

The United Nations, Self-Determination, State Failure and Secession

Written by Ed Brown

This PDF is auto-generated for reference only. As such, it may contain some conversion errors and/or missing information. For all formal use please refer to the official version on the website, as linked below.

The United Nations, Self-Determination, State Failure and Secession

<https://www.e-ir.info/2020/05/29/the-united-nations-self-determination-state-failure-and-secession/>

ED BROWN, MAY 29 2020

This is an excerpt from *The United Nations: Friend or Foe of Self-Determination?* Get your free copy [here](#).

As this chapter will find, the United Nations (UN) has made several declarations concerning self-determination; the stance of the UN on self-determination can appear somewhat contradictory at times, expressing support at various times for both self-determination and for territorial integrity (the inviolability of borders). Despite such ambiguity, the position of the UN on secession and any subsequent recognition is particularly important since accession to the UN is considered by the international community as tantamount to near-universal recognition. To become a member, a state must be recognised by at least two-thirds^[1] of existing members after gaining approval of the UN Security Council, which implies that it has the recognition of the major world powers, i.e. the permanent members (P-5) (UN 2019).

The chapter investigates whether the UN stance on self-determination and secession, makes it a friend or foe to self-determination in the context of failed states. The purpose of this chapter is to analyse the balance of legitimacy between the secessionists and the parent state, given the argument that a failed state has a deficit of legitimacy, and to analyse the UN stance from both an ethical and a practical perspective in light of this. Firstly, what the stance of the UN on self-determination might be is considered, and then the concept of state failure is introduced, while noting how secession from a failed state fits within the UN stance. Finally, two actual cases of secession from failed states will be examined; the secession of South Sudan, which became a UN member, and the *de facto* secession of Somaliland, which so far has not acceded to the UN. This will allow the chapter to ascertain whether the UN stance makes it a friend or foe to self-determination in this particular context.

The main conceptual framework comes from the situation when a people are not having their security protected by their parent state, which then fits into what is known as the 'Remedial Right to Secede' (RRS) (Buchanan 1997, 35). This is loosely based on John Locke's 'Right to Revolution' (ibid.); the idea that if a group has their rights abused by the sovereign, then they have a right to look for a new sovereign. Whilst this could be achieved through democracy or revolution for individuals, writers such as Buchanan (1997, 37) have argued that this could include creating a new sovereign by establishing a new state. Essentially, it means that if the government is not upholding its side of the social contract, i.e. providing security to its citizens, including the individuals within a secessionist entity, then it forfeits a degree of legitimacy. If a secessionist state is able to better provide said security, then the legitimacy of their claim to statehood may increase and a stronger case for recognition can be made.

The idea of the RRS can be seen in this way to complement the Responsibility to Protect (R2P), the idea that sovereignty is dependent on responsibility, in so much that sovereignty and legitimacy are based upon the responsibility of the state in question (Brown 2018, 88–89). This in turn shows that with R2P being brought to the fore in the UN, self-determination through the RRS can be tacitly supported to admit new members to the UN, as the case studies in this chapter both infer. The RRS is compatible with the idea that sovereignty is based on responsibility, and thus if R2P is ostensibly supported within the UN, so too can remedial secession be. This chapter further argues that this right can apply when a parent state is *unable* to uphold the security of all of its citizens, thus *passively*

The United Nations, Self-Determination, State Failure and Secession

Written by Ed Brown

undermining the basic rights of its citizens (including those in a secessionist entity) and where a secessionist entity is better able to do so, thus gaining the balance of legitimacy. Whether states take this into account when considering recognition of new states can determine whether a state accedes to the UN. Therefore, it is important to consider how UN principles on self-determination apply to secession from failed states and how UN principles on self-determination can be interpreted in such a context and particularly, if and how these principles are followed by the international community in this context.

This chapter analyses the ambiguities in the UN stance towards secession in the context of failed states. It assesses whether the UN is a friend or foe in these cases by looking at where exceptions could be or, in the case of the first case study, have been made to what is ostensibly an anti-secessionist stance and the reasoning behind these exceptions. Also, in the second case study, it examines where the conditions for these exceptions are arguably present, but not made. The chapter concludes by arguing that whilst this stance is inconsistent and possibly in need of reform, by keeping its stance ambiguous the UN can act pragmatically in cases where secession from a failed state may ease a conflict without setting a precedent that may undermine the international system of states. This shows that, in this context, the UN can show itself to be a friend to self-determination, but only if expedient to do so (i.e. it helps to resolve a conflict) and does not go against the interests of major powers.

Definitions

Self-Determination

Whilst this chapter deals primarily with self-determination through secession, the UN describes the different modes of self-determination that can occur as 'The establishment of a sovereign and independent state, the free association or integration with an independent state or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people' (A/RES/2625(XXV)). The ambiguity arising from the multiple definitions of self-determination can be dangerous, since it may lead to impasse and conflict where a group believes that they have a right to full independence whilst other actors, such as the parent state, may believe that they have the right to a degree of autonomy or representation in exercising their right to self-determination, but not have a right of secession. For example, James Anaya (1996, 333) differentiates between different modes of self-determination, looking at two specific models:

- 'Constitutive self-determination', whereby a people decide on their future status, opting for or rejecting secession, as has been illustrated in independence referenda such as those in recent times of Scotland, South Sudan and Montenegro (the latter two resulting in independence, the former not); and
- 'Ongoing self-determination', whereby a group exercises a degree of political control over its own people and/or territory, although not necessarily through full independence as the constituent countries of the United Kingdom currently do (2019)[2], or federal subjects of federal countries such as Russia or the United States of America.

