

## **The London School of Economics and Political Science**

### **Moments of Self-determination: The Concept of ‘Self-determination’ and the Idea of Freedom in 20<sup>th</sup>- and 21<sup>st</sup>-Century International Discourse**

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A thesis submitted to the Department of International History  
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## Abstract

This thesis examines how the concept of ‘self-determination’ has featured in high-level international discourse at key moments in the 20<sup>th</sup> and 21<sup>st</sup> centuries. The exact language of ‘self-determination’ was internationalised in 1918 by Woodrow Wilson in the political context of the First World War, and in reaction to Lenin’s earlier references to the concept, which he had developed between 1903 and 1917. Subsequently, ‘self-determination’ has been cited in important international legal settings, as in the League of Nations’ Aaland Islands case (1920–1921), in the UN Charter (1945), during the UN discussions on General Assembly Resolution 1514 (1960) and the International Covenants on Human Rights (1966), and at the International Court of Justice proceedings on Kosovo (2008–2010). Together, these uses of ‘self-determination’ constitute the ‘self-determination moments’ of my thesis.

Taking a hitherto unexplored approach to ‘self-determination’, this thesis builds on previous scholarship on the concept – produced primarily within the fields of international law and international relations – and examines it from the perspective of intellectual and international history. Applying the methodology of Quentin Skinner, the thesis shows that the significant international mentions of ‘self-determination’ have sought *legitimation*. Specifically, the thesis argues that the central international references to ‘self-determination’ over the past hundred years have sought legitimation by invoking two different ideas of freedom: a ‘radical’ idea of freedom, and a ‘liberal-conservative’ one. Based on a wide-ranging analysis of archival materials, published primary sources, original interviews, and relevant secondary works, the thesis finds that the liberal-conservative idea of freedom has dominated the international appearances of ‘self-determination’ at the selected ‘self-determination moments’. However, it is the radical idea of freedom that has repeatedly triggered the re-emergence of ‘self-determination’ as a meaningful concept in international discourse, and kept its potency alive.

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Any shortcomings in this thesis, however, are of course solely of my own making.

Rita Augestad Knudsen, Oslo, 2 October 2013

## GLOSSARY OF ACRONYMS

ACP	Andrew Cordier Papers
ARMSNY	United Nations Archives, New York
EULEX	European Union Rule of Law Mission in Kosovo
FRUS	Foreign Relations of the United States ( <i>document collection</i> )
FRY	Federal Republic of Yugoslavia
HRC	United Nations Commission on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICHRs	International Covenants on Human Rights (ICCPR and ICESCR)
ICJ	International Court of Justice
ICO	International Civilian Office, Kosovo
KFOR	Kosovo Force
KLA	Kosovo Liberation Army
LNA	League of Nations Archives, Geneva
MIA	Marxists Internet Archive
NSGT	Non-self-governing territory
PWW	Papers of Woodrow Wilson
RSDLP	Russian Social Democratic Labour Party
TNA	The National Archives, London
UNCIO	United Nations Conference on International Organisation, San Francisco (1945)
UNGA	United Nations General Assembly
UNMIK	United Nations Interim Administration Mission in Kosovo
UNOGA	United Nations Office in Geneva Archives
UNSC	United Nations Security Council

## INTRODUCTION

‘Self-determination’ emerged as a significant international concept in the early 20<sup>th</sup> century, when Vladimir Ilyich Lenin and Woodrow Wilson brought the exact term into international political discourse.<sup>1</sup> During the decades following Lenin’s and Wilson’s statements and writings, the two most ambitious organisations in contemporary international affairs re-asserted the language of ‘self-determination’ in legal contexts. First, the League of Nations invoked ‘self-determination’ in the 1920–1921 Aaland Islands case. Second, and more importantly, the UN codified the concept in its 1945 Charter as well as in the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples (the ‘Decolonisation Declaration’) and in the two International Covenants on Human Rights (ICHRs) in 1966. And attesting to the current international importance of the concept of ‘self-determination’ is the fact that it featured in the 2008–2010 proceedings on Kosovo’s declaration of independence at the International Court of Justice (ICJ), the UN Court.

All these appearances of the concept of ‘self-determination’ have revealed diverging perspectives on its conceptual and practical meaning. Lenin and Wilson mentioned it with two very different conceptualisations in mind. The 1960s Decolonisation Declaration and the 1966 ICHR were preceded by lengthy discussions between state delegates at the UN on what was meant by ‘self-determination’. Also the inclusion of the term in the UN Charter and in the ICJ case on Kosovo disclosed contrasting understandings. The politicians, diplomats, lawyers, and institutions that reiterate ‘self-determination’ as a concept of international import have confirmed both its importance and its ambiguity. One hundred years after its first appearance in international discourse, the concept still oscillates between institutional formalisation and controversy.

What has remained constant in international invocations of ‘self-determination’ is the linkage with ideas of freedom. From Lenin’s and

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<sup>1</sup> In this thesis ‘discourse’ broadly refers to texts – political, legal, and diplomatic – including recorded oral statements.

Wilson's earliest public references to 'self-determination', *freedom* has been used to explain and legitimise arguments and ideas about the concept. Originally, the term was unfamiliar; but also later, it has lacked an unambiguous definition. Agents<sup>2</sup> drawing upon the concept in international discourse have thus used the idea of *freedom* to give it meaning. Along with its 20<sup>th</sup>-century formalisation in international law, its connection with freedom is what has made 'self-determination' an authoritative international reference point. Combined, its legal status and linkage with ideas of freedom may explain its continuous re-appearance in international affairs, as well as the various attempts to lay claim to it.

Manifestations of 'self-determination' in international discourse have been characterised by the presence of *two* conflicting ideas of freedom. These will be explained below: suffice it here to note briefly that while the 'liberal-conservative' idea of freedom has given priority to the value of *peace*, the 'radical' idea has brought *equality* to the fore. The former idea has dominated international references to 'self-determination', but also the radical version has been evident at each central historical moment studied here. Whenever the concept of 'self-determination' has emerged on the international agenda, proponents of each idea of freedom have implicitly sought to appropriate it, by employing *their* preferred idea as its standard of legitimation. Through this dynamic, international mentions of 'self-determination' serve to reveal which understandings of freedom have been present in international affairs at specific times in history.

This thesis analyses the international discourse on 'self-determination' at key points, or 'moments', in the 20<sup>th</sup> and 21<sup>st</sup> centuries, seeking to explain how this discourse has encompassed the two ideas of freedom. As will be seen, all 20<sup>th</sup>-century 'self-determination moments' ended with formal 'victory', in terms of institutional and legal adoption, for what I call the 'liberal-conservative' idea. This would indicate that in international affairs of the past hundred years, freedom has been understood primarily in liberal-conservative terms. On the other hand, also the 'radical' idea of freedom has

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<sup>2</sup> I refer jointly to the persons, institutions and states who use the language of 'self-determination' as 'agents' or 'actors'.



kept re-surfacing. It has been decisive in triggering the international re-appearances of the concept of self-determination, and was asserted more strongly in connection with the ICJ case, to be dealt with at the end of this thesis.

In this introduction, I discuss the state of research on self-determination and how my dissertation can add to this literature. After introducing the methodological approach followed here, I describe my understanding of the two ideas of freedom that have been expressed with 'self-determination'. Finally, I provide an outline of the thesis and its chapters.

### **Historiography**

Despite its importance in recent international history, the concept of self-determination has tended to be overlooked by historians. True, it has received some attention by historians dealing with either nationalism,<sup>3</sup> or the achievement of independence of specific states, especially in the context of decolonisation.<sup>4</sup> But whereas historians in the first category have strictly equated references to 'self-determination' with nationalist calls for secession, the latter have narrowly applied the concept to the process of granting independence to former colonies. Typically, diplomatic and international historians have discussed self-determination with regard to definite events in time and place. Such a focus on historically precise applications has left unaddressed the questions of how the term became part of international discourse, how it later re-appeared, and the ideas of freedom with which it has been associated. Above all, 'self-determination' in international discourse has yet to be explored from the perspective of intellectual history.

That the interest of historians has been thus restricted has left the field

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3 See e.g. John Breuilly: *Nationalism and the State*, St. Martin's Press, New York, 1982; John Breuilly: 'Changes in the Political Uses of the Nation: Continuity or Discontinuity?', pp.67–101 in Len Scales and Oliver Zimmer (eds): *Power and the Nation in European History*, Cambridge University Press, Cambridge, 2005.

4 Below I indicate how the approach of this thesis differs from the focus of diplomatic histories of decolonisation. For two examples from the historical literature on specific countries' independence, see S. Anatol Lieven: *The Baltic Revolution: Estonia, Latvia, Lithuania and the Path to Independence*, Yale University Press, New Haven, CT, 1994; Cedric Thornberry: *A Nation is Born: The Inside Story of Namibia's Independence*, Gamsberg Macmillan, 2004.

primarily to scholars of international law, with some contributions from international relations and political philosophy. Echoing the disagreement over the concept at the level of international affairs, such scholars have discussed its meaning and value for as long as it has been part of international discourse. Works from different disciplines have variously described self-determination as a ‘right’, ‘remedy’, ‘principle’, ‘process’, and ‘claim’ – with more detailed characterisations ranging from the ‘plebiscite principle’,<sup>5</sup> ‘self-government’,<sup>6</sup> ‘the ability of an individual or a group to make choices free from the bounds of the institutional framework within which they live’,<sup>7</sup> to ‘a human need or urge’,<sup>8</sup> a ‘doctrine of the legitimacy of political institutions’,<sup>9</sup> and ‘a struggle for inclusion’.<sup>10</sup>

Scholars of self-determination have also shared with the politicians, state delegates and lawyers who have spoken about the concept internationally the inclination to either advocate or reject it.<sup>11</sup> Not unlike these international agents, scholars have often argued either *for* or *against* letting ‘self-determination’ have prominent place in international affairs, depicting the concept as a force for *either* destructive exclusivism *or* empowering liberation. With this polarised approach, they have failed to recognise that it

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5 Theodore Woolsey: ‘Self-determination’, *American Journal of International Law*, 13(2), 1919, pp.302–305, at p.302.

6 Avishain Margalit and Joseph Raz: ‘National Self-determination’, *Journal of Philosophy*, 87(9), 1990, pp.439–461, at p.440.

7 Robert McCorquodale: ‘Introduction’, pp.i–xxi in Robert McCorquodale (ed.): *Self-determination in International Law*, Ashgate, Dartmouth, 2000, at p.xi.

8 Gerry J. Simpson: ‘The Diffusion of Sovereignty: Self-determination in the Post-colonial Age’, *Stanford Journal of International Law*, 32, 1996, pp.255–286, at p.275.

9 James Summers: *Peoples and International Law: How Nationalism and Self-determination Shape a Contemporary Law of Nations*, Martinus Nijhoff, Leiden, 2007, p.44.

10 Karen Knop: *Diversity and Self-determination in International Law*, Cambridge University Press, New York, 2002, p.13. See also Ian Brownlie: ‘An Essay in the History of the Principle of Self-determination’, pp.90–99 in *Grotian Society Papers* (C. H. Alexandrowicz, ed.), Martinus Nijhoff, The Hague, 1968, at p.90; David B. Knight and Maureen Davies: *Self-determination: an Interdisciplinary Annotated Bibliography*, Garland Publishing, New York, 1987.

11 For opposite views see James Anaya: ‘A Contemporary Definition of the International Norm of Self-determination’, *Transnational Law and Contemporary Problems*, 3(1), 1993, pp.131–164, as contrasted with Amitai Etzioni: ‘The Evils of Self-determination’, *Foreign Policy*, 89, 1992/1993, pp.21–35. Only a handful of scholars have so far noted, and then without much elaboration, self-determination’s ‘built-in ambivalence’ of progressiveness and threat (Antonio Cassese: *Self-Determination of Peoples: A Legal Reappraisal*, Cambridge University Press, Cambridge 1995, pp.5–6): that it may be able to suspend the usual legal norms (Nathaniel Berman: ‘Sovereignty in Abeyance: Self-determination and International Law’, *Wisconsin International Law Journal*, 7(1), 1988/1989, pp.51–105, especially pp.58, 75), by using ‘the language of bottom-up mass politics’ against the usual elitism of international law (Summers 2007, p.xxxvi).

is precisely the complex, diverging potentialities of self-determination that have sustained it as a powerful international concept. Some one hundred years after its establishment in high-level international affairs, it still provokes strong reactions, all the while evading repeated attempts to pin it down.

These ‘good’ versus ‘bad’ approaches are united in their assumption that the meaning of ‘self-determination’ is sufficiently uniform to enable a decisive position on it. But its record in international affairs pulls it away from such definitional attempts. Over the course of the past century, ‘self-determination’ has meant different things – conceptually and in practice – to different people at different times. Ernesto Laclau has described as a ‘floating signifier’ a notion that does not *per se* denote a precise meaning that remains constant once it has been articulated, but is (re)defined in situations of change.<sup>12</sup> Rather than seeking to define such ‘floating signifiers’, we should understand them in terms of ongoing attempts to hegemonise their content and fix their meaning.<sup>13</sup> Although this thesis is similarly sceptical to the possibility of fixing ‘self-determination’ with one single authoritative, lasting definition, neither does it share Laclau’s emphasis on the *always-changing* content of floating signifiers.<sup>14</sup> I see ‘self-determination’ as a concept found in the tension between the liberal-conservative and radical ideas of freedom.

Beyond this broad understanding, this thesis does not operate with a definition that would sum up the concept in different words than ‘self-determination’. I hold that the concept does not exist separately from the particular language of ‘self-determination’: it *cannot* be fully expressed with different words – the term and concept are one and the same.<sup>15</sup> In the absence of any definition, it is also impossible to identify how and when the

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12 Ernesto Laclau: *New Reflections on the Revolution of our Time*, Verso, London, 1993, p.28. Claude Lévi-Strauss was the first to employ the term ‘floating signifier’.

13 Laclau 1993, p.28.

14 *Ibid.*, pp.18–19, 31.

15 See Annabel Brett: ‘What is Intellectual History now?’, pp.113–131 in David Cannadine (ed.): *What is History Now?*, Palgrave Macmillan, London, 2002, especially p.117; Reinhart Koselleck: *Futures Past: On the Semantics of Historical Time*, Columbia University Press, New York, 2004, pp.84–85. I am aware of Koselleck’s specification of ‘concepts’ as interconnected with words, in contrast to ‘ideas’, but the distinction between ‘concepts’ and ‘ideas’ is not central to this thesis.

‘concept’ might have been articulated in different terms. Such identification would require definitional guidance on what these other terms might have been, but no such guidance can be found.<sup>16</sup> Consequently, this thesis concentrates on international appearances of the specific term ‘*self-determination*’, in English.<sup>17</sup> English was also a widely used and unifying language in 20<sup>th</sup>- and 21<sup>st</sup>-century international affairs. Both the League of Nations and the UN produced official records in English (although, of course, not only in English). In this thesis, only Lenin’s references to ‘self-determination’ were not originally, or officially, produced in English. The decision to nevertheless rely on English versions of Lenin’s language of ‘self-determination’ results from its *international* import, especially the influence on Woodrow Wilson. Wilson’s internationalisation of ‘self-determination’ reacted not only to Lenin’s broader ideas, but also to his use of this *word*, as Wilson had read it in English.

I return later to the historiography of the specific moments covered in this thesis, but will note here that my exclusive concentration on ‘self-determination’ in international discourse entails an historical starting point different from that of other scholars. Most of the literature has commenced with the alleged conceptual ancestors of self-determination and found these, *inter alia*, in ‘ancient’ times,<sup>18</sup> ‘early medieval Western Europe’,<sup>19</sup> the Age of Enlightenment,<sup>20</sup> and the French and American revolutions.<sup>21</sup> Also democratic theory, liberalism, and nationalism have been indicated as being among the predecessors.<sup>22</sup> Usually, after such a start, the literature has proceeded to discuss the post-1945 legal application of self-determination, examining actual cases such as those of East Timor and socialist

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16 Ibid., p.325.

17 See also Quentin Skinner: ‘A Genealogy of the Modern State’, *Proceedings of the British Academy*, 162, 2009, pp.325–370, at p.325.

18 Simpson 1996, p.261.

19 Summers 2007, p.86.

20 Thomas D. Musgrave: *Self-determination and National Minorities*, Clarendon Press, Oxford, 1997, p.1.

21 E.g. Cassese 1995, pp.11–22. By contrast, Gilbert Murray: ‘Self-determination of Nationalities’, *Journal of the British Institute of International Affairs*, 1(1), 1922, pp.6–13 insists on the ‘clearly’ German origin of the concept.

22 See e.g. Deon Geldenhuys: *Contested States in World Politics*, Palgrave Macmillan, London 2009, p.29; Alfred Cobban: *The Nation State and National Self-Determination*, Collins, London 1969.

Yugoslavia.<sup>23</sup>

By contrast, my examination of ‘self-determination’ starts with the introduction of this exact language into international discourse. In 1918, Wilson cited ‘self-determination’ internationally in response to Lenin’s earlier references. This is a pivotal moment, also since the international import of self-determination relates to its association with ideas of freedom and its inclusion in international law: Both features stem from the international emergence of the concept with the words and ideas of Lenin and Wilson. This is not to deny that the language of ‘self-determination’ may have drawn upon earlier philosophical traditions or historical developments. But the introduction of this precise phrase, in English, in international political and legal discourse – which is the focus of this thesis – came in 1918, and was due to Lenin and Wilson.

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23 See, inter alia, S. Joseph, J. Schulz and M. Castan: ‘Right of Self-determination – Article 1’ pp.99–107 in S. Joseph, J. Schulz and M. Castan (eds): *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary*, Oxford University Press, Oxford, 2005; James Crawford: ‘The Right of Self-Determination in International Law: Its Development and Future’, pp.7-67 in Philip Alston (ed.): *People’s Rights*, Oxford University Press, Oxford 2000a. For separate analysis of specific cases as matters of ‘self-determination’, see Steven Hillebrink: *The Right to Self-determination and Post-colonial Governance. The Case of the Netherlands Antilles and Aruba*, TMC Asser Press, The Hague, 2008 and John R. Ballard: *Triumph of Self-determination: Operation Stabilise and United Nations Peacekeeping in East Timor*, Praeger Security International, Westport, CT, 2008; Obiora Chinedu Okafor: *Re-defining Legitimate Statehood: International Law and State Fragmentation in Africa*, Martinus Nijhoff, London, 2000; Raphael Chijoke Njoku: ‘Nationalism, Separatism, and Neoliberal Globalism: A review of Africa and the Quest for Self-determination since the 1940s’, pp.338–361 in Don H. Doyle (ed.): *Secession as an International Phenomenon: From America’s Civil War to Contemporary Separatist Movements*, University of Georgia Press, Athens, GA 2010; Kwame Nimako: ‘Nkrumah, African Awakening and Neo-colonialism: How Black America Awakened Nkrumah and Nkrumah awakened Black America’, *The Black Scholar*, 40(2), 2009, pp.54–70; Prakash Sinha: ‘Self-determination in International Law and its Applicability to the Baltic Peoples’, pp.256–285 in Adolf Sprudz and Armins Rusic (eds) *Res Baltica: A Collection of Essays in Honor of the Memory of Dr. Alfred Bilmanis (1887–1948)*, A.W. Sijthoff-Leyden, 1968; Bryan O’Linn: *The Priority for Namibia Today: An Honourable Peace*, Namibia Publications, London, 1985; Peter Radan: *The Break-up of Yugoslavia in International Law*, Routledge, London, 1988; Stefan Oeter: ‘The Dismemberment of Yugoslavia: An Update on Bosnia and Herzegovina, Kosovo, and Montenegro’, *German Yearbook of International Law*, 50, 2007, pp.457–521; Payam Akhavan: ‘Self-determination and the Disintegration of Yugoslavia: what Lessons for the International Community?’, pp.227–248 in Donald Clark and Robert Williamson (eds): *Self-determination: International Perspectives*, MacMillan Press, London 1996; Carey Levine: ‘The Legacy of Humpty Dumpty: The Role of Recognition in the Dissolution of Yugoslavia’, pp.126–135 in Metta Spencer (ed.): *The Lessons of Yugoslavia*, Elsevier Science, New York, 2000; Hurst Hannum: ‘Self-determination, Yugoslavia, and Europe: Old Wine in New Bottles?’, *Transnational Law and Contemporary Problems*, 3, 1993a, pp.57–69.

Despite disagreements on the definition and value of self-determination, scholars have tended to ask the same questions about the concept.<sup>24</sup> At the bottom line, their interest has been in its possible implementation in actual politics and law – in formulating criteria and guidelines fit to produce pragmatic solutions to current conflicts.<sup>25</sup> Turning to past cases, scholars of international law have aimed at formulating legal criteria; international relations scholars have sought policy recommendations; and political philosophers have looked for moral standards as to when self-determination might be warranted in practice.<sup>26</sup> This criteria-centred orientation has included scholars such as Antonio Cassese, Hurst Hannum, and Allen Buchanan.<sup>27</sup> These and others have suggested conditions for granting groups

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24 This is the case even when titles promise new approaches, such as Nihal Jayawickrama: ‘The Right of Self-determination: A Time for Reinvention and Renewal’, pp.354–374 in Clark and Williamson (eds) 1996; Hurst Hannum: ‘Rethinking Self-determination’, *Virginia Journal of International Law*, 34(1), 1993b, pp.1–69; Ephraim Nimni: ‘Nationalism, Ethnicity, and Self-determination: A Paradigm Shift’, pp.21–37 in Keith Breen and Shane O’Neill (eds): *After the Nation? Critical Reflections on Nationalism and Postnationalism*, Palgrave Macmillan, Basingstoke, 2010; Robin C. A. White: ‘Self-determination: Time for a Re-Assessment?’, *Netherlands International Law Review*, 28, 1981, pp.147–170.

25 The separate reviews of Knop 2002 by Hurst Hannum, Robert Hayden and Wendy Lacey are telling, in their search for something ‘useful’ in the scholarship on self-determination, ‘Book forum’ *AUSTLIJ*, 9, 2003, accessed 30 March 2011, [www.austlii.edu.au/au/journals/MqLJ/2003/9.html](http://www.austlii.edu.au/au/journals/MqLJ/2003/9.html).

26 For recent examples of political philosophy, see Christopher Wellmann: ‘The Morality of Secession’, pp.19–36 and Aleksandar Pavkovic: ‘By the Force of Arms. Violence and Morality in Secessionist Conflict’, pp.259–276; both in Doyle (ed.) 2010; Allen E Buchanan: ‘The Right to Self-determination: Analytical and Moral Foundations’, *Arizona Journal of International and Comparative Law*, 8(2), 1991, pp.41–50; Margaret Moore: *The Ethics of Nationalism*, Oxford University Press, Oxford, 2001; Margalit and Raz 1990, p.439; Allen Buchanan: ‘Uncoupling Secession from Nationalism and Intrastate Autonomy from Secession’, pp.81–114 in Hannum and Babbitt (eds) 2006; Nicolaus Tideman: ‘Secession as a Human Right’, *Journal of Moral Philosophy*, 1(1), 2004, pp.9–19; Anna Moltchanova: *National Self-Determination and Justice in Multinational States*, Springer, London and New York, 2009, p.5; Tamar Meisels: *Territorial Rights*, Springer, Tel Aviv, 2009. See also Burke A. Hendrix: *Ownership, Authority, and Self-determination*, Pennsylvania State University Press, Pennsylvania, 2008, pp.1, 181; Geneviève Nootens: ‘Liberal Restrictions on Public Arguments: Can Nationalist Claims be Moral Reasons in Liberal Public Discourse?’, pp.237–260 in Jocelyne Couture, Kai Nielsen and Michel Seymour (eds): *Rethinking Nationalism*, University of Calgary Press, Calgary, 1996, e.g. p.255; the contributions in Margaret Moore (ed.): *National Self-determination and Secession*, Oxford University Press, Oxford, 1998. For policy-oriented perspectives see e.g. Kamal S. Shehadi: ‘Ethnic Self-determination and the Break-up of States’ *Adelphi Paper*, 283, December 1993, International Institute for Strategic Studies; Marc Weller: *Escaping the Self-determination Trap*, Martinus Nijhoff, Leiden, 2008a; Chadwick 2011; Yonah Alexander and Robert A. Friedlander (eds): *Self-determination: National, Regional and Global Dimensions*, Westview Press, Boulder, CO, 1980; Dino Kritsiotis (ed.): *Self-determination: Cases of Crisis*, University of Hull Law School, Hull, 1994.

27 Key works: Cassese 1995; Hurst Hannum: *Autonomy, Sovereignty, and Self-determination: The Accommodation of Conflicting Rights*, University of Pennsylvania Press, Philadelphia, PA, 1996; Allen Buchanan: *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec*, Westview, CO, 1991.

‘self-determination’, such as exhaustion of all other means, documented human rights violations against claimants,<sup>28</sup> as well as the representativeness of group leaders<sup>29</sup> and their commitment to human rights and democracy.<sup>30</sup>

The criterion that scholars have most frequently proposed for implementing self-determination is that the group seeking it must constitute a properly defined ‘people’.<sup>31</sup> According to this line of thought, only proper definition as a self-determination ‘unit’ can make a group eligible for self-determination – defining the *self*, they say, goes to the heart of the problématique.<sup>32</sup> Legal scholars Jan Hendrik W. Verzijl and James Crawford have both pointed out that it is meaningless to have a legal ‘right’ to self-determination without a clear ‘right-holder’.<sup>33</sup> Avishai Margalit and Joseph Raz have similarly held that the issue of the ‘self’ is more important than the possible outcomes of disputes on self-determination.<sup>34</sup>

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28 Nanda 1981, p.275. See also Lee C. Buchheit: *Secession: The Legitimacy of Self-determination*, Yale University Press, New Haven, CT, 1978, p.219.

29 Jonathan I. Charney: ‘Self-determination: Chechnya, Kosovo, and East Timor’, *Vanderbilt Journal of Transnational Law*, 34, 2001, pp.455–468, at p.464; Cassese 1995, p.167; James Crawford: *Creation of States in International Law*, Clarendon Press, Oxford, 2006, p.387; David Makinson: ‘Rights of Peoples: Point of View of a Logician’, pp.69–92 in James Crawford (ed.): *The Rights of Peoples*, Clarendon Press, Oxford, 1988, e.g. p.77.

30 Daniele Archibugi: ‘A Critical Analysis of the Self-determination of Peoples: A Cosmopolitan Perspective’, *Constellations* 10(4), 2003, pp.488–505, at p.500.

31 See e.g. Alina Kaczorowska: *Public International Law*, Routledge, London, 2010, pp.579–580, 598, 602, 607–611.

32 E.g. Richard N Kiwanuka: ‘The Meaning of “People” in the African Charter on Human and Peoples’ Rights’, *American Journal of International Law*, 82, 1988, pp.80–101; Rupert Emerson: ‘Self-Determination’, *American Journal of International Law*, 65, 1971, pp.459–475, at p.463; Hans Kelsen: *The Law of the United Nations: A Critical Analysis of its Fundamental Problems*, Stevens and Sons, London, 1950, pp.50–53; McCorquodale 1994, pp.866–8; Makinson 1988, e.g. p.72; Hannum 1996, e.g. p.31; Anthony Whelan: ‘Wilsonian Self-determination and the Versailles Settlement’, *International and Comparative Law Quarterly*, 43, January 1994, pp.99–115, at p.103; Joshua Castellino: *International Law and Self-determination*, Martinus Nijhoff, The Hague, 2000, e.g. pp.45, 64; Rodolfo Stavenhagen: ‘Self-determination: Right or Demon?’, pp.1–8 in Clark and Williamson (eds) 1996, at p.6; Musgrave 1997, p.148; Clyde Eagleton: ‘Self-determination in the United Nations’, *American Journal of International Law*, 47(1), Jan 1953, pp.88–93, at pp.91–92; Christian Tomuschat: ‘Secession and Self-determination’, pp.23–45 in Marcelo G. Kohen (ed.): *Secession: International Law Perspectives*, Cambridge University Press, Cambridge, 2006, at p.23; Margalit and Raz 1990, pp.442–443; David Copp: ‘International Law and Morality in the Theory of Secession’, *Journal of Ethics* (2), 1998, pp.219–245, especially pp.227, 229; David Miller: ‘Secession and the Principle of Nationality’, pp.62–75 in Moore (ed.) 1998, at p.69; Summers 2007, xxxiii–xxxiv; also Natan Lerner: *Group Rights and Discrimination in International Law*, Martinus Nijhoff, Dordrecht, 1991, p.36.

33 Verzijl 1968, e.g. p.322; Crawford 2006, p.115.

34 Margalit and Raz 1990, pp.442–447 for criteria; p.454 for the latter question.

Others have noted the paradox involved in the search for a defined self-determination beneficiary. Nathaniel Berman has asked whether international law can ‘recognize a right accruing to an entity which, by its own admission, lacks international legal existence’.<sup>35</sup> And Karen Knop has maintained that achieving an international legal status as a right-holder equal to other right-holders can be a pivotal part of self-determination claims.<sup>36</sup> Although beyond the scope of this thesis, these latter conceptualisations interestingly point to framing ‘self-determination’ in terms of what Hannah Arendt called the ‘right to have rights.’<sup>37</sup>

In endeavouring to define the unit entitled to self-determination, scholars have often turned to ideas of the *nation* – implying, with varying degrees of enthusiasm, that the ‘self’ is inevitably shaped along national lines.<sup>38</sup> On this point, the cross-disciplinary literature on self-determination has intersected with the large body of thought on ‘nationalism’.<sup>39</sup> A premise of linking self-determination with nationalism is that the type of political freedom sought with reference to ‘self-determination’ is grounded in national affiliation, and that the unit demanding it seeks legitimation by purporting to constitute a nation.<sup>40</sup> Similar assumptions have guided authors discussing self-

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35 Berman 1988/1989, p.52.

36 Knop 2002, p.374.

37 See Hannah Arendt: *The Origins of Totalitarianism*, Harcourt, Brace, New York, 1985. For recent discussions, see Ayten Gündodu: ‘“Right to have rights”: Arendt and Agamben on Politics of Human Rights’, Paper for the UMN Political Theory Colloquium, 3 March 2006; Andrew Schaap: ‘Enacting the Right to have Rights: Jaques Rancière's Critique of Hannah Arendt’, *European Journal of Political Theory*, 10(1), 2011, pp.22–45.

38 See Musgrave 1997, pp.102–117; Cobban 1969; Ian Brownlie: ‘The Rights of Peoples in Modern International Law’, pp.1–16 in Crawford (ed.): 1988, at p.5. In Couture et al. (eds) 1996, David Miller: ‘Secession and the Principle of Nationality’ pp.261–282 is positive to such a definition, at p.265; Omar Dahbour: ‘The Nation-State as a Political Community: A Critique of the Communitarian Argument for National Self-determination’, pp.311–344 is negative, at p.339.

39 For a few examples, see Ernest Gellner: *Nations and Nationalism*, Blackwell, Oxford, 2007; Breuilly 2005; John Hutchinson: *Nations as Zones of Conflict*, Sage, London, 2005; Breen and O’Neill (eds) 2010; Antony D. Smith: *Nationalism: Theory, Ideology, History*, Polity Press, Cambridge, 2003a and Antony D. Smith: *Nationalism and Modernism: A Critical Survey of Recent Theories of Nations and Nationalism*, Routledge, London, 2003b; Liah Greenfeld: *Nationalism: Five Roads to Modernity*, Harvard University Press, Cambridge, MA, 1992.

40 See e.g. Michael Walzer: ‘The New Tribalism: Notes on a Difficult Problem’, *Dissent*, Spring 1992, pp.164–171; Jeff Spinner: *The Boundaries of Citizenship: Race, Ethnicity, and Nationality in the Liberal State*, Johns Hopkins University Press, Baltimore, MD, 1994, e.g. p.142; most contributions in David Wippman (ed.): *International Law and Ethnic Conflict*, Cornell University Press, Ithaca, NY, 1998 are based on the same assumption, although Lea Brilmayer (in ‘The Institutional and Instrumental Value of



determination in the context of minorities<sup>41</sup> and indigenous peoples,<sup>42</sup> indicating that these demand ‘self-determination’ due to their particular ‘national’ or ‘ethnic’ identities. A vast majority of scholars appear to assume that nationalism lies at the core of ‘self-determination’ and the claimants’ aim of statehood.<sup>43</sup>

My thesis is not concerned with these preoccupations.<sup>44</sup> There is no need to define the identity and eligibility criteria of a self-determination claimant in order to explore the concept of self-determination in international affairs or its associated ideas of freedom. Understanding ‘self-determination’ in international discourse does not require a general definition of the ‘self’. Neither of the two ideas of freedom used to legitimate language on ‘self-determination’ originally stressed claimants’ intra-group identity, as will be shown in the next two chapters. From my perspective, in any given ‘self-determination moment’, the question is not how a claimant may be defined

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Nationalism”, pp.58–85) disputes that claims are based on such homogeneity, at p.59.

41 See e.g. Patrick Thornberry: ‘Self-Determination, Minorities, Human Rights: A Review of International Instruments’, *International and Comparative Law Quarterly*, 38, 1989, pp.867–889; Margaret Moore: ‘On National Self-Determination’, *Political Studies*, 45(5), 1997, pp.900–913, at pp.902–903. See also Summers 2007.

42 E.g. Chris Tennant: ‘Indigenous Peoples, International Institutions, and the International Legal Literature from 1945–1993’, *Human Rights Quarterly*, 16, 1994, pp.1–57; Philip S. Deloria: ‘Chapter One – The Era of Indian Self-Determination: An Overview’, pp.191–197 in Kenneth R. Philip (ed.): *Indian Self Rule: First-Hand Accounts of Indian–White Relations from Roosevelt to Reagan*, Utah State University Press, Salt Lake City, UT, 1986; Glen Coulthard: ‘Beyond Recognition: Indigenous self-determination as Prefigurative Practice’ pp.187–203 in Leanne Simpson (ed.): *Lighting the Eight Fire: The Liberation, Resurgence, and Protection of Indigenous Peoples*, Arbeiter Ring, Winnipeg, 2008; Glenn T. Morris: ‘In Support of the Right to Self-Determination for Indigenous Peoples under International Law,’ *German Yearbook of International Law*, 29, 1986, pp.277–316; James Anaya: *Indigenous Peoples in International Law*, Oxford University Press, Oxford, 2004, pp.97–128; Gudmundur Alfredsson: ‘The Right of Self-determination and Indigenous Peoples’, pp.41–54 in Christian Tomuschat (ed.) *Modern Law of Self-determination*, Oxford University Press, Oxford, 2001; Karen Engle: *The Elusive Promise of Indigenous Development: Rights, Culture, Strategy*, Duke University Press, Durham, NC, 2010; Erica-Irene A. Daes: ‘The Right of Indigenous Peoples to “Self-determination” in the Contemporary World Order’, pp.47–57 in Clark and Williamson (eds) 1996, at p.53; Hannum 1996, p.454; Tomuschat 2006, p.37.

43 Berman 1988/1989, p.53; Wayne Norman: *Negotiating Nationalism: Nation-building, Federalism, and Secession in the Multinational State*, Oxford University Press, Oxford, 2006, p.183.

44 Cassese 1995, pp.326–327; McCorquodale 1994, p.868 and Summers 2007, p.xxxvii, indicate views closer to those of my own. Also not accepting the ‘self’ as their starting point, some political philosophers understand ‘self-determination’ as a case of ‘polity formation’, Zoran Oklopčic: ‘Eight Thesis on Self-determination: From Self-determination of Peoples to Principles of Polity-formation?’, University of Toronto, undated, p.4; or a ‘speech act’, Uriel Abulof: ‘We the peoples? The Birth and Death of Self-determination’, Tel Aviv University and Princeton University Woodrow Wilson School, 2010.

on national, linguistic, historical or territorial lines, or according to other such criteria. Rather, my interest lies in identifying which ideas of freedom have been used to legitimate the international ‘self-determination’ discourse.

In conceptual terms, moreover, once the demand for political freedom has been made as a call for ‘self-determination’, the political ‘self’ is already there – in the words of Peter Hallward – as a ‘people who participate in the active willing of a general will as such’.<sup>45</sup> He puts this point well:

Such a will is at work in the mobilization of any emancipatory collective force – a national liberation struggle, a movement for social justice, an empowering political or economic association, and so on. ‘The people’ at issue here are simply those who, in any given situation, formulate, assert and sustain a fully common (and thus fully inclusive and egalitarian) interest, over and above any divisive or exclusive interest.<sup>46</sup>

This understanding suggests that it is the aspirational and future-oriented features of ‘self-determination’, and not the current character of its subjects, that is conceptually constitutive of the ‘self’. Since *willing* ‘self-determination’ thus itself creates the relevant unit, a general definition becomes superfluous.

In this light, the massive scholarly concentration on the ‘self’ appears as a distraction, unduly shifting attention to claimants’ identity. The international language on ‘self-determination’ has not sought legitimation primarily by emphasising the internal characteristics of the claimant group, but by appealing to *freedom* – whether understood in liberal-conservative or in radical terms. The scholarly preoccupation with the question of the claiming ‘unit’ has obscured these crucial features of the international ‘anatomy’ of self-determination. Furthermore, decades of probing for definite legal, moral, and policy criteria as to when and how to grant self-determination to

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<sup>45</sup> Peter Hallward: ‘The Will of the People: Notes Towards a Dialectical Voluntarism’, *Radical Philosophy*, 155, May/June 2009, pp.17–29, at p.18.

<sup>46</sup> *Ibid.*, p.18. That this usually has meant being present on a certain *territory* is a feature of self-determination demands beyond the scope of my thesis; for some analysis, see Robert David Sack: *Human Territoriality: Its Theory and History*, Cambridge University Press, Cambridge, 1986; Lea Brilmayer: ‘Secession and Self-Determination: A Territorial Interpretation’, *Yale Journal of International Law*, 16, 1991, pp.177–202; and Lea Ypi: ‘What’s Wrong with Colonialism’, *Philosophy & Public Affairs*, 41(2), 2013, pp.158-191.

a properly pigeonholed ‘self’ have not yielded success. Disagreement persists among scholars, policymakers, and lawyers. It is thus time to move on. In removing ‘self-determination’ from the narrowly pragmatic-oriented literature, this thesis is the first work of intellectual history to embark on an analysis of the concept in international affairs.

Another point on which my approach departs from most existing works concerns their objections to the ‘political’ nature of self-determination.<sup>47</sup> Scholars of international law have often argued that this has made it an excessively vague, ‘manipulative’,<sup>48</sup> meaningless and incoherent,<sup>49</sup> ‘slogan-like’<sup>50</sup> concept, associated with ‘slipperiness’<sup>51</sup> and ‘evils’.<sup>52</sup> Even scholars who favour ‘self-determination’ have seemed wary of its political connotations. Of course, in the real world, questions of self-determination do involve assessing and comparing political demands. The outcome will rarely, if ever, satisfy more than one side.<sup>53</sup> However, rather than denying that self-determination is a political concept, or dismissing it for that reason, this thesis sees its political nature as essential to understanding its use in international affairs.<sup>54</sup>

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47 See e.g. Karl Josef Partsch: ‘Fundamental Principles of Human Rights: Self-determination, Equality and Non-discrimination’, pp.61–86 in Karel Vasak (gen. ed.) and Philip Alston (English ed.): *The International Dimensions of Human Rights*, Vol. I, Greenwood Press, Westport, CT, 1982, p.68.

48 Simpson 1996, p.259.

49 See e.g. Thomas M. Franck: *The Power of Legitimacy Among Nations*, Oxford University Press, Oxford, 1990, pp.153–156, 162.

50 Jan Hendrik W. Verzijl: *International Law in Historical Perspective*, A. W. Sijthoff, Leyden, 1968, p.321.

51 Eirin Jenne: ‘National Self-determination: A Deadly Mobilizing Device’, pp.7–36 in Hurst Hannum and Eileen F. Babbitt (eds): *Negotiating Self-determination*, Lexington Books, Oxford, 2006, at p.7.

52 Etzioni 1992/1993. See also Elizabeth Chadwick: *Self-determination in the Post-9/11 Era*, Routledge, London, 2011, p.141. A few legal scholars do mention the political nature of self-determination and secession without drawing equally negative conclusions: Summers 2007, p.316; Christian Tomuschat: ‘Self-determination in a Post-colonial World’, pp.1–20 in Tomuschat (ed.) 2001, at p.1; Knop 2002, p.374 Hurst Hannum: ‘Self-determination in the Twenty-first Century’, pp.61–80 in Hannum and Babbitt (eds) 2006, at p.77.

53 Some scholars have recognised this, including Brilmayer 1991, p.193; Margaret Moore: ‘The Territorial Dimension of Self-determination’, pp.134–157 in Moore (ed.): *National Self-determination and Secession*, Oxford University Press, Oxford, 1998. Arnold Toynbee: ‘Art 7: Self-Determination’, *Quarterly Review*, London, 1925, pp.317–338, at p.323.

54 On this point, deeper insights are found within the field of political philosophy, where, for instance, Charles Tilly acknowledges the confrontational character of self-determination, ‘National Self-Determination as a Problem for All of Us’, *Daedalus*, 122(3), 1993, p.31; *The Politics of Collective Violence*, Cambridge University Press, New York, 2003. See also Rogers Brubaker: ‘Myths and Misconceptions in the Study of

For instance, in inescapably political terms, self-determination claimants tend to be agonistic<sup>55</sup> in demanding radical freedom *against* and *from* the domination and ‘other-determination’ of a certain ‘enemy’.<sup>56</sup> Also at the level of high-level international affairs, those favouring the ‘radical’ idea of freedom in their ‘self-determination’ discourse have promoted total *liberation*<sup>57</sup> from such an ‘other’ through the establishment of a new body politic. In practice, this has meant backing peoples’ free choice of secession and political independence, or unification with another political entity. As scholars of critical legal theory have pointed out, international law – of which the language of ‘self-determination’ is part – itself partakes in the deeply political, ‘conflictual’ process driving international affairs.<sup>58</sup>

In effect, by normatively<sup>59</sup> demanding a new political and legal order and a group’s disassociation from an existing structure, the radical idea present in calls for ‘self-determination’ has signified an ‘ultimate’ form of political dissent.<sup>60</sup> Like the agents expressing this radical idea at international level, concrete claimants of ‘self-determination’ have not sought merely to *improve* an existing order in terms of, for instance, human rights: no, they have demanded liberation in terms of their gaining the power to decide on the basic framework in which laws are created and rights protected. The question of whether such liberation has been at all realisable in the globalised 20<sup>th</sup> and 21<sup>st</sup> centuries is beyond the scope of this thesis. But ever since ‘self-determination’ became part of international law, the concept has

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Nationalism’, pp.233-260 in Moore (ed.) 1998, at pp.234, 240.

55 See Chantal Mouffe: *On the Political*, Routledge, London, 2005, and Carl Schmitt – whom Mouffe also draws upon: *The Theory of the Partisan: A Commentary/Remark on the Concept of the Political*, Bunker & Humboldt, Berlin 1963, p.65.

56 See Schmitt 1963, p.65: ‘The heart of the political is [...] the distinction of friend and enemy’. For another helpful discussion of the ‘political’ see Jacques Rancière: ‘Ten Theses on Politics’, *Theory and Event*, 5(3), 2001, pp.1–16.

57 As being set ‘free from imprisonment, slavery, or oppression’, *Oxford English Dictionary*, oxforddictionaries.com/, accessed 2 April 2013.

58 See China Miéville: *Between Equal Rights: A Marxist Theory of International Law*, Pluto Press, London 2005, p.27, with reference to Schmitt. See also Martti Koskenniemi: ‘National Self-determination Today: Problems of Legal Theory and Practice’, *International and Comparative Law Quarterly*, 43, April 1994, pp.241–249, at p.244

59 See Schmitt 1963, p.24.

60 See also Brilmayer 1991, pp.187, 191; Bill Bowring: *The Degradation of the International Legal Order? The Rehabilitation of Law and the Possibility of Politics*, Glasshouse, Oxford, 2008.

opened for the possibility of disbanding the state units on which this law rests, thereby undermining it from within.<sup>61</sup>

The liberal-conservative idea of freedom is no less political than the radical one. International discourse has brought out the liberal-conservative idea when agents have sought to legitimise their arguments and ideas about ‘self-determination’ through reference to peace and non-interference with existing borders and orders. The political implications of couching ‘self-determination’ in such terms have been to conservatively favour the established status quo and those benefiting from it. In fact, the radical idea present in international ‘self-determination’ discourse has contained conservative features as well. Generally, the radical idea has not called for the creation of a completely new *type* of political association, but has aspired for yet another state.<sup>62</sup> Further, the central aim of the radical idea has been to achieve a status of equality with existing states and systems. It has not sought to elevate the status of pre-existing states, or to arrange politics along wholly different organising lines.<sup>63</sup>

Of these propensities indirectly competing to determine international language on ‘self-determination’, the radical push for freedom as new state creation has induced alarm among scholars. Noting the threat this could pose to the territorial integrity of established states, scholars have claimed that the very notion of ‘self-determination’ is a ‘reason for grave concern’.<sup>64</sup> Allowing the concept an international role, they have held, might bring ‘chaos’,<sup>65</sup> ‘disruption and subversion’,<sup>66</sup> ‘violence and destruction – even

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61 Summers (2007) concedes that a law of self-determination may be a ‘contradiction in terms’, but falls short of reflecting the concept’s subversive potential: pp.319, 387.

62 See also Ian Hurd: ‘Legitimacy and Authority in International Politics’, *International Organization*, 53(2), 1999, pp.379–408, at p.393; Miéville 2005, pp.270–271; Robert H. Jackson: ‘Quasi-States, Dual Regimes, and Neoclassical theory: International Jurisprudence and the Third World’, *International Organization*, 41(4), 1987, pp.519–549, at p.523.

63 Craig Calhoun: *The Roots of Radicalism: Tradition, the Public Sphere and Early Nineteenth Century Social Movements*, University of Chicago Press, Chicago, IL, 2012, has pointed out that an appreciation of tradition has also historically been part of radical movements, pp.82–120. For a related legal perspective, see James Crawford: ‘Democracy and the Body of International Law’, pp.91–122 in Gregory Fox and Brad Roth (eds): *Democratic Governance and International Law*, Cambridge University Press, Cambridge, 2000b, at p.97.

64 Verzijl 1968, p.335

65 Etzioni 1992/1993, p.28.

war'.<sup>67</sup> On the other hand, a few other scholars have seen such arguments as produced by a state-centred 'bias', and pointed out that a world dominated by states is bound to contest a concept of 'self-determination' that allows for secession from such states.<sup>68</sup> They have, however, highlighted this without considering the concept of 'self-determination' in international affairs from an intellectual history viewpoint, and without investigating the ideas of freedom evoked with it.

## Methodology

The approach of this thesis has been inspired by certain parts of the methodology of Quentin Skinner.<sup>69</sup> As one of the 'Cambridge school' historians, Skinner has developed his method of intellectual history at least since his ground-breaking 'Meaning and Understanding in the History of Ideas', published in 1969.<sup>70</sup> John Pocock is another key name of the Cambridge school; but, despite the similarities in their methods, the differences between them have led me to refer to Skinner's scholarship

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66 Verzijl 1968, p.324.

67 Etzioni 1992/1993, p.34

68 Robert McCorquodale: 'Self-Determination: A Human Rights Approach', *International Comparative Law Quarterly*, 43, October 1994, pp.857–885, at p.885; Tomuschat 2001, pp.4–5, 8; Thomas Franck: 'Postmodern Tribalism and the Right to Secession', pp.3–27 in Cathrine Brölman, René Lefeber, Marjoleine Zieck (eds): *Peoples and Minorities in International Law*, Martinus Nijhoff, Dordrecht, 1993, at p.13; Marc Weller: 'Settling Self-determination Conflicts: Recent Developments', *European Journal of International Law*, 20(1), 2009, pp.111–165, at p.112; Ved P. Nanda: 'Self-Determination under International Law: Validity of Claims to Secede', *Case W. Res. J. International Law*, 13, 1981, pp.257–276, at p.263.

69 Among Skinner's works of intellectual history that have influenced this thesis are *Hobbes and Republican Liberty*, Cambridge University Press, Cambridge 2008; *Liberty Before Liberalism*, Cambridge University Press, Cambridge 1998; Skinner 2009; and 'The Paradoxes of Political Liberty', *The Tanner Lectures on Human Values*, Harvard University, 1984. For his methodology, see the next footnote; for his scholarship on freedom, see below.

70 *History and Theory*, 8, 1969, pp.3–53. Skinner's major articles on methodology (including 'Meaning and Understanding') are compiled in *Visions of Politics Volume I: Regarding Method*, Cambridge University Press, Cambridge, 2002, upon which I have relied in the summary that follows. For appreciations and criticism by others, see James Tully (ed.): *Meaning and Context: Quentin Skinner and his Critics*, Polity Press, Cambridge, 1988, which also contains a few of Skinner's articles and his reply to his critics. See also Donald R. Kelly: 'Horizons of Intellectual History: Retrospect, Circumspect, Prospect', *Journal of the History of Ideas*, 48(1), Jan-Mar 1987, pp.143–169; Joseph M. Levine: 'Intellectual History as History', *Journal of the History of Ideas*, 66(2), 2005, pp.189–200; Bhikhu Parekh and R. N. Berki: 'The History of Political Ideas: A Critique of Q. Skinner's Methodology', *Journal of the History of Ideas*, 34(2), 1973, pp.163–184; Emile Perreau-Saussine: 'Quentin Skinner in Context', *Review of Politics*, 69(1), 2007, pp.106–122. For an illuminating interview with Skinner see Teresa Bejan: 'Quentin Skinner on Meaning and Method', *Art of Theory*, 2011, accessed 2 November 2012, [www.artoftheory.com/quentin-skinner-on-meaning-and-method/](http://www.artoftheory.com/quentin-skinner-on-meaning-and-method/).

alone rather than that of the Cambridge school as a whole.<sup>71</sup> Moreover, I cite Skinner rather than the Cambridge school, because the parts of Skinner's approach I am using the least are both those he is best known for, and those most closely linked to that school.<sup>72</sup>

To be concrete, I am following Skinner principally in examining how ideas and terms are *used* in argument;<sup>73</sup> I have a special interest in the uses of ideas as *standards of legitimation* in international discourse.<sup>74</sup> As Skinner has pointed out, expressions of political thought always seek legitimation, and are 'inhibited' by how they can plausibly be legitimised.<sup>75</sup> In this thesis,

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71 Pocock concentrates even more than Skinner on *language* and has stated that historians of political thought 'are and should be rhetoricians rather than logicians' – a position I do not fully share, John Pocock: *Political Thought and History: Essays on Theory and Method*, Cambridge University Press, Cambridge, 2009, p.27, see also pp.25–27, 51–66. For more on his methodology, see Pocock: 'The Concept of a Language and the Métier d'historien: Some Considerations on Practice', pp.19–38 in Anthony Pagden (ed.): *The Languages of Political Theory in Early-modern Europe*, Cambridge University Press, Cambridge, 1987, at pp.22, 24. For some comparative analyses of their approaches, see Skinner and Pocock, in 'What is Intellectual History?' *History Today*, 35(10), 1985, pp.46–55; Peter L. Janssen: 'Political Thought as Traditionary Action: The Critical Response to Skinner and Pocock', *History and Theory*, 24(2), May 1985, pp.115–146; Mark Bevir: 'Mind and Method in the History of Ideas', *History and Theory*, 36(2), 1997, pp.167–189, and Michael Printy: 'Skinner and Pocock in Context: Early Modern Political Thought Today', *History and Theory*, 48, February 2009, pp.113–121. For Pocock's critiques of Skinner, see Pocock: 'Quentin Skinner: The History of Politics and the Politics of History', *Common Knowledge*, 10(3), Fall 2004, pp.532–550 and Pocock: 'Concepts and Discourses: A Difference in Culture? Comment on a Paper by Melvin Richter', pp.47–58 in Hartmut Lehmann and Melvin Richter (eds): *The Meaning of Historical Terms and Concepts: New Studies on Begriffsgeschichte*, German Historical Institute, Washington, DC, Occasional Paper 15, 1996, at p.55. Pocock's seminal work of history of political thought is *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*, Princeton University Press, Princeton, NJ, 1975.

72 See below on the specific parts of Skinner's approach followed here. John Dunn might be mentioned as another historian associated with the Cambridge school, see e.g. his intellectual histories of, respectively, politics, and democracy, *The Cunning of Unreason: Making Sense of Politics*, HarperCollins, London 2000; *Setting the People Free: The Story of Democracy*, Atlantic Books, London, 2005; on methodology, John Dunn: 'The Identity of the History of Ideas', *Philosophy*, 43(164), 1968, pp.85–104. For some discussion on the Cambridge school, see Bevir 1997; Efraim Podoksik: 'How is Modern Intellectual History Possible?' *European Consortium for Political Research*, *European Political Science*, 9, 2010, pp.304–315.

73 Skinner 2002, p.86.

74 See 'The Idea of a Cultural Lexicon' pp.158–174 in Skinner 2002. See also Hurd 1999 on legitimation in international affairs. For a legal perspective, see Martti Koskenniemi: 'Hierarchy in International Law: A Sketch', *European Journal of International Law*, 8, 1997, pp.566–582, and above all Martti Koskenniemi: *From Apology to Utopia: The Structure of International Legal Argument*, Cambridge University Press, Cambridge, 2005. As noted, in this thesis, 'discourse' encompasses statements and documents issued in high-level political, legal and diplomatic contexts; I return later to those to be explored specifically.

75 Skinner 2002, p.156. Although Skinner refers to legitimation of political action, I take this to include ideas and arguments as well, since he understands political ideas in terms

I assume that the agents who have used the language of ‘self-determination’ internationally sought legitimation for their arguments and ideas. They would have done so in order to achieve their instrumental aims of convincing immediate audiences – and to enhance their general international moral authority, which would again increase their appeal and make their arguments more effective.

Like Skinner, I assume that such agents have sought legitimation for their discourse on ‘self-determination’ by citing standards they expected to be appropriate and valued in the international forums and formats where they have operated.<sup>76</sup> Only by employing such standards could they have reasonably expected to persuade their various addressees. Individuals did not and could not set these legitimising standards themselves, nor would they have been drawn to create new or unusual ones.<sup>77</sup> Their generally brief<sup>78</sup> expressions of ‘self-determination’ would have been more likely to succeed if founded upon conventions already widely appreciated – rather than imaginative and unfamiliar ones. Thus, these agents relied on terms and ideals *already there*, in the domain of international argumentation.<sup>79</sup>

Crucially, ‘self-determination’ has hence been expressed internationally with reference to the legitimising standards already prevalent at the specific international moments and forums in question.<sup>80</sup> As such, the international ‘self-determination’ discourse can reveal what these overarching standards have been. The standards invoked by agents when talking about ‘self-determination’ may indeed have been so dominant and taken for granted

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of their uses in argument, and the making of such arguments as speech acts.

76 This, of course, presupposes that the actors have been rational – which actors, in my view, *prima facie* should be assumed to be. See Skinner: ‘Some Problems in the Analysis of Political Thought and Action’, pp.97–118 in Tully (ed.) 1988, at p.113: ‘unless we begin by assuming the agent’s rationality, we leave ourselves with no means of explaining his behaviour’. See also Mark Bevir: *The Logic of the History of Ideas*, Cambridge University Press, Cambridge, 1999, pp.158–159.

77 Skinner 2002, p.156.

78 Some of the longer contributions in the ICJ Kosovo proceedings were a partial exception; but note that the final 45-page ICJ opinion mentioned ‘self-determination’ only in two of its paragraphs.

79 See e.g. Murray Edelman: ‘Political Language and Political Reality’, *PS*, Winter 1985, pp.10–19, at p.17; Morton A. Kaplan and Nicholas deB. Katzenbach: *The Political Foundations of International Law*, Wiley, New York, 1961, p.343. Why these standards are ‘already there’ is not a topic for my thesis, nor is the precise mechanics of conceptual change – although I briefly return to this below.

80 For the following, see Skinner 2002, p.156.



that presenters might have been unaware of using them.<sup>81</sup>

Specifically, as indicated, 20<sup>th</sup>- and 21<sup>st</sup>- century international expressions of ‘self-determination’ have sought primary legitimation with reference to the standard of *freedom*. Given the initial novelty of the exact language of ‘self-determination’ in international discourse, as well as the lack of a definition of the concept, agents have sought to make sense of it to their audiences by referring to the recognised standard of ‘freedom’. Such discourse has hence reflected the ideas of freedom prevailing internationally at these different time-points. At each moment studied in this thesis, the liberal-conservative and radical ideas of freedom have shifted in shaping the international language of ‘self-determination’, according to the then-current international standing of these ideas. Thus, the dominance of the liberal-conservative idea indicates that, at those moments, international discourse conceptualised ‘freedom’ in predominantly liberal-conservative terms.

In identifying uses of the concept of ‘self-determination’ in international discourse I rely on speeches, minutes, and other documents from what is often understood as the distinct areas of politics and law. Here I follow legal scholar Martti Koskenniemi in considering international politics and international law as inseparable domains.<sup>82</sup> Rather than unfolding on a plane separate from politics, conflict or morality, the creation and codification of international law appeal to and manifest the same legitimising standards that at any given time guide international politics.<sup>83</sup> In my view, the languages of politics and law emerge from the same context, and make up *one* sphere of discourse directed towards the same aim of legitimation.<sup>84</sup> Accordingly,

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81 See e.g. W. H. Walsh: ‘The Causation of Ideas’, *History and Theory*, 14(2), 1975, pp.186–199, at p.191.

82 See e.g. Martti Koskenniemi: *The Politics of International Law*, Hart, Oxford, 2011a; Koskenniemi 2005. See also the contributions in James Crawford and Martti Koskenniemi (eds): *The Cambridge Companion to International Law*, Cambridge University Press, Cambridge, 2011; Hurd 1999; Miéville 2005; Antony Anghie: *Imperialism, Sovereignty and the Making of International Law*, Cambridge University Press, Cambridge, 2005. For a diplomatic history perspective, see Mark Mazower: *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations*, Princeton University Press, Princeton, NJ, 2009; also Mark Mazower: ‘The Strange Triumph of Human Rights, 1933–1950’, *Historical Journal*, 47(2), 2004, pp.379–398, at p.380; Fox and Roth 2000.

83 See also Kaplan and Katzenbach 1961, e.g. p.354.

84 See e.g. Koskenniemi 2011a, p.v; Cass R. Sunstein: *Legal Reasoning and Political Conflict*, Oxford University Press, Oxford, 1996; Ronald Dworkin: *A Matter of*

‘international discourse’ in this thesis incorporates what might elsewhere have been referred to as *either* political *or* legal language.

Understanding the discourse of ‘self-determination’ and its legitimising ideas of freedom in use at key moments requires examining these uses in *context*.<sup>85</sup> When delineating the relevant contexts for my investigation, I am again influenced by Skinner, although only in part. In theory, ‘context’ in intellectual history can involve an almost infinite universe of possibilities.<sup>86</sup> Skinner mainly attends to the ‘wider linguistic context’ of utterances: the language conventions determining the range of expressions available to an agent at a given time.<sup>87</sup> The political and social context then enters as ‘the ultimate framework for helping to decide what conventionally recognisable meanings it might in principle have been possible for someone to have intended to communicate’ at a certain time and place.<sup>88</sup> This thesis places more emphasis on textual analysis than what Skinner’s methodology would call for, and demarcates context as the *forums* and *formats* of international expressions of ‘self-determination’. While using the wider international setting as a basic reference point, I leave its details to diplomatic historians, who have already covered the specific moments in depth.

In the following, chapters 1 and 2 take up issues of context in examining why the phrase ‘self-determination’ became part of international discourse in the early 20<sup>th</sup> century.<sup>89</sup> Context in chapter 1 includes the socialist positions against which Lenin argued when articulating his concept of ‘self-determination’, as well as the textual source from which he seems to have

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*Principle*, Oxford University Press, Oxford, 1985. For a different perspective, see Martin Loughlin: *Sword and Scales: an Examination of the Relationship between Law and Politics*, Hart, Oxford, 2000, e.g. p.217.

85 For a recent summary of the content–context relation in intellectual history, see Darshan Vigneswaran and Joel Quirk: ‘Past Masters and Modern Inventions: Intellectual History as Critical Theory’, *International Relations*, 24, 2010, pp.107–131, pp.108–112.

86 ‘[L]inguistic, economic, rhetorical, institutional, biographical, social, political, international’ settings may all – alone or in combinations – be seen as decisive, Leslie Butler: ‘From the History of Ideas to Ideas in History’, *Modern Intellectual History*, 9(1), 2012, pp.157–169, at p.164. See also Martin Jay: ‘Intention and Irony: The Missing Encounter Between Hayden White and Quentin Skinner’, *History and Theory*, 52, February, 2013, pp.32–48, at p.35; Edelman 1985.

87 Skinner 2002, p.87. See also pp.101–102.

88 *Ibid.*, p.87.

89 See also Quentin Skinner ‘Intellectual History and the History of the Book’, *Contributions to the History of Concepts*, 1(1), 1 March 2005, pp.29–36(8), at p.34.

picked up the term. Throughout the thesis, I pay similar attention to how textual references constitute part of the context of new ‘self-determination’ utterances. Chapter 2 recognises Lenin’s earlier advocacy of ‘self-determination’ as having generated the context in which Wilson internationalised this specific language. Wilson’s pivotal mentions of ‘self-determination’ came in two speeches he made during and *on* the First World War. The main focus of these first two chapters, however, is on the central texts in which Lenin and Wilson referred to ‘self-determination’.

At the moments covered by chapters 3, 4, and 5, ‘self-determination’ was already part of the arsenal of international rhetoric, so the relevant context can help to explain *how* ‘self-determination’ was used internationally, and how these uses expressed the two different ideas of freedom.<sup>90</sup> Chapters 3 to 5 explore how the language of ‘self-determination’ was employed by state representatives when they addressed specific documents and cases at the highest levels of international affairs, as well as how this language was incorporated in the documents resulting from such deliberations. The forums for these expressions of ‘self-determination’ were primarily various UN organs, as well as (briefly) the League of Nations.<sup>91</sup> The formats of these expressions were the language conventionally used in such settings, and the documents adopted after the discussions.

Interestingly, the *agents* who have referred to ‘self-determination’ in the international contexts of my thesis have been of a different kind than those usually featuring in works of intellectual history.<sup>92</sup> Intellectual history

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90 See also *ibid.*, p.34.

91 For continuities between the two organisations, see Mazower 2009.

92 The reasons for not describing my undertaking as a ‘genealogy’ or ‘conceptual history’ are explained below – I also avoid calling it a ‘history of ideas’ project in order to maintain a distance to the method associated with Arthur O. Lovejoy and his view that the history of political thought should be understood in terms of ‘unit-ideas’. See his *Great Chain of Being: A Study of the History of an Idea*, Harvard University Press, Cambridge, MA, 1936; *Essays in the History of Ideas*, Capricorn Books, Ontario, 1960 and ‘Reflections on the History of Ideas’, *Journal of the History of Ideas*, 1(1), 1940, pp.3–23. For various summaries and attempts at categorisation, see e.g. *The Cambridge History of Twentieth-Century Political Thought*, Cambridge University Press, Cambridge 2003; Kelly 1987; Levine 2005; Anthony Grafton: ‘History of Ideas: Precept and Practice, 1950–2000 and Beyond’, *Journal of the History of Ideas*, 67(1), Jan 2006, pp.1–32; the contributions in *History Today* 1985; Jotham Parsons: ‘Defining the History of Ideas’, *Journal of the History of Ideas*, 68(4), 2007, pp.683–699; Dominick LaCapra and Steven L. Kaplan: *Modern Intellectual History: Reappraisals and New*

typically focuses on intellectuals, such as political theorists and scholarly authors who developed their ideas at length in books, articles and lectures. By contrast, my thesis enquires into how political, diplomatic, institutional, and legal agents have used the language of ‘self-determination’ in overt interpolations into international affairs. Of the agents to appear, only Wilson and Lenin were in part speaking on their ‘own’ behalf, as individuals expressing ideas of ‘self-determination’ and freedom. The remaining agents were either acting as representatives of states, or were institutions whose positions were conveyed by individuals who might not have been personally involved in arriving at them.

Given the kinds of agents that express ‘self-determination’ in international affairs, the question of authorial *intentions* has a different role in my thesis than in the work of Skinner. Like Skinner, I do regard expressions of ‘self-determination’ and ideas of freedom as political acts shaped by political intentions,<sup>93</sup> and do see agents’ *intention to legitimise* their arguments and ideas as crucial to understanding the concept in international discourse. I also agree that identifying relevant intentions does not involve searching for motivations possibly hidden in agents’ psychology or biography.<sup>94</sup> However, Skinner is famous for focusing on authors’ ‘intentions *in acting*’ – and this is not reflected in my thesis.<sup>95</sup> In one sense, the intentions implied in this

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*Perspectives*, Cornell University Press, Ithaca, NY, 1982; Maurice Mandelbaum: ‘The History of Ideas, Intellectual History, and the History of Philosophy’, *History and Theory*, 5(5): *The Historiography of the History of Philosophy*, 1965, pp.33–66; Dunn 1968; Roy Harvey Pearce: ‘A Note on Method in the History of Ideas’, *Journal of the History of Ideas*, 9(3), 1948, pp.372–379; Richard Rorty, J. B. Schneewind, Quentin Skinner (eds): *Philosophy in History: Essays on the Historiography of Philosophy*, Cambridge University Press, Cambridge, 1984; Paul A. Roth: ‘Narrative Explanations: The Case of History’, *History and Theory*, 27(1), 1988, pp.1–13; Hayden White: ‘The Question of Narrative in Contemporary Historical Theory’, *History and Theory*, 23(1), 1984, pp.1–33; Robert B. Pippin: ‘Philosophy is its own Time Comprehended in Thought’, *Topoi*, 25, 2006, pp.85–90; Drew Maciag: ‘When Ideas had Consequences, or, Whatever Happened to Intellectual History?’, *Reviews in American History*, 39(4), December 2011, pp.741–751.

93 See ‘Interpretation and the Understanding of Speech Acts’, pp.103–127 in Skinner 2002. For other intellectual history perspectives on intentions, see e.g. Bevir 1999 on ‘weak intentionalism’, pp.67–69; and a criticism of this idea in Vivienne Brown: ‘On Some Problems with Weak Intentionalism for Intellectual History’, *History and Theory*, 41(2), May 2002, pp.198–208.

94 Skinner does however show an interest in agents’ educational background.

95 Skinner 1988, p.263. Drawing on the works of John L. Austin, Skinner explains this in terms of ‘illocutionary acts’ and ‘illocutionary forces’. Since intentions have a different role in my thesis than in Skinner’s work, I do not use this terminology. See also Skinner 2002, pp.98, 104, 108–109. For a critique of Skinner’s approach on this point see Keith Graham: ‘How do Illocutionary Descriptions Explain?’, pp.147–155 in Tully (ed.) 1988,

thesis are more straightforward than those of many historical thinkers. For instance, in the 1960 UN debate on the Decolonisation Declaration, state delegates explicitly sought to convince the UN General Assembly (UNGA) to either adopt or reject the proposed drafts. In the 2008–2010 ICJ case on Kosovo, country representatives aimed – and openly argued – to convince the Court that Kosovo’s declaration of independence was either legal or illegal. My focus on expressions of ‘self-determination’ in the international public arena does not require going beyond these openly cited intentions.<sup>96</sup>

While other schools of intellectual history have been considered when developing this thesis’ methodology, their influence has been so limited that they will only be briefly mentioned here for the purpose of clarifying my own approach. For instance, the method of *genealogy* associated with Michel Foucault and Friedrich Nietzsche has not been adopted, since genealogies typically pursue the contingency of concepts with the aim of *denaturalising* them, effectively making them appear suspicious, if not ripe for rejection.<sup>97</sup> On this point this thesis is more in line with Skinner’s<sup>98</sup> hope that intellectual history can leave us ‘[e]quipped with a broader sense of possibility’,<sup>99</sup> ‘free[ing] us to re-imagine [concepts] in different and perhaps more fruitful ways’,<sup>100</sup> even ‘improv[e]’ current notions.<sup>101</sup> In another difference from the genealogical approach, I am as interested in the

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pp.151–155; for Skinner’s reply, see Skinner 1988, pp.263–272.

96 Regardless of whether these were sincerely held – although sincerity should by ‘default’ be assumed: see Bevir 1999, pp.144–151, especially p.145.

97 Friedrich Nietzsche: *The Genealogy of Morals*, Dover, New York, 2003; Michel Foucault: *Discipline and Punish: The Birth of the Prison*, Random House, New York, 2005; Foucault: Lecture delivered in May 1978, ‘Qu’ est-ce que la Critique?’ *Bulletin de la Société Française de Philosophie*, 84(2), April–June 1990 and ‘Nietzsche, Genealogy, History’, 1977, accessed 11 November 2012, nohernandezcortez.files.wordpress.com/2011/04/nietzsche-genealogy-history.pdf. I do however share with the genealogical approach a doubt of it being possible to write a coherent history of ‘self-determination’ culminating ‘naturally’ in a present-day understanding, and a focus on the *language* of ‘self-determination’, rather than the *causality* of its appearances. See also Gérard Noiriel: ‘Foucault and History: The Lessons of a Disillusion’, *Journal of Modern History*, 66(3), 1994, pp.547–568. Jens Bartleson: *A Genealogy of Sovereignty*, Cambridge University Press, Cambridge, 1995; and Bruce Cumings: “Revising Postrevisionism”, or, The Poverty of Theory in Diplomatic History’, *Diplomatic History*, 17(4), 1993, pp.539–570.

98 While titling at least one of his works a ‘genealogy’ (Skinner 2009), Skinner generally does not follow the conventional genealogical approach. Bartleson 1995 critiques Skinner from a genealogy perspective, pp.65–68.

99 Skinner 1998, p.117. See also Skinner 1984, pp.248–250; Brett 2007, pp.127–128.

100 Skinner 2009, p.326.

101 Skinner 2002, p.127.

*consistencies* among international appearances of ‘self-determination’ as in the aspects of contingency and change.<sup>102</sup>

This thesis is neither a work of *conceptual history* or *Begriffsgeschichte* as pioneered by Reinhart Koselleck.<sup>103</sup> Unlike Koselleck, I doubt whether it is possible to define one concept clearly and write its history in time as an unbroken narrative,<sup>104</sup> and have instead framed my thesis in terms of *moments*<sup>105</sup> at which ‘self-determination’ suddenly became internationally important.<sup>106</sup> Also, rather than sharing Koselleck’s wariness of seeing

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102 See Bartleson 1995, p.75. Also Skinner has expressed scepticism regarding constants and ‘truths’ in intellectual history: Skinner 2002, p.88.

103 From 1972, Koselleck initiated and edited the *Geschichtliche Grundbegriffe*, a 9,000-page German-language encyclopaedia of concepts. See his Koselleck 2004; *The Practice of Conceptual History: Timing History, Spacing Concepts*, Stanford University Press, Stanford, CA, 2002; ‘Social History and Conceptual History’, *Politics, Culture, and Society*, 2(3), 1989a, pp.308–324; ‘A Response to the Comments on the *Geschichtliche Grundbegriffe*’ (GG), pp.59–70 in Lehmann and Richter (eds) 1996; ‘Social History and Begriffsgeschichte’, pp.23–35 in Iain Hampsher-Monk, Karin Tilmans and Frank Van Vree (eds): *History of Concepts: Comparative Perspectives*, Amsterdam University Press, Amsterdam, 1998; ‘Linguistic Change and the History of Events’, *Journal of Modern History*, 61(4), 1989b, pp.649–666; For an example of his own production of conceptual history, published in English, see Reinhart Koselleck and Michaela W. Richter: ‘Crisis’, *Journal of the History of Ideas*, 67(2), 2006, pp.356–400. For useful summaries and discussions of GG and Koselleck, see in particular Helge Jordheim: ‘Against Periodization: Koselleck’s Theory of Multiple Temporalities’ *History and Theory*, 51, May, 2012, pp.151–171; Keith Tribe: ‘The *Geschichtliche Grundbegriffe* Project: From History of Ideas to Conceptual History. A review article’, *Comparative Studies in Society and History*, 31(1), 1989, pp.180–184; Melvin Richter: ‘A German Version of the “Linguistic Turn”’: Reinhart Koselleck and the History of Political and Social Concepts’, pp.58–79 in Dario Castiglione and Iain Hampsher-Monk (eds): *The History of Political Thought in National Context*, Cambridge University Press, Cambridge, 2001; James Schmidt: ‘How Historical is Begriffsgeschichte?’, *History of European Ideas*, 25, 1999, pp.9–14; Michael Freeden: ‘Ideologies and Conceptual History’, *Journal of Political Ideologies*, 2(1), 2006, pp.3–11. For other analyses of Koselleck’s conceptual history, and its relation to the Cambridge school, see e.g. Melvin Richter: *The History of Political and Social Concepts: A Critical Introduction*, Oxford University Press, Oxford, 1995; Lehmann and Richter (eds) 1996; and Hampsher-Monk et al. (eds), 1998; Pasi Ihalainen: ‘Between Historical Semantics and Pragmatics: Reconstructing Past Political Thought through Conceptual History’, *Journal of Historical Pragmatics*, 7(1), 2006, pp.115–143; Helge Jordheim and Iver B. Neumann: ‘Empire, Imperialism and Conceptual History’, *Journal of International Relations and Development*, 14(2), 2011, pp.153–185. For a useful comparison between Koselleck and Skinner, see Kari Palonen: ‘Rhetorical and Temporal Perspectives on Conceptual Change: Theses on Quentin Skinner and Reinhart Koselleck’, Revised version of paper presented at the Finnish Institute in London, 18–20 June, 1998.

104 Like the contributions in Terence Ball, James Farr, Russell L. Hanson (eds): *Political Innovation and Conceptual Change*, Cambridge University Press, Cambridge, 1989.

105 It is noteworthy that all the ‘moments’ in this thesis lasted for years – as Pocock’s ‘Machiavellian Moment’ lasted for several decades, Pocock 1975.

106 This is also a result of taking seriously Skinner’s warning against a ‘mythology of coherence’ in writing intellectual history; indeed, constructing a coherent, ‘closed’ history of ‘self-determination’ would seem like a fabrication, unsupported by its actual appearances, Skinner 1969, pp.16–17 (referring primarily to ‘coherence’ within one specific author’s oeuvre or particular work, but still in a manner useful as applied here).

politics or ideology as drivers of conceptual change,<sup>107</sup> I understand the international ‘self-determination’ discourse as political interventions bound by the standards of legitimation admitted by the currently-dominant ideologies of the time. From my point of view, conceptual change might occur precisely when new political dynamics make the hierarchies between standards shift, and new terms with novel conceptual affiliations become legitimised with reference to old ones.<sup>108</sup>

All intellectual history arguably involves some ‘uncertainty’ that a proper selection and evaluation of valid material might help to minimise.<sup>109</sup> In this regard, my interest in *how* the language of ‘self-determination’ has been invoked and legitimised internationally at key moments entails a closer focus on the primary texts in which ‘self-determination’ was actually mentioned than what strict adherence to either Skinner’s or Koselleck’s methods would demand.<sup>110</sup> Rather than aiming to explain the ‘entire process of conceptual change’,<sup>111</sup> or seeking to uncover the *causes* of the international ‘self-determination’ discourse, my thesis examines this discourse itself at key moments.<sup>112</sup> Specifically, for chapters 1 and 2, I have consulted the speeches, articles and other statements of Lenin and Wilson, found in print and online document collections. Although my focus is on international, public expressions of ‘self-determination’, I have benefited from the primary records of their contemporaries, as found, for instance, in memoirs and printed compilations. Further, I found unpublished materials for chapters 1 and 2 at the UK National Archives (TNA) in London, and at the League of Nations Archives at the UN Office in Geneva (LNA).

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107 E.g. Koselleck 2004, p.83. Positing that linguistic change occurs at a different pace than political change, he makes the relation between language use and political power seem frail, Koselleck 1996, p.66. Freedman 2006 claims that the study of ideologies may benefit from Koselleck’s approach, but does not present these as already covered by it. Skinner 2002, pp.173–174 does regard ideas a determinant of political action.

108 Conceptual change may also occur if the position of a particular language *user* becomes inserted into how a concept is being understood – like with Wilson’s silent appropriation of Lenin’s mentions of ‘self-determination’, see Chapter 2.

