Review of International Studies (1997), 23, 167–184 *Copyright © British International Studies Association*

The narrow gate: entry to the club of sovereign states

ÖYVIND ÖSTERUD

Introduction

Territorial secession and dissolution of empire means a challenge to the established system of states. How are the criteria for recognition of new states worked out? How is the gatekeeping to statehood performed? We shall sort out the answers by putting the new post-Cold War challenge into historical perspective. It is not only a question of changing criteria of entry to the system of states, but also one of a change in the state system whereby the quest for 'criteria of admission' became meaningful. The question of 'gatekeeping' is therefore intrinsically linked up with the modern evolution of the state system as such. The article is structured in a way that will specify this linkage historically.

The state system has expanded in three major waves during the twentieth century. First, the Ottoman and Habsburg Empires collapsed with defeat in war. Successor states multiplied, partly according to an ill-defined principle of nationality and partly under the direction of the victorious powers. Second, decolonization proceeded from the late 1950s, according to rules eventually worked out in the United Nations. Third, the Soviet Union, as heir to the Romanov Empire, imploded in 1989–90, giving the republics within the union a free hand. Likewise, multinational federations which had succeeded the European empires after 1918—Czechoslovakia and Yugoslavia—broke up in ethno-national turmoil, the first through a negotiated secession, and the second in a complex inter-ethnic and inter-republican war.

At present there are about 200 political entities called states. Some of them have emerged in long-term historical trajectories; others according to fairly clear-cut UN guidelines; others, again, after acute political upheavals. Criteria for recognized statehood have changed over time, at least during the nineteenth and twentieth centuries. A pattern may be discerned in the quest for criteria, which is also a clue to the character of the state system. It is this pattern that we shall spell out here.

The political division of the globe into territorially delineated states has become a universal mode of organization, with fairly little ambiguity remaining. This principle of systemic organization gives an illusion of clarity. The evolution of the state system is historically obscure, the criteria for statehood seem rather erratic, and the status of sovereignty is both politically contested and conceptually diffuse. The question of externally legitimate statehood is thus a paramount topic in contemporary international politics.

https://doi.org/10.1017/S0260210597001678 Published online by Cambridge University Press

Academically, the problem hovers at the interface between international relations and diplomatic history on the one hand, and international law on the other. Martin Wight has traced the origins and development of the states system, but the transformed criteria of statehood were left somewhat in the shadows.[1] F. H. Hinsley likewise outlined the grand history of interstate relations, but basically as an exercise in the history of ideas.[2] Higgins and Crawford have analyzed the creation of states, but principally confined to the realm of international law.[3] In a collective volume edited by Bull and Watson, a range of fascinating aspects of the expansion of the modern states system is analyzed, but still without any consistent focus on the evolving criteria for gatekeeping.[4]

After three decades of colonial liberation, this problem deserves reconsideration. At first glance, the external criteria of statehood have become gradually more specific during the twentieth century, from the Hague Conferences to the modern UN doctrine. But while the formal solidity of the idea of the state system may have increased, the conceptual ambiguities of this system have, paradoxically, proliferated. The following account is put forward as a step towards a more specific diagnosis of this dual state of affairs.

A chronological analysis of the evolving criteria for statehood and interstate recognition is presented in the following sections, from the non-codified system of diplomatic practice in the nineteenth century to the UN doctrine of decolonization after World War II. The historical exposition is then summed up in the thesis of a dual system of post-colonial 'gatekeeping', and the post-Cold War situation of imperial dissolution and break-up of states is characterized in a concise diagnosis. The overall conclusion is that no consistent pattern of rules for entry to the state system has emerged.

The quest for statehood

Sovereign statehood is the key for entry to a privileged, exclusive club. That is why decolonization became such an irresistible wave. That is why even the status of Outer Mongolia is enviable to the Tibetans. That is why the Kurds and the Basques and the Palestinians are so desperate in their demands. That is why 'imperialism' is such a potent symbol of illegitimacy.

There is still some proliferation of new political entities recognized as states, but this is mainly limited to the successors of Communist multinational states and to a few leftovers from European overseas empires. Otherwise, club membership is closed in favour of the territorial integrity of established states. The organization of the globe into these formally independent units is basically regarded as a process that is now complete, with the exception of the struggle for Israel–Palestine, and a few remnants of empire.

[1] Martin Wight, *Systems of States*, ed. Hedley Bull (Leicester, 1977).
[2] F. H. Hinsley, *Power and the Pursuit of Peace* (Cambridge, 1963).
[3] Rosalyn Higgins, *The Development of International Law through the Political Organs of the United Nations*, part I (Oxford, 1963); James Crawford, *The Creation of States in International Law* (Oxford 1979).
[4] Hedley Bull and Adam Watson (eds.), *The Expansion of International Society* (Oxford, 1984).

https://doi.org/10.1017/S0260210597001678 Published online by Cambridge University Press

This system nevertheless faces a legitimacy crisis. The boundaries of states are often hotly contested. A substantial number of groups are demanding their own sovereign statehood, or territorial transfer to an adjacent state. Secessionist and irredentist movements are questioning the legitimacy of established sovereignty, arguing their claims in terms of the celebrated principle of nationality: the principle is not fulfilled, they maintain, since the idea of national liberation is intrinsically violated by the established state order.

On nationalist premises, the principle of nationality would be fulfilled with the satisfaction of all demands for statehood.[5] The state system can never, however, be 'completed' in any meaningful way. This basic premise of idealistic ethno-nationalism is false. There will continue to be a proliferation of ethnic groups constituting or reorganizing themselves, discovering, rediscovering or developing their 'nationality' in political terms. On every continent, political movements have been rising to correct or fulfil the state system through separate statehood; but they have often been opposed by counter-demands on identical premises, or been carrying within themselves their own provoked minorities.