The extent of self-determination and self-government is difficult to quantify given the number of forms such an arrangement could take. With this in mind, Buchanan (2004, 333) notes that '[I]t is extraordinarily unhelpful to talk about "the" right to self-determination (or autonomy). Yet existing international law contains dangerously ambiguous references to "the right of self-determination of peoples"'. The many different forms which self-determination has taken throughout the world in the past suggests there is a degree of method to the madness when it comes to the ambiguous nature of states' approaches on the matter. Having multiple definitions of self-determination allows the potential recognising actors to adopt a degree of pragmatism in their approach, as it allows all options to be explored before resorting to recognising the independence of a secessionist state. It also allows for each case to be approached on an individual basis. This is beneficial to the UN approach since, whilst cases of secession may bear similarities to each other, no two cases will be exactly the same. Each instance will have a unique set of needs and will have to be approached in a unique manner. Keeping the law ambiguous allows the UN to tailor its approach to the specific situation, which more specific and rigid laws on the issue would prevent.

This chapter looks at the use of the definition of constitutive self-determination as self-determination exercised

The United Nations, Self-Determination, State Failure and Secession

Written by Ed Brown

through secession. However, it acknowledges that the definition of self-determination is open to interpretation and forms of ongoing self-determination may be favoured if in the interest of states within the international community.

Secession

Secession is the act of defying the rule of the parent state, not through revolution or otherwise trying to change the government of the state, but to exclude the jurisdiction of the parent state from the claimed territory of the secessionists (Buchanan 1991, 10). Whether or not a secessionist entity is indeed a state depends on the theory of state one is using. The *declaratory theory of secession* echoes the Declaration of the Montevideo Convention on the Rights and Duties of States, in that a state exists if it possesses a permanent population, a defined territory, a government and the capacity to enter into relations with other states; if a state fulfils these criteria then it exists regardless of recognition (Eckert 2002, 21). On the other hand, the *constitutive theory of secession* puts more emphasis on *recognition* of statehood rather than statehood alone (Eckert 2002, 24). Whilst the declaratory theory asserts that the existence of a state is independent of recognition, the constitutive theory stresses that for a state to exist it must receive formal recognition specifically, as well as possess the capacity to enter into relations with other states, which many unrecognised states have the ability to do (ibid.).

It would appear that it is the constitutive theory of state that is important for accession to the UN (how this chapter would define a successful secession), since an entity must be recognised as a state by at least two-thirds of the General Assembly (GA) and by the Security Council (SC) to become a member. The implications of this for this chapter are that UN admission is dependent on recognition from states within the international community, thus prospective member-states are at the mercy of how UN declarations based on the right to self-determination are interpreted by the current member-states, who may interpret and apply them differently based on self-interest and/or pragmatism.

State Failure

The concept and definition of a so-called failed state is varied and contested. This is reflected in the sheer number of different indices, such as the *Fund For Peace/Foreign Policy* 'Fragile States Index', the Global Peace Index, George Mason University's State Fragility Index, World Bank Group's Harmonized List of Fragile Situations and the Center for Systemic Peace's Polity project (Brown 2018, 132–139). These indices use a range of factors. However, for the sake of conciseness, we will use a definition based on the works of Max Weber, who stated that a successful state is one that has the monopoly on the legitimate use of force and thus a failed state is one which either loses the monopoly or the legitimacy (Weber 1919).^[3] This phenomenon can be seen in most of the states that rank highly in the aforementioned indices (Brown 2018, 122 and 138). States can lose the *legitimacy* of their use of force by using it in an illegitimate manner, for example by persecuting a group. A state can lose the *monopoly* on the use of force by losing control over its territory, for example if non-governmental armed groups become active within their recognised borders and cannot be controlled by governmental forces. At times, an oppressed group will fight back, and civil war will ensue, as happened in Sudan, in which case the parent state can be said to have lost both the monopoly *and* the legitimacy of the use of force.

Security

For the purposes of this chapter the definition of security is taken from the *Fragile States Index* by Fund For Peace (2019, 34):

The Security Apparatus indicator considers the security threats to a state, such as bombings, attacks and battle-related deaths, rebel movements, mutinies, coups, or terrorism. The Security Apparatus indicator also takes into account serious criminal factors, such as organised crime and homicides, and perceived trust of citizens in domestic security.

When this chapter refers to the ability of a state to uphold citizens' security, it is referring to its ability to mitigate the threats to security outlined above, and, as it says, the confidence a state's citizens have in their ability to do this. A

The United Nations, Self-Determination, State Failure and Secession

Written by Ed Brown

state can fail to mitigate security threats and/or maintain the confidence of its citizens either passively, by lacking the means to mitigate threats, or actively, by undermining security through abuses of power such as oppression and persecution.

Conceptualisation

The UN, Self-Determination and Secession

The UN Charter (1945) expresses the position that peoples have the right to self-determination in Article 1 of Chapter 1, however in Article 2 it also makes clear that the integrity of states is vital. According to the Declaration on the Granting of Independence to Colonial Countries and Peoples this can be applied to the promotion of secession within a third-party country as 'any attempt aimed at the *partial or total disruption of the national unity* and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations' (A/RES/1514 (XV) [emphasis added]). Whilst this declaration concerns decolonisation rather than secession and aims to differentiate between the two by advocating decolonisation but not secession, one of the arguments of this chapter is that secession often occurs when a people are oppressed by a parent state that does not represent them. This is, in principle, similar to a colony working towards independence. Indeed, in the context of South Sudan, Sharkey (2008, 6) referred to the rule over the South by the oppressive, non-representative North as 'cultural colonialism'.

A rationale for this ambiguity is implied by the UN in so much that the territorial integrity of sovereign states is an international norm. This is because allowing a general right to self-determination through secession could result in a proliferation of states that would undermine the international system of states. As Buchanan (1991, 102) points out, 'If large groups are allowed to secede, why not small groups...why not individuals?'. Such an argument paints secession as something of a Pandora's box, that once opened would undermine global order, security and stability as we know it. This concern has been shared by other International Relations scholars such as Pavkovic and Radan (2007, 129) who talk of 'recursive secession', that is, secession from a state that has itself seceded, and 'sequential secession', a further secession from the same parent state. An example of the former would be the secession of South Ossetia and Abkhazia from Georgia, and an example of the latter would be the different states that seceded from Yugoslavia.

With this in mind it would seem logical for the UN to favour the concept of ongoing self-determination rather than constitutive self-determination where it can. However, as Buchanan (1991, 102) rightly goes on to say, this argument is based on the premise that the right to secede is an unlimited right to secede, in other words an inherent right to secession held by all peoples. In reality however, there are limits to such sovereignty and territorial integrity.

