

The Precarious History of the UN towards Self-Determination

Written by Jakob R. Avgustin

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JAKOB R. AVGUSTIN, FEB 18 2020

This is an advance preview from the forthcoming E-IR Edited Collection *The United Nations: Friend or Foe of Self-Determination?*

The principle of self-determination found its way into international law with Articles 1 and 55 of the United Nations (UN) Charter in 1945, followed by the UN General Assembly Declaration on the Granting of Independence to Colonial Countries and Peoples in 1960. With the Declaration on Principles of International Law concerning Friendly Relations in 1970, the UN General Assembly then expanded the concept of self-determination beyond decolonisation. However, the practical complications with sometimes violent effects of various interpretations of the concept have only been exacerbated by the 'absence of any institutional framework or guidelines for the examination of self-determination claims under international law' (Quane 1998). Despite this legal void, the UN has continued to attempt to facilitate self-determination processes in many cases. While there is some evidence that UN Security Council involvement can significantly reduce the possibility of self-determination movements 'turning violent' (Beardsley, Cunningham and White 2015), there is no comprehensive evidence characterising the general role of UN actions in upholding the principle of self-determination. The record varies for example from promises to facilitate a self-determination vote in Western Sahara to final success after massive failures in East Timor. The question therefore remains, whether the UN and its actions have enabled self-determination movements to succeed and to what degree, or whether the UN has in fact generally hindered self-determination claims contrary to its own Charter.

The purpose of this collection is therefore to appraise the role of the UN in relation to the principle of self-determination by illustrating through case studies and real-world examples. This book takes a very practical approach to discussing what role the UN has played in cases of self-determination and importantly, it also ventures beyond the usual discussions of the inherent conflict between self-determination and sovereignty. The contributing authors have looked at the application of the principle of self-determination, each through their own lens of circumstance – not just in terms of case studies presented, but in the framework used. Each chapter can be seen as a stand-alone study of the role of the UN. Though together they demonstrate a holistic representation of the complexity that is the UN and the principle of self-determination itself.

In the first chapter, Tomiak introduces self-determination as a process, arguing that the achievement of independence and sovereignty as a result of the (successful) implementation of self-determination is not and should not be understood as an endpoint. Using the example of South Sudan, Tomiak shows how internal self-determination is a continuing struggle not just in terms of all the peoples of South Sudan and the accompanying violence and power struggles, but also due to the lingering role of the UN in this post-independence phase. Similarly, R. Avgustin, in the second chapter showcasing the example of East Timor, argues that even after the independence referendum was finally held and its results implemented, the people of East Timor gained a new master in the form of the UN. In both cases, it could be concluded that the UN eventually could be understood as a friend to the principle of self-determination in terms of the two nations achieving statehood, and both cases are hailed as eventual success stories in that respect. However, both authors also uncover that the role of the UN must be appraised not only in the phases leading up to independence, but very critically also in the phases post-independence with regard to internal self-determination, i.e. sovereignty even from the UN itself.

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Internal self-determination is very much at the heart of the third chapter, where Lightfoot and MacDonald look into the role of the UN when it comes to Indigenous peoples and their self-determination. Addressing how Indigenous peoples were first excluded from creating and building the UN system and then denied self-determination when the world was de-colonising, their study demonstrates how the Indigenous peoples gained influence internationally. Lightfoot and MacDonald conclude that while the UN has the potential to advance the self-determination of Indigenous peoples, its state-centrism continues to hinder that progress – for the Indigenous peoples and the UN itself. The chapter concludes with venturing even further, exploring possibilities and opportunities of future self-determination, which may involve multiple and plural sovereignties, thereby challenging the notion of state-related self-determination altogether.

In the fourth chapter, Carletti provides an in-depth exploration of the UN vision in terms of coping with post-intrastate conflict situations and the relevance of the internal pattern of self-determination, taking into account the so-called hybrid self-determination. This new interpretation of the principle has emerged as an answer to some of the past failures of sustaining peace. The last part of this chapter investigates the feasibility of this new concept and its impact on the examples of Papua New Guinea, Sri Lanka and Nepal. The impact of peace agreements which have included this hybrid self-determination component is evaluated showing the different scopes and roles the UN has/would have to adopt accordingly. These in turn set out challenges for the UN in testing and renewing its role and mandate in contemporary conflict, especially when involving a case of self-determination.

