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The Politics of Self- Determination

Beyond the decolonisation process

Kristina Roepstorff



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The Politics of Self-Determination

Since the formation of the UN in 1945 the international community has witnessed a number of violent self-determination conflicts such as the disintegration of Yugoslavia, Chechnya, Kashmir, and South Sudan that have been a major cause of humanitarian crises and destruction. This book examines the scope and applicability of political self-determination beyond the decolonisation process.

Explaining the historical evolution of self-determination, this book provides a theoretical examination of the concept and its background. Taking an interdisciplinary approach, the author analyses self-determination in relation to contemporary conflicts, and develops a coherent theoretical framework for international responses to claims for self-determination. Built upon an examination of the conceptual foundations of self-determination, this book presents a new understanding and application of self-determination. It addresses the important question of whether self-determination claims legitimate armed violence, either by the self-determining group's right to rebel, or by the international community in the form of humanitarian intervention.

The Politics of Self-Determination will be of interest to students and scholars of political science, international relations, security studies, and conflict studies.

Kristina Roepstorff is a Government of Canada Postdoctoral Research Fellow at Simon Fraser University Vancouver, Canada.

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Acknowledgements

Self-determination was the driving principle behind the decolonisation process. Following World War II and supported by the newly founded United Nations, the process of decolonisation brought about the independence of various Western colonies and protectorates in Asia and Africa. However, claims for self-determination did not cease as the decolonisation process came to an end. The post-colonial world has witnessed a number of self-determination conflicts where sub-state groups challenge existing state authority and the integrity of the state's territory, leading to widespread human suffering. This raises the question to what extent self-determination is applicable outside the colonial context, and how self-determination is to be understood and realised beyond the decolonisation process.

This book is based on the findings of my doctoral research and examines the applicability and scope of self-determination beyond the decolonisation context. It explores the validity of claims for self-determination that are not, in a narrow sense, made against the background of colonialism. To this end, the book outlines the evolution of the idea of self-determination that has informed the decolonisation process – in particular within the United Nations. In reference to the relevant documents, it is argued that self-determination is not only applicable outside the colonial context, but has more recently already been applied outside this context. However, the current law of self-determination has some major shortcomings. In order to provide for a more adequate theoretical framework that gives guidance on the interpretation and implementation of self-determination beyond the decolonisation process, the book moves from an empirical to a theoretical examination of self-determination. This requires an understanding of the contemporary context in which self-determination conflicts occur, the conceptual foundations of self-determination, as well as explicating ways of exercising self-determination beyond decolonisation. Instead of being perceived as a threat to international peace and stability, the book stresses the

very potential of self-determination as a tool for conflict prevention and resolution.

Writing this book has been both a challenging and exciting process. This book could not have been completed without the support of many people. I am deeply indebted to a number of people and institutions who greatly facilitated the completion of this work, especially Professor Stefan Gosepath, the main supervisor of my doctoral thesis, for his encouragement, patience, and capability in the critical appraisal of earlier drafts of this dissertation and his helpful suggestions. The critique and comments of my fellow PhD students were invaluable for the progress in this research. Thanks go to Dr Hans-Joachim Heintze for his continuous support for the project and his efforts in introducing me to the HUMCRICON Network on Humanitarian Action and Conflict Studies. I highly benefited from a one-year Marie Curie fellowship in Humanitarian Action at the University College Dublin, helping me to complete the research both in financial as well as in intellectual terms. My special thanks go to Dr Pat Gibbons, who took so much time in reading earlier drafts of this book and whose enthusiasm was always a source of encouragement for me. I also owe thanks to Dr Heike Spieker for her useful comments on earlier drafts.

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Introduction

[...] the whole history of the right of self-determination is, for better and worse, the story of adaptation to the evolving struggles of peoples attempting to achieve effective control over their own destinies, especially in reaction to circumstances that are discriminatory and oppressive.

Falk (2000: 48)

Self-determination is a fundamental principle of the international system. It is at the heart of the United Nations (UN) and occupies a prominent position in key international documents such as the Charter of the United Nations and the International Bill of Human Rights. It has even been argued that self-determination as part of *jus cogens* presents a peremptory norm of the international system from which no derogation is ever to be permitted (Cassese 1995; Pomerance 1982: 64; Espiell 1979). Being insufficiently defined, however, self-determination is left open to diverse interpretations and understandings with far-reaching effects on the application of it in international law and politics. Thus, despite its acclaimed importance, until this day there exists no consensus among scholars, international lawyers, and policy-makers on the scope and applicability of self-determination.

Though widely applied in the decolonisation era as a right of colonial people to independence, the applicability of self-determination outside this specific context has been subject to continuing debate. Following World War II and supported by the newly founded United Nations, the process of decolonisation brought about the independence of various Western colonies and protectorates in Asia and Africa. However, claims for self-determination did not cease with the coming to an end of the decolonisation process¹ and the world has witnessed a number of self-determination conflicts where sub-state groups challenge existing state authority and the integrity of the state's territory. Today, self-determination is frequently

2 Introduction

invoked in disparate contexts and by various kinds of groups to support an equally diverse collection of purposes. The demand for self-determination of a group of people – religious, ethnic, cultural, or linguistic – thereby often collides with other fundamental principles of the international system, such as the principle of state sovereignty and territorial integrity of the state. This raises two important questions: first, whether self-determination is applicable outside the colonial context; second, if this is the case, how self-determination is to be understood and realised.²

Regarding the first question, restricting the application of self-determination to the decolonisation context is tenable neither legally nor empirically. Legally, the inclusion of self-determination of peoples into human rights law entitles *all* people to the right to self-determination, irrespective of them being considered ‘colonised’ people or not. As such, human rights law clearly extends the scope of self-determination beyond the decolonisation context. Empirically, the drive for self-determination has been one of the major causes of humanitarian crises in the post-colonial world. Particularly since the Cold War, struggles for self-determination and claims for secession have been the source of conflicts, destruction, and great suffering in many regions of the world, often resulting in the dismembration – the break-up – of nation-states. Examples are plenty and news about groups striving for greater self-determination or independent statehood reaches us regularly: the bloody and destructive disintegration of Yugoslavia and the conflicts in the Caucasus with its disputed territories of Abkhazia, Chechnya, South Ossetia and Nagorno-Karabakh; the conflicts in South Asia – Sri Lanka, Kashmir, North East India; in Europe the conflicts in Northern Ireland and the Basque Country; and the recent independence of South Sudan are but a few of many examples. Self-determination is all too often equated with a right to secession and, ultimately, a right to independent statehood (Xanthaki 2005: 22). Separatist movements use the notion of self-determination to legitimise their challenge of state authority. Similarly, states perceive self-determination claims as claims to independent statehood through secession. This equation of self-determination with secession has at least two negative consequences for the application of self-determination in specific cases. First, the international community of states avoids acknowledging any claims for self-determination as legitimate, as this would lead to a fragmentation of the international state order, constituting a threat to international peace and stability. Second, groups that invoke their right to self-determination believe that having a unilateral right to secession is the only means to realise self-determination. Other ways of realising self-determination, for instance through autonomy or self-governance, are thus seen as a foul compromise that ultimately amounts to a denial of full self-determination.