This is observable in the UN Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (A/RES/2625(XXV)), which, amongst many principles surrounding the promotion between states of cooperation and friendly relations, includes 'the principle of equal rights and self-determination of peoples.' Pavkovic and Radan (2007, 235) observe in this principle that 'A state's right to territorial integrity prevails over the right of any of its peoples to self-determination, *provided that state conducts itself in accordance with the principles of equal rights and self-determination of peoples*' [emphasis added].

This is most observable in the Declaration's section on *the principle of equal rights and self-determination of peoples*, where it is stated that territorial integrity is only protected if the state in question has 'a government representing the whole people belonging to the territory without distinction as to race, creed or colour'. This can be interpreted as the state having a responsibility to represent minorities within its territory (Pavkovic and Radan 2007, 235). It also implies that should a state fail to uphold the rights of these minorities or, worse, persecute the peoples involved, then secession could be justified, and the secessionist entity recognised. To this extent territorial integrity appears conditional upon the sovereign's ability to uphold it responsibly, since a state cannot expect to have its sovereignty and therefore its borders respected if a) it abuses its sovereignty to perpetrate human rights breaches, and b) it appears unable to uphold said sovereignty by failing to provide security for its citizens. This would suggest

The United Nations, Self-Determination, State Failure and Secession

Written by Ed Brown

that territorial integrity is conditional upon the state upholding its duties towards its citizens, including minorities and thus proving itself responsible for their rights. This fits in with the idea of remedial secession as previously discussed.

A/RES/545(VI) goes even further, reaffirming the right to self-determination by noting that 'the violation of this right [to self-determination] has resulted in bloodshed and war in the past and is considered a threat to peace'. Whilst this can apply to violation of self-determination through colonisation, it is also true, as will be seen in the case study on South Sudan, that bloodshed and war can also result through a denial of ongoing self-determination of a group within a state's borders. Thus, the right to self-determination is reaffirmed in this instance.

The argument of this chapter that secession from failed states is distinct from general secession is based on the idea that sovereignty is conditional. This idea is supported by the evolving consensus on R2P within the UN; that is, a state has the responsibility to protect the security of its population, in particular to protect it from 'genocide, war crimes, ethnic cleansing and crimes against humanity' (UN Office on Genocide Prevention and the Responsibility to Protect 2019). The third pillar of the R2P doctrine states that 'If a State is manifestly failing to protect its populations, the international community must be prepared to take collective action to protect populations, in accordance with the Charter of the United Nations' (UN 2012). A report from the UN Secretary-General on R2P noted that 'Responsible sovereignty is based on the politics of inclusion, not exclusion' (A/63/677). This implies that a state's sovereignty and territorial integrity are dependent upon upholding them. Thus, there can be a legitimate claim for recognition of a prospective secessionist state based around such a minority or group if the parent state is not upholding the rights of these people.[4] The idea that the breaching R2P principles can undermine a state's sovereignty has in general been used as a rationale for humanitarian intervention rather than secession. However, Janik (2013, 57–58) hypothesised that humanitarian intervention may lead to intervention in support of secessionist groups if said secessionists are facing persecution, invoking the remedial right to secede and suggesting that such support could in fact encourage secessionist movements. The idea that the Responsibility to Protect could encourage secessionist movements is supported by Kuperman (2009, 22), who suggests that '[G]enocide and ethnic cleansing often represent state retaliation against a sub-state group for rebellion, or armed secession'. Should this be the case then states may intervene on the side of secessionists under the responsibility to protect, thus potentially increasing support for the secession that could conceivably lead to recognition, as in the case of Bosnia and Herzegovina, for example (Janik 2013, 57–60).

The Issue of State Failure

The issue with states that either lose the monopoly or the legitimacy of the force as outlined in the Weberian definition of state failure, is that they will generally either be unable or unwilling to provide basic rights such as security to their citizens. This arguably means that they are unwilling or unable to adhere to the principles of the norm that is the R2P since the state would be 'manifestly failing to protect its populations' as supported in the UN resolution following the 2005 World Summit Outcome (A/RES/60/1). Additionally, such a state would be unlikely to be willing or able to uphold minority rights and thus support the self-determination of peoples within its borders as extolled by the UN Declaration on Friendly Relations (Pavkovic and Radan 2007, 235). This would be the case for a failed state almost by definition, since if it were unable to maintain the monopoly of legitimate force it would be unable to uphold such rights. If the use of force was illegitimate, i.e. being used for the purposes of oppression, then the government in question would not be representative of such a minority. The above definition of state failure refers to the state's ability to provide basic rights and security to all its citizens. However, it is of particular interest and importance if there is a distinct minority within that state who are being directly oppressed by the parent state, are otherwise disproportionately disadvantaged by the failings of the state. It is also of particular interest if said minority has managed to establish order and effective governance within their own region where disorder and lack of legitimate government control is spread throughout the rest of the parent state.

Both phenomena arguably fit in with the aforementioned remedial right to secede, as in both cases the parent state is not upholding its side of the social contract. The first of these phenomena is seen in the first case study of this chapter, South Sudan, whose security and basic human rights had been actively undermined by persecution from the parent state of Sudan. The second of these phenomena is seen in the second case study of the chapter, Somaliland,

The United Nations, Self-Determination, State Failure and Secession

Written by Ed Brown

which has managed to establish a stable government despite the lack of control of the government of parent state Somalia over its claimed territory. The case of South Sudan, as will be seen, would suggest a shifting paradigm within the UN towards further emphasis on the conditions being put on sovereignty such as those observed in 'the principle of equal rights and self-determination of peoples' of the UN Declaration on Friendly Relations and as endorsed by R2P. This in turn has the potential to create a more conducive environment for self-determination within the UN for peoples whose parent states lack legitimacy. This means that the predilection in the UN for supporting territorial integrity over self-determination via secession, as observed earlier in the chapter, could be diminished in cases where the sovereignty of the parent state is compromised by state failure i.e. losing the legitimacy of its use of force, or losing its monopoly on the legitimate use of force. This is shown through the fact that whilst Somaliland has yet to become a UN member, in both cases the ability of the state to provide basic human rights and security is greatly compromised and the remedial right to secede can be invoked.