Repeatedly, it would seem that the models of external and internal self-determination might not be sufficient altogether when it comes to offering possible solutions to conflict. As argued by van den Berg and Nowak in the fifth chapter, the existing UN state-focused paradigm has been unsuccessful in bringing forward a lasting solution for the Cyprus conflict. Suggesting a shift from the current UN model, van den Berg and Nowak look beyond existing interpretations and explore the balancing approach and the human rights approach and test them on the case of Cyprus. Solving conflicts by suggesting a (UN) paradigm shift is the framework also used by Brown in the sixth chapter examining the cases of South Sudan and Somaliland. Investigating the UN stance in cases of state failure and secession, he argues that the remedial right to secede which would complement Responsibility to Protect activities could effectively be used not only to stop violence occurring due to state failure and consequent secession, but would enable the international community and the UN to approach and process cases of self-determination on a more fair basis for all parties involved. Interestingly, it seems that the ‘friendliness’ of the UN with regard to self-determination in cases of state failure and secession seems to wane when there is no immediate threat of violence.

This conditionality of the approach to self-determination is also explored by Crivelente in the seventh chapter. Discussions on what makes a people and how that influences the right to exercise the right to self-determination shows that the UN has been either unable or unwilling to keep decades of its own promises in the examined cases of Palestine and Western Sahara. The right to self-determination has become part of the resistance struggle and vice-versa, and the UN has been challenged not only to deal with calls for self-determination, but also with calls to respond to what is in effect ongoing colonisation. However, the UN is often locked by geopolitical considerations as is obvious also from Westcott’s analysis of Jammu and Kashmir in the eighth chapter. The case study shows that while the UN advocates the right to self-determination, in practice – and especially when it comes to major states, it definitely favours the principle of territorial sovereignty. The people of Jammu and Kashmir and their say in the matter have been ignored altogether, making the UN a foe not only regarding the right to self-determination, but also towards the violence and human rights abuses it so often condemns and deplors in its statements.

Questioning what makes a state enough of a state for the UN, opens up the discussions on the accession of micro-states to the UN as explored by Simpson in the final chapter. Sovereign and independent after de-colonisation, micro-states sought UN membership to solidify their self-determination. Despite all the discussions on size and accession criteria, as well as what constitutes full self-governance, Simpson demonstrates that in fact none of these bore an impact to their achieving UN membership. Although the process may not have been the same for accession during the Cold War and since, and even though concerns may have been genuine, in this case the UN has been successfully empowering and most clearly a friend of self-determination.

While the collection could have been a dry list of case studies, all appraising the role of the UN in the process of the

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right to self-determination being pursued and/or achieved, these chapters offer much more. There are critical insights into what happens after statehood is achieved, for example in South Sudan and East Timor and whether the UN continues to uphold its chartered principles. There are argumentations that the classical interpretation of self-determination, pre-determined by the system's and the UN's state-centrism which worked for the era of decolonisation, needs to evolve to encompass the issues of today, e.g. intra-state conflict, transnational self-determination, secession from failed states, peoples and struggles that do not fit into the existing definitions. Strangely enough, it would seem that only in the case of micro-states has the UN played an active and positive role throughout. As demonstrated with examples from Papua New Guinea, Nepal and Sri Lanka, Indigenous peoples, South Sudan and Somaliland, Palestine and Western Sahara, the principle has indeed been evolving, even if with very little help and impetus from the UN itself.

Moving away from or beyond the existing UN paradigm might bring forward better and sustainable solutions for some of the longest-lasting conflicts, like the situation in Cyprus. A paradigm shift would certainly be needed for any serious renewed approaches for a UN-brokered solution in Jammu and Kashmir. As this collection is going to print, India has been actively destabilising the fragile peace currently in place by further deteriorating the status of the people in Jammu and Kashmir in spite of all its obligations under the UN Charter and numerous declarations and resolutions. This collection could have easily concluded that the role of the UN is always circumstantial, and it could have subscribed to the realist interpretation of the UN as merely a sum of its members, where the principle of territorial sovereignty and the interests of the major powers always dictate the situation. Or that self-determination only really happens when there are no perceived threats to that kind of state of affairs. Perhaps the classical 'original-sin' debate on how and why the right to self-determination inherently erodes state sovereignty should be re-defined; understanding that self-determination of the future is not necessarily state-based, as suggested, would require a very different international community and a very different UN. The most important contribution of this collection therefore lies in finding evidence of this evolving principle of self-determination and opportunities for its application beyond the existing UN paradigm.

References

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Jakob R. Avgustin received his Ph.D. in International Relations from the University of Ljubljana in 2016. He is Editor-at-Large at E-International Relations and works in the Academic Services Office at the University of East Anglia. He researches the use of military force in international relations, particularly when authorised by the UN Security Council. His publications include *Realism in Practice: An Appraisal* (co-editor), and articles in *Sociology of Diplomacy: Initial Reading* and *Acta Diplomatica*. He is currently working on a chapter in an edited collection on Great Powers and post-Yugoslav states.