109 See Adrian Blau: ‘Uncertainty and the History of Ideas’, *History and Theory*, 50, October 2011, pp.358–372.

110 Also, I deal with neither techniques of textual production, nor reception of texts beyond the immediate forums in which they were presented.

111 Skinner on Koselleck, 2002, p.187.

112 I am grateful to Quentin Skinner for helping me clarify this point. Pål Wrangé describes this as ‘the discursive production of the concept [...] in its instances’: *Impartial or Uninvolved? The Anatomy of 20<sup>th</sup> Century Doctrine on the Law of Neutrality*, Stockholm University, 2007, p.49.

For chapters 3 to 5, the essential primary sources have been the international legal texts that authoritatively cite ‘self-determination’, and archival materials that shed light on the making of these texts. These key texts are the League of Nations’ two reports on the Aaland Islands case (1920–1921), the UN Charter (1945), the UNGA Decolonisation Declaration (1960), the ICHRs (1966), and the ICJ advisory opinion on Kosovo’s declaration of independence (2010).

My analysis of these texts has been informed by other primary material I have sought out at the UN archives (ARMSNY) and libraries in New York, at the Columbia University archives in New York, the LNA and the UN archives (UNOGA) in Geneva, the TNA, as well as the archives of the School of Oriental and African Studies, and the London School of Economics (LSE) and British Library collections in London. Further, much material, particularly related to UNGA and ICJ, as well as the Foreign Relations of the United States (FRUS) records, has been available online.<sup>113</sup> For chapter 5, I conducted direct interviews with selected participants in the ICJ Kosovo case, as well as other relevant actors, primarily in Kosovo, on conditions of anonymity.<sup>114</sup> These interviews were semi-structured and were conducted in person, through Skype, or by email. Wherever relevant, I also cite media reporting.

I have incorporated secondary sources too, as briefly outlined in this introduction. Works of international law, international relations, and political philosophy proved useful in narrowly addressing ‘self-determination’. For the wider political context, I have also turned to works of international and diplomatic history. However, such secondary works are referred to only to the extent they might help in understanding ‘self-determination’ in international discourse and the ideas of freedom used to legitimise the concept.

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113 UNGA at [www.un.org](http://www.un.org); ICJ at [www.icj-cij.org/](http://www.icj-cij.org/); FRUS at [uwdc.library.wisc.edu/collections/FRUS](http://uwdc.library.wisc.edu/collections/FRUS), all accessed 20 May 2013.

114 Several interviewees were lawyers who were constrained by attorney–client privilege. They were selected from different legal teams participating in the proceedings, and on the basis of their insight into other relevant developments, such as Kosovo’s declaration of independence and the international administration of Kosovo.



## **‘Self-determination’ and Freedom**

The relation of ‘self-determination’ to ideas of freedom is essential to understanding the concept’s appearances in international discourse. Throughout the last hundred years, international references to the concept have been characterised by the presence of two ideas of freedom, and the implicit rivalry between them. Explaining how international language on ‘self-determination’ has expressed these two ideas is a key concern of this thesis. ‘Freedom’ is among the most discussed topics of political theory and philosophy, and it is not the aim of this thesis to examine or critique this vast body of literature. Instead, I analyse the liberal-conservative and radical ideas of freedom, as defined below, narrowly as they have materialised in international discourse on ‘self-determination’ in specific forums and formats at key moments. Rather than attempting to explore issues of freedom more broadly, I consider these two ideas strictly as they appeared internationally in 20<sup>th</sup>- and 21<sup>st</sup>-century language on ‘self-determination’.

Both the radical and liberal-conservative ideas of freedom should be understood in terms of the absence of a contrasting feature: they are ‘negative’ ideas of freedom, *against* and *from* something else.<sup>115</sup> My interpretation of these two ideas – indeed, my identification of more than one variant of negative freedom – has been influenced by the works of

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115 For the authoritative distinction between ‘positive’ and ‘negative’ concepts of freedom, see Isaiah Berlin ‘Two Concepts of Liberty: an Inaugural Lecture Delivered before the University of Oxford on 31 October 1958’, Clarendon Press, London 1959. Given that claims for self-determination, as stated, always seek freedom from ‘other-determination’, *negative* freedom is the relevant perspective to apply here, and potential conceptualisations of ‘positive’ freedom will not be pursued. For other distinctions – which space constraints prevent me from investigating further – see Benjamin Constant: ‘The Liberty of the Ancient Compared with that of the Moderns: Speech Given at the Athenee Royal in Paris’, pp.307–328 in *Political Writings: Benjamin Constant*, Biancamaria Fontana (trans. and ed.), Cambridge University Press, Cambridge 1988; and Charles Taylor ‘What’s Wrong with Negative Liberty’ in Alan Ryan (ed.): *The Idea of Freedom, Essays in Honour of Isaiah Berlin*, Oxford University Press, Oxford, 1979, pp.175–193, which distinguishes between freedom as an ‘opportunity’ and an ‘exercise’ concept. For a more recent distinction, see Philip Pettit: ‘Agency-freedom and Option-freedom’, *Journal of Theoretical Politics*, 15(4), 2003, pp.387–403. For Skinner’s critique of Berlin’s distinction, see in particular Skinner 1998, pp.113–116. For two of many other discussions of the positive/negative freedom distinction, see Gerald C. MacCallum, Jr.: ‘Negative and Positive Freedom’, *Philosophical Review*, 76(3), 1967, pp.312–334; John N. Gray, ‘On Negative and Positive Liberty’, *Political Studies*, 28, 1980, pp.507–526. For an argument against making any distinction, see Efraim Podoksik: ‘One Concept of Liberty: Towards Writing the History of a Political Concept’, *Journal of the History of Ideas*, 71(2), 2010, pp.219–240.

Quentin Skinner and Philip Pettit on republican liberty.<sup>116</sup> Although, like Skinner, Pettit and other scholars, I employ the terms ‘freedom’ and ‘liberty’ interchangeably, I do prefer ‘freedom’, since ‘liberty’ is sometimes used with reference to individuals only – and ‘self-determination’ applies to groups.<sup>117</sup> Significantly, the ‘radical’ idea of freedom discussed in this thesis resembles to some extent what Pettit, Skinner and others call ‘republican’ liberty.<sup>118</sup> And my interpretation of the ‘liberal-conservative’ idea of

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116 For early versions see Skinner 1984 and Philip Pettit: ‘A Definition of Negative Liberty’, *Ratio (New Series)*, II(2), December, 1989, pp.153–168; they later developed their theories in the works referred to below. Skinner’s early work sometimes referred to this idea as ‘neo-Roman’; however, ‘republican’ is now the convention. See also references above, and his ‘On the Slogans of Republican Political Theory’, *European Journal of Political Theory*, 9, 2010, pp.95–102; ‘The Republican Ideal of Political Liberty’, pp.293–309 in Gisela Bock, Quentin Skinner, and Maurizio Viroli (eds): *Machiavelli and Republicanism*, Cambridge University Press, Cambridge, 1993. Among Pettit’s works, my analysis is based in particular on his ‘Freedom as Antipower’, *Ethics*, 106(3), 1996, pp.576–604; *Republicanism: A Theory of Freedom and Government*, Clarendon Press, Oxford, 1997; ‘Freedom with Honor: A Republican Ideal’, *Social Research*, 64(1), 1997, pp.52–76; *A Theory of Freedom: From the Psychology to the Politics of Agency*, Oxford University Press, 2001; ‘Republican Freedom: Three Axioms, Four Theorems’, *Princeton Law and Public Affairs Working Paper Series*, no 07-004, 2008; ‘The Power of a Democratic Public’, pp.73–93 in Reiko Gotoh and Paul Dumouchel (eds), *Against Injustice: The New Economics of Amartya Sen*, Cambridge University Press, Cambridge 2009a; ‘A Republican Law of Peoples’, *European Journal of Political Theory*, 9, 2010, pp.70–94. For a useful interview, see Maria Dimova-Cookson: ‘Republicanism, Philosophy of Freedom and the History of Ideas: An Interview with Philip Pettit’, *Contemporary Political Theory*, 9, 2010, pp.477–489. His *On the People’s Terms: A Republican Theory and Model of Democracy*, Cambridge University Press, Cambridge, 2012 provides suggestions for institutionalising the republican programme.

117 For one textbook-example, see Katrin Flikschuh: *Freedom: Contemporary Liberal Perspectives*, Polity Press, Cambridge, 2007, p.177, note 5. For a recent, related view of ‘self-determination’ claimants, see Kristina Roepstorff: *The Politics of Self-determination: Beyond the Decolonization Process*, Routledge, New York, 2013, pp.75–86.

118 For historical perspectives see Martin van Gelderen and Quentin Skinner (eds): *Republicanism: A Shared European Heritage, Volume II: The Values of Republicanism in Early Modern Europe*, Cambridge University Press, Cambridge, 2002; Z. S. Fink: *The Classical Republicans: An Essay in the Recovery of a Pattern of Thought in Seventeenth-century England*, Northwestern University Press, Evanston, IL, 1962; Bock et al. (eds) 1993; Daniel J. Kapust: *Republicanism, Rhetoric, and Roman Political Thought: Sallust, Livy, and Tacitus*, Cambridge University Press, Cambridge, 2011; John W. Maynor: *Republicanism in the Modern World*, Polity Press, Cambridge, 2003; Hans Baron: *The Crisis of the Early Italian Renaissance: Civic Humanism and Republican Liberty in an Age of Classicism and Tyranny*, Princeton University Press, New Jersey, 1966. For political theory perspectives, see in particular Cécile Laborde and John Maynor: *Republicanism and Political Theory*, Blackwell, Oxford 2008; Michael Sandel: *Democracy’s Discontent: America in Search of a Public Philosophy*, Harvard University Press, Cambridge, MA, 1996, and Anita L. Allen and Milton C. Regan, Jr. (eds): *Debating Democracy’s Discontent: Essays on American Politics, Law, and Public Philosophy*, Oxford University Press, Oxford, 1998; David Boucher: ‘Oakeshott, Freedom and Republicanism’, *BJPIR*, 7, 2005, pp.81–96; Patricia Springborg: ‘Republicanism, Freedom from Domination, and the Cambridge Contextual Historians’, *Political Studies*, 49, 2001, pp.851–876; M. Victoria Costa: ‘Neo-republicanism, Freedom as Non-domination, and Citizen Virtue’, *Politics, Philosophy and Economics*, 8(4), 2009, pp.401–419; Maurizio Viroli: *Republicanism*, Hill and

freedom is informed by Pettit's and Skinner's analyses of 'liberal' liberty.<sup>119</sup> While my separation between the two ideas also draws on the work of other contemporary scholars,<sup>120</sup> it differs from other distinctions.<sup>121</sup> Shortly I will explain my reasons for moving away from Pettit's and Skinner's 'republican v liberal' terminology, to one of 'radical v liberal-conservative' ideas.

Of the two ideas of freedom, the liberal-conservative idea has dominated the appearances of 'self-determination' in international discourse. The most authoritative international documents citing 'self-determination' from the last hundred years, such as the 1945 UN Charter, conceptualised self-determination primarily in liberal-conservative terms. Although it will be

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Wang, New York, 2002.

119 See e.g. Pettit: 'Liberalism and Republicanism', *Australian Journal of Political Science*, 28 (Special issue), pp.162–189, 1993a; Pettit: 'Negative Liberty, Liberal and Republican', *European Journal of Philosophy*, 1(1), 1993b, pp.15–38; Skinner 1998. The two have been accused of lacking nuances in their construction of liberalism, see e.g. Charles Larmore: 'A Critique of Philip Pettit's Republicanism', *Noûs*, 35, Supplement s1, October 2001, pp.229–243, at p.7. For liberal perspectives see e.g. Matthew H. Kramer (ed.): *Rights, Wrongs and Responsibilities*, Palgrave, New York, 2001; Ian Carter: *A Measure of Freedom*, Oxford University Press, Oxford, 1999; Robert Nozick: *Anarchy, State and Utopia*, Basil Blackwell, Oxford, 1990; John Christman and Joel Anderson (eds): *Autonomy and the Challenges to Liberalism*, Cambridge University Press, Cambridge 2005; Geoffrey Brennan and Loren Lomasky: 'Against Reviving Republicanism', *Politics, Philosophy and Economics*, 5(2), 2006, pp.221–252; Richard Dagger: 'The Sandelian Republic and the Encumbered Self', *Review of Politics*, 61(2), 1999, pp.181–208 (and Sandel's reply: Michael Sandel: 'Liberalism and Republicanism: Friends or Foes? A Reply to Richard Dagger', *Review of Politics*, 61(2), 1999, pp.209–214).

120 For other discussions of the distinction between republican and liberal ideas of freedom, see Bryan Garsten: 'Liberalism and the Rhetorical Vision of Politics', *Journal of the History of Ideas*, 73(1), 2012, pp.83–89; Ronen Shnayderman: 'Liberal vs. Republican Notions of Freedom', *Political Studies*, 60, 2012, pp.44–58; the chapters of Laborde and Maynor (eds) 2008. Departing from the commonplace contrasting of republicanism with liberalism, Miguel Vatter: 'The Quarrel between Populism and Republicanism: Machiavelli and the Antinomies of Plebeian Politics', *Contemporary Political Theory*, 11(3), 2012, pp.242–263; and Nadia Urbinati: 'Competing for Liberty: The Republican Critique of Democracy', *American Political Science Review*, 106(3), 2012, pp.607–621 instead juxtapose republicanism to respectively, 'populism' and 'democracy'.

121 For instance that used by Jürgen Habermas, e.g. in *Between Facts and Norms*, MIT Press, Cambridge, MA, 1998 and 'The Concept of Human Dignity and the Realistic Utopia of Human Rights', *Metaphilosophy*, 41(4), 2010, pp.464–480. While arguing for the 'co-originality' and co-dependency of 'liberal' and 'republican' ideas, Habermas' focus differs from mine. His concern is with democracy within one body politic, whereas my thesis investigates 'self-determination' on the international arena. Further, Habermas refers to a 'liberal' concern with individuals, and a 'republican' orientation towards collective popular will – and proposes to reconcile them. However, both the two ideas of freedom expressed internationally with 'self-determination' have concentrated primarily on groups. See also Johan Karlsson, 'Democracy versus Human Rights: Why Held and Habermas do not Resolve the Tension', Norwegian Centre for Human Rights, 2010; Stefan Rummens: 'Debate: The Co-originality of Private and Public Autonomy in Deliberate Democracy', *Journal of Philosophy*, 14(4), pp.469–481.

demonstrated that the Court's final opinion in the ICJ case on Kosovo had radical implications, the states participating in the preceding proceedings overwhelmingly asserted the liberal-conservative idea. As Skinner has shown, a liberal idea of freedom has dominated political thinking ever since Thomas Hobbes argued against a different, republican, view in the 17<sup>th</sup> century.<sup>122</sup> More recently, the liberal idea has figured in the influential theories of John Rawls.<sup>123</sup>

Clearly, liberalism, conservatism and associated ideas of freedom are understood in a variety of ways, and the 'liberal-conservative' idea addressed in this thesis may differ from some of these. In this thesis, the term 'liberal-conservative' is applied with exclusive reference to one of the ideas of freedom I have identified in international 'self-determination' discourse. At the same time, this liberal-conservative idea has entailed some elements that should uncontroversially justify the label. In unmistakably liberal terms, the liberal-conservative idea has presented interference with action as the greatest threat to freedom. Freedom, it has expressed, simply means *no interference*: if interference is present, freedom is absent. To establish freedom means to end interference. Defining freedom as *non-interference* as an elementary characteristic of liberal freedom has been endorsed by proponents as well as sceptics of liberalism.<sup>124</sup>

Moreover, *peace* and stability have defined the content of the liberal-conservative idea of freedom. Like the 'liberal peace thesis' of international relations theory,<sup>125</sup> the liberal-conservative discourse on 'self-determination'

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122 See in particular Skinner 2008; also 1998, p.60; and 1984, pp.230–231, 245; also Pettit 1997. For the historical shift from the republican to the liberal idea, see Pettit 1993b, pp.33–34.

123 John Rawls: *A Theory of Justice*, Oxford University Press, Oxford, 1999 and *The Law of Peoples*, Harvard University Press, Cambridge, MA, 2002 – see pp.38–41, 85 on 'self-determination'. See also Pettit 1993b, pp.29–30.

124 See the above references.

125 The link between the liberal peace thesis and 'democratic peace theory' is disputed – and this footnote leaves no scope to pursue this – but the following works might nevertheless clarify some scholarly conceptualisations: Michael W. Doyle's 'Kant, Liberal Legacies, and Foreign Affairs', *Philosophy and Public Affairs*, 12(3), 1983, pp.205–235; 'Kant, Liberal Legacies, and Foreign Affairs, Part 2', *Philosophy and Public Affairs*, 12(4), 1983, pp.323–353; and Bruce M. Russett: *Grasping the Democratic Peace: Principles for a Post-Cold War World*, Princeton University Press, Princeton, NJ, 1993; Doyle: 'Three Pillars of the Liberal Peace', *American Political Science Review*, 99(3), 2005, pp.463–466. For later discussions, see Christopher Layne:

has portrayed order and stability within and between states as the ultimate insurance against interference with the actions of states and individuals. Thus it has presented peace and freedom as inherently connected. At one level, such discourse has portrayed peace as an *ultimate form* of freedom – since peace means no interference in the form of violence, disruption and instability. Any concept of ‘freedom’ that did not entail peaceful order would be no true freedom, on this view: lack of peace would mean some kind of interference, which, by definition, would quell freedom. At the same time, language legitimised with the liberal-conservative idea has cited ‘peace’ and ‘stability’ as *more valuable* standards than ‘freedom’ referred to on its own. It has depicted the worth of ‘freedom’, ‘self-determination’ or any other political standard as inextricably bound up with the ability to serve peace and stable order.

While valuing peace above all other standards, the liberal-conservative idea has not abandoned its appreciation of freedom as non-interference. Liberal-conservative international rhetoric on ‘self-determination’ has not challenged the standard of ‘freedom’ as such, nor openly approved of interference. Typically, however, this outlook has focused narrowly on non-interference with *states*, including with their freedom of trade – or, sometimes, on individuals’ freedom from state interference.<sup>126</sup> This perspective has usually not addressed peoples, groups and other non-state collectives. And it has ignored potential ways that freedom may be harmed other than through interference.

Positing peace as the aim of all politics, discourse drawing upon this liberal-conservative idea has portrayed political legitimacy as closely linked to the capacity of the ruler(s) to preserve the peace. Since the maintenance of

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‘Kant or Cant: The Myth of the Democratic Peace’, *International Security*, 19(2), 1994, pp.5–49; John M. Owen: ‘How Liberalism Produces Democratic Peace’, *International Security*, 19(2), 1994, pp.87–125; Henry Farber and Joanne Gowa: ‘Common Interests or Common Politics. Reinterpreting the Democratic Peace’, *Journal of Politics*, 58(2), 1997, pp.393–417; Sebastian Rosato: ‘The Flawed Logic of Democratic Peace Theory’, *American Political Science Review*, 97(4), 2003, pp.585–602; *International Peacekeeping* Special Issue ‘Liberal Peacebuilding Reconstructed’, 16(5), 2009; John Heathershaw: ‘Unpacking the Liberal Peace: the Dividing and Merging of Peacebuilding Discourses’, *Millennium* 36(3), 2008, pp.597–621.

126 It could be noted here that liberal theories of freedom generally prioritises the individual before the group or collective level.

peace, on this account, legitimates power, governmental sovereignty has been considered legitimised if it has produced peaceful outcomes. In international ‘self-determination’ discourse, an *a priori* assumption of the liberal-conservative orientation has been that peace is in the interest of all people – also those who have not themselves articulated such an interest. No matter what claimants of ‘self-determination’ themselves might say, peace is the real priority. Consequently, rulers would be considered justified in taking action to protect the peace also without consulting their subjects. Such an understanding surfaced in Wilson’s 1918 language of ‘self-determination’, as well as in the 1960 UN decolonisation debate.

These characteristics also display the conservative propensities of the liberal-conservative idea. Besides treasuring freedom as non-interference, this outlook, with its robust appreciation of stability, has been inclined to reject change, and opt for solidification of existing order. In this view, change might be allowed – if at all – only gradually, ‘naturally’, and under guarantees of non-interference and peace. Obviously, it is the beneficiaries of the existing legal and political order who could be expected to value the status quo and regard disruptive changes as an interfering threat to (their own) freedom.<sup>127</sup> Indeed, in international discourse on ‘self-determination’, it has been those who were already strong at a given moment who have tended to express the liberal-conservative idea. That it was such agents’ ideas of ‘self-determination’ and freedom that won out over the period covered by this thesis hints at a conservative and self-consolidating streak in international affairs as a whole.<sup>128</sup>

The same prioritisation of peaceful, settled order, without interference with states and individuals has informed the liberal-conservative assessment of whether and how to realise self-determination in practice. At different moments, international arguments for implementing self-determination only if, and in ways that would serve the peace have expressed the liberal-conservative idea, as have those who reject the concept outright, on the

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127 See also Martti Koskenniemi: ‘International Law in the World of Ideas’, pp.47–63 in Koskenniemi and Crawford (eds), 2011b, at pp.48, 58; also Miéville 2005; Koskenniemi 2005, p.607.

128 For a related perspective, see Crawford 2000b, pp.95–97.

grounds that it threatens the current order. Others have revealed their affinities by stating that self-determination need not involve the creation of new states at all, as such an outcome might be disruptive. It is thus the liberal-conservative idea that has been at the heart of proposals for realising self-determination within existing state structures, for instance through the provision of individual human rights, minority rights, or some territorial autonomy. From the 1990s, the academic literature has advanced such proposals using the language of ‘*internal self-determination*’, a phrase state participants in the 2008–2010 ICJ Kosovo case employed too.

On the whole, this liberal-conservative idea has been embedded in the cross-disciplinary scholarship on self-determination. Tellingly, most scholars have conceptualised demands for freedom and ‘self-determination’ as reactions *against interference*.<sup>129</sup> Without questioning the aim of advancing stable peace as non-interference with approved agents, scholars have gone on directly to discuss what *sort* of interference might legitimise ‘self-determination’. Those holding that the concept should have a strong international role have listed forms of interference against which it might be granted, such as non-democratic, ‘alien’ or ‘foreign’ rule.<sup>130</sup> So far, however, only colonialism has been widely recognised as a form of interference that would warrant the application of self-determination.<sup>131</sup> Scholars who oppose ‘self-determination’ have relied on the liberal-conservative idea as well. For instance, when warning that the concept threatens the freedom of states by allowing interference with their peaceful

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129 For one early indication, see Buchheit 1978, p.3. See also Mikulas Fabry: *Recognizing States: International Society and the Establishment of New States Since 1776*, Oxford University Press, Oxford, 2010, p.10.

130 E.g. Franck 1990, pp.169–170; Margalit and Raz 1990, p.460; Moltchanova 2009, p.xvii; Hurst Hannum: ‘Self-determination in the Post-colonial Era’, pp.12–44 in Clark and Williamson (eds) 1996, at p.35. See also David Lefkowitz: ‘On the Foundation of Rights to Political Self-determination, Secession, Non-intervention, and Democratic Governance’, *Journal of Social Philosophy*, 39(4), 2008, pp.492–511.

131 Buchheit 1978, p.18; Hannum 1996, p.469. See also Roland Burke: *Decolonization and the Evolution of International Human Rights*, University of Pennsylvania Press, Philadelphia, PA, 2010, pp.37–39; Charney 2001, p.467; Hannum 1993b, p.57; Kaczorowska 2010, p.581. Rhona K. M. Smith: *Textbook on International Human Rights*, Oxford University Press, Oxford, 2010, p.281. Even scholars arguing against limiting self-determination to colonialism, such as McCorquodale 1994, p.883; Tomuschat 2001 e.g. p.2; S. Prakash Sinha: ‘Is Self-determination Passé?’, *Columbia Journal of Transnational Law*, 12(2), 1973, pp.260–273, at p.272, merely call for applying it to additional types of interference: see also McCorquodale 1994, pp.862, 863 and 874.

sovereignty, and when cautioning that self-determination may lead to anarchy and violence.<sup>132</sup> The limited imagination exhibited by this scholarship has not yet had room for the question of whether self-determination might signify freedom from something other than interference.

What these scholarly, legal and policy positions have overlooked is the ‘radical’ idea of freedom that has also appeared in international language on ‘self-determination’. The international discourse drawing on the radical idea has juxtaposed freedom against domination, dependence and inequality, rejecting the liberal-conservative belief that interfering with action is the only way in which freedom may be curtailed. And it has not seen peace as the supreme legitimising standard. In the radical view, even if no action has been interfered with, an agent is unfree if it is dependent on the arbitrary will of someone else. Dependence and domination involve unpredictability, unaccountability, as well as a *status* of inequality that takes someone’s freedom away even if the superior party has not actually interfered.<sup>133</sup> As long as a ‘master’ has the power to interfere, and may do so arbitrarily, the subordinated, dependent agent remains unfree.<sup>134</sup>

This radical idea of freedom closely resembles the ‘republican’ idea examined by Pettit and Skinner. And a central aim of my thesis is to build on their and other scholars’ works on freedom, and apply their insights to a setting of international history.<sup>135</sup> However, there are several reasons for my choice of a different terminology. First of all, ‘republican’ freedom is strongly connected to a specific historical and philosophical scholarship,

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132 E.g. Musgrave 1997, p.181; Matthew Craven: ‘Statehood, Self-determination, and Recognition’, in Malcolm D. Evans (ed.): *International Law*, Oxford University Press, Oxford 2010, pp.203–251, at p.233; Thomas Franck and Paul Hoffman: ‘The Right of Self-determination in Very Small Places’, *New York University Journal of International Law and Politics*, 1976, pp.331–386 at p.384; Cassese 1995, pp.333–334; Daniel Patrick Moynihan: *Pandaemonium: Ethnicity in International Politics*, Oxford University Press, 1993, p.148.

133 Richard Dagger conceptualises such absence of freedom in terms of lack of autonomy, see his ‘Autonomy, Domination and the Republican Challenge to Liberalism’, pp.177–203 in Christman and Anderson (eds) 2005.

134 Pettit applies the notion of ‘resilient non-interference’ to his understanding of republican freedom, where arbitrary interference is not just absent or unlikely, but impossible (Pettit 1993b, especially pp.17–22). For discussion, see Carter 1999, p.243.

135 As distinct from international relations. See also Dagger 2005, p.188.



engaged with early modern republican thinkers. By contrast, I deal with the radical idea only in terms of its appearance in international expressions of ‘self-determination’.

Moreover, whereas *equality* is pivotal to the radical idea of freedom identified in this thesis, it is not completely clear how essential equality is to the republican notion of freedom. True, republican freedom does seem to call for equal freedom.<sup>136</sup> Recently, however, Nadia Urbinati has alleged that republicanism disregards equality, and that it tends to see democracy as threatening a ‘de facto a kind of tyrannical domination’.<sup>137</sup> In her view, it is democracy and not republicanism that can add ‘the meaning of equal liberty’ to the theory of freedom.<sup>138</sup> Phrased in her terms, the radical idea of freedom expressed in international ‘self-determination’ discourse would appear more ‘democratic’ than ‘republican’.<sup>139</sup>

International language on ‘self-determination’ rooted in the radical idea has implicitly presented *freedom as equality* as the main legitimising standard of the concept. To begin with, such language has presented peoples’ demands for self-determination as legitimate due to their status of inequality and arbitrary dependence on a dominating agent. And it has backed the realisation of their freedom as (re)establishing for them a status of being their own law-makers – not subordinated to any ‘master’ with arbitrary powers.<sup>140</sup> Liberating a group from conditions of dependence, to such an equal status, would in the radical view realise that group’s freedom.

Radical ‘self-determination’ discourse has expressed that in practice, the

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136 Pettit emphasises equality more strongly than Skinner, but it is not presented as the pivotal feature of either scholar’s understanding of republican freedom. See Pettit 1993a, p.162; 1996, p.586. Pettit 2012 cites equality in the context of identifying systems for social justice, pp.77–79.

137 Urbinati 2012, pp.613–614. Daniel Kapust similarly claims that republicanism is compatible with paternalism: ‘Skinner, Pettit and Livy: The Conflict of the Orders and the Ambiguity of Republican Liberty’, *History of Political Thought*, 25(3), 2004, pp.377–401. Viroli (2002, p.10) has described the democratic ideal as a ‘radical version’ of republicanism.

138 Urbinati 2012, p.619.

139 Pettit 2012 states that republicanism provides a ‘more radical ideal of freedom’ than liberalism, but retains the label ‘republican’, p.11.

140 Pettit sometimes effectively captures that freedom is a matter of status, see Pettit 1996 p.602.

concept means leaving all options open, including the option of a people establishing a new state on a par with others in the international system. *Claimants* of self-determination have thus generally decried the radical idea in demanding a state of their own. Calls for ‘self-determination’ as radical equality have sometimes been articulated as a demand for unification with another body politic, as in the Aaland Islands case, and with Kosovo at some points in its history. A related, albeit somewhat less radical, policy demand has been the historical *re*-establishment of countries, as in the cases of the 1990 German reunification, and the 1991 restoration of independence to Estonia, Latvia and Lithuania after the Soviet period.

Leaving all options open, including statehood, is only one of the features that distinguishes the radical idea of freedom from the recent literature on ‘self-determination as non-domination’.<sup>141</sup> While inspired by republican theories of freedom, this ‘non-domination’ approach has been advanced primarily by scholars of political science looking for practical compromise solutions to actual conflicts. Their joint goal has been to identify outcomes that would *not* result in statehood. Concentrating primarily on the applicability of self-determination rather than the ideas the concept involves, these scholars have proposed responding to demands with arrangements internal to a pre-existing state. Above all, they have proposed forms of federalism as an alternative to the creation of new states. Finally, this strand of scholarship has stressed the internal features of ‘self-determination’-seeking groups more strongly than called for by either the radical or liberal-conservative ideas.<sup>142</sup>

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141 Developed especially by Iris Young, e.g. in: ‘Self-determination as Non-domination: Ideas Applied to Palestine/Israel’, *Ethnicities*, 5(2), 2005, pp.139–159; ‘Two Concepts of Self-Determination’, pp.176–198 in Stephen May, Tariq Modood and Judith Squires (eds): *Ethnicity, Nationalism and Minority Rights*, Cambridge University Press, New York, 2004; and *Global Challenges: War, Self Determination and Responsibility for Justice*, Polity Press, Cambridge, 2007. For related, though different, perspectives, see Michael Murphy and Siobhán Harty: ‘Post-sovereign Citizenship’, *Citizenship Studies*, 7(2), 2003, pp.181–197; Derek Kornelsen: ‘Circumscribed Spheres of Belonging and Action: Framing Indigenous Self-Determination in Terms of “Non-Domination”’, *APSA Annual Meeting Paper*, 2011; James Bohman: ‘Republican Cosmopolitanism’, *Journal of Political Philosophy*, 12(3), 2004, pp.336–352; David Held: *Cosmopolitanism: Ideals and Realities*, Polity Press, Cambridge, 2010, pp.83–84; Roepstorff 2013. For an insightful, though equally practically oriented, critique of Young, see Jacob T. Levy: ‘Self-determination, Non-domination, and Federalism’, *Hypatia*, 23(3), 2008, pp.60–78, especially p.69.

142 Young 2005 p.141 claims that such features are not important, but nevertheless

Although my thesis explores the radical idea of freedom in *international* language on ‘self-determination’,<sup>143</sup> this idea appears to be alert to conditions *within* a body politic as well. As the name suggests, the ‘radical’ concern with equality has gone from the ‘roots’ upwards.<sup>144</sup> The radically legitimised ‘self-determination’ discourse has indicated a concern for the free status of a group’s individual members by, for instance, calling for referenda in which everyone would have an equal say. And it has held that no one, whether within a group or outside it, can legitimately speak in its name or for its interests, unless assigned such a position by the group’s equal members. This idea has framed a group’s freedom as independence and equality not only as a question of realising collective freedom – but as a necessary condition for individual freedom as well. Thus, the two ideas of freedom cannot be described simply as one being concerned with individuals, and the other with collectivities. While both have appeared in the group-centred discourse of ‘self-determination’, both have been attentive to individual freedom as well.

An important attribute of the radical idea is that it has attached to the concept of ‘self-determination’ the idea that freedom is a matter of equal and independent *status*. This contrasts sharply with the liberal-conservative focus on the legitimising standard of freedom as peace, as an outcome or *stage*. From the radical perspective, how a group might choose to act upon its free status is irrelevant, even if its free actions might threaten the peace.

In fact, the radical international ‘self-determination’ discourse has often disregarded both peace and existing law and order. As a major difference with the liberal-conservative idea, the radical idea has not acknowledged peace as the most fundamental of all values. Instead, it has presented

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proceeds to discuss ‘self-determination’ for groups constituted according to their distinguishable identities.

143 This, indeed, is another feature that distinguishes it from conventional understandings of ‘republican’ freedom: see in particular Sandel 1996. Although Pettit, Skinner and others have recently touched upon the international implications of republican freedom, these perspectives still remain relatively little-studied. See the whole issue of *European Journal of Political Theory*, 9(1), 2010, including Skinner 2010 and Pettit 2010, Cecile Laborde: ‘Republicanism and Global Justice: A Sketch’, pp.48–69.

144 See Calhoun 2012, especially p.12.

freedom and equality as standards of legitimation in their own right, irrespective of their contributions to order or stability. On this point, the radical idea analysed in this thesis has again diverged from republican ideas of freedom. According to republican theories, law should be endorsed as a possibly non-arbitrary form of interference that might preserve and enhance people's freedom.<sup>145</sup> Adherence to existing law, however, has not been central to the radical idea: on the contrary, that idea has aspired to contravene established law and break up legally existing states. It has justified achieving freedom even by the use of force in violent liberation struggles.<sup>146</sup>

One rare point of convergence between the two ideas of freedom in international discourse on 'self-determination' has been that also the radical idea has disparaged interference, especially of an arbitrary kind.<sup>147</sup> However, such radical discourse has presented interference as inherently connected to dependence and inequality: It has rejected dependence and inequality in part for leaving subjugated peoples vulnerable to arbitrary interference – and condemned interference for producing, and being a symptom of, conditions of dependence. And although the two ideas have been united in rejecting interference, they have been separated by the legitimising standards they see as *primary*: liberal-conservative peace and non-interference (for states and individuals); or radical equality and non-dependence (for non-state groups and the individuals within them).

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145 See e.g. Pettit: 'Law and Liberty', pp.39–59 in Samantha Besson and José Louis Martí (eds): *Legal Republicanism: National and International Perspectives*, 2009b. Skinner contrasts such an understanding with a liberal view of the law as preserving freedom through coercing other people (to refrain from interfering with 'our' actions) Skinner 1984, pp.244–245.

146 For international law approaches to the use of force to achieve 'self-determination', see e.g. Heather A. Wilson: *International Law and the Use of Force by National Liberation Movements*, Clarendon Press, Oxford, 1988; Noelle Higgins: *Regulating the Use of Force in Wars of National Liberation – The Need for a New Regime. A Study of the South Moluccas and Aceh*, Martinus Nijhoff, Leiden, 2010

147 While Skinner seems to see republican freedom as restricted both by actual interference and by a condition of dependence on someone's arbitrary will, Pettit concentrates on the latter. See in particular his 'Keeping Republican Freedom Simple: On a difference with Quentin Skinner', *Political Theory*, 30(3), 2002, pp.339–356. See also Skinner 1998, p.69; Gerald Lang: 'Invigilating Republican Liberty', *Philosophical Quarterly*, 62(247), 2012, pp.273–293, at p.288; Ian Shapiro: 'On Non-domination', *University of Toronto Law Journal*, 62, 2012, pp.293–335; Dagger 2005, pp.188–189. Shnayderman 2012, pp.53–55, claims that Skinner now agrees completely with Pettit. But I still see a slight difference in emphasis in their approaches. For a critique of Pettit's position, see Michael David Harbour: 'Non-domination and Pure Negative Liberty', *Politics, Philosophy and Economics*, 11(2), 2001, pp.186–205.

Crucially, the two ideas have denounced *different types* of actual interference as well. Agents who have implicitly promoted the liberal-conservative viewpoint have condemned the obstruction of state freedom of action, including in the economic arena, and sometimes state interference with private individuals. By contrast, the radical perspective has objected to oppression and exploitation of non-state groups – and indirectly, to the obstruction of individual freedom that such oppression entails. Whereas the former outlook was internationally reflected in the important international legal documents invoking ‘self-determination’, the latter appeared in the later writings of Lenin, and at times during the 1950–1960 UN debates.

It should be stressed that no agent using the language of ‘self-determination’ internationally in the 20<sup>th</sup> and 21<sup>st</sup> centuries has referred to these ideas of freedom in explicit or ‘ideal’ form. No *articulated* conflict between the two ideas has ever occurred, and each ‘moment’ examined in this thesis has contained elements of both ideas, sometimes within one and the same statement. Agents did not themselves announce that they were expressing ‘liberal-conservative’ or ‘radical’ ideas: they signalled their conceptual affiliations by choosing terms such as ‘peace’, ‘stability’, or ‘equality’, or by lauding violent struggle. This was how the tension between the two ideas as legitimating standards for arguments and ideas of ‘self-determination’ came to characterise the central appearances of the concept in international discourse.

Although the liberal-conservative idea of freedom was to dominate international references to ‘self-determination’, the radical idea emerged *first*, in the thinking of Lenin, and was expressed at every important point in time. Each international ‘self-determination moment’ started with a radical pronouncement that provoked liberal-conservative attempts to appropriate the meaning of the concept. And even the incorporation of the liberal-conservative idea in the authoritative legal ‘self-determination’ documents did not prevent the radical idea from reappearing. Although both scholarship and international discourse have tended to use ‘self-determination’ with primary reference to the liberal-conservative idea, it can still be plausibly

conceptualised in radical terms. The continuing legal, political and scholarly disputes over ‘self-determination’ indicate not only disagreement on what should count as interference, or agents, internationally, but also lingering unease over the meaning of ‘freedom’ in international discourse.

### **Chapter Outline and Chapter Historiography**

This thesis is organised in five chapters, each concentrating on international references to ‘self-determination’ at specific moments. The first two chapters explain why and how the concept emerged in international affairs through the language of Lenin (from 1903 to 1917), and Wilson (in 1918). Chapter 3 examines how understandings of self-determination played out in the immediate post-World War One international handling of the Albanian question, and how it featured in the Aaland Islands case of the League of Nations. It then explores the codification of ‘self-determination’ in the 1945 UN Charter. The fourth chapter concentrates on the UN debates between 1950 and 1960 that resulted in the 1966 ICHR and the 1960 Decolonisation Declaration, which defined ‘self-determination’ as *decolonisation*. Chapter 5 examines the language of ‘self-determination’ in the 2008–2010 ICJ proceedings on Kosovo. Throughout, I focus on how the liberal-conservative and radical ideas of freedom appeared in international mentions of ‘self-determination’, reflecting the visions of freedom dominant in international affairs at the time.

In addition to its proposed contribution to the scholarship on freedom, and the literature on ‘self-determination’, it is my hope that this thesis will add to the body of thought on each of the historical moments dealt with here. Concerning the first two chapters, on the first ‘self-determination moment’, I find the existing literature to be limited in several respects. In particular, there has been no thorough, comparative analysis of Lenin’s and Wilson’s words and ideas on ‘self-determination’.<sup>148</sup>

Legally-oriented scholarship might have largely ignored the era of these two

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148 ‘Wilson vs. Lenin’, pp.368–395 in Arno Mayer: *Political Origins of the New Diplomacy 1917–1918*, Yale University Press, New Haven, CT, 1959 compares the two men’s influence on the European left, but does not focus primarily on self-determination. Also insightful is Abulof 2010.

men, since ‘self-determination’ did not feature in the most central international law documents of the period. Diplomatic historians, on their part, have naturally concentrated on the diplomacy and policy decisions of the two, such as those related to the First World War and the 1917 Russian Revolutions. Furthermore, historical scholarship has tended to concentrate on merely one of the two leaders, dealing superficially, if at all, with the other.<sup>149</sup> Many historians have also either idealised Lenin’s or Wilson’s sincerity and commitment to self-determination<sup>150</sup> – or (over)emphasised that they were actually motivated by tactical, hard-headed concerns.<sup>151</sup> Much attention has been paid to the discrepancy between their statements and actual ‘self-determination’ policies.<sup>152</sup> What has been missing is a study of the roles of both Lenin and Wilson in internationalising the concept of ‘self-determination’, as is an analysis of the ideas of freedom they employed in legitimising their references to the concept.

Seeking to close this scholarly gap, in the first two chapters I explore, through the words of Lenin and Wilson, how ‘self-determination’ became important to international discourse. Chapter 1 concentrates on Lenin and the public materialisation of his language of ‘self-determination’. After

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149 For example the perceptive Trygve Thrøntveit: ‘What was Wilson Thinking? A Review of Recent Literature on Wilsonian Foreign Policy’, *White House Studies*, 10(4), 2011a, pp.459–474, which, nevertheless, oversimplifies the position of Lenin and the Bolsheviks on self-determination as ‘every ethnic-nationalist aspiration must be realized in a sovereign state’, p.460.

150 E.g. William G. Carleton: ‘A New Look at Woodrow Wilson’, *Virginia Quarterly Review*, 38(4), 1962, pp.545–566; John Milton Cooper: *Woodrow Wilson: A Biography*, Knopf, New York 2009; Erez Manela: *The Wilsonian Moment: Self-Determination and the International Origins of Anticolonial Nationalism*, Oxford University Press, New York, 2007; Ray Stannard Baker: *What Wilson did at Paris*, Doubleday, Page, New York, 1920; B. I. Zhuchkov: *Lenin on the Nationality Problem*, Novosti, Moscow, 1968; S. Gilov: *The Nationalities Question: Lenin’s Approach*, Progress Publishers, Moscow, 1983; Elizabeth Mauchline Roberts: *Lenin and the Downfall of Tsarist Russia*, Methuen, London, 1966.

151 See e.g. Edward Hallett Carr: *The Bolshevik Revolution 1917–1923*, Norton, New York 1978, Vol. I, p.258; Stanley W. Page: *Lenin and World Revolution*, New York University Press, New York, 1959, pp.347, 353; Gerard J. De Groot: *The First World War*, Palgrave, New York 2001, p.181; Mayer 1959, pp.301, 377–380, 393; Michla Pomerance: *Self-determination in Law and Practice: The New Doctrine in the United Nations*, Martinus Nijhoff, The Hague, 1982, p.12.

152 For a good account, particularly regarding Wilson see Margaret MacMillan: *Paris 1919: Six Months that Changed the World*, Random House, New York, 2001, especially pp.222, 227, 362. See also Linda Killen: ‘Self-determination vs. Territorial Integrity’, *Nationalities Papers: The Journal of Nationalism and Ethnicity*, 10(1), 1982, pp.65–78, and for Lenin’s policy, see e.g. Richard K. Debo: *Survival and Consolidation: The Foreign Policy of Soviet Russia 1918–1921*, McGill-Queen’s University Press, Montreal, 1992; Robert Service: *Lenin: A Biography*, Macmillan, Basingstoke, 2000, especially pp.403–413, 452–455.

examining the context of his formulation, the chapter then turns to Lenin's actual words, and concludes by investigating the influence of the First World War on his pronouncements, and the creation of the context in which Wilson reacted to Lenin's concept of 'self-determination'. In chapter 1, I argue that the concept arose polemically in Lenin's discourse, and that he legitimised it – with momentous implications – with reference to the negative, 'radical', idea of freedom.

By the end of the war, Lenin had expressed his key ideas of 'self-determination'; Wilson had internationalised the concept through his own use; and the international image of the concept had become linked to the 28<sup>th</sup> US president. My second chapter proceeds in a manner similar to the first. It opens by examining the context of Wilson's utterances, his actual language, and the liberal-conservative idea of freedom he used to legitimise it. I show that Wilson's concept of 'self-determination' was much less clear than Lenin's, and that his commitment to it was questionable. Then I argue that the mandate system in effect came to reflect what Wilson had in mind when he spoke of 'self-determination'.

Analysing how Lenin and Wilson launched the phrase 'self-determination' into the language of international affairs in these first two chapters sheds light on *why* this concept emerged internationally in the first place. This 'why'-orientation is less relevant for the later international moments in which the concept featured. In the following three chapters, I focus even more strictly on the *discourse* of 'self-determination' and the ideas of freedom used to legitimise it, than on the underlying causes and intentions. By the time of its subsequent important international occurrences, the concept had already become part of the language of international affairs, so I concentrate more on *how* 'self-determination' was cited and legitimised.

Thus, chapter 3 starts by investigating international conceptualisations of self-determination in the years following Wilson's internationalisation. It examines how the concept was understood during the post-World War One international handling of the Albanian question and the Aaland Islands case. The limited scholarly literature – mainly from the field of diplomatic history



– on these two cases has simply not dealt with self-determination from the perspective of intellectual history.<sup>153</sup> Although legal scholarship occasionally mentions the Aaland Islands case, the analysis has operated with the narrow aim of identifying implementable legal lessons or criteria.<sup>154</sup> In chapter 3, my analysis of these two cases finds that their international treatment indicated a further entrenchment of the ideas of Woodrow Wilson.

Also explored in chapter 3 is the inclusion of ‘self-determination’ in the UN Charter, formally making this language part of international law. Here scholars have mainly discussed what legal status ‘self-determination’ might have gained thereby: for instance, whether the concept could thenceforth be described as a legal right, principle, rule, value, or norm, and what duties it emplaced on states and on the UN.<sup>155</sup> This has been seen as critical, as the obligations and privileges following from a legal right are stronger than those entailed by a ‘mere’ principle. In general, most authors have agreed that its incorporation in the UN Charter did turn ‘self-determination’ into some sort of a legal right.<sup>156</sup>

From an intellectual history perspective, however, seeking to pin down the appropriate legal prefix to ‘self-determination’ after its 1945 codification in the UN Charter is more of a digression. The Charter-focused, predominantly legal, scholarship analysing self-determination in the post-First World War era has also seemed oblivious to the growing body of scholars who examine rights<sup>157</sup> and international law<sup>158</sup> as contested notions *per se*. Labelling self-

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153 E.g. James Barros, *The Aaland Islands Question: Its Settlement by the League of Nations*, Yale University Press, New Haven, CT, 1968.

154 See e.g. Nathaniel Berman: “‘But the Alternative is Despair’”: European Nationalism and the Modernist Renewal of International Law’, *Harvard Law Review*, 106, 1993, pp.1792–1903, at pp.1862–1873; Hannum 1996, pp.370–375; Cassese 1995, pp.27–33.

155 See e.g. Knop 2002, p.10; Crawford 2000a, p.9; David Raic: *Statehood and the Law of Self-determination*, Kluwer Law International, New York, 2002, p.145; McCorquodale 1994, p.858; Summers 2007, pp.379, 387, 393; Cassese 1995, pp.134–140; Anaya 1993.

156 See e.g. Pomerance 1982, p.73; Hannum 1996, pp.33, 45; Hannum 1993b, p.31; McCorquodale 1994, p.858. However, Verzijl 1968, e.g. p.324, disagrees.

157 For a few examples, see Duncan Kennedy: *A Critique of Adjudication (fin de siècle)*, Harvard University Press, Cambridge, MA, 1997, pp.318–319; Stephen P. Marks: ‘Emerging Human Rights: A New Generation for the 1980s?’, *Rutgers Law Review*, 33, 1980/1981, pp.435–452, at p.435; Eugene Kamenka, ‘Human Rights: Peoples’ Rights’, pp.127–139 in Crawford (ed.) 1988, at p.135; Philip Alston: ‘Conjuring up New Human Rights: A Proposal for Quality Control’, *American Journal of International Law*, 78, 1984, pp.607–621, at p.607. See also Martti Koskenniemi: ‘The Effect of Rights on Political Culture’, pp.99–116 in Philip Alston (ed.): *The EU and Human Rights*, Oxford

determination as a legal ‘right’ does not go far in explaining the actual use of the concept or elucidate the ideas it has brought to the fore. Neither legal scholars nor diplomatic historians appear to have been interested in the ideas of freedom implied in the international legalisation of ‘self-determination’, or in how these related to earlier understandings. In chapter 3, I take up these questions and argue that, while it was of great legal import, also the inclusion of ‘self-determination’ in the UN Charter was a reiteration of ideas already internationalised by Wilson’s discourse.

Ever since the concept was included in the UN Charter, many scholars have tended to see the story of ‘self-determination’ in international affairs as a battle between self-determination and the territorial integrity of states.<sup>159</sup> While this juxtaposition does correspond with some aspects of the contrast between the radical and liberal-conservative ideas, my focus is different. The liberal-conservative idea has prevailed internationally among opponents *as well as* proponents of self-determination. And that idea championed more than simply territorial integrity: it cherished peace, order, freedom from interference, as well as orderly change, if any. The radical idea, in turn, has not been characterised solely by its support for self-determination in terms of statehood. Its distinguishing feature has been to legitimise demands for ‘self-determination’ as calls for freedom as equality of status; for freedom from domination, dependence and inequality, as well as from certain forms of interference. The ‘self-determination v territorial integrity’ distinction might prove useful in a search for implementable legal criteria for conflict resolution. My concentration, however, is on the ideas of freedom involved

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University Press, Oxford 1999, at p.110; Costas Douzinas: *The End of Human Rights: Critical Legal Thought at the Turn of the Century*, Hart, Oxford, 2000; Costas Douzinas: *Human Rights and Empire: The Political Philosophy of Cosmopolitanism*, Routledge, New York, 2007, p.113; Allen Buchanan: ‘What’s so Special about Rights?’, *Social Philosophy and Policy*, 2(1), 1984, pp.61–83, especially p.81; Mazower 2004; Susan Marks: *The Riddle of All Constitutions: International Law, Democracy, and the Critique of Ideology*, Oxford University Press, Oxford, 2000.

158 See e.g. Matti Koskenniemi: *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960*, Cambridge University Press, Cambridge, 2001, p.500; Loughlin 2000, p.217; Sunstein 1996; Dworkin 1985. For a ‘self-determination’-oriented analysis, see Lauri Malksoo: ‘Justice, Order and Anarchy: the Right of Peoples to Self-determination and the Conflicting Values of the Law’, *Juridica International*, IV, 1999, pp.75–79.

159 See e.g. Reisman, W. Michael: ‘Coercion and Self-determination: Construing Charter Article 2(4)’, *American Journal of International Law*, 78(3), 1984, pp.642–645; Michael M. Gunter: ‘Self-determination or Territorial integrity: The United Nations in Confusion’, *World Affairs*, 141(3), 1979, pp.203–218.

when ‘self-determination’ has been referred to internationally.

Chapter 4 studies the UN debates that unfolded between 1950 and 1960, resulting in the adoption of ‘self-determination’ in the highly significant 1960 UNGA Decolonisation Declaration, as well as in the two 1966 ICHR. During that decade of UN debates, state delegates argued about the international meaning and value of ‘self-determination’. The resultant three UN documents cited the concept in an identically formulated article, further adding to its standing in international politics and law. Important scholarly works have already covered these UN discussions.<sup>160</sup> However, while of great importance to the legal and diplomatic history of self-determination, as well as to the intellectual history of human rights, the questions motivating this literature differ from those informing my thesis. The main interest in self-determination of scholars on this era has been the trajectory of the concept in international law. They have, moreover, analysed it largely in terms of a strict individual-rights-versus-state-rights contradiction – not by exploring its legitimising ideas of freedom.

Also the diplomatic history of decolonisation has touched upon issues raised in chapter 4, but with a different orientation. Traditionally, the history of decolonisation has been written from the perspective of colonial capitals, detailing the various administrative, diplomatic and political challenges experienced in connection with withdrawal from colonies.<sup>161</sup> Works of this

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160 Above all, Cassese 1995; Samuel Moyn: *The Last Utopia: Human Rights in History*, Harvard University Press, Cambridge, MA, 2010; and Burke 2010.

161 For examples of this traditional approach, see Martin Thomas, Bob Moore, L. J. Butler: *Crises of Empire: Decolonization and Europe's Imperial States 1918–1975*, Hodder Education, London, 2008; John Gallagher (ed.) *The Decline, Revival and Fall of the British Empire*, Cambridge University Press, Cambridge, 1982; Franz Ansprenger: *The Dissolution of the Colonial Empires*, Routledge, London, 1989; Stewart C. Easton: *The Rise and Fall of Western Colonialism: A Historical Survey from the Early Nineteenth Century to the Present*, Pall Mall Press, London, 1964; Muriel Evelyn Chamberlain: *Decolonization*, Blackwell, Oxford, 1999; Raymond F. Betts: *France and Decolonization, 1900–60*, Palgrave Macmillan, London 1991; W. H. Morris Jones and George Fischer (eds): *Decolonization and After: The British and French Experience*, Frank Cass, London, 1980; John Darwin: *Britain and Decolonisation: Retreat from Empire in the Post-war World*, Palgrave Macmillan, London, 1988; Nicholas J. White: *Decolonization: The British Experience since 1945*, Pearson Education, Essex, 1999; Martin Lynn (ed.): *The British Empire in the 1950s: Retreat or Revival?*, Palgrave Macmillan, London, 2006; Dan Horowitz: ‘Attitudes of British Conservatives towards Decolonization in Africa’, *African Affairs*, 69(274), January 1970, pp.9–26. Both Martin Shipway: *Decolonization and its Impact*, Blackwell, Oxford, 2008; and Jan Nederveen Pieterse: *Empire and Emancipation: Power and Liberation on a World Scale*, Nijmegen,

kind have tended to ask why colonialism ended, when it did so, and whether its termination resulted from pressure from colonial movements, the self-interested calculations of colonial powers, or international, Cold War developments. More recent critical approaches have also been oriented towards explaining the political and diplomatic interests driving the policy of decolonisation, seeking to identify its immediate causes.<sup>162</sup> However, the concept of self-determination and affiliated ideas of freedom as expressed in UN discourse during the 1950–1960 debates have not been explored. Chapter 4 seeks to remedy this. I find that while the 1960 Declaration made ‘self-determination’ legally implementable as *decolonisation*, it also reduced the independence prospects of the concept to *colonies*, and weakened its association with the radical idea of freedom.

Scholarship on the two ICHRs, which contained the exact same wording on ‘self-determination’ as the 1960 Declaration, was comparatively sparse until the 1990s, when they were enlisted in support of what was called ‘internal self-determination’. In a context of heightened international attention to human rights,<sup>163</sup> scholars then came to define ‘internal self-determination’ as a ‘right to democratic governance’<sup>164</sup> and human rights within existing

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Amsterdam, 1989, are somewhat more interested in the local-level dynamics that led to the independence of former colonies. Frank Füredi: *Colonial Wars and the Politics of Third World Nationalism*, I. B. Tauris, London, 1994, focuses on the British response to colonial independence movements, and partially on their nature and demands. For a development perspective, see Bruno Kreisky and Humayun Gauhar (eds): *Decolonization and After: The Future of the Third World*, South Publications, London, 1987.

162 For instance W. R. Louis: *End of British Imperialism: The Scramble for Empires, Suez, and decolonization*. Collected Essays, I. B. Tauris, London, 2006a; Frederick Cooper: *Colonialism in Question: Theory, Knowledge, History*, University of California Press, London, 2005; Robert J. C. Young: *Postcolonialism: An Historical Introduction*, Blackwell Publishing, Oxford, 2006. Neta Crawford: *Argument and Change in World Politics: Ethics, Decolonization, and Humanitarian Intervention*, Cambridge University Press, Cambridge, 2002 analyses international argumentation on colonialism, but regarding decolonisation focuses narrowly on the delegitimation of colonial discourse.

163 See e.g. Jack Donnelly: ‘Human Rights: A New Standard of Civilization?’, *International Affairs*, 74(1), 1998, pp.1–23; McCorquodale 1994, p.858; James Mayall: ‘Nationalism and Imperialism’, pp.104–122 in Cambridge 2003, at pp.115, 117. For historical background, see Moyn 2010; Andrew Moravcsik: ‘The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe’, *International Organization*, 54(2), 2000, pp.217–252; Nicholas N. Kittrie: *The War against Authority: From the Crisis of Legitimacy to a New Social Contract*, Johns Hopkins University Press, Baltimore, MD, 1995, especially p.212; John P. Humphrey: ‘Political and Related Rights’, unpaginated in Theodor Meron (ed.): *Human Rights and International Law: Legal and Policy Issues*, Oxford University Press, Oxford, 1986.

164 Thomas M. Franck: ‘The Emerging right to Democratic Governance’, *American Journal of International Law*, 86(1), 1992, pp.46–91. See also Moltchanova 2009, p.83.

states,<sup>165</sup> possibly autonomy<sup>166</sup> or federalism.<sup>167</sup> It was claimed that the ICHR, along with other key documents,<sup>168</sup> showed that ‘internal self-determination’ was the only way to realise the concept after the 1960 Declaration had restricted its prospects of state creation to colonies alone.<sup>169</sup>

From the perspective of international and intellectual history, however, ‘internal self-determination’ does not seem to be the *same* concept that earlier international discourse had referred to as ‘self-determination’.<sup>170</sup> Moreover, the phrase ‘internal self-determination’ was created by the very international legal and international relations scholarship which has come to take it for granted,<sup>171</sup> but is nowhere to be found in the actual legislation drawn upon in its support. For scholars, their intention in promoting this ‘internal’ notion seems to have been to open for pragmatic compromise,<sup>172</sup>

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165 E.g. Georg Nolte: ‘Secession and External Intervention’, pp.65–93 in Kohen (ed.) 2006, at pp.72–73; Anaya 2004, pp.103–106; Smith 2010, p.276; Simpson 1996, especially p.283. See also Allen Buchanan: *Justice, Legitimacy and Self-determination: Moral Foundations for International Law*, Oxford University Press, Oxford, 2004, p.373; Hannum 1996, in particular pp.458–468, Hannum 1993b, p.66; McCorquodale 1994, p.872; Cassese 1995, p.337; and Brownlie 1988.

166 Patrick Thornberry: ‘Images of Autonomy and Individual and Collective Rights on International Instruments on the Rights of Minorities’, pp.97–124 in M. Suksi (ed.): *Autonomy: Applications and Implications*, Kluwer Law International, The Hague, 1998, at p.111; Chris Armstrong: ‘Global Egalitarianism or National Self-determination?’, pp.253–268 in Breen and O’Neill (eds) 2010; Musgrave 1997, e.g. p.207; Adina Preda: ‘The Principle of Self-determination and National Minorities’, *Dialectical Anthropology*, 27, 2003, pp.205–225; Cassese 1995, pp.348–352.

167 Patrick Thornberry: ‘The Democratic or Internal Aspect of Self-determination with some Remarks on Federalism’, pp.101–138 and Otto Kimminich: ‘A “Federal” Right of Self-determination?’, pp.83–100, both in Tomuschat (ed.) 2001; Edward McWhinney: *Self-determination of Peoples and Plural-ethnic States in Contemporary International Law: Failed States, Nation Building and the Alternative, Federal Option*, Martinus Nijhoff, Leiden, 2007. See also Weller 2009, pp.115–158.

168 Especially the ‘Friendly Relations Declaration’, UNGA Resolution 2625 (XXV), ‘Declaration on Principles of International Law concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations’, 24 October 1970; but also the Helsinki Final Act, 1 August 1975 (a non-binding accord between North American and European states); and later, the Indigenous Peoples Declaration, UNGA resolution 61/295, 2007. See e.g. Cassese 1995 pp.52–53, 65–66 on the ICHR and p.70 on the Friendly Relations declaration; Hannum 1996, pp.49, 469.

169 For similar, earlier views, see e.g. Partsch 1982, p.65; UN official John P. Humphrey: *Human Rights and the United Nations: A Great Adventure*, Transnational Publishers, New York, 1984, p.129.

170 See Moyn 2010, p.208.

171 For examples, see McCorquodale 1994, p.869; Jean Salmon: ‘Internal Aspects of the Right to Self-determination: Towards a Democratic Legitimacy Principle?’, pp.253–282 in Tomuschat (ed.) 2001; Hurst Hannum: ‘The Specter of Secession: Responding to Claims for Ethnic Self-determination’, *Foreign Affairs*, 77(2), 1998, pp.13–19; Gentian Zyberi: ‘Self-Determination Through the Lens of the International Court of Justice’, *Netherlands International Law Review*, 56, 2009, pp.429–453, at p.430; Kaczorowska 2010. For an early expression, see Buchheit 1978, p.14.

172 See e.g. Weller 2009; Paul R. Williams and Francesca Jannotti Pecci: ‘Earned

'[t]ak[e] the sting out'<sup>173</sup> of the wider concept, limit its scope, kill off hopes of independence expressed with radical 'self-determination' demands,<sup>174</sup> and remove the threat posed to the territorial integrity of states.<sup>175</sup> Such a variant of 'self-determination' might be preferable to those who already have a state of their own. But disregarding independence as a possible outcome would render the concept meaningless to its claimants, and would ignore its international and intellectual history.<sup>176</sup> Since the focus of this thesis is on 'self-determination' in international discourse, however, these scholarly debates will not be pursued further. I analyse 'internal self-determination' only when it actually became part of international discourse on 'self-determination', as in the 2008–2010 ICJ case on Kosovo.

The fifth and final chapter of this thesis explores the international discourse of 'self-determination' in the ICJ proceedings on Kosovo. Historians have yet to analyse not only this particular ICJ case, but indeed the history of Kosovo as a whole after its 1998–1999 war against Serbia. The most recent past of Kosovo has instead been covered by journalists and international relations scholars, usually seeking to improve the international administration established in post-war Kosovo in 1999.<sup>177</sup> Some legal works

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Sovereignty: Bridging the Gap between Sovereignty and Self-determination', *Stanford Journal of International Law*, 40(2), 2004, pp.347–386; Asbjørn Eide: 'In Search of Constructive Alternatives to Secession', pp.139–176 in Tomushcat (ed.) 2001; Asbjørn Eide: 'Peaceful Group Accommodation as an Alternative to Secession in Sovereign States', pp.87–110, at p.87 and Kumar Rupesinghe: 'Conflict Resolution: Current Options and New Mechanisms', pp.337–355, at p.340, both in Clark and Williamson (eds) 1996; Donald Horowitz: 'Self-determination: Politics, Philosophy, and Law', pp.181–214 in Moore (ed.) 1998.

173 Jan Klabbers: 'The Right to be Taken Seriously: Self-Determination in International Law', *Human Rights Quarterly*, 28(1), 2006, pp.186–206, at p.191.

174 See McCorquodale 1994, pp.878, 884; also Hannum 1996, p.473; Norman 2006, p.73; Klabbers 2006, pp.202–203; Eileen F. Babbitt: 'Negotiating Self-determination: Is it a Viable Alternative to Violence?', pp.159–166 in Hannum and Babbitt (eds) 2006, at p.165 and Weller 2009, pp.112, 114; Weller 2008a.

175 See Moltchanova 2009, especially p.5; McCorquodale 1994, p.864. By contrast, Cassese 1979 and Burke 2010 (especially pp.47–55) indicate that 'internal' self-determination expands the concept.

176 See also Miéville 2005, p.269; Christopher H. Wellman: 'A Defense of Secession and Political Self-determination', *Philosophy and Public Affairs*, 24(2), 1995, pp.142–171; Crawford 2006, p.107; Brilmayer 1991; Tomuschat 2001, p.11; Toyne 1925, p.317; Hannum 1993b, p.39; Hannum 1996, p.39; Tilly 1993.

177 For recent international relations examples see Nina den Boer and Chris van der Borgh: 'International Statebuilding and Contentious Universities in Kosovo', *Journal of Intervention and Statebuilding*, 5(1), 2011, pp.67–88; Andreas Ernst: 'Fuzzy Governance: State-building in Kosovo since 1999 as Interaction between International and Local Actors', *Democracy and Security*, 7, 2011, pp.123–139; Gezim Visoka: 'International Governance and Local Resistance in Kosovo: The Thin Line Between

have shared this concern,<sup>178</sup> while others have concentrated on the lack of accountability, transparency, or representativeness of Kosovo's international administration.<sup>179</sup> Meanwhile a growing body of legal scholarship has examined the ICJ case itself, seeking either to praise or attack the Court's final advisory opinion, and identifying legal lessons to be learned from the case.<sup>180</sup>

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Ethical, Emancipatory and Exclusionary Politics', *Irish Studies in International Affairs*, 22, 2011, pp.99–125; and the coverage of Kosovo in Dominik Zaum: *The Sovereignty Paradox: The Norms and Politics of International Statebuilding*, Oxford University Press, Oxford, 2007; and Oisín Tansey: *Regime Building: Democratization and International Administration*, Oxford University Press, Oxford, 2009. See also Blerim Reka: *UNMIK as an International Governance in Post-war Kosovo: NATO's intervention, UN Administration and Kosovar Aspirations*, Logos, Skopje, 2003; Bernhard Knoll: 'From Benchmarking to Final Status? Kosovo and the Problem of an International Administration's Open-Ended Mandate', *European Journal of International Law*, 16(4), 2005, pp.637–660. For journalistic examples, see the problematic Iain King and Whit Mason: *Peace at Any Price: How the World Failed Kosovo*, Hurst, London, 2006; also Tim Judah: *Kosovo. War and Revenge*, Yale University Press, New Haven, CT, 2002; Tim Judah: *Kosovo: What Everyone Needs to Know*, Oxford University Press, Oxford, 2008; and James Pettifer and Miranda Vickers: *The Albanian Question: Reshaping the Balkans*, I. B. Tauris, London, 2007, which partly covers Kosovo.

178 For one example, see Hansjörg Strohmeyer: 'Collapse and Reconstruction of a Judicial System: the United Nations Missions in Kosovo and East Timor', *American Journal of International Law*, 95(1), 2001, pp.46–63. For the process of determining the status of Kosovo, see Marc Weller: 'Negotiating the Final Status of Kosovo', *Chaillot Paper*, 114, EU Institute for Security Studies, Paris, December 2008b. For useful document collections on the international lead-up to the Kosovo war, see Marc Weller (ed.): *The Crisis in Kosovo 1989–1999: From the Dissolution of Yugoslavia to Rambouillet and the Outbreak of Hostilities*, Documents and Analysis Publishing, Cambridge, 1999; Heike Krieger (ed.): *The Kosovo Conflict and International Law: An Analytical Documentation*, Cambridge University Press, Cambridge, 1999.

179 Oeter 2007, pp.504–505; Fabry 2010, pp.206–207, as well as Gezim Visoka: 'The "Kafkaesque Accountability" of International Governance in Kosovo', *Journal of Intervention and Statebuilding*, 6(2), 2012, pp.189–212. See also Geldenhuys 2009, pp.107–116; Ombudsperson Institution in Kosovo: 'Special Report no. 1 on the Compatibility with Recognized International Standards of UNMIK Regulation No. 2000/47 on the Status, Privileges and Immunities of KFOR and UNMIK and their Personnel in Kosovo (18 August 2000) and on the Implementation of the Above Regulation', 26 April 2001; Malin Palm: 'Accountability and Effectiveness of CSDP Missions: The Role of Civil Society', European Peacebuilding Liaison Office, 2010; Human Rights Watch: 'Better Late than Never: Enhancing the Accountability of International Institutions in Kosovo', 13 April 2009, accessed 8 February 2013, [www.hrw.org/en/reports/2009/04/13/better-late-never](http://www.hrw.org/en/reports/2009/04/13/better-late-never); Débora García-Orrico: 'Kosovo', in Security Council resolutions under Chapter VII: Design, Implementation and Accountabilities, FRIDE 2009, p.142; Lindsey Cameron: *Accountability of International Organisations Engaged in the Administration of Territory*, University Centre for International Humanitarian Law, 2006, pp.5–6; David Marshall and Shelley Inglis: 'The Disempowerment of Human Rights-based Justice in the United Nations Mission in Kosovo', *Harvard Human Rights Journal*, 16(84), 2003, pp.95–146; Christian Tomuschat (ed.): *Kosovo and the International Community – A Legal Assessment*, Kluwer, The Hague, 2002.

180 For recent representative compilations, see James Summers (ed.): *Kosovo: A Precedent? The Declaration of Independence, the Advisory Opinion and Implications for Statehood, Self-determination and Minority Rights*, Martinus Nijhoff, Leiden, 2011; special issue of the *German Law Journal*, 11(8), 2010; and contributions from Frowein, Bogdandy and Jacob, and Fleiner, all in Ulrich Fastenrath, Rudolf Geiger, Daniel-

From my perspective, the important questions involved in the ICJ Kosovo case are how ‘self-determination’ was invoked during the proceedings and how these references expressed ideas of freedom. I see the case as having illuminated current international understandings of self-determination and the ideas of freedom that have dominated international discourse. In chapter 5, I argue that the Kosovo case indicates that, while most states involved in the proceedings understood self-determination chiefly as an ‘internal’, liberal-conservative, stability-promoting notion, the final language of the ICJ advisory opinion served to keep the radical idea alive.

With these chapters, I show how the concept of ‘self-determination’ has been used internationally at important moments in the course of the past hundred years, and how the two ideas of freedom have functioned as its standards of legitimation. As I assume that the arguments and ideas on self-determination sought legitimation with reference to the ideas of freedom prevailing internationally at various times, this investigation also reveals what these ideas were. It emerges that, although the liberal-conservative idea has dominated the international ‘self-determination’ discourse, the radical idea has kept reoccurring. Indeed, the radical idea may have been the real driver behind the international appearances of ‘self-determination’, consistently reviving the currency of the concept by provoking liberal-conservative reactions.

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Erasmus Khan, Andreas Paulus, Sabine von Schorlemer & Christoph Vedder (eds): *From Bilateralism to Community Interest: Essays in Honour of Bruno Simma*, Oxford University Press, Oxford, 2011. See also Mushfig Mammadov: “‘Traditional Gap’ in the ICJ’s Advisory Opinion on Kosovo”, *Caucasian Review of International Affairs*, 4(4), 2010, pp.313–324; Simone Florio: ‘Serbia vs. Kosovo: International Law and Politics of Secession’, *Central and Eastern European Forum Yearbook*, University of Granada, 2011, pp.1–18; Eric De Brabandere: ‘The Kosovo Advisory Proceedings and the Court’s Advisory Jurisdiction as a Method of Dispute Settlement’, *The Hague Justice Portal*, 2012, pp.1–6; Marko Divac Öberg: ‘The Legal Effects of United Nations Resolutions in the Kosovo Advisory Opinion’, *American Journal of International Law*, 105, 2011, pp.81–90; Dinah Shelton: ‘Self-determination in Regional Human Rights Law: from Kosovo to Cameroon’, *American Journal of International Law*, 105, 2011, pp.60–81; David Harland: ‘Kosovo and the UN’, *Survival*, 52(5), 2010, pp.75–98; Richard Falk: ‘The Kosovo Advisory Opinion: Conflict Resolution and Precedent’, *American Journal of International Law*, 105, 2011, pp.50–60.



## 1. TOWARDS INTERNATIONALISATION: LENIN'S CONCEPT OF 'SELF-DETERMINATION'

The significance of 'self-determination' in international discourse stems from the legitimisation of the concept with reference to freedom, and from its legal formalisation. Both these features must be understood in light of the emergence of the specific term 'self-determination' in the language of international affairs early in the 20<sup>th</sup> century. The Russian Bolshevik leader Vladimir Ilyich Lenin and US President Woodrow Wilson both made crucial references to the concept, but it was Wilson who really put the language of 'self-determination' on the international agenda. However, he came to mention it in *response* to Lenin's earlier pronouncements. It is therefore important to explore the language and ideas of both these men in order to explain the internationalisation of 'self-determination'.

This chapter examines Lenin's discourse of 'self-determination'; chapter 2 focuses on Wilson's use of the term. How these two leaders employed this language is the core of the first international 'self-determination moment' to be examined in this thesis. It is a central issue, for two main reasons. First, it was Lenin and Wilson who made 'self-determination' a key reference point in international affairs. To be sure, ideas often associated with the concept – such as freedom, popular sovereignty, and political legitimacy – can be traced back much further in history. But '*self-determination*' as an exact term did not gain *international* prominence prior to Lenin and Wilson. My focus is exclusively on the language of 'self-determination' in high-level international affairs: and it was with Lenin and Wilson that this precise language became internationally important.

The second reason for examining Lenin's and Wilson's discourse of 'self-determination' in these two first chapters is that they set the terms for how the concept would recur in all later important international moments. Both leaders used their ideas of *freedom* to explain and legitimate their positions on self-determination. Lenin did so most directly, by advocating 'self-determination' as a radical idea compassing freedom as equality, which, if realised, would necessarily imply the option of complete political

independence and creating new states. Such an understanding was to reappear in all subsequent international moments. But because the overarching aim for Lenin was freedom as equality in the form of socialist internationalism, in practice he conditioned his concept of self-determination on criteria that were not to become internationally prevailing. Also Wilson's contrasting and more ambiguous references to 'self-determination' implied freedom as a legitimating standard, albeit in different ways.

Foreshadowing later international appearances, Lenin's and Wilson's uses of the language of 'self-determination' were informed by wider, and changing, international contexts. Particularly during the First World War, their statements posited the concept as having a global role in ending a conflict which, they somehow agreed, had been produced by the corruption and non-sustainability of an 'old world'. Both men saw the times they lived in as challenging, but also as charged with great opportunity. In different ways, both Lenin and Wilson seemed intent on using the war as a catalyst for a new and better order, to be shaped according to their political ideals. While they diverged greatly in other respects, both presented 'self-determination' as lying at the heart of their visions for a new and better world. And both made use of this language in order to win over their audiences. Also in the later course of history, 'self-determination' was to gain significance at times of international change and possible regeneration.

Note that I study Lenin's and Wilson's concepts of 'self-determination' as they themselves presented this, in public writings and statements. I do not seek to idealise either of the two, nor do I *a priori* question their sincerity. In exploring Lenin's and Wilson's discourse of 'self-determination' I draw on close readings of how they themselves publicly referred to the concept. Relevant parts of their broader thinking as well as records from their contemporaries are utilised to the extent to which they can illuminate how and why Lenin and Wilson presented their ideas as they did. Further, if I touch upon their personalities, broader ideologies, and wider historical contexts, that is solely in order to shed light on their contributions to internationalising the language of 'self-determination'. The same priorities

guide my selection of sources from the vast secondary literature on these two leaders and their times.

### **Lenin's Concept of 'Self-determination': Context and Language**

Lenin employed the language of the 'right of nations to self-determination' in numerous publications between 1903 and 1917.<sup>1</sup> Ideologically, his discourse was a product of Marxist thinking. Politically, his earliest ideas on 'self-determination' were formulated in the context of intra-socialist debate on the 'national question', whereas his later expressions were influenced by the First World War. To Lenin, the 'national question' and 'self-determination' were parts of the same conceptual problématique. It could be mentioned that the intense post-Second World War scholarly preoccupation with which 'unit' might be eligible for self-determination stands in stark contrast to the socialist focus of Lenin's time. Endeavouring to define this unit in general terms was not central to Marxist discussions on self-determination or the national question: they referred loosely to 'nations'.<sup>2</sup>

When Lenin began to address the right of nations to self-determination, there existed no 'standard' socialist approach to the national question.<sup>3</sup> Both Karl Marx and the first Socialist International (1866) had left the tensions between Marxism and nationalism unresolved. Neither had clarified whether, or how, to reconcile 'national' solidarity with socialism's insistence on class as the prime foundation for political action. At the time of Lenin's earliest references to 'self-determination', the exact relationship between socialist freedom and national liberation was as yet undefined, and the right of nations to self-determination was a controversial topic among Lenin's socialist contemporaries.

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1 In the following, my main reference to works of Lenin and other Marxists is the *Marxists Internet Archive* (MIA): [www.marxists.org](http://www.marxists.org), latest accessed 30 May 2013. Of Lenin's collected works, the website has digitalised the version originally published by Progress Publishers, Moscow. Below I cite the original publication dates of works, as well as their web address. References to Russian names of publications follow the transcription standard used on the website.

2 However, Stalin did address a 'nation's' distinguishing features in 'Marxism and the National Question', see below, *Prosveshcheniye*, 3–5, March–May 1913, accessed 9 February 2011 [www.marxists.org/reference/archive/stalin/works/1913/03.htm](http://www.marxists.org/reference/archive/stalin/works/1913/03.htm).