Additionally, it has been claimed by former UN Secretary-General Boutros Boutros-Ghali in reference to Somalia that the inability of a state to govern erodes its sovereignty (UN 1996, 87):

A state that loses its government...loses its place as a member of the international community...The charter of the United Nations provides for the admission to the international community of a country which gains the attributes of sovereignty...It does not, however, provide for any mechanisms through which the international community can respond when a sovereign State loses one of the attributes of statehood.

It is important to note, however, that this lack of sovereignty does not preclude the existence of the state in question, whilst the sovereignty of a failed state may be compromised in practice, it is still a state in international law and a member of the UN. For example, Somalia, a state whose government has had extremely limited control over its territory for decades, is still a member of the UN. States that lack the ability to govern are still recognised because, as Potter (2004, 11–12) writes, there are two practical aspects of sovereignty that exist side by side: external and internal sovereignty; external sovereignty refers to the recognition of a state by other states, while internal sovereignty refers to the state upholding its responsibilities to its citizens. As this chapter argues, this loss of internal sovereignty among other factors can be used to justify the admission of a secessionist state to the UN if it is governing its territory more effectively than the parent state as a case for remedial secession exists. However, this does not preclude the existence of the parent state, the remainder of the parent state can remain recognised despite its compromised sovereignty leading to secession.

The lack of legitimacy and sovereignty of the parent state, along with the perceived rising legitimacy of the secessionist state has been used to justify the recognition of secession in the past. The example of this phenomena that this chapter will look at is the secession of South Sudan. It must once again be stressed that the UN did not have a direct role in the recognition of these secessions, it is not the UN itself that 'recognises' states, but the member states that make up the UN. However, it is important to analyse the way in which these secessions were handled by the states involved in order to show how secession from failed states has been handled by states within the wider international community, how South Sudan came to accede to the UN and how its recognition fits in with the UN principles on territorial integrity and self-determination. Likewise, the as-yet unrecognised secession of Somaliland will be examined in order to assess why it has not gained membership despite the case for it. This will in turn enable the chapter to understand more about the attitude of the UN towards secession from failed states, as well as a consideration of the suitability of this approach in moral and practical terms.

Case Study: South Sudan

Fitting in with the idea of secession based on R2P and RRS, South Sudan acceded to the UN in 2011. Its split from Sudan had been based upon both resolution of the civil war that had been continuing intermittently for decades and the oppression and subjugation of the South by the Khartoum government prior to, and during, said civil war which had demonstrated Khartoum's inability to protect its citizens, which, as argued in this chapter, can be grounds for remedial secession (Brown 2018, 230). Importantly, many in the South saw this subjugation as 'cultural colonialism' on the part of the Khartoum government (Sharkey 2008, 36). This was due to the 'Arabisation' movement, whereby the Christian, English-speaking identity of the South was denied, indeed, the Southern Federal Party's request that

The United Nations, Self-Determination, State Failure and Secession

Written by Ed Brown

English and Christianity be included as an official language and religion alongside Arabic and Islam, were met with criminal prosecutions (Sharkey 2008, 34–36). This can be seen to contravene UN General Assembly Resolution 2625(XXV), which as seen earlier stipulates that a government must represent all its citizens regardless of race or religion. The ensuing Civil War also invokes UN General Assembly Resolution 545(VI), which reaffirms the right to self-determination when its violation leads to war and bloodshed.

This indicates that, whilst UNGA resolutions are not obligatory for states, it does show that the UN is, in principle at least, something of a friend to self-determination in this context, since in this instance violating this UN principle indeed initiated a process whereby a remedial secession achieved UN membership, as South Sudan did.

Here we see two potential motives for the recognition of a secessionist state, pragmatic conflict resolution, and a moral case based on the oppression of a people. Indeed, both the need to end the civil war, and the past injustices towards the South were noted in the Comprehensive Peace Agreement (CPA) (UNMIS 2005).

It is important to note that the pragmatic course of action can also be the moral one, whilst achieving peace and achieving justice can be seen to be different things, in this case the one could arguably have come with the other.[5] The referendum on the independence of South Sudan was won overwhelmingly, 99.57% voting in favour of South Sudanese secession (BBC 2011). This referendum was part of the CPA under the auspices of the Intergovernmental Authority on Development (IGAD), with which the UN was heavily involved, to end the civil war, in the course of the negotiations such a concession had seemed necessary. UN involvement included providing 'technical and logistical assistance to the CPA parties' referendum preparations through support from its peacekeeping missions on the ground in Sudan, as well as the good offices function provided by the Secretary-General's panel aimed at ensuring the impartiality, independence and effectiveness of the process, and by the UN Integrated Referenda and Electoral Division (UNIRED)' (UNMIS, 2005).

This necessity can be seen as being due to a lack of trust in Khartoum by the South. This mistrust is illustrated by the failure of previous peace agreements such as the Addis Ababa Agreement (UN Peacemaker 1972; Brown 2018, 207). This agreement had granted a degree of autonomy short of independence to the South but failed after President Ga'afar Nimeiri enforced Sharia Law over the predominantly Christian South, again plunging the country into civil war (Woodward 1990, 156–157; Brown 2018, 233–234 and 254–255). This also illustrates the tip in the balance of legitimacy towards the secessionists, since a decline in legitimacy of the parent state due to rights abuses was met with a perceived rise in legitimacy of the secessionist state, as illustrated by the referendum.[6]

It is worth mentioning at this point that the religious aspect of the conflict may have influenced the recognition of South Sudan in that the independence movement became supported by the Christian lobby in the US. The interest and involvement of the US was due to the influence of American Evangelical Christians; according to Huliaras (2008, 163), this group of Christians took an interest in Sudan as they considered the Muslims of the North to be persecuting Christians in the South). It was due to their influence that the US became more involved in the Sudanese peace process, and 'under strong pressure from Washington, Khartoum and the rebels finally reached an agreement in Machakos, Kenya that acknowledged the right of the Southern Sudanese to self-determination' (Huliaras 2008, 171–172). This went on to develop into the CPA, which, at the behest of the United States, included the provision of a referendum for South Sudanese independence to be held in 2011 (Copeland 2013, 26).^[7]

From this it can be seen that the internal workings of third-party states, particularly democratic, powerful states, have a considerable impact on the likelihood that a secessionist movement will receive official recognition. This in turn shows how the recognition of secession can be affected by powerful states' self-interest. From a UN perspective it is worth noting that the US would be less likely to use its Security Council veto right to block admission of a new state if the admission of said state was in the US interest.

