Secession and international law
conflict avoidance - regional appraisals

edited by Julie Dahlitz.

Prepared under the auspices of
The Consortium on International Dispute Resolution, Geneva,

on the basis of regional conferences
organized by and in collaboration with:
The T.M.C. Asser Institute, The Hague
The Santa Clara University School of Law, California
The Diplomatic Academy and
The Russian Association of International Law, Moscow

SECESSION AND INTERNATIONAL LAW

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- Regional Appraisals -

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Published in cooperation with the
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INTRODUCTION

The underlying perception motivating this series of studies is, that a system of legality that is practical in its application and perceived to be just by those to whom it applies, is a necessary element in maintaining a peaceful society. Further, that this principle is also valid in the international arena, where it is an indispensable element for conflict prevention. Regarding matters affecting the supreme security interests of States, identifying and developing international law and the rules of the road for international conduct, are truly daunting tasks. They cannot be achieved merely by scholarly research into the minutiae of precedents. Yet, any departures or re-formulations must be undertaken with great caution, so as to ensure that the achievements of the past are not compromised.

One method of exercising the necessary caution is for non-governmental academic entities to conduct the exploratory work, with the assistance and in close co-operation with the United Nations and its Member Governments. This book is such a work in progress.

From their inception, these studies on Secession and International Law were designed to enable the diplomatic community to arrive at consensus positions in the matters under consideration – not by papering over the divisive problems but by solving them. For helpful outcomes in this terrain, it is essential to realign the work in keeping with the evolving global political outlook. That can only be achieved in a United Nations context.

The background to the decision to explore secession related international law, was provided by a Study initiated by the Consortium on International Dispute Resolution (CIDIR) on the *Peaceful Resolution of Major International Disputes*, resulting in a book by that title[1], which was presented at the Centenary commemoration of the first International Peace Conference, held at The Hague in

1999. That Study concentrated on satisfactory solutions already found for some seemingly intractable problems. This time, while satisfactory solutions have been achieved in some instances of confrontational secessionist aims, the blueprint for arriving at such outcomes fails to maintain the peace in too many instances.

Identification of a problem correctly is the first and most significant step in its solution. The subject of this book concerns the principles and rules of international law as they apply to the involuntary fragmentation of sovereign States. It is a subject so fraught with difficulty - causing widespread bloodshed and international hostility in many regions - that examination of its most crucial and controversial aspects is avoided in academia, as well as by the diplomatic community. Theirs is not a slothful neglect but the consequence of concern that it may be too difficult to reach consensus on the issues at the present stage of development of international law and international relations.

The above attributes of importance and difficulty constitute exactly the type of subject that CIDIR is designed to address. The initiative to undertake the challenge arose from discussions facilitated by a world Conference in connection with the previous Study. The present volume – and the Regional Conferences that gave rise to it – do not purport to be the end of a quest but only its systematic beginning. The series of Regional Conferences on the subject of Secession and International Law commenced with a Preparatory Conference, held in Geneva in collaboration with the Graduate Institute of International Studies. The following Conference was organized by the Diplomatic Academy of the Russian Federation and the Russian Association of International Law, under the auspices of CIDIR, with participation from the Region of the Commonwealth of Independent States (CIS). This Conference was held in Moscow and, like all the others, concerned itself with the issues on a global basis, although participation was regional. Next came

a predominantly local Conference, conducted in a similar vein, held in Sydney and arranged by the Australian Branch of the International Law Association, together with the Australian Institute of International Affairs. The subsequent Regional Conference was held in collaboration with the University of Santa Clara School of Law, in California, encompassing participants from both North and South America. The final Regional Conference was conducted at The Hague, jointly with the T.M.C. Asser Institute, with participation from European States beyond the territory of the CIS. All of the Regional Conferences were held during the years 2000 and 2001.

It should be noted that it was the intention of CIDIR to hold additional Regional Conferences in Africa and Asia but these did not eventuate due to lack of time and resources. Hopefully, colleagues from those parts of the world will actively participate in an envisaged future Global Conference.