3 For a brief analysis of various Marxist approaches to the issue of nationalism, see Breuilly 1982, pp.21–28. See also Walker Connor: *The National Question in Marxist Leninist Theory and Strategy*, Princeton University Press, Princeton, NJ, 1984.

Self-determination was not originally pushed onto the socialist agenda by urgent political developments that required policy action. Nor were socialists at the time in any position to take any such action. True, Lenin's writings on 'self-determination' did sometimes refer to policy issues such as the situation for nationalities living within the Russian Empire.<sup>4</sup> And later he incorporated the concept into his political theories of imperialism and the First World War. The language of 'self-determination' started to gain significance in Lenin's published writings and appear in Russian Social Democratic Labour Party (RSDLP or 'the party' hereafter) resolutions from 1903<sup>5</sup> – a time of socialist debate on the standing of national groups within the socialist parties in Russia and Europe. Nevertheless, it was not primarily such concrete issues of policy that drove Lenin and his contemporaries in their preoccupation with self-determination. To them, the concept was important for reasons of theory and ideology.

Lenin and his socialist contemporaries took theoretical and ideological disputes extremely seriously,<sup>6</sup> and in the early 1900s, the socialist discussions on self-determination unfolded with strong positioning and hard fronts. Moreover, the debate emerged at a time seen as full of dramatic promise of gaining the power to establish a new political order. When Lenin started to engage in the socialist discussion on self-determination, the RSDLP was in a process of ideological and organisational consolidation, albeit without firmly anchored leadership. Lenin had spent most of the early

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4 E.g. Lenin: 'The National Question in Our Programme', *Iskra*, 44, 15 July 1903, accessed 8 January 2011, [www.marxists.org/archive/lenin/works/1903/jul/15.htm](http://www.marxists.org/archive/lenin/works/1903/jul/15.htm) (the identical text is found in Lenin: *Collected Works*, Vol. 6, Progress Publishers, Moscow, 1961, pp.454–463, but hereafter MIA versions are used where available); Lenin: 'The Agrarian Programme of Social-Democracy in the First Russian Revolution, 1905–1907', *Zhizn i Znaniye*, 1917, accessed 14 May 2011, [www.marxists.org/archive/lenin/works/1907/agrprogr/index.htm](http://www.marxists.org/archive/lenin/works/1907/agrprogr/index.htm) and Lenin: 'Critical Remarks on the National Question', *Prosveshcheniye*, 10–12, 1913, accessed 7 January 2011, [www.marxists.org/archive/lenin/works/1913/crnq/index.htm](http://www.marxists.org/archive/lenin/works/1913/crnq/index.htm). On the political role of minorities in Russia at the time, see e.g. Rex A. Wade: *The Bolshevik Revolution and Russian Civil War*, Greenwood Press, Westwood, CT, 2001, p.87; David R. Marples: *Lenin's Revolution: Russia, 1917–1921*, Pearson Education, Essex, 2000, p.5; Edward Acton: *Rethinking the Russian Revolution*, Routledge, New York, 1990, p.145.

5 It was also included in RSDLP resolutions of 1913 and 1917. In the following, 'the party' will be used with reference to the socialist party led by Lenin, whatever its name at the time – the RSDLP was also called the Russian Social Democratic Workers' Party or the Russian Social Democratic Party; later, the 'Bolsheviks', and with the establishment of the USSR, the Communist Party of the Soviet Union.

6 Mayall 2003, p.115 – however, also suggesting that the advocacy of 'self-determination' was a result of tactics rather than ideology.

years of the new century outside of Russia, but had actively followed developments there and written much on ideology and politics. In 1912, he had sided with the majority, ‘Bolshevik’, faction of the party when the ‘Menshevik’ grouping split off.<sup>7</sup> All the same, Lenin’s leadership position was not certain prior to his return to Russia after the February 1917 Revolution, after which the Bolsheviks took power in October that year.<sup>8</sup> It was precisely during this 1903–1917 period that self-determination, as part of these broader power struggles, became a matter of ‘utmost’ and ‘specific importance’ to Lenin and the party.<sup>9</sup>

‘Self-determination’ thus arose in Lenin’s discourse through ideologically charged polemic exchanges with fellow socialists. It seems as though his initial participation in the socialist debate might have been as much about positioning himself as the leading figure of contemporary Marxism as it was about self-determination *per se*. Almost all of Lenin’s interventions on the concept were combatively directed at various critics of his positions, and his earliest statements targeted socialist adversaries above all. Achieving the power to realise his political vision necessitated convincing fellow socialists of his approach on key issues. Since ‘self-determination’ had become a central part of the socialists’ debating programme, especially from 1903, convincing others of his line on this issue became part of Lenin’s general drive to gain power.<sup>10</sup>

In fact, Lenin’s public discourse on ‘self-determination’ was articulated during periods when he was fighting for party, state or global domination of

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7 See e.g. Neil Harding: ‘The Russian Revolution: an Ideology in Power’ in Cambridge 2003, pp.239–266, especially p.242; Carr 1978, pp.26, 37; Page 1959, p.4; Christopher Read: *Lenin: A Revolutionary Life*, Routledge, New York, 2005, p.73; Stephen J. Lee: *Lenin and Revolutionary Russia*, Routledge, London, 2003, p.8.

8 See e.g. Read 2005, p.78; Page 1959, p.353; Leon Trotsky: *Lenin*, G. G. Harrap, London, 1925, pp.79–80; the following date references are to the ‘old’-style Julian calendar used at the time.

9 Lenin: ‘To Alexandra Kollontai’, written after 19 March 1916, in *Lenin on the United States*, International Publishers, New York, 1970, pp.138–139. See also Lenin: ‘The Discussion On Self-Determination Summed Up’, written in July 1916 and published in October 1916 in *Sbornik Sotsial-Demokrata* 1, accessed 8 January 2011, [www.marxists.org/archive/lenin/works/1916/jul/x01.htm](http://www.marxists.org/archive/lenin/works/1916/jul/x01.htm). For a summary of the Marxist debate on self-determination at the time, see e.g. Neil Harding: *Lenin’s Political Thought*, Haymarket Books, Chicago, IL, 2009, pp.298–299.

10 On various views on Lenin’s drive for power, see e.g. Service 2000, p.330; Rex A. Wade: *The Russian Revolution, 1917*, Cambridge University Press, Cambridge, 2005, p.210; Read 2005, p.67; Lee 2003, p.25; Marples 2000, p.10.

a sort that few expected he would be able to achieve.<sup>11</sup> This might have fuelled his eagerness for winning the argument. Certainly the intensity and length with which he argued for ‘self-determination’ indicated that a great deal was at stake for him. As Leon Trotsky, who in 1917 became the Bolshevik Commissioner for Foreign Affairs, put it: Lenin ‘*possessed the tenseness of striving towards his goal*’.<sup>12</sup> According to Trotsky, Lenin tended to concentrate all his energy and all his *being* into the cause for which he was struggling.<sup>13</sup> His 1903–1917 advocacy of ‘the right of nations to self-determination’ certainly brought some of this to the fore.

Given that the socialist debate concerned the ideological correctness of backing ‘self-determination’ as an answer to the ‘national question’, Lenin sought to assert the concept as ideologically correct.<sup>14</sup> When seeking to win over other socialists to his stance, Lenin cited certain well-established authoritative texts. Aside from Marx’s unelaborated references to issues of nationality and nationalism,<sup>15</sup> Lenin relied upon a report from the 1896 London Congress of the Second International.<sup>16</sup> On the issue of ‘self-determination’, he wrote in 1914: ‘No one can seriously question the London resolution’.<sup>17</sup> Quoting the German version of the Political Action Commission’s report from the London Congress, Lenin stated that the Second International supported ‘the full right of all nations to self-determination’.<sup>18</sup> He then used the Second International’s alleged support for self-determination to prop up his own position.<sup>19</sup>

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11 See Orlando Figes: *A People’s Tragedy, The Russian Revolution 1891–1924*, Pimlico Random House, London 1996, pp.386, 388–389.

12 Trotsky 1925, pp.161–162, original emphasis.

13 Ibid. See also Carr 1978, p.23.

14 See e.g. Lenin 1903: ‘The National Question’. These points have been under-emphasised in the literature on Lenin’s idea of self-determination, despite some brief mentions, e.g. in Carr 1978, p.68; a partial exception is provided by Abulof 2010.

15 See Joseph A. Petrus: ‘Marx and Engels on the National Question’, *Journal of Politics*, 33(3), 1971, pp.797–824; Bill Bowring: ‘Marx, Lenin and Pashukanis on Self-determination: Response to Robert Knox’, *Historical Materialism*, 19(2), 2011, pp.113–127.

16 See Dick Geary: ‘The Second International: Socialism and Social Democracy’, pp.219–243 in Cambridge 2003.

17 Lenin: ‘The Right of Nations to Self-Determination’, written February–May 1914, published April–June 1914, *Prosveshcheniye* Nos. 4, 5 and 6, accessed 1 February 2012, [www.marxists.org/archive/lenin/works/1914/self-det/index.htm](http://www.marxists.org/archive/lenin/works/1914/self-det/index.htm), conclusion.

18 Lenin 1914: ‘The Right of Nations’.

19 Also in Lenin’s ‘The Socialist Revolution and the Right of Nations to Self-Determination’, written January–February 1916, published April 1916, *Vorbote*, 2 – in Russian, October 1916, *Sbornik Sotsial-Demokrata*, 1, accessed 3 February, 2012,

Lenin claimed that the Russian version of the Second International's report had 'wrongly' translated the German *Selbstbestimmungsrecht* as 'autonomy' and not 'self-determination'.<sup>20</sup> However, it is not clear that German had been the official language of the Congress of the Second International – or indeed if the conference had operated with any one official language at all.<sup>21</sup> The Congress had been held in London, and, as the English-language report had noted: 'Every speech or remark has to be translated into French and German' (i.e. *from* English).<sup>22</sup> The English version of the report made no mention of 'self-determination', referring instead to 'the full *autonomy* of all nationalities'.<sup>23</sup> This leaves the actual stance of the Second International on 'self-determination' unclear.

Lenin never presented the Second International's alleged sponsorship of 'self-determination' as the overarching *reason* for his own advocacy and ideas. He did, however, use the German report to justify his specific language of what would later always be translated into English as 'self-determination' – including, crucially, in the texts Wilson read and reacted to in 1918.<sup>24</sup> Lenin's use of the report of the Second International underlines his eagerness to legitimise the concept of 'self-determination' as ideologically correct. The equivocal issue of translation involved in Lenin's choice of terminology gives rise to the question of how much chance might have been involved when he launched the exact term that Wilson would later make international as 'self-determination'.<sup>25</sup> Lenin did not explain why he favoured the term 'self-determination' above 'autonomy'. Nor did others

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[www.marxists.org/archive/lenin/works/1916/jan/x01.htm](http://www.marxists.org/archive/lenin/works/1916/jan/x01.htm).

20 Lenin 1914: 'The Right of Nations', part 7, note 1.

21 Wilhelm Liebknecht: 'Our recent Congress', *Justice*, 15 August 1896, accessed 30 May 2011, [www.marxists.org/archive/liebknecht-w/1896/08/our-congress.htm](http://www.marxists.org/archive/liebknecht-w/1896/08/our-congress.htm) discusses the problem of translation during the Congress, indicating that it did not have an official language.

22 Will Thorne, Secretary to the Organising Committee: 'Full report of the Proceedings of the International Workers' Congress, London, July and August, 1896 (the fourth congress of the second international)', *The Labour Leader*, Glasgow, undated, p.14.

23 *Ibid.*, p.32, emphasis added. English was the native language of the reporter of the Political Action Commission, G. Lansbury.

24 See especially 'David Roland Francis to Robert Lansing', Petrograd 31 December 1917, recorded on 1 January 1918, pp.411–412 in Arthur S. Link (ed.): *The Papers of Woodrow Wilson* (PWW), Vol.45, Princeton University Press, Princeton, NJ, 1984.

25 Hence I am open to the possibility of *chance* in intellectual history, although I realise that intellectual history scholarship usually avoids this notion; see Koselleck 2004, p.116.

follow up on this: neither his fellow socialists at the time, nor later international agents drawing upon the language of ‘self-determination’, problematized or challenged the *term* as such.

When arguing for ‘self-determination’ in early 20<sup>th</sup>-century socialist debates, Lenin explicitly attacked two other views in particular.<sup>26</sup> In fact, his discourse of self-determination took shape in directly confronting these other two positions. The first broadly answered the national question with ‘autonomy’.<sup>27</sup> Two groups of socialists put forward such an argument, each promoting slightly differing versions. One of these held that the Social Democratic *party* should be decentralised along national lines. The national question these socialists sought to answer was an intra-party one, and they did not phrase their response in terms of ‘self-determination’. Lenin’s disagreement with such ‘autonomists’ peaked in 1903, when he fell out with the ‘Bundists’, a Jewish group in the RSDLP that sought nationally-based devolution of power and the formation of its own party, the *Bund*. Countering the Bundists, Lenin argued that, for reasons of ideology and organisation, the proletariat should not be divided party-politically according to language or nationality.<sup>28</sup> Such divisions, in his view, would only damage the socialist cause. In 1903, that very conflict led to a rift between the Bundists and the party.<sup>29</sup>

Lenin phrased his case against the second kind of ‘autonomists’ even more harshly. That group, represented by Austrian socialists Otto Bauer and Karl Renner, answered the national question by demanding the reform of existing political structures and limited self-rule for national groups within large

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26 See also Bowring 2008.

27 For analysis, see e.g. R. Craig Nation: *War on War: Lenin, the Zimmerwald Left, and the Origins of Communist Internationalism*, Duke University Press, Durham, NC, 1989, pp.106–109; Carr 1978, pp.418–419.

28 Lenin: ‘Do the Jewish Proletariat need an “Independent Political Party”?’ , *Iskra*, 34, 15 February 1903, accessed 8 February 2012, [www.marxists.org/archive/Lenin/works/1903/feb/15.htm](http://www.marxists.org/archive/Lenin/works/1903/feb/15.htm).

29 Second Congress of the RSDLP, 17 (30) July – 10(23) August 1903: ‘Draft resolution on the Place of the Bund in the Party’, written in June/July 1903, published in *Lenin Miscellany* VI, 1927, accessed 8 February 2011, [www.marxists.org/archive/Lenin/works/1903/2ndcong/2.htm#v06zz99h-470](http://www.marxists.org/archive/Lenin/works/1903/2ndcong/2.htm#v06zz99h-470); Lenin: ‘The Latest Word in Bundist Nationalism’, *Iskra*, 46, 15 August 1903, accessed 12 February 2011, [www.marxists.org/archive/Lenin/works/1903/aug/15b.htm](http://www.marxists.org/archive/Lenin/works/1903/aug/15b.htm); Lenin 1903: ‘Do the Jewish Proletariat’. See also Carr 1978, p.419.



multinational states. National and cultural autonomy, they held, was the proper Marxist response to the national question – not creating new states. In ruling out secession and promoting solutions within the territories of existing states, these Austro-Marxist ‘autonomists’ presaged what scholars in the late 20<sup>th</sup> century would advocate as ‘internal self-determination’. They did, however, not articulate their position on the national question with language of that kind. Arguing for ‘internal’ solutions *instead* of ‘self-determination’, they did not claim these would be a way of actually realising the concept.

Lenin firmly rejected any such ‘internal’ response to the national question.<sup>30</sup> The Austro-Marxists’ tendency to compromise to achieve mere autonomy, he wrote, was ‘meaningless, pompous’ and ‘contradict[ed] the *entire* history of democracy’.<sup>31</sup> Positioning himself against the arguments that claimed that autonomy would suffice, Lenin advocated the right to ‘self-determination’ as the freedom to secede and attain statehood, and be equal to other existing states.<sup>32</sup> To him, freedom as ‘self-determination’ inescapably implied the choice of secession and full political independence; without having such an option, a people would not be free.<sup>33</sup> He never took up the possibility of actually realising self-determination without achieving the status of independent statehood. The national question, he would say, could not be answered with any ‘internal’ autonomy variant: the only right solution was to promote self-determination as the right to create a new state.

In practice, Lenin understood ‘self-determination’ to include a group’s freedom to advocate for secession, and its right to settle the question of

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30 Especially in 1916 ‘The Socialist Revolution’; ‘National-Liberalism and the Right of Nations to Self-Determination’, *Proletarskaya Pravda*, 12, 20 December, 1913, accessed 30 January 2011, [www.marxists.org/archive/lenin/works/1913/dec/20.htm](http://www.marxists.org/archive/lenin/works/1913/dec/20.htm).

31 Lenin 1913 ‘National-Liberalism’.

32 E.g. in Lenin 1914: ‘The Right of Nations’; Lenin: ‘The Revolutionary Proletariat and the Right of Nations to Self-Determination’, written in German not earlier than October 16 (29), 1915, published in Lenin: *Miscellany VI*, 1927, accessed 29 January 2011, [www.marxists.org/archive/lenin/works/1915/oct/16.htm](http://www.marxists.org/archive/lenin/works/1915/oct/16.htm); Lenin 1916 ‘The Socialist Revolution’; Lenin: ‘A Caricature of Marxism and Imperialist Economism’, written August–October 1916, published in *Zvezda* 1–2, 1924, accessed 29 January 2011, [www.marxists.org/archive/lenin/works/1916/carimarx/index.htm](http://www.marxists.org/archive/lenin/works/1916/carimarx/index.htm)

33 See also e.g. Lenin 1916: ‘The Socialist Revolution’ and Lenin 1903: ‘The National Question’ for interchangeable uses of ‘independence’, ‘freedom’ and ‘self-determination’.

whether to secede through a referendum among the equal members of that group.<sup>34</sup> When in 1913, an RSDLP resolution defined ‘self-determination’ as ‘the right to secede and form independent states’, this thus reflected the party’s endorsement of Lenin’s understanding of the concept as the ideologically proper one.<sup>35</sup> ‘Self-determination’, according to the party resolution, meant ‘the constitutional guarantee of an absolutely free and democratic method of deciding the question of secession’.<sup>36</sup>

Lenin’s response to the ‘autonomists’ – in unambiguously equating ‘self-determination’ with the freedom to establish a new state – would be echoed in all subsequent international appearances of the concept. At each later moment when ‘self-determination’ became important in international discourse, agents would presume that statehood was the main way of realising the concept, whether they supported or opposed this as an outcome. By indicating that all ‘nations’ should have such a right because that would realise their freedom as equality, Lenin also introduced *equality* as a key legitimising standard for the concept of self-determination.

Josef Stalin actually held what resembled an ‘autonomist’ view on the national question, although Lenin never directly mentioned Stalin as one of his opponents on ‘self-determination’. Early in 1913, at Lenin’s request, Stalin had produced the first extensive inter-party analysis of nations and nationalism, ‘Marxism and the National Question’.<sup>37</sup> Lenin had great hopes for this investigation, but the final result must have disappointed him.<sup>38</sup> While asserting many of Lenin’s ideas, Stalin’s examination had departed from Lenin’s concept of self-determination by insisting that the ‘only correct solution’ to the national question was ‘*regional* autonomy’.<sup>39</sup> This position conflicted with Lenin’s view that the national question could be

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34 Lenin 1916: ‘The Socialist Revolution’, part 3.

35 ‘Resolutions of the Summer’, 1913, Joint Conference of the Central Committee of the RSDLP and Party Officials, September 1913 in Notification and Resolutions of the Summer, 1913, Joint Conference of the Central Committee of the RSDLP and Party Officials, RSDLP Central Committee, accessed 29 January 2011, [www.marxists.org/archive/lenin/works/1913/sep/30b.htm](http://www.marxists.org/archive/lenin/works/1913/sep/30b.htm), Article 4.

36 Ibid., Article 5.

37 Stalin 1913.

38 See Michael V. Kryukov: ‘Self-determination from Marx to Mao’, *Ethnic and Racial Studies*, 19(2), 1996, pp.352–378, especially pp.355–356.

39 Stalin 1913.

answered only with self-determination as the radical right to full independent statehood.

Moreover, Stalin's discourse had sought primary legitimation for the right of nations to self-determination with reference to their *freedom from interference* – a standard not emphasised as strongly in Lenin's discourse at that time. Although Stalin's 1913 text mentioned 'equal rights' as a value to be preserved, too, his principal assertion of 'self-determination' in that document was as follows:

The right of self-determination means that only the nation itself has the right to determine its destiny, that no one has the right forcibly to *interfere* in the life of the nation, to *destroy* its schools and other institutions, to *violate* its habits and customs, to *repress* its language, or *curtail* its rights.<sup>40</sup>

With this approach, Stalin in 1913 denounced forms of interference that Lenin would condemn more strongly in his later writings on 'self-determination', produced in the context of the First World War.

Further, the emphasis of Stalin's text diverged somewhat from that of Lenin on what constituted a 'nation' or, more broadly, what *agents* might benefit from self-determination. Stalin defined a 'nation' specifically as 'a historically constituted, stable community of people, formed on the basis of a common language, territory, economic life, and psychological make-up manifested in a common culture'.<sup>41</sup> His support for 'the right of nations to self-determination' hence embraced the concept as freedom from interference for groups whose identity met these precise criteria.

While seemingly endorsing this definition – as well as the general view that, at that time, nations might be the proper beneficiaries of self-determination – Lenin did not insist on a precise list of intra-group conditions for either nationhood or self-determination. On the contrary, he stressed that it would be better to avoid 'nationally' defined attachments. In 1913, Lenin described the task of supporting 'self-determination' as a 'largely a negative one' and

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40 Ibid., emphasis in original.

41 Ibid., emphasis omitted.

made the following key distinction: ‘Combat all national oppression? Yes, of course! Fight *for* any kind of national development, *for* “national culture” in general? – Of course not.’<sup>42</sup> Locating the national question and self-determination in a wider ideological context, Lenin’s focus was on the economic and political role the concept of ‘nation’ played in the development towards socialism. To use a phrase introduced long after his time, Lenin would consider a group a possible ‘self-determination unit’ without it having fully qualified according to the identity-oriented criteria laid down by Stalin.<sup>43</sup> Regardless of whether this reflected minor tactical divergences between Lenin and Stalin or serious theoretical rifts, it did reveal a different rhetorical emphasis.

While Lenin made no mention of Stalin in his writings on self-determination, the second socialist position against which Lenin argued directly was that put forward by Rosa Luxemburg of the Polish Social Democrats. Luxemburg was totally opposed to any right to self-determination, rejecting the concept as being a vague and destructive distraction from matters of class. It was class, Luxemburg insisted, and not national affiliation, which was the ideologically correct source of political mobilisation; self-determination would only serve to disturb this focus. Moreover, endorsing the concept would, in the view of Luxemburg, permit the bourgeoisie to use it to divide the proletariat along national lines.<sup>44</sup> In 1903, her Polish Social Democrats had split from the Polish Social Democratic Party on the very issue of self-determination. While the latter had demanded independence for Poland, Luxemburg’s faction had been opposed.<sup>45</sup>

It appears that Lenin saw Luxemburg’s disagreement as a particularly

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42 Lenin 1913: ‘Critical Remarks’.

43 See Kryukov p.357; G. Starushenko: *The Principle of National Self-determination in Soviet Foreign Policy*, Foreign Languages Publishing House, Moscow, 1963, pp.13–19.

44 Rosa Luxemburg: ‘The National Question’ 1909, first published in the article series ‘The National Question and Autonomy’ in Luxemburg’s *Cracow Magazine, Przegląd Socialdemokratyczny*, 1908–1909, accessed 27 January 2011, [www.marxists.org/archive/luxemburg/1909/national-question/index.htm](http://www.marxists.org/archive/luxemburg/1909/national-question/index.htm); Rosa Luxemburg: ‘Foreword to the Anthology: The Polish Question and the Socialist Movement’ 1905, accessed 27 January 2011, [www.marxists.org/archive/luxemburg/1905/misc/polish-question.htm](http://www.marxists.org/archive/luxemburg/1905/misc/polish-question.htm)

45 See e.g. Nation 1989, pp.106–109.

serious challenge. His published writings argued against her views with greater fervour than he expended on the autonomists. In 1914, his main discussion on self-determination, 'The Right of Nations to Self-determination', was formulated in explicit opposition to Luxemburg's standpoints. All arguments similarly rejecting 'self-determination' after her 1908–1909 'The National Question and Autonomy', Lenin wrote, had simply repeated her line.<sup>46</sup>

Lenin responded to Luxemburg's stance by maintaining that there was a huge difference between his ideologically true backing of an 'unconditional' right to self-determination as secession, and supporting actual demands for realising that right in practice.<sup>47</sup> Any claim for self-determination, Lenin stressed, would always have to be subjected to detailed analysis before determining whether or not political independence should be advanced in that particular case. Already in 1903 Lenin had highlighted the distinction between promoting a *right* to self-determination, and backing real-life calls for implementing it.<sup>48</sup> Advocating a right to self-determination, in Lenin's view, did not preclude the necessity of robustly opposing actual secessionist claims at times. On this issue, Stalin's 1913 discussion of the national question reaffirmed Lenin's attitude, signalling its incorporation into the general party line.<sup>49</sup>

As part of Lenin's response to Luxemburg's outright rejection of the right to self-determination, he spelled out the precise historical, economic and geopolitical conditions under which he held it would be ideologically correct for socialists to back it. Between 1913 and 1916 in particular, Lenin detailed the circumstances under which he thought the right to self-determination could suitably be advocated. Thus, although not outlining any specific internal standards for identifying a theoretical self-determination 'unit', Lenin did invoke *externally* determined criteria in his support of the concept. These were stipulated with reference to his overall aim of socialist freedom, and underlined the Marxist framework in which he formulated his

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46 Lenin 1914: 'The Right of Nations'.

47 Ibid.; Lenin 1903: 'The National Question'.

48 Lenin 1903: 'The National Question'.

49 Stalin 1913.

language of ‘self-determination’. They also highlighted the contingencies inherent in his concept of self-determination, as well as in his idea of the ‘nation’.

In 1913, Lenin hinted at a historically determined conditioning of both self-determination and nationhood in averring, with reference to Marx, that national identity and nationalism were products of a particular phase of bourgeois capitalism.<sup>50</sup> As he saw self-determination as part of the national question, this claim indicated that he considered support for self-determination, too, as bound up with the historical development of capitalism. Indeed, Lenin’s 1914 ‘The Right of Nations to Self-determination’ would explain specifically that any claim for self-determination must be analysed in light of the stage of capitalism in which it was raised.<sup>51</sup> The approach to be taken in any particular instance should be determined by what would, at that point in history, best serve the progress of capitalism towards socialism.

According to Lenin’s 1914 analysis, two different stages of capitalist development warranted two contrasting attitudes to self-determination. The first of these stages was characterised by the collapse of feudalism and absolutism, and the formation of states and bourgeois-democratic societies by a process whereby national movements would be transformed into mass movements. Lenin explained that, since capitalism required the bourgeoisie to ‘capture the home market’, it tended, for practical reasons, to organise itself in ‘politically united territories whose population speak a single language’. Historically, under such circumstances, national movements had contributed to the global victory of capitalism over feudalism.<sup>52</sup> In Lenin’s view, this phase of capitalist development made it necessary for all classes to unite in fighting for political freedom as ‘the rights of the nation’.<sup>53</sup> At this stage, demands for realising self-determination would be appropriate

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50 Lenin 1913: ‘Critical Remarks’. On the historical contingency of nationalism and self-determination, also Lenin: ‘Draft Theses on National and Colonial Questions for the Second Congress of the Communist International’, 5 June, 1920, accessed 9 January 2012, [www.marxists.org/archive/lenin/works/1920/jun/05.htm](http://www.marxists.org/archive/lenin/works/1920/jun/05.htm); Gilov 1983, p.28; Carr 1978, pp.234–241.

51 Lenin 1914: ‘The Right of Nations’.

52 Ibid.

53 Ibid.

and should be supported.

By contrast, according to Lenin's 1914 tract, the second historical stage would have no place for self-determination. In history's progress towards socialism, this second phase, the 'eve of capitalism's downfall', would be made up of fully formed capitalist states with clear antagonisms between the proletariat and the bourgeoisie.<sup>54</sup> No mass bourgeois-democratic movements would exist any longer at this point in history: the antagonism between united capital and the working-class movement would now be *international*. And it was this antagonism, Lenin predicted, that would result in the defeat of capitalism through socialist revolution, with internationalism overcoming national self-determination.<sup>55</sup>

In 1915, Lenin added another dimension to his calculus of self-determination – an economic one. The 'division of nations into oppressor and oppressed',<sup>56</sup> he wrote, posed distinct requirements as to the correct Marxist position on the national question. According to this division, the proletariat of oppressor nations should promote the right of oppressed nations to self-determination. Meanwhile, the workers of oppressed nations should advocate 'unity and the merging of the workers of the oppressed nations with those of the oppressor nations'.<sup>57</sup> Otherwise, he warned, workers of the oppressed nations would 'involuntarily become the allies of their own national *bourgeoisie*, which always betrays the interests of the people and of democracy, and is *always* ready, in its turn, to annex territory and oppress other nations.'<sup>58</sup> Already in 1913, Lenin had stated that secession might be acceptable only where liberation movements were progressive and were fighting capitalist oppressors: any nation that stood 'for its own bourgeois nationalism' found no support in his thinking.<sup>59</sup> As he expressed it again in 1914: 'We fight against the privileges and violence of the oppressor nation, and do not in any way condone strivings for privileges

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54 Ibid.

55 Ibid. See also Young 2006, p.287.

56 Lenin 1915: 'The Revolutionary Proletariat'.

57 Ibid.

58 Ibid.

59 Lenin 1913: 'Critical Remarks'.

on the part of the oppressed nation.’<sup>60</sup>

Lenin further developed his criteria for the right of nations to self-determination with a geopolitically defined classification. Three different categories of nations, he held in 1916, had different obligations regarding self-determination.<sup>61</sup> One of these groups consisted of the advanced capitalist countries, like the USA and the Western European powers. For this group, Lenin explained, the era of bourgeois, progressive, national movements had passed, and the advanced capitalist countries were now subjugating other nations, in their colonies as well as at home. Lenin demanded that the proletariat of such oppressor countries should support the self-determination of the nations they dominated. This would both hasten the advance of the oppressed nations towards socialist revolution, and in turn also benefit the domineering states themselves.<sup>62</sup> Citing Marx, Lenin stated: ‘no nation can be free if it oppresses other nations’.<sup>63</sup>

The second grouping in Lenin’s geopolitical categorisation model was made up of Austria, the Balkans and Russia. There, he wrote, bourgeois-democratic national movements had developed only recently, and the proletariat should support the right to self-determination as a way to merge the class struggle of the oppressors with that of the workers of the oppressed nations.<sup>64</sup> Third and last among Lenin’s geopolitical groups was the category of ‘semi-colonial’ China, Persia and Turkey, as well as the colonies. Here Lenin’s analyses seemed informed by his having followed various developments in these vast parts of the world.<sup>65</sup> In the nations belonging to this category, he explained, bourgeois-democratic movements had not yet developed, and he encouraged support for their revolutionary elements. Self-determination for this category should be backed, as unconditional and

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60 Lenin 1914: ‘The Right of Nations’.

61 Lenin 1916: ‘The Socialist Revolution’.

62 Ibid.; also Lenin 1914: ‘The Right of Nations’. The party’s 1913 ‘Resolutions of the Summer’ expresses the same reasoning.

63 Lenin 1916: ‘The Socialist Revolution’.

64 Ibid.

65 See e.g. Lenin: ‘Lenin’s remark on the arrest of B. G. Tilak in 1908’, 1911, pp.134–135 in Ravindra Kumar (ed.): *Selected Documents of Lokamaya Bal Gangadhar Tilak 1880–1929*, Volume II, Anmol, New Delhi, 1992; and ‘Lenin’s comments on Indian political system and the conviction of B. G. Tilak’, 1913, at p.166; and his proposed additions to the 1896 International’s resolution, in Lenin 1916: ‘The Socialist Revolution’.



immediate freedom.<sup>66</sup>

Apart from insisting on these multifaceted criteria in responding to Luxemburg's objections, Lenin maintained that granting nations the *right* to self-determination would give them a status of freedom and equality that would in fact remove their incentive to secede.<sup>67</sup> Within the international system of the time, Lenin, like Marx, saw the benefits of larger states as obvious; and he thought that nations, too, would recognise this if they were allowed full equality.<sup>68</sup> Giving nations the right to self-determination as independence, Lenin argued, would 'attract' them 'to union with great socialist states'.<sup>69</sup> In 1915, he explained why he supported the concept:

[N]ot because we [the social democrats] have dreamt of splitting up the country economically, or of the ideal of small states, but, on the contrary, because we want large states and the closer unity and even fusion of nations, only on a truly democratic, truly internationalist basis, which is inconceivable without the freedom to secede.<sup>70</sup>

In Lenin's thinking, within a larger political structure, an un-dominated nation with equal rights that included the full right to self-determination would have no need or desire to break away. The free and equal status implied by the *right* to self-determination would then have made its actual *exercise* as independent statehood meaningless. And even on the off-chance that nations should opt for secession when allowed that right, their equal status would enable closer ties of solidarity between them.<sup>71</sup> Instead of dividing the working class, Lenin thus claimed against Luxemburg, self-determination would strengthen unity among equal nations across national

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66 Lenin 1916: 'The Socialist Revolution'.

67 Lenin: 'Is a Compulsory Official Language Needed?' *Proletarskaya Pravda*, 14(32), 18 January 1914, accessed 1 May 2011, [www.marxists.org/archive/lenin/works/1914/jan/18.htm](http://www.marxists.org/archive/lenin/works/1914/jan/18.htm); Lenin 1913: 'Critical Remarks'. See also Harding 2009, p.300.

68 Lenin 1913: 'Critical Remarks'; Lenin 1916: 'The Socialist Revolution'; also his 'Note to the Theses "Socialist Revolution and the Right of Nations to Self-Determination"', 1916, accessed 27 January 2011, [www.marxists.org/archive/lenin/works/1916/feb/00.htm](http://www.marxists.org/archive/lenin/works/1916/feb/00.htm).

69 Lenin 1916: 'The Discussion'.

70 Lenin 1915: 'The Revolutionary Proletariat'.

71 Lenin: 'A Letter to S. G. Shahumyan', *Bakinsky Rabochy*, 48, March 1918 [written 1913] accessed 1 February 2011, [www.marxists.org/archive/lenin/works/1913/nov/23.htm](http://www.marxists.org/archive/lenin/works/1913/nov/23.htm).

boundaries.<sup>72</sup> The extent to which Lenin's positions did attract support from peoples within Russia and the Soviet Union is an issue on which views have diverged, and of which a full outline is beyond the scope of this chapter.<sup>73</sup>

What these arguments show is that Lenin's discourse of 'self-determination' both directly and implicitly relied on the ideal of *equality* as a standard of legitimation. Choosing to seek legitimation for his polemic interventions on self-determination with reference to equality indicates that this was an ideal Lenin expected would appeal to his audiences of the time. In 1914, Lenin explained how he conceived of this standard: 'By political equality [we] Social-Democrats mean *equal rights*, and by economic equality [...] the *abolition of classes*.'<sup>74</sup> Later he contrasted this idea of equality with the false, bourgeois 'abstract or formal posing of the problem';<sup>75</sup> and said that: 'Freedom and equality', if acclaimed in any bourgeois society would 'in practice [only signify] *wage-slavery* for the workers'.<sup>76</sup> It was his own, better, idea of equality Lenin had in mind in invoking this standard in his 'self-determination' discourse.

While the precise wording and timing of Lenin's arguments on self-determination had been induced by intra-socialist debate on the national question, his reliance on this specific standard of equality showed that his discourse was rooted in his broader thinking. Fundamentally, Lenin always supported self-determination in the context of achieving freedom *as* equality in classless, internationalist socialism, without national categories.<sup>77</sup> Believing that self-determination could play a role in reaching this goal, he also assumed that once socialism had been realised, the whole national

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72 See e.g. Lenin 1913: 'The Working Class and the National Question', *Pravda*, 106, 10 May 1913, accessed 8 January 2011, [www.marxists.org/archive/lenin/works/1913/may/10.htm](http://www.marxists.org/archive/lenin/works/1913/may/10.htm); Lenin 1920: 'Draft Thesis'.

73 For instance, Lee (2003, p.105) indicates that he was unsuccessful; Wade (2005, p.151), that he was successful in some regions.

74 Lenin: 'A Liberal Professor on Equality', *Put Pravdy*, 33, 11 March, 1914 emphasis in original, accessed 3 December, 2012, [marxists.org/archive/lenin/works/1914/mar/11.htm](http://marxists.org/archive/lenin/works/1914/mar/11.htm).

75 Lenin 1920: 'Draft Theses'.

76 Lenin: 'Deceptions of the People with Slogans of Freedom and Equality', Two Speeches at the First All-Russia Congress on Adult Education, Moscow, 1919, accessed 2 December 2012, [www.marxists.org/archive/lenin/works/1919/jun/23.htm](http://www.marxists.org/archive/lenin/works/1919/jun/23.htm).

77 Lenin: 'The Fight for Freedom and the Fight for Power', *Volna*, 9, May 5, 1906, accessed 2 December 2012, [www.marxists.org/archive/lenin/works/1906/may/05.htm](http://www.marxists.org/archive/lenin/works/1906/may/05.htm); Lenin 1916: 'Note to the Thesis'; Lenin 1914: 'The Right of Nations'.

question, including issues of ‘self-determination’, would disappear with the emergence of *internationalist* equality.<sup>78</sup> Rather than matters of national affiliation, internationalism was a recurrent theme in Lenin’s writings.<sup>79</sup> For Lenin, as Trotsky explained, internationalism functioned as ‘a guide to revolutionary action embracing all nations,’ with the planet ‘considered as one single battlefield’.<sup>80</sup>

Lenin’s defence of self-determination with reference to *freedom as equality* established a negative idea of freedom as the principal legitimising standard for the concept. He argued that the right to self-determination was legitimate as a way to realise a people’s freedom as a status of equality and independence, as a freedom *against* and *from* certain ills. At times, Lenin cited specific forms of restrictions on freedom against which self-determination could be granted, such as tyranny, absolutism, monarchy, annexations, and capitalist oppression.<sup>81</sup> They all amounted to conditions of inequality, dependence as well as certain forms of interference – and, for that reason, they legitimised ‘self-determination’.<sup>82</sup> Although Lenin believed that self-determination, if granted as a right, would rarely be put into practice, he repeatedly legitimised it by invoking it against threats to freedom.

With his discourse, Lenin attached to the language of ‘self-determination’ an idea similar to what early modern republican theorists, centuries earlier, had articulated as freedom from domination and dependence.<sup>83</sup> Lenin, however, diverged from these thinkers on central counts, and expressed ‘self-

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78 Lenin 1916: ‘The Discussion’.

79 See e.g. Lenin 1914: ‘The Right of Nations’.

80 Trotsky 1925, p.143.

81 E.g. in Lenin: ‘The Social Significance of the Serbo-Bulgarian Victories’, Pravda, 162, 7 November 1912, accessed 27 January 2011, [www.marxists.org/archive/lenin/works/1912/nov/07.htm](http://www.marxists.org/archive/lenin/works/1912/nov/07.htm); 1903: ‘The National Question’; and 1916: ‘The Discussion’. For another, related, outline, see Karl Kautsky: ‘The Road to Power’, *Der Weg zur Macht*, ch. 9, ‘A New Period of Revolutions’, Berlin, 1910, in Patrick Goode (ed. and trans.): *Karl Kautsky: Selected Political Writings*, Palgrave Macmillan, London, 1983, at p.75.

82 See also Lenin 1916: ‘The Socialist Revolution’; and Lenin 1914: ‘The Right of Nations’, where he traces the freedom from domination argument to the 1896 Resolution, citing its ‘sympathy for the workers of every country now suffering under the yoke of military, national or other absolutism’. The English version of the report used the term ‘despotisms’ and not ‘absolutisms’ (Thorne 1896, p.32).

83 See the introduction to this thesis.

determination' with reference to a *radical* rather than 'republican' idea of freedom. For instance, while republican theories had been oriented towards conditions within an existing state, Lenin's concept of 'self-determination' focused on the international domain. Freedom as self-determination, in his view, entailed an equal right of a people to create a new, independent state, equal to other states. Moreover, unlike the liberty promoted by republican theorists, Lenin's 'self-determination' had little concern for law and order. On the contrary, if the use of violence or total revolution would promote the advancement of freedom as equality under socialism, he would actively encourage such developments.<sup>84</sup>

Lenin's complex concept of the right of nations to self-determination also provided an important ideological answer to the tension between Marxism and nationalism. That he won the early 20<sup>th</sup>-century socialist debate on the national question is evident from the fact that his theory was incorporated into key party resolutions, especially in 1913 and 1917.<sup>85</sup> The nations of Russia, these resolutions held, should have the full right to 'self-determination' as the right 'to secede and form independent states'.<sup>86</sup> Calling for the 'complete equality for all nations', these resolutions asserted self-determination as a way to eliminate 'national oppression' by 'ensur[ing] complete solidarity among the workers of the various nations.'<sup>87</sup> They embraced Lenin's distinction between supporting the right to self-determination, and 'the expediency of a given nation's secession'.<sup>88</sup> And they emphasised that the latter should always be determined strictly with a view to 'the interests of the proletarian class struggle for socialism', and should never allow for an alliance with the bourgeoisie.<sup>89</sup>

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84 See e.g. Chapter 1 in Lenin's *The State and Revolution: The Marxist Theory of the State and the Tasks of the Proletariat in the Revolution*, written 1917, published 1918, accessed 24 May 2013, [www.marxists.org/archive/lenin/works/1917/staterev/ch01.htm#s4](http://www.marxists.org/archive/lenin/works/1917/staterev/ch01.htm#s4).

85 See Wade 2005, p.151 and Carr 1978, pp.261–263 on how Lenin in 1917 ensured inclusion of the language of 'self-determination' in the party programme despite initial defeat, as well as Carr 1978, p.269, on how this happened in 1919 as well. See also Read 2005, p.226.

86 The same phrase occurs in the 1913 'Resolutions of the Summer' and in 'Resolution on the National Question' of the Seventh (April) All-Russia Conference of the RSDLP (Bolsheviks) 24–29 April 1917, accessed 28 January 2012, [www.marxists.org/archive/lenin/works/1917/7thconf/29e.htm](http://www.marxists.org/archive/lenin/works/1917/7thconf/29e.htm).

87 RSDLP 1917: 'Resolution on the National Question'.

88 RSDLP 1913: 'Resolutions of the Summer'.

89 Ibid.

Not long after Lenin's discourse of 'self-determination' had been formalised with these resolutions, the Bolsheviks took power in Russia with the October 1917 Revolution. Lenin then faced the challenge of applying his theories to real calls for independence, from nations like the Finns, the Ukrainians, and the Baltic peoples, to name but a few.<sup>90</sup> Examining Lenin's policies towards all these demands is beyond the constraints of this chapter, and is a topic already covered by others.<sup>91</sup> But it is worth noting that while contradictions between Lenin's advocacy of self-determination and his rejection of real independence claims may appear glaring,<sup>92</sup> he always presented his policies within the ideological framework above. Explaining his decisions as prioritising socialist development, Lenin maintained his theoretical support for self-determination until the end.<sup>93</sup> The justice and fairness of placing 'self-determination' decisions with the party, and ultimately, with Lenin as party leader, is of course questionable. However, the internal logic of his concept of 'self-determination' did remain intact.

### **The First World War and Lenin's Concept of Self-determination**

The First World War came to influence Lenin's discourse on self-determination,<sup>94</sup> and shape the way Wilson would respond to and internationalise the concept. After all, many of Lenin's central writings on self-determination were produced during the war, and they directly presented what he saw as its causes, nature and possibilities. Lenin saw the war as a product of capitalism, more specifically of its 'imperialist', highest

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90 See e.g. Jurij Borys: *The Sovietisation of Ukraine: 1917–1923. The Communist Doctrine and Practice of National Self-Determination*, Canadian Institute of Ukrainian Studies, Edmonton, 1980; Edward Hallett Carr: *The Bolshevik Revolution 1917–1923*, Vol III, Macmillan, London, 1953, pp.258–270.

91 E.g. Borys 1989; Harold Temperley: *A History of the Peace Conference of Paris*, Vol. VI, Henry Frowde and Hodder & Stoughton, London 1924, pp.311–333; Debo 1992; Carr 1978, p.265 on Ukraine; pp.270–273 on the Baltic States and Georgia, pp.286–289 on Poland and Finland; as well as Figes 1996, pp.375–377, 703–713.

92 For allegations of double standards and 'opportunism' of the Bolshevik policy on 'self-determination and nationalities', see e.g. H. Seton-Watson: 'Soviet Nationality Policy', *Russian Review*, 15(1), 1956, pp.3–13 especially p.4; Winston Churchill: *The World Crisis. The Aftermath*, Thornton Butterworth, London, 1929, p.85.

93 See e.g. Lenin: 'The Question of Nationalities or "Autonomisation"', written 30/31 December, 1922, accessed 20 February 2011, [www.marxists.org/archive/lenin/works/1922/dec/testamnt/autonomy.htm](http://www.marxists.org/archive/lenin/works/1922/dec/testamnt/autonomy.htm).

94 For the war's impact on Lenin's political thought, see also Harding 2009, pp.20–26; Read 2005, pp.116–126; Pieterse 1989: pp.4–13.

stage.<sup>95</sup> In his seminal 1917 pamphlet *Imperialism* he explained this as a period when large monopolies had replaced free competition,<sup>96</sup> and capitalist powers contended for exclusive economic and political control.<sup>97</sup> The war itself, was in Lenin's words, 'imperialistic (that is, annexationist, plunderous)'.<sup>98</sup> Given the specific characteristics of imperialism, he also saw the war as inevitable. Since imperialism strove solely for control, it was bound to produce violence<sup>99</sup> – both from the rivalry between capitalist powers, and from imperialist oppression in the colonies.<sup>100</sup> In Lenin's view, it was primarily capitalist rivalry that had generated the First World War.

The capitalist struggle for colonies was central to the rampant, violent competition of imperialism. In a world '*completely* divided up',<sup>101</sup> Lenin wrote, colonial annexations were driven by capitalist aims of achieving monopolist control over ever-new territories and raw materials.<sup>102</sup> While he was 'obviously not' against the use of force in general,<sup>103</sup> Lenin rejected annexations because they violated the right of nations to self-determination.<sup>104</sup> Annexations, he wrote in 1916, 'establish[ed] state *frontiers contrary to the will* of the population.'<sup>105</sup> As he explained:

National self-determination means political independence. Imperialism seeks to violate such independence because political annexation often makes economic annexation easier, cheaper (easier to bribe officials, secure concessions, put through advantageous legislation. etc.), more convenient, less troublesome.<sup>106</sup>

For Lenin, opposing imperialist domination and supporting the right of nations to self-determination was one and the same thing.<sup>107</sup>

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95 For Lenin's views on imperialism, see in particular his *Imperialism: The Highest Stage of Capitalism*, Pluto Press, London 1996 [originally written in 1916 and published in 1917], as well as his extensive *Collected Works: Notebooks on Imperialism*, Vol. 39, Progress Publishers, Moscow, 1968.

96 Lenin 1996, p.101.

97 Ibid., pp.89, 77.

98 Ibid., (preface to the French and German editions, written in 1920), pp.3–4.

99 Ibid., p.83.

100 Ibid., pp.97 and 125. See also 'Resolution on the National Question' 1917.

101 Lenin 1996, p.90.

102 Ibid., p.83.

103 Lenin 1916: 'The Discussion'.

104 Lenin 1996, p.125.

105 Lenin 1916: 'The Discussion', emphasis in original.

106 Lenin 1916: 'A Caricature'.

107 See also Harding 2009, p.66; Young 2006, pp.107–134.

In Lenin's view, the violence that imperialism would inevitably spark in the colonies by violating the self-determination of colonial people had emancipatory potential. Such violence, he believed, would be incited when imperialist oppression awakened the national consciousness of exploited peoples and revolutionised social relations. By being able to maintain economic growth only through increased repression, imperialism would provoke people to awareness and armed struggle.<sup>108</sup> It was this dynamic, Lenin explained in his 1917 *Imperialism* pamphlet, which would exacerbate the antagonisms of capitalism and trigger violent reactions, even revolutionary liberation.<sup>109</sup> Lenin's wartime critique of imperialism thus underscored that his concept of freedom as self-determination put no superior value on peace. In fact, he recognised violence as sometimes necessary to achieve real freedom. As I will show, Lenin's discourse on the relationship between self-determination, freedom, and peace contrasted profoundly with the positions that Woodrow Wilson would champion.

Lenin's analysis of imperialism entailed strong support for colonial independence. 'Liberation of the colonies', he wrote in 1916, 'means self-determination of nations. Europeans often forget that colonial peoples *too* are nations, but to tolerate this "forgetfulness" is to tolerate chauvinism.'<sup>110</sup> Lenin was not the first socialist to argue in such terms.<sup>111</sup> Karl Kautsky, for instance, had in 1910 noted that imperialism 'deceived and disposed of foreign peoples as if they were cattle'. Moreover, as Kautsky put it:

[Imperialism] rest[ed] on the assumption that only the peoples of European civilization are capable of independent development. The men of other races are regarded as children, idiots or beasts of burden, to be treated with more or less mercy – at any rate they are beings of a lower kind, which can be controlled according to our

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108 Lenin 1996, p.125.

109 Ibid., pp.125, 97.

110 Lenin 1916: 'A Caricature'.

111 See e.g. Rosa Luxemburg: *The Accumulation of Capital*, Routledge, London 2003 (first published in 1913); Karl Kautsky: 'Imperialism and the War', *International Socialist Review*, November 1914, accessed 20 February 2011, [www.marxists.org/archive/kautsky/1914/09/war.htm](http://www.marxists.org/archive/kautsky/1914/09/war.htm); Karl Kautsky: 'Ultra-Imperialism', *Die Neue Zeit*, September 1914, accessed 20 February 2011, [www.marxists.org/archive/kautsky/1914/09/ultra-imp.htm](http://www.marxists.org/archive/kautsky/1914/09/ultra-imp.htm).

whim.<sup>112</sup>

For Lenin, advocacy of the right of all dominated and colonial people to self-determination as independence ‘without exception’ was underpinned by the same logic that sustained his overall conceptualisation. While generally expecting colonial national revolts to benefit the development towards socialism, he would always evaluate actual individual cases specifically with this end in mind.<sup>113</sup> The common assumption among scholars that Lenin ‘first and foremost’ saw self-determination as ‘a postulate of anti-colonialism’<sup>114</sup> is thus untenable.<sup>115</sup> Not only did Lenin present ‘self-determination’ as a much broader solution to the ‘national question’ – in line with his own logic, he would *not* support colonial independence in any case where it obstructed socialist development.

With his support for colonial self-determination, Lenin seemed to contradict his rejection of the calls during the First World War to ‘defend the fatherland’, defined in national terms, in Russia and Europe.<sup>116</sup> During the war, a wave of patriotism had spread through the fighting countries, with people across the political and class spectrums rallying around their flags and leaders.<sup>117</sup> Lenin had little but scorn for such support for a national ‘fatherland’ war effort, considering it as a distracting, ‘despicable betrayal of socialism’.<sup>118</sup> While his argument here resembled Luxemburg’s objections to self-determination, there was a key difference. Luxemburg opposed any ‘defence of the fatherland’ and ‘self-determination’ in *all* contexts,<sup>119</sup> whereas Lenin generally backed the concept in connection with nations revolting against imperialism. These should, in his view, be encouraged to rebel, and could even call their fight for freedom a ‘defence

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112 Kautsky 1910, pp.75–76.

113 See Lenin 1916: ‘A Caricature’.

114 Cassese 1995, p.44.

115 See also Bowring 2011, p.125.

116 Lenin 1916: ‘The Discussion’; also Figes 1996, p.293; Mayer 1959, pp.60–63, 380–381.

117 See Geary 2003, p.237, on how this affected various groups within the Second International.

118 Lenin 1920: ‘Draft Resolution’. See also Carr 1978, p.66.

119 Rosa Luxemburg: ‘Either/Or’, *Ausgewählte Reden und Schriften*, II, Berlin: Dietz Verlag, 1951, in Dick Howard (ed.): *Selected Political Writings of Rosa Luxemburg*, Monthly Review Press, New York, 1971, pp.347–351.



of the fatherland.’<sup>120</sup> Both Lenin’s support for colonial independence and his criticism of ‘defending the fatherland’ were legitimised with reference to his Marxist ideology – moreover, both positions were directed against imperialism.

Lenin’s indictment of imperialism with the language of ‘self-determination’ underscored that he sought to legitimise the concept as a negative idea of freedom. He denounced the imperialist drive for ‘domination’ as a quelling of ‘liberty’,<sup>121</sup> and presented ‘self-determination’ as the liberating cure for the un-freedom that imperialism produced. When Lenin also condemned imperialism for its oppression, exploitation and annexations, he indicated that he saw specific forms of interference as a threat to peoples’ freedom as well. From the start, his discourse of ‘self-determination’ had rejected forms of capitalist interference along with dependence and domination, but before the war he had not presented interference as a *key* form of freedom restriction. What distinguished Lenin’s wartime attacks on imperialism from his earlier language was that he now depicted interference as a major way in which freedom could be quelled, and self-determination justified as a remedy. Interference in the form of capitalist oppression and exploitation, he seemed to argue, precluded real freedom as equality. With these ideas, Lenin was expressing a very early variant of what late-20<sup>th</sup> century scholarship would call ‘remedial’ self-determination, which state parties in the 2008–2010 ICJ case on Kosovo would invoke as well.

This change of emphasis in the idea of freedom Lenin used to legitimise his language of ‘self-determination’ confirms not only that the First World War and his analysis of imperialism influenced his conceptualisation. It also suggests that, during the war, Lenin might have targeted his discourse at a different audience than with his earlier arguments. Given that agents seek legitimisation for their arguments and ideas with standards they believe will convince their specific audiences, a shift in legitimising standards may imply a corresponding shift in the intended addressees. Indeed, during the war, Lenin did direct his discourse at audiences far beyond the group of

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120 Lenin 1916: ‘The Discussion’.

121 Lenin 1996, p.83.

socialists to whom he had initially presented his concept of ‘self-determination’. In so doing, he also revealed a widening of his ambitions.

One purpose of Lenin’s use of the language of ‘self-determination’ during the war seems to have been to inspire a global audience to undertake revolution, worldwide. First, he hoped that promoting self-determination as a right to freedom from imperialist oppression would incite rebellion in the colonies, thereby threatening capitalist domination and sparking a global revolutionary wave.<sup>122</sup> Moreover, he aimed for revolt and uprising in Europe. According to Lenin and the Bolsheviks, such destabilising developments in Europe, on the domestic front of the imperialists, would ‘sharpen the revolutionary crisis’ within the capitalist powers.<sup>123</sup> And this, they believed, could bring the war as a whole to an immediate, revolutionary end and advance the onset of socialism.<sup>124</sup> Reflecting such concerns, whereas Lenin’s pre-war rhetoric on ‘self-determination’ had taken issue primarily with internal socialist critics, his pronouncements during the war took direct aim at external, capitalist opponents.<sup>125</sup>

Also at another level Lenin seems to have sought revolutionary developments with his wartime references to ‘self-determination’. His insertion of the concept into the ideological rivalry between the warring parties appears to have been an attempt to attract a more global audience to his radical vision. Ideology and propaganda were powerful weapons in the First World War, with mass media and propaganda machines ensuring that appeals reached worldwide populations.<sup>126</sup> Belligerents targeted groups at

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122 See also Trotsky 1925 p.93; Zhuchkov 1968, p.43; Nation 1989, p.232; Carr 1978, pp.245–246, 428; Mayer 1959, pp.24, 264, 301; Richard K. Debo: *Revolution and Survival: The Foreign Policy of Soviet Russia 1917–18*, Liverpool University Press, Liverpool, 1979, p.48; Figs 1996, pp.294, 537–538.

123 Lenin 1916: ‘The Discussion’. See also Carr 1978, pp.55, 62; Carr 1953, p.9.

124 See in particular Lenin: ‘The Tasks of the Proletariat in Our Revolution (Draft Platform for the Proletarian Party)’ (The ‘April Theses’), Priboi Publishers, 1917, accessed 20 February 2011, [www.marxists.org/archive/lenin/works/1917/tasks/index.htm](http://www.marxists.org/archive/lenin/works/1917/tasks/index.htm). See also Carr 1978, pp.65–67; Carr 1953, pp.7; Mayer 1959, pp.97, 245.

125 See e.g. Lenin 1915: ‘The Revolutionary Proletariat’ and 1916 ‘The Discussion’.

126 See De Groot 2001, pp.146–148. Mayer 1959, pp.7–8; Figs 1996, p.541 for the spread of Bolshevik propaganda; on US propaganda, see George Creel: *How we Advertised America. The First Telling of the Amazing Atory of the Committee of Public Information that Carried the Gospel of Americanism to Every Corner of the Globe*, Harper, New York, 1920a, and George Creel: *The War, the World, and Wilson*, Harper, New York, 1920b. See also Herbert E. Brekle: ‘War with words’, pp.81–91 in Ruth Wodak (ed.):

home and abroad with messages on their war efforts, broader ideologies and values.<sup>127</sup> In this setting of wartime ideological battles, Lenin and Wilson alike seemed to recognise the propaganda value of the language of ‘self-determination’. This, however, is not to suggest that their advocacy was *exclusively* tactical: for both men, their mentions of ‘self-determination’ were in line with their broader orientations.<sup>128</sup>

The ideological aspects of the war intensified in 1917 with the two Russian revolutions as well as the US entry into the war in April of that year.<sup>129</sup> President Wilson painted the war as an issue of morality and virtue, and sought to legitimise the American engagement with reference to standards of freedom from interference, and, above all, peace. The next chapter examines Wilson’s statements on ‘self-determination’ in this context.<sup>130</sup> In contrast to the language and ideals of the US president, by 1917 Lenin had posited ‘self-determination’ as a revolutionary weapon, primarily against imperialism, for achieving freedom as equality. In Russia itself, the 1917 February revolution resulted in the overthrow of the tsar and the installation of a Provisional Government, which partly shared, partly competed for power with the revolutionary socialist ‘Soviet of Workers’ Deputies’ in Petrograd.<sup>131</sup> After the October revolution that same year, Russia’s fate was suddenly in the hands of the Bolsheviks. While little was generally known of them, it was clear that their ideology of radical socialism differed from

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*Language, Power and Ideology: Studies in Political Discourse*, John Benjamins, Amsterdam, 1989, especially pp.83–87.

127 Regarding the role of the media, Churchill (1929) notes that by the time of the Paris Peace Conference, 500 ‘special correspondents’ were following its day-to-day developments, p.137. See also Laurence W. Martin: *Peace without Victory: Woodrow Wilson and the British Liberals*, Yale University Press, New Haven, CT, 1958; Mayer 1959, pp.54, 372.

128 despite the claims of some, e.g. Chamberlain 1999, p.10.

129 Although the USA entered the war on Allied or ‘Entente’ side formally as an ‘Associated’ and not ‘Allied’ power it will be referred to here as one of the ‘Allies’.

130 The morally charged US discourse during the war is also exemplified by former president Theodore Roosevelt’s 1914 suggestion to establish a ‘World League for the Peace of Righteousness’, *Outlook*, 23 September 1914, pp.169–178, at p.178.

131 See e.g. Harding 2003, p.240. The name was subsequently changed to ‘Petrograd Soviet of Workers’ and Soldiers’ Deputies’. The Mensheviks dominated this Soviet until September 1917: Wade 2005, pp.64, 70. By October, the Petrograd and Moscow Soviets had Bolshevik majorities: Marples 2000, p.87; also Sheila Fitzpatrick: *The Russian Revolution*, Oxford University Press, Oxford 2008, pp.43, 49; Carr 1978, pp.70–71; Peter Holquist: *Making War, Forging Revolution: Russia’s Continuum of Crisis, 1914–1921*, Harvard University Press, Cambridge, MA, 2002, p.50; Peter Gatrell: *Russia’s First World War: A Social and Economic History*, Pearson, Harlow, 2005, p.197; Mayer 1959, p.72.

the visions of the other fighting countries' leaderships.

Although Russia and the USA were formal allies until March 1918,<sup>132</sup> under these circumstances the Bolsheviks and the US administration eyed each other as ideological competitors. It was not yet clear in 1917 that the war would end with the break-up of empires and the territorial reorganisation of Europe, but the 'old ways' of diplomacy and imperialism already appeared frayed.<sup>133</sup> In this context, both the Bolsheviks and the US president represented something new. With greater moral credibility than the other warring parties, their discourse launched rivalling concepts for the post-war order and the standards that should guide a new and better world. Without doubt, Lenin and Wilson were the main competitors in this wartime ideological rivalry. Standing for dramatically differing ideas, both set out to persuade key international audiences of their line.<sup>134</sup>

From the perspective of the USA and its Western Allies, the growing political and ideological power of Lenin and the Bolsheviks and their uncompromising calls for revolution were disconcerting.<sup>135</sup> Before the war, the Bolsheviks' appeal outside of Russia had been limited, but their wartime demands for peace and emancipatory change found popular resonance, in war-weary Europe – and beyond.<sup>136</sup> In this situation, Western public opinion

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132 when Russia signed the Brest–Litovsk treaty with Germany, see below.

133 For an expression of this attitude from 1919, see L. Oppenheim: *The League of Nations and Its Problems: Three Lectures*, Longmans, Green, London, 1919

134 On Wilson, see e.g. Carleton 1962, p.566.

135 The issue comes up frequently in Wilson's correspondence during 1917 and 1918, see PWW 1984, Vol.45, e.g. 'A Memorandum by William Boyce Thompson', 3 January 1918, at p.442; 'From George Jan Sosnowski', 11 January 1918, at p.574; 'A Memorandum by Sidney Edward Mezes, David Hunter Miller, and Walter Lippmann' – i.e. 'The Memorandum of the Inquiry' – 'The Present Situation: The War Aims and Peace Terms its Suggests. Our Objectives', at pp.459–464; also 'Sir William Wiseman to Lord Reading, 12 February 1918', pp.333–334 in PWW 1984, Vol.46; Memorandum from William Bullitt received by Wilson on 18 November 1918, pp.121–123 in PWW 1986, Vol.53; Robert Lansing: *The Peace Negotiations. A Personal Narrative*, Constable, London, 1921, p.171; Edward Mandell House: *The Intimate Papers of Colonel House* (hereafter 'House'), Vol.III, Ernest Benn, London 1928, pp.297–298. Russia was also a topic of frequent discussion at the Paris Peace Conference: see e.g. 'Hankey's notes of a meeting of the Council of Four', 20 May 1919, pp.301–302 in PWW 1988, Vol. 59.

136 In reaction, Wilson's propaganda chief George Creel called for the establishment of an American Bureau of Public Information in Europe; see 'A Memorandum by George Creel', 31 January 1918, pp.200–203 in PWW 1984, Vol. 46. In another expression of American nervousness about the Bolsheviks' appeal, *New York Times*: 'Prey of Agitators', 23 August 1919, warned that 'a campaign for self-determination for the negroes of all corners of the earth' was praising Lenin and Trotsky. For the Bolsheviks'

and the European Left became core addressees for the parties' wartime statements.<sup>137</sup> Furthermore, Western Allies feared that the Bolshevik call for immediate peace would mean that Russia would withdraw from the war, leaving their side strategically disadvantaged.<sup>138</sup> That did indeed happen: March 1918 saw the signing of the Brest-Litovsk Treaty between the Bolsheviks and the Central Powers, which relieved the latter from having to fight on the Eastern front.<sup>139</sup> Even before this, Germany had been keen on destabilisation in Russia – an attitude that in turn had inflamed Allied and US suspicions that the Germans were 'behind' the Bolsheviks' rise to power.<sup>140</sup>

Seen from Lenin's point of view, Wilson's worldwide prestige, his 'liberal' credentials, and effective propaganda machinery<sup>141</sup> challenged his own plans to win people over to radical Marxism.<sup>142</sup> While the US president partly used comparable language and, like Lenin, contrasted his new world vision with the old ways of empire and annexations, he was calling for change along liberal-conservative lines, not radical and socialist ones. After the war, Lenin deplored Wilson's wartime seduction of European liberals, who, he said, 'call[ed] themselves pacifists and socialists, who sang praises to "Wilsonianism", and who insisted that peace and reform were possible

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growing popularity within Russia at the time, see Gatrell 2005, p.221.

137 See e.g. House 1928, Vol.III, p.329; and Lenin quoted in Carr 1953, p.9. Martin (1958) describes how radical groups in Britain had greater influence on Allied war policies than their numbers suggested, p.58. See also Memorandum of Lloyd George, 'Some Considerations for the Peace Conference', 25 March 1919 in Ray Stannard Baker: *Woodrow Wilson and World Settlement*, (hereafter: 'Baker') Vol.III, Doubleday, Page, New York 1922, p.449, as well as pp.451–452; Carr 1953, p.12; Mayer 1959, pp.31, 34–35, 265, 333–334, 387–391. See also Lenin 1915: 'The Revolutionary Proletariat' and 1916 'The Discussion', referring in particular to German and Polish leftists.

138 Mayer 1959, pp.170, 77–78, 83, 88; Throntveit 2011, pp.457–458.

139 For a discussion of the Russian treaties from that time, see e.g. Charles G. Fenwick: 'The Russian Peace Treaties', *American Political Science Review*, 12(4), 1918a, pp.706–711.

140 See e.g. the secret 'Memorandum on the Formula of 'the Self-Determination of Peoples' and the Moslem World', British Intelligence Bureau, TNA: FO 608/203, Department of Information, Section E, 30 January 1918, no. 6289/1, pp.2–3; and memoranda received by Wilson on 20 and 22 November 1918, in PWW 1986, Vol. 53, pp.136–137, 169–180.

141 See *New York Tribune* editorial reproduced in House 1928, Vol. III, p.354. See also Klaus Schwabe: *Woodrow Wilson, Revolutionary Germany, and Peacemaking, 1918–1919: Missionary Diplomacy and the Realities of Power*, University of North Carolina Press, Chapel Hill, NC, 1985, p.25, on the 'remarkable success' of Wilson's rhetoric in Germany.

142 Baker 1922, Vol. I suggests that Wilson readily attracted support from 'the liberal and labour groups', p.45; see also Carr 1953, p.13. For details on the US information infrastructure, see Creel 1920a and 1920b.

under imperialism.’<sup>143</sup>

In changing his emphasis on legitimating standards for ‘self-determination’ during the war, Lenin seems to have taken note of Wilson’s rapidly spreading appeal.<sup>144</sup> Even though Wilson hardly ever used the specific term ‘self-determination’, the ideas associated with the concept, and from 1918, this language itself, was seen as central to his message – and this Lenin appeared intent on sabotaging.<sup>145</sup> In using ‘self-determination’ *against* the USA and its allies with reference to these countries’ interference with the freedom of colonial peoples, Lenin appeared resolved to retain ownership of the concept, and to highlight the hypocrisy of the capitalists’ normative commitments.<sup>146</sup>

Preceded and brought on by the intra-socialist debate on ‘self-determination’, in 1917, the concept started to surface in the ideological battle between the warring parties.<sup>147</sup> First, under pressure from Lenin’s ideology and the competing legitimacy of the Petrograd Soviet,<sup>148</sup> the Russian Provisional Government’s ‘Declaration of War Aims’ pronounced in March 1917: ‘[T]he objective of free Russia is not the domination of other nations, nor the expropriation of their... property, nor the forcible seizure of foreign territories, but the ratification of a stable peace on the basis of national self-determination.’<sup>149</sup> Shortly after the October revolution, the Bolsheviks endorsed the right to self-determination for all peoples in Russia, and called for a democratic peace based on ‘no annexations or

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143 Lenin 1996, p.5, from his preface written in 1920.

144 See also Debo 1992, pp.24, 26, and Debo 1979, pp.386–388; Mayer 1959, p.373.

145 See e.g. Manela 2007, in particular pp.47–51.

146 Trotsky 1925, p.93, Debo 1992, pp.30–31 and Debo 1979, pp.386–388. Mayer 1959, p.170.

147 This is under-emphasised in the literature; Manela 2007, p.7, for instance, claims that Lenin’s idea of self-determination had global influence only after spring 1919.

148 See e.g. Wade 2005, p.84; Fitzpatrick 2008, p.46.

149 ‘Provisional Government’s Declaration of War Aims’, 27 March 1917, p.48 in Ronald I. Kowalski: *The Russian Revolution 1917–1921*, Routledge, London, 1997, Document 4.2. See also Figs 1996, p.381. Lenin soon called for exposing ‘the utter falsity’ of the Provisional Government’s promises ‘particularly of those relating to the renunciation of annexations’, Lenin 1917: ‘The Tasks’. The Provisional Government’s declaration had been preceded by the Petrograd Soviet: ‘Appeal to all the peoples of the world’, which denounced annexations: *Izvestiya* 15 March 1917, in Martin McCauley (ed.): *The Russian Revolution and the Soviet state 1917–1921: Documents*, Macmillan, London, 1975, pp.78–79.

indemnities and the self-determination of nations'.<sup>150</sup> In a further attempt to undercut the moral authority of their ideological opponents, the Bolsheviks also made public all secret treaties from the tsarist era.<sup>151</sup>

The most important international articulation of Lenin's concept of 'self-determination' came soon after, with the address of Bolshevik Foreign Commissioner Trotsky, 'To Peoples and Governments of Allied Countries', of 31 December 1917. With that address, the Bolsheviks demanded that the Allies clarify their war aims. Targeting the Allies' double standards, the Bolsheviks asked if the Allied Powers were 'willing on their part to give the right of self determination to the peoples of Ireland, Egypt, India, Madagascar, Indochina, et cetera' – like the Russian Revolution had given this right to the peoples of Finland and Ukraine:<sup>152</sup>

[I]t is clear that to demand self determination for the peoples that are comprised within the borders of enemy states and refuse self determination to the peoples of their own state and their own colonies would mean the defence of the most naked, the most cynical imperialism.<sup>153</sup>

In a direct challenge to Western colonial powers, the statement proclaimed Lenin's ideas of 'self-determination', putting weight on its anti-imperial force.

Once these public statements had injected Lenin's language of 'self-determination' into the war's combative, moralising rhetoric, other warring parties too came to incorporate the term in their speeches. In December 1917, Wilson might have included only an implicit reference in his State of the Union address, when he called for 'the principle' to be 'brought under

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150 Bolshevik decree of 2 November 1917, 'Declaration of the Rights of the Peoples of Russia', signed Lenin and Stalin, accessed 30 April 2011, [www.marxists.org/history/ussr/government/1917/11/02.htm](http://www.marxists.org/history/ussr/government/1917/11/02.htm)

151 See L. Trotsky: 'Note of Foreign Minister Trotsky to the Allied Embassies in Petrograd Offering an Armistice', 21 November 1917, pp.188–189 in James Brown Scott: *Official Statements of War Aims and Peace Proposals, December 1916 to November 1918*, Carnegie Endowment for International Law, Washington, DC, 1921.

152 English version in 'David Roland Francis to Robert Lansing', Petrograd 31 December 1917, recorded on 1 January 1918, PWW 1984, Vol. 45, pp.411–412.

153 Ibid., pp.412–413.

the patronage of its real friends.’<sup>154</sup> In that same month, the ‘Christmas’ address of Austria-Hungarian Foreign Minister Ottokar Czernin referred to ‘self-determination’ explicitly, and stated that the Central Powers granted ‘validity to this principle everywhere in so far as it is practically realizable’ – and as long as the other parties in the war did so as well.<sup>155</sup>

On 5 January 1918, British Prime Minister David Lloyd George declared, ‘we are fighting for a just and lasting peace’, which required that ‘a territorial settlement must be secured, based on the right of self-determination or the consent of the governed’.<sup>156</sup> Although some have claimed that, with this statement, Lloyd George ‘coined the phrase *self-determination*’,<sup>157</sup> it came years after Lenin had already elaborated this discourse in numerous published works, and moreover in the aftermath of the Bolsheviks’ international wartime appeals. Three days after Lloyd George’s address, Wilson held his ‘Fourteen Points’ speech, and a month later, he properly internationalised the language of ‘self-determination’. These developments form the subject of the next chapter.

## Conclusions

Lenin’s 1903–1917 discourse of ‘self-determination’ is crucial to understanding the subsequent international appearances of the concept. Lenin presented the realisation of self-determination as synonymous with establishing a separate state. While the criteria for the concept that came to figure in international discourse after Lenin’s time were certainly not based

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154 Wilson: ‘Fifth Annual Message’, 4 December 1917, Miller Center of Public Affairs, University of Virginia, accessed 21 February 2011, [millercenter.org/scripps/archive/speeches/detail/3799](http://millercenter.org/scripps/archive/speeches/detail/3799)

155 ‘Statement of Count Czernin at Brest–Litovsk of the Terms on which the Central Powers were willing to Conclude a General Peace’, 25 December 1917, pp.221–222 in Scott (ed.) 1921.

156 Lloyd George, David: ‘British War Aims’, 5 January 1918, WWI Document Archive, accessed 21 February 2011, [wwi.lib.byu.edu/index.php/Prime\\_Minister\\_Lloyd\\_George\\_on\\_the\\_British\\_War\\_Aims](http://wwi.lib.byu.edu/index.php/Prime_Minister_Lloyd_George_on_the_British_War_Aims). The speech was so similar to what Wilson then planned that he reportedly considered cancelling his Fourteen Points Speech: Victor S. Mamatey: *The United States and East Central Europe 1914–1918: A Study in Wilsonian Diplomacy and Propaganda*, Princeton University Press, Princeton, NJ, 1957, pp.175–176. See also Trygve Throntveit: ‘The Fable of the Fourteen Points: Woodrow Wilson and National Self-determination’, *Diplomatic History*, 35(3), 2011b, pp.445–481, especially pp.459–460.

157 Cooper 2009, p.421; also p.426.



on his radical socialism,<sup>158</sup> his framing of its content as independent statehood was to lie at the heart of all its later significant international appearances. Whenever ‘self-determination’ was mentioned later in important international contexts, the creation of a new state would appear as the ‘default’ way of implementing the concept, and as the option that anyone referring to it had to either endorse or oppose.

Also seminal was Lenin’s legitimation of self-determination with reference to a negative idea of freedom, collectively understood. ‘Self-determination’, to Lenin, primarily meant a group’s freedom from inequality, domination and dependence; he employed *freedom as equality* as the supreme aim and justifying foundation of the concept. In certain instances of oppression and exploitation, Lenin added freedom from interference as well, as a standard of legitimation. He was not concerned with peoples’ intra-group identity qualifications, and would allow them to use violence in achieving freedom as self-determination. With this approach, Lenin firmly linked the international ‘self-determination’ discourse to ideas of *freedom*, filling the concept with positive moral associations.

Lenin also more specifically sketched out the radical idea of freedom associated with ‘self-determination’ that would come to compete with the liberal-conservative idea over determining how the concept appeared internationally. Whereas the liberal-conservative idea came to feature more visibly in the international discourse of ‘self-determination’, the radical version implied in Lenin’s thought never disappeared – although later it would rarely be seen as affiliated with his specific brand of socialism.

Finally, Lenin’s language of ‘self-determination’ was central in inducing Wilson to take up and fully internationalise the concept in 1918. In 1917, the international insertion of ‘self-determination’ into the wartime ideological rivalry was, conceptually and politically, due to Lenin. By that time, he had been grappling with the concept for some fourteen years, and indirectly raised the stakes for internationally ‘owning’ it. Without the

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158 For a few later suggestions on how to condition statehood on the basis of ‘self-determination’, see e.g. Norman 2006, pp.208–212, and Tideman 2004.

setting engendered by Lenin's discourse, Wilson might not have referred to 'self-determination' on the international platform at all, and the internationalisation of the concept might have taken a very different form. Through Lenin's words, the radical idea of freedom attached to self-determination thus provided the original spark for making the concept international. This dynamic was repeated at subsequent international moments in which the language of 'self-determination' appeared, when radically legitimised discourse would trigger rhetorical liberal-conservative efforts to gain ascendancy and ownership of the concept.

