LEGAL ORDER

This encyclopedia addresses in great detail why, when, and how nationalism developed, both in Europe and elsewhere. Although there may not be agreement on whether states created nations or vice versa, there can be no doubt that achieving a "nation-state" has been the goal of many groups over the past two centuries. Perhaps surprisingly, international law has generally paid little attention to the real or purported existence of "nations," choosing instead to focus on the outward expression of international political personality known as the state.

International law historically has been concerned primarily with relationships among sovereigns, whether personified as royalty or institutionally organized as states. Although it may have been possible in the Middle Ages and earlier to speak of "absolute sovereignty," in the sense of an unfettered right to act in any way one pleased within one's own country, even kings and queens ultimately owed their legitimacy and allegiance to religious authorities. Temporal sovereignty was thus subject to the spiritual sovereignty of God and church.

The birth of modern international law is often dated from the 1648 Peace of Westphalia, which ended the Thirty Years' War and replaced the formerly hierarchical, religiously based European political order within the Holy Roman Empire with a horizontal system of equal and sovereign states. This "sovereign equality of states" necessarily restricted acts of one state that might adversely affect another state, although affairs within states remained essentially beyond the reach of international law. Of course, sovereign equality did not prohibit the use of war as an instrument of politics, and the acquisition of territory or other goods by conquest remained legal (if not necessarily moral) into the 20th century.

Seventeenth century international law, as articulated by such celebrated legal theorists as Grotius, Pufendorf, Victoria, and Gentili, paid little attention to nationality, ethnicity, or similar status, although many states were formally or informally founded on religious tenets—and conflicts. Those within the jurisdiction of a state were commonly assumed to have the same characteristics as their sovereign, and their protection in other states flowed from the deference owed to that sovereign.

The religious, ethnic, or linguistic homogeneity (or heterogeneity) of a state was irrelevant from the perspective of those outside its borders, and there was no required or expected correlation between cultural and political boundaries. While the Peace of Westphalia did contain provisions to protect the respective religious rights of Catholics, Lutherans, and Calvinists, the clear goal was maintaining peace in Europe, not protecting religious groups per se. Other 17th century treaties contained similar provisions, and several treaties between Christian European powers and the Ottoman Empire protected the rights of Christian religious orders in the latter's territory.

Of course, both before and after 1648, states and empires frequently adopted internal political arrangements to accommodate the interests of certain groups, some of which later developed into nations. The millet system of the Ottoman Empire, for example, allowed a degree of cultural and religious autonomy to non-Muslim religious communities, such as the Orthodox Christians, Armenians, Jews, and others. The French and American revolutions in the late 18th century proclaimed the free exercise of religion as a fundamental right, although neither directly addressed the broader issue of minority or national protection.

As nationalist philosophy became more widespread in the late 18th through the mid-19th centuries, propagated by writers such as Fichte, Hegel, Mazzini, Mill, and Rousseau, its political force grew commensurately. The consolidations of Italy and Germany in the mid-19th century were based on appeals to shared history, culture, and language, but they were brought about by the old-fashioned means of alliances and military conquest. International law neither approved or disapproved of these events, although it was ready to recognize the results.

Likewise, international law paid little or no attention until the 20th century to the notion that statehood or sovereignty should be based on the consent of the governed, although philosophical interest in democracy, liberty, and popular consent paralleled nationalist developments in many respects. Again, however, the means by which a government obtained control over a territory or population was viewed as outside the purview of international law, and despots and democrats were equally welcomed into the international community.

International law generally reserved full participation in its processes to "civilized" European states, although by the end of the 19th century some Latin American and Asian states were admitted to the club of internationally relevant countries and participated in major multilateral conferences. Territories not recognized as "civilized" remained open to conquest, appropriation, and annexation, and developing international norms placed no significant restraints on the creation and expansion of either overseas European colonial empires or the consolidation of contiguous territories within a single state. The fiction of *terra nullius*, i.e., that a territory inhabited by populations or governments unworthy of recognition was equivalent to uninhabited territory, was often used to justify colonial conquest.

At the same time, international law recognized a great variety of legal relationships among political entities, beyond the simple division into independent "states" and "others." In addition to colonies, room was made in the international legal order for protectorates, protected independent and dependent states, neutralized states, guaranteed states, semisovereign states, vassal states, wardship, administered provinces, and other dependencies. Some of these entities were formed around "national" identities, but, again, no rule of international law required such separate treatment.

As European powers sought to take advantage of the senility of the "sick man of Europe," the Ottoman Empire, they supported nationalist movements within the empire that sought greater autonomy or even independence. Consistent with the development of "national" identity in the 19th century from Italy to Germany to Ireland, these new states were frequently based on notions of cultural or linguistic affinity, whether or not such affinities were historically accurate, along with a desire to safeguard local economic and other interests. Among the "nations" that acquired varying degrees of independence from the Ottomans prior to the wholesale disintegration of the empire during World War I were the Greeks, Serbs, Romanians, Bulgarians, Armenians, and Albanians. Most of these groups (except the Albanians) were distinguished from the Ottomans by religion, but all adopted the language of nationalism and self-determination in order to gain European support for their separatist desires.

II. SELF-DETERMINATION

A. Self-Determination up to the League of Nations

The principle of the self-determination of peoples is commonly dated from the American and French revolutions in the late 18th century. The former asserted the right of the people of the American colonies to choose their own government and separate from Britain; the latter claimed the right of the whole people of France to choose their rulers within their existing territory. This distinction between the "external" and "internal" aspects of self-determination continues to be important today, although many proponents of self-determination blur the two concepts.

Appeals to the principle of self-determination were made by many nationalist leaders in the 19th century, but its impact on international law and international relations was not really felt until its articulation by two early 20th century leaders, President Woodrow Wilson of the United States and Russian Communist Party founder V. I. Lenin.

Lenin's view of self-determination included a right of secession for national minorities within states, although he was not a proponent of a state for every nation. Self-determination also justified the struggle against colonialism, in which the Soviet Union was in the forefront. At the same time, however, both Lenin and Joseph Stalin were clear that the principle of self-determination was secondary to the requirements of socialist revolution, and there is no evidence of their support for secessionist self-determination within socialist states.