A wide variety of criteria can be employed to delineate the political community of oppositional movements: language, religion, 'ethnicity', historical destiny. The Balkan problem of nationalities was not solved by the dissolution of the multi-national Habsburg Empire, as witnessed by the composition and eventual disaster of Yugoslavia. Unified states like France and Spain experienced a renewed potential for historically and culturally based regional separatism from the 1960s and 1970s. The Celtic fringe of the British Isles simultaneously regained its political consciousness. Separatism and irredentism along 'ethnic' lines have shaken a multitude of post-colonial states in Africa, Asia and Oceania. The fate of national minorities was underlined by the self-definition of established states as 'nation-states', striving to embody their national unity by cultural standardization, the assimilation of subgroups, and sustained *nation-building*. The principle of nationality was invoked to lend legitimacy to established states, while the same principle backlashed on those very units.

The idea of a 'complete' state system is untenable for several reasons. Often, the liberation of one group means the suppression of another. Self-determination for the Palestinians can principally be fulfilled by violating Israeli demands; or the converse: the Catholic vote in Northern Ireland is nullified by the Protestant Ulster majority, as this majority would be marginalized in a unified Irish republic; the solution is too often the problem. The choice of ethno-national marker—language or religion or collective destiny—frequently gives rise to conflicting nationalist claims, while ethnic identity as such is a plastic phenomenon, contextually and subjectively conditioned.

There is no upper limit to the potential number of nationalist claims to autonomy. On the basis of fairly distinct contemporary ethnic groups, the number of sovereign states would probably surpass 5,000, entailing a complete political reorganization of the globe. With ethnicity as a plastic phenomenon, the *reductio ad absurdum* argument against unlimited self-determination in a report to the French National

[5] Cf. Michael Walzer, 'The Reform of the International System', in Ö. Österud (ed.), *Studies of War and Peace* (Oslo and Oxford, 1986).

https://doi.org/10.1017/S0260210597001678 Published online by Cambridge University Press

Assembly in 1793 acquires even greater force: 'If . . . society had a right to proclaim its will and secede from the major unit . . . every district, every town, every village, every farmstead could declare itself independent'.[6]

This is the domino theory of secession *in extremis*, as the picture has in fact developed in the wake of decolonization. The quest for statehood is an unlimited quest. In nationalist terms the crisis of legitimacy has no viable solution. The key to the state system must lie elsewhere.

The state system

What is sovereign statehood? If external sovereignty is effective omnipotence, the very concept should be abandoned, as in fact several theorists have argued.[7] No state is an island in the absolute sense; indeed some states are highly dependent upon decisions made elsewhere. Sovereignty in the external sense may be seen as the recognition of a territorial polity as constitutionally independent. The sovereign state may be small, economically dependent, with a shaky power structure internally and few resources for self-assertion externally. But it is recognized as a member of the club of states in so far as no legitimate external authority controls its constitutional foundation.[8] Here is the key to international status. Texas is no such unit despite its vast resources and broad participation in an intercontinental network; tiny Tuvalu in the South Pacific, lacking both resources and participation, is. How did this incongruous situation come about?

There is no agreement on the historical evolution of the system of constitutionally sovereign states. Right up to this century the character of this system has been very obscure, although standard accounts locate the beginnings in early modern Europe. Wight argues that the origins may be found in the late fifteenth century, with the basic characteristics of a secular state system established by the mid-seventeenth century.[9] Renaissance Europe experienced the beginnings of a balance of power in inter-dynastic rivalries, and institutionalized diplomacy heralded the nascent system of territorial states. The 1648 Treaty of Westphalia codified the principles of the secular state system, setting domestic sovereignty above the authority of the Holy See, while a multiple balance of power emerged within the anomalous entity of the Holy Roman Empire. Wight's position is that the modern system of states established itself in early modern Europe during the period from the Renaissance to Westphalia. This standard view is supported by later studies in European state formation, stressing new military demands as a response to transformed technology, the growth of standing armies, and the concomitant initiation of professionalized

[6] The report was written by Lazare Carnot, and published in *Gazette nationale ou le Moniteur Universal*, 17 February 1793; cf. the extensive quotes in Erno Wittmann, *Past and Future of the Right of National Self-Determination* (Amsterdam, 1919), pp. 52ff.

[7] Cf. the discussion of the idea of sovereignty as absolute freedom in Joseph Frankel, *International Politics: Conflict and Harmony* (Harmondsworth, 1969), p. 38 and *passim*.

[8] Cf. Alan James, *Sovereign Statehood* (London 1986).

[9] Wight, *Systems of States*, pp. 110ff.

https://doi.org/10.1017/S0260210597001678 Published online by Cambridge University Press

diplomacy.[10] The state system thus became embedded in the technological revolution and the new means of centralized authority during the absolutist epoch.

Hinsley's argument, in contrast, is that historians traditionally have antedated the radical emergence of the new state system because of their preoccupation with its 'origins'.[11] The massive developments which transformed the European system, in his view, took place in the pre-Napoleonic decades. During the eighteenth century there emerged a new *conception* of Europe, one that captured the character of the modern state system. Hinsley's approach is thus one of inquiry into the intellectual changes of the epoch. His substantiation for the later chronology is provided by the formulations within eighteenth-century political philosophy and international law. His understanding is that the new conceptualization is intrinsic to the workings of the system.

Wight's methodology is not fundamentally different. He links together two fairly standard conceptions of modern interstate relations: the Renaissance and the Westphalian heritage. This chronology is then opposed to Hinsley's argument for the emergence of the modern system as late as the eighteenth century, based on a different account of the perceptions of statesmen and secularized international law.

How are we to judge? Both Wight and Hinsley hold that the character of the state system is produced and determined by the ideas of its members. The constituent elements are found in the explicit emergence of the conceptions of external sovereignty, balance of power, diplomacy and international law. Doctrine is a key to reality. In these terms Wight's book is a work of marvellous scholarship, with a well-organized wealth of documented insights. But his sampling of evidence is casual and his method impressionistic. In his Renaissance argument he mentions a case or two of princely expansion, an example of a 'balance' between two regents, a reference to new ways of diplomacy, and a few quotes from recent commentators on the decline of Catholic Christianity and the substitution of *raison d'état* for moral universality. These references may well indicate a transformation towards a new system of sovereign states, and the Renaissance is most certainly a crucial epoch; but Wight hardly manages to substantiate the conventional impression. After the collapse of medieval feudalism and papal authority, the state system began to evolve: that much is indisputable. But how drawn-out was the process, and what were the mechanisms?