## 2. WOODROW WILSON'S INTERNATIONALISATION OF 'SELF-DETERMINATION'

US President Woodrow Wilson internationalised the concept of 'self-determination' in 1918. From a position of world power, he filled the concept with morally charged language, and ensured for it a global audience. Without Wilson's international discourse of 'self-determination', the later institutionalisation of the concept and its codification in international law with the 1945 UN Charter would have been much less likely. Indeed, Wilson is widely seen as so significant to the concept of 'self-determination'<sup>1</sup> that its international framing has become associated also with parts of his policy and ideas that did not explicitly involve it. A case in point is his Fourteen Points speech. Despite the lack of any mention of 'self-determination' in that speech, it has become a key reference point for the concept.<sup>2</sup>

Like Lenin's discourse, Wilson's language of 'self-determination' took shape in the historical context of its time. Wilson's major pronouncements of the concept occurred in a setting generated by Lenin's previous references, and at a moment of world war. This chapter examines the environment of Wilson's articulations of 'self-determination', before exploring this language itself and its standards of legitimation. Since self-determination at that time was seen as bound up with resolving concrete territorial settlements resulting from the First World War, this chapter will analyse Wilson's use of the concept in this light. It should be noted that, although Wilson's discourse was rooted in his broader political thought,<sup>3</sup> the

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1 For examples, see Manela 2007; Kittrie 1995, p.249; Easton 1964, p.123.

2 See Throntveit 2011b, especially, pp.445, 450, 476; Manela 2007, especially pp.47–51; Carleton 1962, p.563.

3 Wilson had been a university professor before entering politics. Of earlier influences on Wilson's political thought on 'self-determination', Giuseppe Mazzini could briefly be mentioned – Wilson paid him tribute in Genoa on 5 January 1919, 'Remarks about Giuseppe Mazzini' and 'Further remarks in Genoa', PWW 1986, Vol.53, pp.614–15. See also Giuseppe Mazzini: 'On Nationality', 1852, Modern History Sourcebook, accessed 11 May 2011, [www.fordham.edu/halsall/mod/1852mazzini.html](http://www.fordham.edu/halsall/mod/1852mazzini.html) and Stefano Recchia and Nadia Urbinati (eds): *A Cosmopolitanism of Nations: Giuseppe Mazzini's Writings on Democracy, Nation Building, and International Relations*, Princeton University Press, Princeton, NJ, 2009. Although Mazzini, contrary to what is claimed by the editors in that volume's introduction (p.3), rarely mentioned 'self-determination', his thoughts on popular legitimacy seem to have inspired parts of Wilson's discourse, see e.g. pp.194, 233.

focus of this chapter is strictly on his internationalisation of ‘self-determination’, not on locating his conceptualisation within his overall ideas.<sup>4</sup>

Wilson’s public statements on ‘self-determination’ were both fewer and less clear than Lenin’s, but Wilson, too, sought legitimation for the concept with reference to an idea of freedom. Although vague and fraught with tensions, Wilson’s ‘self-determination’ discourse invoked a negative idea of freedom – but one different from that of Lenin. Wilson’s rare mentions of ‘self-determination’ implicitly suggested that self-determination would be legitimate only as a means to ensure freedom from interference in the form of peace and stability for the political agents that met his approval. As will be shown, it was versions of Wilson’s articulation of ‘self-determination’ and its legitimation by this liberal-conservative idea of freedom that tended to reappear in later international occurrences of the concept.

### **Wilson’s Concept of ‘Self-determination’: Presentation and Content**

When Wilson made his key public pronouncements of ‘self-determination’ in 1918,<sup>5</sup> the wartime ideological rivalry was at its height. With official appeals laying out conflicting visions for peace, the warring parties competed to glorify their own war efforts while denigrating the virtues of their opponents.<sup>6</sup> Targeting global audiences, their messages aimed at

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4 For a review of recent literature addressing Wilson’s thinking, see Throntveit 2011a; also David Steigerwald: ‘The Synthetic Politics of Woodrow Wilson’, *Journal of the History of Ideas*, 50(3), 1989, pp.465–484; Stephen Wertheim: ‘The League that wasn’t: American Designs for a Legalist-sanctionist League of Nations and the Intellectual Origins of International Organization 1914–1920’, *Diplomatic History*, 35(5), 2011a, pp.797–836. Revealingly, Wilson’s favourite philosopher was Edmund Burke: see Harley Notter: *The Origins of the Foreign Policy of Woodrow Wilson*, Johns Hopkins Press, Baltimore, MD, 1937, pp.29, 68; and ‘Wilson and the Liberal Peace Program’ pp.91–125 in Arthur S. Link: *Wilson: The Diplomatist. A Look at his Major Foreign Policies*, Johns Hopkins Press, Baltimore, MD, 1957; David Hunter Miller: *The Drafting of the Covenant* (DHM), Vol. I, Knickerbocker Press, New York, 1928, p.43, memorandum from Isaiah Bowman after a meeting with Wilson on 10 December 1918 and Wilson’s ‘Remarks to Foreign Correspondents’, in PWW 1984, Vol.47, p.288.

5 Wilson’s speeches are accessed primarily at The American Presidency Project (APP) [www.presidency.ucsb.edu/ws/index.php?pid=65405](http://www.presidency.ucsb.edu/ws/index.php?pid=65405), the Woodrow Wilson Presidential Library (WWPL) [www.woodrowwilson.org/](http://www.woodrowwilson.org/); and Scripps Library and Multimedia Archive (SLMA), [millercenter.org/Scripps](http://millercenter.org/Scripps).

6 Mamatey 1957, pp.136–137 traces such ‘peace exchanges’ to the resolution of the German Reichstag 19 July 1917, but Chapter 1 explained that ‘self-determination’ already been included in the Russian Provisional Government’s statement on war aims 27 March 1917. In this context, Wilson’s adviser ‘Colonel’ House (see below) urged the President to formulate a strategy on war aims on 17 August, 1917 House 1928, Vol.III,

contributing to winning the war, and to taking the lead in the envisaged post-war international order. As the previous chapter showed, Lenin's influence had in 1917 made 'ownership' of the language of 'self-determination' a central part of the war's ideological competition.

In this high-stakes international environment, the US administration had significant expectations for the propaganda value of Wilson's words. After the war, in 1920, the head of the US Committee on Public Information described Wilson's wartime speeches as having been the country's 'most effective weapons' in conveying to the world 'the motives, purposes, and ideals of America so that friend, foe and neutral alike might come to see us as a people without selfishness and in love with justice.'<sup>7</sup> Wilson himself took his global image seriously, and was concerned with the USA's international prestige.<sup>8</sup> That his appeal, especially in Europe, had an edge on that of the other leaders was evidenced by the 'unprecedented enthusiasm' that greeted Wilson on his arrival for the Paris Peace Conference at the end of the war.<sup>9</sup>

The immediate context in which Wilson's discourse of 'self-determination' emerged contrasted with the setting that shaped Lenin's initial articulation. When the two men began using the language of 'self-determination', their basic positions differed. Lenin had started to speak of the concept at a time when he did not hold a political position to determine actual self-determination claims. Wilson, by contrast, was in a place of such authority when he made his key statements on the concept. Thus, Lenin's discourse focused mainly on the theoretical coherence and ideological 'correctness' of the concept of self-determination, whereas Wilson's concentrated on war-related, practical and diplomatic concerns. During the war, however, both were eager to win over international audiences to their respective ideologies

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p.161.

7 Creel 1920a, pp.288, 237.

8 Notter 1937, pp.285, 294.

9 See Viscount Cecil: *A Great Experiment: An Autobiography*, Jonathan Cape, London, 1941, p.59; also Arthur S. Link: *The Higher Realism of Woodrow Wilson and Other Essays*, Vanderbilt University Press, Nashville, TN, 1971, p.125 and 'From the diary of Dr. Cary T. Grayson', 14 December 1918, PWW 1986, Vol.53, p.383, and House's diary from the same day, pp.389–391. Wilson's visit was the first time a US President had travelled outside the USA while in office.

and policies – and both referred to ‘self-determination’ in seeking to achieve this.

Furthermore, Lenin first vigorously argued for the concept while fighting for power in a small, obscure party. In a fragile political setting and within a Marxist community deeply committed to ideological dispute, Lenin might have feared a loss of influence if he failed to persuade his comrades. By contrast, Wilson employed his discourse on ‘self-determination’ at the height of his power, as President of the USA, when his country enjoyed global esteem. Objections to his statements would not immediately threaten his presidency, and were probably something he felt he could afford to ignore.

Personality might have further enhanced the contrasts in how ‘self-determination’ first appeared in the two men’s utterances and writings. While both seem to have handled criticism very badly,<sup>10</sup> they acted differently on feedback, advice and opposing views. In stark distinction to the intense polemics with which Lenin engaged his opponents, there is no record of Wilson striving to convince others of his views on self-determination.<sup>11</sup> On the contrary, he seemed unaffected by criticism and counterarguments from those around him. His contemporaries straightforwardly characterised him as uninterested in and even ‘intolerant of the views of others’, and as ‘intensely prejudiced in his likes and dislikes.’<sup>12</sup> Co-workers noted that Wilson resisted advice,<sup>13</sup> and ‘shunned the

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10 For Lenin, see e.g. Figes 1996, p.391, for Wilson, see below.

11 When Wilson on a rare occasion replied to questions on ‘self-determination’, from the San Francisco Labor Council, 17 September 1919, he was defensively trying to ease concerns over the practical implications of the idea, rather than positively arguing for it. Records from the meeting, WWPL, accessed 7 March 2011 [wwl2.dataformat.com/Document.aspx?doc=29523](http://wwl2.dataformat.com/Document.aspx?doc=29523).

12 Cited in Louis Siebold: ‘The Extraordinary Career of Woodrow Wilson who left the Quiet of University Life for the Turmoil of Politics and became the Leader of the World’s greatest Nation during the World’s most Stirring Times,’ *Post-Dispatch*, 18 June 1920, WWPL, accessed 20 March 2011, [wwl2.dataformat.com/Document.aspx?doc=32168](http://wwl2.dataformat.com/Document.aspx?doc=32168). British diplomat Cecil claims that Wilson was ready to meet other people’s views ‘as soon as he realized what they were’, but implies that he was not always interested in finding out, Cecil 1941, pp.68–69. See also Siebold 1920; House’s diary from 22 November, 1915, House 1926, Vol.I, p.128.

13 Lansing 1921, p.38. See also Cecil 1941, p.64; George Curry: ‘Woodrow Wilson, Jan Smuts, and the Versailles Settlement’, *American Historical Review*, 66(4), 1961, pp.968–986, especially pp.977–979 for how Wilson allegedly ignored his advisors when drafting the Covenant; and Robert W. Tucker: *Woodrow Wilson and the Great War*:

sight or study of unpleasant truths that diverted him from his foregone conclusions.’<sup>14</sup> Wilson, they said, had a ‘one-track mind’,<sup>15</sup> and was ‘dogmatic and yet [without] a very clear idea of what was really needed.’<sup>16</sup>

On issues of ‘self-determination’, Wilson’s apparent disregard of the opinions and advice of his Secretary of State Robert Lansing was particularly striking. For instance, Wilson included in his Fourteen Points speech of January 1918 an explicit reply to the December 1917 Bolshevik statement that had, with reference to ‘self-determination’, challenged the Allies to clarify their war aims.<sup>17</sup> Wilson chose to answer the Bolsheviks in the Fourteen Points in defiance of Lansing’s emphatic warnings that the Bolsheviks did not represent the Russian people and that they spoke solely to ‘the proletariat [,] the ignorant and mentally deficient’.<sup>18</sup> Their idea of ‘self-determination’, Lansing urged, would cause ‘international anarchy’ and was best left unaddressed.<sup>19</sup>

It is possible that Wilson ignored Lansing in this specific instance because he did not share this undivided hostility towards the Bolsheviks. In the summer of 1918, Wilson confessed to being uncertain of how to deal with them: ‘I have been sweating blood over the question what is right and feasible to do in Russia. It goes to pieces like quicksilver under my touch.’<sup>20</sup>

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*Reconsidering America’s Neutrality 1914–1917*, University of Virginia Press, Charlottesville, VA, 2007, p.21.

14 David Lloyd George: *Memoirs of the Peace Conference*, Vol. I, Yale University Press, New Haven, CT, 1939, p.140. See also John Maynard Keynes: *The Economic Consequences of the Peace*, Labour Research Department, London 1920, p.38 and Llewellyn Woodward: ‘A British View of Mr. Wilson’s Foreign Policy’, pp.141–176 in Edward H. Buehrig (ed.): *Wilson’s Foreign Policy in Perspective*, Indiana University Press, Bloomington, IN, 1957, at p.142.

15 Wilson initially applied the phrase to himself (House 1926, Vol. I, diary notes from 10 July 1915, p.129). For studies of Wilson’s personality see Sigmund Freud and William C. Bullitt: *Woodrow Wilson: A Psychological Study*, Transaction, London, 1966 and Alexander L. George and Juliette L. George: *Woodrow Wilson and Colonel House: A Personality Study*, Dover, New York, 1964.

16 Cecil 1941, p.68.

17 Woodrow Wilson: ‘Address to a Joint Session of Congress on the Conditions of Peace’ (‘Fourteen Points’), 8 January 1918, APP, accessed 21 February 2011 [www.presidency.ucsb.edu/ws/index.php?pid=65405](http://www.presidency.ucsb.edu/ws/index.php?pid=65405). See also A. J. P. Taylor: *The Origins of the Second World War*, Penguin, Harmondsworth, 1991, p.567; Manela 2007, p.42; Mayer 1959 pp.342, 353–355. The Bolsheviks, however, remained suspicious; see House 1928, Vol. III, p.356.

18 ‘From Robert Lansing’, Washington 2 January 1918 in PWW 1984, Vol.45, p.429.

19 *Ibid.*, p.427.

20 Wilson to House on 8 July, 1918, House 1928, Vol. III, p.398, see also pp.324–325.

While Wilson had sided with other Americans in viewing the February 1917 Russian Revolution favourably, the Bolshevik takeover that autumn had induced scepticism.<sup>21</sup> Believing that the Bolsheviks had been right to react against the pre-war practice of secret diplomacy and annexations, Wilson nonetheless struggled with their call for radical change.<sup>22</sup> Although echoing some of their criticisms of empire, he deplored disorder.

At the same time, Wilson was aware of the Bolsheviks' ideological allure, especially in parts of a war-weary Europe. By the time of the Fourteen Points speech, the US side also acknowledged the importance of keeping Russia fighting as an Ally in the war, and was apprehensive about the negotiations between the Bolsheviks and the Central Powers that had started in December 1917. Given such divided sympathies, Wilson's decision to respond to the Bolsheviks in his Fourteen Points speech seemed partly an attempt to involve them in dialogue and indirectly persuade them to stay engaged in the war on the Allied side.<sup>23</sup> Moreover, he appeared to use the speech to compete with the global attraction of socialist ideas, in order to draw the world – and the Western left especially – away from the Bolshevik vision and towards his own country's ideology and politics.<sup>24</sup> However, the Fourteen Points address contained no mention of 'self-determination'.

This is not to say that Wilson necessarily avoided the language of 'self-determination' in the Fourteen Points speech because of Lansing's opposition. As will be explained, he explicitly internationalised the concept only a month later, again ignoring Lansing's insistent protestations. Deeply opposing the concept of 'self-determination', Lansing always objected

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21 For summaries of US discussions of the Bolsheviks see Mayer 1959, e.g. p.166 and MacMillan 2001, e.g. p.79.

22 See e.g. 'To Robert Lansing, with Enclosure', 20 January 1918, PWW 1984, Vol.46, p.45 and 'Bowman Memorandum on Conference with President Wilson', 10 December 1918, House 1928, Vol.IV, p.291. See also David Stevenson: *The First World War and International Politics*, Clarendon Press, Oxford, 1991, p.194; Georg Schild: *Between Ideology and Realpolitik: Woodrow Wilson and the Russian Revolution, 1917–1921*, Greenwood Press, Westport, CT, 1995. For a scholarly view from the time, see Simon Litman: 'Revolutionary Russia', *American Political Science Review*, 12(2), 1918, pp.181–191.

23 See also Killen 1982.

24 Throntveit 2011b, p.459, mentions that Wilson also hoped to encourage a popular uprising in Germany. See also Charles Seymour: 'Woodrow Wilson and Self-determination in the Tyrol', *Virginia Quarterly Review*, 38(4), 1962, pp.567–587, at pp.570–571.



strongly to Wilson citing it: in fact, Lansing's critique has remained a key reference for scholarship on self-determination.<sup>25</sup> A lawyer by training, Lansing held that the lack of a clear beneficiary of 'self-determination' made the concept both dangerous and meaningless,<sup>26</sup> and could be 'utterly destructive of the political fabric of society and result in constant turmoil and change'.<sup>27</sup> Already in 1918, in a much-quoted passage with points he also put across to Wilson, Lansing formulated his position in terms that would reappear at later international moments:

The more I think about the President's declaration as to the right of 'self-determination', the more convinced I am of the danger of putting such ideas into the minds of certain races. It is bound to be the basis of impossible demands on the Peace Congress and create trouble in many lands. What effect will it have on the Irish, the Indians, the Egyptians, and the nationalists among the Boers? Will it not breed discontent, disorder, and rebellion? [...] The phrase is simply loaded with dynamite. It will raise hopes which can never be realized. It will, I fear, cost thousands of lives. In the end it is bound to be discredited, to be called the dream of an idealist who failed to realize the danger until too late to check those who attempt to put the principle in force. What a calamity that the phrase was ever uttered! What misery it will cause!<sup>28</sup>

Wilson, however, seems to have shown scant interest in Lansing's arguments, to the latter's great distress.<sup>29</sup> Rather than attempting to convert Lansing to his own views, Wilson turned elsewhere for input. On matters of foreign policy, as on most other issues, he relied more upon his 'second personality'<sup>30</sup> and closest advisor 'Colonel'<sup>31</sup> Edward House.<sup>32</sup> But even

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25 For a few of many explicit references, see Cassese 1995, p.316, Pomerance 1982, p.74; Musgrave 1997, p.31; Moynihan 1993, pp.81–84.

26 Lansing 1921, notes from 20 December 1918, p.86.

27 'From Robert Lansing', Washington, 2 January 1918, PWW 1984, Vol.45, p.428.

28 Cited in Lansing 1921, pp.86–87. See also Lansing: 'Notes on Sovereignty in a State', *American Journal of International Law*, 1(105), 1907, pp.105–128, at p.128.

29 Lansing's diary notes from 20 November 1921, quoted in Arthur S. Link: *Wilson: The New Freedom*, Princeton University Press, Princeton, NJ, 1967, p.67.

30 Wilson cited in House 1926 Vol. I, p.118, further explaining: 'If anyone thinks he is reflecting my opinion by whatever action he takes, they are welcome to the conclusion'.

31 The 'Colonel' title was honorary.

32 See Charles Seymour: 'The Role of Colonel House in Wilson's Diplomacy', pp.11–33 in Buehrig (ed.) 1957, at p.20; Lansing 1921, p.38. Wilson's wife implies that the President relied on her as much as on House, whom she did not like: Edith Bolling Galt Wilson: *Memoirs of Mrs Woodrow Wilson*, Putnam, London, 1939, pp.179, 282–283, 300. See also Tucker 2007 p.31–38; *Springfield Republican*: 'A Picture of Chaos and Black Night', 29 May 1919, WWPL, accessed 21 February 2011, [ww12.dataformat.com/Document.aspx?doc=32059](http://ww12.dataformat.com/Document.aspx?doc=32059); House 1926, Vol.II, p.113, citing *Atlantic City Review*, 26 December 1915; House's diary notes 14 December 1918, in

House sometimes felt left in the dark on Wilson's policies and decisions.<sup>33</sup>

On specific issues of self-determination, it was from other sources that Wilson said he would seek advice. During the First World War, the concept was widely seen as one concerning the territorial settlements expected to result from the conflict's conclusion. All parties using the language of 'self-determination' at the time of the war, including Lenin, did so with reference to its projected territorial implications. And whereas Wilson seemed to have resisted counsel on other fronts, on the issue of territorial settlements, he sought out the opinions of 'experts'.<sup>34</sup> As one of his advisors at the 1919 Paris Peace Conference put it: Wilson sought application of 'general principles of justice', 'not by diplomats and politicians each eager to serve his own interests, but by dispassionate scientists – geographers, ethnologists, economists – who had made studies of the problems involved.'<sup>35</sup> En route to the Peace Conference in late 1918, Wilson said to the experts accompanying him: 'Tell me what is right and I will fight for it. Give me a guaranteed position.'<sup>36</sup>

Four months before the Fourteen Points speech, and five months before Wilson would internationalise 'self-determination', his faith in expert opinion on issues of territorial war settlements had materialised in the establishment of a US 'Commission of the Inquiry'.<sup>37</sup> Led by presidential advisors and composed of academic experts, this Commission had been instructed to recommend concrete territorial arrangements in preparation for future peace negotiations. Shortly before delivering the Fourteen Points speech, Wilson had received a memorandum with the Commission's

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PWW 1986, Vol.53, p.390.

33 See e.g. George and George 1964, pp.188, 191. According to Tucker 2007, p.22, Wilson's unwillingness to discuss his policies or take advice often rendered his decisions 'obscure'.

34 See below for the Fourteen Points. For one expression of Wilson's attitude to experts, see DHM 1928 Vol.II, Document 18: 'The Council of Ten, January 30, 1919: Secretary's Notes of a Conversation Held at M. Pinchon's Room at the Quai d'Orsay, Paris, on Thursday, January 20, 1919, at 11 AM', p.198. See also Seymour 1962, p.575.

35 Baker 1922, Vol.I, p.112.

36 Ibid., p.113, as noted by Isaiah Bowman.

37 The Inquiry was set up in September 1917. See Liliana Riga and James Kennedy: 'Mitteleuropa as Middle America?: "The Inquiry" and the Mapping of East Central Europe in 1919', *Ab Imperio*, 4, 2006, pp.271–300.

recommendations.<sup>38</sup> The many territorial provisions of the Fourteen Points address came to draw on these proposals.<sup>39</sup>

Wilson's Fourteen Points speech was not only his most detailed pronouncement on the war's territorial settlements and the most famous statement anyone made during the First World War: it would also be seen as expressing the US President's concept of 'self-determination', albeit without actually using this language.<sup>40</sup> The speech came to represent both Wilson's close affiliation with 'self-determination', and his overall wartime vision. During the war as well as later, Wilson would be seen as embodying the concept of 'self-determination', and its international value and meaning would be closely tied to his wider policies and discourse.

The diplomatic setting of the Fourteen Points speech has already been indicated, and others have analysed it in depth.<sup>41</sup> Suffice it to say that whereas Wilson had made no major international reference to 'self-determination' before the speech, other warring parties had employed such language. Wilson gave the speech seven days after receiving an English version of the Bolsheviks' challenge to clarify the Allies' war aims with reference to 'self-determination'.

Most of the fourteen points outlined in Wilson's speech would propose territorial settlements for Europe based on criteria that would later be associated with his concept of self-determination: an independent Poland should be 'inhabited by indisputably Polish populations' (XIII); and Italy's borders readjusted 'along clearly recognizable lines of nationality' (IX). The peoples of Austria-Hungary (X) and the Ottoman Empire (XII) should be allowed the 'opportunity of autonomous development'; and Balkan relations should be established 'along historically established lines of allegiance and

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38 DHM 1928 Vol.II, p.110; Baker 1922, Vol.III, p.23; also House 1928, Vol.III, p.328; Mamatey 1957, p.179; Martin 1958, p.145; Mayer 1959, p.339.

39 According to Baker (1922, Vol.I, p.110), six of the fourteen points came directly from the memorandum. See also Throntveit 2011a, p.463.

40 See also Throntveit 2011b, especially p.450.

41 See in particular Stevenson 1991, p.183–198; Mamatey 1957, pp.153–233; Temperley 1920, Vol. I, pp.166–203 as well as 'National Self-determination During the Great War', pp.28–52 in Derek Heater: *National Self-determination: Woodrow Wilson and his Legacy*, Macmillan Press, New York, 1994.

nationality'. In addition, the 'political and economic independence and territorial integrity of the several Balkan states' should be guaranteed (XI).<sup>42</sup>

Furthermore, Wilson's Fourteen Points demanded settlement of colonial claims to be 'based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined' (V). He called for 'evacuation of all Russian territory' (VI), restoration of Belgium (VII), and righting of the 'wrong done to France by Prussia' in Alsace-Lorraine (VIII). In the address, Wilson demanded an end to the practice of secret treaties (I), guarantees of freedom of the seas and free trade (II and III), arms reduction (IV); as well as the establishment of a 'general association of nations' to safeguard 'political independence and territorial integrity to great and small states alike'.

Given the close association with 'self-determination', with this speech Wilson implied a new way of framing the concept internationally, without openly citing it. For instance, by mentioning nationally defined characteristics as a guide for determining state boundaries, Wilson provided some ground for the many later international agents as well as scholarly works that would discuss self-determination as a concept defined in national terms. Moreover, his points on the restoration of independence to Belgium and France presaged what would in later international history be expressed as a concept of self-determination that could re-establish state sovereignty after occupation and annexation, as in the 1990s cases of Baltic independence. Meanwhile, Wilson's reference to Russia seemed spurred by the Bolshevik-induced concerns he grappled with at the time, and the mention of 'colonial claims' appears a reaction to the Bolsheviks' anti-imperialist language of 'self-determination'.

Crucially, Wilson sought legitimation for his Fourteen Points by invoking the ideals of peace, order, and freedom from different kinds of interference than what Lenin's language of 'self-determination' had referred to. Lenin's

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<sup>42</sup> Wilson 1918: 'Fourteen Points'.

discourse of ‘self-determination’ had primarily denounced domination, dependence and inequality – as well as interference with peoples in the forms of capitalist and imperialist oppression and exploitation. Wilson, by contrast, equated the freedom of ‘free nations’ – ‘states’ in today’s terminology<sup>43</sup> – with their *peace* and unencumbered trade.<sup>44</sup> He presented instability and other forms of disruptive interference as the main threats to state freedom. These standards would prevail throughout his wartime messages, including those directly referring to ‘self-determination’, as will be shown. While he rarely mentioned ‘self-determination’ or ‘freedom’ directly,<sup>45</sup> peace and unencumbered action for states were the dominant ideals in his discourse.<sup>46</sup> Given the context of war, Wilson’s reliance on *freedom as peace* as the main legitimising standard was perhaps unsurprising. Nevertheless, it represented a noteworthy change from the idea of freedom Lenin had previously attached to the language of ‘self-determination’.

Wilson’s wartime statements indicated a special concern for interference with states on the *economic* field, often underlining the importance of free trade.<sup>47</sup> Restricting interstate trade, he warned, would threaten state freedom

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43 This is clear e.g. from Wilson’s ‘Address delivered at the First Annual Assemblage of the League to Enforce Peace’, 27 May 1916, APP, accessed 8 February at [www.presidency.ucsb.edu/ws/index.php?pid=65391](http://www.presidency.ucsb.edu/ws/index.php?pid=65391); and the Fourteen Points, which is also concerned with states; also House’s diary notes from 15 August 1918, from a discussion with Wilson on representation at the future League of Nations, House 1928, Vol.IV, p.49; Oppenheim 1919, p.33; Inis L. Claude, Jr.: *Swords into Ploughshares: The Problems and Progress of International Organization*, Random House, New York, 1984, p.52–53.

44 See e.g. points II and III, as well as point VI (on Russia) and VII (on Belgium).

45 However, his 1915 State of the Union address contained many mentions of freedom and liberty: 7 December 1915, WWPL, accessed 10 March 2012, [wwl2.dataformat.com/Document.aspx?doc=30447](http://wwl2.dataformat.com/Document.aspx?doc=30447). For rare mentions from after the US war entry, see Wilson’s ‘Speech at the Opening of the Third Liberty Loan Campaign, delivered in the Fifth Regiment Armory, Baltimore’ (‘Force to the Utmost’), 6 April 1918 APP, accessed 2 March 2011, [www.presidency.ucsb.edu/ws/index.php?pid=65406](http://www.presidency.ucsb.edu/ws/index.php?pid=65406); and ‘Address of the President of the United States Delivered at a Joint Session of the Two Houses of Congress’, Washington 11 February, 1918, (‘Four Principles’), WWPL, accessed 22 February 2011, [wwl2.dataformat.com/Document.aspx?doc=30724](http://wwl2.dataformat.com/Document.aspx?doc=30724), as well as his reported reference in the 1918 Bowman memorandum, op.cit.

46 See also Wilson’s speech at Coliseum, Indianapolis, Indiana, 4 September 1919, in Ray Stannard Baker and William E. Dodd (eds), *War and Peace: Presidential Messages, Addresses, and Public Papers (1917–1924)*, Vol. I, Harpers, New York, 1927, pp.610–621.

47 E.g. Wilson: Address to the Senate of the United States: ‘A World League for Peace’ (‘Peace without Victory’) January 22, 1917 APP, accessed 25 February 2011, [www.presidency.ucsb.edu/ws/index.php?pid=65396](http://www.presidency.ucsb.edu/ws/index.php?pid=65396); Wilson 1915: ‘State of the Union’.

as non-interference.<sup>48</sup> Economic liberalism, as he saw it, was vital to peace as much as to freedom. In April 1918, he cautioned that a consequence of a German victory in the First World War would be to have ‘trade [...] follow the flag’, with no freedom of the seas.<sup>49</sup> To him, protectionism interfered illegitimately with trade, to the detriment of state freedom and international peace.<sup>50</sup> Accordingly, in detailing actual post-war settlements, Wilson sought to ensure unobstructed trade for certain countries by insisting on their having access to the sea.<sup>51</sup>

Those of Wilson’s wartime statements that actually contained the language of ‘self-determination’ were based on these same standards of legitimation. Before the US entry into the war, his main reference to the concept had been to use it, in 1915, to request Congress to expand US defences for the sake of the country’s independent naval trade<sup>52</sup> – an understanding of self-determination that had not been internationalised. It was only in the ‘Four Principles’ speech of 11 February 1918 that Wilson made his first major international reference to ‘self-determination’.<sup>53</sup> At that time, the USA had been involved in the war for almost a year. Russia was still formally on the Allied side, whilst also negotiating with the Central Powers. In a context of growing pressure, Wilson’s reference to ‘self-determination’ in the Four Principles speech was also his most important international articulation of the concept.

Like Lenin’s wartime writings, Wilson’s Four Principles incorporated the language of ‘self-determination’ into an analysis of the causes and nature of the war. Wilson noted: ‘This war had its roots in the disregard of the rights of small nations and of nationalities which lacked the union and the force to make good their claim to determine their own allegiances and their own

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See also Stevenson 1991, p.66.

48 In Woodrow Wilson: *The State: Elements of Historical and Practical Politics*, D. C. Heath, London 1919 (original 1889), p.309, he expressed that interference should be allowed only ‘where common action (and) uniform law are indispensable’.

49 Wilson 1918: ‘Force to the Utmost’

50 See also Buehrig (ed.) 1957, p.42; Lloyd E. Ambrosius: ‘Democracy, Peace and World Order’, pp.225–249 in Cooper (ed.) 2008, at p.240.

51 Wilson 1917: ‘Peace without Victory’. He added such access to the territorial settlements for Poland and Serbia in the ‘Fourteen Points’, PWW, 1984, Vol.45, p.478.

52 Wilson 1915: ‘State of the Union’.

53 Wilson 1918: ‘Four Principles’.

forms of political life.’<sup>54</sup> Disparaging the ‘forever discredited’ game ‘of the balance of power’, Wilson posited that, to secure peace, ‘every territorial settlement involved in this war must be made in the interest and for the benefit of the populations concerned.’ He then proposed ‘self-determination’ as a remedy against instability, to help ensure a peaceful post-war order:

National aspirations must be respected; peoples may now be dominated and governed only by their own consent. ‘Self-determination’ is not a mere phrase. It is an imperative principle of action, which statesmen will henceforth ignore at their peril.<sup>55</sup>

With this formulation of ‘self-determination’, Wilson revealed that he, like Lenin, legitimised the concept as a means to a greater end – although their ends surely differed. For Lenin, self-determination was legitimate as long as it encouraged progress towards freedom as equality in internationalist socialism. Seeking the revolutionary overthrow of capitalism, he supported peoples’ use of force, as well as infringements of law and order if needed for achieving this aim. By contrast, Wilson’s legitimising standard for self-determination was freedom as peaceful order and non-interference. Rejecting violence and revolutionary change, he saw peace as the natural and ideal state of affairs.<sup>56</sup>

The distinction Wilson made in the Four Principles between ‘peoples’ and ‘statesmen’ is worth noting. Not only did he invoke it on several occasions, it also expressed a tension in his discourse. On the one hand, Wilson sometimes stated that it was governments and not people that had caused the First World War,<sup>57</sup> and that whereas the USA was at war with Germany, it had ‘had no quarrel with the German people’.<sup>58</sup> Calling for nations’ freedom from ‘autocratic rulers’, Wilson seemed to condemn Germany’s autocracy

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54 Ibid.

55 Ibid.

56 See e.g. Notter 1937, pp.20, 80, 228; Manela 2007, p.43.

57 E.g. in a *Washington Post* interview, 5 November 1916, quoted in Notter 1937, p.568, see also p.480.

58 Wilson: ‘Address to a Joint Session of Congress Requesting a Declaration of War against Germany’, 2 April, 1917, APP, accessed 21 February 2011, [www.presidency.ucsb.edu/ws/index.php?pid=65366](http://www.presidency.ucsb.edu/ws/index.php?pid=65366).

as an illegitimate restriction of the freedom of the people under its control.<sup>59</sup> However, his views had little room for ideas of ‘bottom–up’ popular sovereignty. Rather than advocating that people should decide for themselves, he focused on learned leaders of state who would intuitively interpret the general will.<sup>60</sup> In fact, Wilson saw ‘the people’ as being disposed to dubious decision-making that could endanger the peace he valued above all else.<sup>61</sup> Reportedly, in 1917, he had described himself as ‘a democrat like Jefferson, with aristocratic tastes’.<sup>62</sup> Intellectually, he had said, he deemed himself democratic, which was unfortunate, because ‘his mind led him where his taste rebelled.’<sup>63</sup> Apparently, Wilson considered his own reasoned support for democracy to be ‘bad taste’.

In essence, Wilson formulated his concept of ‘self-determination’ in the Four Principles as a warning to *statesmen* that ignoring it would imperil their positions. He proposed the concept as a way to remove the reasons for disaffection before popular dissent could spin out of leaders’ control.<sup>64</sup> It was for such statesmen that self-determination ought to be an ‘imperative principle of action’: disregarding it would make their own rule unstable, and threaten their state’s peace. The ‘implementers’ of self-determination should not be those subjected to governance based on the concept.<sup>65</sup> And self-determination should certainly not materialise in popular demands for equality or separate statehood.<sup>66</sup>

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59 Wilson 1918: ‘Four Principles’, see also his message to the All-Russian Congress of Soviets, 11 March 1918, Baker 1922, Vol.I, p.45; and House, Vol.III, p.433. For the Bolsheviks’ reply to this address, written by Lenin, see ‘Draft Resolution on Lenin’s Message’, March 15, 1918, accessed 20 December 2012, [www.marxists.org/archive/lenin/works/1918/mar/13.htm#bk2](http://www.marxists.org/archive/lenin/works/1918/mar/13.htm#bk2). See also William Langer: ‘Peace and the New World Order’ p.67–68 in Arthur Dudden (ed.): *Woodrow Wilson and the World Today*, University of Pennsylvania Press, Philadelphia, PA, 1957.

60 See e.g. Stephen Wertheim: ‘The Wilsonian Chimera: Why Debating Wilson’s Vision hasn’t saved American Foreign Relations’, *White House Studies*, 10(4), 2011b, pp.343–359, pp.349, 351.

61 Especially certain kinds of people, as I will show. See also House 1928, Vol.IV, p.28, note 1.

62 House 1928, Vol.III, pp.181–182, diary notes from 10 September 1917.

63 *Ibid.*

64 See Wilson 1917: ‘Peace without Victory’; also Edward M. House: ‘The Versailles Peace in Retrospect’, pp.425–444 in Edward Mandell House and Charles Seymour (eds.): *What Really Happened at Paris: The Story of the Peace Conference 1918–1919 by American Delegates*, Hodder & Stoughton, London, 1921, p.429.

65 See also Steigerwald 1989, p.484.

66 See also Throntveit 2011b, p.446; and the Bowman memorandum, DHM 1928, Vol.I, p.43.



Scholars have tended to overlook how Wilson used the concept of ‘self-determination’ to appeal to statesmen over the heads of the people, rather than the other way around. His concept of democracy clearly contrasted with today’s understandings,<sup>67</sup> and depictions of Wilson’s idea of self-determination in terms of ‘popular sovereignty’<sup>68</sup> and ‘self-government’<sup>69</sup> must be questioned. True, Wilson did occasionally address specific popular audiences – for instance, the Western left to attract them away from the Bolsheviks, and enemy peoples to encourage their dissent.<sup>70</sup> But such narrow appeals did not chime with his overall discourse of ‘self-determination’, and appear more like chance tactical moves dictated by specific, immediate wartime concerns.

These ideas described here as Wilson’s concept of ‘self-determination’ actually tended to occur in his discourse in a different guise: as the ‘consent of the governed’.<sup>71</sup> At times, Wilson used the language of ‘self-determination’ and ‘consent of the governed’ indistinguishably,<sup>72</sup> but mostly he employed the latter. In 1917, for instance, Wilson had stated that lasting peace depended on ‘the principle that governments derive all their just powers from the consent of the governed.’<sup>73</sup> His ambiguous and occasionally interchangeable use of the two phrases caused confusion on their real meaning(s), and allowed people to interpret ‘self-determination’ as they saw fit.<sup>74</sup> However, all his mentions of ‘self-determination’ and ‘consent of the governed’ signalled sustained commitment to the same legitimising standards of peace, stable order and non-interference.

Although Wilson himself never elaborated on his choice of words, to those

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67 See especially Wilson 1919 *The State*; also Wertheim 2011b, p.349.

68 Manela 2007, p.42.

69 Throntveit 2011b, p.451.

70 See e.g. Carleton 1962, p.563.

71 E.g. Wilson 1917: ‘Peace without Victory’; and on 26 May 1917 when Wilson addressed the new Russian Government, House 1928, Vol.III, p.135. The claim of Manela 2007, p.22, that Wilson replaced ‘self-determination’ with ‘consent of the governed’ only after February 1918 thus does not correspond to Wilson’s actual uses of the two phrases.

72 E.g. Wilson: ‘The Pueblo Speech’, 25 September 1919, *Voices of Democracy*, The US Oratory Project, accessed 15 December 2012, [voicesofdemocracy.umd.edu/wilson-the-pueblo-speech-speech-text/](http://voicesofdemocracy.umd.edu/wilson-the-pueblo-speech-speech-text/). See also the reference to ‘consent’ in the Four Principles quote above.

73 Wilson 1917: ‘Peace without Victory’, emphasis added. See also ‘Force to the Utmost’.

74 See also Throntveit 2011b, p.478.

around him, his favoured notion of ‘consent of the governed’ looked like a milder or weaker version of ‘self-determination’.<sup>75</sup> A quick semantic comparison between the two phrases would seem to point to ‘consent’ setting up a feebler connection between people and sovereignty than ‘determination’. ‘Consent of the governed’ would appear to open only for passively acceding to an established political authority – not actively determining a political framework, or disassociating from it by creating a new political unit. The phrase implicates a type of political representation, rather than political ownership. And without denoting any standard of equality, ‘consent of the governed’ suggests placing people passively at the bottom of a political status hierarchy – as *governed*. This notion does not seem to conceptualise peoples as governing, law-making, or a source of political legitimacy.

Significantly, Wilson presented this concept of what can be called ‘self-determination as the consent of the governed’ at a time when Lenin had already articulated ‘self-determination’ with reference to freedom as equality and new state creation. Wilson had responded to Lenin’s radical discourse by undermining the differences between ‘self-determination’ and ‘consent of the governed’ and by shifting self-determination’s meaning in a less radical direction. Whether or not this was the result of a conscious plan on Wilson’s part, it occurred at the peak of the ideological wartime rivalry, when the USA sought to undermine the Bolsheviks’ authority. It is likely that Wilson in this context hoped to co-opt the socialists’ globally appealing language of ‘self-determination’, strip it of their radical idea of freedom, and link it to his own liberal-conservative worldview.

When Wilson internationalised this concept of ‘self-determination’, peoples around the world listened to his messages and directly drew upon his language in their appeals for political freedom.<sup>76</sup> Wilson’s words obviously

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75 Lansing 1921, p.85; Ray Stannard Baker: ‘The Versailles Treaty and After’, *Current History*, 88(534), 1989 (originally published 1924), pp.20–23, p.21; DHM 1928, Vol.II, Document 7: ‘Wilson’s Second Draft or First Paris Draft, 10 January 1919 with comments and suggestions by Hunter Miller: Covenant’, p.87.

76 E.g. the Provisional Government of Lithuania: ‘Lithuanian Delegation to Woodrow Wilson, 23 Jan. 1919’, WWPL, accessed 25 February 2011, [wwl2.dataformat.com/Document.aspx?doc=30992](http://wwl2.dataformat.com/Document.aspx?doc=30992); Manela 2007, p.196.

*mattered*, and could affect how the war developed and the extent to which popular demands were met. His international wartime pronouncements took shape in awareness of the possible impact of his discourse. As mentioned, in referring to ‘self-determination’ in the first place, Wilson was probably influenced by US apprehensions of the Bolsheviks’ ideological appeal, and the possibilities of a Russian withdrawal from the war. In downplaying ‘self-determination’ in favour of ‘consent of the governed’, it is likely that Wilson had in mind his country’s relations with other parties in the war.

Take the US relationship with Austria-Hungary. Until at least spring 1918, the US side had hoped to conclude a separate peace with that multi-national empire, which a clear reference to ‘self-determination’ would risk jeopardising.<sup>77</sup> On the other hand, advocating ‘self-determination’ to that enemy territory might have incited rebellion among Austria-Hungary’s diverse populations,<sup>78</sup> a development urged on by the British and by the US Commission of the Inquiry.<sup>79</sup> The latter had directly recommended a policy of first ‘stirring up of nationalist discontent, and then [...] refusing to accept the extreme logic of this discontent, which would be the dismemberment of Austria-Hungary.’<sup>80</sup> In this light, ‘consent of the governed’ appears to have been advocated as a middle-ground compromise between silence and ‘self-determination’.

Also America’s relationship with its Allies called for softening Wilson’s discourse of ‘self-determination’. At the time when the US President publicly used this language in 1918, Lenin had internationally associated ‘self-determination’ with colonial liberation and anti-imperialism. Meanwhile the Allies ruled vast territories and hoped to expand even

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77 See Lansing’s ‘Memorandum on the Policy of the United States in Relation to Nationalities Included within the Austro-Hungarian Empire’, June 1918, quoted in Mamatey 1957, p.267. See also pp.56–57, 107. Mamatey claims this policy changed when Lansing on 29 May 1918 expressed America’s ‘earnest sympathy’ with the ‘nationalistic aspirations for freedom’ of the Czecho-Slovaks and Jugo-Slavs [sic], p.261. See also Dragan Zivojinovic: *America, Italy and the Birth of Yugoslavia*, Columbia University Press, New York, 1973.

78 See also Pomerance 1982, p.12. On 29 May 1918, US officials said that they had followed with great interest ‘the Congress of Oppressed Races of Austria-Hungary’ held in Rome that April. Charles G. Fenwick: ‘Jugoslavic National Unity’, *American Political Science Review*, 12(4), 1918b, pp.718–721, at p.718.

79 Cablegram from Balfour to House, 27 February 1918, House 1928, Vol.III, p.386.

80 PWW 1984, Vol.45, pp.459, 463.

further. Britain and France had no plans of granting independence to their 'subject peoples', and already viewed with suspicion Wilson's principles and proposals.<sup>81</sup> In this setting, overly clear US promotion of 'self-determination' might have upset US–Allied relations. Consequently, in the autumn of 1918, an official US, Wilson-approved<sup>82</sup> commentary to the Fourteen Points urged Britain and France not to worry that 'self-determination' would affect their colonial possessions.<sup>83</sup> Soon after, the Allies hesitantly agreed to make peace based on the Fourteen Points 'and the principles of settlement enunciated in [Wilson's] subsequent address'.<sup>84</sup> Although these principles included self-determination,<sup>85</sup> the Allies certainly did not approve of any version of the concept that would open for colonial independence.<sup>86</sup>

By the time of the Paris Peace Conference, then, Wilson's appropriation of 'self-determination' seemed to have made the concept compatible with colonialism.<sup>87</sup> Having legitimised his discourse with reference to values of order, peace and non-interference with states, Wilson accepted colonial rule, too, as long as it did not challenge these standards. At the Paris Peace Conference, colonialism was also perpetuated in practice, with actual territorial settlements moulded according to the national interests of powerful states. The conference created few states that had not existed

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81 Churchill 1929 insisted none of the Allies felt committed to Wilson's programme 'except in general sympathy', p.105; Georges Clemenceau (in *Grandeur and Misery of Victory*, Harrap, London, 1930) seemed annoyed and described the Fourteen Points as a 'purely American idea', p.156. For a similar perspective, see Ansprenger 1989, p.31.

82 House initiated the commentary in preparation for the Peace Conference – where it came to be used in negotiations with the Allies. It was finalised on 29 October 1918 after drafting primarily by Walter Lippman, who had also been Secretary of the Inquiry, House 1928 Vol.IV, pp.156–158 and Churchill 1929, p.106. See also Riga and Kennedy 2006.

83 House 1928 Vol.III: 'Official American Commentary on the Fourteen Points', October 1918, pp.198, 201. See also Churchill 1929, p.106; Seymour 1962, pp.567–558, 571.

84 With reservations regarding 'freedom of the seas', and abstaining from demanding German compensation, André Tardieu: *The Truth about the Treaty*, Bobbs-Merrill, Indianapolis, IN, 1921, p.71. The Allies' statement came in reply to 'President Wilson's consent to propose an armistice to the Allies', Department of State, Washington, DC, 23 October 1918, in Scott 1921, pp.434–436.

85 France did indeed cite 'self-determination' in its 'plan of procedure' for the Paris Peace Conference, Tardieu 1921, p.88.

86 Clemenceau later denied that the Allies ever aimed at any 'liberation program': Mayer 1959, p.184; also De Groot 2001, pp.197, 193. For an unconvinced British attitude to Wilson's principles, see TNA: FO 608/41, 503, Peace Conference (British Delegation) Files 97/1/22 to 98/1/2 (To PP.18113), 1919, from Herron on 30 April 1919, Geneva.

87 See the discussions documented in DHM 1928, Vol.I–II.

before the war had ended,<sup>88</sup> and left large, dissatisfied minorities outside what they saw as their ‘mother’ countries.<sup>89</sup> Some of these were granted minority rights within existing states, at the expense of a state of their own.<sup>90</sup>

Even Wilson seemed oddly uncommitted to ‘self-determination’ at Paris. He certainly did not act on the concept as its proponents had hoped, and was especially sceptical to boundary changes.<sup>91</sup> During the war, populations worldwide had seen Wilson as the personified promoter of self-determination,<sup>92</sup> and the ‘icon of their aspirations’.<sup>93</sup> It was to him they had directed their pleas for freedom with letters, visits and petitions.<sup>94</sup> However, he was to provide little assistance.<sup>95</sup> Having presented his ‘scientific’ positions in advance, new claims left him cold.<sup>96</sup> Wilson had legitimised ‘self-determination’ as the servant of peace, international order and non-interference in the affairs of states. To him, it was not in *itself* an imperative principle of action. At the Paris Peace Conference, he rather chose to work for a *League of Nations* as his preferred path to peace.

Perhaps by the time of the Paris Peace Conference, Wilson regretted that his

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88 See e.g. Hannum 1996 pp.28, 30. Against this, it has been claimed that: ‘Never before had so many nation-states been created at one time in the name of the right of self-determination.’ Paul Gordon Lauren: *The Evolution of International Human Rights: Visions Seen*, University of Pennsylvania Press, Philadelphia, PA, 2011, p.99.

89 See in particular Mamatey 1957; Temperley 1921, Vol.V, pp.112–132, as well as Vol. I–VI, 1920–1921; and ‘The Application of Self-determination in the Peace Treaties of 1919’ pp.57–84 in Cobban 1969; and Seymour 1962.

90 Liliana Riga and James Kennedy: ‘Tolerant Majorities, Loyal Minorities, and “Ethnic Reversals”: Constructing Minority Rights at Versailles 1919’, *Nations and Nationalism*, 15(3), 2009, pp.461–482, especially pp.463–464. For a perspective on the war’s end in terms of international power relations, see Paul M. Kennedy: ‘The First World War and the International Power System’, *International Security*, 9(1), 1984, pp.7–40.

91 See Lloyd E. Ambrosius: *Wilsonianism: Woodrow Wilson and His Legacy in American Foreign Relations*, Palgrave Macmillan, New York, 2002, p.131.

92 See e.g. Ivo J. Lederer: *Yugoslavia at the Paris Peace Conference: A Study in Frontiermaking*, Yale University Press, New Haven, CT, 1963, p.25.

93 Manela 2007, p.4.

94 William Allen White: *Woodrow Wilson: The Man, His Times and His Task*, Houghton Mifflin, Boston, 3rd edition, 1925, p.388.

95 See also Manela 2007 concerning the Koreans, pp.123–127; Egyptians, p.153; India, p.166.

96 For one example, see the case of Indian and Turkish representatives described in Grayson’s diary entrance from the Peace Conference, 17 May 1919, WWPL, accessed 21 February 2011, [ww12.dataformat.com/Document.aspx?doc=30940](http://ww12.dataformat.com/Document.aspx?doc=30940). See also the records from February 6, 1919 cited in House 1928, Vol.IV, p.322, and DHM 1928, Vol.I, pp.158, 165, on India and self-government. The claim in Seymour 1962, p.569 that Wilson had strong ‘emotional sympathy for the weaker nationalities struggling for freedom’ thus seems questionable. Also House later expressed annoyance with smaller entities’ claims to self-determination, see House 1921, p.431.

wartime language of ‘self-determination’ had been interpreted globally as a promise of full freedom. Shortly before the conference, Wilson reportedly said to his propaganda chief, who had distributed his speeches internationally:

I am wondering if you have not unconsciously spun a net for me from which there is no escape. It is to America that the whole world turns to-day, not only with its wrongs, but with its hopes and grievances. The hungry expects us to feed them, the roofless look to us for shelter, the sick of heart and body depend upon us for cure. [...] What I seem to see – with all my heart I hope that I am wrong – is a tragedy of disappointment.<sup>97</sup>

Wilson’s clearest expression of disquiet at having ever referred to ‘self-determination’ has been misattributed to a ‘speech’ he is said to have given to the US Senate on 19 August 1919,<sup>98</sup> or a ‘written statement’ supposedly sent Congress ‘in late 1919’.<sup>99</sup> The actual statement in question was recorded at a meeting with Irish representatives in Paris on 11 June 1919, and was submitted to the US Senate Committee on Foreign Relations on 30 August 1919.<sup>100</sup> While it is not clear whether the conversation was taken down verbatim or paraphrased, the record had the Irish representatives saying that Wilson had spoken for countless of peoples when he had ‘uttered those words declaring that all nations had a right to self-determination’. In response, Wilson purportedly bemoaned the unforeseen consequences of his discourse: ‘When I gave utterance to those words, I said them without the knowledge that nationalities existed, which are coming to us day after

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97 Creel 1920b, p.163. See also Baker 1922, Vol.I, p.7.

98 Tim Potier: *Conflict in Nagorno-Karabakh, Abkhazia and South Ossetia: A Legal Appraisal*, Lower Law International, The Hague, 2001, p.23; Cassese 1995, p.22, n.33, referring to Temperley 1921, Vol.IV. Temperley 1921, Vol.IV, p.429, does not in fact suggest that Wilson made a speech that day, but Temperley (1920 Vol.III, p.66) claims that a ‘discussion between President Wilson and the Senate Foreign Relations Committee’ took place on 19 August 1919. Cassese’s reference seems to have conflated the two events.

99 Joan Hoff: *A Faustian Foreign Policy from Woodrow Wilson to George W. Bush: Dreams of Perfectibility*, Cambridge University Press, Cambridge, 2007, p.49.

100 US Senate: ‘Interview between President Wilson and Messrs. Edward F. Dunne and Frank P. Walsh, at the President’s House, 11 Place des Etats Unis, Paris, Wednesday, June 11, 1919’ submitted by Walsh to Hearings before the Committee on Foreign Relations, US Senate, 66th Congress, First Session: ‘On the Treaty of Peace with Germany, signed at Versailles on June 28, 1919, and submitted to the Senate on July 10, 1919, by the President of the United States’, Government Printing Office, Washington, DC, 1919, Document 106, from Saturday 30 August 1919, p.838.

day.’<sup>101</sup>

Such concern for the real-life potency of his language sits ill with views of Wilson as the true champion of ‘self-determination’. A firm belief in the concept would logically have implied seeking to spread and realise it. Alarm at its potential impact would seem to indicate weak commitment. Might Wilson’s infrequent and ambiguous references to ‘self-determination’, and his apparent disinterest in the concept at Paris, be explained by lack of devotion, even remorse? However, he never explicitly stated in public that his language of ‘self-determination’ had been misunderstood, or that that he should not have used it.<sup>102</sup>

What seems more likely is that Wilson came to realise that his words had been received differently than he intended: *his* understanding of ‘self-determination’ was not really what he had internationalised. When Wilson had spoken of ‘self-determination’ to an international audience, Lenin’s radical concept of freedom as equality for all peoples – including colonies – was generally associated with that language. Wilson responded to Lenin’s discourse by addressing statesmen with the language of ‘self-determination’, and by legitimising the concept with reference to standards of peace, order and non-interference. He had hoped that political leaders would act on self-determination to prevent disorder and ensure lasting stability. Certainly he had not sought to encourage peoples to undertake their own liberation in unpredictable or potentially disruptive ways. Instead of boosting his cherished values, however, Wilson’s internationalisation of ‘self-determination’ came to spark aspirations of freedom far beyond his intentions.

This perspective would make sense of an apparent paradox from the meeting with the Irish representatives in Paris. Later in that meeting Wilson reportedly expressed a remorse in seeming contradiction to his statement above, apparently still on the topic of ‘self-determination’: ‘I wish that you would bear in mind that I came here with very high hopes of carrying out

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101 Ibid.

102 Throntveit 2011b, p.478. See also US Senate 1919, p.838; Baker 1922, Vol.II, p.107; Baker 1989, p.21.

the principles as they were laid down. I did not succeed in getting all I came after.’<sup>103</sup> While the first statement, cited above, had Wilson worried that he did too much by mentioning self-determination at all – with the second, he expressed that he had done too *little* by not implementing the principle as he had hoped.<sup>104</sup> Perhaps it was not the language of ‘self-determination’ as such, that he regretted, but rather the realisation that it now appeared to be peoples and not their leaders who were acting on it.

Wilson revealed his complex attitude to the language of ‘self-determination’ also in another non-public utterance. His desire to create a League of Nations is well known, with French Prime Minister Georges Clemenceau describing it as Wilson’s ‘motor’.<sup>105</sup> And Wilson’s first draft of a League Covenant, of 7 September 1918, did cite ‘self-determination’ – although as a principle conditional on world peace:

The Contracting Powers unite in guaranteeing to each other political independence and territorial integrity; but it is understood between them that such territorial readjustments, if any, as may in the future become necessary by reason of changes in present racial conditions and aspirations or present social and political relationships, *pursuant to the principle of self-determination*, and also such territorial readjustments as may in the judgement of three fourths of the Delegates be demanded by the welfare and manifest interest of the peoples concerned, may be effected, *if agreeable to those peoples*; and that territorial changes may in equity involve material compensation. The Contracting Powers accept without reservation the principle that the peace of the world is superior in importance to every question of political jurisdiction or boundary.<sup>106</sup>

It was Wilson’s advisor House who had planted the language of ‘self-determination’ in this draft article of the Covenant, and the above paragraph was virtually copied from one House had produced.<sup>107</sup> For a long time,

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103 US Senate 1919, p.838.

104 See also Baker 1922, Vol.II, p.107; Baker 1989, p.21.

105 Clemenceau 1930, p.161. See also Ambrosius 2008, p.229, and Stevenson 1991, p.245.

106 DHM 1928, Vol.II, Document 3: ‘Wilson’s First Draft: Covenant’, pp.12–13, emphasis added. Three months later, Wilson reportedly argued that territorial adjustments should be considered only ‘in time as passion subsided’: House 1928, Vol.IV, p.292. See also Temperley 1920 Vol.III, p.56: ‘Revision of the Text of the Covenant of the League’; PWW 1986, Vol.53, p.655, note 1; DHM 1928, Vol.I, p.15.

107 Wilson had formulated a generally worded request for such a draft after the British ‘Philimore report’. House’s draft was sent to Wilson on 16 July 1918. House 1928, Vol.IV, pp.22, 27, 34 and DHM 1928, Vol.II, Document 2: ‘Suggestion for a Covenant of a League of Nations’, p.10, and DHM 1928, Vol.I pp.12, 14–15. The second



Wilson kept secret the drafts that cited ‘self-determination’.<sup>108</sup> When Lansing and Wilson’s advisor David Hunter Miller found out about the concept’s inclusion, they objected strongly: ‘self-determination’ would only bring destabilisation.<sup>109</sup> Foreshadowing many later efforts to hush calls for self-determination as statehood by offering ‘internal’ or human rights instead, Hunter Miller then suggested replacing ‘self-determination’ in the Covenant with certain minority rights provisions.<sup>110</sup>

Reacting to such protestations, Wilson then softened the draft Covenant’s reference to ‘self-determination’ by introducing a provision allowing states to veto any future territorial adjustments.<sup>111</sup> When in later drafts, ‘self-determination’ was dropped altogether, there is no evidence that Wilson objected.<sup>112</sup> He certainly did not fight for including the language of ‘self-determination’ in the Covenant which he deemed so vital for the post-war order.<sup>113</sup> During the drafting process, ‘self-determination’ was first replaced with ‘consent of the governed’,<sup>114</sup> before this too was removed.<sup>115</sup> Eventually, the relevant Article (X) of the final Covenant simply stated:

The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation

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emphasis was Wilson’s only substantial addition to House’s draft – other amendments were minor. Wilson presented the draft to his Paris commissioners with only slight amendments. PWW 1986, Vol.53, pp.655–656. Cooper 2009, p.651, note 28, erroneously suggests that Wilson wrote House’s draft.

108 According to DHM 1928, Vol.I p.14, only Wilson and House had copies. See also John Milton Cooper: *Breaking the Heart of the World: Woodrow Wilson and the Fight for the League*, Cambridge University Press, Cambridge 2001, p.30.

109 Lansing 1921, p.85. DHM 1928, Vol.II, p.70 and DHM 1928, Vol.I, p.52 – Hunter Miller produced a paper with his objections, p.45.

110 On 10 January 1919 DHM 1928, Vol.II, p.70.

111 In his draft of 20 January 1919, *ibid.*, Document 9, p.99. See also Riga and Kennedy 2006 and 2009; Throntveit 2011b, pp.445–446.

112 See the records in DHM 1928, Vol.II, especially Document 7, with Hunter Miller’s comments to the article, p.70; as well as Document 8, p.94; Document 12: ‘Cecil-Miller Draft, January 27, 1919’, p.134; and Document 14: ‘Wilson’s Fourth Draft or Third Paris Draft, February 2, 1919’, p.146. House regretted the removal of the ‘elasticity’ of the original formulation, House 1928, Vol.IV, p.35.

113 Neither did he refer to the concept when explaining the article above to contemporaries, according to the Bowman memorandum of December 1918: House 1928, Vol.IV, p.292.

114 On the suggestion of Hunter Miller, DHM 1928, Vol.II, p.87. See also Document 11, p.119, with the same suggestion made by Lord Eustace Percy.

115 DHM 1928, Vol.I, p.71.

shall be fulfilled.<sup>116</sup>

Wilson had thus had the opportunity to codify ‘self-determination’ in the League Covenant, but had chosen not to.<sup>117</sup> In consequence, even after Wilson’s internationalisation of ‘self-determination’ and his broadening of the concept’s appeal, it remained a non-legal term. While Wilson did enhance the *political* power of the language of ‘self-determination’, he did not make it part of international law, and he left it without any formalised implementation options.

Looking back, it seems that even Wilson’s most empathic use of the language of ‘self-determination’, in the Four Principles speech had some reservations. In that address, as part of a verbal attack on Germany and Chancellor Georg van Hertling, Wilson had asked:

Is Count von Hertling not aware that he is speaking in the court of mankind, that all the awakened nations of the world now sit in judgment on what every public man, of whatever nation, may say on the issues of a conflict which has spread to every region of the world?

It was this ‘court’, Wilson had said, which had spoken out against annexations and indemnities, and had decided that: “‘Self-determination’ is not a mere phrase. It is an imperative principle of action, which statesmen will henceforth ignore at their peril.”<sup>118</sup> So even in what was his strongest expression of ‘self-determination’ Wilson distanced himself somewhat from the concept by presenting it as a preference of the ‘court of mankind’ – that is, as an external actor’s concept. Moreover, he conveyed that the purpose of mentioning ‘self-determination’ at all had been to show that van Hertling was ignoring it, rather than to positively endorse the concept himself. And finally, the address came eight days after US diplomat William Bullit had advised Wilson to use the language of ‘self-determination’ against the Central Powers – and four days after Wilson had received a memorandum

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116 League of Nations: Covenant (Including Amendments adopted to December, 1924), Avalon Project, accessed 8 February 2011, [avalon.law.yale.edu/20th\\_century/leagcov.asp](http://avalon.law.yale.edu/20th_century/leagcov.asp).

117 See also Throntveit 2011b, pp.445–446.

118 Wilson 1918: ‘Four Principles’.

on the striking German workers demanding ‘self-determination’.<sup>119</sup> On closer inspection, then, his Four Principles reference to ‘self-determination’ appears both reactive and rather disengaged.

Wilson’s second and arguably also final key public mention of ‘self-determination’<sup>120</sup> was remarkably similar to that of the Four Principles. Two months after that address, Wilson cited ‘self-determination’ in his ‘Force to the Utmost’ speech to a US regiment armoury in Baltimore. At that point, his statements were being spread worldwide, and a global audience eagerly awaited his words. In ‘Force to the Utmost’, Wilson attacked what he called Germany’s ‘programme’. Within that ‘programme’, he claimed, ‘our ideals, the ideals of justice and humanity and liberty, the principle of the free self-determination of nations, upon which all the modern world insists, can play no part’.<sup>121</sup> Neither on this occasion did Wilson actively promote the language of ‘self-determination’ as integral to his own ‘programme’: he employed it reactively to undercut a wartime opponent.

Perhaps the most important tensions in Wilson’s discourse of ‘self-determination’ surfaced when he linked it to a notion of *equality*. Like Lenin before him, Wilson drew upon some ideal of equality when talking about self-determination.<sup>122</sup> But unlike Lenin, Wilson seemed to value equality only as part of a vision of orderly peace. For instance, in the Fourteen Points, Wilson presented his aim as being a peace based on peoples’ ‘right to live on equal terms of liberty and safety’.<sup>123</sup> In the same speech, he espoused ‘equality of trade conditions’ for peaceful states, a message repeated in the Four Principles.<sup>124</sup> And in ‘Force to the Utmost’, Wilson declared himself ready for ‘a peace in which the strong and the weak shall

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119 Cited in correspondence from Gordon Auchincloss, PWW 1984, Vol.46, pp.227, 266.

120 Wilson did cite ‘self-determination’ on later occasions, including in the 1919 ‘Pueblo Speech’, but then only in passing, and when arguing for the League – not ‘self-determination’. Mentions beyond these were even less consequential: see his September 1919 session with the San Francisco Labor Council and his conversation with Grayson on 8 December 1918; Grayson’s ‘Peace Conference Diary Entry’, WWPL, accessed 7 March 2011, [ww12.dataformat.com/Document.aspx?doc=27740](http://ww12.dataformat.com/Document.aspx?doc=27740).

121 Wilson 1918: ‘Force to the Utmost’.

122 Wilson 1918: ‘Four principles’; ‘Force to the utmost’. See also 1917: ‘Peace without Victory’.

123 Wilson 1918: ‘Fourteen Points’.

124 Wilson 1918: ‘Four Principles’.

fare alike.’<sup>125</sup>

But Wilson incorporated the value of ‘equality’ in his ‘self-determination’ discourse with only certain agents in mind, and with a narrower range of application than Lenin.<sup>126</sup> To Lenin, the ideal of equality pertained broadly to nations and peoples, also those without political power at a given time. Wilson, on the other hand, using the vocabulary of his times, mostly referred to the equality of ‘nations’, which today would denote *states*. Furthermore, Wilson praised states’ equality only as a means to peace,<sup>127</sup> and understood it as their equal right to be free from interference in their political and commercial affairs.<sup>128</sup>

Also in occasionally referring to ‘peoples’ and ‘nations’ more broadly, Wilson would disqualify for equal self-determination any group he did not find fit. Although he has been said to have had ‘a passionate faith [...] in the higher nature of the people!’,<sup>129</sup> he did not extend this faith to all peoples. Favouring established, stable order, Wilson would consider for self-determination only those groupings that could handle the concept responsibly, maturely and in an orderly way.<sup>130</sup> Instead of proposing the equal spread of self-determination to all sorts of people, Wilson called for controlled arrangements benefiting international stability. Importantly, this

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125 Wilson 1918: ‘Force to the Utmost’.

126 Also in his domestic politics, the commitment to equality seemed dubious: see e.g. Wilson ‘An Address at New Rochelle, New York,’ 27 February 1905, when he criticised labour unions’ drive for equality, claiming that ‘they drag the highest man to the level of the lowest’, in PWW 1974, Vol.16, p.15. Wilson also opposed equal rights for non-whites, Manela 2007, pp.26–29. The impact of racial thinking on Wilson’s policy and political thought has been of some interest to scholars, with one recent study directly calling him ‘racist’, Gary Gerstle: ‘Race and Nation in the Thought and Politics of Woodrow Wilson’, pp.93–124 in Cooper 2008, p.115. See also Siba N’Zatioula Grovogui: *Sovereigns, Quasi sovereigns, and Africans: Race and Self-determination in International Law*, University of Minnesota Press, Minneapolis, MN, 1996, pp.120–121. Scepticism towards certain ‘races’ as well as towards mass democracy was widespread at the time; for an overview see Richard Bellamy: ‘The advent of the Masses and the Making of the Modern Theory of Democracy’, pp.70–103 in Cambridge 2003.

127 Wilson 1916: ‘Address’; 1918: ‘Fourteen Points’. See also House’s diary of 15 August 1918, House 1928, Vol. III, p.49; Killen 1982, p.67.

128 See e.g. Wilson 1917: ‘Peace without Victory’.

129 Baker 1922, Vol.I, p.103. See also Link 1957, p.14 and Edith Benham’s diary notes, 10 January 1919, in PWW 1986, Vol.53, p.707–709. See also Wilson 1919: *The State* e.g. p.27.

130 Wilson outlined these elements of his political thinking in his 1919 (originally 1889) *The State*, as well as in ‘The Modern Democratic State,’ an essay he wrote in 1885, reproduced in PWW 1968, Vol.5, see pp.90 and 92 in particular.

shows that although Wilson was more occupied than Lenin with the internal characteristics of a possible self-determination ‘unit’, both men understood the concept in primarily civic rather than ethnic terms.

Even with regard to his expressed formal ideal of equality between *states*, Wilson’s statements were ambiguous. Most noticeably, he presented some states as ‘more equal than others’, and the USA as the best of all. Apparently, Wilson believed that the USA was outstanding in ‘serving humanity’<sup>131</sup> – and that he himself had a special role in this task.<sup>132</sup> In strong, normative terms, Wilson declared that the power of the USA ‘spr[ang] out of freedom and [was] for the service of freedom’.<sup>133</sup> Only the USA, he said, could ‘redeem the world’.<sup>134</sup> He saw the USA was the war’s sole ‘disinterested’ party,<sup>135</sup> a perspective he also asserted in 1917 when declaring the war aim of a ‘Peace without Victory’.<sup>136</sup> During the war, Wilson saw his and his country’s unique moral purpose manifested by his standing up for a better peace against the old order of secret treaties, annexations, and closed diplomacy.<sup>137</sup> Wilson thus championed US exceptionalism, and not true equality between states.

Moreover, with his wartime statements Wilson expressed the intention of universalising these true and better ‘American values’ – rather than allowing other peoples to develop on their own, equally valid terms. While he maintained, in the Four Principles, that he did ‘not mean that the peace of the world depends upon the acceptance of any particular set of suggestions’,<sup>138</sup> a year earlier, he *had* insisted on such a set of suggestions. Wilson had called for a new world order based on ‘consent of the governed’, freedom of the seas, and arms reduction, before concluding:

These are American principles, American policies. We could stand for no others. And they are also the principles and policies of

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131 Baker 1922, Vol.I, pp.17, 22.

132 For psychological analysis, see Freud and Bullit 1966, pp.197, 226.

133 Wilson 1918: ‘Four Principles’.

134 Wilson 1918: ‘Force to the Utmost’.

135 According to Bowman’s notes, quoted in DHM 1928, Vol.I, p.41.

136 Wilson 1917: ‘Peace without Victory’.

137 Baker 1922, Vol.I, pp.27–29, 100. See also Notter 1937, pp.114–119.

138 Wilson 1918: ‘Four Principles’.

forward looking men and women everywhere, of every modern nation, of every enlightened community. They are the principles of mankind and must prevail.<sup>139</sup>

Whilst espousing such missionary aims, however, Wilson was also heedful of his domestic audience in presenting his foreign policy and the US war effort as being in the country's interest.<sup>140</sup> Throughout the war, he emphasised that US self-interest would be best served through a peace that guaranteed the country non-interference, especially when it came to its free trade.<sup>141</sup> In 1918, he announced that if the war were lost, the Americans' 'own great Nation's place and mission in the world would be lost with it.'<sup>142</sup> His stated convictions might well here have been genuine, but he must also have kept in mind a Republican US Congress wary of entanglement in the complex affairs of the world.<sup>143</sup>

### **Wilson's 'Self-determination' in Practice**

A similarly tension-ridden ideal of 'equality' surfaced on the field of Wilson's actual self-determination policies. Due to the concept's close association with its perceived originator, these policies, too, would become part of the international image of 'self-determination'.<sup>144</sup> Besides disregarding actual peoples who invoked the concept, Wilson wrote off Africans in Germany's colonies as 'barbarians' unfit for self-determination.<sup>145</sup> In Europe, he expressed similar attitudes concerning the Irish and Albanians. The next chapter examines the Albanian case, which offered an international opportunity to implement Wilson's vision of self-determination. As for the Irish, their representatives asked Wilson for support at a meeting at the White House in early 1918, but he remained

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139 Wilson 1917: 'Peace without Victory'.

140 See Ambrosius 2002, p.122.

141 Before the US war entry, in Wilson's 1915: 'State of the Union'; after, in 1917: 'Peace without Victory'.

142 Wilson 1918: 'Force to the Utmost'.

143 See references to Republican criticism in Creel 1920b; Wilson 1939, p.187; Manela 2007, p.56.

144 See also the recollections of American Peace Conference delegates in House and Seymour (eds.), 1921.

145 As expressed in South African Prime Minister Jan Smuts' proposal, finalised on 16 December 1918, which Wilson excitedly received on 26 December, DHM 1928, Vol.I, pp.34, 28; see PWW 1986, Vol.53, p.515, note 1. See also Hunter Miller's 'Summary Observations' on Smuts' Plan to the American Commissioners, 13 January 1919 in DHM 1928, Vol.I, pp.35–36, and J. C. Smuts: *The League of Nations. A Practical Suggestion*, Hodder & Stoughton, London, 1918.

unmoved.<sup>146</sup> Later he allegedly confessed that the Irish had made him ‘very angry’, and ‘that he had wanted to tell them (the Irish) to go to hell’.<sup>147</sup> Wilson seems to have dismissed as irrelevant Irish non-consent to the rule of Britain – a country that happened to be an important US ally.<sup>148</sup>

Wilson’s language of equality was thus tempered by his conflicting view that only the sufficiently enlightened counted in politics.<sup>149</sup> He saw equality as a standard applicable primarily to ‘free states’, who proved their maturity by peacefully adhering to the law.<sup>150</sup> Agents who conducted themselves unlawfully, by contrast, threatened to imperil stable order, and hence did not deserve equal recognition.<sup>151</sup> In 1917, Wilson stated that equality had to be ‘gained’ in a peaceful and gradual manner.<sup>152</sup> He saw such a conditional approach to equality as necessary for the sake of peace – the only standard he recognised as meriting unreserved endorsement. At the end of the First World War, a similar reasoning materialised when diplomatic recognition of newly independent states was made conditional on their adoption of specific minority rights treaties.<sup>153</sup>

Disinclined to policies of unconditional equality and statehood for the ‘unqualified’, Wilson in late 1918 found in the *mandate system* a worldwide guarantee for what he saw as moral and orderly governance.<sup>154</sup> The system

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146 ‘An Address and a Reply’, 10 January 1918, in PWW 1984, Vol.45, pp.559–561. See also Wilson’s replies to the San Francisco Labor Council in September 1919, op.cit.

147 DHM 1928, Vol.I, p.294. See also Joseph P. Tumulty: *Woodrow Wilson as I Know Him*, The Echo Library, Fairford, 2006, p.264.

148 See also Ambrosius 2002, p.119–122.

149 For his political outlook on these issues, see his *The State* (1919); as well as Throntveit 2011b, especially p.470; Notter 1937, pp.69–71; Steigerwald 1989, p.473.

150 See his first draft Covenant in House 1928, Vol.IV, p.27–28. See also Notter 1937, p.61; House’s letter to Lord Robert Cecil of 25 June 1918, House 1928, Vol.IV, p.18.

151 See Link 1971, especially ‘Woodrow Wilson and his Presbyterian Inheritance’, pp.3–20. With the same reasoning, Wilson suggested that ‘self-determination’ should not (at least not immediately) apply to German-speaking Austria, Grayson’s notes of 8 December, 1918, op cit., and PWW 1986, Vol.53, pp.336–340, especially p.339. Shipway 2008 notes that Germany, for similar reasons, was regarded as unfit to be a colonial power.

152 Wilson 1917: ‘Peace without Victory’. The British expressed the same attitude, e.g. regarding prospects for Egyptian self-rule in Minute High Commissioner, Egypt, 11 May 1922, TNA: FO 141/790, no 14549/1. See also Ambrosius 2002, p.127.

153 Concretely, Bulgaria, Czechoslovakia, Greece, Hungary, Poland, Romania, Turkey and Yugoslavia. For a criticism of this practice, see Riga and Kennedy 2009. See also Jan Herman Burgers: ‘The Road to San Francisco: The Revival of Human Rights Idea in the Twentieth Century’, *Human Rights Quarterly*, 14, 1992, 447–477, at pp.449–450.

154 See Wilson’s reasoning as recorded in DHM 1928, Vol.II, Document 18: ‘The Council of Ten, January 30, 1919’, pp.196–197.

would effectively become the chief policy materialisation of his concept of self-determination. Its final codification in the League of Nations Covenant meant that the mandate system would give the League sovereignty and ‘right of ultimate disposal’ over peoples formerly under Russian, Ottoman and Habsburg rule, with a specific League member acting as mandatory for each mandate.<sup>155</sup> In the words of the Covenant, such peoples should be governed as mandates for ‘not [being] able to stand by themselves under the strenuous conditions of the modern world’.<sup>156</sup>

Wilson’s promotion of the mandate system had been inspired by South African Prime Minister Jan Smuts’ ‘Practical Suggestion’ for a League of Nations.<sup>157</sup> This ‘Smuts plan’ categorised peoples according to their (in)ability for self-rule, finding some altogether lacking, and others in need of ‘much nursing’ to achieve it.<sup>158</sup> With reference to ‘self-determination’, Smuts had claimed that the ‘genius of Western civilization’ had a special responsibility for the post-war world.<sup>159</sup> When reading Smuts’ proposal, Wilson had reportedly been ‘[d]eeply impressed with the idea that it was the moral duty of the great and enlightened nations to aid the less fortunate and especially to guard the nationalities freed from autocratic rule until they were capable of self-government and self-protection.’<sup>160</sup> He had then incorporated the system into his own drafts of the League of Nations Covenant.<sup>161</sup>

The President’s collaborators sanctioned the incorporation of the mandate system in the Covenant. The system was spoken of as offering guardianship

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155 Smuts 1918, p.12. The official US commentary to the Fourteen Points had outlined a similar system, proposing that colonial powers should act ‘as trustee(s) for the natives and for the interests of the society of nations’, House 1928, Vol.III, p.202.