Woodrow Wilson viewed self-determination primarily as the right to democratic self-government within existing borders, although he also championed external self-determination as an appropriate guiding principle for post-World War I boundary adjustments. The phrase "self-determination" did not appear in Wilson's famous "Fourteen Points" speech in January 1918, but he did address the issue in a subsequent address:

> National aspirations must be respected; peoples may now be dominated and governed only by their own consent. "Self-determination" is not a mere phrase. It is an imperative principle of action, which statesmen will henceforth ignore at their peril. . . . [P]eoples and provinces are not to be bartered about from sovereignty to sovereignty as if they were more chattels and pawns in a game.

Like Lenin, however, Wilson's commitment to self-determination was secondary to another goal; for Wilson, that goal was the preservation of peace. His proposal to include a provision on self-determination in the Covenant of the League of Nations was rejected, even though it included the limitation that "the peace of the world is superior in importance to every question of political jurisdiction or boundary."

In fact, the Versailles Peace Conference followed the principle of self-determination only when it complemented other geopolitical motives of the Great Powers. While plebiscites were held in a few less-sensitive frontier regions to determine which state the inhabitants wished to join, no such consultations were held when South Tyrol was handed to Italy, other Austro-Hungarian territories were ceded to the Allies, or Alsace-Lorraine was returned to France from Germany.

The legal implications of self-determination at the end of World War I are best illustrated by the case of the Åland Islands, a Swedish-speaking group of islands included in Finland when the latter declared its independence from Russia in 1917. The question presented to the international community was whether the Åland Islands were part of the new Finnish state or whether they should be permitted to reunite with their cultural and linguistic motherland, Sweden (the islands had been under Swedish control from 1157 to 1809).

The League of Nations was asked to resolve the dispute between Finland and Sweden, and it appointed two expert bodies to examine the question. The first body, the Commission of Jurists, decided that the dispute was a matter of international concern within the League's competence and went on to note,

> Positive International Law does not recognise the right of national groups, as such, to separate themselves from the State of which they form part by the simple expression of a wish, any more than it recognises the right of other States to claim such a separation. Generally speaking, the grant or refusal of the right to a portion of its population of determining its own political fate . . . is, exclusively, an attribute of the sovereignty of every State which is definitively constituted.
>
> Report of the International Committee of Jurists, *League of Nations Off. J.*, Spec. Supp. No. 3 (Oct. 1920) at 5.

The second body of experts, the Commission of Inquiry, agreed with the Committee of Jurists. It found that Finland was "definitively constituted" and rejected the right of Ålanders to choose to which state they wished to belong, even though it also concluded that merger with Sweden would undoubtedly reflect the wishes of a vast majority of Åland inhabitants.

> To concede to minorities, either of language or religion, or to any fractions of a population the right of withdrawing from the community to which they belong, because it is their wish or their good pleasure, would be to destroy order and stability within States and to inaugurate anarchy in international life; it would be to uphold a theory incompatible with the very idea of the State as a territorial and political unity. . . .
>
> Report presented to the Council of the League by the Commission of Reporters, League of Nations Doc. B.7.21/68/106 (1921) at 28.

But while the commission's conclusions were stated broadly, it did appear to imply that separation might be legitimate in extreme circumstances.

> The separation of a minority from the State of which it forms a part and its incorporation in another State can only be considered as an altogether exceptional solution, a last resort when the State lacks either the will or the power to enact and apply just and effective guarantees.
>
> Report presented to the Council of the League by the Commission of Reporters, League of Nations Doc. B.7.21/68/106 (1921) at 28.

Following the commission's recommendation, Finland enacted an autonomy statute for the Åland Islands that ensured their linguistic and cultural protection, a status that has continued (with amendments) to this day.

In addition to the Åland Islands, the League created specialized international regimes in Danzig, the Memel Territory, and Upper Silesia, although each was designed to ease political tensions rather than to respond to self-determination claims. Similarly, political considerations, rather than self-determination, governed the recognition of new states or new frontiers in Czechoslovakia, Greece, Poland, Romania, and Yugoslavia.

B. The United Nations Era

The mandate system created by the League of Nations imposed a "sacred trust of civilization" on those states that were granted the right to administer a number of colonial territories, although it was anticipated that only the former Ottoman territories of Iraq, Lebanon, and Syria would become independent; in fact, only Iraq achieved independence before the outbreak of World War II. The United Nations replaced the League's mandate system by a system of trusteeship, although the system applied only to 11 former mandatories and Italian Somaliland, which was taken from Italy at the end of the war. However, the obligation on those administering trust territories was expanded under the UN Charter to include "progressive development towards self-government or independence as may be appropriate to the particular circumstances."

The UN Charter also laid down obligations for all states to "develop self-government" and "take due account of the aspirations of the peoples" who lived in "non-self-governing territories" administered by UN members. This clearly applied to colonies, and some

states argued (often disingenuously) that this language should apply to areas within independent states as well.

Both the trusteeship system and the provisions on non-self-governing territories reflected the UN Charter's cautious embrace of "the principle of equal rights and self-determination of peoples" in articles 1(2) and 55. However, there was no further elucidation in the Charter of just what this principle of self-determination meant, and it is doubtful that the major colonial powers would have become founding members of the organization if they believed that all of their colonies had the right to independence.

Nonetheless, the vague principle of self-determination enunciated in the UN Charter soon gave way to the internationally recognized right to self-determination, in one of the United Nation's most important examples of law-making. Although UN General Assembly resolutions are not directly binding on states, they may contribute to and/or reflect customary international law, and it is now universally agreed that the norm of self-determination, as articulated in the General Assembly resolutions discussed below, has become a binding international legal norm.

The United Nations debated a number of issues related to decolonization throughout its early years (including the situations in Indonesia, Eritrea, Libya, Somaliland, Morocco, Tunisia, and Algeria), but it did not at first proclaim that these colonies had an automatic right to become independent. That proclamation would await the adoption of Resolution 1514 in 1960, the Declaration on the Granting of Independence to Colonial Countries and Peoples (Declaration on Colonial Independence).