Both Wight and Hinsley argue that the modern state system has several internal characteristics which did not necessarily evolve in a historically synchronized way.

The fact of formal sovereignty developed from an ecclesiastical community, with roots in the medieval church councils, and a secular codification by the Treaty of Westphalia. The mutual recognition of sovereignty, and particularly the principle of formal sovereign equality, belongs basically to the epoch after the Congress of Vienna.[12] The fact and conception of a balance of power of course is found even in antiquity, and can be traced continuously back at least to early modern Europe. The institutionalized diplomacy between dynasties, like exchange of ambassadors, 'summit meetings', and interstate congresses, was well established in Renaissance Europe.

[10] See Charles Tilly (ed.), *The Formation of National States in Western Europe* (Princeton, 1975). Cf. also, from radically different points of view, Gianfranco Poggi, *The Development of the Modern State* (London, 1978), and Perry Anderson, *Lineages of the Absolutist State* (London, 1974).

[11] Hinsley, *Power and the Pursuit of Peace*, p. 153.

[12] See Robert A. Klein, *Sovereign Equality among States: The History of an Idea* (Toronto, 1974).

https://doi.org/10.1017/S0260210597001678 Published online by Cambridge University Press

Modern international law, recognizing the idea of sovereign states, was pioneered by Grotius and Pufendorf in the seventeenth century, while the notion of collective security even predates the Renaissance system.[13]

The standard account of the expansion of the modern state system holds that it was established as a European system confined to the Christianity from which it originated; that it then included the European colonies in the Americas as peripheral members when they gained independence; that the Ottoman Empire became part of the system by treaty in the mid-nineteenth century—it was no longer based on similarity of culture—whereas Persia, Siam, China and Japan gained access about half a century later; and, finally, that the global extension of the system through universal decolonization took place from the 1950s and 1960s.[14]

This standard description has been challenged by C. H. Alexandrowicz, who concludes from a study of the East Indies and of treaty relations between Christian and non-Christian powers that regular diplomatic rules, developed also from non-Western influence, signify the status of pre-colonial sovereigns.[15] The major implication of this is that a number of new post-colonial states are the successors of pre-colonial principalities, recovering their ancient status, irrespective of the colonial violation of boundaries.

In defence of the orthodox view, it may be argued that the modern idea of statehood originated on European soil; that a European state system as opposed to clerical and imperial supremacy developed in the early modern epoch; and that there was a continuity of systemic expansion from the European core with the establishment and later dissolution of European colonialism.

But how did the admission criteria develop? Indeed, when did the notion of 'criteria' at all originate? Within the state system of *anciens régimes*, based on the dynastic principle of legitimation, new states were principally created through inter-dynastic marriage, or occasionally, as with the Low Countries, by revolutionary upheavals involving small pockets of republicanism. The recognition of states was expressed in such diplomatic practice as the exchange of ambassadors and treaty relationships.

The French Revolution, based on a popular principle of legitimacy, signalled a new instrument: the plebiscite as a substitute for dynastic marriage or annexation. But although plebiscites of a sort were employed to decide the sovereignty of fringe territories, the popular instrument did not generally replace the prescriptive and customary character of sovereign statehood. The question of the types and number of the units comprising the states system was faced in diplomatic and political practice but not as a question of principle.[16]

In the nineteenth century, the status of sovereign statehood still derived from the political fact of recognition. Diplomatic recognition was not based on explicit rules, but was a matter of finding a territorial authority sufficiently entrenched to justify normal diplomatic interchange with European powers. The fact of territorial control was transformed into international law through recognition. And recognition in turn

[13] Wight, *Systems of States*, pp. 149f.
[14] Ibid., p. 117; cf. Bull and Watson (eds.), *Expansion of International Society*.
[15] C. H. Alexandrowicz, *An Introduction to the History of the Law of Nations in the East Indies* (Oxford, 1967).
[16] Cf. Ian Brownlie, 'The Expansion of International Society: The Consequences for the Law of Nations', in Bull and Watson (eds.), *Expansion of International Society*.

https://doi.org/10.1017/S0260210597001678 Published online by Cambridge University Press

derived from practice: the practice of partnership in treaties, in invitations to interstate conferences, and by participation in diplomatic exchange with the dominant European states. Some parts of this extended state system were recognized only occasionally, and some were only marginal participants, with no universal recognition-in-practice from all core members. A system of this type had no definite number of units, since the criteria for statehood remained largely undefined.

The state system was based on prescription and customary inclusion right up to the early twentieth century, even if the French Revolution of 1789 had heralded alternative sources of legitimation, and even if the unifications of Germany and of Italy signalled the ideological force of 'the principle of nationality'.

From political effectiveness to legal rule

The nineteenth-century state system was a European club which tacitly or explicitly adopted new members, such as the USA and the Ottoman Empire at first, and China, Japan and others later. The adoption of new states was a matter of practical recognition, and the state system as such was a system of customary practice in bilateral relations, treaty partnerships and conference participation. This implicitly positivist doctrine was already ambiguous, because recognition could be interpreted either as a practical codification of established status, or as an expression of a political act which created this status.[17] There was thus a need for workable criteria of statehood on which recognition could be based, independent of the act of recognition alone. This requirement became manifest with the organization of international peace conferences from the turn of the century, and of course with the establishment of the League of Nations after World War I.

Two points will amplify the need for criteria. First, admission to these new global organizations could not be regulated by mere 'recognition', since this would be begging the question of universal criteria. Secondly, it was never assumed that membership as such was a marker of statehood: dependent territories could be admitted out of political expediency, and the access of sovereign states could be refused on political grounds. These considerations carried the conception of statehood beyond the circumstances of diplomatic recognition.

By the turn of the century, the criteria were still in a state of flux. Twenty-six states were represented at the first Hague Peace Conference in 1899: nineteen from Europe, two from the Americas (the USA and Mexico) and five from Asia (including Turkey). At the second Hague Peace Conference in 1907 there were forty-four states, since sixteen Latin American republics now were included after being strongly promoted by the USA. But there was hardly an understanding that this participation mirrored the entire universe of independent states. The conferences were dominated by an uncontested core of sovereign powers, but the system remained extremely diffuse on the fringes and peripheries, without any universally recognized formalization.