156 Wilson had himself included this formulation in several of his Covenant drafts; see e.g. DHM 1928, Vol.II, Document 14, p.151–152.

157 The proposal was much discussed among the Allies in late 1918: see Smuts 1918; Curry 1961, especially p.975; N. Gordon Levin: *Woodrow Wilson and World Politics: America’s response to War and Revolution*, Oxford University Press, 1968, p.186; Thomas J. Knock: *To End All Wars: Woodrow Wilson and the Quest for a New World Order*, Oxford University Press, New York, 1992, p.202. For Smuts’ later influence on the establishment of the UN, see Mazower 2009.

158 Smuts 1918, p.11; DHM 1928, Vol.II, Document 5: ‘The Smuts Plan: The League of Nations. A Practical Suggestion’, p.26.

159 As cited in DHM 1928, Vol.II, pp.26–27.

160 Lansing 1921, pp.142–143.

161 In the first instance applied to the former German colonies, DHM 1928, Vol.II, p.40. Churchill 1929 remarked: ‘This was carrying a sound principle too far’, p.150.



of the uncivilized, within which the enlightened, ‘advanced nations’<sup>162</sup> would protect the immature peoples, and the world as a whole, against the destabilising potential of such peoples.<sup>163</sup> However, although the mandate system was legitimised with reference to peace for all, it seemed to serve primarily one side of the equation. In the final Covenant, scant influence was left to the mandated peoples,<sup>164</sup> while all League members could exploit the mandates’ resources in line with the ‘open door’ principle.<sup>165</sup> Lansing later explained that allied countries’ support for the system was driven by hopes of dividing Germany’s colonies between them without reducing their indemnities.<sup>166</sup>

Internationally, the mandate system became directly associated with Wilson’s concept of ‘self-determination’. At the 1919 Paris Peace Conference, non-self-governing peoples destined for the system queried Western powers about its implications,<sup>167</sup> and asked Wilson what, if any, differences there were between the mandate system and ‘self-determination’.<sup>168</sup> Wilson merely responded enigmatically: ‘In every instance the mandate should fit the case as the glove fits the hand’.<sup>169</sup> Later, he said that the system would benefit the mandated peoples, helping them develop gradually towards ‘full membership in the family of nations’, for the sake of peace.<sup>170</sup> Wilson seemed to view its role along the lines of how he saw his own and the USA’s standing in the world: Embodying and executing peoples’ interests and will, regardless of their expressed

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162 League of Nations Covenant, Article XXII.

163 See Churchill 1929 p.139; Lloyd George on 30 January 1919, quoted in DHM 1928, Vol.II, Document 18, pp.194–195.

164 As suggested by Smuts 1918, p.19. The final Covenant’s Article XXII allows only peoples formerly under parts of the Ottoman Empire to be consulted on issues regarding ‘their’ mandatory power.

165 Wilson praised this in conversation with Bowman in December 1918, House 1928, Vol.IV, p.293. The US commentary to the Fourteen Points had claimed this would be in the mandates’ interest, House 1928, Vol.IV, p.201.

166 Lansing 1921, p.140.

167 E.g. at the Council of Ten meeting on 30 January; see questions from Australia, DHM 1928, Vol.II, Document 18: ‘The Council of Ten, January 30, 1919’, p.202; and at the plenary session on 14 February 1919 – see questions from the Turkish, DHM 1928, Vol.II, p.194. See also pp.23, 561.

168 DHM 1928, Vol.II, pp.196–197.

169 Ibid., p.198.

170 As noted by Grayson 1919. See also the second principle in Wilson 1918: ‘Four Principles’. Using a similar line of reasoning on the domestic front, Wilson argued that segregation would be best for the ‘Negroes’ too, Gerstle 2008, p.109.

viewpoints.<sup>171</sup> Since the mandate system would provide for peoples' peaceful development, it would actually help realise their true freedom.

Presenting mandated peoples as too immature for peaceful political agency, the mandate system that Wilson advocated barred such peoples from any role in their own political, economic or legal affairs. Although a small group of mandates could appeal to the League on certain limited issues, no mandate could dispute the mandatory form of governance. Only the League and the mandatory in charge could decide on possible, eventual self-rule after mandates had organically 'grown up' through indefinite subjugation. Mandated peoples were permitted to consent to the system, but there was no mechanism for registering either their consent, interests or will. Plebiscites – discussed for some post-war settlements – were not at issue regarding mandates.<sup>172</sup> Protecting a stable international order and the mandatories' freedom of unhindered action seem to have been the guiding principles. The system thus codified and institutionalised some of the most conservative elements of Wilson's concept of 'self-determination', although without drawing on this exact language.

## **Conclusions**

Wilson introduced 'self-determination' into the language of high-level international affairs during the First World War. His global appeal ensured both a worldwide audience and a high moral status for the concept. After Wilson's 1918 references to 'self-determination', the concept became not only inherent to international discourse, but also hard to argue against.<sup>173</sup> Wilson connected 'self-determination' to vague but positive ideals of peace, freedom, and equality, making the concept seem like a legitimising standard of its own. Despite having excluded the concept from the League of Nations

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171 See e.g. Wilson in DHM 1928, Vol.II, Document 15: 'Plenary Session of the Peace Conference, January 25, 1919', p.155. See also Notter 1937, p.75 and Pomerance 1982, p.6.

172 Plebiscites were discussed with regard to e.g. Alsace-Lorraine, Fiume (Rijeka), Istria, and Poland: see House 1928, Vol.IV, diary notes from 31 May, 1919, p.487; Baker 1922, Vol.III, Document 65, 'Memorandum of Mr. Lloyd George, entitled, "Some Considerations for the Peace Conference before they finally draft their terms"', 25 March 1919, p.483; PWW 1984, Vol.45, 'From Frank William Taussig', 3 January 1918, p.'441; PWW 1988, Vol.'59, 'Hankey's notes of a meeting of the Council of Four', 13 May, 1919, p.86. See also Temperley 1924, Vol.VI, pp.556–559.

173 See e.g. Füredi 1994, p.10.

Covenant, his discourse hence paved the way for its appearance in the 1920–1921 League of Nations’ Aaland Islands case, and its codification in international law with the 1945 UN Charter. With later international references to ‘self-determination’, the concept would be presented as being *Wilson’s*, and it was the ideas he had associated with it that would prevail when it subsequently appeared.<sup>174</sup>

Wilson’s strong association with the language of ‘self-determination’ would ensure that even parts of his discourse and policies that had not mentioned it directly would become globally affiliated with the concept. This was reinforced by the ambiguity and tensions in his actual ‘self-determination’ references, which allowed for a range of interpretations. However, Wilson’s ambiguities all pointed towards turning self-determination from a radical into a liberal-conservative concept. In scrapping ‘self-determination’ in the League Covenant and implementing the concept through the mandate system, Wilson subordinated it to ideas of predictable order. His preference for stability and mature, ‘deserving’ political agents implanted these features in the international imagination as relevant to ‘self-determination’. And when he cited ‘self-determination’ and ‘consent of the governed’ interchangeably, he suggested that the concept might not require creating new states. With this approach, Wilson also indirectly prepared the ground for the late 20<sup>th</sup>-century scholarly notion of ‘internal self-determination’, which held that the concept could be realised within established states, for the sake of international security.

With its selection of legitimating standards, Wilson’s language effectively co-opted Lenin’s ‘self-determination’ discourse and painted the concept in new colours. Lenin had championed self-determination as an idea of freedom as equality opening for full political independence for different

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174 For an acknowledgement from a time not covered by this thesis, see the statement delivered by Carl Gershman, Counsellor of the US Mission to the United Nations, 9 October 1981: ‘Self-determination and the Soviet Empire’, *World Affairs*; 1981/82, 144(3), pp.229–236, at pp.230–231. For interesting perspectives on Wilson’s legacy in terms of US foreign policy, see Anne-Marie Slaughter: ‘Afterword: Making Democracy Safe for the World’, pp.327–335 in John Milton Cooper (ed.): *Reconsidering Woodrow Wilson: Progressivism, Internationalism, War, and Peace*, Johns Hopkins University Press, Baltimore, MD, 2008, and the whole of Part IV, pp.253-325 in the same book; Wertheim 2011b.

kinds of groups. In concrete cases of self-determination, Lenin would ask *the people* to decide, leaving all options open, including their right to independent statehood. He would approve of their use of violence if this would aid the achievement of his goal of freedom as equality.

Reacting to this radical vision, Wilson's concept of self-determination prioritised stability and organic order. For Wilson, *peace* was the ultimate goal, condition, and legitimising standard of self-determination. In contrast to Lenin's orientation, moreover, Wilson's hazy standard of equality recognised the political agency of only what he considered to be mature bodies politic. His concept of 'self-determination as consent of the governed' allowed state leaders to act without popular consultation, even contrary to the peoples' will – as long as peace and non-interference were maintained. Concerned with statesmen *embodying* a general will, Wilson presented self-determination as a tool that leaders could use to prevent destabilising resistance from emerging. By linking 'self-determination' to an idea of freedom as peaceful non-interference, primarily in the actions of states, Wilson narrowed down the type of freedom the concept would be internationally associated with.

Despite the huge differences between them, both Lenin's and Wilson's concepts of 'self-determination' contained a conditionality 'let-out clause'<sup>175</sup> that accorded with their respective ideologies. For Lenin, implementation of the concept hinged on his ultimate aim of internationalist socialism. It should be up to socialists – and himself in particular – to decide when it might be realised. In terms fundamentally contrasting yet strikingly similar, Wilson would permit self-determination only when it served international peace and the non-interference of the agents that he approved of. It would have to be the enlightened, qualified leaders of the world – his own person especially – that should determine when the proper criteria had been met.

Today, Wilson is seen as the 'father' of 'self-determination'.<sup>176</sup> And undoubtedly, he was critical to the concept's internationalisation. Wilson's

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175 I am grateful to John Breuilly for this formulation.

176 See e.g. Castellino 2000, p.13; Gershman 1981.

ideas, arguments and legitimating standards would recur in all later international appearances of the concept. However, the widespread view that his influence on 'self-determination' totally overshadowed that of Lenin might be due to the predominance of liberal-conservative ideas in subsequent international affairs. Lenin and Wilson alike expanded the political imagination of international affairs with their uses of 'self-determination', leaving all later significant international appearances to echo their discourse and ideas. While Wilson's visions figured most prominently in these subsequent appearances, *both* Lenin's and Wilson's concepts of self-determination contributed to shaping international conceptualisations of freedom.

### **3. ‘SELF-DETERMINATION’ FROM IGNORANCE TO INTERNATIONAL CODIFICATION**

By the end of the First World War, the language of ‘self-determination’ had become a central part of international political discourse, but had not yet been codified in law. This chapter examines selected international understandings of self-determination from the time around the conclusion of the war and up to the legal formalisation of the concept in the 1945 UN Charter. The pre-1945 cases of Albania and the Aaland Islands exemplify how self-determination was conceived of internationally after Wilson’s internationalisation of the concept, but before its legal codification. And the formalisation of the language of ‘self-determination’ in the UN Charter shows how the concept came to be adopted in international law. In investigating these events, the chapter identifies the ideas of freedom used to internationally legitimise arguments and ideas of self-determination.

Already towards the end of the First World War, peoples around the world had started to use the language of ‘self-determination’ to pursue their aspirations for political freedom. The cases of Albania and of the Aaland Islands were both of this kind. Not only are they distinct from each other, the two cases may seem odd in light of today’s common view that a case of ‘self-determination’ usually involves decolonisation. Despite their particularities, however, both concerned radical calls for freedom as the formation of new states – Albania wanted independence, and the Aaland Islands sought unification with Sweden. Both, moreover, appeared on the international agenda at the end of the First World War due to the interests of great powers. The ways the two were handled and argued reflect the internationally prevalent understandings of the concept of self-determination and ideas of freedom at the time.

The Aaland Islands case was significant also for contributing to the UN Charter’s incorporation of the language of ‘self-determination’. When discussing the Aaland Islands in 1920 and 1921, the League of Nations addressed the meaning of ‘self-determination’ and acknowledged the international standing of the concept, although concluding that it did not

apply to the Aaland Islands specifically. By transporting the concept of ‘self-determination’ into the discourse of the most important international institution of the time, the case elevated its status in international affairs and paved the way for its legal codification. Later, in 1945, the UN Charter would make the language of ‘self-determination’ part of international law.<sup>1</sup> Together with its close association with ideas of freedom, the legal authority the concept gained with its inclusion in the Charter lies at the heart of its international importance.

Exploring these understandings of self-determination between 1918 and 1945 makes it clear that Lenin and Wilson had set the terms for the appearances of the concept in international affairs. In each of the three instances covered in this chapter, the legitimating standards of freedom employed by these two men continued to shape international ‘self-determination’ discourse. No new standard of legitimation was used to argue internationally about self-determination: the radical and liberal-conservative ideas of freedom with which Lenin and Wilson had imbued the concept would keep competing to define it. Measured by the League of Nations’ and the UN Charter’s authoritative articulations of ‘self-determination’, the liberal-conservative idea emerged from this period as internationally dominant.

With this chapter, the thesis shifts away from individual political leaders and their use of the language of ‘self-determination’, to utterances in the international institutional forums of the League of Nations and the UN. Moreover, unlike the preceding analyses of the political statements of Lenin and Wilson, the following chapters concentrate on discourse in primarily legal settings. Indeed, the major post-First World War international references to ‘self-determination’ came from state delegates debating legal language on behalf of their countries, or from documents of international law.

As in previous chapters, however, the focus remains on how ‘self-determination’ was referred to in the international public domain at key

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<sup>1</sup> See e.g. Cassese 1995, pp.43, 65.

moments, and how agents sought legitimation for this language with ideas of freedom. My concern is not with whether official statements disclosed the sincerely held opinions of representatives, or whether they effectively served state interests. As explained in the introduction, study of international ‘self-determination’ language presented *in public* can reveal the legitimating standards of international discourse regardless of whether behind-the-scenes rhetoric might have more accurately reflected the ‘real’ intentions of individual agents.

### **Albania and the Aaland Islands**

The case of Albania towards the end of the First World War was not subjected to the same lengthy League of Nations treatment as the Aaland Islands case would be, and it lacked authoritative international mentions of ‘self-determination’. Nevertheless, the international handling of the Albanian question offers insights into how the political meaning of self-determination was understood internationally in the immediate aftermath of Wilson’s utterances.<sup>2</sup> It also provides a background to the later independence claims of largely Albanian-populated Kosovo,<sup>3</sup> to be dealt with in the final chapter of the thesis.

Albania had become independent in 1912, but due to the First World War, the status of Albanians, like that of many other peoples, had become unclear. During the war, Albania had been neutral, but had come under the occupation of several forces, including those of Italy and Serbia.<sup>4</sup> In 1917, the Italians had declared Albania ‘independent’, but under the ‘protection’ of an Italian administration.<sup>5</sup> As explained in the previous chapter, from late 1918 Woodrow Wilson came to champion the mandate system as a realisation of his concept of self-determination. Interestingly, for a period

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2 See also ‘The Clemenceau–Lloyd George Proposals as submitted to the President on the 10th September’, TNA: FO 608/41: 329, 331, 333.

3 Kosovo has not held a complete census since 1981 (results from a 2011 census are still incomplete) but estimates put its population at 92% Albanians, 5.7% Serbs and 2.3 % other minorities, according to Kosovo’s Statistical Office, accessed 10 January 2011 at [www.ks-gov.net/ESK/eng/](http://www.ks-gov.net/ESK/eng/).

4 See e.g. Lederer 1963, p.57.

5 For a wide-ranging analysis of Albanian history over the last hundred years, see Alexandra DeRenzy Channer: *Defeat and Resurrection: A Political History of the Pan-Albanian National Revolutionary Movement 1912–2010*, PhD diss., University of Pennsylvania, 2012.



around the same time, Albania was the only country in Europe (except Eurasian Armenia) that the USA and its allies favoured placing under the mandate system.

The source of the idea of turning Albania into a mandate was the 'Treaty of London', which Britain and France had secretly entered into with Italy in 1915, in order to secure Italy as an ally in the First World War.<sup>6</sup> While not specifying Albania's mandate prospects in precisely the same terms that were later outlined in the influential 1918 Smuts plan, the Treaty of London had given Italy full sovereignty over parts of Albania and mandatory powers over others. The treaty had also divided the remaining Albanian territories between Serbia, Montenegro and Greece, and promised Albanian-populated Kosovo to Serbia, which had occupied Kosovo in 1912.

In discussing territorial settlements resulting from the First World War, Britain and France favoured making Albania an Italian mandate, even though they had recognised Albania as an independent state in 1912. Besides being interested in staying on good terms with the Italians, Britain felt, soon after the war, that 'the internal security' of Albania could 'only be maintained by placing it under the protection of a Great Power'.<sup>7</sup> The British seem to have reached this conclusion partly due to the fact that most Albanians were Muslim, a point that might become a source of instability.<sup>8</sup> According to the British, Muslim 'Orientals' lacked political capacities, and were entitled to fewer rights than 'Europeans'.<sup>9</sup> Such reasoning corresponded with Wilson's ideal of enlightened statesmen establishing stable forms of governance suited to the peoples' capacity levels, for the sake of international peace and non-interference.

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6 Treaty of London, 26 April 1915, accessed 20 May 2012, WWI Document Archive, [http://wwi.lib.byu.edu/index.php/The\\_Treaty\\_of\\_London\\_\(1915\)](http://wwi.lib.byu.edu/index.php/The_Treaty_of_London_(1915)); see Temperley 1921, Vol. IV, pp.278–319.

7 See the British Foreign Office's confidential report 'South Eastern Europe and the Balkans' 13, 1919, TNA: FO 925/30210, p.11.

8 As expressed by the British Intelligence Bureau in its secret 'Memorandum on the Formula of 'the Self-determination of Peoples' and the Moslem World', TNA: FO 608/203, pp.14–15. The document was reportedly authored by Arnold Toynbee on 10 January 1918: see William H. McNeill: *Arnold J. Toynbee: A Life*, Oxford University Press, Oxford, 1989.

9 British Intelligence Bureau 1918, pp.1, 33.

Moreover, there were fears that Muslim self-determination could inspire a Muslim–Bolshevik alliance. In early 1918, a British memorandum had warned that Muslims and Bolsheviks believed themselves ‘to be face to face with the same enemy – namely, “Capitalism”, or in other words the European Middle Class’. Since an alliance between these forces could spark revolutionary disturbance, vigilance towards Muslims everywhere was warranted: ‘Scratch the Tartar and you find the Bolshevik!’<sup>10</sup> Regardless of whether such sentiments were backed by actual realities, fears of the spread of Bolshevik ideology and radical self-determination were prevalent also among Britain’s allies, including the United States.

Also the US administration initially rejected Albanian independence and supported its becoming a mandate of either Italy or Serbia.<sup>11</sup> Without giving any reasons, the US Commission of the Inquiry had in 1918 pronounced: ‘an independent Albania is almost certainly an undesirable political entity.’<sup>12</sup> Throughout 1918 and 1919, the USA continued to reject Albanian self-rule as a matter of unquestioned policy.<sup>13</sup> And although Wilson had established his name globally in part by denouncing precisely such secret treaties as the Treaty of London,<sup>14</sup> he endorsed the London Treaty’s call for an Albanian mandate.<sup>15</sup>

During the spring of 1919, another reason materialised for the Western powers to let Albania fall under an Italian mandate in the name of peace and order. A conflict then arose at the Paris Peace Conference over the city of Fiume (today Rijeka in Croatia) with surrounding territory.<sup>16</sup> The area had a

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10 Ibid., p.17.

11 Lansing 1921, referring to meetings on 21 September 1918, pp.172–173. See also ‘Official American Commentary’, in House 1928 Vol.IV, pp.206, 209.

12 PWW 1984, Vol.45, p.470.

13 An early 1919 British memorandum indicating a difference within US opinion on Albania makes clear that none of the options favoured by the US side included Albanian self-rule. See 10 January 1919 transmission from H. Nicholson, written 9 January 1919, ‘Record of Conversation with Members of United States Delegation regarding Bulgaria, Macedonia, Greeco-Bulgarian Frontier, Thrace, Dobrudja, Albania, Italian Treaty, Greece, Serbia, Constantinople and Asiatic Turkey’, 578 in TNA: FO 608/ 30, Peace Conference (British Delegation) 76/2/8 to 79/1/1 1919, 575.

14 See e.g. the first of Wilson’s 1918 Fourteen Points.

15 As noted by the British Foreign Office, ‘British Delegation, Paris, October 3, 1919, Draft telegram No 1410, Cypher’, TNA: FO 608/41, 49. He had become aware of the treaty in June 1917: Seymour 1962, p.570.

16 See e.g. Mayer 1967, pp.673–716 and Stevenson 1991, pp.283–289. For a contemporary

majority Yugoslav (Croat) population, and the Treaty of London – viewed as the maximalist Italian position – had *not* granted it to Italy. Wilson refuted Italy’s claims to Fiume. Generally sympathetic to Serb and Yugoslav demands for ‘self-determination’,<sup>17</sup> the USA supported the case against Italy. When this triggered a dramatic Italian walkout from the Paris conference, a crisis ensued amongst the allies. In response, Britain and France proposed giving Albania as a mandate to Italy in exchange for it ‘giving up’ Fiume. Wilson, however, soon seemed tired of the whole issue, and confined himself to remarking quietly that the mandate solution *might* mean giving the Italians too much for something that had not really been theirs to begin with.<sup>18</sup>

The allied powers’ well-documented preoccupation with the Italian–Yugoslav crisis did not entail much recorded interest in the Albanians’ own view of their self-determination or mandate prospects.<sup>19</sup> On asking Wilson directly if he could prevent the dismemberment of their country, the Albanians appear to have received no answer.<sup>20</sup> Wilson’s advisor Baker in turn commented on their appeal that everyone turned to the President in their own egoistic interest.<sup>21</sup> The United States’ allies, likewise, dismissed a request of the Albanian President for separate representation at the Paris Peace Conference.<sup>22</sup> Rather than allowing self-determination as statehood to any kind of people, they seem to have acted in line with Wilson’s preference for an orderly peace with friendly, enlightened statesmen in charge of mature, ‘free nations’.

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view on the issues involved in the dispute, see Robert-William Seton-Watson: *The Balkans, Italy and the Adriatic*, Nisbet & Co., London, 1916. His *Absolutism in Croatia*, Richard Clay & Sons, Suffolk, 1912 deals with the Yugoslav question from the perspective of the predicted end to Hungarian rule in Croatia.

17 Lederer, 1963, pp.25, 35.

18 ‘Substance of telegram from Wilson to Mr. Polk’, 22 September (received 2 October) 1919, TNA: FO 608/41: 335 – see also TNA: FO 925/30210, p.3 and p.11; and PWW 1988, Vol.59, ‘Manteaux’s Notes of a Meeting of the Council of Four’, 28 May 1919, p.565.

19 Records on the crisis abound, with correspondence warning of further war, as well as socialist revolution in Italy if it was not resolved. See e.g. TNA: FO 608/41 in particular telegram from Sir R. Rodd, Rome, No. 607, sent 23 September, received 24 September 1919, No. 90: 8.

20 Baker 1922, Vol.I, p.8.

21 *Ibid.*

22 ‘From the President of the Albanian Government’, 23 January 1919, TNA: 110/1/2, 25 January 1919, in FO 608/47, Peace Conference British Delegation Files 109/1/2 to 110/2/1 1919: 267 and TNA: ‘Cypher telegram from Mr Balfour to Lord Curzon, D. 1205, 16 February 1919’ 9-110/1/2/2210/19, in FO 608/47: 272.

From a different side of the political spectrum, a radical call for Albanian ‘self-determination’ had appeared in 1917, when Moscow’s Moslem Executive Committee had backed Albanian independence. The British nervously registered that an appeal from that Committee had warned that the Allies’ position on the Albanian question ‘roused suspicion and doubt among the many Moslems of Russia, particularly in consequence of those bitter experiences of centuries past, during which Moslems all the world over [...had] learnt the meaning of what is called European justice.’<sup>23</sup> This, however, was an exceptional instance of support for the Albanian cause – and without discernable results. With few other backers in sight, Albanian representatives in the spring of 1919 even turned to the USA to be their mandatory power, hoping that this would protect them better than being under Italy.<sup>24</sup> After this request fell on barren ground, Albania seemed set for a future as a mandate under Italy.

Meanwhile in 1919, different ideas of the practical meaning of self-determination were manifested on the ground. Whereas the Italian-supported leadership in Albania was without popular backing,<sup>25</sup> the British mission there reported that a ‘Kosovo [sic] Committee’ had formed after Wilson’s Fourteen Points speech, to fight for true Albanian independence.<sup>26</sup> Yugoslav representatives were then keen users of the language of ‘self-determination’ when addressing Western states.<sup>27</sup> But while the Yugoslavs did argue for Albanian statehood against the idea of an Italian mandate, they also had their own ambitions for dominating the Albanian lands, and for weakening their Italian rival.<sup>28</sup>

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23 Reproduced in British Intelligence Bureau 1918, pp.14–15.

24 ‘Albanians Want Us to Act as Mandatory’, *New York Times*, 8 March 1919, p.1; ‘American Mandatory Asked by Albanians’, *Los Angeles Times*, 1 May 1919, p.12. A similar option was discussed for Armenia, but rejected. See PWW 1988, Vol.59, ‘Hankey’s and Mantoux’s Notes of a Meeting of the Council of Four’, May 21 1919, p.345.

25 As recorded by Phillips, Head of the British Military Mission to Albania, 10 July 1919, to the D. M. I. TNA: FO 608/30, Confidential Report no. 22, p.13.

26 *Ibid.*, p.20.

27 See FRUS, 1921, Vol.II, Europe, p.948, ‘Yugoslavia’, letter from the Montenegrin Prime and Foreign Ministers to the US Secretary of State, 15 April 1921; see also Reuters interview with Serb leader Pasic 28 October 1918, cited in Lederer 1963, p.41; the sympathies of King Nicholas of Montenegro in 1918–1919, p.71; the Yugoslav programme of 1919, p.94.

28 See TNA: letter from Ante Trumbic to George D. Herron, No 4176, sent 13 March,

Also the 1918 incorporation of Kosovo into the ‘first Yugoslavia’, the Kingdom of Serbs, Croats and Slovenes had disclosed tensions in that state’s commitment to self-determination: Kosovo’s Albanian majority population represented a problem for Serb nationalist aspirations.<sup>29</sup> Already in 1919, observers warned that Serbs were expelling and massacring Albanians from Kosovo and Northern Albania in attempts to make the territory’s demography ‘fit’ with Serb objectives of dominance based on their view of ‘self-determination’.<sup>30</sup> The ensuing situation for Albanians under Yugoslav rule indicated little, if any, concern for their self-determination, as the League of Nations continued to receive reports of discrimination and atrocities.<sup>31</sup>

In the summer of 1919, the head of the British military mission to Albania indicated some sympathy with the Albanians’ capability for self-rule when

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received 14 April 1919, and letter from Mr Lazarovich Hrbeljanovich, 19 February 1919 with enclosure: ‘A Copy of a Resolution Passed at a Mass Meeting of Serb Croat and Slovenes at New York’, 17 February, 1919, FO 608/41: 495, 438, and 441 respectively; and ‘Confidential Report from G. F. Phillips, Brig-Gen, Head of British Military Mission, Albania, Scutari’ (Shkoder), 29 June 1919, no. 20, FO 608/30: 20; Lederer 1963, pp.96, 285.

29 See MacMillan 2001, p.361; population statistics for Kosovo prior to 1919 in TNA: FO 608/47, 43–53.

30 See letter from Edith Durham to the British Foreign Office, TNA: FO 608/47, pp.4–6, and reports from other British observers, pp.9, 119.

31 At the LNA: especially Box 1657, Section 41, including File 32213, ‘Albanian Minorities in Yugoslavia’, 1923; File 58664, Dossier 11379, from the German Consul in Geneva, April 8, 1927, ‘Albanian Minorities in Yugoslavia’: ‘Towards a Petition Addressed by a former Albanian Minister, Hassan Bey Prishtina to the Presidency of the League Council Demanding Protection for the Albanians in Yugoslavia’, 15 Mars 1927; File, 12416, Dossier 11379. On discrimination of Albanians in Serbia and Greece see e.g. Telegram from Ilias Vrioni, President of the Council of Ministers of Albania, Durazzo (Durrës), undated, received in Geneva 5 March 1921; File, 12479, Dossier 11379, 29 April 1921: ‘Precis of Attached Correspondence from M Frasheri, President of the Albanian delegation, Paris, to the Secretary-General, League of Nations’ and the letter: ‘From Midhat Frasheri, President of the Albanian Delegation to the Peace Conference’, 3 March 1921, with an Attached memorandum of 26 April 1921; File, 39302, Dossier 11379, 26 September 1924: Letter signed Bajram Tzuri, Hassan Prishtina, B. Pejami to the President of the Council of the League, 25 Sept 1924; File, 12394, Dossier 11379, from the ‘Colony of Cossova in Central Albania’, 4 April 1921: ‘Protection of Albanian minorities in Jugo-Slavia’; File, 38248, Dossier 11379, ‘Massacre d’Albanais à Kossovo’; telegrams in File, 39301, Dossier 11379, e.g. ‘M Azcarate, from E.C 29 Sept 1924’; File, 23109, Dossier 11379: 11 September 1922, petition from Albanians; File, 33547, Dossier 11379: 23 January 1924, on discussions with M Taditch [sic]; File, 41214, Dossier 11379: 15 December 1924, on the heated language in the Serbian press; File, 41229, Dossier 11379: ‘Albanian minorities in Yougoslavia’, ‘Letter from EC to Cadogan’, Geneva, 26 March 1925, on discrimination; File, 31166, Dossier 11379: 21 September 1923, from EC to Rosting, on the Yugoslav reply. For a contemporary perspective on the emerging Yugoslav state, see Fenwick 1918b, especially p.721.

he claimed to have discovered the real leader of the ‘Kosovo Committee’. ‘[O]ne Hassan Bey Pristina’, this British official stated, ‘[had] been a revolutionist against the Turks and the Serbians all his life. Well educated, very highly born with great influence, he [had] in the background, been working with the one object to regain Albania its lost territory.’<sup>32</sup> Despite such sporadic expressions of approval, however, the allies did not actually drop the mandate idea until Albanians themselves in 1920 had overthrown the Provisional Government and driven out Italian forces from strategic areas. Perhaps realising that independence was now the solution most likely to keep the peace, Wilson then called for recognition of Albania’s 1913 borders, with no mandate. On 17 December 1920, the League of Nations recognised Albania as a full member state.<sup>33</sup> Meanwhile, the Albanian population in Kosovo remained under Serbian rule.

While the Albanian question exemplifies one version of the practical fate of the concept of ‘self-determination’ after Wilson had internationalised it, the Aaland Islands case brought its first formal mention at the international *institutional* level. With the League of Nations’ 1920 and 1921 handling of the Aaland Islands case, the international profile of ‘self-determination’ discourse was raised and institutionally affirmed. Moreover, not only were the League of Nations’ references to ‘self-determination’ an important precursor to the concept’s later incorporation in the UN Charter: they also foreshadowed arguments and ideas that would be repeated at later international moments, including during the 2008–2010 ICJ case on Kosovo.

The case of the Aaland Islands surfaced internationally around the same time as that of Albania, and similarly concerned a population demanding to determine its own political fate. However, due to the different great-power interests involved, the two cases were treated differently. Albanian petitions and demands for self-determination had initially been ignored, then overshadowed by Italy’s priorities, and, in the case of Kosovo, set aside for the sake of the Yugoslavs. Nevertheless, the Albanians managed to regain

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32 Phillips, TNA: FO 608/47, 10.

33 For this sequence of events, see Temperley 1921, Vol. IV, pp.342–344; Lederer 1963 p.291.

their state, although the Albanians in Kosovo stayed under Serbian rule. By contrast, the Aaland Islanders' desire to unite with Sweden received considerable international attention, including a lengthy League of Nations treatment addressing 'self-determination' – but did not end with statehood.

Unlike the Albanian question, the Aaland Islands<sup>34</sup> case concerned several powerful states directly, threatening to cause international destabilisation by upsetting relations between them. Geographically situated between Sweden and Finland, the archipelago of the Aaland Islands was at the end of the First World War under Finnish sovereignty despite the express wish of its Swedish-speaking population to break away.<sup>35</sup> Because of their strategic importance, the islands had from the 1853–1856 Crimean War onwards experienced repeated invasions and attempts at demilitarisation and remilitarisation. Britain, France, Russia, Germany and Finland had all been involved, and thus held a stake in the fate of the Aaland Islands.

In 1917, the islanders had petitioned the Swedish monarch to take up their case for unification with Sweden.<sup>36</sup> Sweden had then attempted to have the matter addressed at the 1919 Paris Peace Conference. At this stage, however, the issue had been temporarily shelved, together with other disputes relating to former Russian territories.<sup>37</sup> Shortly after, the case was put firmly on the international agenda: in June 1920, Britain requested the Council of the League of Nations to internationalise the Aaland Islands question by discussing its proper handling.<sup>38</sup>

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34 The Islands are variously referred to in English as Aaland, Åland, or, sometimes, Åland. 'Aaland', however, is the standard.

35 For background to the case, see e.g. Markku Suksi: 'The Åland Islands as a Continued Asymmetrical Feature of Finnish Governance – With some Convolved Tendencies of Resymmetrisation', pp.133–153 in Ferran Requejo and Klaus-Jürgen Nagel (eds): *Federalism Beyond Federations: Asymmetry and Processes of Re-symmetrization in Europe*, Ashgate, 2011, and Norman J. Padelford and K. Gösta A. Andersson: 'The Aaland Islands Question', *American Journal of International Law*, 33, 1939, pp.465–487; Barros 1968; Markku Suksi: 'The Aaland Islands in Finland', in *Local Self-Government, Territorial Integrity and Protection of Minorities, Proceedings of the UniDem Seminar in Lausanne*, 16, Council of Europe, 1996, pp.20–50; Rudolf Bernhardt (ed.): *Encyclopedia of Public International Law, Vol I: Aaland Islands to Dumbarton Oaks Conference (1944)*, Elsevier Science, London 1992.

36 See Padelford and Andersson 1939 p.470, Suksi 2011, p.135

37 See e.g. LNA: Series 468, Section 11, Box R 544, file 2137: FO, London, 28 November 1919: 'To Harold Nicholson, Paris'.

38 LNA: Series 468, Box R 545, Section 11, file 5020: Letter from Earl Curzon of Kedleston to the League of Nations Secretary-General, 19 June 1920. See also LNA:

Britain's letter to the League of Nations Council cited Article XI of the League Covenant, whereby every League Member had a 'friendly right' to bring to the League 'any circumstance whatever affecting international relations which threaten[ed] to disturb international peace or the good understanding between nations upon which peace depends'.<sup>39</sup> In the view of the British, the Aaland Islands question was affecting international affairs by threatening to disturb the good interstate relations necessary for world stability. The British letter further noted that both Finland and Sweden were implicated in the case and had been informed of Britain's move.<sup>40</sup>

Also several other appeals to the League of Nations responding to the British action argued with reference to peace and international stability: and some used the language of 'self-determination'.<sup>41</sup> Swedish submissions presented the Aaland Islanders' right to self-determination as a matter of international importance, holding that they should be allowed to unify with Sweden as an expression of that right.<sup>42</sup> Representatives of the Aaland Islands presented their case in similar terms, calling upon the League to let them part from Finland and join Sweden instead. Besides pointing to the will of the population as expressed in petitions and votes, they warned the League that the islanders would face assimilation if forced to stay under Finnish rule. Under such circumstances, it was implied, the Islands might not remain peaceful.<sup>43</sup>

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*Records of the First Assembly*, 1920, Section Économique, Société des Nations, Plenary meetings (meetings held 15 November to 18 of December 1920), Geneva 1920 and LNA: Box R 544 File 2660: 'Note from the Foreign Office', FO, London, 2 January 1920; as well as Charles Noble Gregory: 'The Neutralization of the Aaland Islands', *American Journal of International Law*, 17(65) 1923, pp.63–76, at p.63.

39 'Letter from Earl Curzon' 1920; League of Nations Covenant.

40 'Letter from Earl Curzon' 1920.

41 See the records at LNA: Box R 545 File 5355: 8 July, 1920: The 'Aaland Islands question', Note by the Secretary-General, and Box R 544 File 5350: 7 July 1920: 'The Åland Islands', Handbooks Prepared under the Direction of the Historical Selection of the Foreign Office, no 48, H. M. Stationery Office, London, 1920 and *The New Europe*, 15(192), 17 June 1920 (eds R. W. Seton-Watson and A. F. Whyte). See also Philip Marshall Brown: 'The Aaland Islands Question', *American Journal of International Law*, 15(2), 1921, pp.269–270.

42 'The Aaland Islands question. Letter dated 10 July 1920, from M. Branting', LNA: Box R 545 File 5396: 10 July 1920, circulated for information of the Council.

43 LNA: Representatives of the Aaland Islands Johannes Erikson and August Karlsson: 'Letter, dated 6th June [July?] 1920, from the accredited representatives of the Landsting of the Aaland Islands', Box R 545 File 5303; from Johannes Eriksson to the Council of the League, Stockholm, 24 July 1920, Box R 545 File 5706.



On the other side of the dispute, Finland opposed any internationalising of the Aaland Islands case via the League's involvement. In the Finnish view, the issue was a strictly domestic one; it was of the essence that outside actors should refrain from interfering with Finland's internal affairs. Moreover, the separation of the Aaland Islands from Finland had to be prevented on the grounds that the 'wishes of a minority' should not trump 'the economic and military security of a nation'.<sup>44</sup> Effectively, Finland was arguing that internationalising the Aaland Islands case, and allowing secession, would set a dangerous precedent. Such a precedent would threaten the stability not only of other League members, but of the world order as a whole. With this argumentation, Finland put forward what was to become a common case against radically legitimised self-determination in the ensuing ten decades. As will be shown, almost one century later, Serbia would present the same reasoning at the ICJ, against Kosovo's self-determination and independence.

In July 1920, the League of Nations acted on Britain's letter by setting up a Committee of Jurists to advise the Council of the League on the legal status of the Aaland Islands dispute.<sup>45</sup> While this in itself represented an internationalisation of sorts, the jurists' examination was meant to clarify whether the case required further international action. Composed of three international jurists, the Committee was to consider two questions: if the Aaland Islands' demand of a plebiscite on whether to separate from Finland and join Sweden was an international matter within the League's mandate; and whether the League should issue advice on the validity of the post-Crimean War agreement on the Islands' demilitarisation.<sup>46</sup> Since the League would raise the issue of 'self-determination' only in its answer to the first point, that is the question to be analysed here.

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44 LNA: 'Brief review of the question of the Aaland Islands' from the Finnish delegation, London, 7 July 1920, Box R 545 File 5319, No 609.

45 See LNA: file 5717 in Series 468, Section 11, Box R 545 on the appointment of advisory committee of jurists on the Aaland Islands question.

46 *League of Nations Official Journal*, October 1920, special supplement no. 3: 'Report of the International Committee of Jurists Entrusted by the Council of the League of Nations with the Task of Giving an Advisory Opinion upon the Legal Aspects of the Aaland Islands Question' (dated 5 September 1920) (hereafter: 'Jurists 1920'), p.3.

Upon completing its investigation into the Aaland Islands case, the Committee of Jurists submitted an advisory report to the Council of the League in September 1920. The report opened by reformulating the first question as follows: '[C]an the inhabitants of the Aaland Islands, as at present situated, and taking as a basis the principle that peoples must have the right of self-determination, request to be united to Sweden?' By rephrasing the original question, the League's Committee of Jurists had placed the international meaning of 'self-determination' at the heart of the case. Under the headline 'The principle of self-determination and the rights of peoples', the report noted: 'Although the principle of self-determination of peoples plays an important part in modern political thought, especially since the Great War [...] there is no mention of it in the Covenant of the League of Nations.' Consequently, the Jurists held, self-determination did not constitute a positive rule of international law.

Mirroring parts of Finland's position, the Committee of Jurists further maintained that national groups did not have a right to separation 'by the simple expression of a wish'. Decisions about separatist claims, they stated, belonged to the domestic jurisdiction of states. Interfering in a state's affairs by shifting decision-making power on an issue of self-determination from that state's internal, sovereign domain onto the League of Nations would 'endanger the interests of the international community'.<sup>47</sup> With these reflections, the League's Committee of Jurists seemed to say that the concept of self-determination had no role to play in international affairs.

At the same time, the Committee stated that under two types of circumstances, 'self-determination' claims might come within the scope of the League's mandate as matters of international concern, after all. The first situation would involve a state's 'manifest and continued abuse of sovereign power, to the detriment of a section of the population of [that] State'. According to the League Jurists, the Aaland Islands case did not fall into that category. The second scenario in which 'the principle of self-determination of peoples [might] be called into play' as a matter of international concern was if a state's legal status was not 'normal in respect

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<sup>47</sup> Ibid., p.5.

to territorial sovereignty’ – but ‘obscure and uncertain from a legal point of view’.<sup>48</sup> In the view of the League’s Jurists this *did* apply to the Aaland Islands case, because Finland’s status under international law had not been settled after it had gained independence.<sup>49</sup> Based on this reasoning, they concluded that the Aaland Islands case was an international matter, beyond the domestic jurisdiction of Finland. Therefore, it would have to be decided within the remit of the Council of the League.<sup>50</sup>

Significantly, the Committee of Jurists also cited ‘self-determination’ when deliberating on the legal status of Finland and the Aaland Islands. Finland’s legally unclear status, they explained, had been

caused by and originated in the separatist movement among the [Aaland Islands] inhabitants, who quoted the principle of ‘national self-determination’ in the context of Finland’s recent independence from the Russian empire and subsequent civil war.<sup>51</sup>

It was this, as the Jurists saw it, that had made the boundaries of Finnish sovereignty unclear, and turned the Islanders’ demand for ‘self-determination’ into an international issue. Put differently, according to the Jurists, the Aaland Islanders’ call for self-determination had not in itself been of direct international concern. But since their ‘self-determination’ demands had contributed to unsettling Finland’s legal status, their self-determination had, indirectly, become an international matter. The Jurists hence indicated that peoples could internationalise their ‘self-determination’ claims by casting the states in which they were situated into legal uncertainty. The undefined status of such states could then transfer a people’s demands from the domestic to the international plane. Exactly how the existence or degree of legal uncertainty should be determined in such cases was, however, a point on which the Jurists remained silent.

With these analyses, the League’s Committee of Jurists presented two seemingly contradictory perspectives on the role of self-determination in

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48 Ibid., p.6.

49 Ibid., pp.9, 14.

50 Ibid., p.14.

51 Along with the military events accompanying Finland’s separation from Russia: *ibid.*, p.14.

international affairs. On the one hand, their report ruled out self-determination as having any legal import, and denied the relevance of the concept to separatist conflicts. In mentioning instances of state abuse as one exception to this rule of inadmissibility, the Committee had found self-determination inapplicable to the Aaland Islands case. On the other hand, their report stated that self-determination *was* in fact relevant to the Aaland Islands, due to the unclear legal status of Finland. And they had recognised the international force of ‘self-determination’ discourse by implying that the Islanders’ calls for ‘self-determination’ had compromised Finland’s legal status in the first place.

This was not the only self-determination-related ambiguity in the report; another regarded the relationship between ‘self-determination’ and statehood. In one respect, the report had indicated that the two notions were situated on different conceptual planes. The Jurists had posited statehood as an international concept, and self-determination as belonging to a state’s domestic sphere. Containing self-determination issues within a state’s internal domain had even been presented as vital to the very notion of statehood: moving self-determination issues from states to international institutions would interfere with state sovereignty and ‘be contrary to the very idea embodied in the term “State”’.<sup>52</sup> Further, the Jurists had disassociated ‘self-determination’ from statehood by arguing that such claims should not be allowed to break up existing states or create new ones. Demands for self-determination should not lead to political independence: the peace should be preserved by internal compromise solutions guided by ‘geographical, economic and other similar considerations’.<sup>53</sup>

These points suggested that the League’s Jurists interpreted ‘self-determination’ as a fundamental threat to the idea of statehood. The concept of self-determination, they indicated, would have to be pacified because it challenged not only actual, existing individual states, but the very international order of states. For the sake of stability and the right of established states to non-interference, self-determination should as a rule not

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52 Jurists 1920, p.5.

53 Jurists 1920, p.6.

be discussed outside the realm of sovereign states – nor should it result in radical, new statehood.

On the other hand, the League of Nations Jurists coupled ‘self-determination’ and ‘statehood’ by acknowledging that calls for ‘self-determination’ were always about creating a new state. Whether such claims sought separate independence or, as in the case of the Aaland Islands, unification with an existing state, the Jurists presented *creating a new state* as the clear aim. Notably, they did not offer their preferred recourse of minority rights as a *realisation* of self-determination; rather, they expected claimants to *give up* ‘self-determination’ in terms of statehood, and gain minority rights instead. Hence the Jurists did not support any ‘internal’ version of self-determination, of the sort to be mooted in the 2008–2010 ICJ Kosovo case. Unlike the claim of this later ‘internal’ notion that self-determination could be realised without involving statehood – but rather through human rights and possibly territorial autonomy – the Jurists implied that realising the concept in practice could only mean new state creation.

By aligning ‘self-determination’ with political independence in this manner, the League’s Committee of Jurists not only recognised the concept’s radical, secessionist potential, but also elucidated the paradoxical side of its radicalism. After all, also the radical and seemingly subversive manifestations of ‘self-determination’ in international discourse have been oriented towards the established option of *statehood*, thereby boosting the conventional idea that states in their current format (albeit not necessarily with their present boundaries) are worth preserving as the proper foundations of international order.

Based on the Jurists’ finding that the Aaland Islands were an international rather than internal Finnish matter, the League of Nations on 20 September 1920 declared itself competent to deal with the case. It also appointed a new Committee, of International Rapporteurs, to visit the islands, examine the situation, and recommend further action. Following their investigations, these Rapporteurs presented their conclusions to the League Council on 16

April 1921 in the form of a second report.<sup>54</sup>

The Rapporteurs agreed with the Jurists that the Aaland Islands were of international concern. However, in the view of the Rapporteurs, the chief reason for this was neither ‘self-determination’ nor Finland’s uncertain legal status, but the fact that the case threatened to destabilise relations between Sweden and Finland. The League Rapporteurs further differed from the Jurists in offering their own reformulation of the first question posed in the case, leaving ‘self-determination’ unmentioned. In the words of the Rapporteurs, the first question was about ‘Finland’s right of sovereignty with regard to the Aaland Islands’.<sup>55</sup> Raising the concept of self-determination only cautiously, the Rapporteurs merely referred to Woodrow Wilson’s principle of a ‘right of people to dispose freely of their own destinies’,<sup>56</sup> and the ‘principle of free determination (or self-determination)’.<sup>57</sup> This, they held, was ‘a principle of justice and liberty, expressed by a vague and general formula which has given rise to the most varied interpretations and differences of opinion.’<sup>58</sup>

Yet, on the issue of the international meaning of ‘self-determination’, the two League reports converged. Both assumed that realising self-determination meant creating a new state, and that this was not a right enshrined in law.<sup>59</sup> And both reports invoked peace, stability, and an idea of freedom as non-interference with existing states, in arguing that state dissolution with reference to ‘self-determination’ should generally be avoided.<sup>60</sup> They similarly recommended orderly solutions within state boundaries, such as protection of language, property, and political rights – *instead* of self-determination.<sup>61</sup> As the Rapporteurs summed it up in words

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54 See LNA: *Records of the Second Assembly*, 1921, Section Économique, Société des Nations, Plenary Meetings and Committees, Geneva 1921, p.84–89.

55 LNA: League of Nations Commission of Rapporteurs: ‘Report presented to the Council of the League of Nations by the Commission of Rapporteurs’, League of Nations Council Document B7 21/68/106, 1921 (hereafter: ‘Rapporteurs 1921’), p.2.

56 *Ibid.*, p.1

57 *Ibid.*, p.3.

58 *Ibid.*, p.3.

59 For the Rapporteurs, see *ibid.*, pp.3, 10.

60 See *ibid.*, p.11

61 In the end, this was also how the League came to approach the Aaland Islands case in practice. Soon after the Rapporteurs had recommended that the League should monitor the guarantees it had stipulated for the Aaland Islanders within Finland, this proposal

resembling both the Jurists' and those of Lansing quoted in the previous chapter:

To concede to minorities, either of language or religion, or to any other fractions of a population the right of withdrawing from the community to which they belong, because it is their wish or their good pleasure, would be to destroy order and stability within states and to inaugurate anarchy in international life; it would be to uphold a theory incompatible with the very idea of the State as a territorial and political unity.<sup>62</sup>

In addition, the reports concurred that since the Aaland Islanders did not suffer oppression, 'self-determination' was generally inapplicable to their case. It was implied that the Aaland Islanders did not need to be granted political freedom as self-determination because – since they were not interfered with – they were already free. The concept of 'self-determination' expressed in the two League reports presumed that freedom can be taken away only by interference – not by domination, dependence, or inequality.

The reports, in effect, jointly proposed that self-determination should be realised only in exceptional cases, when a state had interfered with a group's freedom in such a manner that granting self-determination would be the solution most likely to serve international stability. The Jurists had taken an indirect approach; in such cases, they had said, 'self-determination' demands would threaten to obstruct interstate relations and thus become international concerns. More directly, the Rapporteurs had indicated that self-determination might even be *granted* in such instances. They concluded their report by stating that if Finland did not comply with their recommendations to enhance the internal rights of the Aaland Islanders, that would open for 'another possible solution, and it is exactly the one which we wish to eliminate.'<sup>63</sup>

These conclusions brought to the fore what had been a fundamental feature of the international language of 'self-determination' ever since Lenin's time: its legitimation with reference to an idea of freedom negatively defined

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was implemented.

62 Ibid., p.4

63 Rapporteurs 1921, p.13.

*against* and *from* certain ills. Lenin's 1903–1917 writings had identified these ills as domination, inequality, as well as specific forms of capitalist and imperialist interference with a people. Subsequently, Wilson had legitimised his 'self-determination' discourse by invoking an idea of freedom *from* the forms of interference with state action that he despised, especially war and obstructions with trade. The League of Nations reports perpetuated the link between 'self-determination' and a negative idea of freedom, while also, like Lenin, proposing that it could function as a remedy. With its two reports, the League implied that self-determination might be legitimate only as a form of remedial freedom from interference, and only under the condition that it would serve the (non-interfered-with) freedom of established states.

The League of Nations Aaland Islands case hence recognised the language of 'self-determination' and its connection to political freedom at international institutional level. The case provided what was by then the highest-level and most authoritative international assessment of the concept. It represented the first attempt by a key international institution to crystallise the meaning of the concept, and reaffirmed its political import.

Nonetheless, the case did not bring new ideas into how 'self-determination' was referred to or legitimised internationally. Both League reports vaguely echoed Lenin's conceptualisation of self-determination as a negative idea of freedom, the realisation of which would entail the establishment of a new state – although they legitimised it with reference to a narrower idea than that endorsed by Lenin. The reports made no mention of domination, dependence or inequality, but focused on freedom as peace and non-interference, above all with established states. Self-determination, they held, might be tolerable as an exceptional remedy against interference, in the interest of international order. As such, they expressed an understanding closer to that of Wilson. Finally, regardless of the importance of the Aaland Islands case, it still left 'self-determination' outside of international law.

### **The UN Charter**

'Self-determination' did appear in international discourse between the



Aaland Islands case and the formulation of the UN Charter in 1945. Especially through Wilson's use, the concept had reached global audiences, who made their own uses of it between the two world wars. The most important of these were the 1930s references to 'self-determination' by the Nazi regime in Germany. Aware of the international moral and political appeal of this language at the time, the Germans attempted to use the concept as a standard to legitimise their increasingly aggressive policies. This acknowledged concept of freedom, they implied, would be violated as long as people's natural development was interfered with through foreign rule. In practice, the Nazi regime called for self-determination for Germans living outside the boundaries of Germany as part of its annexation plans.<sup>64</sup>

Although the Nazi discourse of 'self-determination' was noted, at times sympathetically, by Western states, it led to no expansion of the ideas already played out with this language internationally, and no changes in the international status of the concept.<sup>65</sup> It did not result in any international discussion on the meaning of the concept, nor was the language of 'self-determination' incorporated into the international treaties of the time.<sup>66</sup> Strikingly, the Nazi discourse of 'self-determination' did not result in discrediting the concept, either. Instead, Nazi argumentation and the Second World War as a whole seemed to cast *minority* rights in a questionable light. Partly as a consequence, the beginnings of the international history of individual human rights emerged after the war.<sup>67</sup> Around the same time, also the language of 'self-determination' reappeared on the international scene.

It was only when the UN Charter included the language of 'self-determination' that the status and significance of the concept in international affairs really changed. From that point on, 'self-determination' was part of

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64 Abulof 2010, pp.46–49 provides a useful summary.

65 See e.g. FRUS: 1938, Vol.I, General, 'Annexation of Austria by Germany', Telegram from the Ambassador in Germany to the Secretary of State, Berlin 13 March 1938, p.435; 1939, Vol.I, 'Events leading to war in Europe', Chargé in Germany to the Secretary of State, Berlin 3 April 1939, p.109. William L. Shirer's bestselling *The Rise and Fall of the Third Reich: A History of Nazi Germany*, Secker and Warburg, London, 1960 does not address 'self-determination'. For rights discourse and the development of human rights 1933–1950, see Mazower 2004.

66 See e.g. the Munich Pact of 29 September 1939, accessed at the Avalon Project, 30 December 2012: [avalon.law.yale.edu/imt/munich1.asp#art2](http://avalon.law.yale.edu/imt/munich1.asp#art2).

67 See Mazower 2004; Mayall 2003, p.117; see also Moyn 2011.

international law. The importance of the Charter is unrivalled in giving self-determination international legal weight, adding to its already established political and moral authority. At the later moments when the concept again assumed significance in high-level international affairs, the Charter would serve as its supreme textual reference point.

‘Self-determination’ is cited in Article 1, paragraph 2 of the UN Charter as one of the organisation’s ‘purposes’. This is the core reference to ‘self-determination’ in the Charter. The concept is also mentioned in the UN Charter’s Article 55 on international economic and social cooperation, but Article 55 merely copies the wording of 1(2) and presents economic and social cooperation as a means to ensure ‘self-determination’ – which 1(2) had already established as a UN purpose.<sup>68</sup> The greater significance of 1(2) is evident also from the fact that this Article was to be cited as the essential ‘self-determination’ reference in subsequent international discussions, to which next chapters will turn. The remainder of this chapter focuses on Article 1(2), seeing Article 55 as a reiteration of the former, and thus not warranting separate analysis.

The first proper draft of the UN Charter was formulated at the Dumbarton Oaks Conference in 1944 and did not mention ‘self-determination’.<sup>69</sup> Also the 1941 Atlantic Charter had ignored the language of ‘self-determination’ when listing the principles that should guide a better post-war world.<sup>70</sup> ‘Self-determination’ was only introduced into the draft UN Charter at the 1945 San Francisco Conference.<sup>71</sup> At Dumbarton Oaks, merely representatives of

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68 Charter of the United Nations, 1945, Article 1(2) and 55.

69 Formally, the Washington Conversations on International Peace and Security Organization. For useful overviews of the conference and other post-war planning documents from the time, see United Nations Documents 1941–1945, Royal Institute of International Affairs, London, 1946, and Harley Notter (ed.): *Postwar Foreign Policy Preparation 1939–1945*, Greenwood Press, Westport, CT, 1975 (originally 1949).

70 Despite scholarly claims to the contrary, e.g. Cassese 1995, p.37. The Atlantic Charter, 14 August 1941, Avalon Project, accessed 15 February 2013: [avalon.law.yale.edu/wwii/atlantic.asp](http://avalon.law.yale.edu/wwii/atlantic.asp). ‘Self-determination’ does not seem to have been discussed at the Yalta conference 4–11 February 1945 either. For insiders’ accounts see Edward R. Stettinius: *Roosevelt and the Russians: The Yalta Conference*, Jonathan Cape, London, 1950; Clyde Eagleton: ‘The Charter Adopted at San Francisco’, *American Political Science Review*, 39(5), 1945a, pp.934–942.

71 Officially, United Nations Conference on International Organisation (UNCIO). For the formal set-up of the conference, see UNCIO, Vol.XV, United Nations Information Organizations, London, New York, 1945; for proposals and amendments based on the

the ‘Big Four’ – the USA, UK, USSR, and China (in 1945 becoming the ‘Big Five’ with the inclusion of France) – had discussed the planned world organisation. At the San Francisco Conference, held between 25 April and 26 June 1945, national delegates from 50 Second World War allies would pick up on these talks.

Soon after the San Francisco Conference got underway, the four countries that had participated at Dumbarton Oaks jointly submitted 27 amendments to their proposal of 1944. One of these amendments incorporated ‘self-determination’ in the Charter as one of the purposes of the new world organisation. According to this four-state amendment (with additions to the Dumbarton Oaks proposal shown in italics), the UN should aim ‘[t]o develop friendly relations among nations *based on respect for the principle of equal rights and self-determination of peoples* and to take other appropriate measures to strengthen universal peace.’<sup>72</sup> Although several other state representatives proposed amendments as well,<sup>73</sup> the four-power ‘package’ with the 27 amendments became the basis on which discussions on the Charter proceeded.<sup>74</sup> Meanwhile, most other states withdrew their amendments.<sup>75</sup>

It is not clear why the four states that had excluded ‘self-determination’ from the Dumbarton Oaks draft decided, only a few months later, to incorporate the concept in the Charter after all. What is clear, though, is that

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Dumbarton Oaks drafts, see UNCIO, Vol.III: *Dumbarton Oaks Proposals Comments and Proposed Amendments*. See also FRUS, 1945, Vol.I, General, Foreign Relations: ‘The United Nations Conference on International Organization, San Francisco, California, April 25–June 26 1945’ (hereafter cited as FRUS SF); Leland M. Goodrich and Edvard Hambro: *The Charter of the United Nations: Commentary and Documents*, Stevens, London, 1949.

<sup>72</sup> See UN: *Dumbarton Oaks to San Francisco*, United Nations Information Organisation, London 1945, 5 May 1945, Doc 2; G/29, p.622. The four powers submission included 27 proposed amendments. See also ARMSNY, UNCIO collection: S-0981, Box 14, File 3, Progress reports – summary reports for 1–15 May 1945, ‘Summary report for May 8’.

<sup>73</sup> ARMSNY UNCIO: S-1006, Box 1, File 7, Working Papers, Dumbarton Oaks Proposals, comments and amendments (15 April–15 May, 1945).

<sup>74</sup> See ARMSNY UNCIO: S-0981, summary report for 8 May; also Mary Ann Glendon: ‘The Forgotten Crucible: The Latin American Influence on the Universal Human Rights Idea’, *Harvard Human Rights Journal*, 16, 2003, pp.27–40: ‘It was only after Churchill, Roosevelt and Stalin had settled everything that was most important to them that they announced a meeting where the rest of the Allies could have a say’ (p.27).

<sup>75</sup> ARMSNY UNCIO: S-1006, Box 1, File 8, Working Papers, Dumbarton Oaks Proposals, comments and amendments (1 May–15 June, 1945).

the initiative for its inclusion came from the Soviet Union.<sup>76</sup> In early May 1945, the USSR had made the language of ‘self-determination’ part of the four-state package of amendments, suggesting it for the Charter’s first article as a purpose of the UN. The Soviet Union had also proposed a reference to ‘self-determination’ in the section of the Charter dealing with trusteeship – a colonial arrangement similar to the mandate system.<sup>77</sup>

When soon after, discussions on the Charter commenced at San Francisco, Soviet delegates were the most vocal defenders of ‘self-determination’.<sup>78</sup> Subsequently at the conference, and on later occasions, Soviet representatives laid claim to the language of ‘self-determination’ and took credit for having placed it in the UN Charter.<sup>79</sup> However, it is not immediately obvious why the USSR wanted to have the Charter mention ‘self-determination’. The initiative was not explained, and at San Francisco, Soviet representatives mentioned the concept very rarely, without arguing for it in any detail, and without presenting it as being very important.<sup>80</sup> At one point, Soviet Ambassador Andrei Gromyko even stated that the USSR was willing to drop the ‘self-determination’ reference altogether ‘in the interest of agreement’ between the great powers.<sup>81</sup> The Soviet Union’s longest elaboration of its stance on the UN and the Charter at the closing plenary session of the San Francisco Conference contained no reference to

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76 FRUS SF: ‘Minutes of the First Four-Power Consultative meeting on Charter Proposals, held at San Francisco, May 2, 1945, 9pm’, informal notes, p.551.

77 Ibid., pp.551, 569; also Huntington Gilchrist: ‘Colonial Questions at the San Francisco Conference’, *American Political Science Review*, 39(5), 1945, pp.982–992; Humphrey 1986; Claude 1984, p.351; Frederic L. Kirgis, Jr: ‘The Degrees of Self-determination in the United Nations Era’, *American Journal of International Law*, 88(2), 1994, pp.304–310. For an insightful discussion on the concept of trusteeship, see William Bain: *Between Anarchy and Society: Trusteeship and the Obligations of Power*, Routledge, London, 2006.

78 See ARMSNY UNCIO: S-1018, Box 2, File 5, Working Papers, Commissions and Technical Committees, summary reports Committee I/1, ‘Report of second meeting of the drafting committee, Committee I/1/A’, 9.30am, 16 May.

79 E.g. on 11 June, 1945, see Mr A. A. Arutiunian (USSR), pp.56–57 in ‘Verbatim minutes of second meeting of Commission II’ (with Smuts as president of the Commission), 11 June 1945, UNCIO, Vol. VII, *Commission II General Assembly*, 1945, p.56.

80 See also Rupert Emerson: ‘Colonialism, Political Development, and the UN’, *International Organization*, 19(3), 1965, pp.484–503, p.487; Paul Gordon Lauren: ‘First Principles of Racial Equality: History and the Politics and Diplomacy of Human Rights Provisions in the United Nations Charter’, *Human Rights Quarterly*, 1, 1983, pp.1–25, at p.4. See also Bowring 2011.

81 FRUS SF, ‘Minutes of the Thirteenth Five-Power Informal Consultative Meeting on Proposed Amendment, held at San Francisco, June 2, 1945, 5:30pm’, ‘Trusteeship Questions’, p.1113.

‘self-determination’.<sup>82</sup>

Moreover, when the USSR did mention ‘self-determination’ at San Francisco, the narrow reference was to the concept as an aim of the specific, colonial ‘trusteeship’ system. This was also the agenda item under which ‘self-determination’ was generally discussed during the conference. Soviet delegates did not invoke self-determination as a broader idea of freedom and equality for groups other than trusteeships, or stress that it should include the option of statehood.<sup>83</sup> The Soviet linkage of ‘self-determination’ with trusteeship at San Francisco had been foreshadowed by Lenin’s anti-imperialist discourse, and would predicate the anti-colonialism of 1950–1960 UN debates.<sup>84</sup> Nevertheless, the connection between ‘self-determination’ and independence for colonies was not to be fully formalised until the UNGA passed the Decolonisation Declaration in 1960.

Remarkably, also the other three states – the USA, Britain and China – that had joined the USSR in sponsoring the amendment containing ‘self-determination’ seemed disinterested in the concept at San Francisco. Britain had at first argued in favour of the Soviet move to refer to ‘self-determination’ in the Charter, but had then opposed it, along with the French, apparently since such a reference might threaten these countries’ colonial possessions.<sup>85</sup> Nevertheless, the UK soon came to accept having the language of ‘self-determination’ in the Charter, on the pragmatic grounds that rewriting Article 1(2) might take too much work.<sup>86</sup> Also the Chinese tried on at least one occasion to modify the Charter’s wording of ‘self-determination’, but generally appeared unengaged.<sup>87</sup> Apparently both China

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82 Ambassador Gromyko at the closing plenary session on 26 June 1945 as recorded in Andrew Cordier Papers, Columbia Archives Rare Books and Manuscript Collection, ID: 4078451 (hereafter: ACP), UNCIO, pp.5–7.

83 See e.g. ‘Summary of fourth meeting of Committee II/4’, 14 May 1945, UNCIO, Vol.X *Commission II General Assembly*, UN Information Organizations, New York 1945, p.441.

84 See also Füredi 1994, p.52.

85 FRUS SF, informal minutes of 2 May 1945, p.551. FRUS SF, ‘Minutes of the Sixtieth Meeting of the United States Delegation, Held at San Francisco, Friday, June 1, 1945, 9am’, informal notes, ‘Trusteeship’, p.1055. See also Lauren 2011, p.155.

86 ARMSNY UNCIO: S-1018, ‘Report of second meeting’ 16 May. Besides the USSR and the Ukrainian SSR representatives, Egypt argued for including self-determination: ARMSNY, UNCIO: S-0981, Box 14, File 3, ‘Summary report for May 14’.

87 See ARMSNY UNCIO: S-1018, ‘Report of second meeting’ 16 May.

and the UK accepted the Charter's 'self-determination' reference as a matter of mere convenience.

The USA would seemingly have preferred to leave the concept of 'self-determination' unaddressed at San Francisco – but once the suggestion to include it in the Charter had been made, found it hard to oppose.<sup>88</sup> Initial US drafts prepared for the conference had avoided the language of 'self-determination',<sup>89</sup> despite pleas from civil society representatives to have the Charter include it.<sup>90</sup> Even the US co-sponsoring of the four-state amendment of Article 1(2) at San Francisco reflected less than total commitment. In fact, US delegates instantly contradicted their own co-sponsorship of the amended Article, and argued that the Charter should drop the language of 'self-determination'. The wording on the concept, they claimed, lacked sufficient clarity.<sup>91</sup>

Regardless of some lingering concerns,<sup>92</sup> the Americans then again reversed their position, and endorsed the Charter's reference to 'self-determination'.<sup>93</sup> On the very day this happened, President Franklin D. Roosevelt had explained to his San Francisco delegation that the USA should support 'self-determination': The USA, he had said, needed to 'take the leadership and indicate to the Oriental peoples that we do not back the imperial role of the handful of non-Asiatics.'<sup>94</sup> This change of heart on 'self-determination'

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88 Ibid. See also Ruth B. Russell: *A History of the United Nations Charter: The Role of the United States 1940–1945*, Brookings Institution, Washington, DC, 1958, p.810.

89 See Louis B. Sohn: 'How American International Lawyers Prepared for the San Francisco Bill of Rights', *American Journal of International Law*, 89, 1995, pp.540–554.

90 Notably from the future first president of the UN General Assembly, Belgian socialist Paul-Henri Spaak, cited in FRUS SF, 'Interest of the United States in the Reaction of Non-participating Governments to the Dumbarton Oaks Proposals' from US Ambassador to Belgium, Charles Sawyer, to Secretary of State 25 November 1944, p.940. See also Lauren 2011, pp.167, 171–172. For pressure groups' reactions to Dumbarton Oaks, see also Burgers 1992, pp.474–475.

91 This exchange is summarised even more briefly in ARMSNY UNCIO: S-1018, 'Report of second meeting' 16 May, p.2.

92 See records from the Four-Power Consultation on May 2 in FRUS SF, p.546: 'Review of amendments to Dumbarton Oaks Proposals as suggested by the Soviet Delegation', and Russell 1958, p.810.

93 ARMSNY UNCIO: S-1018, Box 2, File 5, Working Papers, Commissions and Technical Committees, Committee I/1/A (drafting subcommittee reports), 'Report of Third meeting of Committee I/1/A (Drafting subcommittee)', 18 May, 1945, 'Consideration of outstanding points for Chapter I: Purposes', p.3–4.

94 FRUS SF, 'Minutes of the Forty-fifth Meeting of the United States Delegation, Held at San Francisco, Friday, May 18, 1945, 9am', informal notes, p.794.

might, however, be explained by more than such sentiments. Ever since Wilson's time, Americans had seen the concept of self-determination as *theirs*, and as a value linked broadly to freedom and peace.<sup>95</sup> In the words of one US delegate to the San Francisco Conference, his country simply could not 'place itself in a position of denying the principle of "self-determination"'.<sup>96</sup> The next chapter will show how similar ambivalence continued to characterise US 'self-determination' discourse during UN debates between 1950 and 1960.

The four co-sponsors' lack of enthusiasm for self-determination at San Francisco suggests that the inclusion of the concept in the Charter did not result from an elaborate, determined plan on the part of any one of them. To begin with, the USSR might have planted the language of 'self-determination' in the four-power package of amendments by 'default', as an unquestioned part of Soviet foreign policy doctrine established by Lenin decades earlier. 'Self-determination' then became only one of 27 proposed changes to the Charter, of which the four co-sponsors found several others more pressing.<sup>97</sup> Although the other three sponsors acquiesced – even if they had wanted to oppose inclusion of the term, they might have found it tricky to do so. Already in 1918, Wilson had internationally cemented the moral and political appeal of 'self-determination' discourse. And in 1920–1921, the League of Nations had further strengthened the concept, affirming its international institutional importance. By the time of San Francisco, 'self-determination' had become known worldwide as a value of in its own right.<sup>98</sup>

In contrast to the four powers' passivity on self-determination at San Francisco, other conference representatives did argue about the concept

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95 See also Russell 1958, p.75.

96 FRUS SF, 'Minutes of the Sixtieth Meeting', 1 June, p.1055.

97 ARMSNY UNCIO: S-0981, Summary report for 8 May. In the course of the conference, the four sponsoring governments jointly submitted 29 amendments to the Dumbarton Oaks proposal. See e.g. Mr Koo (China) in ACP, UNCIO: Plenary session, Doc.1209 (English), P/19, June 27, 1945 p.3; also William T. R. Fox, 'Collective Enforcement of Peace and Security', *American Political Science Review*, 39(5), 1945, pp.970–981.

98 See Council on African Affairs: 'The San Francisco Conference and the Colonial Issue', *Memorandum Prepared for Consideration in Relation to the Establishment of the Charter of a World Organization at the San Francisco Conference of the United Nations*, April, New York, 1945, p.4.

when discussions on the Charter commenced in early May 1945. All these arguments sought legitimation with reference to similar ideals of peace and international order, suggesting that these were the dominating standards of the day. For instance, those who opposed having ‘self-determination’ included in the Charter usually claimed that the concept should be excluded because its codification would threaten world stability. According to one version of this argument, which never gained much hold, Hitler’s earlier use of ‘self-determination’ proved that the concept was suited only to induce war-mongering abuse.<sup>99</sup>

An argument more prevalent at San Francisco against an unqualified mention of ‘self-determination’ in the Charter claimed that such a mention could incite disorder by breaking up existing states, hence fundamentally interfering with their sovereignty. This line of reasoning arose in the relevant drafting committee on the initiative of Colombia.<sup>100</sup> ‘[S]elf-determination’, Colombia had maintained, ‘was acceptable within the text [of the Charter] only if it meant the right to self-government of a people, and not if it meant the right to secede.’<sup>101</sup> If ‘self-determination’ were to be included in the Charter, it would be necessary to make this clear. Although the drafting committee agreed that ‘self-determination’ did not have to imply secession, it did not incorporate Colombia’s proposed specification into the Charter text. The drafting committee merely chose to affirm, internally, that self-determination ‘corresponded closely to the will and desires of peoples everywhere and should be clearly enunciated in the Charter’.<sup>102</sup>

In the same drafting committee discussion, several other states ‘strongly argued’ for including the language of ‘self-determination’ in the Charter,

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99 Iran cited in ‘Advance progress Report, Fifth Meeting of Commission I, Committee I, 14 May’, ARMSNY UNCIO: S-1018, Box 2, File 3 (-4), Working Papers, Commissions and Technical Committees, summary reports Committee I/1. See also ARMSNY UNCIO: S-0981, Box 14, File 3: Summary report for 14 May.

100 At San Francisco, it was Committee I/1/A that concentrated on Article 1(2).

101 ARMSNY UNCIO: S-1018, Box 2, File 3 (-4), Summary report of sixth meeting of Committee I/1, 15 May, 1945; and Committee I/1, progress report, sixth meeting, 15 May, 1945; also ARMSNY UNCIO: S-0981, Box 14, File 4, progress reports – summary reports for 15–20 May 1945, daily record of progress of commissions and committees, 15 May.

102 ARMSNY UNCIO: S-0981, daily record, 15 May.



claiming that it would contribute to international peace. Syria, for instance, held ‘that this principle correspond[ed] closely to the will of the people everywhere; [...] it served Belgium, Norway, Greece and Syria in their struggle for liberation.’ Yugoslavia wrongly cited ‘self-determination’ as ‘one of Woodrow Wilson’s Fourteen Points’, and espoused it as ‘the cornerstone’ of its own constitution.’<sup>103</sup> Contrary to the overall position of the drafting committee, such viewpoints assumed that realising ‘self-determination’ would have to involve the creation of new states.

Belgium presented the most adamant case against mentioning ‘self-determination’ in the Charter, depicting the concept as ‘dangerous and unacceptable’.<sup>104</sup> Codifying it as the basis of interstate relations by including it in Article 1(2), Belgium insisted, ‘would open the door to inadmissible interventions’ in the internal affairs of states.<sup>105</sup> Nonetheless, even this strongest critic of ‘self-determination’ could not sustain an all-out rejection. After initially having opposed the concept entirely,<sup>106</sup> Belgium then proposed instead to leave it in the Charter, but make its implementation conditional on the maintenance of ‘international order’.<sup>107</sup> Without any explanation, however, the drafting committee rejected Belgium’s attempt to attach conditions to self-determination, and left the concept in the Charter in the original version of the four-state amendment.<sup>108</sup>

Both Belgium’s tempering of its resistance to the language of ‘self-determination’, and the fate of the Belgian and Colombian proposals, reaffirmed the international appeal of the concept. At the time of San Francisco, the language of ‘self-determination’ appeared to be widely accepted as being of some moral and political value. It seemed unacceptable to disallow it completely, and hard to argue against. The arguments exhibited at San Francisco just before the language of ‘self-determination’

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103 ARMSNY UNCIO: S-1018, Summary report of sixth meeting, 15 May, 1945; and Committee I/1, progress report, sixth meeting, 15 May, 1945; also UNCIO: S-0981, daily record, 15 May.

104 ARMSNY UNCIO: S-1018, ‘Report of second meeting’, 16 May.

105 Belgian amendment to 1(2), UNCIO, Vol. IV *Commission I, General Provisions*, UN Information Organizations, London, New York 1945, Doc 374, p.300

106 ARMSNY UNCIO: S-0981, summary report for 14 May; and ARMSNY UNCIO: S-1018, ‘Advance progress Report’, 14 May.

107 ARMSNY UNCIO: S-1018, ‘Report of second meeting’ 16 May.

108 Ibid.

was included in the Charter also showed that the prevalent legitimising standards of the time lay close to Wilson's ideals of non-interference and peace. As in 1918, it seems, an international environment scarred by a world war had helped to affiliate the concept with a liberal-conservative idea of freedom.<sup>109</sup>

The idea of freedom underpinning the Charter's reference to 'self-determination' shone through also on a few other occasions at San Francisco. The word 'freedom' itself was barely mentioned at the conference, nor did it figure in the Charter. When Iran's representative towards the end of the conference lamented the absence of the word 'liberty' in the Charter, the US chairman of that meeting simply closed the issue without any explanation.<sup>110</sup> A rare record of an explicit linking of freedom and 'self-determination' at San Francisco was dated two days before the concept was voted into Article 1(2). During a drafting committee meeting on that day, a British delegate had equated 'self-determination' with independence, but warned that these notions should not be 'confus[ed]' with true freedom. '[I]ndependence', he had said, was not the same as freedom, and 'would come, if at all, by natural development'.<sup>111</sup> 'Self-determination' as independence, Britain wanted to make clear, was not to be achieved instantaneously, but through slow, 'natural' steps.<sup>112</sup>

This British intervention seemed intent on inserting a condition of 'maturity' into realising self-determination as independence, especially if

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109 For references to peace as the objective of the conference and of the UN, see ACP UNCIO: Plenary sessions, e.g. 'Verbatim minutes of the first plenary session', 27 April, 1945 Doc 15, P/3, and 'Verbatim Minutes of the closing plenary session, Opera House, June 26, 1945', of 27 June 1945, Doc.1209 (English), p.19. For Soviet references see Gromyko, p.8.