The Declaration on Colonial Independence solemnly proclaimed "the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations" and set forth what has become the standard international formulation of the right to self-determination: "All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development" (para. 2). The declaration also maintained that "[i]nadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence" (para. 3).

The thrust of the declaration was clear: all colonial territories had the right to independence. Unfortunately, a number of uncertainties resulted from varying uses of the terms "peoples," "territories," and "countries," as well as from the final provision in the declaration, which prohibited "[a]ny attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country" (para. 6). Later texts offered only partial help in interpreting the exact scope of the Declaration on Colonial Independence.

General Assembly Resolution 1514, adopted three days after the Declaration on Colonial Independence, attempted to define what a "non-self-governing territory" was, although it contains no specific reference to "self-determination." It provides that a territory is presumed to be non-self-governing if it is geographically separate and ethnically or culturally distinct from the metropolitan authority; if the territory is also politically subordinate, the presumption is reinforced.

Designation of a territory as non-self-governing became politically equivalent to recognizing that a territory had the right to self-determination, and inclusion or exclusion of a territory on the United Nations' "non-self-governing" list was taken seriously by states. For example, objections were raised (not always successfully) to inclusion in the non-self-governing list of Hong Kong and Macao (by China), the Falkland/Malvinas Islands (by Argentina), Gibraltar (by Spain), and Belize (by Guatemala) to ensure that none of these entities would be perceived to have a right to independence or to a free choice as to its future status. In a somewhat parallel fashion, non-European states that wished to annex former colonies without regard to the wishes of the inhabitants asserted that historical claims outweighed any right to colonial self-determination; this was essentially the position of India with respect to Goa, Hyderabad, and Sikkim; Indonesia with respect to West Irian and East Timor; and China concerning Hong Kong and Macao.

The most important UN articulation of the right to self-determination was adopted in 1970, as part of a wide-ranging General Assembly resolution entitled, Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations (Declaration on Friendly Relations). This resolution, 2625, was adopted by consensus after years of negotiation, and it is widely accepted as reflecting customary international law.

The sections of Resolution 2625 that deal with self-determination are consistent with, if somewhat more detailed than, the provisions adopted a decade earlier. All "peoples" have the right "freely to determine, without external interference, their political status and to pursue their economic, social and cultural development." Among the ways of implementing a people's right to self-determination are creation of an independent state, free association or integration with an existing state, or emergence into "any other political status

freely determined by a people." The declaration also notes that the territory of a non-self-governing territory has a status distinct from the state administering it, which continues until "the people of the colony or Non-Self-Governing Territory have exercised their right to self-determination."

Some commentators have suggested that, like the oblique reference by the Commission of Inquiry in the Åland Islands case, the Declaration on Friendly Relations does hint that peoples within independent states may have self-determination rights in certain circumstances, perhaps even including the right of secession. Here is the relevant provision:

> Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.

The argument is that the final clause defines those states that are deserving of having their territorial integrity respected, i.e., those states that comply with the norm of self-determination and "thus" have a nondiscriminatory government.

There are two problems with an expansive reading of this provision. First, the cross reference to self-determination is obviously tautological, since it merely suggests that peoples may have the right to self-determination if their right to self-determination is denied.

The second problem is found in the requirement that the government represent the whole people "without distinction as to race, creed or colour." While this formulation successfully excludes from the international guarantee of territorial integrity and political unity any racially discriminatory regime that excludes a segment of its population from political participation (such as South Africa under apartheid), it would seem to forbid the treatment that many national groups in fact desire: favorable treatment based on ethnicity-race and/or religion. In other words, while the Declaration on Friendly Relations sets forth the right of all racial groups to internal self-determination, in the form of political participation on a nondiscriminatory basis, it does not suggest any right of such groups to external self-determination, secession, or even separate autonomous status within a state.

The only multilateral treaties which contain a specific provision on self-determination are the two human rights covenants (the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) which were adopted by the United Nations in 1966. They entered into force in 1976, and each has been ratified by over 140 states. Paragraph 1 of article 1 of each covenant contains identical language, which essentially restates the provisions discussed above: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

Again, "peoples" remain undefined, and the uncertainty of this term is perhaps best exemplified by the 1955 report of the Third Committee (which discussed the draft covenants) to the General Assembly. After noting that much of the debate on article 1 had been concerned with colonialism, the report nonetheless concluded that

> [t]he right [to self-determination] would be proclaimed in the Covenants as a universal right and for all time. The dangers of including the article had been exaggerated. . . . [T]he article was not concerned with minorities or the right of secession, and the terms "peoples" and "nations" [the latter had been included in an earlier draft of the Commission on Human Rights] were not intended to cover such questions.
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> Report of the Third Committee, U.N. GAOR, 10th Sess., Annexes, Agenda Item 28, pt. 1, at 30, U.N. Doc. A/3077 (1955), para. 39.

Thus, the international legal right to self-determination, as articulated by the United Nations, was limited in its external dimension to the context of decolonization: all colonies had the right to become independent (or to choose any other political option they desired). In its internal dimension, however, "peoples" had only the right to full participation in government on a nondiscriminatory basis, i.e., the right to democracy in Wilsonian terms.

The shift from the 19th century *principle* of self-determination to the 20th century *right* to self-determination was accompanied by a paradigmatic shift from ethnic (or religious, linguistic, or cultural) self-determination to territorial self-determination, as evidenced by international practice since 1945. With rare exceptions—the partition of the former colonies of British India, Palestine, Ruanda-Urundi, the Gilbert and Ellice islands, and the U.S. Trust Territory of the Pacific Islands—the United Nations has consistently rejected the division of colonial territories along national or ethnic lines. Secessionist civil wars in the Congo, Nigeria, and Pakistan were almost universally opposed by the international community, even though Bangladesh's independence from Pakistan was ultimately recognized after Pakistan acquiesced in the new status. Similar claims by Irish Republicans in Northern Ireland, Basques and Catalans in Spain, ethnically German South Tyroleans in Italy, Chechens in Russia, Abkhaz and Ossetians in Georgia, Armenians in Azerbaijan, Sikhs and others in India, Tamils in Sri Lanka, Karens and other hill peoples in Burma, some southerners in Sudan, Turkish Cypriots, and Somalis who wish to incorporate neighboring territory into a greater Somalia have all been rejected.