Strategies employed were, first, to attempt deleting from consideration all issues of general agreement, so as to allow more time and space for contentious issues. This has been only partly successful, as the contents will demonstrate. Secondly, it was sought to resolve and confirm legal principles and practice where the content of the law is relatively certain, even if not sufficiently clearly stated. Lastly, there was identification of emerging law on the subject, together with new proposals advocated by some participants. There was, of course, considerable disagreement as to which aspects of the law are merely emerging, *de lege ferenda*, and which have already emerged, *de lege lata.* Also, as to what are the valid criteria and appropriate fora for determining that distinction in connection with secession related issues.

It is well known that the fact and consequences of forceful secession and secessionist movements are the increasingly frequent subject of international discourse and decision making in numer-

ous connections. A few cases have even resulted in the enunciation of non-conclusive legal dicta. Predominantly, however, such references concern the propriety of foreign intervention in the internal affairs of States in response to violence or breach of human rights; at whose request such intervention may occur; under whose control; and at whose cost. Also, as to which international bodies/ States are to be involved in decision making regarding the devolved States and territories, as well as in the punishment of "terrorists/ dictators/freedom fighters", and so on.

The cluster of questions that is habitually neglected,[2] comprises precisely the ones that are central if upheaval is to be prevented at the outset or, better still, put beyond contemplation. *They concern the issues of the legality or otherwise of the aspiration to secede in defined situations, as well as the appropriate means by which secessionist aims may be pursued or resisted.* Those are the issues to which the eminent authors of this volume have turned their minds.

It is in the nature of law that every case is factually different. Equally pertinent is the tenet of the law which demands impartiality, meaning that all cases must be judged by the same criteria, while variations in treatment due to factual differences have to be on the basis of clear distinctions made on equitable grounds. Those requirements apply whether they relate to the pronouncement of a Court or another kind of decision making body exercising a quasi judicial function, such as the Security Council or a regional body. The alternative to impartial justice is the law of the jungle. That may be acceptable in the jungle, where battles are fought with claws and teeth, but not so where they are waged with the threat and use of contemporary weaponry. An approximation to desirable levels of international legality has been achieved in many fields, notably in the application of commercial law. Regretfully, the law relating to secession is, at present, at the opposite end of the spectrum.

The Geneva Preparatory Conference established the parameters

of this Study and they were largely adhered to at all of the Regional Conferences, ensuring that all participants were discussing exactly the same topic. The three main Regional Conferences produced a series of substantive "Conclusions and Recommendations", achieved with an approximate consensus. Those documents are reproduced separately. It was accepted from the outset that the absence of a universally agreed set of coherent and consistent principles of international law relating to forceful secession, is one of the most serious obstacles to achieving international peace and security. Finding the key to forestalling secession related violence would be a prime means of conflict prevention. There is a pressing need to halt the ricochet effect of relatively insignificant minority grievances leading to escalating reactions and, ultimately, resulting in irreconcilable hostility. Then, in turn, providing the fertile ground for foreign international rivals to encourage violent secession and so create their proxy battlefield - to the severe detriment of both the indigenous majorities and minorities alike. However, important as it is, that scenario is only one of several that require urgent attention.

The detailed parameters of the Study were designed to advance conflict prevention to the maximum extent.

Those parameters are as follows:

Detailed Objectives

To stimulate developments in international relations and international law so as to bring into harmony the divergent notions concerning a right to secession that lead to an alteration of national borders. To those ends it was thought necessary to -

- establish more clearly the nature of the problems associated with secession;
- assess whether and, if so, in what way and to what extent there are inconsistencies and contradictions between legal rules and

principles relating to the subject;

- to propose solutions or interim remedies with regard to any matter concerning secession that is deemed to be unsatisfactory or unclear in the law as it stands today, being of a nature that is both universally applicable and drawing distinctions between the manner of application only on the grounds of universally valid and equitable criteria; and
- give consideration to the best manner in which the law may be changed, as required, so as to meet with – as far as possible - universal approval among States.