As previously seen in this chapter, whilst the UN Charter ostensibly supports self-determination, it cannot be interpreted as a general right to secede due to the detrimental effect such a precedent would have on the international system of states as we know it. However, the granting of recognition to the independence of South Sudan can be justified morally both as an act of remedial secession, upholding R2P and as an act of conflict

The United Nations, Self-Determination, State Failure and Secession

Written by Ed Brown

resolution. Although, as will be seen in the next case study, the same pragmatism and principle is not always employed by the international community and does not always lead to accession to the UN leading to an argument that the UN only supports remedial secession from failed states in cases of *ongoing* civil war.^[7]

Case Study: Somaliland

Somaliland is a secessionist state in the north of Somalia that does not have a seat in the UNGA, nor is it recognised by any UN member state. Somalia itself is the archetypal Weberian failed state. It has been without an effective government, at least in terms of providing security for its citizens, since the fall of Siad Barre in 1991 and groups around the country control various regions, meaning that the Mogadishu government does not have the monopoly on the use of force (Stremlau 2019). It topped the *Foreign Policy/Fund for Peace* failed/fragile states index from 2008–13 and has been ranked in the top two to date (Fund For Peace 2018). In the north of the country there is a secessionist entity known as Somaliland, which has been shown to have its own functioning democratic government (Stremlau 2019).

Somaliland arguably fits the criteria for remedial secession under the auspices of R2P. This is due to the Mogadishu government not upholding its side of the social contract in so much as it is unable to provide security to its citizens. This is illustrated by the Somali government not being in control of the majority of its territory, Somaliland included, for decades and therefore being unable to protect its citizens from atrocities (such as attacks by Al-Shabaab) or to provide basic security. This is compounded by the fact that there have been reports of government forces raping, murdering and looting Somali citizens, the looting being attributed to the fact that these forces were often not paid by the government and are therefore forced to rely on looting for survival, further undermining the legitimacy of the Somali government (Hanson and Kaplan 2008). Further to this, the Federal Government of Somalia (formerly Transitional Federal Government) is not representative of Somaliland. Whilst the Somali Government claims Somaliland as a federal entity within a united Somalia, the Issaq clan (the dominant clan in Somaliland), have so far refused to participate, meaning that the Somali government cannot claim to have 'a government representing the whole people belonging to the territory' as expressed in UNGA Resolution 2625(XXV). Somaliland's lack of UN membership could possibly refute the earlier point about the violation of UNGA Resolution 2625(XXV) being a catalyst to UN membership for a remedial secession.

One could argue that this discrepancy is due to the fact that the citizens of Somaliland are not an ethnic minority, however it can be argued that the Issaq clan is still a distinct group within Somalia that have suffered past persecution and discrimination at the hands of the central government, as this chapter will see, and the current recognised government of Somalia is incapable of protecting this group from future persecution. As such, in this case at least, the desired quality for a government to be 'representing the whole people belonging to the territory' as UNGA Resolution 2625(XXV) stipulates, does not necessarily refer to ethnic minorities alone.

Importantly, an overwhelming majority (97%) of the population of Somaliland voted in favour of the constitution, which reaffirmed support for independence (Farley 2011). As seen in the South Sudan, referendum supporting independence among other factors, which combined with a lack of legitimacy of the parent state, led to recognition and UN membership. Yet this has not been the case with Somaliland. This shows a major inconsistency in the attitudes of the UN and its members towards secession from failed states when looking at this particular set of factors. The difference here is that the secession of Somaliland is not causing conflict on the scale of the Sudanese Civil War.^[8] It can even be said that Somaliland is a victim of its success now, its relative stability and peaceful existence mean that it can be more easily ignored by the wider international community (Keating 2018). Geldenhuys (2009, 139) elaborates on this, stating that 'its peace and stability amid the turmoil of Somalia did not capture media headlines or arouse humanitarian concerns'. This also shows that when self-determination through secession from failed states is condoned in the UN, it is linked to the UN's role as a peacemaker. It also shows that secession attempts, even when not recognised by anyone, can lead to a relatively stable and peaceful co-existence. The UN role in the conflict mediation in the Sudanese Civil War showed that such negotiations can lead to self-determination through secession. However, if there is no major conflict to mediate, then it appears unlikely that a secession from a failed state will achieve UN membership, as the case of Somaliland illustrates.

The United Nations, Self-Determination, State Failure and Secession

Written by Ed Brown

Another somewhat anomalous feature about Somaliland's lack of UN membership is that the secessionist claim of Somaliland is based upon the original colonial border between British Somaliland and Italian Somalia. Indeed, Somaliland had briefly been a separate nation following decolonisation and prior to a union with Somalia a matter of days later. Thus, Somaliland's claim for independence could be seen as the dissolution of a union rather than a unilateral secession, and so fears over setting a precedent that could undermine the international norm of territorial integrity should be less of a concern. This is because it will be a reversion to previous borders rather than creating new ones, as has previously been accepted by the international community in cases such as the dissolution of the USSR, the breakup of Czechoslovakia and Yugoslavia. It seems there is something of an inconsistency here in how secessionist states in post-colonial Africa have gained UN membership. Post-colonial secessions such as Eritrea and, as we have seen, South Sudan have gained UN membership, yet Somaliland has not. One can argue that this is due to the oppression that the Eritreans and South Sudanese faced at the hands of their respective parent states, giving them the right to remedial secession under the auspices of R2P. However, Somaliland has a similar claim due to the persecution the Isaaq clan faced under the presidency of Barre. For example, according to Worthington (2004), opposition to Barre's rule amongst the Issaq had been met with:

[T]he extraordinary situation in which Barre's aircraft would take off from Hargeysa [sic] airport, bomb and strafe the city, load up again at the airport and carry on. They continued until there were 50,000 dead in Hargeysa and hundreds of thousands of dead in the rest of Somaliland...the rest of the population fled. That was the most extreme attempt at genocide against the dominant Isaaq [sic] clan.