Of course, this rejection of any internationally recognized right to self-determination that would include ethnic or national secession does not imply that international law forbids secession. Agreements to sever Singapore from Malaysia and Eritrea from Ethiopia, as well as the dissolutions by agreement of the United Arab Republic, the Soviet Union, and Czechoslovakia, were readily accepted by the United Nations and the world's states. Similar recognition would no doubt be forthcoming were Belgium to decide to divide between Flemish and Walloons or Canada to agree that Quebec could secede.

C. Postcolonial Developments

As suggested by the examples cited immediately above, national self-determination does not include the right of an ethnically distinct nation to secede from a sovereign independent state. Some holdovers from the colonial era do continue to exist (fewer than 20 "non-self-governing territories," most of which are small British or American island colonies in the Caribbean or Pacific, are now recognized by the United Nations), including some territories which neighboring states have attempted to incorporate, such as East Timor and Western Sahara. But these few situations aside, it is the principle of the sanctity of borders and the territorial integrity of states to which the international community adheres, not the self-determination of nations or peoples.

The first troublesome ripples in the smooth waters of the international law of self-determination appeared in the 1990s, particularly with respect to the Socialist Federal Republic of Yugoslavia (SFRY). The Yugoslav case is an important one, and legal and political precedents set during the Yugoslav civil war that began in 1991 may change the way in which international law responds to nationalist claims in the future.

In response to the threatened disintegration of the Soviet Union and Yugoslavia, the European Community (EC) in 1991 adopted a "common position on the process of recognition" of new states. After reaffirming "their attachment . . . to the principle of self-determination," they then adopted a very conservative position with respect to national self-determination. The EC recognized the need to protect the rights of "ethnic and national groups and minorities" according to CSCE norms (which are discussed in Section III.B below), but it also reconfirmed "respect for the inviolability of existing frontiers which can only be changed by peaceful means and by common agreement." Despite reference to nuclear nonproliferation, human rights, and the peaceful settlement of disputes, there was no mention either of secession or of the rights of "peoples" to self-determination.

It should be no surprise that a declaration on recognition (long considered to be an inherently political rather than a legal matter) also should recognize "the normal standards of international practice and the political realities in each case." Given the events which followed almost immediately in Yugoslavia, it is clear that the latter were more important.

Although the crisis which led to the disintegration of Yugoslavia had many political, economic, and social causes, the immediately precipitating cause was the declaration of "sovereignty" and independence by the republics of Slovenia and Croatia in June 1991. Macedonia declared independence in September 1991, while Bosnia-Herzegovina did not follow suit until March 1992. Following a brief war in June–July 1991, Slovenia soon achieved de facto independence, while approximately one-third of the territory of Croatia remained under the control of federal Yugoslav and/or Croatian Serb forces. No fighting occurred in Macedonia, but the vicious war in Bosnia-Herzegovina continued until the Dayton Peace Agreement was imposed on the parties in December 1995.

The initial reaction of the international community was to support the territorial integrity of the SFRY, although it condemned the use of force by federal authorities to enforce that integrity. By October 1991, however, the European Community had suspended trade relations with Yugoslavia on the grounds that the Yugoslav state was "in the process of dissolution." Slovenia, Croatia, Bosnia-Herzegovina, and Macedonia (formally known as The Former Yugoslav Republic

of Macedonia, due to Greek objections to the shorter name) became widely recognized in spring 1992 and were admitted to membership in the United Nations—even though at the time Serb forces controlled approximately one-third of Croatia and 70% of Bosnia-Herzegovina.

The ultimate position taken by the European Community and United Nations was (1) recognition of the six constituent republics of the SFRY as new independent states (two republics, Serbia and Montenegro, remained united in the new Federal Republic of Yugoslavia [FRY]), with the same borders that had previously been republic borders within the former Yugoslavia; (2) a determination that none of the new states should be considered the successor state to the SFRY, which had ceased to exist; and (3) rejection of any right to independence or secession on the part of groups or territories within the new states, e.g., Serbs in Croatia and Bosnia-Herzegovina, Croats in Bosnia-Herzegovina, or the provinces of Kosovo and Vojvodina in Serbia. The international community did not consider that any secession from the former Yugoslavia had occurred, although the dissolution of the state obviously occurred by force rather than by agreement.

Formulated in this manner, the treatment by international law of the dissolution of Yugoslavia is consistent with the UN norms described above. Its rejection of any right of secession and its insistence on maintaining existing (previously internal) borders similarly parallels the United Nations' reluctance to redraw colonial borders. Again, it was multiethnic territories (republics) that had the right to independence, not the nations or peoples who inhabited those territories.

Of course, this legalistic, territorial approach to self-determination did not satisfy the desires of various national groups within the new states. Serbs within Croatia and Bosnia-Herzegovina were denied the right to unite with the FRY; most of the former were "ethnically cleansed" from, or fled, Croatia in 1995, while the Republika Srpska was recognized under the Dayton Accords as one of the "entities" within Bosnia-Herzegovina. Croats in Bosnia-Herzegovina also were forced by Dayton to remain within the state, rather than join Croatia. In the FRY of Serbia and Montenegro, the largely ethnically Albanian province of Kosovo was denied the right either to become independent or to join Albania. Even NATO's military intervention in 1999 was designed only to restore Kosovo's autonomy within the FRY, not to suport its independence or right to external self-determination (although independence may yet come when a final resolution of the Balkan wars is achieved).

In summary, the religious-linguistic-ethnic principle of self-determination popularized in the 19th century was replaced by the colonial-territorial right of self-determination in the late 20th century. There has been no international legal acceptance of the demand that these two concepts should be combined into a right for all ethnic groups or nations to independence or secession from existing states.

One arguable exception to denying any right of ethnic or national self-determination might arise when an ethnic group or minority is denied basic human rights and the opportunity of equal participation in the political life of the state in which it is found. For example, the mass expulsions and widespread killings of Albanians in Kosovo may give rise to a right to secession that would not have existed were it not for the grave human rights violations committed by the FRY government. But international law has not yet articulated the conditions under which such a rectificatory right might exist, or even if it does.