Definition of Secession

For the purpose of the Study, the following definition was accepted:

"The issue of secession arises whenever a significant proportion of the population of a given territory, being part of a State, expresses the wish by word or by deed to become a sovereign State in itself or to join with and become part of another sovereign State".

Scope

Guidelines were laid down regarding the scope and content of the Study, requiring that -

- it should concentrate on issues concerning *sovereignty, self-defence, self-determination and humanitarian law,* as they apply to secession;
- proposals should be sought for a set of coherent and consistent principles and rules of international law to be observed with regard to secession related issues and they should be universally applicable, even if not universally enforceable at present;
- all proposals must be evaluated on their potential to obtain broad international support;
- regarding the possible implementation of proposals, the involvement of international organs – existing or envisaged – ought to be considered.

In order to confine the subject to manageable proportions, the following were to be excluded from consideration:

- any individual case, past, current or predicted, except by way of illustration of a general proposition;
- methods of enforcement;
- methods of devolution or self-government, whether by federation or otherwise, confining the discussion to issues that fall within the agreed definition of "secession".

The exclusion from consideration of issues of self-determination, short of altering sovereign status, was decided upon merely so as to focus more intensively on the remaining issues and did not imply the attribution of insignificance to those matters. Without question, if a State can accommodate the needs and desires of its citizens by any system of subsidiarity, federalism or devolution, those are the best solutions to self-determination problems. However, steps toward those ends are basically matters of internal good governance.

Similar considerations applied to other situations thought to enjoy general legal and diplomatic consensus. They comprised consensual separation; separation in accordance with constitutional provisions or treaties; and the granting of independence to peoples under overtly colonial rule.

As envisaged in the preparatory guidelines, the principles of law which chiefly animated discussion at the Conferences related to the maintenance of territorial integrity of States; United Nations Charter prohibition of the threat or use of force except in situations of self defence; political independence and non-interference in the internal affairs of States; the right to self-determination of peoples; and the status of recent developments in human rights and humanitarian law. Some contended that the harmonization of these diverse rights and duties can be achieved under international

law as it stands. What is required, they contended, is to re-state the relevant principles with greater clarity, as well as more precision as to when and how the pertinent rights and duties may be invoked. Yet, even in accordance with that minimalist view, substantial elaboration is needed if consistency of application is to be achieved in the variety of situations that present themselves and those that are likely to arise in the future.

The next step in the CIDIR project is to convene a Global Conference on the subject where, by utilizing the achievements of the Regional Conferences, further development could be attempted. Might it be possible there to achieve such order among the various principles, that the status in international law of all the far-flung instances of secessionist conflict could be equitably assessed in accordance with universally accepted standards?

Notwithstanding the long-term topicality of these contents, there is an urgency for their publication. It is for this reason that certain niceties of form have been sacrificed for the sake of speed. For instance, several authors have retained the format of a speech, albeit updated in response to points raised during discussion.

Acknowledgements

Neither this book, nor the Conferences which preceded it, would have been possible without the enthusiastic and highly efficient partnership of the participating institutes already mentioned, whose backgrounds and activities are briefly described under *Contributing Institutes*. Together with the substantive input they imparted, their generous allocation of administrative time and of funds was essential to the outcome. Also, substantial funding was gratefully received from the **Carnegie Corporation of New York** towards The Americas Regional Conference and from the **Ministry of Foreign Affairs of the Netherlands**, which latter gift facilitated the organization of the European Regional Conference, as well as

making possible the publication of its proceedings, together with input from the other two major Regional Conferences.

Certain people have made especially significant contributions to this undertaking in their individual capacity.