However, related to the aforementioned point about Somaliland's current relative peaceful existence, the fact that there is no ongoing, highly destructive conflict specifically regarding the secession of Somaliland can explain a lack of UN mediation on the issue and be a possibility as to why Somaliland has yet to achieve UN membership. However, the Mogadishu government remains both unrepresentative of Somaliland and unable to uphold security in the region. Importantly, Somaliland has proven to be relatively secure, even showing the beginnings of democracy, having held a number of elections and being classified as 'partly free' and an 'emerging democracy' by Thinktank Freedom House (Keating 2018). This means that Mogadishu's claim on Somaliland can be seen as illegitimate based on both UNGA Resolution 2625(XXV) and R2P.

Analysis

In the case of the secession of South Sudan it was an apparent lack of legitimacy of the parent state that allowed the secessionists passage to UN accession based around UNGA Resolution 2625(XXV) (Brown 2018, 227-229; Gettleman 2011). In addition to this, when one considers the UN principle of R2P, it compounds the case for allowing UN membership based on the principle of remedial secession. However, it would seem that this is a case of principle justifying pragmatism, and that allowing a seat to remedial secessionists, from a failed state or otherwise, is the exception rather than the rule. We have seen that Somaliland remains unrecognised. This is despite having many similar features to the secession of South Sudan, in which the secessionists succeeded in becoming UN members. Such features include, being unrepresented in its parent state, having suffered oppression at the hands of the state and holding the balance of legitimacy over its parent state based on these factors, plus the parent state's inability to govern.

Whilst conflict resolution can be seen to have played a part in the admission of South Sudan to the UN, it must be noted that even in cases of conflict resolution secessionist states have not necessarily been admitted to the UN; an example of this would be South Ossetia and Abkhazia. An analysis of these conflicts is outside the scope of this chapter; however, it is important to note that the interests of the global powers, most notably the P-5, have a great bearing on whether new states become UN members. For example, the secession of Abkhazia and South Ossetia was opposed by NATO (2008), of which the US, France and the UK are members. The interests of these countries in opposing this secession is shown by the fact that the parent state in question, Georgia, is a prospective member of NATO (2019). This illustrates that the self-interest of states, particularly those on the P-5, can hinder a secessionist state's hopes of becoming a UN member. Likewise, support of a powerful patron-state (along with a lack of opposition from other powerful states) can increase the likelihood of a state gaining recognition. This was seen in the US support for the independence of South Sudan. Conversely it would appear that the secession of Somaliland is

The United Nations, Self-Determination, State Failure and Secession

Written by Ed Brown

largely inconsequential to the global powers.

As previously mentioned, it is not the UN that recognises states as such, but grants membership based on the recognition of its member states; however, its member states can, ostensibly, use UN principles such as the UN Charter, UNGA Resolution 2625(XXV) and R2P, as supported in the UN resolution following the 2005 World Summit Outcome, in order to inform their decision to recognise a secessionist state. It would seem that it is in the general interest of states to uphold the primacy of territorial integrity, even in cases where a secession is causing conflict. These principles that can be interpreted to support remedial secession from a failed state are only interpreted as such in cases where pragmatic conflict resolution is combined with recent oppression of the people of the secessionist state. They are also only interpreted as such when the secession in question does not go against the interests of the P5. This is in order to uphold the international states system as we know it. This chapter will conclude by assessing how appropriate this stance is.

Conclusions

The UN line on self-determination through secession is such that secessionist states are unlikely to gain membership as the principle of territorial integrity holds primacy, which initially would show it to be a foe to self-determination through secession. However, as has been seen in cases such as South Sudan, the principle of territorial integrity is not absolute and has limits, most notably when the parent state is not fulfilling its side of the social contract by failing to provide security for its citizens. However, so far, the UN has not voiced support for the admission of secessionist states without the consent of the parent state (Orakhelashvili 2008, 8). This has sometimes been as part of a peace settlement, such as in the case of South Sudan, and if the failure of the parent state to provide security is down to direct oppression and persecution that is an ongoing concern. The principle of allowing these exceptions to the primacy of territorial integrity can be linked to UNGA Resolutions 545(VI) and 2625(XXV) and R2P, which would show the UN to be a friend to self-determination through secession in this instance. However, there is an argument, as noted in the introduction, that cases of *passive* failure to provide basic security and rights. This was evident in the case of Somalia, as illustrated by the aforementioned inability of the Somali government to prevent its forces raping and looting. This can invoke the same principles. The fact that Somaliland is not a UN member would show the UN to be a foe to self-determination through secession in this instance.

As previously noted, the settlements that saw South Sudan become recognised were part of a negotiation for the resolution of conflict between the secessionists and their parent state. This indicates that the eventual admission of these states to the UN was a pragmatic move in order to create stability in the respective regions. This pragmatism can be further morally justified by the remedial right to secede and R2P, and its legitimacy justified by caveats such as UNGA Resolution 2625(XXV). However, arguably it would be just as pragmatic and moral to allow Somaliland to join the UN. It can be seen as compensation for the past wrongs of Barre, as well as promoting stability in at least part of Somalia, a country that is otherwise a failed state. This inconsistency can be explained since, as noted, Somaliland itself is not a major international security concern and thus does not warrant UN mediation in negotiations that could lead to recognition and UN membership. It was also not in the interests of any of the P-5 to recognise; both of these factors are in contrast to the case of South Sudan. Thus, keeping a somewhat ambiguous approach allows the UN to admit new members in cases of pressing threats to international security such as ongoing conflict, yet prevents a mass proliferation of states that could undermine the international states system, and also allows the P-5 to uphold their interests.