III. MINORITY RIGHTS

As noted above, the development of the right of colonies to independence was matched by a denial of the right of nations or ethnic groups to secede from existing states. However, this conservative, state-centered development has been paralleled by a gradual expansion of the rights of national and other minorities within states. No explanation of the international law of nationalism can be complete without addressing minority rights as well as self-determination.

A. Historical Background

In the age of empires, there was little need for special protection for ethnic or other minorities, since emperors rarely required more than the payment of taxes or tribute and that peace reigned throughout the empire. Thus, "minority" languages and cultures were not unduly threatened by a generally distant and relatively nonintrusive empire, even if the rulers were of another nation or culture.

The only exception to this rule concerned religion, since the early identification of state and religion in both the Christian and the Muslim worlds laid the foundation for conflict. Many wars in the Middle Ages were fought either between Christian and Muslim kingdoms or, after the Reformation, between Catholics and Protestants. It was the end of one of these latter wars in 1648 that created the present international legal order

of theoretically equal states and, almost in passing, also contained provisions to guarantee the free exercise of the Catholic, Lutheran, and Calvinist faiths.

The Ottoman "millet" system recognized the right of Christian and Jewish communities to govern themselves in most respects, particularly in areas of religion and culture. As European powers brought increasing political and military pressure to bear on the Ottoman Empire during the 19th century, the rights of Christian minorities were often used as leverage to extract concessions from the Sublime Porte. The 1815 Congress of Vienna, which dismembered the Napoleonic empire, recognized minority rights to some extent, as did the 1878 Treaty of Berlin, which recognized special rights for the religious community of Mount Athos.

As described in Section II.A, however, most legal-political concerns during the 19th century were directed toward justifying the unification of linguistic "nations" based on the principle of self-determination, not the protection of minority groups per se. The most deliberate attempt to address minority issues did not occur until the end of World War I, when a series of so-called "minorities treaties" was adopted for the purpose of protecting certain specified groups.

These treaties fell into three categories. The first group included those imposed on the defeated states of Austria, Hungary, Bulgaria, and Turkey. The second group consisted of new states created in the aftermath of the dissolution of the Ottoman Empire and those states whose boundaries were altered in response to Wilsonian concerns about self-determination; this group included Czechoslovakia, Greece, Poland, Romania, and Yugoslavia. Finally, special regimes to protect minorities were imposed by the League of Nations in the Åland Islands, the Free City of Danzig, the Memel Territory, and Upper Silesia.

Some of the treaties provided a degree of territorial autonomy, but most of the treaties in the first two groups addressed religious, linguistic, and educational issues. Among the protections commonly included were the rights to equality and nondiscrimination; the right to citizenship if a person commonly resident in a new state (or a state with new borders) so wished; the right to use one's own language in public and private; the right of minorities to establish their own religious, cultural, charitable, and educational institutions; an obligation on the state to provide an "equitable" level of financial support to minority schools, in which instruction at the primary level would be in the minority's mother tongue; and entrenchment of laws protecting minorities so that the laws could not be changed by subsequent statutes.

Of almost equal significance to the substantive rights guaranteed was the fact that implementation of the minorities treaties was overseen by the League of Nations, in a major erosion of what would have been seen in the 19th century as an area of domestic jurisdiction wholly reserved to each sovereign state. Although the supervisory system established by the League was political rather than legal and did not permit aggrieved minorities to "sue" states on an equal footing, it did provide meaningful oversight through the League's Secretariat. Almost any person or group could bring a situation to the attention of the League, and the Secretariat also could investigate situations on its own initiative. Proceedings were confidential (unless a state decided to bring a case to the attention of the League Council), but information could be sought from the states themselves or any other source.

The ultimate sanction of the League procedures was public discussion in the League Council and, possibly, adoption of a resolution calling upon a state to take particular action. Some treaties, such as that which created the Free City of Danzig, provided for access to the Permanent Court of International Justice (the predecessor to today's International Court of Justice), and the Court delivered a number of important advisory opinions on minority issues.

The short lifespan of the League of Nations renders it impossible to arrive at a verdict on the potential value of its work on behalf of minorities. However, several observations are in order. First, it is important to underscore that the minorities treaties applied only to a small number of defeated or new states; there was no agreement that minority rights were universally applicable. Second, the rights protected were largely related to religion, language, culture, and education; although some saw minority rights as a kind of second prize awarded to groups whose right to self-determination was not recognized, special political rights were rarely granted. Third, the principle of international interest in and supervision of the fate of minorities within states was a significant breakthrough in the development of international law, which in some ways presaged the later promotion of broader human rights by the United Nations.

The UN Charter makes no mention of minority rights, but it does include several provisions on human rights. The most important is perhaps article 1(3), which identifies as one of the purposes of the United Nations the achievement of international cooperation "in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." In 1948, the General Assembly adopted the Universal

Declaration of Human Rights, which articulated the content of human rights in much greater detail and which remains one of the most important international human rights documents. The General Assembly was unable to agree on any formulation concerning minority rights, however, merely noting in the same resolution that proclaimed the Universal Declaration that "it was difficult to adopt a uniform solution for this complex and delicate question [of minorities], which had special aspects in each State in which it arose."

The United Nations did address minority issues in a number of specific cases, and the 1948 Genocide Convention prohibits the destruction of "a national, ethnical, racial or religious group, as such." However, it was generally believed that issues related to minorities would be best addressed through a combination of respect for individual human rights and the growing attention being paid to the right to colonial self-determination.

The focus on human rights was understandable in many respects, as the Nazi regime had used alleged ill-treatment of German-speaking minorities in Europe as one of the excuses to begin World War II. Human rights as articulated by the United Nations also had the advantage of being universally applicable, unlike the minority rights formulated in the post-Versailles era. Finally, international human rights norms include many of the protections most important to minorities, such as freedom of religion, conscience, expression, assembly, and association; nondiscrimination; the right to participate in political life; and the right to choose appropriate education for one's children.