In the first instance there was the input of **Professor Jiri Toman**, Chairman of the Board of Directors of CIDIR, who also organized the Americas Regional Conference, and **Dr. Vladimir Kotliar**, Deputy Chairman of the Board, who was chiefly responsible for the organization of the CIS Regional Conference. **Dr. Keith Suter** organized the Sydney Conference.

An Expert Consultant of CIDIR, **Professor Emeritus Christian Dominicé,** was indispensable in the initiating stages of the Geneva Preparatory Conference. Finally but extremely importantly, another CIDIR Expert Consultant, **Professor Karel Wellens,** had a major role in the organization of the European Regional Conference.

Of course the academic institutes hosting the three Regional Conferences made vital contributions to the fruitful outcome: **Professor Frans A. Nelissen,** Director of the T.M.C. Asser Institute; **Professor Mack Player,** Dean of the Santa Clara University School of Law; **Ambassador Y. Fokin**, Rector of the Diplomatic Academy of the Russian Federation and **Professor A Kolodkin**, President of the Russian Association of International Law; all headed efficient and committed staffs to confront the many tasks.

The contribution of the authors and the participants who drew up the several Conclusions and Recommendations is evident from the contents of the volume.

All of the abovementioned input greatly eased my burden as CIDIR Co-ordinator in the organization of the interconnected project.

The impression was inescapable that all shared the conviction as to the importance and urgency of the task undertaken, even those

who did not foresee an entirely successful resolution of secession related problems in the nearest future.

Julie Dahlitz, Editor, Geneva, September 2001

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[1] Dahlitz, Julie (Editor), *Peaceful Resolution of Major International Disputes*, United Nations, Sales No. GV.E.99.0.13 – ISBN 92-1-101000-4 (Hardbound) Sales No. GV.E.99.0.18, ISBN 92-1-101003-9 (Softbound)

[2] For a notable exception *see* J. Crawford, *State Practice and International Law in Relation to Secession*, The British Yearbook of International Law, 1998, p.85.

In Memory of Julie Dahlitz

It was with great sadness that we learned that Julie Dahlitz had passed away early December 2001. Julie Dahlitz was diagnosed seriously ill soon after the final stages of the preparation of this book. The present volume is the outcome of an important project launched by Julie Dahlitz in the spring of 2000 in her capacity of Co-ordinator of the Consortium on International Dispute Resolution.

Co-organisors, speakers and participants at the various Regional Conferences on Secession and International Law will always remember Julie Dahlitz as a unique woman: her professional qualities, drive and dedication in exploring the more difficult issues in contemporary international law were both a challenge and an inspiration to all of us who had the privilege of working with her.

The death of Julie Dahlitz is also a great loss to the larger community of friends and colleagues who will have to continue their professional activities in international law and international relations without the benefit of her enthusiastic support and guidance.

Karel Wellens, 11 February 2002

PARTICIPATING INSTITUTES

THE T.M.C. ASSER INSTITUTE: established in 1965 and located in The Hague, The Netherlands, is an independent academic and inter-university institution in which all Dutch law faculties participate. The Institute carries out research in the fields of private international law, public international law, including international humanitarian law, the law of the European Union, the law of international commercial arbitration and, increasingly, also international economic law, the law of international commerce and international sports law. The primary objective of the Institute is the implementation of fundamental and applied academic research in these areas.

The Institute's main activity is the implementation of fundamental academic research in the international-legal field. A team of expert researchers guarantees high standards. Among the Institute's multitude of research facilities there is an extensive international network of university and academic contacts. Another essential component of the Institute's objectives is to develop young talent. In addition to fundamental academic research, the Institute is also active in contract research and the provision of legal advice. This tailor-made applied research varies from finding *ad hoc* solutions to co-ordinating and/or implementing long term research projects. The extensive range of resource of materials which the Institute has at its disposal is available to the public and may be accessed in the modern and well equipped library.

The Asser Institute has established its own, specialised publishing house, T·M·C· ASSER PRESS. Among the many publications of the Institute, the *Yearbook of International Humanitarian Law*, the *Netherlands Yearbook of International Law* and the *Netherlands International Law Review* deserve special mention.