110 Chairman Stettenius stated that the coordination committee would sort out the issue – but the committee never addressed it; see Adle, Iran, on 23 June, 1945, UNCIO, Vol.V *Delegation Chairmen Steering Committee Executive Committee*, United Nations Information Organizations, London, New York 1945, p.310. Also Uruguay called for the inclusion of 'freedom' in the Charter on 14 May: ARMSNY UNCIO: S-0981, summary report for 14 May.

111 'Summary of fourth meeting of Committee II/4', 14 May 1945, UNCIO 1945, Vol. X, p.440.

112 On the issue of independence, Philippine delegate Carlos P. Romulo: *I Walked with Heroes*, Holt Rinehart and Winston, New York, 1961, claimed he fought and won the battle for including 'independence' in the Charter's Article 76(b) as an aim for non-self-governing territories, pp.259, 261–262. See also Gilchrist 1945, p.987.

applied to colonies.<sup>113</sup> That position was similar to Wilson's discourse of 'self-determination' from almost three decades earlier, and was to be repeated in the 1950–1960 UN debates examined in the next chapter. Also towards the end of the San Francisco Conference, the UK expressed alarm at the prospect of making self-determination in the form of statehood an unconditional 'goal for all territories'.<sup>114</sup> Moreover, with its attempt to disassociate 'independence' from 'freedom', Britain indirectly rejected the idea that conditions of dependence could make peoples unfree, implicitly saying that it was only interference that could take freedom away.

While the San Francisco Conference participants seemed to associate the same ideas of freedom with the language of 'self-determination', on the whole they did not operate with any joint definition of the concept. Oddly, at the very same meeting on 16 May 1945 in which the drafting committee adopted the four-power proposal's precise wording on 'self-determination',<sup>115</sup> the committee also called for more discussion on what the concept really meant.<sup>116</sup> However, no such detailed discussion was recorded at the conference.<sup>117</sup> Perhaps it did not actually take place because delegates had warned against it. According to a UK representative, discussing self-determination would only trigger disagreement, a point on which a USSR

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113 See also William Roger Louis: 'Public Enemy Number One: The British Empire in the Dock at the United Nations, 1957–71', pp.186–213 in Lynn (ed.) 2006b, at p.187.

114 UNCIO 1945, Vol. X, 'Summary report of fifteenth meeting of Committee II/4', 18 June 1945, p.562.

115 ARMSNY UNCIO: S-1018, 'Report of second meeting' 16 May; also S-1018, Box 2, File 7, Working Papers, Commissions and Technical Committees, Committee I/1/A, misc: 'Text of Chapter I, as agreed upon by the drafting committee', 16 May 1945 and Report of the Third meeting of Committee I/1/A (Drafting subcommittee), 18 May, 1945, 3.05pm.

116 ARMSNY UNCIO: S-0981, Box 14, File 4, Office of the Executive Secretary, summary report for 17 May 1945 stated that 'The questions of the equality of states, self-determination and the sanctity of treaties have been raised in I/1; I/1/A considers that these topics should be considered elsewhere, but no specific recommendation on this subject has been made.' See also Subcommittee I/1/A's report from the same day, and ARMSNY UNCIO: S-1018, 'Report of second meeting' 16 May.

117 Eagleton 1945a blamed such oversights on 'the fact that the Conference was dominated by individuals inexperienced in international organization and more interested in political security than in legal order or constitutional form', p.937. See also Clyde Eagleton: 'International Law and the Charter of the United Nations', *American Journal of International Law*, 39(745), 1945b, p.751–754. For similar contemporary criticism of the final Charter, see George A. Finch: 'Editorial Comment: The United Nations Charter', *American Journal of International Law*, 39, 1945, p.541–546. For a defence, see Mintauts Chakste: 'Justice and Law in the Charter of the United Nations', *American Journal of International Law*, 42, 1948, pp.590–598.

delegate agreed.<sup>118</sup> In the conference's last recorded use of the language of 'self-determination', its meaning still seemed to be unclear.<sup>119</sup>

The conference's only two brief attempts at defining the concept of 'self-determination' did not really make it any more clear-cut. These efforts did, however, highlight the ideas of freedom which the concept was associated with at the time. Two different drafting committees issued these clarifications after the 16 May vote on including 'self-determination' in Article 1(2), and before the final version of the Charter had been approved.<sup>120</sup> Dated 1 June<sup>121</sup> and 14 June,<sup>122</sup> the second of these texts was both a specification of the first, and was issued from a higher level of the conference drafting hierarchy.

According to the 1 June text, the two principles in Article 1(2) – 'equal rights' and 'self-determination' – were 'two component elements or one norm'. Free expression of peoples' will, the text held, was essential to prevent abuse of this norm. '[T]he principle as a whole', it continued, 'extends as a general basic conception to a possible amalgamation of nationalities if they so freely choose.' The text concluded that 'what is intended by paragraph 2 is to proclaim the equal rights of peoples as such, consequently their right to self-determination. Equality of rights, therefore, extends in the Charter to states, nations, and peoples.'<sup>123</sup>

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118 Jebb, UK, 'Summary report of twenty-second meeting of Coordination Committee', 15 June, UNCIO Vol. XVII Documents of the Coordination Committee, UN Information Organizations, London, New York 1945, p.143.

119 Ibid., pp.142–143.

120 The Charter was approved by the Coordination Committee on 1 and 2 June, ARMSNY UNCIO: S-1019, Box I, File 6, Charter, Commission I/Committee 1, records from 5 June 1945: To Coordination Committee (via Commission I), 'Approval of Chapter I by Committee I/1'. The Committee had the ultimate authority to approve drafts of the Charter; see ACP UNCIO: 'Conference Procedure on Drafting Final Charter', 11 May 1945, Steering Committee, Restricted, Doc 243 (English), ST/8. For the adoption of the text at the Conference, see e.g. ARMSNY UNCIO: S-1018, Box 2, File 7, A, misc: 'Text of Chapter I, as agreed upon by the Drafting Committee', Doc. 384, I/1/A/5 (2), 18 May 1945; also ACP UNCIO: 'Tentative Drafts of the Coordination Committee and the Advisory Committee of Jurists, Subject to Final Approval of the Coordination Committee', 21 June 1945, Coordination Committee, Document 1140 Co/179, p.2.

121 UNCIO 1945, Vol. IV, 'Report of Rapporteur of Subcommittee I/1/A, Farid Zeineddine, Syria, to Committee I/1, 1 June, 1945', pp.703–704.

122 ARMSNY UNCIO: S-1018, Box 2, File 1, Working Papers, Commissions and Technical Committees, summary reports Committee I, general, 'Report submitted to Commission I on behalf of Committee I, working on Preamble, purposes and principles', 14 June 1945, p.13.

123 UNCIO 1945, Vol. IV, Report of Rapporteur, 1 June 1945, pp.703–704.

The subsequent 14 June text would be the final and most authoritative explication of ‘self-determination’ at the conference. ‘The principle of equal rights of peoples and that of self-determination’, that text went, ‘are two complementary parts of one standard of conduct. [R]espect for that principle is a basis for the development of friendly relations and is one of the measures to strengthen universal peace.’ Ending with a warning similar to that of 1 June, the 14 June clarification stressed that genuine expression of peoples’ will was essential to prevent the concept from being misused.<sup>124</sup>

Despite the rather imprecise language of the two texts, the more authoritative 14 June document involved three interesting changes in emphasis from that of 1 June. First, the 14 June text specified international peace as superior to and the *aim of* self-determination. Then, it limited the 1 June text’s broader reference to equality. And, with reference to ‘friendly relations’, the later text affirmed that self-determination was meant for *states*, not for ‘states, nations, and peoples’, as in the 1 June text. Just like Wilson, the San Francisco drafters seem to have seen states as the primary agents and ‘recipients’ of self-determination, and to have favoured the concept as a means of achieving international stability. Indeed, also the four-power draft which would become Article 1(2) had proclaimed ‘self-determination’ in the context of orderly interstate relations. The purpose of the UN, according to that draft, was to ‘develop *friendly relations among nations* based on respect for the principle of equal rights and self-determination of peoples and to take *other appropriate measures to strengthen universal peace*’ (emphases added).

In essence, the 14 June text held self-determination to be synonymous with ‘*sovereign equality*’, meaning the equal right of states to non-interference when engaging in international affairs.<sup>125</sup> At the time of San Francisco as

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124 ARMSNY UNCIO, ‘Report’, 14 June 1945. See also ‘Verbatim Minutes of the First Plenary Session’ 27 April 1945, ACP, UNCIO, Plenary sessions, Doc 15, P/3, for Stettenius, see pp.5–7; also Hans Kelsen: *The Law of the United Nations*, Praeger, New York, 1950, pp.51–53.

125 See R. Higgins: ‘Postmodern tribalism and the right to secession, comments’, in Brölman et al. (eds), 1993, pp.29–35, at p.29; Robert A. Klein: *Sovereign Equality among States: The History of an Idea*, University of Toronto Press, Toronto, 1974.

well as today, ‘sovereign equality’ denoted protection of the sovereign jurisdiction of states, especially when entering into international agreements and organisations.<sup>126</sup> The notion of sovereign equality did not encompass peoples or groups other than already well-established bodies politic.<sup>127</sup> Unsurprisingly, established states have generally seen the consolidation of sovereign equality as an international value.<sup>128</sup>

Despite the mention of ‘equal rights’ together with ‘self-determination’ in Article 1(2), therefore, the discourse shaping the drafting of the UN Charter did not seem particularly appreciative of equality as an ideal. It was not equality that underpinned the drafters’ decision to base the UN’s workings on the exclusive veto powers of five permanent members of the Security Council.<sup>129</sup> And it was not the radical idea of freedom as equality of status that provided the foundations for understanding self-determination as sovereign equality. Instead, the language of the drafters of Article 1(2) suggested framing the concept as a path to peace, non-interference and ‘absence of coercion’<sup>130</sup> for established states.<sup>131</sup>

## Conclusions

Following the international realisation of one version of self-determination in the case of Albania, the League of Nations’ Aaland Islands case and then the UN Charter formalised the significance of the concept in international affairs. The Charter also codified the language of ‘self-determination’ in

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126 See Kelsen 1950, pp.51–53; the UNCIO volumes and ACP UNCIO records, as well as William T. R. Fox: ‘The Super-Powers at San Francisco’, *Review of Politics*, 8(1) 1946, pp.115–127, at p.118 and Alan James: ‘The Equality of States: Contemporary Manifestations of an Ancient Doctrine’, *Review of International Studies*, 18(4), 1992, pp.377–391, especially pp.384–385.

127 See Hans Kelsen: ‘The Preamble of the Charter – a critical analysis’, *Journal of Politics*, 8(2), 1946, pp.134–159, especially pp.149–151. See also Cassese 1995, p.42; Martti Koskenniemi: ‘Legal Cosmopolitanism: Tom Franck’s Messianic World’, *International Law and Politics*, 35, 2002–2003, pp.471–486, at p.475.

128 See Hurd 1999.

129 And for a perspective on racial equality at the conference, see Lauren 1983.

130 President F.D. Roosevelt defining ‘self-determination’ in a letter to Churchill on planning for the post-war international order, FRUS 1944, Vol. III, ‘The British Commonwealth and Europe’, ‘President Roosevelt to the British Prime Minister (Churchill)’, 27 May 1944, p.692.

131 Kelsen 1946, p.152; M. S. Rajan: ‘United States Attitude toward Domestic Jurisdiction in the United Nations’, *International Organization*, 13(1), 1959, pp.19–37, at pp.19, 35; M. Glen Johnson: ‘The Contributions of Eleanor and Franklin Roosevelt to the Development of International Protection for Human Rights’, *Human Rights Quarterly*, 9, 1987, pp.19–48, at p.24.

international law. Neither of these cases, however, changed the dynamics of legitimation or the ideas of freedom that Wilson and Lenin had attached to the concept internationally. In the cases of Albania and the Aaland Islands, radical articulations of ‘self-determination’ served to spark discourse and solutions with liberal-conservative affinities – as when Wilson had reacted to Lenin’s language. And even after the adoption of the Charter in 1945, the concept would remain within the conceptual confines drawn up by those two men. Sometimes with explicit reference,<sup>132</sup> the three instances investigated in this chapter reaffirmed particularly Wilson’s liberal-conservative notion of self-determination as a means of ensuring peace, stability and non-interference with approved state agents – while largely pushing aside the radical idea of freedom as equality of status.<sup>133</sup> The cases repeated the vision associated with Wilson’s language of ‘self-determination’, but did not change it.

Of the events examined in this chapter, the formulation of the UN Charter was clearly the most important. Leaving the precise meaning of ‘self-determination’ unclear, the Charter, as the world’s supreme legal document, asserted the concept as a purpose of the UN and vested it with legal authority. When the language of ‘self-determination’ later gained international importance, especially in the UN debates to be discussed in the next chapter, and in the ICJ Kosovo case, the Charter was cited as the key textual source. Regardless of what precise legal status the Charter might have accorded to the concept, that document made ‘self-determination’ an authoritative international standard. The Charter also took a step towards making ‘self-determination’ legally operational. In light of the concept’s lingering associations with the prospect of statehood, this might be seen to in itself have radical implications. Indeed it is for such reasons that scholars

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132 See above, as well as Czechoslovak representative Mazaryk at the closing plenary session at San Francisco, 26 June 1945, as cited in ACP UNCIO, p.17.

133 For related contemporary expressions of these ideals, see *Annals of the American Academy of Political and Social Science*, 243, Essential Human Rights, January 1946, including Edward R. Stettinius, Jr.: ‘Human rights in the United Nations Charter’, pp.1–3; H. V. Evatt: ‘Economic Rights in the United Nations Charter’, pp.4–5; Charles de Visscher: ‘Human Rights in Roman Law Countries’, pp.53–59 and Henri Bonnet: ‘Human Rights are Basic to Success of United Nations’, pp.6–7, all proposing that the inclusion of human rights in the Charter would be a way to safeguard peace, and Karl Loewenstein: ‘Freedom is Unsafe Without Self-government’, pp.47–49, indicating self-government – but not secession – as a similar remedy.

have posited that ‘self-determination’ amounts to an ‘international law of freedom’.<sup>134</sup>

Most of these ideas and conceptualisations were merely implied when the League and the UN Charter used the language of ‘self-determination’. It was not until the 1950–1960 UN debates on the ICHR and the Decolonisation Declaration that the international meaning and value of ‘self-determination’ would be debated, head on. These are the issues to which this thesis now turns.

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<sup>134</sup> For example Miéville 2005, p.268.



#### 4. 'SELF-DETERMINATION' DEFINED?

Five years after the UN Charter had legally codified an undefined variant of the concept of 'self-determination', the UN began debating its meaning – and this was to prove a lengthy process. First, commencing in 1950, the Third Committee of the UN General Assembly (UNGA) discussed incorporating the term in the International Covenants on Human Rights (ICHRs).<sup>1</sup> Then, at its 1960 plenary session, the UNGA plenary deliberated upon the Declaration on the Granting of Independence to Colonial Countries and Peoples (the 'Decolonisation Declaration'), which it would pass later that year.<sup>2</sup> Together, these two UN debates – in effect constituting a single, decade-lasting discussion – were uniquely engaged with the international significance of the language of 'self-determination' and its relation to political freedom.

Apart from the early 20<sup>th</sup>-century emergence of the discourse of 'self-determination' in international affairs, no other moment has been more important to the concept. Although the full details of the international context of the 1950–1960 UN discussions are beyond the scope of this chapter, I could note that 'self-determination' again became significant during global change and intense ideological competition. Arguments at the UN reflected Cold War tensions as well as the ongoing dismantling and delegitimation of colonialism. Speakers seemed keen to protect their countries' international prestige and geopolitical interests; the often-heated

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<sup>1</sup> Initially, the UN had envisaged a single human rights covenant, but decided in 1954 to formulate two, adopted by the UNGA in 1966 as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) – in this thesis referred to jointly as 'ICHR' or 'ICHRs'. These ICHR entered into force in 1976. Over the years, primarily the UNGA Third Committee discussed 'self-determination' in this setting, and above all between 1950 and 1955; the concept was however cited also in other UN texts and organs, like the UN Human Rights Commission (HRC) and the UNGA plenary, including with regard to UNGA Resolution 545(VI), 5 February 1952 and UNGA Resolution 637(VII), 16 December 1952. Because discussion of 'self-determination' at the Third Committee's ICHR debate was the most important, as well as uniquely detailed, in the following I concentrate on this debate as the key part of the UN's handling of the concept in the 1950s. See the UN's public records from the Third Committee, HRC and UNGA (especially 1950–1955), as well as UNOGA records cited below. See also UN official John P. Humphrey: *Human Rights and the United Nations: A Great Adventure*, Transnational Publishers, New York, 1984, p.205.

<sup>2</sup> UNGA Resolution 1514, 14 December 1960.

rhetoric signalled that the stakes involved were high.<sup>3</sup> In these circumstances, the language of self-determination was legitimised with reference to the ideas of freedom then deemed suitable for steering the world towards a better international order.

The 1950–1960 decade of UN debate ended with the UNGA passing three documents of international law: the 1960 Decolonisation Declaration and the two 1966 ICHRs. All three texts contained exactly the same wording on ‘self-determination’: ‘All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.’<sup>4</sup> Even more than this formulation itself, the debates preceding its inclusion in the three documents disclosed international understandings of the concept of self-determination and affiliated ideas of freedom.

Legally, the force of the three documents was less than that of the UN Charter – nevertheless, the 1960 Decolonisation Declaration in particular was important. It formalised the legal and policy connection between ‘self-determination’ and colonial independence, and provided the closest thing ‘self-determination’ would ever get to an authoritative definition. Moreover, the 1960 Declaration served to make the concept politically *implementable*. From the adoption of that Declaration, independence for colonies has been the conventional association with the language of ‘self-determination’ in scholarship, politics and law. Granting colonies statehood has become the only form of realising self-determination widely accepted even in non-consensual cases. Although the final text of the two 1966 Covenants would not be equally significant to ‘self-determination’ in international affairs, the discussion preceding these ICHRs is also necessary to understanding the concept.

Like the previous chapter, this one focuses on ‘self-determination’ discourse presented by states and institutions, not by individuals in personal

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3 Benjamin Rivlin: ‘Self-determination and Colonial Areas’, *International Conciliation*, Carnegie Endowment for International Peace, 501, January 1955, e.g. remarks on the rising temperature of the ICHR debates, pp.204, 218. See below for further detail.

4 UNGA Resolution 1514, 2, ICCPR and ICESCR 1(1).

capacities. It should be noted that, during the UN debates, Middle Eastern, Latin American, Asian, and African delegates seemed less bound by their capitals than their Western<sup>5</sup> and socialist<sup>6</sup> counterparts.<sup>7</sup> Nevertheless, the statements issued by *all* delegates were necessarily official country positions, and not private views. And as before, my focus is on *international* discourse on self-determination and the ideas of freedom publicly used to legitimise such discourse. Thus, the backgrounds or motivations of the various individuals who happened to present arguments are not pertinent to the study.

This chapter starts with explaining the 1950 onset of the UN debates addressing ‘self-determination’ and ends with a closer look at how the 1960 Declaration framed self-determination as colonial independence. In-between these two points, I examine the rhetorical strategies that debate participants employed in arguing about self-determination at the UN. Overall, Western delegates made the case *against* incorporating ‘self-determination’ in the three UN texts in greater detail and with more varied arguments than did those states that argued for including the concept. Since Western arguments sceptical to self-determination were central to the international discourse on the concept at this moment, my analysis will pay greater attention to them. Throughout, I explore how states invoked the radical and liberal-conservative ideas of freedom in arguing about self-determination internationally.

This chapter does not seek to pigeonhole the conceptual promoters of the

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5 It is established terminology to use the terms ‘the West’ and ‘Western’ with reference to Western European, North American, and British Commonwealth country representations in UN debates: see e.g. Burke 2010, pp.9–12 and Cassese 1995 pp.46–47 (although the latter’s ‘West’ sometimes includes North Americans and sometimes not, see e.g. p.49). Nordic countries usually echoed the discourse of the ‘West’.

6 This term here denotes the members of the Warsaw Pact as they participated in the UN debates.

7 Internal correspondence indicates both that Western governments kept their UN delegates on a tight leash – and Western frustration of a lack of similar coordination on the part of others. See e.g. FRUS, 1952–1954, Vol.III, UN Affairs, UN Planning Staff, Bureau of UN Affairs, Washington, A/MS files, lot 54 D291 (V), ‘UNA/P master file’, undated (but referring to a new US policy of 6 April 1954), p.132. See also Burke 2010 pp.10–11 and Moyn 2010, e.g. p.96, referring to French and US delegates speaking on behalf of their governments. Whether these dynamics reflected countries’ positions on the role of the UN in the Cold War is a question beyond the scope of this chapter.

two ideas of freedom according to their Cold War affiliations<sup>8</sup> – nor is it possible to categorise them in this way. Cold War interests clearly produced conflicting arguments on self-determination *policy*. But the standards that states used to *legitimise* these arguments were not determined in the same way. After all, participants were operating in the same international forums and formats, seeking to win over the same audiences to their arguments and ideas. In line with the logic of legitimation explained in the introduction to this thesis, it should thus come as no surprise that the discourses of different states on ‘self-determination’ in the UN debates relied upon similar legitimating standards. And again, the liberal-conservative idea of freedom came to dominate.

### **Debating ‘Self-determination’ at the UN**

The decade of UN discourse on ‘self-determination’ was instigated by the post-Second World War efforts to adopt an international human rights bill. Already at the 1945 San Francisco Conference, the participants had determined that the UN Economic and Social Council should establish a Commission on Human Rights (HRC), within the framework of keeping the peace and avoiding a new war.<sup>9</sup> At its very first meeting in January 1947, this HRC had decided to draft a human rights covenant with these ends in mind.<sup>10</sup> Discussing a preliminary draft in 1948, the HRC had not mentioned ‘self-determination’.<sup>11</sup> But it had emphasised, in terms resembling those of Wilson several decades earlier, that ‘human rights should be protected by a regime of law’, so as to stop mankind from threatening the peace by

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8 For a perspective from the time on Cold War ‘bloc’ thinking at the UN, see Alexander Dallin: ‘The Soviet View of the United Nations’, *International Organization*, 16(1), 1962, pp.20–36.

9 See e.g. Dean Gildersleeve, USA, in ARMSNY UNCIO: ‘Report of Third Meeting of Committee I/1/A, 18 May 1945: Consideration of Outstanding Points for Chapter I: Purposes’, S-1018, Box 2, File 5.

10 Initially referred to as an ‘International Bill of Human Rights’, UNDocE/259, 11 February 1947, ‘Economic and Social Council, Human Rights Commission: Report of the Commission on Human Rights to the Economic and Social Council’, United Nations Economic and Social Council (ECOSOC) 4th session 1947, Plenary General Series, UNDocs E/33/Rev.2, 33/Rev.3, E/251-274/Add.5, UNE 251-2744, p.2. Unless otherwise stated, all UNDocs cited here have been accessed at the UN Library, New York.

11 See the following records: ECOSOC 6th session 1948 6:4; ECOSOC 7th session 1948 Plenary General Series; ECOSOC, HRC, 1948–1949; these and any ensuing ECOSOC records are official records accessed at the UN Library, New York.

‘rebel[ling] against tyranny and oppression’.<sup>12</sup> One of the human rights that had then been put forward had been ‘the right to a government which conforms to the will of the people.’<sup>13</sup>

At the HRC’s May–June 1949 session, the USSR, as in 1945, made the first move on ‘self-determination’, by proposing the inclusion of the following article in the human rights covenant:

Every people and every nation shall have the right to national self-determination. States which have responsibilities for the administration of non-self-governing territories [NSGTs] shall promote the fulfilment of this right, guided by the aims and principles of the United Nations in relation to the peoples of such territories.<sup>14</sup>

Subsequent discussions and drafts, however, seemed to ignore both this specific proposal and the language of ‘self-determination’.<sup>15</sup> Initially, the USSR and its allies protested that the other proposed drafts were ignoring the ‘right of peoples and nations to national self-determination’.<sup>16</sup> But when these objections were met with silence, their focus shifted elsewhere.<sup>17</sup>

‘Self-determination’ did not become a topic of extended discussion at the UN until 9 November 1950, following a joint initiative of Saudi Arabia and Afghanistan at the UNGA’s Third Committee. The Third Committee had just become the main organ drafting the ICHR, and would remain so until it presented the covenants to the UNGA plenary in 1966.<sup>18</sup> The Saudi–

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12 ECOSOC 7th session, *op.cit.*, UNDocE/800, 28 June 1948: Report of the HRC 3rd session, annex A, p.10.

13 *Ibid.*, p.12.

14 ECOSOC, 9th session, 1949 UNE 1363-1406: UNDocE/1371 and UNDocE/CN.4/350: Report of HRC 5th session to ECOSOC, 9 May–20 June, 1949, p.47.

15 See records from ECOSOC 11th session, 1950, UNE 1678–1687.

16 Official records from the UNGA 5th session, 1950/51, Third Committee, UNA C.3 L.41-153, A/C.3/L.77, 2 November 1950. See also the intervention of Panyushkin (USSR) in the minutes from the 289th meeting of the Third Committee, 19 October 1950, in UN R1/1, UNGA Official Records 5, 1950, 3rd–4th Committees, p.114. Also representatives of Poland as well as Ukrainian and Byelorussian SSRs criticised the absence of ‘self-determination’ in the ICHR draft: see pp.113, 117, 125, and 129.

17 ‘Self-determination’ was not included when, shortly after, the USSR presented a list over rights for the covenant: UN R1/1 1950, Third Committee 297th meeting, 30 October, pp.175–176. See also ‘Daily Report of 17 November 1950’, ARMSNY: S-0923, Box 12, File 8, Daily General Assembly Reports to the Secretary-General, 27 Sept–17 November 1950.

18 For records on discussions of ‘self-determination’ in the ICHR, see Marc J. Bossuyt:

Afghan proposal called upon the UNGA to request the HRC to study how the right to self-determination might be ensured, and to prepare recommendations to the Assembly.<sup>19</sup> Whereas the Soviet Union had never explained why it in 1949 had wanted to have ‘self-determination’ included in a human rights covenant, Saudi and Afghan representatives did expand on their proposal. Saudi Arabia’s delegate, Jamil Murad Baroody, stated that colonies and colonial powers should be ‘partners’ with ‘equal rights’ – and, speaking on behalf of Afghanistan, Abdul Rahman Pazhwak denounced violations of the ‘basic’ ‘right of nations to self-determination’:

It was being violated in the name of civilization, of freedom from want and ignorance, and of democracy; but those were poor excuses. Men who governed their own fate were guided by other motives than those who governed the fate of others; and poverty was preferable to slavery.<sup>20</sup>

Clearly, then, the Saudi–Afghan call for higher-level UN recognition of ‘self-determination’ was legitimised with reference to equality and freedom from dependence. A status of equal independence, the argument went, was more valuable even than economic prosperity. People’s freedom as independence should be valued and promoted, regardless of the economic consequences. Later, its drafters pointed out to the Third Committee that their ‘self-determination’ proposal had not been intended to limit the concept to colonial peoples only – in their view, it encompassed a broader idea of freedom.<sup>21</sup> This 1950 move hence expressed a radical idea of ‘self-determination’, though one seemingly unaligned with Lenin’s specific socialist ideology. After this initiative, Baroody and Pazhwak reportedly

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*Guide to the ‘Travaux Préparatoires’ of the International Covenant on Civil and Political Rights*, Martinus Nijhoff, Dordrecht, 1987; Matthew Craven: *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development*, Clarendon, Oxford University Press, Oxford, 1995; Sarah Joseph, Jenny Schultz and Melissa Castan: *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary*, Oxford University Press, Oxford, 2004. For these discussions in the context of human rights history, see Moyn 2010, Burke 2010 and Kristen Sellars: *The Rise and Rise of Human Rights*, Sutton, London, 2002.

19 UNDocA/C.3/L.88, 3 November 1950, Afghanistan and Saudi Arabia: ‘Amendment to the Joint Draft Resolution Submitted by Brazil, Turkey and the United States of America (UNDocA/C.3/L.76)’ and UNDocA/C.3/L.88/Rev.1 of 7 November.

20 UN R1/1 1950, Third Committee 309th meeting, 9 November, p.240.

21 Pazhwak, 4 November 1955, UN R1/1, UNGA Official Records 10, 1955, 3rd committee, p.141.

assumed ‘unofficial leadership’ of the Third Committee.<sup>22</sup>

Interestingly, given Lenin’s earlier advocacy, Soviet reactions to the Saudi–Afghan draft encapsulated a narrower understanding. While commending the draft text, the USSR used the language of ‘self-determination’ only with reference to the prospects for ‘self-government’ – rather than full statehood – of colonies ruled by Western states.<sup>23</sup> ‘Self-determination’, the Soviet representatives argued, should be granted to ‘abolish all restrictions’ specifically for populations oppressed by Western colonialism.<sup>24</sup> With this stance, Soviet delegates indicated that they understood self-determination primarily as a weapon against colonial Cold War opponents, and as legitimate if it enhanced peoples’ freedom from imperialist interference. In so doing, they were repeating only one strand of Lenin’s ideas of ‘self-determination’, ignoring parts of his broader conceptualisation. Nevertheless, the USSR would continue to support the concept in whichever guise it occurred throughout the decade of UN debates.<sup>25</sup>

It was the Saudi–Afghan initiative, rather than the Soviet one, that served to spark off the years of UN discussion. By contrasting self-determination with dependence and inequality, it had indicated not only a radical policy of self-determination – but also a radical way of understanding freedom in international affairs.<sup>26</sup> This immediately triggered strong reactions at the UN, including personal acrimony of some Western states against the authors of the draft.<sup>27</sup> British delegates spoke against the Saudi–Afghan proposal, stressing that ‘self-determination was [...] of necessity a slow and gradual process’. The French said that the concept should be excluded from the

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22 UN official Humphrey 1984, p.172.

23 by presenting ‘self-determination’ as based on UN Charter Article 73(b) on the administration NSGTs. For the ensuing debate, see UN R1/1 1950 Third Committee, 309th meeting, 9 November, p.240.

24 Morozov, USSR, UN R1/1 1950/51, 317th Plenary Meeting, 4 December 1950, p.553.

25 For a contemporary analysis of immediate post-war Soviet approaches to international law, see W. W. Kulski: ‘The Soviet Interpretation of International Law’, *American Journal of International Law*, 49(4), 1955, pp.518–534.

26 Interestingly, Berlin 1959, p.30, disagrees that demands for colonial liberation can be demands for ‘negative’ freedom – he claims they have the ‘positive’ concept of liberty at heart.

27 Especially against Baroody: see ‘From the UK UN delegation to ER Warner’, UN Dept, Foreign Office, November 1952, TNA: CO 936/102: 15 January–7 December 1953, Doc.26.

ICHR and that the Third Committee should discuss it no further.<sup>28</sup> Belgium's delegates repeated the country's 1945 case: 'Self-determination' would result in 'anarchy, as the populations were not yet sufficiently advanced to decide their own fate'.<sup>29</sup> And with characteristic ambivalence, the USA stated that while it 'supported the principle of self-determination', it would have to be excluded from the present discussion.<sup>30</sup>

These early developments launched the assumptions, arguments and legitimising standards that would play out as the UN debated self-determination for the next ten years. Significantly, while states' arguments and rhetoric could differ greatly, their basic assumptions and their legitimising standards were often *not* in conflict. For instance, a key assumption shared by participants in the debate was that the language of 'self-determination' primarily connoted political independence. True, a very few UN delegates did present self-determination as realisable through democratic representation and individual rights within existing states.<sup>31</sup> And the fact that the UN discussed including the concept in a *human rights* bill also hinted at such an 'internal' perspective. But 'internal self-determination' was never explicitly advocated during the UN discussions. As these debates unfolded, the language of 'self-determination' generally stayed linked to statehood.

Moreover, state participants in the UN debates also commonly assumed that the key question raised by 'self-determination' was whether or not to grant statehood to 'dependent territories' – in the main, to *colonies*.<sup>32</sup> Although Western states repeatedly tried to prevent colonialism from becoming the subject of any international discussion at the UN, in this they were

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28 UN R1/1 1950, Third Committee, 309th meeting, 9 November 1950, p.240.

29 Ibid., and 310th meeting, 10 November 1950, p.241.

30 Eleanor Roosevelt, *ibid.*, p.243. For a brief and somewhat rosy perspective on the role of Eleanor and Franklin D. Roosevelt in the emergence of human rights, see Johnson 1987, especially pp.27–28.

31 E.g. Gilson, Belgium, 643rd meeting, 25 October, 1955; Hoare, UK, 652nd meeting, 4 November, 1955; Houk, Canada, 674th meeting, 28 November 1955, all in UN R1/1 1955, Third Committee, pp.94, 143, 249, respectively.

32 Including NSGT and Trust Territories. Although without unambiguous formal definition, 'dependent territory' was applied in the UN setting as a synonym of 'colony', including NSGTs and Trust Territories. See e.g. M.I. Finley: 'Colonies – an Attempt at a Typology', *Transactions of the Royal Historical Society*, Conference of the Society, 19 September 1975, pp.167–188, at p.170.



unsuccessful. For the most part, UN delegates seemed to take it for granted that self-determination chiefly concerned establishing new states from former colonies. Most also came to admit that colonies would, some day, become independent – although they disagreed strongly on the circumstances, tempo and authority under which this might happen.<sup>33</sup>

Another joint assumption was that the language of ‘self-determination’, in general terms, held a certain positive moral value and a level of international authority. Over the decade of discussion at the UN, few states directly opposed it as such.<sup>34</sup> Instead, delegates explained the international weight of the concept of self-determination as being founded in the UN Charter’s Article I, as well as in Wilson’s advocacy.<sup>35</sup> Socialist representatives also referred to Lenin;<sup>36</sup> others mentioned the French and American revolutions and the independence of specific states as proof of the practical import of the concept.<sup>37</sup> These references to earlier authoritative mentions of ‘self-determination’ at the UN debates both reflected, and might have helped create, the debates’ near-consensus on the concept’s international meaning.

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33 Cooper 2005 (especially pp.213–241) traces the colonial powers’ acceptance of this to the realisation that they were not interested in granting equal citizens’ rights to colonial peoples. See also Frederick Cooper: *Decolonization and African Society: The Labor Question in French and British Africa*, Cambridge University Press, Cambridge, 1996.

34 Rivlin 1955 claimed that ‘self-determination’ was ‘espoused by every member nation’ in a manner ‘akin to the unanimity of all political candidates in opposing sin’ (p.204); also Füredi 1994, p.270; Crawford 2002, p.296, for the 1940s and pp.340–341 for subsequent international history.

35 For references to Wilson, see e.g. Tsaldaris, Greece, Third Committee, 572nd meeting, 3 November 1954, UN R1/1, UNGA Official Records 9, 1954, Third Committee, p.150, as well as Asha, United Arab Republic, 929th UNGA Plenary Meeting, 30 November 1960, British Library microfiche SPR Mic. E 14, UNGA Official Records 4th emergency & 15th sessions, Plenary Documents, A/4355–A/4682, A/INF; A/L, 1960, Box No. 1 (hereinafter: ‘BL’), p.1047, and Rossides, Cyprus, 945th Plenary Meeting, 13 December 1960, BL, p.1254. For the Charter, see e.g. Dag Hammarskjöld, ‘Statement by the Secretary-General’, Third Committee, 633rd meeting, 11 October 1955, UN R1/1 1955, p.45, as well as Jochamowitz, Peru, 363rd meeting, 10 December 1951, and Ullrich, Czechoslovakia, 366th meeting, 11 December 1951, both at the Third Committee cited in UN R1/1, UNGA Official Records 6, 52, 2nd and 3rd Joint and 3rd Committees, pp.100, 118, respectively; Fekini, Libya, 929th Plenary Meeting, 30 November 1960, BL p.1033.

36 E.g. Zorin, USSR, 925th Plenary Meeting, 28 November 1960, BL, p.981.

37 For the American Revolution see e.g. Thors, Iceland, 936th Plenary Meeting, 5 December 1960, BL, p.1147, and for the French and American Revolutions, as well as Wilson, see Begum Jehan-Murshid, Pakistan, Third Committee, 827th meeting, 3 December 1957, UN R1/1, UNGA Official Records 12, 1957, 2nd–3rd Committees, p.320. See also Robert Waelder: ‘Protest and Revolution against Western Societies’, pp.3–27, in Morton A. Kaplan (ed.): *The Revolution in World Politics*, Wiley, New York, 1962, claiming that the US references to the American Revolution were part of the US rhetorical strategy in the decolonisation debate, at p.23.

The year 1955 added two new sources to this list of textual self-determination authorities that participants cited during the UN debates. That year, the Third Committee's drafters of the ICHRs voted the precise language of 'self-determination' into the draft covenants, advancing the international formalisation of the concept.<sup>38</sup> Moreover, in 1955 also the African–Asian Bandung Conference asserted the concept, in its (non-binding) final communiqué, with language mirroring that employed during the preceding five years of Third Committee discussion.<sup>39</sup> Bandung was especially critical in certifying the importance of 'self-determination' to the non-aligned movement.<sup>40</sup> Without Bandung, the African–Asian-sponsored draft that was to result in the 1960 UNGA Decolonisation Declaration might not have materialised.<sup>41</sup> In 1955, both the draft ICHRs article on 'self-determination' and the Bandung communiqué strengthened the general sense at the UN that the concept was of high international standing.

In fact, participants in the UN debates converged on more than these basic assumptions on what 'self-determination' meant and what its textual authorities were – they also relied on strikingly similar standards of legitimation in arguing about the concept. Western states were the most vocal espousers of the liberal-conservative standards that would dominate the decade. Although amending their precise lines of reasoning, as will be shown, they uniformly sought legitimation with reference to peace and non-interference. When they presented their various arguments against UN codification of 'self-determination', the heart of their case remained that codifying the concept would mean risking instability through interfering

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38 UNDocA/C.3/SR.676, 29 November 1955; see the chronology recorded in 'Proceedings of the Third Committee', UNOGA: SOA 317/1/03 A, 'Article Relating to the Right of Peoples to Self-determination'.

39 'Final Communiqué of the Asian–African Conference of Bandung', 24 April 1955. See also Roland Burke: "'The Compelling Dialogue of Freedom": Human Rights at the Bandung Conference', *Human Rights Quarterly*, 28, 2006, pp.947–965; and Burke 2010, especially p.26.

40 For the atmosphere and key themes of Bandung, see Richard Wright: *The Color Curtain: A Report on the Bandung Conference*, Banner Books, New York [1956] 1994. For a human rights perspective, see Burke 2006. See also the memoir of Philippine representative Carlos P. Romulo: *The Meaning of Bandung*, University of North Carolina Press, Chapel Hill, NC, 1956; also Naoko Shimazu: "'Diplomacy as Theatre" Recasting the Bandung Conference of 1955 as Cultural History', *Asia Research Institute Working Group Series*, no 164, October 2011.

41 See e.g. Crawford 2002, p.317.

with the affairs of established states.<sup>42</sup> Britain and the Commonwealth countries, as well as Belgium, France, Italy, the Netherlands, Portugal, Spain and the USA, were especially prominent on this side of the discussion – although the US position was often ambiguous.<sup>43</sup>

Also most African, Asian and Middle Eastern states cited such standards when they sought to legitimise their arguments against the West and *for* UN formalisation of the language of ‘self-determination’. They often disagreed with the West on facts and policy, as well as on which agents *counted* politically – taking account of non-state peoples and not only existing states in their international outlooks. Their discourse, however, implicitly relied upon similar ideas of freedom. Indeed, the Saudi–Afghan draft had been a rare exception in the UN debates, and the form of radical ideas it expressed would not again be formulated as clearly. Instead, some non-Westerners defended self-determination *both* as a matter of radical equality *and* as a means to secure peace,<sup>44</sup> while most relied on standards even closer to those espoused by the West. Typically, African, Asian and Middle Eastern delegates argued for self-determination as freedom from oppression, exploitation and other forms of interference, and by emphasising above all that its codification would serve world peace.<sup>45</sup> Placing peace at the top of their value hierarchy, they argued that it was *violations* of self-determination through illegitimate interference with subjugated peoples that would cause

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42 See e.g. the British UN Delegation summing up views expressed in British–French–Belgian talks on ‘self-determination’ on 27–28 May; the concept was seen as ineffective, unenforceable, political, disruptive, a threat to contractual obligations, and a ‘serious menace to peace’: TNA: FO371/101434, ‘Draft Brief on “Self-determination”’, 14 June 1952.

43 For an example of this ambivalence, see Roosevelt at the Third Committee, Daily Report of 18 November 1952, attachment at ARMSNY: S-0923, Box 12, File 9, General Assembly, Daily General Assembly Reports to the Secretary-General, 15 Nov 1952–4 March 1953. See also Roosevelt, US, Third Committee 364th meeting, 10 December 1951, UN R1/1, 1951–1952, p.104. For a scholarly discussion on this ambivalence, see Annette Baker Fox: ‘International Organization for Colonial Development’, *World Politics*, 3(3), 1951, pp.340–368, especially pp.340–341.

44 See e.g. from the 1960 UNGA Plenary Session, BL: Bhutto, Pakistan 878th meeting, 29 September, pp.236, 233; Sukarno, President of the Republic of Indonesia, 880th meeting, 30 September, p.286. See also e.g. Sékou Touré, President of Guinea, 896th meeting, 10 October, pp.564, 573; Souvanlasy, Laos, 904th meeting, 13 October, p.709; Okala, Cameroun, 866th meeting, 21 September, p.29.

45 E.g. Tamba, Liberia, Third Committee 366th meeting, 11 December 1951, UN R1/1, UNGA Official Records 6, 1951–52, 2nd and 3rd Joint and 3rd Committees, UN, New York, p.115; Cheng China, Third Committee 569th meeting, 2 November 1954, UN R1/1 1954, p.135; also Emerson 1965, especially p.486.

instability, ‘bloodshed and war’.<sup>46</sup>

The arguments of socialist states, in support of including ‘self-determination’ in the ICHR and the Decolonisation Declaration, generally employed similar legitimating standards.<sup>47</sup> The socialist demand that peoples should be freed from colonialism *because* it was oppressive and interfering defended an idea of freedom as non-interference of the sort that Lenin had first associated with ‘self-determination’. However, the rest of Lenin’s radical discourse was absent from socialist argumentation in the decade of UN debates. Significantly, despite occasional mentions of ‘equality’, the ‘self-determination’ discourse of socialist states actually presented ‘peace’ as more important.<sup>48</sup> Obviously, socialists confronted the West on factual and policy questions, such as whether colonialism was truly oppressive, and whether advancing self-determination would aid peace and non-interference. But during the 1950–1960 debates, they never explicitly contested the legitimising standards that underpinned the West’s language of ‘self-determination’.<sup>49</sup>

It is imaginable that non-Western states’ appeals to peace and non-interference in the UN debates were tactical moves aimed at increasing the chances of gaining legitimacy for their arguments and ideas – while their ‘real’ end was equality. For the purposes of this thesis, however, the key point is that the very choice of drawing on such liberal-conservative ideals proves the high international status of these ideals at the time. Seeking legitimation in the same international forums and formats, states

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46 Raadi, Iran, Third Committee 399th meeting, 23 January 1952, UN R1/1 1951–52, p.316. See also Baroody, Saudi Arabia, Third Committee 398th meeting, 22 January 1952, *ibid.*, p.310.

47 For socialist perspectives on the 1960 session as a whole, see V. Solodovnikov: ‘At the 15th Session of the UN General Assembly in 1960’, *International Affairs*, 52(4), 2006, pp.188–196; Starushenko 1963, pp.152–154.

48 E.g. Khrushchev’s submission of the draft decolonisation declaration, 23 September 1960, UNDocA/4502; also Fomin, USSR, Third Committee, 565th meeting, 27 October 1954, referring to both equality and non-interference, but citing peace as the uppermost aim, UN R1/1 1954, p.109; from the 1960 UNGA plenary, BL: Gheorghiu-Dej, Romania, 872nd meeting 27 September, p.140; socialist interventions at the 902nd meeting on 12 October, especially p.671; Budo, Albania, 933rd meeting, 2 December, p.1085.

49 It is beyond the scope of this chapter to discuss the possible role played by internal Soviet discussions on foreign policy, including the emphasis on ‘peace’ and ‘peaceful co-existence’.

participating in the 1950–1960 UN debates had to refer to the standards they expected to be convincing there. Irrespective of whether their choice of legitimising standards materialised from ‘true’ convictions or short-term tactics, their decision to use them shows that they expected such standards to be internationally convincing.

UN delegates’ common ground on the meaning, authority and legitimising standards of the language of ‘self-determination’ contrasted with the points on which they disagreed. Most importantly, states disagreed on whether the concept should be codified in the ICHRs and the Decolonisation Declaration, further integrating it into international law. Western states presented their case against including ‘self-determination’ in these texts with both argumentative flexibility and conceptual consistency. While the widely acknowledged value of self-determination sometimes required Western delegates to support the concept in the abstract, they continued to resist its formalisation in law. And, while employing various rhetorical strategies, they made their case with constant reference to the standards of non-interference and peace.

One broad line the West presented against codifying ‘self-determination’ in the three UN texts was that including such language would be improper for various ‘technical’ reasons. For instance, Western delegates insisted that, at any specific time, no UN forum was technically qualified to discuss self-determination.<sup>50</sup> Revealingly, in 1955, internal UK and US correspondence described this evasive, ‘technical’ position as an attempt to push the language of ‘self-determination’ off the UN agenda altogether, in the interests of the status quo.<sup>51</sup> In 1960, the same tactic seemed aimed at avoiding discussion of self-determination in the UNGA plenary due to the public international interest in that particular Assembly session.<sup>52</sup>

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50 For early versions, see the Third Committee 297th meeting, 10 November, UN R1/1 1950, p.243. For 1960, see e.g. the 898th UNGA Plenary Meeting, 10 October, p.614, and the 902nd, 12 October, BL pp.671, 674.

51 Minutes from a meeting at the Foreign Office between UK and US representatives on 30 March 1955, Foreign Office Minutes, 1 April 1955 (Mr Warner), quoting US UN delegate Lord, TNA: FO371, 117561. See also Inis L. Claude, Jr.: ‘Domestic Jurisdiction and Colonialism’, pp.121–135 in Martin Kilson (ed.) *New States in the Modern World*, Harvard University Press, Cambridge, MA, 1975, pp.122, 134.

52 See especially the discussion at the 898th meeting, 10 October, BL, from p.614.

A different set of ‘technical’ objections had surfaced at the UN’s discussions on including ‘self-determination’ in the ICHRs in the early 1950s. Some delegates had then claimed that incorporating the concept in the covenants would prevent states from ratifying them – a view expressed by UN officials as well.<sup>53</sup> Moreover, several Western countries had maintained that since the ICHRs concerned individual rights, and self-determination regarded groups, the latter concept did not belong in the covenants – and was in any case less important than the human rights of individuals.<sup>54</sup> Against such ‘technical’ protestations, other delegates had argued that the UN *should* proclaim ‘self-determination’ in the covenants, as a condition and as a ‘source’ for all other rights.<sup>55</sup>

Western delegates also objected to incorporating ‘self-determination’ in the UN texts because, they held, the concept, technically speaking, was not (already) a legal right. Its legal status was unclear; although the UN Charter had mentioned ‘self-determination’, it had endorsed only the concept’s moral and political – rather than legal – force, and had not defined its meaning: ‘Self-determination’ was merely a ‘principle’,<sup>56</sup> ‘feeling’,<sup>57</sup>

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53 Humphrey 1984, p.129; Bossuyt 1987, e.g. p.23; on France see Sellars 2002, p.80.

54 These points were repeated throughout the ICHR debates – e.g. by Cassin, France, Third Committee, 309th meeting, 9 November 1950, UN R1/1, 1950, p.244; Keith Officer, Australia, 317th UNGA Plenary Meeting, 4 December, 1950, UN R1/1 1950–51, ‘Draft First International Covenant on Human Rights and Measures of Implementation: Report of the Third Committee’ (UNDocA/1559 and Corr.1), p.555. And from the Third Committee’s 1954 records at UN R1/1 1954: Elliot, UK, 562nd meeting, 22 October, p.96; Hood, Australia, 564th meeting, 27 October; Beaufort, Netherlands, 567th meeting, 29 October, pp.103–105; Montgomery, Canada, 569th meeting, 2 November, p.133. See also Alston 1984, pp.616–617. Not solely technical, this also exhibited a liberal concern with shielding individuals from state interference. See also Lord, USA, 568th Third Committee meeting, 1 November 1954, UN R1/1 1954, p.124. Interestingly, in 1954, a US attempt to include an article on the right to private property in the ICHRs was defeated. ECOSOC, 17th session, 1954, UNE 2567–2576, HRC Report of the Tenth Session 23 February–16 April 1954 in ECOSOC official records, 18th session, supplement 8, p.7. See also from the 1960 UNGA plenary meetings, BL: Macmillan, UK, 877th, 29 September, p.225, and Ormsby-Gore, UK, 925th meeting, 28 November, p.985.

55 Matthew, India, Third Committee, 569th meeting, 1 November 1954, UN R1/1 1954, p.131. See also Tomasic, Yugoslavia, Third Committee, 568th meeting, 1 November 1954, *ibid.*, p.126; and Baroody, Third Committee, 309th meeting, 9 November 1950, UN R1/1 1950, p.240 and at the Third Committee, 10 November 1954, UN R1/1 1954, p.193.

56 De Lacharriere, France, 317th plenary meeting, 4 December 1950, UN R1/1 1950–51, p.558.

57 Roosevelt, USA, at the Third Committee, 10 December 1951 *op.cit.*, p.104.

‘force’,<sup>58</sup> or ‘drive’.<sup>59</sup> To include such a vague, ‘impracticable’ notion in the ICHR and the Decolonisation Declaration would only open the doors to destabilising arbitrariness and abuse.<sup>60</sup> Responding to this stance, non-Western delegates pointed out that also ‘freedom’ and ‘democracy’ had been cited with unclear or dubious intentions in the past, and that had never provided any reason for abandoning such concepts.<sup>61</sup>

As a final ‘technically’ phrased point, Western states argued that internationally codifying ‘self-determination’ would inappropriately interfere with the freedom of states. UN codification, they claimed, would curb the freedom of all states by imposing legal duties on them, and would rob colonial powers specifically of their rightful control over colonies.<sup>62</sup> Parties in the UN debates generally viewed self-determination as related to colonial independence, and Western states saw colonies as belonging to the domestic sphere of the colonial powers. From this viewpoint, if the UN adopted the concept in the three texts under discussion, that would open up for international interference with the freedom of colonial states. In reply, one delegate summarised the opposition to this Western argument by stating that such reasoning ‘should not be used as a disguise for the continued domination of dependent peoples and the denial to them of the right of self-

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58 Hoare, UK, Third Committee, 642st meeting, 24 October 1955, UN R1/1 1955, pp.90–91.

59 US President Eisenhower, 868th plenary meeting, 22 September 1960, BL, pp.45–46. See also Humphrey 1984, p.163.

60 See e.g. Eisenhower, 868th plenary meeting, 22 September 1960, BL, as well as Dehousse, Belgium, Third Committee 371st meeting, 20 December 1951, UN R1/1 1950, p.144, referring to the Nazi regime – as did, for instance, Corley Smith, UK, Third Committee 401st meeting, 24 January 1952, UN R1/1 1951–52 p.329. By contrast, in the 1960 debate a reference to the Nazi regime condemned colonialism rather than ‘self-determination’: De Freitas-Valle, Brazil, 934th meeting, 3 December 1960, BL p.1126.

61 Baroody, Saudi Arabia, Third Committee, 648th meeting, 31 October 1955, UN R1/1 1955, p.121. He repeated the same argument on 25 November 1955, UN R1/1 1955 p.240.

62 See Berard, France, 945th plenary meeting, 13 December 1960, BL p.1259. Coulson, UK, 317th plenary meeting, 4 December 1950 UN R1/1 1950–1951, p.554. For internal records, see the whole of FO371/101439 at TNA, e.g. Howard to the Registry, 5 December 1952, warning that including ‘self-determination’ in the covenant would ‘promote interference by the U.N.’ in colonial matters. See also TNA: Foreign Office minutes, 12 July 1955 of a meeting with the Minister of State on 8 July, FO371/117561, outlining that the British ‘adhered to the principle but could not admit the United Nations or other outside interference with its implementation in our dependent overseas territories.’ For the USA, see former US Ambassador to the UN James J. Wadsworth: *The Glass House: The United Nations in Action*, Praeger, New York, 1966, p.123. See also Moyn 2010, p.96; Claude 1984, pp.367–370. For further secondary analysis, see e.g. Claude 1984 (originally 1964), pp.367–369.

determination.’<sup>63</sup>

Oddly, Western states continued their ‘technical’ attempts to block UN discussion and codification of the concept of ‘self-determination’ even after the battle had been lost. Already in 1952, the UN had formally voted that the ICHRs should proclaim self-determination as a right for ‘all peoples’.<sup>64</sup> Rather than acceding to this defeat, however, sceptical delegates stepped up their efforts to get the UN to dismiss the language of ‘self-determination’.<sup>65</sup> A similar dynamic was seen in 1955, when the UN voted the specific text of the article on ‘self-determination’ into the ICHRs.<sup>66</sup> Prior to the 1955 vote, the UK delegation had voiced horror at the prospects of the UN accepting the ‘dangerous doctrine that self-determination is a [legal] “right”’.<sup>67</sup> Sharing this fear,<sup>68</sup> Western UN officials had tried to postpone the vote indefinitely.<sup>69</sup>

Extraordinarily, just before the 1955 vote occurred, UN Secretary-General Dag Hammarskjöld himself appeared before the Third Committee to urge caution on ‘self-determination’ for the sake of world order.<sup>70</sup> Already a year

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63 Omar, Somalia, 13 December, 1960, BL pp.1259, 1248–1249

64 UNGA Resolution 545, 1952.

65 E.g. ‘Speech made by Gladwyn Jebb to the Council’ on 30 July 1952, TNA: FO371/101434; also FO371/101433, ‘Letter from A. A. Dudley to S. Hoare, Foreign Office’, undated (but refers to a New York Times article from 24 April 1952); and ‘Howard, Foreign Office, to EM West, Colonial Office, 27 June 1952’, CO 936/100 ‘5 January 1952–25 August 1952’, Annex B. For the USA, see from ‘Roosevelt, Acting Chairman of the US delegation to the UNGA to the Secretary of State, Paris, February 7, 1952’, FRUS 1951, Vol.II ‘The United Nations; the Western Hemisphere’, p.785, referring to a meeting with the French Ambassador.

66 See accounts in UN Interoffice memoranda of 15 and 29 November 1955, from John P. Humphrey, Director, UN Division of Human Rights to Philippe de Seynes, Under-Secretary for Economic and Social Affairs. ‘Proceedings of the Working Party of the Third Committee’, and ‘Proceedings of the Third Committee’, both UNOGA: SOA 317/1/03 A.

67 ‘Memorandum on Self-Determination’, UK delegation, New York, 28 September 1955, TNA: FO371/117561.

68 On the increasing discomfort of Humphrey and his deputy director Egon Schwelb 1950–1955, see e.g. UNOGA: SOA 317/1/01A, ‘Draft ICHR and Question of Implementation May 1950–Dec 1951’; SOA 317/1/01B, 06.1952–03.1953; SOA 317/1/01C, April 1953–Nov 1955; and SOA 317/1/01D, 1955, especially inter-office memorandum, 11 February 1954 from Schwelb to Humphrey, then Acting Assistant Secretary-General, Department of Social Affairs: ‘The Fate of the Draft Covenants on Human Rights’, and correspondence from Humphrey to Arthur W. Rogers, UN Association in Canada, 22 November 1955.

69 See the notes by Mehdi Vakil to the Secretary-General, ‘An Informal Discussion with the Chairman of the Third Committee’, 18 October, 1955, UNOGA: SOA 317/1/03 A.

70 On 11 October 1955, UN R1/1 1955, p.45. See the development of the statement in: ‘From Humphrey to de Seynes, 13 September 1955 Draft Statement by the Secretary-



earlier, Hammarskjöld had expressed deep concern over self-determination. In a report on the UN's work, he had called for 'a balance between vision and restraint, recognizing the fundamental right to self-determination as well as the fact that the exercise of self-determination maybe [sic] self-defeating if not wisely and carefully prepared.'<sup>71</sup> Despite the Secretary-General's interventions against UN codification, the 1955 vote did in the end incorporate 'self-determination' into the draft ICHR's.

These two UN votes on the language of 'self-determination' showed increasing international appreciation of the concept as anti-colonial sympathies spread worldwide.<sup>72</sup> Ever since the Second World War, preserving colonialism in its then-current form had appeared increasingly untenable; by the 1950s, the system had begun to be seen as a threat to world peace.<sup>73</sup> Independence for the colonies was now seen as the way forward.<sup>74</sup> Given the association of 'self-determination' with colonial freedom, this development enhanced the international appeal of the concept even further. As the decade progressed, and more and more African and Asian states gained admission to the UN, the pro-'self-determination' sentiment of the debates grew stronger still.<sup>75</sup>

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General to the 3rd Committee', attachment SOA 317/1/03A.

71 UN Secretary-General: 'Annual Report on the Work of the Organization' 1 July 1953–30 June 1954, UN, New York, 1954, pp.xii-xui.

72 See e.g. Rupert Emerson: *From Empire to Nation: The Rise to Self-assertion of Asian and African Peoples*, Harvard University Press, Cambridge, MA, 1960; Jackson 1987, p.526.

73 See e.g. Cooper 2005; Cooper 1996, p.173 and Ray Kiely: *Rethinking Imperialism*, Palgrave, London 2010 for strategies of legitimation during the dismantlement of colonialism; and Frederick Cooper: 'Modernizing Bureaucrats, Backward Africans, and the Development Concept', pp.64–92 in Frederick Cooper and Randall Packard (eds): *International Development and the Social Sciences: Essays on the History and Politics of Knowledge*, University of California Press, Berkeley, CA, 1997, on the turn to 'development' discourse in this strategy. With a complementary perspective, Füredi 1994 covers colonial powers' attempts to de-legitimise colonial movements. See also Claude 1984, p.361. Crawford 2002 (e.g. pp.292–296) offers a broader analysis of colonialism's loss of legitimacy in international discourse after the Second World War.

74 Louis 2006a, p.192; Claude 1984, p.367.

75 See e.g. Solodovnikov 2006, p.189; John Sankey: 'Decolonisation: Cooperation and Confrontation at the United Nations', pp.90–119 in Erik Jensen and Thomas Fisher (eds): *The United Kingdom – The United Nations*, Macmillan, London, 1990, p.100; Lauren 2011, p.203; David A. Kay: 'The Politics of Decolonization: The New Nations and the United Nations Political Process', *International Organization*, 21(4), 1967, pp.786–811, at p.789; Emerson 1965, p.484; Mark E. Ellis: 'The New International Economic Order and General Assembly Resolutions: The Debate over the Legal Effects of General Assembly Resolutions Revisited', *California Western International Law Journal*, 15, 1985, pp.647–704, at p.656; Edward McWhinney: *The United Nations and a New World Order for a New Millennium*, Kluwer Law International, The Hague, 2000,

In this setting, the UN debates were developing into being about something more than just the narrow codification of ‘self-determination’ in three UN texts: the discussions concerned the political and ideological leadership of the Cold War world. Today’s attitudes to UNGA proceedings as generally neither important nor interesting contrast sharply with those of the 1950–1960 period.<sup>76</sup> Throughout the 1950s and especially during the culminating 1960 plenary debate, UN delegates were keenly aware that the eyes of the world were on them, and that the very international moral prestige of their states was at issue.<sup>77</sup> In a tense environment attuned to a global Cold War public, states’ arguments in the UN debates aimed to both legitimise their specific positions on self-determination, and to enhance their *ethos* worldwide.

Under these circumstances, outright rejection of UN formalisation of ‘self-determination’ in the three UN texts was an untenable strategy for Western sceptics of the concept: UN majorities plainly could not be won over to this position.<sup>78</sup> With UN rhetoric and affinities turning increasingly anti-colonial, any argument that implied an all-out rejection of self-determination was unlikely to win support. And so Western arguments began to proclaim general, principled support for the concept of ‘self-determination’, while opposing its proposed formalisation into the UN texts. For instance, during the 1950s discussions, Western representatives argued that the concept, although valuable, should not feature in the ICHRs since these covenants presented ‘self-determination’ in an unnecessarily ‘narrow or rigid’ form, failing to acknowledge it as ‘universal’.<sup>79</sup> While also this Western line

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pp.9, 34–35. On the contributions of Latin American countries to this changed dynamic on the issue of human rights, see Glendon 2003; Wilson 1988, p.67.

76 For a recent vocal criticism of the UN and the UNGA, see John Bolton (former US Ambassador to the UN): ‘The Key to Changing the United Nations System’, *Foreign and Defence Policy*, 28 October 2010.

77 See e.g. *Khrushchev Remembers: The Last Testament*, Strobe Talbott (transl. and ed.), Andre Deutsch, London, 1974 (hereafter: ‘Khrushchev 1974’), p.482; Carlos P. Romulo with Beth Day Romulo: *Forty Years: A Third World Soldier at the UN*, Greenwood Press, New York, 1986, pp.158–159.

78 See Gauntlett, UK Colonial Office, 10 July 1958, in TNA: CO 936/400, 1957–1959, part B, IRD 123/355/01.

79 E.g. Roosevelt, USA, 18 November 1952, op.cit., pp.2, 1; Roosevelt, USA, Third Committee 364th meeting 10 December 1951, op.cit., pp.104–105. For another US iteration of the position, see ‘Speech delivered by Mrs Walter Elliot, CBE, on November 29th 1957 in the Third Committee’, TNA: FO 371/ 129971. See also records

opposed UN formalisation of ‘self-determination’, it did so in the name of defending a true, ‘universal’ version of the concept.<sup>80</sup>

Western states’ advocacy of such ‘universal self-determination’, however, was ridden with contradictions. Essentially, they employed this language with less than ‘universal’ ends in mind. At first glance, claiming that the concept was ‘universal’ would seem intended to broaden and strengthen it – and scholars have also taken this claim at face value.<sup>81</sup> But whereas championing a ‘universal’ principle of self-determination would have entailed urging others to embrace it, Western states underscored its broad scope as a deterrent. For instance, in 1955, the UK cautioned that if the UN texts incorporated ‘self-determination’, that would incite minorities all over the world to seek secession.<sup>82</sup> Later internal UK correspondence described as a ‘weapon’ such use of the language of ‘universal self-determination’ in the UN debates, to make other states wary of formalising it.<sup>83</sup> Apparently, Western delegates stressed the ‘universality’ and broad appeal of self-determination precisely in order to *prevent* UN codification.<sup>84</sup>

Likewise, had Western states really seen self-determination as ‘universal’, it should have applied universally, also to the colonialism of the West. But

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from 13 November 1952, in ARMSNY: S-0923, Box 12, File 1, Daily UNGA Reports 21 October–14 November, 1952, p.3; also Elliot, UK, Third Committee, 576th meeting, 8 November 1954, UN R1/1 1954, p.173; Quentin-Baxter, UK, Third Committee, 649th meeting, 1 November 1955, UN R1/1 1955, p.124; Hoare, UK, 652nd meeting, 4 November 1955, UN R1/1 1955 p.142. See also to the Foreign Office from the UK UN delegation, 10 December 1952, TNA: FO371/101439, and FO371/107143, from the UK delegation at the UN to the Foreign Office, 29 December 1952, ‘Notes on Third Committee’ presenting this as the UK’s main argument.

80 In 1955, the HRC as a whole echoed this rhetoric, stating ‘it was generally agreed [that self-determination] was a universal principle, applicable to all nations and to all peoples in all parts of the world’ HRC, Report of the 11th Session, 5–29 April 1955, ECOSOC official records, 20th session, supplement no. 6, UNE 2727–2737, p.21.

81 Antonio Cassese: ‘Political Self-determination – Old Concepts and New Developments’, pp.137–165 in A. Cassese (ed.): *UN Law/Fundamental Rights: Two Topics in International Law*, Sijthoff & Noordhoff, Alpen aan den Rijn, 1979, at p.140; Burke 2010, pp.20, 36, 50–55.

82 Hoare, UK, Third Committee, 642st meeting, 24 October 1955, UN R1/1 1955, pp.90–91. See also the British UN delegation ‘Notes on Third Committee’, 29 December 1952, op.cit.: ‘(we) did our best to break through the anti-colonial front by hammering the theme of universality and indicating the danger to sovereign states of recognising an unqualified “right of self-determination” for all minorities and undefined groups.’

83 From the Colonial Office (JE Marnham) to the Foreign Office (GR Gauntlett), 5 September 1957, TNA: FO371/129971.

84 Rivlin (1955, p.206) pointed out that both the calls for universality and the attacks against Soviet domination in fact were efforts to ‘brake the drive for’ self-determination.

Western states used the language of ‘universal self-determination’ to shift attention *away* from their own colonialism.<sup>85</sup> A meeting of colonial powers confessed as much in late 1952:

[T]he best way of trying to reduce the anticipated anti-colonial majority would be to concentrate upon the universality of the principle of self-determination [...] and to attempt to steer the discussion away from colonies whenever the purely colonial application of the principle was unduly emphasised.<sup>86</sup>

Sitting ill with their pretensions of ‘universality’, the arguments of Western delegates in fact focused exclusively on presenting their Cold War enemy as the target for freedom and ‘self-determination’.<sup>87</sup> Consensus had emerged in the UN debates that ‘imperialism’ curtailed peoples’ freedom,<sup>88</sup> and warranted self-determination.<sup>89</sup> With the language of ‘universal self-determination’, Western states seemed to be trying to not only steer the anti-colonial sympathies away from themselves – but to stir up these sympathies against *Soviet* ‘imperialism’.<sup>90</sup> While Lenin in 1917 had taken aim at Western countries when attacking imperialism with the language of ‘self-determination’, in the 1950-1960 UN debates, these countries themselves now employed such discourse. Rather than mirroring Lenin’s call for allowing the creation of new states on the basis of self-determination, however, the West now demanded Eastern bloc states’ ‘internal’ freedom from Soviet interference.<sup>91</sup>

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85 See e.g. Crawford 2002, pp.292–341; Cooper 2005; Sellars 2002, p.87; Kay 1967, p.808.

86 ‘To the Foreign Office’, 10 December 1952, TNA: FO371/101439; see also Gauntlett, Colonial Office, 10 July 1958, op.cit.

87 Roosevelt, 10 December 1951, op.cit., p.105.

88 Particularly in the 1960 debate. Space does not allow for an analysis of ‘imperialism’ or related concepts; for illuminating detail see Jane Burbank and Frederick Cooper: *Empires in World History: Power and the Politics of Difference*, Princeton University Press, Princeton, NJ, 2010. See also Kiely 2010. For a brief conceptual history, see Jordheim and Neumann 2011. For examples from the UN debates, see BL: Shehu, Chairman of the Council of Ministers of the People’s Republic of Albania, 871st plenary meeting, 26 September 1960, p.132 and Pazhwak, Afghanistan 935th plenary meeting, 5 December 1960, p.1137.

89 In similar terms, Latin American countries denounced ‘neo-colonialism’ – meaning economic interference also after formal independence; see e.g. Benites Vinuesa, Ecuador, 933rd plenary meeting, 2 December, 1960, p.1100, BL. African states too condemned neo-colonialism at the 1960 session – although Young 2006, p.46, has contended that the term was not introduced before 1961.

90 See e.g. Roosevelt, 18 November 1952, op.cit., pp.3-4.

91 See e.g. Ormsby-Gore, UK, 925th plenary meeting, 28 November 1960, BL, p.982. For the US, see ‘Telegram from the Department of State to Mission at the United Nations,

By the time of the 1960 UNGA debate, such ways of employing the language of ‘self-determination’ and freedom to accuse Cold War enemies of imperialism seems to have become a broader trend.<sup>92</sup> The general agreement at the UN that imperialism truly restricted freedom then gave rise to a rhetorical Cold War battle on who the *real* imperialists were. Apart from the West’s attacks against the USSR,<sup>93</sup> socialists condemned ‘American imperialism’,<sup>94</sup> and Arab states reviled Israel’s ‘embodiment’ of ‘imperialism and colonialism’.<sup>95</sup> Despite irreconcilable factual disagreements, such language showed conceptual agreement that imperialist interference with states – rather than peoples’ dependence or inequality – was what threatened freedom, and thus merited self-determination.<sup>96</sup> All the various arguments on *what forms* of interference deserved denunciation sought restitution of the same idea of freedom.

With their language of anti-imperialism and ‘universal self-determination’, the Western states might also have hoped to discredit the USSR’s representation of the cause for colonial freedom.<sup>97</sup> Western fears of the Cold

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Washington, October 6, 1960’, FRUS 1958–1960, Vol.II, UN and General International Matters: ‘Department believes it important secure as much support as possible in general debate and in committee for proposition that USSR remains major colonial while other former colonial empires have been largely liquidated. Inasmuch as there will be clear majority in UNGA for any statement condemning colonialism, best course we can follow is to seek turn declaration against Soviets themselves by portraying them in true colonialist colors.’ See also Wadsworth, USA, at the 869th plenary meeting, 23 September 1960, BL, p.93, and subsequent UNGA plenary sessions; Burke 2010, p.47, and interview with Khrushchev in the USA on 9 October 1960 in N. S. Khrushchov [sic]: *Disarmament and Colonial Freedom: Speeches and Interviews at United Nations General Assembly Sept–Oct 1960*, Lawrence and Wishart, London 1961, pp.140–141, 149. Allegations of Soviet interference were a key part of US Cold War rhetorical strategy: see Norman A Graebner: ‘Myth and Reality: America’s Rhetorical Cold War’, pp.20–37 and J. Michael Hogan: ‘The Science of Cold War Strategy: Propaganda and Public Opinion in the Eisenhower Administration’s “War of Words”’, pp.134–168, both in Martin J. Medhurst and H. W. Brands (eds): *Critical Reflections on the Cold War: Linking Rhetoric and History*, Texas A&M University Press, College Station, TX, 2000.

92 Louis Henkin: ‘The United Nations and Human Rights’, *International Organization*, 19(3), 1965, pp.504–517, at p.511, contends that participants also in the ICHR debates were keen to ‘embarrass’ each other.

93 Gershman 1981 shows that the trend continued beyond this ‘moment’.

94 Shehu, Albania, 871st plenary meeting, 26 September 1960, BL, p.114.

95 Shukairy, Saudi Arabia, 899th plenary meeting, 11 October 1960, BL, p.626

96 See also Zorin, USSR, 939th plenary meeting, 7 December 1960, BL, p.1188.

97 See e.g. Lynn Boyd Hinds and Theodore Otto Windt, Jr: *The Cold War as Rhetoric: The Beginnings, 1945–1950*, Praeger, New York, 1991, p.19, and Theodore Otto Windt, Jr: *Presidents and Protesters: Political Rhetoric in the 1960s*, University of Alabama Press, Tuscaloosa, AL, 1990, p.4; Harold Karan Jacobson: ‘The United Nations and Colonialism: A Tentative Appraisal’, *International Organization*, 16(1), 1962, pp.37–

War spread of communism, and of the formation of an anti-colonial–socialist alliance are well documented.<sup>98</sup> In addition, the Americans in particular were competing with the USSR for the role as the main sponsor of anti-colonialism at the UN.<sup>99</sup> Already in 1952, an internal US memorandum had cautioned that the USA was appearing to ‘perpetuate the old-style colonial system’, ‘allow[ing] the Soviets to take credit for championing the cause of dependent peoples’ and the concept of self-determination.<sup>100</sup>

As the decade proceeded, the USA increasingly seemed to find itself in something of a bind in the UN debates. On the one hand, US economic and political interests dictated a close bond to Europe’s colonial powers and a sceptical attitude towards the language of ‘self-determination’. On the other hand, the USA was striving to be on the right side of the UNGA majority, which it saw as expressing ‘world public opinion’ and as a political as well as ‘moral force’.<sup>101</sup> In light of the broad UN backing of the language of ‘self-determination’, the USA was keen to appear as its owner and originator.<sup>102</sup> The country’s history, self-image and popular support for ‘self-

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56, at p.39. Further on general US–USSR rhetorical strategies during the Cold War, see Martin J. Medhurst, Robert L. Ivie, Philip Wander and Robert L. Scott (eds): *Cold War Rhetoric: Strategy, Metaphor, and Ideology*, Michigan State University Press, East Lansing, MI, 1997.

98 See e.g. Young 2006, p.171; Steven Metz: ‘American Attitudes toward Decolonization in Africa’, *Political Science Quarterly*, 99(3), 1984, pp.515–533, especially pp.518, 522; Odd Arne Westad: *The Global Cold War*, Cambridge University Press, Cambridge, 2005; also Fox 1951, p.353; Dallin 1962; Jacobson 1962, p.41.

99 See e.g. US Ambassador Wadsworth 1966, p.110, and internal US correspondence referred to below. Also the UNSG’s special advisor Andrew Cordier (US) expressed frustration over the Soviet role, in particular that of Khrushchev in the 1960 session, as well as general distress over the unfolding 1960 UNGA proceedings. See his letters at ACP Box 55, UN Files, Outgoing Correspondence, Chronological, 1959–1960. For American analysis from the time, see Vernon McKay: ‘Too Slow or Too Fast? Political Change in African Trust Territories’, *Foreign Affairs*, 35(2), 1957, pp.295–310; Jacobson 1962, pp.37–56. See also Metz 1984, pp.515–533, and Robert J. McMahon: ‘“By Helping Others, We Help Ourselves”: The Cold War Rhetoric of American Foreign Policy’, pp.233–246 in Medhurst and Brands (eds) 2000, especially p.235 on ‘peace’ and ‘freedom’ in US rhetoric.

100 ‘Memorandum Prepared in the Bureau of United Nations Affairs’, 21 May, 1952, op.cit., p.39; also the same volume’s UN Planning Staff, Bureau of UN Affairs, Washington, Undated, A/MS files, p.127, and ‘UNA/P master file’, undated, 1954, p.130. For analysis, see e.g. Good 1959.

101 FRUS 1952–1954, ‘Memorandum by the American UN Planning Staff to the Planning Adviser, Bureau of UN Affairs, William Sanders’, Attachment: ‘Principal Stresses and Strains Facing the US in the UN’, Washington, DC, 27 July 1953, p.87.

102 See e.g. ‘Draft Report Prepared by Lincoln Bloomfield’, Washington, DC, 9 February 1956, FRUS, 1955–1957, Vol. XI, United Nations and General International Matters, p.52–57; Good 1959, p.265.

determination'<sup>103</sup> too made it difficult to oppose inclusion of the concept in the UN texts.<sup>104</sup> 'Self-determination', as the US position emerged, might be defended as a means to world peace and realisation of US interests.<sup>105</sup>

As a result of such diverging pressures, US discourse at the UN debates stayed ambivalent on issues of colonialism and self-determination.<sup>106</sup> During the decade, US representatives both praised European colonial rule<sup>107</sup> and made claims such as that the USA 'constantly sought' to realise self-determination 'behind the scenes in attempting to convince metropolitan powers'.<sup>108</sup> Such double signals annoyed the British ally,<sup>109</sup> who felt that the Americans had given up on empire too quickly, and only supported self-determination at the UN out of fear of Soviet influence in the colonial world.<sup>110</sup> In 1955, the US State Department admitted that '[t]he question of self-determination [...] has caused us very considerable difficulties' at the UN due to 'attempts to steer a middle-of-the-road course between the

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103 'Minutes of Twenty-ninth Meeting of the United States Delegation to the General Assembly, Paris, December 10, 1951', FRUS, 1951, Vol. II, 'The United Nations; the Western Hemisphere', p.776. See Fox 1951 for analysis from the same year.

104 See also interview with Andrew Cordier, 30 October, 1963, describing the USA as taking a moderate position due to concern for its NATO allies: Oral History Research Office, Columbia University, Dag Hammarskjöld Oral History Project 'Recollections of Dag Hammarskjöld and the United Nations, by Andrew W. Cordier', p.76.

105 'Action Program for Improvement in U.S. Participation in the United Nations General Assembly', in 'Memorandum from the Assistant Secretary of State for International Organization Affairs (Wilcox) to the Representative at the United Nations (Lodge)', Washington, DC, 7 May 1956, FRUS 1955–1957, pp.67–70.