Nonetheless, it gradually became clear that "individual" human rights were not always sufficient to address the demands of ethnic, linguistic, or national groups for greater protection of their identity and increased political and economic rights. These demands have become increasingly important as today's states intrude ever more deeply into people's lives, both positively (e.g., providing social welfare and promoting economic development) and negatively (e.g., "state-building" through the imposition of more uniform linguistic and social norms across heterogeneous populations). However, as discussed above, there was little room for recognizing diversity as relevant to the process of decolonization, which was based primarily on territory, rather than ethnicity. Eventually, recognition of minority rights became a necessary counterpart to self-determination, just as it had in the post-1919 era.

The United Nations did pay some attention to minority issues, in addition to adopting the Genocide Convention. In the 1960s, three important instruments addressed minority rights, although in a somewhat secondary manner. The UN Educational, Scientific, and Cultural Organization (UNESCO) adopted a Convention against Discrimination in Education in 1960, which recognized the right of minority group members to carry on their own educational activities, including establishing their own schools and teaching their own language. In 1965, the United Nations adopted the Convention on the Elimination of All Forms of Racial Discrimination, which includes within its prohibition against racial discrimination any distinction "based on race, colour, descent, or national or ethnic origin." Finally, in 1966, the International Covenant on Civil and Political Rights (ICCPR) included in article 27 a specific provision aimed at minorities.

The ICCPR has now been ratified by over 140 states, and article 27 is worth quoting in full:

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

The somewhat convoluted language of article 27 suggests that the rights granted were to be interpreted narrowly. For example, the first phrase might be interpreted to exclude recent immigrants or to freeze application of the article to states with minorities in the 1960s or at the time of ratification. The negative formulation of the next phrase—"shall not be denied the right"—appears to exclude any positive obligation on states to promote minority identity. And the actual rights included (culture, religion, and language) are less extensive than those granted by the League of Nations' minorities treaties. Finally, the article applies not to minority groups per se, but to individual members of such groups.

Despite this minimalist formulation, the body created to oversee implementation of the ICCPR, the Human Rights Committee, adopted a fairly expansive interpretation of article 27 in 1994. The Committee was of the opinion that the article applied to everyone, whether citizen, resident, or tourist, and that states could be requried to adopt affirmative measures in order to guarantee the rights in a meaningful way.

B. Contemporary Formulations

With the few exceptions just discussed, international law paid little attention to minority rights in the period from 1945 to 1990. However, as the Cold War ended and human rights acquired new importance in Central and Eastern Europe and in the new states created out of the dissolution of the Soviet Union, European institutions began to realize that the status of national minorities could once again become a destabilizing influence, just as they had been in the post-World War I period.

The breakthrough came in 1990, when a review meeting of the Conference on Security and Cooperation in Europe [now the Organization for Security and Cooperation in Europe (OSCE)] adopted a wide-ranging declaration on human rights, democracy, the rule of law, and minority rights. This so-called Copenhagen Document commits the (now) 55 members of the OSCE to a much wider range of minority rights than those set forth in the Covenant on Civil and Political Rights. And, although the Copenhagen Document is only a political declaration and not a legally binding treaty, its impact has been significant.

Only two years later, in 1992, the OSCE created the position of High Commissioner on National Minorities. This office is technically devoted to early warning about potential minority–majority conflicts, rather than the protection of minority rights per se. Its mandate contains no provision for complaints by minority group members who believe that their rights have been violated. Nevertheless, the High Commissioner has been extremely active in mediating minority–majority disputes throughout the OSCE countries (particularly in Eastern and Central Europe and the Baltic states), and his activities have ensured that minority issues remain an important part of the political agenda of the OSCE.

Another European organization concerned with human rights, the Council of Europe, has devoted its efforts to drafting new treaties on minority issues. During the 1990s, the Council adopted a European Charter for Regional or Minority Languages and a Framework Convention for the Protection of National Minorities, both of which entered into force in 1998.

The UN General Assembly contributed to this process of international law-making by adopting a Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities in 1992. This declaration, too, is a political rather than a legal instrument, but its provisions have become the basis for UN monitoring of minority rights throughout the world.

Without addressing each of these instruments in detail, it is nonetheless possible to outline the general content of minority rights at the end of the 20th century. Bearing in mind that specific instruments contain differing provisions and that some apply only to a relatively small number of states, minority rights at the end of the 20th century include the following:

- Protection of physical integrity and identity as a member of a minority, including the prohibition of forced assimilation or population transfers which are designed to minimize or interfere with minority cultures. Whether or not an individual is a member of a minority group is up to the individual, and whether or not there is, in fact, a minority within a particular country is a matter of fact that does not depend on formal recognition by the state.
- Nondiscrimination and equality of treatment. Affirmative measures may be necessary to ensure equality in fact as well as in law, but such measures should not prejudice the human rights of others.
- The right to enjoy one's own culture.
- Freedom of religion.
- The right to use one's language in public and in private. This right may extend to the right to use one's language in communicating with governmental administrative authorities, if there is a need to do so in areas where minorities constitute a substantial proportion of the population. It also may include the right to recognition of minority-language place names and personal names, parallel to use of the majority or official state language.
- The right to establish minority associations and institutions, including schools. Where necessary and feasible, primary school instruction should be in the minority language or, at least, provision should be made for minority children to be taught their mother tongue. The extent to which states are obligated to provide funds for minority education varies from instrument to instrument.
- The right to maintain contacts with other members of the group, including across frontiers.
- The right to effective participation in cultural, economic, and political life, including the right to participate in decision making on issues which might be of particular importance to minorities. The form that such participation might take is left to the discretion of national authorities.

Much of the substance of minority rights remains general or even vague, and it will probably require decades before international law recognizes these rights as customary law binding on all states. Both politically and legally, however, the trend is clearly toward treating minority rights as a matter of legitimate international concern.

IV. INDIGENOUS PEOPLES

Indigenous peoples, typified by the Indian nations that lived in the Western hemisphere prior to European

colonization, have developed as separate subjects of international law during the past several decades. Indigenous peoples consider themselves to be distinct from minorities, although there is a consensus that they enjoy at least those rights enjoyed by minorities. The real issue is whether they should enjoy greater rights, possibly including the right to self-determination.

Many North American Indian nations entered into formal treaties with the colonizing powers of England, France, Canada, and the United States. However, when these treaties were unilaterally abrogated or ignored, the international community did not continue to view indigenous peoples as separate subjects of international law. Although indigenous nations assert their equality with states, this position has not to date been accepted by international law or international organizations, and indigenous groups are not considered to have an international personality separate from or equivalent to that of the states in which they are found.