THE AUSTRALIAN INSTITUTE OF INTERNATIONAL AFFAIRS: is an independent, non-profit organization, which promotes public education in international affairs, especially regarding Australia's role in the world.

It achieves this both by serving as a think-tank, and through branch activities. As a think-tank it looks to the wider community and decision-makers, producing research publications, maintaining a web-site, and holding seminars. Branches conduct programs of regular meetings for members.

While the Institute provides a forum for discussion and debate, it does not seek to take institutional positions on particular issues or to promote views of its own. Rather it seeks to bring to the attention of the community international issues relevant to Australia, and illuminate them with professional and expert understanding. One Foreign Minister described the Institute as "the pre-eminent, non-governmental institution dealing with all aspects of Australia's foreign relations".

Established nationally in 1933, the National Office of the Institute is located at Stephen House, Deakin, ACT. There are branches in Melbourne, Sydney, Brisbane, Adelaide, Canberra, Perth, Hobart and Townsville.

The Institute publishes the *Australian Journal of International Affairs*. Established in 1946 under the name Australian Outlook, it remains Australia's leading professional journal dealing with international issues.

THE CONSORTIUM ON INTERNATIONAL DISPUTE RESOLUTION (CIDIR): is a Geneva based forum composed of organizations and individuals from around the world, expert in public international law and international relations. By facilitating exchanges they aim to help in the avoidance or peaceful settlement of any disagreements among States.

Its purpose is to assist in the reduction and eventual elimination of the need for the threat or use of force in international relations. That is to result from the availability of an adequate range of institutions and methodologies, as well as universal acceptance of a body of principles and rules, which would serve as an acceptable alternative for the settlement of conflicting vital interests. The expectation is to build on existing systems but without ruling out the option of amending or replacing them as may be required.

CIDIR is engaged in the initiation and co-ordination of international activity and discourse for the creation of more efficient methods whereby disputes between States can be settled peacefully, with emphasis on disputes that involve their supreme security interests, and the dissemination of documents resulting from such discourse. These functions are achieved by enlisting the co-operation of the optimally widest range of legal, scientific and diplomatic experts and decision-makers on a global scale, including academics, professional practitioners, government employees, political leaders and officers of international organizations.

The decision making process relies on a six Member Board of Directors from six States and four continents, supported by a panel of Expert Consultants. The funding, decision-making and methods of work of CIDIR are designed to guarantee maximum flexibility and independence, creating the possibility of fulfilling a pioneering role in the selected subject areas.

THE DIPLOMATIC ACADEMY OF THE MINISTRY FOR FOREIGN AFFAIRS OF THE RUSSIAN FEDERATION: is the leading educational institution in Russia providing a second education to diplomats and other specialists in international relations. Established in 1934, the Academy has since trained about 6000 diplomats. More than 400 of them have later become USSR or Russian Ambassadors abroad. Nowadays, all newly appointed ambassadors, minister-councillors and consul-generals of Russia have to take special short-term courses before they leave for a country of their appointment. There are over 180 teachers and researchers, including 60 professors and 90 doctors of sciences on the staff of the Academy. About 1000 trainees study annually at the Academy, taking a two-year course of studies and a number of short-term training courses - among them over 300 career diplomats, officials from presidential and government bodies, as well as representatives of regions of Russia. The Academy has also graduate and doctorate schools where, annually, about 140 scholars prepare their dissertations.

Research work at the Academy is carried out by its specially established division (1994) called the Institute for Contemporary International Studies (ICIS). There are several research centres in ICIS specialising in such topics as the Commonwealth of Independent States; the Asia-Pacific region; Europe; the Middle East and Africa; America; global problems; international law; security; armaments control and peace-keeping; and international economic relations. Its staff consists of 45 members, while Foreign Ministry and Government officials also participate in the research work at the ICIS. The two major tasks of the ICIS are preparation of textbooks and manuals, as well as position papers and recommendations for the Foreign Ministry.