[17] Cf. the discussion of the 'constitutive' vs the 'declaratory' theory in international law in Crawford, *Creation of States*, pp. 17ff.

https://doi.org/10.1017/S0260210597001678 Published online by Cambridge University Press

Membership in the League of Nations was not based on sovereign statehood. India and the 'white Dominions' of the British Empire were among the signatories and original members, while Article 1 of the Covenant states that 'any fully self governed State, Dominion or Colony . . . may become a Member of the League if its admission is agreed to by two-thirds of the Assembly', and on condition of showing proof of its intentions to observe its obligations and the regulations of the League.[18] The League refused to admit a mini-state like Liechtenstein, for example, on the grounds that some of the attributes of sovereignty had been passed over to another state, and that it would therefore be unable to observe all its obligations. This stated reason is scarcely consistent with Indian or 'white Dominion' membership at the time; it has been suggested that the crux of the refusal was sheer size.[19]

On the other hand, the Paris Peace Conference had invoked an explosive doctrine of self-determination which was selectively employed to dissolve the Ottoman and Habsburg Empires, and to revise European borders at the territorial expense of the powers that had lost the war.

The League of Nations defused this potentially explosive doctrine.[20] Very few new states were established by stage-management of the League. From 1920 to the late 1930s, only Ireland in Europe, and Iraq and Saudi Arabia in the Middle East, gained sovereignty, while more countries lost their independent status through annexation. Initial attempts to modify the territorial integrity of states by applying the Wilsonian principle of self-determination failed.[21] The precedence of territorial integrity was firmly codified in Article 10 of the Charter of the League; and the first test case, the settlement of the Aaland Islands question, gave priority to historically established state boundaries over the secessionist demands of peripheral minorities. The League favoured as an alternative to independent statehood the formal protection of minorities, partly expressed in separate peace agreements between contending states, partly by international declarations in support of minority claims, and partly by a right of appeal to the Council of the League.

When the idea of national self-determination had become a crucial part of the diplomatic vocabulary of the Allied powers during the latter part of the war, no one thought of including European colonies overseas. Lloyd George occasionally argued that colonial self-determination was included, but his interest in the rights of indigenous peoples was restricted to the *German* colonies, as the Allies concentrated their concern on the fate of European territories occupied by the Central Powers. The postwar mandates system grew out of the problem of German colonies, where explicit guidance towards future self-government for the more emancipated territories was a clever answer to the universalistic implications of 'self-determination', on the one hand, and to the problem of disposing of the German colonies without subtracting from the ordinary claim of war indemnities, on the other. The mandates system was a very modest, partial and incipient programme of distant decoloniz-

[18] Alfred Zimmern, *The League of Nations and the Rule of Law*, 2nd edn (London, 1938); see the Covenant and a list of members in appendix, pp. 511ff.

[19] See Michael M. Gunter, 'Lichtenstein and the League of Nations: A Precedent for the United Nations Ministate Problem?', *American Journal of International Law*, 68:3 (1974). The refusal to admit Liechtenstein led Monaco to withdraw its own application, while San Marino ended its exploration of possibilities for admission: cf. James, *Sovereign Statehood*, pp. 114f.

[20] Cf. Öyvind Österud, *Nasjonenes selvbestemmelsesrett. Søkelys på en politisk doktrine* (Oslo, 1984), esp. ch. 9.

[21] Ibid.

https://doi.org/10.1017/S0260210597001678 Published online by Cambridge University Press

ation within the control of the colonial powers. The paternalistic claim to final judgment of the prerequisites for independent statehood was not abandoned—or rejected—until well after World War II.

The League of Nations, however, found that it needed more formalized criteria of statehood. This need was accentuated by the confused debate on self-determination, by the need for criteria of legitimate membership, and by the future implications of the idea of emancipating mandates. The general requirements of statehood were listed in the first article of the Montevideo Convention of 1933, whereby a 'state' as a subject of international law should have a permanent population, a defined territory, a government, and the capacity to enter into relations with other states.[22] The criteria were thus based on a principle of effectiveness, implying that actual independence was a requirement for recognized statehood in international affairs. This formal solution based on stable and effective government, however, did not answer the fundamental question of legitimate self-determination for non-self-governing territories—the dual legacy of Wilsonian and Marxist ideas and of the latent force of incipient decolonization foreshadowed in the mandates system. The Montevideo Convention codified the transition from constitutive recognition to empirical prerequisites for recognition, but left untouched the explosive potential of the principle of nationality, as a catchphrase for unfulfilled aspirations. The ambiguities of the Versailles settlement, which the League of Nations had tried to avoid, were rewritten into the UN Charter of 1945. Now the conflict between stable government, territorial integrity and a doctrine of self-determination in universalistic language became acute. The word 'state' is used more than thirty times in the Charter, and it is stated repeatedly that 'all peoples' have a right to self-determination. Admission is explicitly open to any peace-loving state willing and able to carry out Charter obligations; but some of the first UN members were not states, and a 'people' with a legitimate claim to statehood was not defined. India and the Philippines took part before their independence had been obtained, and curious diplomatic manoeuvres led to the admission of Byelorussia and Ukraine as separate members. The United Nations had fifty-one members in 1945, but some of these were obviously not sovereign states, and some obviously sovereign states were not among the 160-odd members forty years later, either for political reasons (the 'divided states'), or of their own choice (like Switzerland and a few microstates). UN membership is neither a sufficient nor a necessary criterion of independent statehood.

All the same, the United Nations stands as an illustration of the expanding international system, with its 51 original members increased to 81 in 1959, to 127 in 1970 and to 157 in 1981, with a majority now from Africa and Asia, whereas the European states had dominated completely in 1945. What were the criteria for this dramatic expansion, and, more precisely, for the establishment of new sovereign states?