At the same time, there is growing acceptance of the idea that indigenous peoples are distinct from minorities and that neither individual human rights nor minority rights are adequate to deal with the situation of indigenous peoples. For example, the International Labor Organization has adopted two treaties concerning indigenous and tribal peoples. The first, a 1957 treaty whose approach was somewhat assimilationist and paternalistic, was replaced in 1989 by a more progressive treaty that sets forth indigenous rights to, inter alia, recognition of indigenous customs and collective land ownership.

More extensive catalogs of indigenous rights, in the form of formal declarations, are being drafted by the United Nations and the Organization of American States (OAS). Although neither draft declaration has yet to be adopted, both provide for indigenous control over and/or participation in decision making regarding land use, the environment, and exploitation of natural resources. Indigenous government institutions are recognized, as is the right of indigenous peoples to determine their own membership. Indigenous customs and traditions are to be upheld, so long as they are consistent with internationally recognized human rights.

Perhaps most interesting from the perspective of the present article is the debate over whether indigenous groups are "peoples" and, if so, whether they enjoy the right to self-determination. While some states object to the term "peoples," on the ground that it recognizes group rather than individual rights, that position is gradually losing adherents. Certainly the distinct cultures, languages, social and government institutions, and lifestyles of indigenous groups would appear to fall within any common-sense definition of people or nation.

Somewhat more problematic is the concept of indigenousness, at least outside the Western hemisphere, Australia, and New Zealand, where indigenous peoples are easily identified as those who inhabited the territory prior to European settlement. That distinction is less clear in Africa, Asia, and Europe, where land migrations of various peoples have occurred over centuries, and where who was in a particular place "first" may be irrelevant or difficult to determine.

Very few indigenous groups wish to secede from the state that surrounds them and, as the discussion in this article implies, the content of the right to self-determination of any noncolonial people is unclear. The draft UN declaration includes a reference to the right of indigenous peoples to self-determination; the draft OAS declaration does not. Whether or not a self-determination provision is included in either or both documents, there is no consensus at present as to what the legal implications of recognizing an indigenous right of self-determination might be.

V. NATIONALISM AND LAW TODAY

Political theorists and adventurers have long debated whether every nation should have a state or, more broadly, whether the nation is the most salient identity group for purposes of political organization. International law has generally declined to take a side in this debate.

In the early post-Westphalian legal order, ethnic or national identity was largely irrelevant. Sovereignty was vested in monarchs, who, in turn, founded their legitimacy on religion; the "divine right of kings" was a meaningful principle, and internationally recognized legal authority over territory was commonly determined by conquest, marriage, heredity, or all three.

The "national" revolutions in the American colonies and France encompassed populations who shared many of the same characteristics (primarily historical memory and culture, broadly defined), but the appeal of both the American and the French revolutions was to morality and political justice, not to law. In each case, the revolutions succeeded in separation or domestic restructuring, respectively, due to success in battle rather than an appreciation of the legality of the cause.

As 19th century nationalist movements in Europe, typified by the unifications of Italy and Germany, acquired an increasingly ethnic and linguistic cast, international law made room for these movements but did not grant them any greater or lesser legitimacy than other revolutionary movements. To be sure, international public opinion was often swayed by appeals to shared mythical origins and purported linguistic affinity, but the support of the Great Powers was based on realist political calculations rather than sympathy for the principle that each nation should have its own state. Homogeneous and heterogeneous states were equally legitimate in the eyes of international law.

As noted in Section II.A, the principle of national self-determination was not accepted by the League of Nations, even in the mild formulation proposed by Woodrow Wilson. Some elements of the need for popular consent did creep into the territorial settlements mandated at Versailles, but both self-determination and the rights of minorities were recognized in only a very narrow range of cases. Although national desires had become factors to be taken into account, the precedents of the Åland Islands, Czechoslovakia, and Yugoslavia make clear that the wishes of the populations involved were secondary to the broader interests of the victorious powers in preserving peace and stability in Europe.

In the era of decolonization that followed World War II and the creation of the United Nations, a number of political principles were gradually transformed into international legal norms. Again, however, these norms were defined narrowly, and the right to "national self-determination" was in fact interpreted as equivalent to the right to colonial independence. Nation was equated with state or colony, and national liberation movements were, by definition, anticolonial. Few or none of the traditional elements of the 19th century European "nation"—ancestry, language, culture, and religion—were to be found in anticolonial "nationalism."

With only minimal exceptions, the territory of the world is now divided into internationally recognized sovereign states. Thus, except for the few remaining colonies, new states can be created only out of existing states. Dissolution or secession may occur by mutual consent or by force, and international law must now determine what its response will be to such situations when they arise in the future. While it is important to remember that independence is not a necessary result of a group's exercise of self-determination, any other result—autonomy, devolution of power, federation, confederation, etc.—must involve the consent of both territories and populations involved. Only independence can truly be determined unilaterally, and the question is whether such an outcome can or should be determined by international law.

A. Secession

When secession or dissolution occurs by consent, international law poses no barrier to recognizing the new states that result. In recent years, Czechoslovakia, Ethiopia, and the Soviet Union offer the clearest examples of consensual separation; many other examples could be cited.

Given the fact that customary international law prohibits the use of force against the political unity or territorial integrity of any state, it would seem evident that there is no right for either individual states or the "international community" to intervene in favor of a national self-determination or secessionist movement within a state. Reality, however, is less clear, and the international response since 1991 to the dissolution of the former Yugoslavia has opened the door for a new interpretation of the right to self-determination, which might include the right of a disaffected group within a state to claim recognition as an independent entity.

Unfortunately for those who seek to assert such a right to national independence, essentially combining the 19th century political principle of ethnolinguistic self-determination with the 20th century legal right of colonial independence, neither states nor the vast majority of international lawyers are ready to go so far. Not a single claim to a right of secession has been widely recognized by the international community, unless the secession has been first recognized by the state within which the seceding territory was found. The independence of the Baltic states and Bangladesh was widely recognized only after it was accepted by the Soviet Union and Pakistan, respectively. As already noted, the situation in Yugoslavia in 1991–1992 was carefully characterized as one of dissolution or disintegration, not as the secession of some republics from the larger state.