The Academy has developed wide ranging international co-op-

eration. Thus, in 1994-2001 its staff participated in over 70 international conferences organised together with academic and educational institutions of all the five continents of the world held in Moscow or in other venues around the globe.

THE GRADUATE SCHOOL OF INTERNATIONAL STUDIES: was founded in 1927, at the peak of the internationalism associated with the League of Nations. At the time, the Institute was one of the first teaching and research institutions devoted to the graduate-level study of international relations. Today, it is an internationally recognized centre for the quality of its teaching staff, the rigorous selection of its students, and the relevance of its teaching research. Now, among the world's many international relations centres, the Institute stands out by virtue of its pluridisciplinary and international character. Four disciplines – international law, international economics, international history and politics, and political science – are taught at the Institute, with the goal of drawing on cross-disciplinary links to present a broad and sophisticated understanding of international relations.

Its location in Geneva, the subjects in its curriculum, the composition of its teaching staff and the diversity of its student body, give it a cosmopolitan and dynamic character. Institute faculty members, who number around forty, come from all regions of the world. The Institute's international character is reinforced by the use of both English and French as working languages.

The curriculum at the Institute is designed to give students a first rate education in any of its disciplines. Together, professors and students create a cosmopolitan institution where cultures meet and ideas are exchanged in a unique academic milieu.

THE INTERNATIONAL LAW ASSOCIATION (ILA): participated in the Conference series and the resulting volume through its Australian and Russian branches. The Association, which now has its Headquarters in London, United Kingdom, was founded in Brussels in 1873. Objectives under its Constitution include "...elucidation and advancement of international law, public and private, the study of comparative law, the making of proposals for the solution of conflicts of law and for the unification of law and the furthering of international understanding and goodwill".

These objectives are pursued primarily through the work of International Committees and the focal point of its activities is the series of biennial conferences of which 69 have so far been held.

At present the membership is about 4,200, spread among Branches in every continent. The ILA has consultative status, as an international non-governmental organization, with a number of the United Nations Specialized Agencies.

SANTA CLARA UNIVERSITY SCHOOL OF LAW: is located in "Silicon Valley," an area of unique economic activity, being adjacent to the business and legal center of San Jose, the third-largest city in California. Since 1976, through the *Institute of International and Comparative Law*, the Santa Clara University School of Law has offered international legal programs to law students and attorneys in the United States and from abroad. International law, human rights, international humanitarian law, and international dispute resolution, among others, constitute the regular curriculum.

The Institute regularly organizes conferences and it features a continuing education program, including the following:
Master's Degree in United States Law for Foreign Lawyers: This program leads to an LL.M. degree in United States Law.
Master's Degree in International and Comparative Law: Recently

inaugurated, it provides a program leading to an LL.M. degree in International and Comparative Law.
Introduction to United States Law: Ten courses are offered in an intensive five-week period.
Visiting Scholars Program: Each year a small number of professors, judges, court officials and other legal scholars are admitted to the law school as Visiting Scholars. While they are given full use of the law library, they do not take examinations and are not awarded academic credit toward any law degree, and other facilities.
Summer Law Study Abroad: The Santa Clara University School of Law has large summer programs conducted at 13 venues: Bangkok; Beijing; Geneva; Ho Chi Minh City; Hong Kong; Kuala Lumpur; Munich; Oxford; Shanghai; Seoul; Singapore; Strasbourg; and Tokyo. Other programs are at the planning stage.
International Law Certificate and International High Tech Certificate: The program is intended for the law student interested in pursuing a career in the international arena.