The UN Charter provided two points of departure for the numerical proliferation of states. One was the universal idea of self-determination for all peoples, in Articles 1 and 55. The other was found in the provisions concerning trusteeships and non-self-governing territories, particularly Article 73, with an obligation to develop self-governing institutions in these territories, preparing them for a gradual transition

[22] Cf. Crawford, *Creation of States*, pp. 48ff.

https://doi.org/10.1017/S0260210597001678 Published online by Cambridge University Press

from colony to mandate and finally to independent statehood. The first route was unconditional and universalistic, but intrinsically diffuse, without a clear and uncontested interpretation. The second one was a fairly specific obligation to create the empirical prerequisites for effective statehood under the paternalistic guidance of the colonial powers. These two programmes soon tended to merge, but in a radically transformed way: taking the unconditionality of the first idea, and the geographical reference of the second one. How did this dual process develop?

Self-determination as decolonization

The Charter of the United Nations specifically mentions self-determination twice, in Articles 1 and 55. Article 1(2) indicates that international relations should be 'based on respect for the principle of equal rights and self-determination of peoples'. The same principle is endorsed in Article 55 as a basis for friendly relations among nations. The chapters on non-self-governing and trust territories have, further, been interpreted as arguing for evolution in accordance with the wishes of the population concerned, and thus for evolution towards 'self-determination'.

The principle of self-determination was ambiguous and confusing from the very beginning. There was no general agreement as to how a 'people' exercising this right should be defined, nor as to what this rather diffuse entity should be free to determine. Article 2(4) of the Charter proclaimed that 'all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state'. Established territorial states were thus inviolable. Hans Kelsen has argued that Article 1 of the Charter refers to relations among states, and that self-determination of peoples actually means the sovereignty of states: the principle of self-determination is thus basically a principle of non-intervention and respect for the sovereign equality of the member states.[23] Others have seen Article 1(2) as a promise of political emancipation for non-self-governing peoples. The UN Secretariat suggested already in 1945 that 'peoples' in the Charter was a wider concept than the already sovereign 'states', and even wider than 'nations', which were taken to include colonies, mandates and protectorates in addition to states.[24]

The clause providing for 'self-determination of peoples' had been proposed by the Soviet Union during the Big Four conference in San Francisco in spring 1945, as a support for the national liberation of dependent countries; but these implications were not generally accepted, and the scope of the principle was not made clear.[25] Should any national or sub-national group be free to declare itself independent and secede from an existing state? Should a 'people' inhabit a unified territory, and should it be a viable self-governing unit? Which criteria should, in the end, measure 'viability'? How strong demands for self-determination should a 'people' make to have its case considered by the UN?

[23] Hans Kelsen, *The Law of the United Nations* (London, 1950), pp. 51ff.
[24] The UN Secretariat Memorandum; see also A. Rigo Sureda, *The Evolution of the Right of Self-determination. A Study of United Nations Practice* (Leyden, 1973), pp. 99ff.
[25] Ruth B. Russell, *A History of the United Nations Charter* (Washington, DC, 1958), p. 810 and *passim*. See also Harold S. Johnson, *Self-determination within the Community of Nations* (Leyden, 1967), pp. 31ff.

https://doi.org/10.1017/S0260210597001678 Published online by Cambridge University Press

These basic questions of definition and competence were built into the UN debate from the very beginning. On the one hand, the UN was an organization of states, with guarantees for the territorial integrity of its members, and with clauses prohibiting interference in internal affairs. On the other hand, the principle of self-determination could be appealed to by any secessionist or irredentist movement, implying a direct threat to the political unity and territorial integrity of sovereign states. In the United Nations, as in the League of Nations after World War I, the concern for integrity and stable political units was given priority over far-reaching demands for self-determination.[26] But at one important point there was a modification of this priority; a modification which gave the doctrine of self-determination an effective scope far beyond the horizons of the League.

The Charter formula for self-determination has been repeated and interpreted in a veritable blizzard of resolutions from the UN General Assembly and the Commission of Human Rights. Other parts of the Charter have also been employed, from the very beginning, to illuminate the scope of the general principle. Article 73 draws a line between *metropolitan areas* and *non-self-governing territories*, indicating a duty to develop self-governing institutions in dependent areas. A supplementary declaration to Article 73, presented at the San Francisco Conference in 1945, expressed the opinion that 'there is implicitly affirmed in providing rules of general application for the transition from a colony to a mandate and from a mandate to a sovereign State—the principle that the goal which should be sought is that of obtaining the universal application of the principle of self-determination'.[27] This was the point of departure for the coming decolonization policy within the UN, with the principle of self-determination as general justification.

Decolonization became an acute international problem from the mid-1950s. The Afro-Asian conference in Bandung in early 1955 issued a statement rejecting colonialism with reference to the principle of self-determination in the UN Charter, and simultaneously confirming the national sovereignty and territorial integrity of all nations.[28]

The definitive anti-colonial breakthrough in the UN came with General Assembly Resolution 1514 of 14 December 1960, entitled 'Declaration on the granting of independence to colonial countries and peoples'.[29] The UN is here given a central role in supporting independence for colonies and trust areas. The declaration confirms that 'all peoples have a right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development'. It goes on to denounce 'any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country' as incompatible with the purposes and principles of the UN Charter. This was to become the major channel for the UN doctrine of self-determination:

[26] Cf. Aureliu Cristescu, *The Right to Self-determination. Historical and Current Development on the Basis of United Nations Instruments* (New York, 1981), p. 40 and *passim*; cf. also Hector Gros Espiell, *The Right to Self-determination. Implementation of United Nations Resolutions* (New York, 1980).

[27] *Documents of the United Nations Conference on International Organisation*, G/7(c), vol. 3, p. 146; cf. Cristescu, *Right to Self-determination*, p. 3.

[28] The text is reproduced as an appendix to Gunter Decker, *Das Selbstbestimmungsrecht der Nationen* (Gottingen, 1955), pp. 389f.

[29] *Official Records of the General Assembly, Fifteenth Session*; see also Cristescu, *Right to Self-determination*, pp. 6f. The draft resolution was adopted by eighty-nine votes to none, with nine abstentions.

https://doi.org/10.1017/S0260210597001678 Published online by Cambridge University Press

decolonization, but territorial integrity for new as well as for old states. The doctrine was intended to give protection against foreign intervention, but without legitimizing territorial disintegration from within. The right of self-determination was not to be applicable to parts of the territory of a sovereign state besides the colonial possessions; anti-colonial independence should not open the door to further secession from independent states.