Indeed, the catalog of unrecognized secessionist movements is impressively long. Despite international sympathy for some of these "national" movements and pressures to negotiate a mutually agreeable solution, no state has supported the right of people in Northern Ireland, Catalonia, the Basque country, Corsica, South Tyrol, northern Cyprus, southeastern Turkey, Punjab, northern and eastern Sri Lanka, Tibet, Mindinao, Bougainville, Aceh, southern Sudan, northern Somalia, or anywhere else to declare their independence unilaterally.

Some chinks in this conservative armor of state sovereignty and integrity may be appearing, but they have not yet acquired the status of international law or even been accepted as desirable political principles. Claims of

historical injustice, in particular, have been consistently rejected as legitimizing secession, perhaps because of the impossibility of identifying an appropriate date after which an "unjust" seizure of territory should not be recognized. After all, nearly every state was founded on conquest or the drawing of arbitrary boundaries in distant capitals, and what may be perceived as unjust in the 20th century was often acceptable and legal in the 17th.

More persuasive is the argument that a right to secession should be recognized in extreme situations, when a particular group or region has been subjected to deliberate, widespread discrimination and/or violations of fundamental human rights. In such situations, the state would be deemed to have lost its previously legitimate claim to the territory as a sanction against its gross abuses of human rights or its discriminatory exclusion of part of its population from political participation, analogous to the manner in which the international community refused to recognize the legitimacy of the apartheid regime in South Africa (although the legitimacy of the South African state was never questioned).

There is currently no agreement on the specific circumstances which might give rise to such a right of secession, and mere discrimination or repression probably would not suffice. Physical attacks approaching genocide, on the other hand, probably would qualify. To return to the complex example of Yugoslavia, denial of autonomy to Kosovo and general repression of Albanians would not seem to offer sufficient reason for international law to mandate the dismemberment of the Yugoslav state. On the other hand, the systematic ethnic cleansing and widespread killings that followed the NATO bombing campaign in spring of 1999 might legitimize Kosovar independence.

Of course, enforcing legal norms often represents a greater challenge than articulating new rules. Even during the era of decolonization, Western powers did not accept that outsiders had the right to support a self-determination movement with force. If a new right of secession is ever recognized, similar questions will arise as to if and when armed force, whether unilateral or multilateral, may legally be used in response to a denial of that right.

B. Identity and Participation

While the international legal response to self-determination and secession has been essentially conservative, there has been a much greater willingness to create new norms for the treatment of minorities and other groups within states. Minority rights are being expanded almost anually, particularly within Europe, and outsiders seeking to prevent or mediate internal conflicts are increasingly seeking agreement on new forms of political and economic power sharing.

These developments stem primarily not from nationalist theory but from the human rights norms that have gradually developed since 1945. Most observers now recognize that purely individual rights may not always be adequate to respond to the desires of indigenous peoples, minorities, and other communities for a more meaningful role in the society that surrounds them, as well as their need to protect and develop their own cultures.

The right to develop one's individual and collective identity is implicit in human rights, and it is protected through guarantees of freedom of religion, expression, association, privacy, and related rights. But this right to identity is increasingly being interpreted to require active facilitation or support from the state, in the form of affirmative action or reverse discrimination schemes in employment, support for minority education, increased access to the media, and recognition of the value of minority cultures.

As stated many years ago by the Permanent Court of International Justice in the Minority Schools in Albania case,

> Equality in law precludes discrimination of any kind; whereas equality in fact may involve the necessity of different treatment in order to attain a result which establishes an equilibrium between different situations. It is easy to imagine cases in which equality of treatment of the majority and of the minority, whose situation and requirements are different, would result in inequality in fact. . . . The equality between members of the majority and of the minority must be an effective, genuine equality.
>
> *Minority Schools in Albania*, Advisory Opinion, 1935, P.C.I.J., Series A/B, No. 64, 4, at 19.

It is difficult to determine the dividing line between state action that is mandated by international law and that which is merely politically desirable, and this task is even more difficult with respect to the requirement of effective participation. Is autonomy for Kosovo or power sharing for Nationalists in Northern Ireland now required by international law? If so, such a norm would represent a truly historic intrusion into, or reinterpretation of, state sovereignty, because states have always been free to determine their own political and economic systems. It is largely for this reason that many states are extremely wary of the potential implications of accepting new obligations with respect to minorities.

The best solution is perhaps to see the norm of effective participation as a norm of result, not of conduct. In other words, states are, indeed, required to secure effective as well as formal participation by minorities, but they are free to determine the means by which such participation will be achieved. Such means might include the creation of advisory groups; electoral systems which facilitate or maximize minority representation; local control over certain government functions in areas where minorities constitute a majority of the residents; and/or provisions for specific approval by minority representatives of some proposed legislation.

The norm also is limited to participation; it does not mandate that the minority be given a veto power or that its wishes must always prevail over those of the majority. But all of these arrangements recognize that it may not be enough to ensure "one person, one vote," in states where such a system results in the permanent disenfranchisement of a particular group.

Although these new norms of identity and effective participation may appear vague, they are no less precise than other concepts with which we have become familiar, such as fair trial, equal protection, due process, national security, or public order. Few rights are absolute, and the balancing of individual, minority, and majority interests will continue to be primarily an internal task for each society.

Despite its origins in Western Europe, international law today must be truly global if it is to evolve meaningfully. Until there is a consensus that homogeneous states are better than heterogeneous states or that the interests of ethnonational groups should always prevail over those of broader societies, it is appropriate that international law treat nationalism and related issues with care. As apocryphally asked during the Yugoslav war, "Why should I be a minority in your state when you could be a minority in mine?" International law cannot yet answer that question, although it is beginning to ensure that minorities, nations, and ethnic communities in any state are treated as full and equal members of the societies in which they live.

See Also the Following Articles

EMPIRE AND IMPERIALISM • ETYMOLOGY, DEFINITIONS, TYPES • STATE, THE • SUPRANATIONAL ORGANIZATIONS

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