The issue of state failure has been observed to be taken into account by the UN in the case of South Sudan. Thus, ostensibly one could argue that the UN is a friend to self-determination via secession if the balance of legitimacy is tipped towards the secessionists. However, the fact that Somaliland is not yet a UN member can be argued to refute this observation, thus it could be argued that the lack of legitimacy of a parent state and potential increased legitimacy of the secessionist state is only taken into account in cases of a pragmatic response to conflict resolution and when such secession does not contravene the interests of the P-5. The case of South Sudan showed that the UN can be a friend to self-determination through secession in the context of state failure when required to facilitate mediation of conflict resolution that may result in secession (possibly at the behest of a major power). In such an incidence UN resolutions and principles can be interpreted as supporting such secessions, so long as none of the

The United Nations, Self-Determination, State Failure and Secession

Written by Ed Brown

P-5 object. However, the UN is a foe to self-determination through secession in the context of state failure when there is not an immediate security threat and such a secession is not supported by a major P-5 power, as Somaliland has shown. This, however, fits in with the principle of territorial integrity which is a major principle of the UN and supported throughout the international community as it prevents a precedent that could undermine the international system of states. This means that the UN being a friend to self-determination via secession, even in the case of secession from failed states, is the exception rather than the rule.

Notes

[1] Whilst accession to the UN does not necessarily mean a state has achieved universal recognition, most members who vote in the UN General Assembly are generally recognised to be states (Aust 2005, 18).

[2] Scotland can be seen as an example of both forms of self-determination, since it held a referendum on independence as well as holding a degree of autonomy through the Scottish Parliament.

[3] It must be noted that Weber was a sociologist, however, in this context he was discussing the role of force in statehood, an issue which crosses the disciplines of sociology and politics.

[4] It must be noted that it is not always mistreated minorities that want to secede; however, this chapter is exploring the idea that minorities within a failed state which is unwilling and/or unable to uphold minority rights, and in some cases have been actively persecuted, have a case for UN membership based on the remedial right to secede.

[5] A detailed discussion of the difference between achieving peace and achieving justice is outside the scope of this chapter.

[6] An analysis of the legitimacy of South Sudan following secession is outside the scope of this chapter as the chapter is concerned with the current attitude of the UN towards membership of secessionist states rather than the aftermath of secession.

[7] For the purposes of studying the UN attitude to secession from failed states, the post-independence conflict within South Sudan will not be considered as it is outside the scope of the chapter.

[8] Whilst the Somali civil war is ongoing and was a factor which led to Somaliland's secession, the secession itself is not causing a highly destructive war on the scale of that in Sudan (border skirmishes with neighbouring Puntland notwithstanding).

References

Anaya, James S. 1996. *Indigenous Peoples in International Law*. New York: Oxford University Press.

Aust, Anthony. 2005. *Handbook of International Law*. Cambridge: Cambridge University Press.

BBC. 2011. "South Sudan referendum: 99% vote for independence." *BBC*, January 30, 2011.

<http://www.bbc.co.uk/news/world-africa-12317927>.

Brown, Edmund. 2018. "Secession from Failed States: Ethical and Practical Issues with Current Approaches." Ph.D. diss., University of Leicester.

Buchanan, Allen. 1997. "Theories of Secession." *Philosophy and Public Affairs* 26(1): 31-61.

Buchanan, Allen. 2004. *Justice, Legitimacy and Self-Determination: Moral Foundations for International Law*. New York: Oxford University Press.

The United Nations, Self-Determination, State Failure and Secession

Written by Ed Brown

Copeland, Eddie. 2013. "New State Formation: The Case of South Sudan." MA diss., University of Leicester.

Eckert, Amy E. 2002. "Constructing States: The Role of the International Community in the Creation of New States." *Journal of Public and International Affairs* 13: 19–39.

Farley, Ben. 2001. "Recognition of Somaliland Overdue." *World Politics Review*, January 26, 2011.

<http://www.worldpoliticsreview.com/articles/7673/recognition-of-somaliland-overdue>.

Fund For Peace. 2018. "Fragile States Index 2018." Accessed August 13, 2018. <http://fundforpeace.org/fsi/data/>.

Fund For Peace. 2019. *Fragile States Index: Annual Report 2019*. Washington D.C.: The Fund for Peace.

<http://fundforpeace.org/wp-content/uploads/2019/04/9511904-fragilestatesindex.pdf>.

Geldenhuis, Deon. 2009. *Contested States in World Politics*. London: Palgrave Macmillan.

Hanson, Stephanie, and Eben Kaplan. 2008. "Somalia's Transitional Government." *Council on Foreign Relations*, May 12, 2008.

<http://www.cfr.org/somalia/somalias-transitional-government/p12475>.

Huliaras, Asteris. 2008. "The Evangelical Roots of US Africa Policy." *Survival* 50(6): 161–182.

Janik, Ralph. 2013. "The Responsibility to Protect as an Impetus for Secessionist Movements: On the Necessity to Re-Think Territorial Integrity." In *Grenzen im Völkerrecht*, edited by Matthias Kettmann, 41–69. Vienna: Jan Sramek Verlag.

Keating, Joshua. 2018. "When is a nation not a nation: Somaliland's dream of independence." *The Guardian*, July 20, 2018. <https://www.theguardian.com/news/2018/jul/20/when-is-a-nation-not-a-nation-somalilands-dream-of-independence>.

Kuperman, Alan J. 2009. "Rethinking the Responsibility to Protect." *The Whitehead Journal of Diplomacy and International Relations* 10(1): 19–29.

Montevideo Convention on the Rights and Duties of States, Montevideo, December 26, 1933, *United Nations Treaty Series*, 165(3802): 19–45, available from <https://treaties.un.org/doc/Publication/UNTS/LON/Volume%20165/v165.pdf>.