106 See W. R. Louis (with Ronald Robinson): 'The Imperialism of Decolonization', pp.451–502 in Louis 2006a, for the post-Second World War emergence of this ambivalence. For contemporaneous views, see e.g. Charles Wolf, Jr.: *United States and the Third World: Problems and Analysis*, Little, Brown, Boston, MA; 1967; Wolfers (ed.) 1959, especially Good 1959; Lincoln P. Bloomfield: *The United Nations and U. S. Foreign Policy: A New Look at the National Interest*, Little, Brown, Boston, MA; 1967; Claude 1984 (originally 1964), p.362.

107 See e.g. Wadsworth 1966, pp.110–112.

108 'Speech by the Honourable Mrs Oswald B. Lord, United States Alternate Representative, in Committee III, on Self-determination' 28 November 1957, TNA FO 371/129971. See also Nigel J. Ashton: 'Anglo–American Revival and Empire during the Macmillan Years, 1957–63', pp.164–185 in Lynn (ed.) 2006.

109 For British irritation over the US ambivalence see e.g. Hoare to Attlee, 23 February 1955, TNA: FO371/117561, claiming that the USA feigned concern for self-determination 'for home consumption' while eager to keep their allies, concluding that 'their present effort seems peculiarly silly'; also FO 371/117566, records from 24 and 25 October 1955, and FO371/129971 from the Colonial Office to the Foreign Office, 5 September 1957, describing the 'mental processes' of the US State Department on self-determination as 'rather wooden'. However, it was evidently also important to the UK to 'ensure the full co-operation of the Americans', to bring others over to voting with the UK, especially Latin American countries: Foreign Office, 9 July 1959, to the UK mission at the UN, TNA: CO 936/400.

110 See e.g. Louis (with Robinson) 2006a, p.475, for references to the era of Churchill and Eden.

colonial and anti-colonial states'.<sup>111</sup> This US ambivalence on self-determination would remain until the 1960 vote on the Decolonisation Declaration, and even thereafter.<sup>112</sup>

Needless to say, the increasingly anti-colonial environment at the UN put also other Western states in a tricky position in the debates on self-determination, especially those that still had colonies. Aware of the sympathies of the UN majority, some of these manoeuvred into a position where they could present self-determination as a positive principle – while stressing that it could only be granted by colonial powers, not through incorporating it in international law. The colonial powers alone, these Western representatives said, could decide to grant self-determination to their colonies when they determined that the colonial peoples in question had reached sufficient 'maturity'.<sup>113</sup> But until the colonial states had decided to end colonialism, no other agent should interfere with Western decision-makers, or with their colonies.<sup>114</sup>

In hence presenting *maturity* as a condition for self-determination and statehood, Western states revealed that they considered their 'dependent territories' to be incapable of independence, not unlike children.<sup>115</sup> By implication, as long as colonial peoples lacked the skills and experience required for a self-sufficient existence, they would be dependent on and subordinated to 'parental' colonial administration. For the duration of their

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111 'Action Program', FRUS 1955–1957, pp.67–70. See also McKay 1957, p.308.

112 Metz 1984, p.516 claims to have observed a 'watershed' of change in US anti-colonialism, but nothing of the sort is reflected in US positions as expressed in the UN debates.

113 Dehousse, Belgium, Third Committee 361st meeting, 7 December 1951, UN R1/1 1950/51, p.83. The racism inherent to this outlook was expressed also with regard to non-Western delegates in the UN debates, e.g. FRUS, UN Planning Staff, 'UNA/P master file', 1954, p.132. For scholarly outlooks from the time, see Fox 1951, pp.340–368; John Fletcher Cooke: 'Some Reflections on the International Trusteeship System, with Particular Reference to its Impact in the Governments and Peoples of the Trust Territories', *International Organization* 13(3), 1959, pp.422–430 and 'Trusteeship and Non-self-governing Territories', *International Organization*, 16(1), 1962, pp.137–182; Bloomfield 1967, p.203.

114 See also Cooper 1996 and Cooper 1997.

115 See in particular BL: Couve de Murville, France, 864th plenary meeting, 20 September 1960, p.8, and most other statements that day; also Christiansen, Denmark, 945th plenary meeting, 13 December, 1960, p.1262. Cordier expressed the same attitude to the recently independent countries at the 1960 session, in an interview from 30 October 1963, Hammarskjöld Oral History Project, p.75. See William Bain: 'The Political Theory of Trusteeship and the Twilight of International Equality', *International Relations*, 17(1), 2003, pp.59–77.



‘immaturity’, the colonies would need educational training. Only once the colonies had ‘reached adulthood’ through colonial rule, could they, under suitable conditions, become independent.<sup>116</sup> With these perspectives, Western states debating at the UN perpetuated a reasoning akin to Wilson’s concept of ‘self-determination’, and one that had briefly appeared at the San Francisco Conference as well.

From this standpoint, the West was in effect arguing that only after colonial peoples had become sufficiently mature would it be *safe* to let them take care of themselves. It was seen as less important to consult colonial peoples than to look after their interests; and the West held that it *would* be in colonies’ interest that their colonisers protected them against self-determination until they were ready.<sup>117</sup> Terminating colonial governance too hastily might induce irresponsible and destabilising conduct – and that would benefit neither the colonies nor the world. As put by the USA, the ‘unrestricted application’ of self-determination ‘could result in chaos’ and might ‘endanger international peace and security’.<sup>118</sup> Indeed, ‘the right of self-determination, if not exercised wisely, [could] endanger peace and destroy freedom.’<sup>119</sup>

The Western view of the ‘childlike’ nature of colonial dependence portrayed the continuation of colonialism as an altruistic move, for the good of the global order as a whole.<sup>120</sup> In the 1960 UNGA debate, colonial powers echoed the language of Smuts’ 1918 proposal, claiming to have assumed a singular responsibility in educating their ‘dependencies’ for the sake of world peace.<sup>121</sup> For this reason, they held, they should be seen as the ones who deserved applause once ‘their’ former colonies had reached ‘self-

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116 See also Wadsworth 1966, pp.152–153.

117 E.g. Shanahan, New Zealand, 932nd plenary meeting, 2 December 1960, BL, p.1073. See also Belgium Third Committee, 310th meeting, 10 November 1950, UN R1/1 1950, p.241

118 Roosevelt, 18 November 1952, op.cit., pp.3, 6.

119 Ibid.

120 See also Cooper, 1996, p.27.

121 De Lequerica, Spain, 886th plenary meeting, 4 October 1960, pp.391–392, 396, BL; also Plimsoll, Australia, 933rd plenary meeting, 2 December 1960, pp.1090–1091; Christiansen, Denmark, 945th plenary meeting, 13 December, 1960, p.1262. See also Claude 1984, p.370.

determination'.<sup>122</sup> When the opening of the 1960 UNGA session admitted 16 African states and Cyprus as new UN members,<sup>123</sup> there was no lack of Western representatives who lauded their own 'crowning achievement' of letting their dependent peoples go.<sup>124</sup> Such self-praise was probably also articulated to score points in the tense Cold War setting, and to set a positive historical record for Western colonialism, the legitimacy and moral standing of which was plainly on the wane.<sup>125</sup>

At the same UNGA session, many newly independent states made use of similar rhetoric, complimenting their former colonisers. In a particularly telling example, Dahomey (today Benin) 'congratulated' France 'for having realized in time that we had reached the age of political maturity and for having prepared us by easy stages to come of age without strife.'<sup>126</sup> Also the UN delegates of other new states justified the achievement of independence by emphasising their responsible, and above all, peaceful management.<sup>127</sup>

This maturity-oriented discourse projected the view that dependence and self-determination was a question of different *stages*. Those who drew on such language implicitly argued that colonies, at their current, dependent stage, were situated at the low end of an evolutionary line that might some day, after training and preparation, ripen naturally into a stage of self-determination and statehood.<sup>128</sup> From this point of view, the subordination of

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122 E.g. Ormsby-Gore, UK, 925th meeting, 28 November 1960, BL, p.986. See former head of the African division of the UK Colonial Office, Andrew Cohen: *British Policy in Changing Africa*, Routledge & Kegan Paul, London, 1959, e.g. pp.35–36, claiming that also nationalism and the colonial demand for independence resulted from the education provided by the West; also pp.90, 106.

123 At its 864th plenary meeting on 20 September, 1960.

124 Couve de Murville, France, 864th plenary meeting, 20 September, 1960, BL, p.8. See also Wigny Belgium, 869th plenary meeting, 23 September, 1960, BL, p.85.

125 See Louis 2006b; also Ormsby-Gore, UK, 925th meeting, 28 November 1960, BL, p.982. For various examples of related discourse from the time, see the records of the Movement for Colonial Freedom at the School of African and Oriental Studies Archives, e.g. MCF, COM-10-15, Files 11, 15 and T5, 1960; and MCF, Box 26, AFF 49, AAF, UT (1), 1961; AFF 50, AAF, UT (2), 1961; AFF 51, AAF, UT (3), 1959–1961; AFF 52, AAF, UT (4), 1960–1963.

126 At the 866th plenary meeting, 21 September 1960, BL, p.33; also delegates from Upper Volta and Congo (Brazzaville), pp.33–35.

127 Ibid.; Barnes, Liberia and Rakotomalala, Madagascar, at the 893rd plenary meeting, 7 October 1960, BL, pp.531–532.

128 Martino, Italy, 937th plenary meeting, 6 December 1960, BL, p.1165–1166. See also Wadsworth, USA, 937th plenary meeting, 6 December 1960, BL p.1157. On British attitudes, see e.g. Philip Murphy: *Party Politics and Decolonization: The Conservative Party and British Colonial Policy in Tropical Africa*, 1964, Clarendon Press, Oxford,

colonial people was due to their *inadequate development* – and not, for instance, the colonial powers’ interests in perpetuating the inequalities of the system. Moreover, according to this model, colonial peoples could reach the stage of self-determination only gradually and under circumstances determined by their more advanced superiors, the colonial powers.<sup>129</sup> Without such slow, path-dependent guidance, the flawed capabilities of the colonial peoples could threaten world peace.<sup>130</sup> Moving them responsibly from the stage of dependence to the level of self-determination would thus serve the cause of world stability.

Crucially, from this perspective, the colonies of the Western states did not lack freedom. According to the logic of Western discourse, only interference, especially of Soviet ‘imperialist’ kind, could take away freedom. In the UN debates, Western countries eschewed any suggestion that *they* were interfering with their colonies.<sup>131</sup> When socialist delegates alleged that Western colonialism exploited and oppressed colonial peoples – thereby interfering and in a sense depriving them of freedom according to the West’s own standards – Western delegates responded vehemently.<sup>132</sup> These colonial powers did not insist that the colonial relationship was one of equality,<sup>133</sup> but they presented its unequal nature as being of no consequence to the question of colonial freedom. Throughout the decade, the Western states framed the unequal, dependent status of the colonies in terms of colonial peoples’ lack of capacities rather than their lack of freedom.

Western delegates actually maintained that colonialism *advanced* the freedom of colonial people as their peaceful non-interference, irrespective

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1995, and Partha Sarathi Gupta: *Imperialism and the British Labour Movement, 1914–1964*, Macmillan, London, 1975. For a US policy perspective from the time, see Max F. Millikan and Donald L. M. Blackmer (eds): *The Emerging Nations: Their Growth and United States Policy*, Little, Brown, Boston, MA, 1961.

129 Thors, Iceland, 936th plenary meeting, 5 December 1960, BL, p.1147.

130 See e.g. *ibid.*, p.1149; Benites Vinueza, Ecuador, 933rd plenary meeting, 2 December 1960, BL, p.1102.

131 See e.g. De Lequerica, Spain, 886th plenary meeting, 4 October 1960, BL, p.392

132 For one illustration, see the exchange started by Zorin, USSR, 939th plenary meeting, 7 December 1960, BL, p.1187.

133 For odd references to equality, however, see BL: Nash, Prime Minister of New Zealand, 886th plenary meeting, 4 October 1960, p.398, and Garin, Portugal, 892nd plenary meeting, 7 October 1960, p.505.

of the subordinate status to which it assigned them.<sup>134</sup> In the UN debates, Western states seemed to appreciate peace as a higher form of freedom, as the opposite of violent interference with an existing, stable order. And since colonialism, in this Western view, *did* provide for peace, it served not only international stability, but the freedom of colonial peoples as well.<sup>135</sup> At the end of the 1960 debate, France explicitly defended colonialism based on its promotion of freedom as non-interference. True freedom as advanced by colonialism, France claimed,

is not the freedom of a minority to impose its laws nor of a majority to silence any voice raised in disagreement[, but] liberation from hunger, from fear and from ignorance. It is the freedom of self-expression, of action, freedom to construct without constraint, without anxiety or any hindrance other than respect for the freedom of others.<sup>136</sup>

Interestingly, few of the arguments in favour of including ‘self-determination’ in the three UN texts challenged the Western claim that specific conditions should be attached to realising the concept as independence. Several non-Western delegates, for instance, made the case that colonial peoples were not immature: ‘neither poor nor without civilization’, they were sophisticated peoples with long histories and traditions.<sup>137</sup> Such points did not dispute the principle that implementing self-determination required a proper level of ‘maturity’, or that lack of such would have justly assigned colonies to a subordinate, dependent status.<sup>138</sup> They merely contested the West’s description of colonial capability levels and claimed that colonial peoples were already mature enough for

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134 See BL: Ormsby-Gore, UK, 947th plenary meeting, 14 December 1960, p.1275 and Garin, Portugal, 947th plenary meeting, 14 December 1960, p.1280.

135 See e.g. Ormsby-Gore, UK, 902nd plenary meeting, 12 October 1960, BL p.674; Wadsworth, USA, 869th plenary meeting, 23 September, BL, p.93. For a rare claim that colonies actually also had political representation, see the British UN delegation’s ‘Draft Brief on “Self-determination”’, 14 June 1952, TNA: FO371/101434.

136 Bernard, France, 945th plenary meeting, 13 December 1960, BL, p.1258. For a similar defence of colonialism based on its championing of freedom, see Burns 1957, pp.5, 15, 23, 73.

137 BL: Wirjopranoto, Indonesia, 936th meeting, 5 December, p.1150; also Aw, Mali, 931st meeting, 1 December, p.1065; Roa, Cuba, 937th meeting, 6 December, p.1169; Ismail, Guinea, 902nd meeting 12 October, p.680, as well as Kadar, Hungary, 883rd meeting, 3 October, p.333.

138 Even the UN debates’ harshest critic of the West, Soviet leader Khrushchev, reasoned in 1960 that ‘one must mature in order to realize the heights to which human society can attain’: Khrushchev, USSR, 902nd plenary meeting, 12 October 1960, BL, p.688.

statehood. Instead of challenging Western decision-makers' authority on self-determination, such arguments merely asked the West to recognise that the conditions for implementing the concept had already been fulfilled.

In the 1960 UNGA debate, however, the 'self-determination' discourse of some non-Western delegates had a more radical tinge. Several states then indirectly rejected the paternalism that shone through the West's language of self-determination by comparing colonies to *slaves* rather than to children.<sup>139</sup> Likening the status of the colonies to that of slaves meant conceptualising colonialism as a relationship of inequality, with the lower-ranking agent dependent on the superior one for all decision-making and rules. In this understanding, colonial dependence unjustly deprived colonial peoples of power over their own affairs, and assigned them by law to open-ended reliance on the arbitrary will of their colonial masters. Significantly, from this perspective, colonial dependence was a matter of *status* and not a *stage*; it reflected institutionalised inequality and not simply a degree of underdevelopment.

Such language presented 'dependent' peoples as *ipso facto* unfree, precisely because of their status of inequality and dependence on the will of their colonial masters.<sup>140</sup> Not in charge of their own, self-determined body politic, colonial populations were subordinated to their rulers; neither were they equal to other, independent peoples. In contrast to the outlook espoused by the West, in this view, deprivation of freedom did not necessitate interference. Most of the radically-sounding arguments in the UN debates

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139 E.g., at 1960 plenaries, BL: Mazurov, BSSR, 893rd meeting, 7 October, p.531; Ghana's President Nkrumah, 869th meeting, 23 September, p.61; Guinea's Ismaël Touré, 902nd meeting 12 October, p.680. See also Tamba, Liberia, Third Committee 366th meeting, 11 December 1951, UN R1/1 1951–52, p.115; also Bain 2003. Western states, especially European colonial powers responded angrily to such suggestions, see e.g. Garin, Portugal, 892nd plenary meeting, 7 October 1960, BL p.508. See also records from 5 January 1952 to 25 August 1952, TNA: CO 936/100, claiming that the reference to 'slavery' with regard to dependent peoples obscured the fact that people were more unfree in communist countries. Later the same year, Britain complained ('From W. A Morris to A. A. Dudley, 21 May 1952' TNA: FO371/101434) of 'reference to the enslavement of peoples, so manifestly offensive as to be clearly unacceptable to a number of countries'.

140 For a few examples from the 1960 UNGA plenary, BL: Gromyko, USSR, 864th meeting, 20 September, p.13; Touré, Guinea, 865th meeting, 20 September, p.23; Castro, Cuba, 871st meeting 26 September, p.135; Sosa Rodriguez, Venezuela, 939th meeting, 7 December, p.1199.

held that colonialism *also* involved oppression and economic exploitation of the kind Lenin had condemned, but did not present this as the heart of the matter: Colonialism would have dispossessed peoples of their freedom even in the absence of such interference. For no matter what colonial powers actually did, they could legally and at any time arbitrarily use their powers over colonial peoples. These peoples were made unfree by having no way of predicting or affecting the powers or laws that prevailed over them.<sup>141</sup>

On this reasoning, colonialism's alleged benefits to colonial peoples were immaterial to the question of their freedom.<sup>142</sup> Regardless of whether colonialism might bear positive results, it was its dependent and unequal nature, not its methods or outcomes, that would inevitably curtail colonies' freedom. As a delegate from Ceylon put it in an illustrative quote from the 1960 session:

However good a colonial government may be and however much it may do to improve the lot of the dependent peoples, there is no justification for the continuance of a system of colonial domination. Good government can never be a substitute for self-government.<sup>143</sup>

Discourse of this kind portrayed the radical demand for self-determination as freedom and equality as legitimate irrespective of a colony's level of development. Even if capacities might be flawed or potentially destabilising, as one UN delegate firmly stated in 1954, 'it was preferable to have people err by themselves rather than to have others err for them'.<sup>144</sup> Maturity, from this perspective, was not a precondition for statehood. Self-determination was not a matter of gradually reaching a proper stage of development – it meant freedom as a legally and actually guaranteed status of equality. And this would have to involve the option of realising independent statehood

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141 From the 1960 UNGA plenary, BL: Touré, Guinea, 912th meeting, 8 November, p.827, and 902nd meeting 12 October p.680; Rifa'I, Jordan, 930th meeting, 1 December, p.1056.

142 The question of *whom* colonial development had benefited was also raised during the 1960 plenary, as laconically noted by Cooper, Liberia, 'One feeds the cow not for the good of the cow itself but for the milk it produces': 902nd plenary meeting, 12 October 1960, BL, p.682.

143 Claude Corea, Ceylon, 901st plenary meeting, 12 October 1960, BL, p.665. See also Ba, Mali, 901st plenary meeting, 12 October 1960, BL, p.654.

144 De Barros, Brazil, Third Committee, 565th meeting, 27 October 1954, UN R1/1 1954, p.111. Recall also Pazhwak's words, 'poverty was preferable to slavery' above, op.cit.

*without* conditions.<sup>145</sup>

Moreover, unlike the Western preoccupation with ideals of peace and stable order, this contrasting ‘self-determination’ discourse did not present peace as a higher type of freedom, or as inevitably more important than freedom as equality. ‘Peace’, in the words of a 1960 UN delegate exemplifying this perspective, ‘is not simply a good thing in itself’.<sup>146</sup> At the 1960 UNGA session, various socialist and non-Western countries openly proclaimed that liberation might legitimately be achieved by violent means, if commanded by the aim of freedom. Some praised the bloody, ‘merciless wars’ of colonial liberation,<sup>147</sup> and others said that colonial emancipation ‘has always been the result of pressure’.<sup>148</sup> As one representative summed it up, ‘dominated peoples are entitled to overthrow this domination, even by the force of arms’.<sup>149</sup>

While such utterances reflected certain aspects of Lenin’s language of ‘self-determination’, they entailed a central difference. To be sure, Lenin too had endorsed the use of violence to achieve self-determination, and had bound the concept up with the prospect of achieving statehood, including for colonial peoples. But he had also insisted that self-determination should ultimately *not* lead to statehood; to him, the end goal was freedom as equality in internationalist socialism. By contrast, the radical discourse of the 1950–1960 UN debates, assumed statehood itself to be the chief aim of self-determination.

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145 For the rhetoric of equality within the imperial system and demands for equal citizenship rights, including from organised labour, see Cooper 2005, pp.202, 205, 214–218, 227. See also Burns 1957, p.75, portraying a call for equality as the core of the demand for colonial independence – and then arguing against this demand, since it threatens world peace, p.86. For a few debate interventions on these themes, see Baroody, Third Committee 362nd meeting, 8 December 1951, UN R1/1 1951–1952, p.95; and BL: Boucetta, Morocco, 945th plenary meeting, 13 December 1960, pp.1249–1253; and Senegal’s Prime Minister Mamacou Dia, 940th plenary meeting, 8 December 1960, pp.1201–1202.

146 Mamacou Dia, 940th plenary meeting, 8 December 1960 BL, pp.1201–1202.

147 Boucetta, Morocco, 945th plenary meeting, 13 December 1960, BL, p.1252.

148 Aw, Mali, 874th meeting, 28 September 1960, BL, p.679.

149 Shukairy, Saudi Arabia, 927th meeting 29 November 1960, BL p.1012; also Khrushchev’s statement of 13 October 1960, quoted in Khrushchev 1961, p.184.

## A Definition of ‘Self-determination’?

Of the three UN texts resulting from the 1950–1960 UN debates, the focus here is on the 1960 Decolonisation Declaration. Not only did the UNGA pass it before adopting the two ICHR in 1966, the Decolonisation Declaration also, crucially, formalised the link between ‘self-determination’ and colonial independence. Consequently, scholars have described the Declaration as ‘almost an amendment of the Charter’.<sup>150</sup> The ICHR, meanwhile, simply repeated the exact wording of the 1960 Declaration, while situating ‘self-determination’ in a human rights framework.<sup>151</sup>

The Decolonisation Declaration was debated at the UNGA’s plenary meetings between September and December 1960,<sup>152</sup> a time when the Assembly’s international standing was at its peak.<sup>153</sup> At the opening of that UNGA session, the UN admitted 17 new states as members, accentuating the importance of the moment. During the ensuing plenary meetings, UN delegates cited ‘self-determination’ both when discussing the proposed drafts of the Decolonisation Declaration, and in addressing the admission of the new UN members. Of the then 99 UN countries, 79 participated in the debate, including heads of state and foreign ministers.<sup>154</sup> Even more than the

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150 Emerson 1965, p.493. See also Samuel A. Bleicher: ‘The Legal Significance of Recitation of General Assembly Resolutions’, *American Journal of International Law*, 63, pp.444–478, 1969, at p.444; Louis 2006a, p.186.

151 For brief discussions, see Christian Tomuschat: ‘Democratic Pluralism: The Right to Political Opposition’, pp.27–47 in Allan Rosas and Jan Helgesen (eds): *The Strength of Diversity: Human Rights and Pluralist Democracy*, Martinus Nijhoff, Dordrecht, 1992, p.40; Crawford 2000b, p.94–95; Burke 2010, p.37; Craven 1995, p.24.

152 For insider accounts, see e.g. James J. Wadsworth: *The Price of Peace*, Praeger, New York, 1962, pp.11–12; Wadsworth 1966, pp.106–109; Khrushchev 1974, pp.462, 468, 471, 479–482; and Khrushchov 1961. For a full audio recording of the 14 December 1960 meeting at which the Decolonisation Declaration was adopted, see UN Audiovisual Library of International Law, accessed 23 July 2012, [untreaty.un.org/cod/avl/ha/dicc/dicc\\_audio.html](http://untreaty.un.org/cod/avl/ha/dicc/dicc_audio.html).

153 For the UNGA’s international authority, especially around 1960, see e.g. Miguel Marin-Bosch: ‘How Nations Vote in the General Assembly of the United Nations’, *International Organization*, 41(4), 1987, pp.705–724, at p.705; Kay 1967, p.786; Emerson 1965, p.496; Alston 1984, p.608. See also Erik Voeten: ‘Clashes in the Assembly’, *International Organization*, 54(2), 2000, pp.185–215; Divac Öberg 2006; N. G. Onuf: ‘Professor Falk on the Quasi-legislative Competence of the General Assembly’, *American Journal of International Law*, 6, pp.349–355; Bleicher 1969; Obed Asamoah: ‘The Legal Effects of Resolutions of the General Assembly’, *Columbia Journal of Transnational Law*, 3, 1963, pp.210–230, at p.214; Ellis 1985.

154 See ARMSNY: ‘Statements Regarding the Secretary-General and the Secretariat Made in the General Debate at the Fifteenth Session of the General Assembly’, General Assembly Matters Files of the Secretary-General: U Thant (especially Statements 01/09//1960-01/10/1960), S-0856, Box 5, file 8, Acc Dag/1/5.2.1.3, ‘Statements 01/09//1960-01/10/1960’. For media reporting, see in particular *New York Times*



1950s ICHR discussions, the 1960 UNGA debate played out in a truly international setting. Participants described the discussions as a ‘landmark of decisive importance in the history of mankind’.<sup>155</sup>

As in 1945 and 1949, it was the USSR that placed the language of ‘self-determination’ on the international agenda in 1960. On 23 September 1960, three days after the opening meeting of the UNGA session, the Soviet Union submitted a draft of the Declaration on the Granting of Independence to Colonial Countries and Peoples.<sup>156</sup> This 14-page proposal called for ‘the final and complete liberation of peoples languishing in colonial bondage’, with reference to the UN Charter’s principle of ‘self-determination’.<sup>157</sup> Sharpening the already contentious UN rhetoric of the time, the draft described colonial peoples as living under a ‘shameful colonial regime’, ‘in conditions of colonial oppression and exploitation’.<sup>158</sup> Detailing the horrors, underdevelopment and instability caused by colonialism, the Soviet draft lauded the brave national liberation struggles of peoples around the world.<sup>159</sup>

While ‘radically’ confronting Western colonial *policy*, the Soviet draft had conceptual similarities to Western discourse in the UN debates. Like the West, the Soviet draft sought to legitimise its position on self-determination by citing peace as *the* key value. Instead of promoting self-determination as a matter of equality, the draft highlighted ‘the great objective of securing a strong and lasting peace on earth’.<sup>160</sup> However, in denouncing interference, the emphasis differed. Western discourse chiefly acclaimed freedom *as* peace and non-interference with established states. The USSR draft denounced interference in the forms of oppression and exploitation of colonial, non-state peoples. Thus it repeated the parts of Lenin’s ‘self-determination’ discourse that had advocated colonial liberation as a matter of freedom from interference.

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coverage from 20 September to 15 December, 1960. See also Solodovnikov 2006, p.188.

155 Sosa Rodriguez, Venezuela, 939th plenary meeting, 7 December 1960, BL, p.1198.

156 For Khrushchev’s account of the submission, see Khrushchev 1974, pp.481–482.

157 UNDocA/4502, BL version, pp.1, 2, 13.

158 Ibid., p.1; UNDocA/4501, BL version, unpaginated.

159 UNDocA/4502, p.1.

160 Ibid., p.14.

When the UNGA started to debate this draft in October 1960, the majority in the Assembly immediately backed both UN action on colonial independence and the substance of the USSR text.<sup>161</sup> Socialist and most African and Asian delegates pressed for UN endorsement of self-determination as statehood for colonies – some while reviling European colonialism for ‘crimes’, ‘oppression,’<sup>162</sup> and being ‘obnoxious’.<sup>163</sup> The debate gave rise to what might have been the fieriest public exchanges of the entire Cold War.<sup>164</sup> Tellingly, the meetings included the famous ‘shoe-banging’ episode, in which Soviet leader Nikita Khrushchev was said to have taken off one shoe and banged it in protest at the Philippines’ allegation that the Soviet Union had ‘swallowed up’ the peoples of Eastern Europe.<sup>165</sup>

Probably realising that the UN was about to formalise ‘self-determination’ as a principle of colonial freedom, Western states shifted their argumentation. Although colonialism had greatly benefited colonial peoples, they now said, it might have reached its end point.<sup>166</sup> The colonial powers had succeeded in bringing most colonies to maturity,<sup>167</sup> and could grant them self-determination ‘in progressive steps’<sup>168</sup> so as ‘to avoid giving rise

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161 See the minutes starting from the 898th meeting on 10 October 1960 and the sessions immediately following it, BL p.614.

162 Ba, Mali, 901st plenary meeting, 12 October 1960, BL, p.654.

163 Cooper, Liberia, 902nd plenary meeting, 12 October 1960, BL, p.681.

164 For the most heated exchanges from the decade of UN debates, see the whole 902nd plenary meeting on 12 October 1960, BL pp.671–690.

165 Lorenzo Sumulong, BL, p.682. Khrushchev (1974) explained that when Western delegates at the UNGA session started ‘banging on their desks and making noise’, the Soviet delegates ‘began to pay them back in kind’, p.471. Official UN transcripts did not record this episode, but it was reported in i.a. the *New York Times* the following day (13 October 1960) and vividly recounted at ACP 1959–1960, e.g. letters to A. J. Brumbaugh, Florida, 16 October 1960; to Dr V. F. Schwalm, Indiana, 21 October 1960; to Dr R. V. Bollinger, Dean of Students, Manchester College, Indiana, 16 October 1960. See also Wadsworth 1966, p.107.

166 For appraisals of colonialism, see BL: Plimsoll, Australia, 933rd plenary meeting, 2 December 1960, pp.1090–1091; Christiansen, Denmark, 945th plenary meeting, 13 December 1960, p.1262; for admissions that the time of colonialism might have passed, see Wadsworth, USA, 869th meeting, 23 September, p.93; Ormsby-Gore, UK, 925th meeting, 28 November, p.983; Segni, Italy, 874th meeting 28 September, p.199. See also ‘Paper Prepared by the Assistant Legal Adviser for United Nations Affairs’ (Meeker), New York, 4 October 1960, from ‘US Policy and the 15th General Assembly’, FRUS 1958–1959, Vol.II, p.389 See also McKay 1957, p.309; Cooper 1996, p.27.

167 Ormsby-Gore, UK, 925th plenary meeting, 28 November 1960, BL, p.986.

168 Wadsworth, USA, 937th plenary meeting, 6 December 1960, BL, p.1157.

to disorder and chaos.’<sup>169</sup> As one UK delegate put it, viewed ‘objectively’, colonialism might be ‘dying [only] in the sense that the Phoenix dies, dying at the moment of its greatest glory, when it gives birth to new nations’.<sup>170</sup>

The Soviet draft may have triggered the discussion on self-determination at the 1960 UNGA plenary, yet it was not that text that would eventually be adopted as the final Decolonisation Declaration. On 28 November 1960, a large group of African and Asian states presented their own, identically titled, alternative draft Declaration to the UNGA.<sup>171</sup> This move, its sponsors explained, was an attempt to prevent colonial independence from becoming subjected to automatic Cold War bloc voting.<sup>172</sup> Except for some Western scepticism, this new draft immediately gained wider Assembly support. And two weeks later, on 14 December 1960, the UNGA adopted it as the Decolonisation Declaration<sup>173</sup> – with 89 states voting in favour, none against,<sup>174</sup> while Australia, Belgium, the Dominican Republic, France, Portugal, Spain, Britain, the Union of South Africa and the USA abstained.<sup>175</sup>

The US abstention on the 14 December vote revealed the persisting ambivalence on ‘self-determination’. The US delegation had actually been involved in the preceding weeks’<sup>176</sup> drafting of the African–Asian

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169 Martino, Italy, 937th plenary meeting, 6 December 1960, BL, p.1165–1166.

170 Ormsby-Gore, UK, 925th plenary meeting, 28 November 1960, BL, p.983.

171 UNDocA/L.323, on behalf of Afghanistan, Burma, Cambodia, Ceylon, Chad, Ethiopia, Ghana, Guinea, India, Indonesia, Iran, Iraq, Jordan, Lebanon, Liberia, Libya, Morocco, Nepal, Nigeria, Pakistan, Saudi Arabia, Sudan, Togo, Tunisia and Turkey. In the end, 43 African and Asian states were listed as sponsors of the draft. Besides this draft and the Soviet one, Honduras presented its own draft declaration, which did not gain support: UNDocA/L.324/REV.2, 7 December 1960. Honduras later described this as a ‘supplement’ to the African–Asian draft, which it also voted for: Milla Bermudez, Honduras 937th plenary meeting, 6 December 1960, BL, p.1157.

172 Nong Kimny, Cambodia, 926th plenary meeting, 28 November 1960, BL, p.989, and UNDocA/L.323. See also Kay 1967, p.790.

173 With the minor change of removing quotation marks in referring to the work of the UN; see UNDocA/L.323 and UNGA Resolution 1514. See also Humphrey 1984; Romulo with Romulo 1986, pp.158–159.

174 The USSR voted in favour of the resolution, but later described its own draft as having ‘far more scope and substance, clarity and consistency’; see the submission of a letter by the USSR delegation (V. Zorin) from 30 December 1960, with a statement of Khrushchev from 27 December 1960, 4 January 1961, ARMSNY: S-0856, Box 5, File 8, ‘Record 10631, Declaration on the Granting of Independence to Colonial Countries and Peoples, TR410, Jan 1960–Dec 1963’, p.5.

175 947th plenary meeting, 14 December 1960, BL, p.1274.

176 Palar, Indonesia, claimed the drafting had taken four weeks: 947th plenary meeting, 14 December 1960, BL, p.1279. Indonesia had chaired the African–Asian working group

proposal.<sup>177</sup> Exactly what their influence was on the text is unclear, but the Americans had commented on it already on 9 November. Apparently, the USA had worked with the UK to exclude from the draft any specific target dates for colonial independence, and to shift the focus from Western colonialism onto Soviet interference.<sup>178</sup> When the African–Asian sponsors submitted the text to the UNGA, the US State Department internally described it as ‘a considerable improvement over previous drafts.’<sup>179</sup> Only six days before the vote, the US Secretary of State and the US UN delegation had favoured it.<sup>180</sup> Although President Dwight D. Eisenhower had been wary and had considered threatening to withdraw aid to countries planning on a positive vote, also he nonetheless concluded that a ‘yes’ stance on the Declaration might be proper.<sup>181</sup> The following day, however, British Prime Minister Harold Macmillan seems to have convinced Eisenhower to abstain instead, apparently for the sake of Anglo-American harmony.<sup>182</sup>

By eventually abstaining, the USA placed itself in the company of the European colonial powers, and against the UN majority.<sup>183</sup> This

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drafting the declaration, see from Sukardjo Wirjopranoto, Permanent Representative of Indonesia to the UN, to Mongi Slim, President of the General Assembly, ARMSNY: 699/0101, 6 December 1961, TR 412/1, ‘Special Committee of Seventeen Members on the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (GA Res 1514 (XV))’, Jan 1960–Dec 1963, S-0443-0088, 10636. Kay 1967, p.790 claims the African–Asian group started informal discussions already on 10 October 1960, while the USA claimed it started around 1 November: Telegram from the Department of State to the Mission at the UN, Washington, November 1, 1960, FRUS 1958–1960, Vol.II, pp.431–432.

177 On 1 November 1960, the State Department instructed the US delegation at the UN that the dangerously anti-colonial atmosphere created by the USSR submission of its colonial independence draft could be handled by submitting a ‘counter-resolution’. It suggested consultations with four countries, of which two (Turkey and Tunisia) were to be among the original co-sponsors of the 28 November draft, Telegram from the State Department, op.cit.

178 Telegram from the State Department to the US UN Mission, 25 November 1960, FRUS 1958–1960, Vol.II, p.447, referring to conversations with the UK delegation; and Telegram from the State Department to the UN Mission, Washington, 4 November 1960, p.433; also Telegram from the State Department to the UN Mission, 30 November 1960, p.450; Telegram from the American UN Mission (by Wadsworth) to the State Department, 14 December 1960, at 1 am, New York, p.458

179 State Department to the UN Mission, 30 November 1960, *ibid.*, p.450.

180 Memorandum from the Secretary of State (Christian A. Herter) to the President’s Staff Secretary (A. Goodpaster), Washington, 8 December, *ibid.*, p.454

181 ‘Memorandum of a Telephone Conversation Between the President and the Secretary of State’, Washington, 8 December 1960, *ibid.*, p.456.

182 *Ibid.*, editorial note.

183 Khrushchev was particularly pleased with this development: see Khrushchev 1974, p.482; also Solodovnikov 2006, p.191.

corresponded badly with US ambitions for a role as the promoter of freedom at the UN, or with its Cold War image concerns.<sup>184</sup> Even the US delegation expressed unease. When the UNGA passed the Declaration, one US delegate showed her personal dissent with the official position of her country by standing up and applauding.<sup>185</sup> Explaining the US vote to the plenary, Ambassador James J. Wadsworth proclaimed America's 'support of freedom' and the Declaration's 'underlying principles', before praising the Western colonial powers and condemning Soviet imperialism. He then added, 'I am sure that the devotion of the United States to the principles of human freedom and political advancement will be judged by what the United States has done, is doing and will continue to do in the cause of freedom.'<sup>186</sup> In a telegram to the State Department, Wadsworth admitted he was 'shocked and disheartened' by Washington's 'last minute reversal', and warned that UNGA delegations had reacted strongly, emotionally and negatively towards the US abstention.<sup>187</sup>

Remarkably, the USA again reversed its position in 1961, when it pleaded strong support for the Decolonisation Declaration and voted in favour of implementing it.<sup>188</sup> At the UNGA that year, newly instated US President John F. Kennedy proclaimed that the 'continuing tide of self-determination, which runs so strong, has our sympathy and our support'.<sup>189</sup> It seems that,

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184 See Wadsworth 1966, p.181; Telegram from the State Department to the UN Mission, 30 November 1960, FRUS 1958–1960, Vol.II, p.450.

185 *New York Times*, 15 December, 1960. See also Kay, 1967, p.793. In his memoirs, Wadsworth expressed relief at finally being able to tell the truth about his work at the UN: Wadsworth 1962, p.8.

186 Wadsworth, US, 947th plenary meeting, 14 December, 1960, BL, pp.1281–1284.

187 Telegram from the US Mission at the UN (Wadsworth) to the State Department, New York, December 15, 1960, FRUS 1958–1960, Vol.II, pp.458, 460. For Wadsworth's position on 'self-determination' specifically, see his 1966 memoirs, pp.141–153.

188 Also Australia, Belgium, and the Dominican Republic voted in favour of implementing the Declaration.

189 'The Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples', from Permanent US Representative to the UN to the president of the GA, 25 November 1961, ARMSNY: S-0443-0088, 10631, TR410, 'Declaration on the Granting of Independence to Colonial Countries and Peoples, Jan 1960–Dec 1963', UNDocA/4985, p.12. Metz 1984, p.527 claims that the USA went from seeing colonial independence as a threat to seeing it as an opportunity. See also Louis (with Robinson) 2006. For criticism of the implementing committee, see e.g. Seymour M. Finger: 'A New Approach to Colonial Problems at the United Nations', *International Organization*, 26(1), 1972, pp.143–153, at p.143. Perhaps by then, the USA had concluded that it might continue to exert influence even in the African and Asian states that had recently become independent: see Louis (with Robinson) 2006, pp.467, 491; Kiely 2010, p.108.

despite its abstention on the 1960 vote, the USA was not ready to abandon its claim to stand as the world's foremost promoter of freedom and self-determination at the UN.

That the European colonial powers too chose to abstain rather than vote against the Decolonisation Declaration is likely to have reflected more than a desire to avoid upsetting the world's affinities on self-determination.<sup>190</sup> These states probably also appreciated that the language and legitimising standards of the final document were more closely aligned with their ideals than the Soviet proposal had been. The final text presented colonialism as merely being out of date, rather than outright morally condemnable,<sup>191</sup> and elevated *peace* as its supreme objective.<sup>192</sup> Significantly, the document also decried '[a]ny attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country'.<sup>193</sup> While these dispositions chimed well with those of Western states, the formal sponsors of the document must have prized the values of peace and non-interference as well, with many seeking to bolster their states' recent independence beyond formal UN membership.<sup>194</sup>

With this approach to 'self-determination', the 1960 Decolonisation Declaration cemented the concept's international association with independent statehood, but also limited its realisable scope to *colonies*.<sup>195</sup> The document did not proclaim 'self-determination' as a more broadly applicable idea of freedom from inequality, dependence or domination, nor

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190 In arguing against the Declaration earlier in the UNGA session, they had foreshadowed that they would vote against it. See also Kay 1967, pp.808–809.

191 See also Nong Kimny, Cambodia, 926th plenary meeting, 28 November 1960, BL, p.989. For an analytical argument against colonialism, see Ypi 2013.

192 As did its sponsors: see BL: e.g. Vakil, Iran, 926th plenary meeting, 28 November 1960, p.992; Obeid, Sudan, 935th plenary meeting, 5 December 1960, p.1133; and Jawad, Iraq, 937th plenary meeting, 6 December, p.1173; socialist delegates appraised the draft in similar terms: Nosek, Czechoslovakia, 926th plenary meeting, 28 November, 1960, p.996; and Zorin, USSR, 939th plenary meeting, 7 December 1960, p.1188. On peace as the key overall 'legitimizing concept' for decolonisation, see Claude 1984, p.351; also Cassese 1979, p.141.

193 UNDocA/L. 323.

194 See Burke 2010, p.25, referring to attitudes expressed at Bandung; for a critical approach, see Jackson 1993.

195 See Hannum 1996, p.49; Cassese 1979, p.147; Evan M. Brewer: 'To Break Free from Tyranny and Oppression: Proposing a Model for Remedial Right to Secession in the Wake of the Kosovo Advisory Opinion', *Vanderbilt Journal of Transnational Law*, 45, 2012, pp.245–292, at p.252.

did it infuse the concept with new international standards. With language strengthening established notions of peace, statehood, and non-interference,<sup>196</sup> as well as specifically existing borders,<sup>197</sup> the Declaration invoked ideas that Wilson had first internationally articulated with the discourse of ‘self-determination’.<sup>198</sup>

## Conclusions

The 1950–1960 UN debates revealed deep international disagreement on issues of colonial policy, and on whether the UN should adopt the three ‘self-determination’ texts under discussion. The debates reflected Cold War geo-ideological interests and states’ concerns with their global standing and appeal. Legally and in policy terms, the main text resulting from this 1950–1960 ‘moment’, the Decolonisation Declaration of 14 December 1960, was ground-breaking. It laid out the content of ‘self-determination’ as being colonial independence, and made the concept a realisable part of politics and law.

In conceptual terms, however, the moment added little new. States’ discourse on ‘self-determination’ did not go beyond the conceptual frames set by Wilson and Lenin decades earlier. Again, international arguments on self-determination played out liberal-conservative and radical ideas of freedom. And again, a radical formulation of ‘self-determination’ sparked liberal-conservative attempts to take over the concept. During the ensuing debates, the international discourse reflected mainly the liberal-conservative standards of peace, order and non-interference: these would also be codified in the final Decolonisation Declaration. Previous chapters have shown that earlier international moments bolstered the liberal-conservative idea of freedom associated with ‘self-determination’, even though the radical one remained. This was also the case in the UN debates of the 1950s and 1960.

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196 See Robert H. Jackson: *Quasi-states: Sovereignty, International Relations and the Third World*, Cambridge University Press, Cambridge, 1993, p.523.

197 Colonies already had a separate legal status: see e.g. Benyamin Neuberger: ‘National Self-determination: Dilemmas of a Concept’, *Nations and Nationalism*, 1(3), 1995, pp.297–325, at p.315; also Koskenniemi 1994, p.256; Karen Knop: ‘Statehood: Territory, People, Government’, pp.95–116 in Koskenniemi and Crawford (eds), 2011, at p.100; Franck 1993, p.6. For a different perspective, see Kwaw Nyameke Blay: ‘Self-determination Versus Territorial Integrity in Decolonization Revisited’, *Indian Journal of International Law*, 25, 1985, pp.386–410.

198 See also Emerson 1965, p.495; Claude 1984 [1964], pp.351, 367.

The boundaries drawn up at this moment for the international meaning of self-determination remained intact until the 1990s break-up of the Soviet Union and socialist Yugoslavia. It was only from that point on that the question of the radical potential of self-determination, beyond the colonial context, started to be revived. Emerging from these circumstances, the 2008–2010 ICJ proceedings on Kosovo then came to re-examine the concept at considerable length.



## 5. SELF-DETERMINATION TODAY: THE INTERNATIONAL COURT OF JUSTICE PROCEEDINGS ON KOSOVO

Between 2008 and 2010, UN debate again brought the language of ‘self-determination’ to the centre of international affairs. The occasion was the proceedings of the UN’s principal court, the International Court of Justice (ICJ), on Kosovo’s declaration of independence.<sup>1</sup> On 17 February 2008, Kosovo had declared independence; in response, Serbia had requested the ICJ for an advisory opinion on the legality of the declaration.<sup>2</sup> During the ensuing proceedings, dozens of states argued about the issue, including, for the first time in an ICJ case, all five members of the UN Security Council (UNSC).<sup>3</sup> The ICJ statute allows any state to initiate proceedings of this kind, and the fact that the case occurred was not in itself remarkable.<sup>4</sup> What made it extraordinary were the large number of states participating, and the prominent use of the language of ‘self-determination’.

Unlike the 1950–1960 UN debates, the ICJ Kosovo case did not deal with whether ‘self-determination’ should be codified in documents of international law. Nor were the participants in the proceedings – state agents, the Court, and the judges on the ICJ panel – formally required to discuss ‘self-determination’. The question Serbia had put to the ICJ had been: ‘Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?’<sup>5</sup> In the final ICJ advisory opinion, which concluded that the declaration had *not* violated international law, the Court included only a

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1 See the ICJ website, [www.icj-cij.org](http://www.icj-cij.org), accessed 26 January 2013. Unless otherwise stated, all ICJ materials cited in this chapter have been retrieved from its website.

2 Serbia formally requested the UNGA to ask the ICJ to render an opinion; see UNGA Resolution 63/3, 8 October 2008. In the UNGA, 77 states voted for referring the question to the ICJ, while 74 abstained and 6 voted against.

3 By April 2009, the ICJ had received written arguments from 37 states (including Kosovo), and 15 additional written comments by July. In December 2009, the Court heard the oral arguments of 29 states. Hereafter, countries’ written submissions are referred to by state name: written comments, as ‘comments’, and oral contributions as ‘oral’. The Court referred to Kosovo as ‘the authors of the declaration of independence’ rather than as a ‘state’, and its submissions were, uniquely, called ‘contributions’. For the sake of simplicity, however, in the following I refer to Kosovo as a ‘state’ or ‘country’, and its contributions as ‘submissions’. As of September 2013, Kosovo has been recognised as an independent state by 104 UN members, including the UK, where this thesis is submitted, as well as by my native Norway.

4 For the rules of the court, see the ICJ Statute.

5 UNGA Resolution 63/3 2008.

brief mention of ‘self-determination’.<sup>6</sup>

Most states arguing before the ICJ nevertheless raised the question of whether, and how, the concept of ‘self-determination’ might apply to Kosovo. While few asserted unambiguously that it did, in explaining their positions to the world’s highest court, states revealed how they conceptualised self-determination, and, indirectly, the ideas of freedom invoked by the concept. Consequently, the final ICJ opinion did mention ‘self-determination’, and some of the judges in the case chose to express their views on the concept in statements issued separately to the opinion of the Court.<sup>7</sup> In subsequent comments, scholars have described the case as being one of ‘self-determination’.<sup>8</sup> By exposing the perspectives of significant states and institutions, the Kosovo proceedings provided unique insights into current international understandings of self-determination.<sup>9</sup> In effect, the ICJ case was the furthest-reaching international debate on the concept since the 1950–1960 UN discussions.

Followed closely around the world,<sup>10</sup> the ICJ Kosovo proceedings involved

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6 ‘Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo’, ICJ, (‘Final Opinion’ hereafter), 22 July 2010.

7 Three of the four judges voting against the Court’s opinion issued ‘dissenting opinions’, while four of the ten voting in its favour issued ‘separate opinions’. Two judges issued ‘declarations’. Although these texts were without legal force, they are notable in conveying the reasoning of some of the most esteemed and influential minds of international law.

8 E.g. Kaiyan H. Kaikobad: ‘Another Frozen Conflict: Kosovo's Unilateral Declaration of Independence and International Law’, pp.55–85 in Summers (ed.) 2011, p.55.

9 See also Richard Caplan: ‘The ICJ’s Advisory Opinion on Kosovo’, *PeaceBrief* 55, United States Institute of Peace, 17 September 2010, p.3.

10 For a few of the many scholarly and media comments on, and reactions to the case, besides the references below, see Björn Arp: ‘The ICJ Advisory Opinion on the Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo and the International Protection of Minorities’, *German Law Journal*, 11(8), 2010, pp.847–866, at p.847; Thomas Burri: ‘The Kosovo Opinion and Secession: The Sounds of Silence and Missing Links’, *German Law Journal*, 11(8), 2010, pp.881–890, especially pp.881–882; Dan Bilefski: ‘World Court Rules Kosovo Declaration was Legal’, *New York Times*, 22 July 2010; Vuk Jeremic (Serbian Foreign Minister): ‘Kosovo’s Disastrous Precedent; Serbia Will Never Recognize this Unilateral Declaration of Independence; We Seek Peaceful Compromise’, *Wall Street Journal*, 27 July, 2010; Hashim Thaci (Kosovo’s Prime Minister): ‘To Kosovans, Blair is a True Hero’, *The Guardian*, 2 September 2010; ‘Kosovo Independence Move Not Illegal, says UN Court’, *BBC World News*, 22 July 2010; *China Daily*: ‘ICJ Ruling Not to Change Russia’s Stance on Kosovo’, 23 July 2010; *Taipei Times*: ‘ICJ’s Kosovo Decision is Vague and Very Limited’, 28 July 2010; *Tehran Times*: ‘Will Ruling on Kosovo Entice other Regions?’, 24 July 2010; *Radio Free Europe/Radio Liberty* (RFERL): ‘Tartarstan Nationalist Leader Encouraged by Court Ruling on Kosovo’, 26 July 2010; RFERL: ‘Karabakh Armenians Buoyed by Kosovo “Precedent”’, 27 July 2010; RFERL:

high stakes for more countries than only Kosovo and Serbia. As will be shown, Kosovo had really first emerged as an international issue in the context of the 1998–1999 Kosovo war, which had arisen from the early 1990s breakup of the Socialist Federal Republic of Yugoslavia (hereafter: ‘Yugoslavia’). Shortly after the end of the Cold War, these developments had raised fundamental questions on the standards guiding the conduct of international affairs, including territorial integrity, non-interference, and human rights.<sup>11</sup> While there is no space here to investigate the post-Cold War evolution of such international norms, it should be noted that states’ positions on them were reflected by their roles in the Yugoslav wars, including that in Kosovo.<sup>12</sup> The fact that, in the ICJ Kosovo case, arguments and ideas of states were markedly aligned to those expressed in the 1990s indicated the case was seen as an arena for defending also these earlier political and legal positions.

Furthermore, after Kosovo had declared independence in 2008, Western states in particular had publicly defended and recognised its statehood, and

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‘Transdnier Hails Court Ruling on Kosovo’, 28 July 2010; Joshua Keating: ‘So Kosovo is Legal. What Happens Now?’ *Foreign Policy Blog*, 22 July 2010; International Crisis Group: ‘Kosovo and Serbia after the ICJ Opinion’, Europe Report no 206, 26 August 2010.

11 For a succinct summary see Marc Weller: ‘The Rambouillet Conference on Kosovo’, *International Affairs*, 75(2), 1999, pp.211–251, at pp.213–218. See also Martti Koskenniemi: ‘“The Lady Doth Protest Too Much”: Kosovo, and the Turn to Ethics in International Law’, *Modern Law Review*, 65(2), 2002, pp.159–175; Christopher Coker: *Humane Warfare*, Routledge, London 2001.

12 Literature abounds, much of it highly polemic and concentrated on the 1999 NATO intervention against Serbia; see e.g. Ivo H. Daalder and Michael E. O’Hanlon: *Winning Ugly. NATO’s War to Save Kosovo*, Brookings Institution Press, Washington, DC, 2000; Alex Bellamy: *Kosovo and International Society*, Palgrave, London 2002; Ted Galen Carpenter (ed.): *NATO’s Empty Victory*, Cato Institute, Washington, DC, 2000; Philip Hammond and Edward S. Herman (eds): *Degraded Capability: The Media and the Kosovo Crisis*, Pluto Press, London 2000; Michael Ignatieff: *Virtual War: Kosovo and Beyond*, Holt, New York, 2000; Noam Chomsky: *The New Military Humanism: Lessons from Kosovo*, Pluto Press, London, 1999; James Gow: *The Serbian Project and its Adversaries: A Strategy of War Crimes*, Queen’s University Press, Kingston, 2003, dealing with the war in Bosnia as well as in Kosovo. For useful contemporary perspectives, see Slavoj Žižek: ‘Against the Double Blackmail’, Lacan Dot Com, 1999, accessed 30 January 2011 at [www.lacan.com/kosovo.htm](http://www.lacan.com/kosovo.htm); Julie A. Mertus: *Kosovo: How Myths and Truths Started a War*, University of California Press, Berkeley, CA, 1999; Antonio Cassese: ‘Ex iniuria ius oritur: Are We Moving Towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?’, *European Journal of International Law*, 10, 1999, pp.23–30; for summaries of the diplomacy of the Kosovo war, see Richard Caplan: ‘International Diplomacy and the Crisis in Kosovo’, *International Affairs*, 74(4), 1998, pp.745–761 and Weller 1999. For the documents concluding the war, see the ‘Military Technical Agreement’ (‘Kumanovo Agreement’) between NATO’s KFOR and the Federal Republic of Yugoslavia plus Serbia, 9 June 1999, and UNSC Resolution 1244, 10 June 1999.

continued to play a key role in its international administration,<sup>13</sup> as had other, non-Western, states. On the opposing ‘side’ at the ICJ,<sup>14</sup> states with close economic and political ties to Serbia, and those worried about secessionist claims from within their own borders, had made vocal public cases against Kosovo’s statehood.<sup>15</sup> Although this chapter concentrates narrowly on the discourse used in the ICJ case rather than the intricacies of the larger international context, this picture does go some way in explaining the intensity of state involvement in the proceedings. The ICJ case became a scene for political as much as legal deliberations.<sup>16</sup> While only ‘advisory’, the Court proceedings gave rise to a battle about the legitimacy of countries’ wider standards and policies, on which participants may have expected the final opinion to provide an authoritative verdict.

As in all other ICJ cases, participants in the Kosovo proceedings were state delegates and the judges of the Court. State delegations were composed of national diplomats as well as legal experts, some of whom held different citizenship than the state they represented at the ICJ. As to the Court’s fifteen judges, these had each been elected separately by the UNGA and the UNSC for a period of nine years.<sup>17</sup> In the Kosovo proceedings, all fifteen participated up until the concluding vote, before which one judge resigned, leaving only fourteen to vote on the final advisory opinion. As in all ICJ cases, the judges were to ‘represent the main forms of civilization and the

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13 I return to Kosovo’s international statebuilding project below. Notably, these same countries had also been at the fore of the 1999 NATO intervention against Serbia over Kosovo, especially the USA and most of the EU. See e.g. Stephen Tierney: ‘The Long Intervention in Kosovo: A Self-determination Imperative?’, pp.249–278 in Summers (ed.) 2011. For Kosovo’s recognition, see e.g. Gary Wilson: ‘Self-determination, Recognition and the Problem of Kosovo’, *Netherlands International Law Review*, 2009, pp.455–481; Grace Bolton and Gezim Visoka: ‘Recognizing Kosovo’s Independence: Remedial Secession or Earned Sovereignty?’, *South East European Studies at Oxford*, Occasional Paper 11/10, October 2010.

14 Re ‘sides’ of the case: this refers to the countries that argued that the declaration was legal, and those arguing that it was not.

15 For instance, Cyprus, Russia and Spain.

16 The wider issue, as noted in the introduction to this thesis, that it in any event makes no sense to distinguish between the discourse of international politics and international law, is far beyond the scope of this chapter, and has been lucidly dealt with especially by Koskeniemi, 2011a (e.g. p.225); also 2011b, pp.57, 60–61; 1999, p.115; 2005. For references to the Kosovo case on the same theme, see Christopher J. Borgen: ‘The Language of Law and the Practice of Politics: Great Powers and the Rhetoric of Self-Determination in the Cases of Kosovo and South Ossetia’, *Chicago Journal of International Law*, 10, 2009, pp.1–33, as well as Veton Surroi: ‘The ICJ Advisory Opinion on Kosovo: The Beginning of a New Road’, *ISS Opinion*, September 2010, p.1.

17 After being proposed by a Permanent Court of Arbitration; ICJ Statute, Article 4.

principal legal systems of the world',<sup>18</sup> and came from a broad array of states. The judges did not speak at the Court on behalf of their own governments: they were to consider the Kosovo case independently in light of the applicable international law.

This chapter examines the language of 'self-determination' in the ICJ Kosovo case and the ideas of freedom contained therein. It starts by looking at the background to the ICJ Kosovo case from the perspective of 'self-determination' in international discourse. Then it turns to the language of the proceedings themselves, as presented in the arguments of participating states, the separately issued statements of ICJ judges, and the Court's final opinion. The states participating in the case, it is worth noting, were not clustered into neat geopolitical categories. Whereas many Western states argued for the legality of Kosovo's declaration of independence and statehood, several non-Western countries did so as well. Opposing them, Russia, China, a few EU countries, and others, argued against. While both sides used the language of 'self-determination', Kosovo's supporters elaborated most on it and are thus more extensively cited here. Throughout, my analysis enquires into how the discourse of 'self-determination' at the ICJ expressed ideas of freedom.

### **Background**

Decades had passed between the UN debates that had unfolded between 1950 and 1960, and the ICJ Kosovo case, and 'self-determination' had of course been referred to in this period. Yet, none of these intermediate appearances had brought the concept back into the focus of international affairs as it had been during the First World War, in the UN Charter, or in the 1950–1960 UN debates. Furthermore, these in-between references did not implicate any other ideas, meanings or standards of legitimation than those already introduced in earlier international discourse. And they involved no important international discussions where participants sought legitimation for their arguments and ideas on self-determination by invoking ideas of freedom. A full discussion of these cases would go beyond the confines of this chapter, as well as being less pertinent to my investigation.

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<sup>18</sup> Ibid., 9.

A few examples do, however, warrant mention. ‘Self-determination’ had been referred to in international diplomacy during the breakup of Yugoslavia, during the independence of the Baltic States from the USSR, as well as during German reunification. But the language of ‘self-determination’ never became central to the Yugoslav case, as I will show. And since Baltic independence and German unification were instances of *consensual* self-determination, they prompted no deeper international debate. Moreover, neither case brought any new international conceptualisations. German ‘self-determination’ realised a scenario resembling the Aaland Islanders’ demands from decades earlier; and the self-determination of Estonia, Latvia and Lithuania ‘restored’ their already acknowledged statehoods from Soviet occupation.<sup>19</sup>

There had also been references to ‘self-determination’ at the ICJ specifically before the Kosovo proceedings commenced, notably in the cases of East Timor (1995) and Palestine (2004).<sup>20</sup> Since East Timor was formally a colony, the Court’s confirmation of its self-determination simply repeated the 1960 Decolonisation Declaration’s framing of the concept.<sup>21</sup> In the Palestine ICJ proceedings, the Court, without elaboration, merely asserted that the Palestinians had a right to self-determination.<sup>22</sup> Neither case challenged or further illuminated the concept of self-determination in international affairs, or placed it at the forefront of international discourse.

In fact, until the ICJ Kosovo proceedings started, it was far from given that this would be the case that would bring ‘self-determination’ back onto the international agenda, or that Kosovo would even be internationally addressed in such terms. Kosovo’s Albanian population had sought to break

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19 See e.g. the Declaration of European Community Foreign Ministers, Brussels, 27 August 1991. See also Lauri Mälksoo: *Illegal Annexation and State Continuity: The Case of the Incorporation of the Baltic States by the USSR*, Martinus Nijhoff, Leiden, 2003; Mälksoo 1999.

20 ‘East Timor (Portugal v. Australia)’ and ‘Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory’, ICJ. ‘Self-determination’ was also at issue in other ICJ cases: see e.g. ‘Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276, Advisory Opinion’, ICJ, 21 June 1971

21 East Timor Judgment, ICJ, 30 June 1995, pp.105–106, and the Court’s reasoning, p.103.

22 And that Israel was violating this by building the wall; see also the oral arguments presented on 23–25 February 2004, Palestine Advisory Opinion ICJ, 9 July 2004.

away from Serbia's rule ever since the 1912 occupation – initially through unification with other Albanian-populated areas, and then through equal recognition as a republic within Yugoslavia.<sup>23</sup> From the 1990s, Kosovo had demanded separate statehood, confirming this in a 1991 referendum. However, while international institutions, including the League of Nations and the UN, had been aware of the situation of Kosovo's Albanians from the start, their demands had not been registered as ones of 'self-determination'.<sup>24</sup> The incorporation of Kosovo in the Kingdom of Serbs, Croats and Slovenes, established in 1918, did not occur with reference to 'self-determination' either.<sup>25</sup> And when socialist Yugoslavia was created in 1943, Kosovo was included as an entity subordinate to the republics of the federation, as an autonomous province of Serbia.<sup>26</sup>

International institutions and states had also ignored Kosovo's prospects for self-determination when the Yugoslav federation collapsed in the early 1990s.<sup>27</sup> Despite the increased oppression of the Serbian state, as well as Kosovo's 1991 referendum and appeals for international recognition, the case went nowhere.<sup>28</sup> Kosovo was not an international priority. Since

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23 See Channer 2012.

24 For the UN, see below; for the League of Nations, see Chapter 3, as well as British records from 1919, including at TNA: FO608/47, letter from Edith Durham to the Foreign Office, 18 February 1919, transmitted on 26 February, 4–6, and other reports including, in the same file, 9 and 119, as well as in FO608/30, 76/2/8–79/1/1 1919, correspondence from British observers on the ground to the Foreign Office, June and July 1919; and, records from February to April 1919 in FO608/47.

25 See 'South Eastern Europe and the Balkans', TNA: FO925/ 30210 P.13, p.2.

26 The Kosovo Albanians' call for 'self-determination' and the right to union with Albania at the 1943–1944 'Bujan Conference' did not achieve this end either; see Reka 2003, pp.42–43.

27 The scholarship on Yugoslavia, its breakup, and the history of Kosovo is vast. For various approaches, see e.g. Susan Woodward: *Balkan Tragedy: Chaos and Dissolution after the Cold War*, Brookings Institution, Washington, 1995; Sabrina Ramet: *Nationalism and Federalism in Yugoslavia 1962–1991*, Indiana University Press, Bloomington, IN, 1992; Noel Malcolm: *Kosovo. A Short History*, Macmillan, London, 1998; Denisa Kostovicova: *Kosovo: The Politics of Identity and Space*, Routledge, London, 2005; Besnik Pula: 'The Emergence of the Kosovo "Parallel State" 1988–1992', *Nationalities Papers*, 32(4), 2004, pp.797–826; Caplan 1998; Weller 2009; John Williams: *Legitimacy in International Relations and the Rise and Fall of Yugoslavia*, St. Martin's Press, London, 1998; Bogdan Denitch: *Ethnic Nationalism: The Tragic Death of Yugoslavia*, University of Minnesota Press, London, 1994. For a recent contribution, see Josip Glaurdic: *The Hour of Europe: Western Powers and the Breakup of Yugoslavia*, Yale University Press, New Haven, CT, 2011.

28 See 'Letter from Dr Rugova to Lord Carrington, Peace Conference on Yugoslavia, 22 December 1991', referring to the EC Declaration on Yugoslavia of 16 December 1991 inviting Yugoslav republics to apply for recognition and indicating criteria for recognition in Krieger (ed.) 1999, p.118. For the declaration, see Danilo Turk: 'Recognition of states: A Comment', *European Journal of International Law*, 4, 1993,

Kosovo's Albanian population were non-violent in their resistance to Serbia, the outright war elsewhere in Yugoslavia overshadowed their predicament.<sup>29</sup> If Kosovo came up at all in international discussions of the early 1990s, its chances of statehood seemed to be ruled out.<sup>30</sup> The most direct international initiative on Kosovo at that time was a one-sentence, non-public 'Christmas warning' from outgoing US President George Bush (Sr) to Serbian leader Slobodan Milosevic. On 24 December 1992, Bush had stated that the USA would use force against Serbia if it caused conflict in Kosovo.<sup>31</sup> Not then leading to any international action, and not mentioning 'self-determination', the warning indicated that the only way Kosovo could become a subject of high-level international affairs was if the level of violence there came to threaten international security.

The language of 'self-determination' did appear internationally with some *indirect* relevance to Kosovo when the European Community (EC) in 1991 tasked the Badinter Commission with legally assessing the breakup of Yugoslavia, of which Kosovo was then still part.<sup>32</sup> From November 1991 to July 1992, the Commission issued ten opinions on the feasibility of internationally recognising the former Yugoslav republics as independent states, as well as, in brief, the applicability of 'self-determination' to Serbs in Bosnia and Croatia. None of these opinions mentioned Kosovo explicitly, and they were not legally binding – although, in the 2008–2010 ICJ proceedings, participating states came to refer to the Badinter opinions as authoritative on the legal issues of the Kosovo case.<sup>33</sup>

In its first opinion, the Badinter Commission held that Yugoslavia was 'in

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pp.66–71, Annex 2, at p.73.

29 For the situation in Kosovo around this time, see e.g. Kostovicova 2005 and Pula 2004.

30 See e.g. Krieger (ed.) 1999, p.120; Weller (ed.) 1999, p.48.

31 Quoted in Barton Gellman: 'Slaughter in Racak Changed Kosovo Policy', *Washington Post*, 18 April 1999.

32 Formally, the Arbitration Committee of the Peace Conference on Yugoslavia – usually known as the 'Badinter Commission', after its president, Robert Badinter, who was also the President of the French Supreme Court. Its opinions were issued on the request the Chairperson of the Yugoslav Peace Conference, Lord Carrington.

33 See contributions from the side of Serbia: Cyprus p.31; Romania p.37; Russia p.16; Serbia p.179; oral p.79; Spain p.18; Venezuela oral p.6; and on the side of Kosovo: Austria oral p.2; Denmark oral pp.12–13; USA p.55; Kosovo pp.148–156; comment p.66. In the scholarship on the ICJ case, Peter Hilpold: 'The Kosovo Case and International Law: Looking for Applicable Theories', *Chinese Journal of International Law*, 8,(1), 2009, pp.47–61 also describes the Badinter opinions as authoritative.



the process of dissolution',<sup>34</sup> and in its eighth, that this process had been completed.<sup>35</sup> This meant that the ex-Yugoslav countries had not *seceded from* Yugoslavia, but had rather *succeeded* it as separate states, and that they hence had not set any precedents for the world's other independence-seeking groups. The language of Opinions 1 and 8 signalled that the Badinter Commission did not see the independence of the former Yugoslav republics as a matter of self-determination. While Germany did refer to 'self-determination' when it recognised Slovenia and Croatia as independent soon after the Commission's first opinion, other states eschewed such language.<sup>36</sup> It is likely that they did so for fear of being seen as admitting that the non-colonial meaning of 'self-determination' could be the creation of new states, as this might have created unwanted precedents for other secessionist demands.

Also the third opinion of the Badinter Commission had some bearing on the later ICJ debate on Kosovo's self-determination and statehood, although that opinion did not address such questions directly. According to Opinion 3, the boundaries between Yugoslavia's republics 'and possibly other adjacent independent states may not be altered except by agreement freely arrived at'.<sup>37</sup> It affirmed the principle of *uti possidetis*, which the ICJ in a different context in 1986 had defined as the preservation of the boundaries of former colonies at the time of their independence.<sup>38</sup> Not spelling out *how* this principle applied to the non-colonial Yugoslav case, Opinion 3 also left unnamed the 'possibly other adjacent independent states'— so it remained unsaid whether Kosovo might one day be among them. However, none of the Commission's opinions openly raised the issue of the boundaries of Yugoslavia's non-republic entities, such as Kosovo.<sup>39</sup>

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34 Reproduced in Alain Pellet: 'The Opinions of the Badinter Arbitration Committee: A Second Breath for the Self-Determination of Peoples', *European Journal of International Law*, 3, 1992, pp.178–185, at p.183.

35 Reproduced in Turk 1993, p.88.

36 For international considerations on recognition of the former Yugoslav republics, see Richard Caplan: *Europe and the Recognition of New States in Yugoslavia*, Cambridge University Press, Cambridge, 2005.

37 In Pellet 1992, p.185.

38 The 'Frontier Dispute, Judgment', ICJ, 22 December, 1986 (Burkina Faso v Mali), p.17.

39 For criticism of the opinions' ambiguity on the issue of borders, see e.g. Peter Radan: *The Breakup of Yugoslavia and International Law*, Routledge, London, 2002, pp.217–220; 222–223; Martyn Rady: 'Self-determination and the Dissolution of Yugoslavia', *Ethnic and Racial Studies*, 19 (2), 1996, pp.379–390, at p.386. See also Caplan 2005,

It was only the Badinter Commission's Opinion 2 that explicitly used the language of 'self-determination', in evaluating the application of the concept to Serbs in Bosnia and Croatia.<sup>40</sup> That Opinion claimed that the 1966 ICHR had 'established that the principle of the right to self-determination serves to safeguard human rights. By virtue of that right every individual may choose to belong to whatever ethnic, religious or language community he or she wishes.'<sup>41</sup> Notwithstanding this odd proposition, Opinion 2 called for granting minority and other internal rights to the Serbs in Bosnia and Croatia, and for general recognition of the 'identity' of 'ethnic, religious or language communities'. While not directly rejecting the idea that such communities might *also* have independence, the Opinion seemingly embraced a 'human rights' idea of self-determination, which would allow the concept to be realised through individual rights guarantees instead of secession.<sup>42</sup> However, also this opinion failed to bring up the particular case of Kosovo.

Even the international handling of the 1998–1999 Kosovo war did not produce any definite guidelines on Kosovo's self-determination. Having been left out of the international handling of the war in Bosnia, Kosovo started to receive international attention only when war in Kosovo itself threatened the stability of the wider region.<sup>43</sup> From 1997, the Kosovo Liberation Army (KLA) had begun targeting Serbia's policemen and military to achieve independence from the Serbian state,<sup>44</sup> to which Serbia had responded with massive violence. Reacting to the escalation, the international community became involved over the course of 1998.

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pp.69–71.

40 In Pellet 1992, pp.183–184.

41 Ibid., p.184.

42 See also James Ker-Lindsay: 'Not Such a "Sui Generis" Case After All: Assessing the ICJ Opinion on Kosovo', *Nationalities Papers: The Journal of Nationalism and Ethnicity*, 39(1), 2011, pp.1–11, at p.2.

43 See Caplan 1998 for a summary of the early international involvement, as well as Krieger (ed.) 1999 and Weller (ed.) 1999 for original statements and resolutions from the relevant international organs like the OSCE, UN and NATO. Concerns for regional stability were exacerbated by the 1997 breakdown of the Albanian state, which greatly increased the inflow of weapons to Kosovo, and by the fact that neighbouring Macedonia and Montenegro, as well as Serbia 'proper', all contained sizable dissatisfied Albanian minority populations. For a journalistic account, see Judah 2002.

44 Specifically, KLA members swore an oath to fight for the 'liberation of all occupied Albanian territory and their unification' (cited in Channer 2012, p.81).

With the worsening war, a conference in Rambouillet in early 1999 brought together key international actors as well as representatives from Kosovo and Serbia.<sup>45</sup> The Accords resulting from the conference stated, *inter alia*, that Kosovo's future status should be determined by consulting 'the will of the people' as well as other factors of the case.<sup>46</sup> After US representatives assured the Kosovo delegation that this meant a referendum on independence after three years, Kosovo accepted the Accords, while Serbia rejected them.<sup>47</sup> Although the formal meaning of the reference to the 'will of the people' was unclear, and the Accords had no direct legal force, also they would be briefly cited during the ICJ case, in support of independence for Kosovo.<sup>48</sup>

Soon after the Rambouillet conference, NATO initiated a bombing campaign against Serbia – according to its Secretary-General, 'not to conquer or preserve territory but to protect the values on which the alliance was founded'.<sup>49</sup> Meanwhile, Kosovo's self-determination demands remained off the table,<sup>50</sup> and the territorial integrity of the 'Federal Republic of Yugoslavia' (FRY) was affirmed.<sup>51</sup> The international documents adopted when the Kosovo war ended in June 1999 did not refer to 'self-determination'.<sup>52</sup> NATO had conducted the bombing campaign for the sake of the values of peace, regional stability and international security, and not to realise Kosovo's self-determination as statehood.<sup>53</sup> By avoiding the

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45 Primarily the Contact Group, consisting of France, Germany, Italy, Russia, the UK, and the USA

46 See Weller 1999, p.245. For the original documents, see Krieger (ed.) 1999 and Weller (ed.) 1999.

47 Weller 1999, especially p.232; author's interviews with participants at Rambouillet on conditions of anonymity, 2006.

48 France 2009, p.29.

49 Javier Solana: 'NATO's success in Kosovo', *Foreign Affairs*, 78, 1999, pp.114–120, at p.114.

50 See e.g. Part II, A, of the ICJ's background dossier to the Kosovo case, 12 November 1998 S/1998/1068, 'Report of the Secretary-General Prepared Pursuant to Resolutions 1160 (1998), 1199 (1998) and 1203 (1998) of the Security Council', p.3.

51 Weller 1999, pp.216. FRY was established in 1992, but internationally recognised only in 2000. In 2003 it morphed into the State Union of Serbia and Montenegro, which dissolved with the independence of Montenegro in 2006.

52 See especially UNSC Resolution 1244 (1999). For a contemporary view on Kosovo's 'self-determination', see International Crisis Group: *Intermediate Sovereignty as a Basis for Resolving the Kosovo Crisis*, Balkans Report N°46, Brussels, 9 November 1998.

53 See also Thomas H. Lee: 'International Law, International Relations Theory and Preemptive War: The Vitality of Sovereign Equality Today', *Law and Contemporary*

language of ‘self-determination’ throughout the Kosovo war, international agents indicated that they regarded the concept as both unclear and possibly dangerously precedent-setting if invoked without colonial associations.

Significantly, when the UN in 2008–2009, as a standard procedure in preparing for ICJ advisory cases, compiled a *background dossier* to the Kosovo proceedings, it included the Badinter Commission’s Opinions 1, 2, and 8, as well as the Rambouillet Accords.<sup>54</sup> All materials contained in the dossier were ‘to throw light upon the question on which the advisory opinion of the Court [was] requested’.<sup>55</sup> In this light, it seems striking that the UN decided to incorporate in the dossier all key international legal texts that referred to ‘self-determination’: the 1945 UN Charter and the 1960 Decolonisation Declaration, as well as the 1966 ICHRs and the 1970 Friendly Relations Declaration.

Of these materials, the UN’s selection of the 1960 Decolonisation Declaration was particularly noteworthy. As explained in the previous chapter, that Declaration proclaimed independence for colonies, with reference to self-determination. International law had never defined Kosovo as a ‘colony’. ‘Self-determination’ appeared to be the only plausible link between the 1960 Declaration and the ICJ Kosovo case, and the explanation for the inclusion of that document in the dossier. While Kosovo itself had employed the language of ‘self-determination’ in calling for statehood before the ICJ case, neither the UN nor any other key international institution had discussed Kosovo in such terms.<sup>56</sup> With its choice of material for the background dossier, and especially by reproducing the Decolonisation Declaration, the UN now signalled that the concept of self-

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*Problems*, 167, Autumn 2004, pp.147–167, especially p.155.