The colonial paternalism which had characterized the UN Charter and the great-power attitudes in 1945 was also totally rejected in 1960. According to Resolution 1514, 'inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence'.

The General Assembly provided further criteria for decolonization in the same resolution, where a *non-self-governing territory* (in Article 73 of the Charter) was defined as 'a territory which is geographically separate and which is ethnically and/or culturally different from the country that administers it'.[30] Here we have the UN doctrine of self-determination as a right to independent statehood clearly formulated: a self-determination for colonies overseas. This is the '*salt-water criterion*' of political independence. In 1960 came the breakthrough for the salt-water theory of colonialism and for international stigmatization of across-salt-water imperialism. Two competing doctrines, behind which the colonial powers had tried to find some shelter from the winds of anti-colonialism, were thereby brushed aside: the so-called Belgian thesis of the early 1950s, arguing that even participants in the anti-colonial crusade had their 'non-self-governing territories' derived from continental rather than overseas expansion; and the alternative 'integration thesis' put forward by Portugal, Spain and France, implying that territories overseas could be integral parts of the metropolitan area.[31]

The anti-colonial wind gave a specific content to the initially vague 'principle of self-determination', pointing directly at the European colonial empires. Resolution 1514 was confirmed by the General Assembly at each following session; then, in two resolutions in 1970 colonialism was condemned as a crime, as an illegal violation of the UN Charter.[32] The way towards acceptance of anti-colonial struggles as justified wars against criminal repression was prepared from the early 1960s, when the UN tacitly accepted India's invasion, and subsequent annexation, of the Portuguese colony of Goa from December 1961.[33] The UN doctrine of self-determination has partly been a principle of non-intervention towards sovereign states, and partly a right to independent sovereignty for colonies overseas. The salt-water criterion has

[30] *Official Records, Fifteenth Session*; see also Rigo Sureda, *Evolution of Right of Self-determination*, p. 105.

[31] See particularly the General Assembly Official Records, 4th Committee, 7th–9th sessions. Cf. also C. E. Toussaint, 'The Colonial Controversy in the United Nations', *The Year Book of World Affairs 1956* (London, 1956); Inis L. Claude, Jr, 'Domestic Jurisdiction and Colonialism', in Martin Kilson (ed.), *New States in the Modern World* (Cambridge, MA, 1975); Mohamed Alwan, *Algeria Before the United Nations* (New York, 1959); Patricia Wohlgemuth, 'The Portuguese Territories and the United Nations', *International Conciliation*, 545 (1963).

[32] Res. 2621 and 2627 of October 1970. The anti-colonial UN resolutions were particularly advocated by a front of Asian, African and Communist countries. Cf. also Cristescu, *Right to Self-determination*, pp. 9f.; Rupert Emerson, *Self-determination revisited in the Era of Decolonisation* (Harvard, 1964), pp. 13, 28ff. and *passim*.

[33] See Quincy Wright, 'The Goa Incident', *American Journal of International Law,* 56 (1962). See also generally Rigo Sureda, *Evolution of Right of Self-determination* pp. 172ff.; Claude, 'Domestic Jurisdiction', pp. 132ff.; and Michla Pomerance, *Self-determination in Law and Practice* (The Hague, 1982), p. 106 and *passim*.

https://doi.org/10.1017/S0260210597001678 Published online by Cambridge University Press

given an authorized key to new state formations, without threatening new and old states with dismemberment by unbridled secession. The doctrine became firmly entrenched as the new states began to organize themselves. The Organization of African Unity wrote geographical integrity and respect for established frontiers into its Charter of 1963.[34] Non-intervention and territorial integrity were declared prerequisites for the consolidation of independence with respect for colonial boundaries: self-determination should protect against foreign dominance, but it should not legalize territorial disintegration from within.[35] With few exceptions, secession has been refused on principle according to the 'domino theory of disintegration', and to thwart neo-colonialist comebacks or reduced viability.[36]

The consequence of the general post-colonial attitude has been a consistent struggle for the 'self-determination' of colonized peoples, with an equally consistent struggle against groups that advance corresponding demands on former colonies, whether within or across established frontiers. Here is a close parallel to the scenario for Central Europe after imperial dissolution during World War I: empires should be broken up, but the successor nation-states should be preserved intact, irrespective of the national complexity they might contain.[37]

Legitimate statehood reconsidered

UN General Assembly Resolution 1514 of December 1960 confirmed that no criteria for statehood existed. New states emerging from decolonization were to proceed unconditionally. The former empirical requirements of effective government or viable units were abandoned as illegitimate 'pretexts for delaying independence'. The salt-water theory combined the general idea of self-determination with specific obligations towards non-self-governing territories.

The United Nations has occasionally but not consistently endorsed popular consultation in colonial areas. There were plebiscites supervised by the UN in British Togoland, in the British Cameroons, and in Western Samoa; and corresponding supervision of elections in French Togoland and in Ruanda-Urundi. The UN also investigated the elections in parts of Malaysia in 1963, when North Borneo and Sarawak chose to defy the wishes of Indonesia and join the new federation. The UN has also advocated referenda as a method of conflict resolution in other territorial disputes, but not as a prerequisite for recognition of state sovereignty. Ethiopia's incorporation of Eritrea was accepted after an international debate and a split UN commission, without a popular vote. India's seizure of Kashmir and of Goa, and Indonesian control of Irian Jaya and East Timor, have also been accepted as established facts, albeit not without dissent.