NATO. 2008. "Statement by the North Atlantic Council on the Russian Recognition of South Ossetia and Abkhazia regions of Georgia." Last updated August 22, 2009. http://www.nato.int/cps/en/natohq/news_43517.htm?selectedLocale=en.

NATO. 2019. "Enlargement." Last updated February 15, 2019. https://www.nato.int/cps/en/natohq/topics_49212.htm.

Orakhelashvili, Alexander. "Statehood, Recognition and the United Nations System: A Unilateral Declaration of Independence in Kosovo." In *Max Planck Yearbook of United Nations Law*, edited by A. Armin von Bogdandy and Rudiger Wolfrum, Volume 12, 1–144. https://www.mpil.de/files/pdf2/mpunyb_01_orakhel_12.pdf.

Pavkovic, Aleksandar, and Peter Radan. 2007. *Creating New States: Theory and Practice of Secession*. Aldershot: Ashgate.

The United Nations, Self-Determination, State Failure and Secession

Written by Ed Brown

Pellet, Alain. 1992. "The opinions of the Badinter Arbitration Committee: A Second Breath for the Self-Determination of Peoples." *European Journal of International Law* 3(1): 178–185.

Potter Donald. W. 2004. "State Responsibility, Sovereignty, and Failed States." Refereed paper presented to the Australasian Political Studies Association Conference, University of Adelaide, September 29–October 1, 2004, available from <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22media/pressrel/WS1F6%22>.

Rich, Roland. 1993. "Recognition of States: The Collapse of Yugoslavia and the Soviet Union." *The European Journal of International Law* 38(4): 36–65.

Ryngaert, Cedric, and Nico Schrijver. 2015. "Lessons Learned from the Srebrenica Massacre: From UN Peacekeeping Reform to Legal Responsibility." *Netherlands International Review* (62)2: 219–227.

Sharkey, Heather J. 2008. "Arab Identity and Ideology in Sudan: The Politics of Language, Identity and Race." *African Affairs* 107(426): 21–43.

Stremlau, Nicole. 2019. "Governance Without Government in the Somali Territories." *Journal of International Affairs*, January 9, 2019.

<https://jia.sipa.columbia.edu/governance-without-government-somali-territories>.

The Comprehensive Peace Agreement Between the Government of the Republic of the Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army. *UNMIS*, January 9, 2005, Machakos Protocol. https://unmis.unmissions.org/sites/default/files/old_dnn/cpa-en.pdf.

UN Office on Genocide Prevention and the Responsibility to Protect. 2019. "Responsibility to Protect: About." Accessed October 2, 2019. <https://www.un.org/en/genocideprevention/about-responsibility-to-protect.shtml>.

UN Peacemaker. 1972. The Addis Ababa Agreement on the Problem of South Sudan. *UN Department of Political and Peacebuilding Affairs*, February 27, 1972. https://peacemaker.un.org/sites/peacemaker.un.org/files/SD_720312__Addis%20Ababa%20Agreement%20on%20the%20Problem%20of%20South%20Sudan.pdf.

United Nations. 1945. *Charter of the United Nations and the Statute of the International Court of Justice*. San Francisco: United Nations Press. <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>.

United Nations. 1996. "The United Nations and Somalia 1992–1996" *The United Nations Blue Book Series* Volume VIII, New York: United Nations Publication.

United Nations. 2019. "About UN Membership." Accessed October 2, 2019. <http://www.un.org/en/sections/member-states/about-un-membership/index.html>.

United Nations, Department of Public Information, *Outreach Programme on the Rwanda Genocide and the United Nations: The Responsibility to Protect*. Background Note, March 2012, <https://www.un.org/en/preventgenocide/rwanda/pdf/bgresponsibility.pdf>.

United Nations, General Assembly, *Implementing the Responsibility to Protect: Report of the Secretary General*, A/63/677 (12 January 2009), available from <https://www.undocs.org/en/A/63/677>.

United Nations General Assembly Resolution 545(VI), *Inclusion in the International Covenant or Covenants on Human Rights of an article relating to the Right of Peoples to Self-Determination*, A/RES/545(VI) (5 February 1952), available from [https://undocs.org/en/A/RES/545\(VI\)](https://undocs.org/en/A/RES/545(VI)).

The United Nations, Self-Determination, State Failure and Secession

Written by Ed Brown

United Nations General Assembly Resolution 1514(XV), *Declaration on the Granting of Independence to Colonial Countries and Peoples*, A/RES/1514(XV) (14 December 1960), available from [https://www.undocs.org/en/A/RES/1514\(XV\)](https://www.undocs.org/en/A/RES/1514(XV)).

United Nations General Assembly Resolution 2625(XXV), *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, A/RES/2625(XXV) (24 October 1970), available from [https://www.undocs.org/en/A/RES/2625\(XXV\)](https://www.undocs.org/en/A/RES/2625(XXV)).

United Nations General Assembly Resolution 60/1, *2005 World Summit Outcome*, A/RES/60/1 (16 September 2005), available from <https://www.undocs.org/en/A/RES/60/1>.

United Nations Mission in Sudan. 2005.

Weber, Max. 1919. *Politics as a Vocation*.

<http://anthropos-lab.net/wp/wp-content/uploads/2011/12/Weber-Politics-as-a-Vocation.pdf>.

Weller Marc. 1992. "The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia" *The American Journal of International Law* 86(3): 569–607.

Woodward, Peter. 1990. *Sudan 1898–1989: The Unstable State*. Boulder: Lynne Rienner Publishers Inc.

Worthington, Tony. 2004. "Statement on Somaliland." *Westminster Hall Debates* Vol. 417, Part No. 534, Column 273WH, February 4, 2004. <http://www.publications.parliament.uk/pa/cm200304/cmhansrd/vo040204/halltext/40204h03.htm>.

About the author:

Ed Brown is a tutor and distance learning tutor at the University of Leicester. His Ph.D. focused on secession from failed states and the ethical and pragmatic issues surrounding it. He has presented papers on self-determination, secession and state failure at several conferences, including for the British International History Group and the International Association for Peace and Conflict Studies. He has also written book reviews for journals such as the *Commonwealth Journal of International Affairs*.