Regular publications are *the Santa Clara Law Review, Santa Clara Computer & High-Technology Journal* and will soon include *Santa Clara International and Comparative Law Journal.*

PART I

SECESSION IN SOCIETY AND LAW

SELF-DETERMINATION AND SECESSION

Judge Rosalyn Higgins *

I. The Conference Theme

The overall theme of the Conference is *Secession and International Law*. Various of us have been asked to introduce the discussion on different aspects that touch on the question of secession. And thus what I have been asked to introduce to our discussion is the topic of *self-determination and secession*.

As I started to prepare my remarks, the thought occurred to me that certain concepts of international law are so interrelated that one cannot understand the one without also understanding the other. Our understanding of any one of the concepts of self-determination, minorities and secession depends upon us also understanding the other two. Everyone of us here in this distinguished audience has followed, and indeed written on, these various matters. If the theme of our conference had not been "Secession and International Law", but "Self-determination in International Law", or "Minority Rights in International Law", we would have had to have the same papers (on self-determination, minorities and secession) and to cover the same ground. The same group of invitees would still have occurred to our hosts, the Asser Institute, whichever one of the three elements had been chosen as the theme of our meeting.

Why is this so ? I think that is because each of the concepts provides an element within a larger value-set that is supported by international law. International law is necessarily predicated upon the idea of the nation State. However, the events of this century

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Footnote texts at the end of each chapter

have made it all too clear that a statehood dependent on power (whether colonial or contemporary) is not stable or justifiable if it is imposed upon the peoples within that State and does not reflect their own desires: here we have the concept of self-determination of peoples. On the other hand, majoritarian rule within the nation State, while in principle necessary and desirable, will have to be tempered to reflect the fact that some groups feel very special ties of language, culture or religion, and will want to make sure that the aspirations of the majority within the nation State do not prevent the coexistence of these special values. Hence the concept of minority rights. Secession is international relations' "long stop" or "bolt hole", an ultimate possibility for a group caught in a total failure of the intended balance between self-determination of all the peoples, and minority rights of some of the people. Their situation may become so desperate that they see no option but to leave the larger politics within which they exist in the nation State. Whether secession is a legal right, or simply a regrettable fact, is something we will come back to.

This, I think, is the larger picture and I have taken a minute to elaborate on it because this *total* picture of self-determination, minority rights and secession is what colours what I understand each of these elements to comprise.

II. Self-determination

(a) The Charter Term and the Layman's Understanding

From the outset, the term has been invoked to mean something other than it was meant to mean in its appearances in the *UN Charter* – though the Charter is so regularly cited by the layman as the source of legitimacy for a rather different understanding of self-determination. Article 1 (2) of the Charter reminds us that one of the underlying purposes of the United Nations is "...to develop friendly relations among nations based on respect for the principle

of equal rights and self-determination of peoples...". That phrase "...equal rights and self-determination of peoples..." is the formula that appears elsewhere. Thus Article 55, on economic and social cooperation, instructs the United Nations to promote higher standards of living, solutions to health and cultural problems, and universal respect for human rights all in order to create conditions necessary for peaceful and friendly relations among nations based on "equal rights and self-determination". In both Article 1 (2) and Article 55, the context seems to be the rights of the peoples of one State to be protected from interference by other States or governments. We cannot ignore the coupling of 'self-determination' with 'equal rights' and it was equal rights of *States* that was being provided for, not of individuals (the *travaux préparatoires* of the Charter confirm this understanding of the phrase: see VI UNCIO 300[1]). The concept of self-determination did not then, originally, seem to refer to a right of dependent peoples to be independent, or, indeed, even to vote.

The incorrectness of popular assumptions about what the UN Charter provides on self-determination is further strikingly illustrated by turning to those parts that deal with dependent territories. Here, it might be assumed, would be found the references to the duty to provide self-determination on the basis of independence. In fact, Chapters XI and XII of the UN Charter do not use the phrase 'self-determination'. Chapter XI, which is concerned with non-self-governing territories, refers in Article 73 (b) to the duty of the governing State to "...develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and the varying stages of advancement." While laudable, this falls quite short of what today is generally thought of as self-determination. Chapter XII, which covers the