[34] Cf. Zdenek Cervenka, *The Organisation of African Unity and its Charter*, 2nd edn (London, 1969).
[35] See *Proceedings of the Summit Conference of Independent African States* (Addis Ababa, 1963), esp. vol. 2.
[36] Cf. O. S. Kamanu, 'Secession and the Right of Self-Determination: An OAU Dilemma', *The Journal of Modern African Studies*, 12:3 (1974).
[37] There have been important exceptions to this basic rule, like the territorial partition between India and Pakistan, and later between Pakistan and Bangladesh. A good analysis of the problem of secession is still Lee C. Buchheit, *Secession: The Legitimacy of Self-determination* (New Haven, CT, 1978).

https://doi.org/10.1017/S0260210597001678 Published online by Cambridge University Press

Even more remarkable, a UN majority has favoured 'decolonization' in territories where an overwhelming majority of the local population have voted for continued attachment to the metropolitan power. More than 99.6 per cent of voters in a referendum in Gibraltar in 1967 opted for British sovereignty, but the inhabitants were disregarded by the UN General Assembly as non-indigenous to the territory.[38] Likewise the British population of the Falkland Islands was widely disregarded, even if they had a longer ancestry on the islands than most Argentinians had in Argentina, and even if their Falklander ancestors had hardly ousted anyone in settling there.

The political interpretation of legitimate statehood is here a supplement to the salt-water theory: an idea of territorial vicinity as a supplementary criterion, whereby a European colonial power should be expelled from the remnants of empire despite the preference of the local population. The breakthrough for this privileged standing of salt-water anti-colonialism was the Indian invasion of Portuguese Goa.[39] India argued that the Portuguese colonization of Goa was aggression against a part of post-colonial India, with counter-conquest as legitimate liberation of Indian soil. India also argued, wrongly, that Goa was part of a pre-colonial Indian unity, so that its intervention became an act of restoration. The Security Council found itself stalemated, with a Western veto against a pro-Indian resolution, and a Soviet veto against a condemnation of the Indian invasion. The General Assembly did not vote, but its silence was regarded as tacit acceptance of the Indian invasion, which ended in the formal incorporation of Goa as a union district in early 1962.

The 'Goa doctrine' was neither accepted nor rejected by UN organs in December 1961. All the same, it remained an anti-colonial watershed which was gradually endorsed by a majority of the General Assembly during the 1960s, culminating in the resolutions that condemned colonialism as a crime in 1970.

The salt-water theory implied that governmental effectiveness was no criterion of new statehood. It also implied that popular approval was no necessary test of self-determination, since colonial borders should be firmly preserved after independence, and since territorial vicinity had priority over remnants of European sovereignty, irrespective of the will of the local population.

The anti-colonial legitimation of statehood also involved a racial element. White dominance overseas was more internationally illegitimate than other types of dominance between territories or ethnic groups. When Southern Rhodesia unilaterally declared itself independent in 1965, it would have passed the 'Montevideo test' of effectiveness: a stable population, a distinct territory, a government, and the capability of meeting international obligations. Still the regime in control was regarded as a rebel clique, and Rhodesian independence was not accepted internationally or by the British Government itself. Southern Rhodesia was not legally recognized as a sovereign state even if it seemed to fulfil all the usual requirements, because white minority rule in Africa was not seen as legitimate. The near-universal illegitimacy of the Smith government during fourteen years of stigmatized independence is the negative paradigm case of what Ali Mazrui has called 'pigmentational sovereignty'.[40] The racial doctrine gives further substance to the salt-water theory of liberation.

[38] Cf. Klein, *Sovereign Equality*, pp. 148f.

[39] Cf. Wright, 'Goa Incident', and Emerson, *Self-determination Revisited*, p. 20.

[40] James, *Sovereign Statehood*, pp. 153ff.; Ali A. Mazrui, *Towards a Pax Africana* (London, 1967).

https://doi.org/10.1017/S0260210597001678 Published online by Cambridge University Press

Still the recognition of statehood may be contested within a definite post-colonial setting. In contemporary Africa there are at least three fundamentally different views on national criteria, corresponding to the disparate ideas of the foundation of the European nation-state. There is the *political nation* as the new paradigm case. The newly independent states codified the political boundaries established by the colonial powers as the basic axiom, and they wrote this into the Charter of the Organization for African Unity.

In some parts of Africa, however, the Alexandrowicz idea of the non-European *historical nation* prevailed, as independent states argued for the inclusion of adjacent territories allegedly linked by pre-colonial bonds of allegiance. Independence was conceived as the restoration of a pre-colonial greater kingdom now transformed into a modern nation-state.

The concept of an *ethnic nation* is, finally, a disruptive political force on the African continent. Claims for independent statehood, or for irredentist rectification, have been made on tribal or ethnic grounds, and often from group identity across state boundaries or within sections of states. Zaire, Nigeria and Sudan show the most dramatic histories of separatism, while countries like Mauretania and Somalia have presented irredentist claims.

This tripartite conceptualization of legitimate statehood is a fairly accurate replica of European dynamics during the past 200 years. The most intensive and intricate national conflicts arise when these conflicting criteria arise over the same territory, as shown by the struggle over the Western Sahara.[41] The principle of nationality is no unambiguous clue to satisfied aspirations for statehood.

The United Nations formula—the political nation and the salt-water theory combined—was a practical solution, acceptable to a world of established sovereign states, but it did not solve the problem of dissatisfied nationalities. When popular consultation was employed as a method of self-determination, classical problems of delineation were often revealed: Should a specific sub-territory vote in its own right? Or should it count as part of a greater unit, even if a total vote might give an outcome at odds with the majorities of various subsections? Who are the legitimate inhabitants of a contested territory, when subsequent waves of immigration may have transformed its ethnic composition, and thereby the outcome of a referendum on sovereignty? The strategic decisions on these questions are often the decisive ones, the subsequent act of self-determination being a foregone conclusion. Here are the blind spots in the UN doctrine of legitimate statehood.

The new dualism revised

The long-term historical pattern is now clearly seen. The original European state system was already a dual system, composed of a core of European powers and an external arena where different rules of order prevailed. The 1559 Treaty of Cateau-Cambrésis between France and Spain was based on the understanding that extra-European rivalries should not affect the peace in Europe, and prescriptive

[41] Öyvind Österud, 'Varieties of Self-determination: The Case of the Western Sahara', *The Maghreb Review*, 10:1 (1985).

https://doi.org/10.1017/S0260210597001678 Published online by Cambridge University Press

obligations generally expressed two sets of international transactions.[42] The pioneers of international law, like Hugo Grotius, conceived the state system as an inner circle of Christian European powers, and an outer circle embracing all mankind and subordinate to natural law. In political terms, most treaties between European powers and non-European rulers were made in order to regulate the rivalries between European states, rather than in recognition of interstate equality within and outside Europe.

The age of imperialism formalized the asymmetries of power, and simplified the variety of relationships between European and non-European countries. From the second half of the nineteenth century, the international dualism was codified in a formal polarization between sovereign and dependent territories.

It has been argued that the modern doctrine of decolonization implies a new mode of dualism, with 'empirical statehood' based on effective state formation on the one hand, and 'juridical statehood' based on a doctrine of unconditional colonial liberation on the other.[43] The idea is that effectiveness increasingly became the criterion of sovereign statehood in encounters between historically established states, while the act of unconditional decolonization established new states by courtesy, irrespective of the empirical qualities of leadership, administration, territorial control and viability. The constitutive rules of sovereignty, it is argued, favour the weak 'quasi-states', and divorce legal statehood from the empirical qualities of historical state formation.[44]

The thesis of post-colonial dualism postulates a paradigmatic evolution of statehood in Europe, with recognition based on effectiveness, and a reverse development in colonial areas, where effectiveness often remains a chimera after the colonial administration has withdrawn.

This description does not quite capture the European development of legitimate statehood. It rather projects the quest for empirical criteria on a more diffuse historical pattern. Recognition by practical interchange was constitutive in nineteenth-century Europe, and the empirical qualities of recognized states were extremely variable and often precarious, as indeed they remain for many old states today. The principle of effectiveness was a programmatic quest in recent international law, but it was never supported by modern practice. State sovereignty is constitutional independence rather than empirical independence or strength: this holds true for old states as well as for new ones.[45] Pseudo-states, or 'states by imitation' in empirical terms, are not confined to the post-colonial world. There is definitely a split between 'empirical statehood' at one end of the scale, and 'states by courtesy' at the other. But there is, as always, a fairly contingent relationship between position on this scale and admission to the state system.

[42] Hedley Bull, 'The Revolt Against the West', in Bull and Watson (eds.), *Expansion of International Society*, p. 127.
[43] Cf. Robert H. Jackson and C. G. Rosberg, 'Why Africa's Weak States Persist: The Empirical and the Juridical in Statehood', *World Politics*, 35:1 (1982); R. H. Jackson, 'Quasi-states, Dual Regimes, and Neoclassical Theory: International Jurisprudence and the Third World', *International Organization*, 41:4 (1987); R. H. Jackson, *Quasi-states: Sovereignty, International Relations, and the Third World* (Cambridge, 1990).
[44] Jackson, 'Quasi-states, Dual Regimes', p. 537.
[45] Cf. James, *Sovereign Statehood.*

https://doi.org/10.1017/S0260210597001678 Published online by Cambridge University Press

The post-Cold War dissolution of empire

With the dissolution of the Soviet Union and Yugoslavia came attempts to add a new criterion to the Montevideo criteria for recognition of statehood: democracy and respect for human rights. This criterion, which emerged in European accords within the Conference on Security and Cooperation in Europe process, proved very difficult to sustain, however, and quickly collapsed in the face of political expediency.

Within the former USSR, the republics gained international recognition as independent states as it became obvious that imperial control had been abandoned. Besides the observation of imperial withdrawal, there were no international requirements as to popular accountability or nationally legitimate frontiers. The new criterion loomed large in political rhetoric, but hardly became operative in diplomatic practice.

In the early stages of the dissolution of Yugoslavia, the republics of Croatia and Slovenia were internationally recognized according to political considerations in parts of Western Europe. The EU tried for some time to preserve the federation, but gave up on the idea in late 1991.

By and large it was Germany which dragged its reluctant EU partners into early recognition of the Yugoslav republics, and most certainly with dramatic consequences for the stability of Bosnia-Herzegovina. The Serbian position was partly that the federation should be restored, and partly that recognition of non-Serbian republics meant inadequate consideration of Serbian enclaves and minorities outside Serbia. Thereby the demand for Serbian self-determination presented opposition to self-determination and integrity for the republics. The international argument for giving in to the republics was that the Yugoslavian federation was irrevocably dissolved, and that inter-republican borders should be respected.

In the USSR, as well as in Yugoslavia, the formally federal structure meant that the intra-imperial republics were quite automatically regarded as the natural successor states. Thus the Montevideo criteria could easily be regarded as satisfied with the actual abandonment of central control. The established decolonization doctrine of the UN, originally formulated as a barrier against the secession of adjacent lands, was thereby not challenged. Neither was the language of democracy and human rights given operative force.

Conclusion

The evolution of the system of sovereign states is historically diffuse. The diplomatic practices of a European core area have controlled admission right up to the twentieth century, with uncertain positions and partial inclusion at the fringes of the system. The quest for distinct empirical criteria had legal consequences for the recognition of *governments*, but the establishment of new states was basically confined to the pragmatic necessities evolving from the post-1945 constellation of forces: the salt-water doctrine with colonial boundaries preserved. In this way the disruptive force of the principle of self-determination was limited and contained,

https://doi.org/10.1017/S0260210597001678 Published online by Cambridge University Press

even if the doctrine gave no guidance on particularly intricate problem areas, and even if the operational range became arbitrary in theoretical terms. Anti-colonialism led to erratic criteria of nationalist legitimation, since the universalistic language of sovereignty and liberation became the selective practice of anti-European exorcism.

Self-determination-as-decolonization is a *regime* in international affairs: a constructivist agreement within the confines of the established state system; reluctantly accepted by the major colonial powers in confrontation with the ideological force and pressure of the anti-colonial coalition.

No consistent rules can be discerned, however, in the handling of the dissolution of empire and of multinational states after the demise of the Cold War. Recognition of statehood has followed rather pragmatically in the wake of imperial collapse. The search for new criteria like democratic governance has become reduced to rather half-hearted window-dressing in the initial phase of state formation.

https://doi.org/10.1017/S0260210597001678 Published online by Cambridge University Press