54 The ICJ had ordered the dossier on 17 October 2008; the UN Office of the Legal Counsel compiled it on behalf of the UN Secretary-General, which submitted it to the ICJ on 30 January 2009: Final Opinion, p.5, Introductory Note to the dossier, misleadingly dated 10 October 2008; author’s correspondence with ICJ staff, 17 September 2012. For Badinter and Rambouillet, see, respectively, III-C, ‘Regional Instruments in the Context of the Former Yugoslavia’, pp.5–14, and II-B, ‘Security Council Resolution 1244 (1999)’, pp.5–88.

55 ICJ background dossier, Introductory Note, p.1 and ICJ Statute, 65(2).

56 For Kosovo’s language, see below; for the international community’s language, see the dossier, Parts I (on the request for the ICJ opinion) and II (on the UN’s Kosovo involvement from 1998–1999 onwards, including on the UN interim administration Mission in Kosovo, UNMIK, and the UN-led process of determining Kosovo’s status).

determination *was* worth discussing with regard to Kosovo's declaration of independence.

State participants in the ICJ Kosovo proceedings had had access to this background dossier before submitting their own first arguments to the Court.<sup>57</sup> The composition of the dossier, therefore, not only indicates a UN perspective on the law, questions and concepts involved in the question of the legality of Kosovo's declaration of independence. It also reveals what the proceedings' participants *knew about* the UN's interpretations and expectations before they formalised their own opinions. The dossier, effectively, informed participants of where the UN anticipated the case would go before they submitted their own, earliest positions. Reading that dossier would have made them prone to conclude that the UN expected them to address 'self-determination', and to clarify how the concept applied to Kosovo.

Since states and international institutions generally did not see Kosovo's independence claim as a demand for decolonisation,<sup>58</sup> to consider the case as a matter of 'self-determination' would have radical implications. The previous chapter showed how the 1960 Decolonisation Declaration authoritatively restricted the connection between 'self-determination' and political independence to colonies alone, and legitimised it with a liberal-conservative idea of freedom. At the time of the Kosovo case, the language of 'self-determination' was not commonly associated with the radical idea of freedom as equality and statehood for non-colonial, non-state groups. Presenting the demand of the non-colonial Kosovo people for freedom in the form of equal statehood, as an issue of 'self-determination' thus reintroduced the concept's association with the radical idea.

Another document in the background dossier expressed a similarly radical understanding of Kosovo's independence and the concept of 'self-

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57 Author's Skype interview with legal counsel in the proceedings, on the condition of anonymity, 17 September 2012; Final Opinion, p.5. The dossier was also made available on the Court's website. All original interviews referred to here were conducted by the author, on conditions of anonymity.

58 However, in the ICJ case, Kosovo comment, p.81, and Switzerland, p.20, did argue that Kosovo was a NSGT.

determination' in international affairs. This was a declaration adopted by Kosovo's Assembly in 2005.<sup>59</sup> Its preamble cited the UN Charter's affirmation of the right of peoples to self-determination, and pronounced 'the legitimate aspiration of Kosovo[']s population to [live] in Freedom and peace with other people.' The declaration then called for a referendum, and independence for Kosovo. In sum, the declaration issued a radical demand for freedom and self-determination as a matter of achieving a status equal to that of other independent states.

Also Kosovo included in its first submission in the ICJ proceedings a central document that expressed the radical idea of freedom. This document contained the minutes of the 2008 meeting that had adopted Kosovo's independence declaration. Within the text of the internationally-formulated<sup>60</sup> declaration of independence, 'freedom' appeared only in a promise to 'respect the human rights and fundamental freedoms of all [...] citizens' – whereas 'self-determination' had not been mentioned.<sup>61</sup> But in the meeting at which independence had been declared, the idea of 'freedom' had emerged in a different guise: Kosovo's President, Prime Minister and the Assembly Speaker had all used the language of 'freedom',<sup>62</sup> and the Speaker had asserted: 'There can be real peace and freedom only between equals.'<sup>63</sup> Moreover, while stressing Kosovo's desire for and contribution to peace, the speakers had also cited the 'sacrifice' of the KLA, the guerrilla army which in the 1990s had taken up arms to end Serbian rule.<sup>64</sup>

Since these 2008 minutes were relevant to the question of the ICJ case – the legality of Kosovo's declaration of independence – it must be presumed that participants had studied them before entering the proceedings, together with the UN dossier. With this in mind, the wide use of the language of 'self-

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59 On 17 November 2005, ICJ background dossier, II-I, unpaginated

60 Author's interviews in Kosovo, 2010 and 2012; Susan Woodward: 'Varieties of State-building in the Balkans: A Case for Shifting Focus' pp.47–54 in Martina Fischer and Beatrix Schmelzle (eds): *Building Peace in the Absence of States: Challenging the Discourse on State Failure*, Berghof Handbook Dialogue Series, Berlin, 2009, at p.50.

61 'Kosovo Declaration of Independence', 17 February 2008, Background dossier, II-H, unpaginated.

62 'Extraordinary session of the Assembly of Kosovo, held on 17 February 2008', Kosovo, Annex 2: Speaker Jakup Krasniqi, p.226/2; Prime Minister Thaci, p.228/4; President Fatmir Sejdiu, p.232/8.

63 Ibid., p.226/2, Krasniqi.

64 Ibid.

determination’ in the ICJ case becomes less surprising.<sup>65</sup> A literal reading of the question to the Court (a reading which some participants disputed<sup>66</sup>) would entail addressing only Kosovo’s *declaration* of independence, not the independence itself or the applicability of self-determination. But the arguments of the proceedings centred almost exclusively on precisely such wider issues.<sup>67</sup> When, in the end, the Court issued a narrow opinion that did not clarify the role of self-determination,<sup>68</sup> it was criticised for having done so.<sup>69</sup> The radical allusions of the UN dossier and the earlier articulations of Kosovo’s demands seem to have prompted anticipations that, in the ICJ case, the international meaning of ‘self-determination’ hung in the balance.<sup>70</sup>

### **Debating ‘Self-determination’ at the ICJ**

Like those involved in the 1950–1960 UN debates, participants in the ICJ Kosovo case shared some assumptions on the international meaning of ‘self-determination’ – although they disagreed on the concrete practical implications and legal relevance of the concept. A common assumption in the ICJ proceedings was that, in a non-colonial context, self-determination should first and foremost be implemented without leading to the creation of a new state. In non-colonial settings, the primary way to realise self-

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65 Author’s interviews with participants on various legal teams. One senior legal counsel noted that his team never even considered *not* addressing ‘self-determination’.

66 See e.g. Russia oral, p.40. See also Judges Trindade, p.13; Yusuf p.5; Simma, p.2, and Sepúlveda-Amor, p.7 – all of whom voted in favour of the final opinion.

67 However, some – including the UK and the Netherlands – stressed the narrower argument that international law had nothing to say about declarations of independence.

68 Final Opinion, p.43.

69 See especially Judge Yusuf’s separate opinion, p.5. For scholarly criticism, see e.g. Burri 2010, p.882; Daphné Richemond-Barak: ‘The International Court of Justice on Kosovo: Missed Opportunity or Dispute “Settlement”?’, *Hague Yearbook of International Law*, 2011, unpaginated, accessed 10 June 2013, [portal.idc.ac.il/FacultyPublication/Publication?PublicationID=1616&FacultyUserName=YmFyYWsuZGFwaG5l](http://portal.idc.ac.il/FacultyPublication/Publication?PublicationID=1616&FacultyUserName=YmFyYWsuZGFwaG5l); ‘Recent International Advisory Opinion’, *Harvard Law Review*, 124, 2010 pp.1098–1105; John R. Ablan: ‘Signal and Affirm: How the United Nations Should Articulate the Right to Remedial Secession’, *Vanderbilt Journal of Transnational Law*, 45, 2012, pp.211–244, at pp.212, 217. Serbia’s formulation of the question to the court has been criticised as well, e.g. in Theodore Christakis: ‘The ICJ Advisory Opinion on Kosovo: Has International Law Something to Say about Secession?’, *Leiden Journal of International Law*, 24(1), 2011, pp.73–86, at p.75; Hurst Hannum: ‘The Advisory Opinion on Kosovo: An Opportunity Lost, or a Poisoned Chalice Refused?’, *Leiden Journal of International Law*, 24(1), 2011, pp.155–161; Roland Tricot and Barrie Sander: ‘The Broader Consequences of the International Court of Justice’s Advisory Opinion on the Unilateral Declaration of Independence in Respect of Kosovo’, *Columbia Journal of Transnational Law*, 49, 2011, pp.321–363. For a defence of the Court’s narrow approach, see Marc Weller: ‘Modesty Can Be a Virtue: Judicial Economy in the ICJ Kosovo Opinion?’, *Leiden Journal of International Law*, 24(1), 2011, pp.127–147.

70 In the proceedings, Burundi oral, p.39 expressed this most directly.

determination had to be as ‘*internal* self-determination’. This shared assumption made the ICJ Kosovo case the most prominent exposition ever of international arguments and ideas on the role of ‘internal self-determination’ in international affairs.

‘Internal self-determination’, as explained in the introduction to this thesis, is not a notion originating from international law, but one that gained prominence in scholarship especially from the 1990s. The clearest legal expression of ‘internal self-determination’ might be the 2007 UNGA Declaration of the Rights of Indigenous Peoples, but not even that Declaration employed that specific wording.<sup>71</sup> Scholarship and law alike leave it unclear what ‘internal’ self-determination might add to the more familiar notions of ‘human rights’ and ‘democracy’, or what its usefulness might be in cases where peoples demand self-determination in terms of statehood.

Given the uncertain substance and unconfirmed legal status of ‘internal self-determination’ it is remarkable that states in the ICJ proceedings presented near-identical views on the general content of the idea. ‘Internal self-determination’, they stated, meant a right to ‘participation’,<sup>72</sup> representative government,<sup>73</sup> respect for human rights,<sup>74</sup> and equality before the law in an existing state.<sup>75</sup> While some also mentioned territorial ‘autonomy’ as a way of realising ‘internal self-determination’,<sup>76</sup> participants broadly expressed that the notion was concerned with *individual* rather than group rights. All maintained that if practical realities allowed ‘self-determination’ to be realised internally, that would be preferable, and come at the expense of the option of independence. However, while all agreed that ‘internal self-determination’ should be prioritised before self-determination *qua* statehood, states diverged on the consequences of these assumptions for the

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71 UNGA resolution 61/295, 2007. Its article 46(1) is phrased in the same terms as the ICHRs. In the ICJ Kosovo proceedings, the 2007 Declaration was not included in the court’s background dossier, and only a few states referred to it explicitly: Malcolm Shaw for Serbia, p.67; Kosovo p.41, and James Crawford on behalf of the UK, p.53.

72 Albania, p.19, and Bolivia oral p.11.

73 E.g. Netherlands p.9.

74 E.g. Romania p.23.

75 E.g. Venezuela oral p.12.

76 Germany p.33; Finland p.3; Bolivia oral p.11 and Belorussia oral p.29. Albania p.39 also implied this as a possibility.



Kosovo case.

To start with the arguments in favour of the Serbian case, opposing the legality of Kosovo's declaration of independence. These held that, although Kosovo might have a right to 'internal self-determination', that would preclude it from gaining separate statehood. In Serbia's words, '[a]n exercise of internal self-determination logically bars an exercise of external self-determination, as the former is, as a matter of fact, only applicable within the territory of the State concerned.'<sup>77</sup> The only form of 'self-determination' Kosovo might be allowed would thus prevent it from achieving full independence. The very few of Serbia's supporters who conceded that a people might be granted self-determination as independence in exceptional non-colonial cases were at pains to stress that Kosovo was not such a case.<sup>78</sup>

From this perspective, the reason for not letting 'self-determination' lead to statehood for Kosovo was that the principle of territorial integrity ruled out such outcomes, in the interest of international stability. As the supreme guarantor of world peace, territorial integrity always triumphed over self-determination.<sup>79</sup> Allowing exceptions to this rule would threaten international peace and interfere with states' freedom to decide over their own affairs.<sup>80</sup> In particular, accepting Kosovo's self-determination as statehood in violation of the principle of territorial integrity would create an alarming precedent for other secession-seeking groups, endangering the very international order.<sup>81</sup> At the end of the ICJ proceedings, one of the

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77 Serbia comment p.139.

78 Especially Romania and Russia. Less directly, Belorussia and Burundi made similar cases.

79 See e.g. Egypt 2009, p.20 (Egypt notably changed its position after the fall of President Mubarak, and recognised Kosovo in 2013). See also the arguments of Argentina, Bolivia, Brazil, China, Iran, Romania, Serbia, Spain, Venezuela, Vietnam, and Judge Koroma. Since the Kosovo war, scholars have seen the tension between territorial integrity and self-determination as central to the case of Kosovo; see e.g. Weller 1999, p.213 and Elizabeth Chadwick: 'Post-World War 2 Exercises of Self-determination: "Peaceful", "Friendly", and "Other"', pp.213–247 in Summers (ed.) 2011, p.221; Ablan 2012, p.222; and Koskenniemi 2002, especially pp.163, 167.

80 See the arguments of Azerbaijan, Bolivia, Brazil, China, Cyprus, Egypt, Iran, Libya, Romania, Russia, Serbia, Spain, Venezuela, Vietnam, as well as Vice President Tomka and Judge Koroma.

81 See e.g. Cyprus comment 2009, pp.14–15. The same argument was made by, in particular, Bolivia, Iran, Serbia, Spain, as well as by Argentina, and by Judges Sotnikov

judges summed up these concerns with language that expressed a variant of Lansing's arguments against Wilson from almost a hundred years earlier:

International law does not confer a right on ethnic, linguistic or religious groups to break away from the territory of a State of which they form part, without that State's consent, merely by expressing their wish to do so. To accept otherwise, to allow any ethnic, linguistic or religious group to declare independence and break away from the territory of the State of which it forms part, outside the context of decolonization, creates a very dangerous precedent. Indeed, it amounts to nothing less than announcing to any and all dissident groups around the world that they are free to circumvent international law simply by acting in a certain way and crafting a unilateral declaration of independence, using certain terms. The Court's Opinion will serve as a guide and instruction manual for secessionist groups the world over, and the stability of international law will be severely undermined.<sup>82</sup>

This passage brought out yet another point frequently raised by the pro-Serbia side: that Kosovo's claim to self-determination and independence was illegitimate because its population was a non-colonial group which no international authority had defined as a 'people'.<sup>83</sup> Many participants in the ICJ case held that only a colony would count as a 'people' entitled to statehood based on 'self-determination'.<sup>84</sup> And instead of being a colonised people, Kosovo's Albanians were a minority whose rights extended no further than to human rights within Serbia.<sup>85</sup> Being internationally recognised as a political entity is typically the *aim* of a declaration of

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and Koroma. The issue of precedent has been widely discussed in the scholarship, sometimes in highly alarmist terms, see e.g. Miodrag A. Jovanovic: 'Is Kosovo and Metohija Indeed a "Unique Case"?' , pp.345–374 and Snezana Trifunovska: 'The Impact of the "Kosovo Precedent" on Self-determination Struggles', pp.375–393, both in Summers (ed.) 2011; Thomas Fleiner: 'The Unilateral Secession of Kosovo as a Precedent in International Law', pp.1–23 in Fastenrath et al. (eds), 2011; Ralph Wilde: 'Self-determination, Secession, and Dispute Settlement after the Kosovo Advisory Opinion', *Leiden Journal of International Law*, 24(1), 2011, pp.149–154, at p.152; Marcelo G. Kohen and Katherine del Mar: 'The Kosovo Advisory Opinion and UNSCR 1244 (1999): A Declaration of "Independence from International Law"?' , *Leiden Journal of International Law*, 24(1), 2011, pp.109–126, at p.123 (both serving as legal counsels on Serbia's legal team); Ker-Lindsay 2011, pp.3, 7.

82 Judge Koroma, p.2.

83 For example Argentina, Russia, Serbia, and Spain.

84 Including Belorussia, Bolivia, Cyprus, Egypt, Romania, Slovenia, Venezuela, as well as Judge Koroma. Some cited the 1960 Decolonisation Declaration to this effect: e.g. Belorussia oral 2009, p.29; Bolivia comment 2009, p.3; oral p.11; China p.4. Serbia, p.190, claimed that the 1960 Declaration had 'set the terms' for international discourse on 'self-determination'; see also p.216. Similar views were also presented by Kosovo, comment p.63, and UK p.89.

85 See the arguments of Argentina, Azerbaijan, Belorussia, Cyprus, Egypt, Iran, Romania, Russia, Serbia, Slovenia and Venezuela.

independence. But with this argument, Serbia and its supporters demanded a kind of international recognition *prior* to such an act.

Turning now to the arguments for Kosovo's case – support for 'internal self-determination' there formed part of a quite different line of reasoning. These arguments tended to maintain that since Serbia had interfered with Kosovo's 'internal self-determination' through oppression in the 1990s, Kosovo's declaration of independence was legal and its statehood legitimate.<sup>86</sup> Obviously, this argument contradicted Serbia's position by accepting Kosovo as an independent state. But also this pro-Kosovo line placed 'internal self-determination' at its fore. It was only *because* and *after* internal rights had been violated and 'internal self-determination' had become unviable, that statehood had emerged as justified for Kosovo.

Interestingly, in making this case, Kosovo's supporters rarely argued that independence had realised its 'self-determination', or that its statehood was legitimate as an expression of that concept. They assumed that self-determination could (and should) be realised internally, without secession, and were hesitant to acknowledge that the concept could mean state creation for non-colonies.<sup>87</sup> Only one country – Finland, to which I return briefly – portrayed Kosovo's independence as legitimate primarily for expressing its 'self-determination'. All other participants were wary of such language, and some avoided it altogether.<sup>88</sup> A few, Kosovo among them, pleaded to the Court to ignore 'self-determination' when issuing its final advisory opinion.<sup>89</sup> One Kosovo-backer stated outright that Kosovo's statehood was *not* based on self-determination, since only colonies could have independence on this ground.<sup>90</sup> Participants not only appeared sceptical to basing Kosovo's statehood on self-determination – they also seemed to doubt that non-colonial self-determination could *ever* mean independence.

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86 Including – to varying degrees – Albania, Denmark, Estonia, Finland, Germany, the Netherlands and Switzerland.

87 See e.g. the submissions of Albania, Finland, Jordan, the Netherlands and Switzerland.

88 Notably Austria, whose arguments narrowly maintained that international law does not address (and thus does not prohibit), declarations of independence: see Austria, p.22 and oral pp.6–7, 9, 11.

89 See Kosovo's submissions, as well as Albania, Austria, Denmark, Norway and the UK.

90 Japan, pp.4–5.

Nearly all of Kosovo's supporters relied upon an argument which was the opposite of providing general support to 'self-determination' as new state creation. It was, as they saw it, not any such broad concept of self-determination, but rather a combination of extraordinary features that had given legitimacy to Kosovo's independence. Its statehood was justified only as a *sui generis* case: a singular exception to the general rule of *not* allowing peoples independence.<sup>91</sup> Almost half of the promoters of this *sui generis* argumentation in the ICJ proceedings did not mention 'self-determination' at all,<sup>92</sup> while the rest of that group, including Kosovo itself, cited 'self-determination' as a secondary point.<sup>93</sup> This prevalent 'flagship argument'<sup>94</sup> on the Kosovo side implicitly assumed that its case was not a matter of equality either, since its unique characteristics set it apart.

In making the case that Kosovo's independence was such a rare aberration, states at the ICJ emphasised Serbia's brutality from 1989 – especially in the 1998–1999 war – and also listed other features which they claimed had made the case unique. The violent breakup of Yugoslavia, Kosovo's post-1999 status under international administration, and the years of UN-led, ultimately failed, status negotiations, they said, had left Kosovo with no other option than to declare independence.<sup>95</sup> Some added further supposedly *sui generis* elements: Kosovo's special status within the Yugoslav federation,<sup>96</sup> its whole post-1912 history,<sup>97</sup> being under Serbian occupation,<sup>98</sup> the expressed desire of its people for independence,<sup>99</sup> and post-independence commitments to minority rights.<sup>100</sup> One state held that, when setting the terms for post-war Kosovo, UNSC Resolution 1244 of 1999 might have

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91 Denmark, Germany, Ireland, Kosovo, Latvia, the Maldives, the Netherlands, Poland, Slovenia and the UK all made such cases. Outside of the ICJ case, Kosovo's post-independence international administrators argued in such terms as well: see International Civilian Office (ICO) chief Pieter Feith: 'Consolidating Kosovo's European Future: Tracing Next Steps', LSE, 13 May 2009 (audio).

92 Bulgaria, Croatia, Czech Republic, France, Luxemburg and the USA. The UK avoided self-determination throughout its dozens of pages of written submissions, but mentioned it briefly at the very end of its oral statement.

93 Denmark, Germany, Ireland, Latvia, Maldives, Poland, Slovenia, as well as Kosovo.

94 Serbia, comment, p.209.

95 Denmark, Germany, Ireland, Kosovo, Latvia, Maldives, the Netherlands, Poland, Slovenia and the UK all argued along these lines.

96 E.g. Denmark oral, p.47; Ireland, p.10; Japan p.6; Poland pp.5, 16.

97 Germany 2009, p.27.

98 Kosovo oral p.16.

99 Ireland 2009, p.11. See also Japan p.7.

100 France 2009, p.29. See also Japan p.7, Latvia pp.1–2.

exceptionally opened for statehood by indirectly endorsing the Rambouillet Accords and their reference to ‘the will of the people’.<sup>101</sup>

Clearly, none of these features in isolation would qualify as *sui generis*. Throughout history, innumerable groups have been oppressed and denied internal rights. Many have expressed a desire for self-determination and independence. Sometimes, internationally-led negotiations have failed. Also other cases than Kosovo have involved international administration, for instance East Timor and Bosnia, as well as mandates and trusteeships in earlier times. Moreover, occupation is nothing new in international history – the Baltic States provide other recent examples. Nor were the intuitively more exceptional features of the Kosovo case altogether distinctive. Its formal status within Yugoslavia, for instance, was like that of the federation’s other Serbian province, Vojvodina. Taken together, the characteristics of Kosovo’s case no doubt constitute ‘something’ unique. But then, *no* two cases will hold the exact same sum of characteristics. Each will always involve its own special combination of features, as pointed out by participants on both sides of the ICJ proceedings.<sup>102</sup>

The argument that Kosovo’s independence was legitimate *sui generis* contrasted the warnings of Serbia’s supporters that it would set a dangerous precedent and open for destabilising challenges to the existing international order. While Kosovo’s promoters also emphasised peace and order, they held that in this very special instance it was independence that would truly serve the peace.<sup>103</sup> Moreover, since the case of Kosovo could not be compared to any other, accepting its statehood would strengthen rather than undermine the general rule of non-disruptive solutions as the standard. Instead of creating precedence for other independence-seeking groups, approving Kosovo’s statehood on *sui generis* grounds would signal that this was generally *not* a favoured result.<sup>104</sup> By arguing that Kosovo’s independence was warranted only as a final resort in unique circumstances,

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101 France 2009, p.29.

102 E.g. Cyprus comment, p.13 and Finland oral p.58.

103 Arguing in these terms were e.g. Albania, Bulgaria, the Czech Republic, Denmark, Estonia, France, Germany, Ireland, Jordan, Kosovo, the Netherlands, Norway, Saudi Arabia, Slovenia, the UK, and the USA, as well as Judges Sepulveda-Amor and Yusuf.

104 See especially Judge Cancado Trindade, p.16; also Lee 2004.

its supporters implied that, without exceptional features, status quo outcomes should apply.

These lines of reasoning showed that the arguments on both sides of the ICJ debate used peace and stable order as their main legitimising standards. Given the general dynamic of legitimation regulating participants' discourse, they had to argue with reference to the standards and ideals they believed to be the most powerful and convincing in the forums and formats where they expressed themselves. Evidently, before the world's highest court, peace and international stability was the order of the day.<sup>105</sup> Indeed, a few participants even modified their discourse towards aligning their legitimating standards closer to these liberal-conservative ideals. For instance, in its earliest submission, Albania had argued that Kosovo's independence had realised its 'self-determination'.<sup>106</sup> By contrast, Albania's final statement described statehood for Kosovo as a 'peace and stability' imperative.<sup>107</sup>

Also Kosovo amended its discourse. The 2005 assembly declaration and the 2008 minutes cited above had showed that, before the ICJ case had started, Kosovo had presented its claim to independence in terms of 'self-determination', freedom as equality, and violent liberation. However, when seeking to legitimise its statehood in the international ICJ setting, Kosovo invoked different standards, which it expected to be appreciated and effective there.<sup>108</sup> Now Kosovo urged the Court not to address 'self-determination',<sup>109</sup> and argued that its independence should be approved as benefiting peace and regional stability.<sup>110</sup> Echoing discourse from the 1960 UN debate, Kosovo implicitly claimed to have deservedly reached the stage of independence, through Serbia's past oppression and through its own

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105 Sources involved in the drafting of participants' arguments have explained that each of the sides 'coordinated' their arguments before finalising their submissions (author's interviews, September 2012).

106 Albania, pp.39, 56; see also its comment, p.48.

107 Albania oral p.18. See also Jordan, the Netherlands, Saudi Arabia and Switzerland; also Germany, p.43.

108 First-hand sources have explained that those declaring Kosovo's independence avoided mentioning 'self-determination' and 'freedom' at the ICJ to ease other states' fears of setting a precedent for secession. Author's interviews, September 2012.

109 Kosovo comment p.86. See also Hilpold 2009, p.55.

110 Kosovo oral, pp.9, 11; Kosovo p.190.

commitments to a peaceful future.<sup>111</sup> Rather than being a precedent-creating case of secession, Kosovo claimed before the Court, its independence ‘entailed special characteristics that [were] unlikely to be replicated in other cases.’<sup>112</sup>

This widely cited argument – that Kosovo’s independence was lawful *sui generis* chiefly due to Serbia’s oppression and for the sake of international stability – sounded like a case for ‘remedial’ secession or ‘remedial’ self-determination, a notion several ICJ participants also mentioned in the proceedings.<sup>113</sup> ‘Remedial’ secession is a scholarly rather than legal term; it implies attaining self-determination in the form of independence as a last-resort remedy against oppression. Especially in the 1990s, scholars of international law and political philosophy discussed whether remedial secession could be a way to legitimise self-determination as independence outside the framework of colonialism.<sup>114</sup> In 1991, philosopher Allen Buchanan’s *Secession: the Morality of Political Divorce* made an influential case, which legal scholars too have since endorsed.<sup>115</sup> In this view, demands for separate statehood that seek legitimation with reference to harsh forms of interference are more justified than are nationally or ethnically articulated

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111 See in particular Hyseni’s part of the oral statement, pp.6–13; also p.35, and Kosovo pp.9–60.

112 Kosovo comment, p.125.

113 For explicit references, see e.g. UK and UK comment, Albania oral, as well as counter-arguments made in the oral meetings by Azerbaijan, China, Romania, Serbia and Spain. For scholarly examples referring to Kosovo, see Mindia Vashakmadze and Matthias Lipphold: “‘Nothing but a Road Towards Secession’?” – The International Court of Justice’s Advisory Opinion on Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo’, *Goettingen Journal of International Law*, 2, 2010, pp.619–647, at p.635; Elena Cirkovic: ‘An Analysis of the Advisory Opinion on Kosovo’s Unilateral Declaration of Independence’, *German Law Journal*, 11(8), 2010, pp.895–912; Weller 2008b, p.88; Ablan 2012; Sienho Yee: ‘Notes on the International Court of Justice (Part 4): The Kosovo Advisory Opinion’, *Chinese Journal of International Law*, 9, 2010, pp.763–782, at p.777. While most scholars explain remedial secession with reference to self-determination, Klabbers 2006, p.198 exceptionally suggests that the two are separate rights.

114 Buchanan 1991; Crawford 2006; Michel Seymour: ‘Secession as a Remedial Right’, *Inquiry*, 50(4), 2007, pp.395–423 are generally all in favour of a right to remedial secession. Simon Caney: ‘Self-government and Secession: The Case of Nations’, *Journal of Political Philosophy*, 5(4), 1997, pp.351–372 and Tideman 2004 argue from a moral philosophy perspective that a right to secession should be more inclusive than a remedial right. Copp 1998 and Buchheit 1978, pp.220–223, also touch upon the concept, but without discussing it in detail. See also J. Oloka-Onyango, J.: ‘Heretical Reflections on the Right to Self-determination: Prospects and Problems for a Democratic Global Future in the New Millennium’, *American University International Law Review*, 15(1), 1999, pp.151–208.

115 Notably Hannum 1993b, pp.60–62: see also Hendrix 2008; Cassese 1995, pp.359–360; Seymour 2007; Summers 2007, pp.343–344; Whelan 1994; Musgrave 1997, p.258.

demands.<sup>116</sup> Notably, in contending to have been subjected to special oppression, demands for remedial secession will always seek some sort of exceptional, *sui generis* status.

In arguing that the independence of Kosovo was such a special, remedial case, several ICJ participants cited the 1970 UNGA Friendly Relations Declaration in support.<sup>117</sup> Many Kosovo-advocates claimed that the ‘saving clause’ of that Declaration provided legal grounds for independence on an exceptional, remedial basis. That clause had proclaimed to guarantee the ‘territorial integrity’ and ‘political unity’ of states ‘conducting themselves in compliance with the principle of equal rights and self-determination of peoples [...] and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour’. To Kosovo’s supporters, this meant that states that did *not* conduct themselves in this manner, including Serbia, had no protection against secession. Those arguing *against* Kosovo in the ICJ case, however, cited the 1970 Friendly Relations Declaration to the opposite effect. In their view, that Declaration defended the territorial integrity of states against secession, including attempts made with reference to ‘self-determination’.<sup>118</sup>

However, irrespective of whether the Friendly Relations Declaration had provided *legal* support for ‘remedial’ secession or ‘remedial’ self-determination, such a notion would be nothing new in international *discourse*. Some ‘remedial’ notion had been implied in the concept of ‘self-determination’ ever since Lenin launched it as a remedy against colonial and capitalist oppression. And also in the Aaland Islands case, the League of Nations had expressed certain ‘remedial’ components of the concept.

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116 Buchanan 1991; see also Buchanan: ‘Theories of Secession’, *Philosophy and Public Affairs*, 26(1), 1997, pp.31–61; Buchanan 2006, p.92; and Buchanan: ‘What’s so Special about Nations?’ pp.283–310 in Couture et al. (eds) 1996, at pp.293–294, arguing that ‘national’ claims are raised at the expense of other allegiances, including religious, linguistic, and ideological ones. Moltchanova 2009, especially p.6, supports this, while Seymour 2007 argues against.

117 UNGA Resolution 2625, 1970; Albania comment, p.33; oral pp.16, 19; Jordan oral p.34, the Netherlands pp.7–8; Poland p.24; Switzerland p.14; and Judge Trindade p.54. The Declaration was also quoted by Yusuf p.4 and the UK, pp.90–91.

118 Belorussia oral p.30; Bolivia comment p.3; oral p.11; Brazil p.2; China p.4; oral p.35; Cyprus comment p.7; oral p.39; Serbia pp.214, 230; Spain p.17; Venezuela p.2; oral p.16. See also Judge Koroma p.7.



When Kosovo's supporters sought to legitimise the case for its 'remedial independence', they again relied upon standards resembling those used by Serbia's backers. Serbia had rejected statehood for Kosovo as a precedent-setting threat to the territorial integrity of all states and hence to their freedom from interference. 'Remedial' arguments for Kosovo also emphasised non-interference – although they concentrated on the freedom from interference of a non-state group rather than that of existing states. The remedial model rested on the idea that a group could be granted self-determination in the form of independence if its freedom had been interfered with in an unusually brutal manner and there was no other way out. In such a case, interference could justify remedying the group's loss of freedom by granting it statehood.<sup>119</sup> It would then serve established states and the international order as a whole to allow 'self-determination' to lead to independence, so as to prevent wider unrest.

The one country that argued in a straightforward manner for Kosovo's independence as a matter of 'self-determination', Finland, legitimised its case in terms of this kind.<sup>120</sup> In the Finnish view, territorial integrity always had to 'be weighed against countervailing values, among them the right of oppressed people to seek self-determination by way of independence.'<sup>121</sup> There was no reason to 'limit the right to secession to decolonization':<sup>122</sup> 'self-determination' had always entailed an option of new state creation.<sup>123</sup> The League of Nations Aaland Islands case had specifically established that the 'traditional law of self-determination' allowed for independence when a '[s]tate lack[ed] either the will or the power to enact and apply just and effective guarantees' for a people.<sup>124</sup> Essentially, Finland's argument for 'self-determination' as statehood for Kosovo was a defence of its remedial freedom from the interference exercised by Serbia.

At the time when Kosovo's ICJ backers in 2009 argued that its statehood was legitimate as an exceptional remedy against Serbian interference,

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119 See also Brewer 2012.

120 Especially in Finland's oral statement as delivered by Martti Koskenniemi.

121 Finland oral, p.60.

122 Ibid., p.62

123 Ibid., pp.62, 64.

124 Ibid., p.61.

Kosovo had been independent for more than a year. Their logic implied that Kosovo at that point, in 2009, *was* free, since the remedy of statehood should have re-established its freedom and ended interference. Interestingly, many of those who made this argument at the ICJ, including most Western countries, had already for ten years been involved in governing Kosovo through an *international statebuilding* project.

‘International statebuilding’ is a scholarly term used to denote interventions ranging from military, ‘peacebuilding’ and development projects, to ‘international territorial administrations’ like those in Kosovo, Bosnia and East Timor.<sup>125</sup> Intended to address challenges to international security by ‘building’ stable states throughout the world, international statebuilding commonly involves international decisionmakers taking over local powers, without local accountability.<sup>126</sup> On the economic field, its programme is

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125 For various approaches to international statebuilding see Chandler (ed.) 2008; Shahrbanou Tadjbakhsh (ed.): *Rethinking the Liberal Peace: External Models and Local Alternatives*, Routledge, London, 2011; Susanna Campbell, David Chandler and Meera Sabaratnam (eds): *A Liberal Peace? The Problems and Practices of Peacebuilding*, Zed Books, London, 2011; Roland Paris and Timothy D. Sisk (eds): *The Dilemmas of Statebuilding: Confronting the Contradictions of Postwar Peace Operations*, Routledge, London, 2009; Dominik Zaum: *The Sovereignty Paradox: The Norms and Politics of International Statebuilding*, Oxford University Press, Oxford, 2007; Shahar Hameiri: ‘Capacity and its Fallacies: International State Building as State Transformation’, *Millennium*, 38(1), 2009, pp.55–81; David Chandler: *International Statebuilding: The Rise of Post-liberal Governance*, Routledge, Oxford, 2010; Simon Chesterman: *You, the People: The United Nations, Transitional Administration, and State-Building*, Oxford University Press, Oxford, 2004; for a briefer Kosovo-specific summary, see Rita Augestad Knudsen: ‘Privatization in Kosovo: “Liberal Peace” in Practice’, *Journal of Intervention and Statebuilding*, 7(3), 2013, pp.287-307. For ITAs, see Ralph Wilde, ‘From Danzig to East Timor and Beyond: The Role of International Territorial Administration’, *American Journal of International Law*, 95(3), 2001, pp.583–605, especially p.585; Simon Chesterman, ‘East Timor in Transition: Self-Determination, Statebuilding, and the United Nations’, *International Peacekeeping*, 9(1), 2002, pp.45–76, especially p.47. To add terminological confusion, the term ‘nation-building’ is sometimes also used, see e.g. Michael Ignatieff: *Empire Lite: Nation-building in Bosnia, Kosovo and Afghanistan*, Vintage, London 2003.

126 The sizable literature on the lack of accountability in international statebuilding operations includes Aleksandar Morimov: *Accountability of International Organizations in Post-Conflict Governance Missions*, Boom Juridische Uitgevers, The Hague, 2005; Rebecca Everly: ‘The Regulation of International Territorial Administration in Bosnia and Herzegovina and Kosovo’, Trinity College, 2006; Cameron 2006; Florian Hoffmann and Frédéric Mégret: ‘Fostering Human Rights Accountability: An Ombudsperson for the United Nations?’, *Global Governance*, 11(1), 2005, pp.43–64. See also the ‘Accountability of International Organisations’-Reports of the International Law Association, e.g. Second report, London Conference, 2000; the report of the New Delhi Conference, 2002; and the final report, Berlin Conference, 2004; for Kosovo, see Robert Muharremi: ‘The European Union Rule of Law Mission in Kosovo (EULEX) from the Perspective of Kosovo Constitutional Law’, *Zeitschrift für Ausländisches Öffentliches Recht und Völkerrecht*, 70, 2010b, pp.357–379.

generally one of strong neoliberalism.<sup>127</sup> Recent scholarship has been alert to the similarities between today's international statebuilding and earlier arrangements such as trusteeship and colonialism.<sup>128</sup> Current practice also bears similarities resembles the mandate system that Wilson saw as the materialisation of his concept of 'self-determination'.

In Kosovo, the UN had established an international statebuilding project immediately following the 1999 war.<sup>129</sup> Led by the United Nations Interim Administration Mission in Kosovo (UNMIK), it had included the NATO force KFOR, the EU and the OSCE.<sup>130</sup> In addition to having taken control over Kosovo's administration, reconstruction, development and military security, the statebuilding project had formally vested its chief, the head of UNMIK, with all legislative, executive and judiciary powers.<sup>131</sup> The international project had thus both suspended Serbia's sovereignty over Kosovo<sup>132</sup> and barred Kosovo's population from running its own affairs – although Kosovo did have, from 2001, a UNMIK-mandated local government with limited powers.

This international statebuilding project had continued after Kosovo's 2008 declaration of independence.<sup>133</sup> Moreover, in 2008, two additional international offices with executive powers had installed themselves there.<sup>134</sup>

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<sup>127</sup> See Susan Woodward: 'Do the Root Causes of Civil War Matter? On using Knowledge to Improve Peacebuilding Interventions', pp.42–56 in David Chandler (ed.): *Statebuilding and Intervention: Policies, Practices and Paradigms*, Routledge, London, 2008, at p.59; Eric Herring: 'Neoliberalism Versus Peacebuilding in Iraq', pp.47–62 in Michael Pugh et al. (eds.): *Whose Peace? Critical Perspectives on the Political Economy of Peacebuilding*, Palgrave Macmillan, New York, 2008, at p.48; Michael Pugh: 'The Political Economy of Peacebuilding: A Critical Theory Perspective', *International Journal of Peace Studies*, 10(2), pp.23–42; Hameiri 2009. See also Memorandum of the Inquiry in PWW 1984, Vol.45, p.466.

<sup>128</sup> E.g. David Chandler: *Empire in Denial: The Politics of State-building*, Pluto Press, London, 2006; Bain 2006; Richard Caplan: 'From Collapsing States to Neo-trusteeship: The Limits to Solving the Problem of "Precarious Statehood" in the 21st Century', *Third World Quarterly*, 28(2), 2007, pp.231–244.

<sup>129</sup> UNSC resolution 1244, 10 June 1999.

<sup>130</sup> See UNMIK at [www.unmikonline.org](http://www.unmikonline.org), accessed 20 January 2011.

<sup>131</sup> UNMIK Regulation 1999/1, 25 July 1999.

<sup>132</sup> UNMIK was established on the basis of the UN Charter's Chapter VII (see UNSC Resolution 1244, 1999), which authorises any action the Security Council deems necessary 'to maintain or restore international peace and security' – including those conflicting with a country's sovereignty. UN Charter Chapter VII, especially Article 39.

<sup>133</sup> UNSC member Russia had stated that it would not let UNMIK withdraw – seeing such withdrawal as acceding to Kosovo's independence.

<sup>134</sup> The EU rule of law mission EULEX with executive powers over Kosovo's rule of law, and the ICO, with wide-ranging powers resembling those of UNMIK as well as of the

The international project's post-independence aims were to keep the peace, ensure rule of law, and enforce the 2007 'Ahtisaari Plan'.<sup>135</sup> That plan, the result of two years of UN-led status negotiations, had been approved by Kosovo's leadership, the UN Secretary-General and several countries including the USA and most EU members.<sup>136</sup> It had recommended conditional or 'supervised' independence for Kosovo with continued international administration; and it detailed unpopular, wide-ranging reforms including ethnically-based 'decentralisation'.<sup>137</sup> Kosovo's 2008 declaration of independence as well as its constitution – both formulated by Western representatives<sup>138</sup> – established this comprehensive plan as the country's supreme legal document.<sup>139</sup>

What this meant was that, even after its declaration of independence, Kosovo was bound to an international statebuilding project that held extensive powers over its governance and laws. Kosovo's citizens were not the equals of the international officials who governed them, and had no decisive say in the applicable law of their country. Moreover, as 'independent' Kosovo lacked full international recognition, and was not a UN member, it did not, as an entity, enjoy international equality with other states either. In essence, Kosovo was still 'dependent' in the sense referred to in the 1960 UN debate on decolonisation, and in a manner resembling how Wilson had conceptualised mandated peoples: it remained subordinated to an international administration that had been established in the name of

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Office of the High Representative in Bosnia. The ICO closed down on 10 September 2012, while EULEX, KFOR and UNMIK still retains powers. An extensive Organisation for Security and Cooperation in Europe mission also remains, as part of UNMIK.

135 'Comprehensive Proposal for the Kosovo Status Settlement', 26 March 2007, known as the 'Ahtisaari Plan' after its chief architect, the UN-appointed special envoy and former President of Finland, Martti Ahtisaari. For the post-independence aims of, respectively, KFOR, EULEX and ICO, see [www.aco.nato.int/kfor/about-us/mission.aspx](http://www.aco.nato.int/kfor/about-us/mission.aspx); [www.eulex-kosovo.eu/en/info/whatisEulex.php](http://www.eulex-kosovo.eu/en/info/whatisEulex.php) and [www.ico-kos.org/?id=9](http://www.ico-kos.org/?id=9), accessed 19 May 2013.

136 For a summary of immediate international reactions to the proposal, see B92: 'International Reactions to Status Proposal', 2 February 2007.

137 'Report of the Special Envoy of the Secretary-General on Kosovo's future status', 26 March 2007; see also Denisa Kostovicova: 'Legitimacy and International Administration: The Ahtisaari Settlement for Kosovo from a Human Security Perspective', *International Peacekeeping*, 15(5), 2008, pp.631-647.

138 Author's interviews in Kosovo, 2010 and 2012.

139 See Declaration of Independence, 17 February 2008 and the Constitution of the Republic of Kosovo, ratified on 9 April and becoming effective on 15 June, 2008, Article 143.

helping it develop while protecting its peaceful freedom.<sup>140</sup> Using language similar to that employed in the 1960 debate, participants in the ICJ proceedings compared Kosovo under international rule to a child placed in the hands of a guardian.<sup>141</sup>

At no point in the ICJ proceedings was the fact that international statebuilding still dominated Kosovo, excluding its citizens from governance and law-making, presented as limiting Kosovo's freedom or self-determination.<sup>142</sup> Its supporters certainly did not argue against its 'international statebuilding': on the contrary, they were themselves the prime implementers of the international statebuilding project there. Rather, Kosovo's backers seemed to assume that once the remedy of statehood had put an end to Serbia's interference, Kosovo had become free, since only interference could restrict its freedom. And international statebuilding, as they saw it, was not something that 'interfered'.

Quite the reverse: some of Kosovo's ICJ supporters implied that they saw continued international statebuilding as a *condition* for the legitimacy of its independence.<sup>143</sup> At earlier moments, Wilson and delegates in the 1950–1960 UN debates had presented 'maturity' as a condition for statehood, for the sake of peace. Kosovo's ICJ backers, on their part, required perpetuated subordination to international statebuilding as an international stability guarantee. That 'independence' of this kind might not really justify that label was not the only paradox involved in their position. Many of Kosovo's supporters *both* legitimised its statehood as a remedy against interference

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140 See e.g. Judge Cancado Trindade, pp.69, 53. Spain comment, p.5 claimed that international administration had already granted Kosovo 'self-determination'.

141 Cyprus oral, p.45; USA oral, p.38. Some claimed UNMIK's rule had already irreversibly ended Serbia's control, e.g. the Netherlands oral p.15. A similar point is distinguishable in the Court's final opinion, pp.34–36, as well as Finland oral, p.60.

142 Only Serbia, p.202, brought up this point, but then to claim that Kosovo did not meet the criteria for statehood. For a different view on the statehood criteria, see the Czech Republic, p.5.

143 For indications, see e.g. Bulgaria oral, p.22; Croatia oral, p.51; Estonia p.12; France p.29; Germany p.43; Ireland p.11; Japan p.6; Kosovo p.189; Luxemburg p.2; Norway p.17; Slovenia p.1; the UK p.12; the USA p.34. The UK, p.14, and the USA, pp.35–36 also implied that Kosovo's commitment to European integration added to the legitimacy of its statehood. The separate opinion of Judge Yusuf expressed that Kosovo's years under international administration added to the grounds for possibly, exceptionally evaluating it as a self-determination case, p.4. See also Judge Cancado Trindade, pp.53, 69, mentioning East Timor as well; also Helen Quane: 'Self-determination and Minority Protection after Kosovo', pp.181–212 in Summers (ed.) 2011, at p.212.

and denial of internal rights – *and* presented it as legitimate with reference to the sustained denial of internal rights under international statebuilding. Perhaps this reasoning returned the concept of self-determination to its international policy origins. After the First World War, Wilson had seen his concept of self-determination realised as ‘consent of the governed’ and the mandate system, with international administration of territories in the interest of world order. On the same legitimising basis, contemporary international statebuilding continued in Kosovo.

### **The Final Word**

The Court’s advisory opinion of 22 July 2010 would offer the ICJ proceedings’ most authoritative expression of the language of ‘self-determination’ and its affiliated ideas of freedom.<sup>144</sup> The actual word ‘freedom’ had scarcely been cited during the ICJ proceedings; and when it was, the mentions were either insubstantial,<sup>145</sup> or in the form of a brief addendum in the phrase ‘human rights and fundamental freedoms’.<sup>146</sup> Likewise, no one had pronounced that ‘equality’ for Kosovo legitimised its statehood. Like ‘freedom’, ‘equality’ was mentioned rarely, in passing, and then to signify the equality of individuals before domestic laws, rather than the international equality of peoples or other collectives.<sup>147</sup> Using language similar to that employed during the drafting of the UN Charter, a few participants had mentioned ‘sovereign equality’ together with the territorial integrity of states when arguing that Kosovo should not be allowed to violate the sovereignty of Serbia.<sup>148</sup>

In its operative part, the final ICJ opinion concentrated on Kosovo’s *declaration* of independence, and not its statehood, and addressed few of the arguments summarised in this chapter.<sup>149</sup> Adopted by ten votes to four, the

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144 Final Opinion, 22 July 2010.

145 See Belorussia oral p.32 and USA oral p.23.

146 Austria oral p.10; also Venezuela oral p.16 and Judge Trindade, pp.22–26, 60.

147 E.g. Albania p.19; Azerbaijan p.21

148 E.g. Spain oral p.11; Cyprus oral p.39; Vietnam oral p.17.

149 For a useful summary of the opinion, see Robert Muharremi: ‘A Note on the ICJ Advisory Opinion on Kosovo’, *German Law Journal*, 11(8), 2010a, pp.867–880, at pp.871–874. For discussion, see University College London: ‘What the Kosovo Advisory Opinion Means for the Rest of the World’, Panel convened by Ralph Wilde, 25 March 2011, with Marko Milanovic (from Serbia’s legal team), Anne Peters, and Qerim Qerimi (from Kosovo’s legal team).

Court's opinion stating that Kosovo's declaration had not violated international law did not explain the international meaning of 'self-determination' – nor did it clarify whether Kosovo had a right to independence. The opinion left it to individual states to decide, as a matter of policy rather than law, whether to validate Kosovo's statehood by granting diplomatic recognition. All these questions, the Court held, were outside its remit.<sup>150</sup> Instead, it concluded that, since neither general international law nor the laws applying specifically to Kosovo had prohibited it from declaring independence,<sup>151</sup> its declaration of independence had not violated international law. This 'minimalist' approach sparked immediate criticism from scholars and from judges involved in the case.<sup>152</sup>

A closer look at the Court's opinion reveals that its language was only deceptively narrow, and that it did in fact express broader ideas that could have repercussions for the roles of self-determination and freedom in international affairs. For instance, the opinion stated that 'the international law of self-determination' had created 'a right to independence for the peoples of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation [...]. A great many new States have come into existence as a result of the exercise of this right.'<sup>153</sup> While this wording may seem to merely mirror that of the 1960 Decolonisation Declaration, the ICJ opinion did not mention any other way of realising self-determination except by creating new states. From the Court's language, it could thus be deduced that there is no 'internal' variant of self-determination: the concept means independence.

Furthermore, the Court's opinion did not present Kosovo as a *sui generis* case. It discussed the case as a matter of equal legal relevance to other cases; it compared it, where relevant, to previous ones, and concluded, as with other cases, in light of the law.<sup>154</sup> It might have been *sui generis* that so

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150 Final Opinion, p.31.

151 Notably, UNSC Resolution 1244 (1999).

152 For Judges' critiques, see Trindade, p.13; also Simma, p.1, Sepúlveda-Amor, p.6, Skotnikov, p.6. Some participants had, however, defended this approach, especially Austria and the UK, whose oral 'minimalist' case was presented by James Crawford.

153 Final Opinion, p.30.

154 See e.g. *ibid.*, pp.30–31. See also Christakis 2011, p.80; Corten 2011, p.93.

many participants had mentioned ‘self-determination’ in their arguments before the Court in this non-colonial case of seeking independence. And the wider international handling of the Kosovo issue had indeed been unique in some respects. But no two cases are the same. In the end, nothing in the Court’s opinion indicated that Kosovo would *not* establish a legal precedent, leaving this question open.

Moreover, the ICJ opinion’s ‘factual background’ summary of the case seemed much more in line with the picture Kosovo had presented during the proceedings – noting its history of oppression, UN administration, and exhaustion of other options – than the account given by Serbia. Perhaps this implied some sympathy for the ‘remedial’ case, although the Court did not use such language explicitly.<sup>155</sup> In its ‘factual background’ section, the opinion also cited the Rambouillet Accords and the reference to ‘the will of the people’, although that had barely appeared in states’ arguments in the proceedings.<sup>156</sup> The opinion further concluded that the principle of territorial integrity concerned only *interstate* relations, and thus did not preclude non-state actors from declaring independence.<sup>157</sup>

Above all, it was on the issue of the ‘identity of the authors of the declaration of independence’ that the ICJ opinion expressed ideas with broader implications for freedom and self-determination. This concerned the question of *which agent* had really declared Kosovo independent – a point that would prove to be the most controversial of all those raised in the case.<sup>158</sup> During the proceedings, Serbia had argued that it had been Kosovo’s ‘provisional’ Assembly that had issued the declaration of independence in

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155 Final Opinion, pp.21–29.

156 Ibid., p.40.

157 Ibid. See also Dov Jacobs: ‘International Court of Justice, Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion of 22 July 2010’, *International and Comparative Law Quarterly*, 60(3), 2011, pp.799–810, at p.805; Oliver Corten: ‘Territorial Integrity Narrowly interpreted: Reasserting the Classical Inter-state Paradigm of International Law’, *Leiden Journal of International Law*, 24(1), 2011, pp.87–89; Anne Peters: ‘Does Kosovo Lie in the Lotus-land of Freedom?’, *Leiden Journal of International Law*, 24(1), 2011, pp.95–108; Muharremi 2010.

158 Final Opinion, p.36. For criticism, see especially Kohen and del Mar 2011, as well as Ker-Lindsay 2011, p.6. For critical legal discussions summarising the points in dispute, see the dissenting opinions of Judges Bennouna, p.8, Koroma, p.2 and Skotnikov, p.4, the declaration of Vice-President Tomka, pp.3–4, as well as the separate opinions of Sepúlveda-Amor, pp.5–6 and Yusuf, p.6.



2008. And that since this Assembly had been established by UNMIK and was bound by UNMIK's legal framework, the declaration of independence had gone beyond the mandate of the Assembly – and had thus been illegal.<sup>159</sup> If the Court had agreed with this view, its opinion would probably have found that the declaration had violated international law.

Importantly, the Court concluded that it had *not* been Kosovo's Assembly that had declared independence in 2008, but rather 'persons who acted together in their capacity as representatives of the people of Kosovo outside the framework of the interim administration'.<sup>160</sup> One implication of this was that those who had declared independence in 2008 had not represented 'the people' *because* they had originally been constituted by UNMIK: on the contrary, when they declared independence, they had represented the people of Kosovo *outside* of the UNMIK framework. Without elaborating further, the Court thus indirectly highlighted the democratic limits of UNMIK as a non-elected, unaccountable and unpopular structure,<sup>161</sup> one which had produced local leaders through elections tainted by fraud allegations and low turnouts.<sup>162</sup> This part of the Court's conclusion indicated that, under ordinary circumstances, the persons meeting in Kosovo's Assembly building on 17 February 2008 could not have been described as people's representatives. But when – and *because* – they acted on the well-established desire of the people of Kosovo for independence<sup>163</sup> and declared Kosovo independent, they became 'representatives of the people'.

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159 *Ultra vires*, in legal parlance; for a summary see Serbia, comment pp.21–26.

160 Final Opinion, p.39

161 Surveys show that at the time of the declaration, satisfaction with UNMIK was below 30 per cent (United Nations Development Programme: Early Warning Report, EWR 20, 2008, p.17). See also Ivan Ingravallo: 'Kosovo after the ICJ Advisory Opinion: Towards a European Perspective?', *International Community Law Review*, 14, 2012, pp.219–241, at p.238.

162 Interviews conducted in Kosovo in the aftermath of the 2007 and 2010 elections. For turnout in the 2007 election, see e.g. Reuters: 'Record Low Turnout', [www.reuters.com/article/2007/11/17/us-serbia-kosovo-turnout-idUSL1731845620071117](http://www.reuters.com/article/2007/11/17/us-serbia-kosovo-turnout-idUSL1731845620071117); and B92: 'Voting Ends in Kosovo', both 17 November 2007, accessed 26 September 2012.

163 Including in the 1991 referendum. Judge Bennouna's separate opinion, p.9, questioned the representativeness of the declaration by arguing that the issue of independence was not raised in the 2007 election campaign – however, from the 1990s onwards, an overwhelming range of political and civil society representatives in Kosovo had unanimously demanded independent statehood. Observations in Kosovo from 2006 to the declaration of independence. Immediately following the declaration, almost 90 per cent of survey respondents reported satisfaction with the way independence had been declared, EWR 2008, p.21; also Balkan Gallup: 'Insights and Perceptions, Voices of the Balkans', Brussels, 2008, pp.56–58.

It was on this point that the language of the ICJ opinion was at its most radical. *In* declaring independence, the opinion expressed, the gathering of persons in Kosovo had not only represented the people, but had also ‘acted [...] outside the framework of the interim administration’. By acting on the people’s will, these ‘authors’ had placed themselves – and, it could be assumed, the people they represented – outside the legal order within which they usually operated. Since the Court did not suggest that, in so doing, they had stepped into a legal vacuum, the inference was that this act had established a *new* legal and political order.

Hence, in its Kosovo opinion, the world’s highest court, the ICJ, acknowledged the power of collective action based on a people’s will to freedom and ‘self-determination’, as Kosovo had articulated its demands before the court case started. The Court recognised that a people’s representatives can free themselves from a legal and political system of domination and dependence, and function as the power constituting a new order.<sup>164</sup> With this, the ICJ opinion also illuminated how ‘self-determination’ has the potential to undermine existing international law from within. Although Kosovo, through its action, had not achieved a status of full international equality, the Court’s opinion did not bar it from doing so. Through these conclusions, the Court brought the radical idea of freedom back into international ‘self-determination’ discourse. The full implications of these aspects of the case, however, remain uncertain, as they have yet to be analytically pursued in scholarship or in law.

## **Conclusions**

The arguments on policy and law put forward in the ICJ Kosovo proceedings were less consequential than the ideas of freedom inherent in the discourse of the case. From the perspective of international law, the proceedings might not even be seen as illustrating present *opinio juris*.<sup>165</sup> States’ positions might bind only themselves, if that, and it is unclear whether or how the case might have set a legal precedent. Policy and legal

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<sup>164</sup> On this political function in the context of republicanism and populism, see Vatter 2012.

<sup>165</sup> Author’s interviews with legal counsels in the case, September 2012.

arguments produced no unambiguous guidance as to the post-colonial applicability of self-determination, or on what 'internal' or 'remedial' self-determination might truly mean. Politically and legally, the case reinvigorated the concept of 'self-determination' on the international stage, but also perpetuated its undefined and contended standing.

Conceptually, however, the language of the Kosovo proceedings uniquely conveyed international understandings of self-determination and freedom. In making their cases, both sides sought legitimation for their arguments and ideas by referring to standards of peace, order and non-interference. Serbia's supporters opposed Kosovo's independence by warning of its security impact and, indirectly, the dangers the precedent of its statehood would pose to all countries' freedom as non-interference. Kosovo's backers cited similar standards of peace and non-interference to defend independence as an exceptional, *sui generis* remedy. All participants agreed that, outside of decolonisation, the concept of self-determination should first and foremost be realised internally – and they ranged from hesitation to outright hostility on whether to accord it any role outside of such a setting.

And yet, the weightiest international statement from the whole case – the final ICJ advisory opinion – did not fully echo this liberal-conservative unanimity. The opinion forthrightly equated 'self-determination' with independence, leaving unmentioned any other way to realise the concept. It acknowledged the radical, constitutive power of a people acting on the basis of its will to freedom as equality and self-determination – a point overlooked by scholars thus far. Finally, the very fact that the language of 'self-determination' was so widely used in proceedings that were seen to concern a case of non-colonial independence in itself indicates the tenacity of the radical idea.

With the ICJ Kosovo case, the radical idea of freedom expressed in the language of 'self-determination' again triggered liberal-conservative attempts to co-opt it into a vision that could appear less challenging to established international affairs. Nonetheless, by targeting radical 'self-determination' discourse with various attempts at dismissals and

reformulations, the proceedings also indicated its continued potency. And compared to the other, earlier international 'self-determination moments' covered in this thesis, the Kosovo case had a more radical ending.

## CONCLUSIONS

Ever since the concept of ‘self-determination’ became an important part of international discourse, agents have sought legitimation for their arguments and ideas on it by drawing upon ideas of *freedom*. Given that they have relied on the ideas of freedom that they have deemed most internationally powerful and appealing, the 20<sup>th</sup>- and 21<sup>st</sup>-century international ‘self-determination’ discourse can shed light on key international conceptualisations of freedom. The present thesis has explored this hitherto overlooked feature of the concept of self-determination in international affairs. Besides examining the language of central ‘self-determination’ utterances and the context in which they emerged, it has identified the ideas of freedom that this language has relied upon for legitimation.

The specific language of ‘self-determination’, in English, first appeared high on the international agenda during the First World War, when US President Woodrow Wilson internationalised the concept in response to earlier references by Lenin. Subsequently, Wilson’s ideas were reflected in the immediate post-war international policies towards Albania, before the League of Nations institutionally recognised the political import of the language of ‘self-determination’ in the 1920–1921 Aaland Islands case. In 1945, the concept of ‘self-determination’ became part of international law through its inclusion in the UN Charter, where it was recognised as one of the purposes of the new world organisation. Following a decade of discussion, the UNGA Declaration on the Granting of Independence to Colonial Countries and Peoples (the Decolonisation Declaration) in 1960 formally linked ‘self-determination’ with colonial independence. The importance of the concept in today’s international discourse was made evident when ‘self-determination’ became a central reference point during the 2008–2010 proceedings on Kosovo at the International Court of Justice (ICJ).

All these important international expressions of ‘self-determination’ appeared at moments when the standards guiding world affairs were in flux, with states and institutions competing to re-define them. The First World

War and its immediate aftermath, then the post-Second World War international setting, the global process of decolonisation, and the security environment that developed in the aftermath of the Cold War were all contexts of this kind. Under each of these circumstances, the language of ‘self-determination’ became an important part of the international battle of ideas. Over time, the status of the concept of self-determination was elevated from a moral and political principle to a legal, implementable right. As the perceived force of ‘self-determination’ grew internationally, agents’ stakes in legitimising their arguments and ideas on the concept were raised as well.

At each of these major moments, the political and legal agents using the language of ‘self-determination’ internationally sought legitimation for their discourse with reference to either a radical or a liberal-conservative idea of freedom. Agents showed that they favoured the radical idea when they proposed conceptualising self-determination as a matter of equal status, as freedom *from* inequality, domination, and dependence, as well as from certain forms of interference with a people. Such radically framed arguments were always in favour of self-determination, presenting the aim as being full independence and freedom in the form of new state creation. Moreover, when this radical idea of freedom appeared in the international discourse on self-determination, agents seemed less worried about maintaining peace on the path to achieving it.

By contrast, agents’ international discourse on self-determination exhibited the liberal-conservative idea when they expressed a preference for freedom as peace, in the form of stable order and non-interference with the affairs of established states. Advocates of this understanding of self-determination – sometimes in favour of, and sometimes opposed to the concept itself – typically argued for solutions that would not threaten existing countries, and that would be implemented gradually, naturally, and in an orderly fashion. According to which ideal these two ideas of freedom valued most, international statements of ‘self-determination’ tended to group themselves along an ‘axis’ of *freedom as peace* versus *freedom as equality*.

Of the two ideas of freedom employed internationally to legitimise arguments and ideas on self-determination over the past hundred years, the liberal-conservative has dominated. Not only have the discourses of most agents relied on it for legitimation, this idea was also the one incorporated into the main documents of international law citing ‘self-determination’: the 1945 UN Charter, the 1960 Decolonisation Declaration, as well as the 1966 International Covenants on Human Rights (ICHRs). Although in the ICJ Kosovo case, the Court’s final advisory opinion was more equivocal, in the proceedings preceding it, all states had argued within the same liberal-conservative confines.

Each ‘self-determination moment’ investigated in this thesis unfolded according to what was broadly the same dynamic: an international articulation of ‘self-determination’ that agents legitimised with reference to the radical idea of freedom incited attempts by other agents to co-opt the concept’s international meaning to a liberal-conservative outlook. All the moments studied here, except the most recent one, clearly ended with the liberal-conservative idea of freedom more authoritatively pronounced.

The first time this dynamic of appropriation played out was when Wilson used the language of ‘self-determination’ in response to Lenin’s earlier discourse. That moment of internationalising the concept of ‘self-determination’ ended with it firmly linked in the global imagination to Wilson’s liberal-conservative ideas. Wilson’s concept then came to be mirrored in the international handling of the case of Albania, and appeared in the League of Nations Aaland Islands case as well. Both these cases, however, had first been placed on the international agenda by radically articulated claims of peoples to self-determination. The League’s Aaland Islands case then created the pathway to international codification of the concept in the 1945 UN Charter, a document that would also come to embody the liberal-conservative idea.

The same dynamic occurred at the UN in 1950, when a ‘self-determination’ statement legitimised in radical terms sparked ten years of largely liberal-conservative attempts to re-define the concept, and fill it with non-radical

content. That ‘moment’ ended with incorporation of the language of ‘self-determination’ in three UN documents of international law, all framing it in liberal-conservative terms.<sup>1</sup> Finally, the impetus for the ICJ Kosovo case also came from radical calls for freedom as equality and ‘self-determination’, by the people of Kosovo. During the ICJ proceedings, all participating states took care to employ the language of ‘self-determination’ in ways that would not threaten established forms of stability and non-interference. The way *that* moment came to an end, however, was with a critical, albeit hitherto largely ignored, endorsement of key aspects of the *radical* idea of freedom. In its final advisory opinion, the world’s highest court implicitly acknowledged that peoples claiming ‘self-determination’ might indeed create new states.

From this recurrent pattern, it appears that it was the radical and not the liberal-conservative idea of freedom that kept the language of self-determination alive in international affairs, at different times bringing it to the fore. At each of the junctures, the ensuing discourse then became driven by a liberal-conservative aspiration to neutralise the concept of self-determination, to disassociate it from its radicalism, and dilute or undermine it. Although usually ending with the liberal-conservative idea prevailing, these moments thus also proved the continuing importance of the radical idea.

Apart from having introduced this dynamic into how ‘self-determination’ appeared in international discourse, Lenin and Wilson set the terms for the ideas of freedom reflected in such language. After these two men had expressed the two ideas of freedom with their respective discourses of ‘self-determination’, no other moment would really add much. On the other hand, later international agents did not simply copy them, either. For instance, Lenin had legitimised his concept of self-determination as part of the progress towards equal freedom in socialism. He contrasted his idea of freedom with inequality, domination and dependence, as well as specific forms of interference with a group. Moreover, he justified the use of

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<sup>1</sup> The 1960 Decolonisation Declaration and the 1966 ICHR; see also Moyn 2010, p.117, describing the end of empire as an opportunity for ‘the reclamation of liberalism’ for a new era.



violence on the part of peoples seeking to break free. Wilson, by contrast, sought legitimation for his discourse primarily by appealing to peace and non-interference with bodies politic that he considered sufficiently mature. Stability, order and purely ‘natural’ change were the values to which Wilson appealed.

Subsequent international discourse on self-determination perpetuated a conservative mix of the different ideas these two men had stood for. As noted, the central documents that integrated ‘self-determination’ into international law leaned on versions of the liberal-conservative idea espoused by Wilson. Expressing appreciation of the existing order, these documents prioritised freedom as peace and non-interference, chiefly in the affairs of established states. The ICJ Kosovo proceedings showed that also the most conservative portion of Lenin’s ideas would be internationally preserved. State participants in that case indicated, as Lenin’s anti-imperialist rhetoric had done, that self-determination might be legitimate as the creation of new states in narrowly defined cases of interference – although the *forms* of interference emphasised by the participants in the ICJ case clearly differed from what Lenin had proposed. From both perspectives, though, the bar was set high for realising the concept. Recent scholarship on ‘remedial’ self-determination has put forward similar views, accepting the statehood connotations of the concept solely in cases of extraordinary interference, and for the sake of peace. The other aspects of Lenin’s concept, such as his condoning of violence and his ultimate aim of socialism, have generally been ignored.

Liberal-conservative values of stability and non-interference with established political agents might logically be expected to appeal to those who profit from an order functioning on such a basis. Radical ‘equality’, by contrast, might be presumed to attract the less privileged, and those in favour of changes in existing hierarchies. Unsurprisingly, it was those who stood to benefit from existing systems of stability and non-interference that advanced the liberal-conservative idea in international ‘self-determination’ discourse. The prevalence of this idea thus indicated a strengthening of established orders and structures, and of agents that were already strong.

Moreover, it implied that advantaged agents managed to establish their preferred normative ideals as the international standards that would guide the arguments and ideas on ‘self-determination’.<sup>2</sup> Indeed, it was as part of the consolidation of the 20<sup>th</sup>-century international order that the ‘self-determination’ discourse overwhelmingly invoked the liberal-conservative idea, which left unchallenged those already well situated.

More specifically, it was usually Western states that most insistently promoted the liberal-conservative idea of freedom with their language of ‘self-determination’. Indeed, it was US President Wilson who introduced it into international ‘self-determination’ discourse in the first place. However, it would be an over-simplification to consider the international dominance of this idea as a ‘Western’ triumph. Also non-Western states – and, not least, the 1960 UN General Assembly as a whole, espoused the same orientation. To see the discourse of such agents as a product of ‘Western’ power would be to deprive them unreasonably of agency. Instead, it should be assumed that, across the geopolitical spectrum, the agents who at various times expressed the liberal-conservative idea had their own reasons for doing so. The logic of legitimation regulating their discourse would lead them to appeal to the idea of freedom they thought would best persuade their audiences.

Actually, not only Western states, but nearly *all* state-agents citing ‘self-determination’ in international affairs legitimised their arguments and ideas with reference to the standards of peace, stability and non-interference. By contrast, the non-state agents who demanded self-determination, as well as a few state actors, relied on the radical idea in calling for peoples’ equal status, and the creation of new states. The supremacy of the liberal-conservative idea in the international discourse on self-determination therefore indicates more than a solidification of the international standing of specific, already privileged states. It also points to a corresponding lack of international recognition of non-state groups as potential agents of political freedom.

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<sup>2</sup> See also Crawford 2000a, pp.95–97.

In fact, both the ideas of freedom that were used to legitimise the international discourse on self-determination served to strengthen *states* as the units organising international affairs. Each of the ideas' preferred practical solutions to questions of self-determination gave priority to the concept of statehood – while disagreeing on whether to protect only those states that already existed, or permit the creation of new ones. The liberal-conservative idea promoted non-interference with and stability of existing states, and favoured the resolution of self-determination conflicts within existing state boundaries. Only in exceptional cases, if it would benefit international order, would the liberal-conservative viewpoint permit the creation of new states.

Also the radical idea of freedom present in international language on self-determination concentrated on statehood. This idea called for the establishment of *new* states, either through secession of the group seeking freedom, or its unification with another, existing, state. So proponents of the radical idea, too, assumed that politics should primarily be organised along the lines of statehood. In its earliest form, in Lenin's discourse, the radical idea had indicated that self-determination as statehood would be merely one step on the path towards the further, better, status of equality in internationalist socialism. But this 'most radical' version of the radical idea was not retained in the international language on 'self-determination' after Lenin's time. Later radical expressions presented statehood itself as the primary aim of self-determination, and its ultimate destination. Moreover, even Lenin's radical variant had maintained that *at present*, political action should be organised around the concept of statehood.

Interestingly, the strengthening of the idea of statehood reflected in international discourse on self-determination occurred simultaneously with another international development. While the language of self-determination signalled a state-oriented approach to world affairs, 20<sup>th</sup>-century international law as well as international relations and legal scholarship began to devote increased attention to *individuals*.<sup>3</sup> More recently, the

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3 For one useful perspective on these developments, see e.g. Costas Douzinas: 'The Paradoxes of Human Rights', *Constellations*, 20(1), 2013, pp.51–67.

previous century's growing focus on individuals, which came to be codified in international human rights law, was reflected in the 'internal' framings of self-determination favoured by participants in the 2008–2010 ICJ Kosovo case.<sup>4</sup> However, recognition of individuals as subjects of international affairs became limited to their status as victims of abuses, and did not grant them active agency. This development corresponded to the liberal focus on freedom as non-interference, and on individuals as the most basic source of politics, morality and law. Whether these developments may come to create opportunities for broader, even radical, freedom has been disputed.<sup>5</sup>

Since the end of the Cold War, the orientation towards individual human rights has become bound up with a re-conceptualization of international security. From the Cold War concentration on territorial defence, post-Cold War security has shifted, at least in part, to being framed in terms of *protecting people* (from state interference), and defending 'values'.<sup>6</sup> The military intervention in Kosovo, its subsequent international statebuilding, and the concept of Responsibility to Protect (R2P, introduced in 2001) have all manifested this trend.<sup>7</sup> This security programme has been criticised for highlighting the predicaments of individuals in order to legitimise interventions in 'failed' states by those at the forefront of 'the international community'<sup>8</sup> – interventions ultimately implemented *by* powerful states *against* those seen to threaten or destabilise them through 'interfering'

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4 See Moyn 2010 for the emergence of international human rights, dating this to 1977, especially pp.4, 121. For a relevant recent theoretical perspective, see Eva Erman: 'Human Rights Do Not Make Global Democracy', *Contemporary Political Theory*, 10(4), 211 pp.463–481.

5 For differing views, see Marks 2000; Boaventura De Sosa Santos: *Towards a New Legal Common Sense*, Cambridge University Press, Cambridge, 2002, especially chapter 9, 'Can Law be Emancipatory?'; Habermas 2010; and Douzinas 2013.

6 For a 'self-determination' perspective on these developments, see James Mayall: 'Non-intervention, Self-determination and the "New World Order"', *International Affairs*, 67(3), 1991, pp.421–429; also Coker 2000; Andrew Williams: *Failed Imagination? New World Orders of the Twentieth Century*, Manchester University Press, Manchester, 1998.

7 For Kosovo, see the previous chapter, for R2P, see R2P, see International Development Research Centre: *International Commission on Intervention and State Sovereignty: The Responsibility to Protect. Report of the International Commission on Intervention and State Sovereignty*, Ottawa, 2001, and Spencer Zifcak: 'The Responsibility to Protect', pp.504–527 in Evans (ed.) 2010.

8 For a summary of the rhetoric involved, see Morten Bøås and Kathleen Jennings: 'Insecurity and Development: The Rhetoric of the "Failed State"', *European Journal of Development Research*, 17, 2005, pp.385–395.

phenomena such as refugee flows, terrorism or organised crime.<sup>9</sup>

This greater international concentration on individuals as victims and states as principal agents has pushed to one side the kinds of groups that claim self-determination. Between the planes of separated individuals in their capacity as victims, and the non-interfered-with action of established states, little conceptual space was left for *collectives*. The parallel developments of emphasising individuals while boosting the idea of statehood thus seemed to suggest that groups that had constituted themselves by their collective will to ‘self-determination’ did not really count as potential agents of freedom.<sup>10</sup> Also international law seems to have disregarded groups created on the basis of willing ‘self-determination’, focusing instead on non-state groups defined only in terms of their intra-group identity, usually understood in ‘national’ terms.<sup>11</sup>

Regarding self-determination claimants, their shared intra-group features, whether defined nationally or in other ways, have generally not featured strongly in attempts to legitimise their demands. Instead, self-determination claimants have been constituted by, and sought legitimation with reference to, the specific political contexts in which they have collectively willed radical freedom. For instance, Kosovo was populated largely by Albanians: but there were Albanians living outside Kosovo as well; and before and during the ICJ case, Kosovo argued for independence principally by calling for freedom as equality, and later by describing the oppression practised by Serbia. Similarly, when former colonies called for colonial freedom in the 1950–1960 UN debates, they usually stressed the dominating and interfering nature of colonialism rather than the intra-group features of colonial peoples.

As this thesis has shown, the two men who introduced the language of ‘self-determination’ in international affairs, Lenin and Wilson, were not preoccupied with the internal characteristics of a potential self-

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9 See e.g. Chandler 2006 and Douzinas 2007.

10 See also Rancière 2001, pp.5–6.

11 As also reflected in the international codification of minority rights and the rights of indigenous peoples.

determination claimant. Lenin legitimised his advocacy of self-determination with reference to the wider economic, geopolitical and historical settings in which claims might be raised. Even in arguing for self-determination for colonies, he stressed the political and economic nature of colonial un-freedom, and not the intra-group specificities of the colonial peoples. Wilson held a comparable outlook. Although he did pronounce some ‘nationally’ defined criteria for boundary creation, Wilson did not present these as vital to his conceptualisation of self-determination. Nor did he adhere to such criteria in practice. In linking their respective ideas of freedom to the concept of self-determination, neither Wilson nor Lenin placed the characteristics of its possible beneficiaries at the fore. Both men’s ideas of self-determination were highly conditional – but the various conditions they proposed were generally external to the concept’s possible claimants.

Not until the UN’s 1960 Decolonisation Declaration was the international spotlight put on the intra-group identity features of potential recipients of self-determination. That declaration narrowed down the implementable force of the concept to colonies whose development had been interfered with by an ‘outdated’ colonial regime. Hence it excluded possible claimants whose identities were defined in other ways. It also put those who favoured a different understanding of self-determination in the position of having to argue with reference to aspects of claimants’ character. Reflecting this development, many state participants in the ICJ Kosovo case presented the identity of the ‘authors’ of Kosovo’s declaration of independence as crucial with regard to determining the legitimacy of their demands.

One paradoxical upshot of the domineering role of the liberal-conservative idea in the international discourse on self-determination was to radicalise the radical idea. The prevalence of the liberal-conservative idea in international language on self-determination intimated that ‘interference’, associated with war and instability, was the main challenge in international affairs. According to this outlook on world affairs, threats in the form of *security risks* were the major evils to be avoided. And the form of security preferred in this orientation was non-interference in the affairs of established

political and legal agents, above all states. According to this reasoning, security threats would justify states and institutions taking any action necessary to preserve the peace.

Consequently, the prominence of the liberal-conservative idea made radical articulations of ‘self-determination’ even more powerful and threatening. After all, the radically legitimised ‘self-determination’ discourse aimed to challenge and interfere with established bodies politic, and could even endorse the use of force in achieving freedom as international equality. In a world dominated by the idea of *freedom as peace*, self-determination became a security issue.<sup>12</sup> From the liberal-conservative standpoint, radical self-determination claims would pose such a threat to the international order and states’ peaceful freedom that it might actually be better to grant independence to the claimants. The Kosovo case may have illustrated this development when the ICJ acknowledged that a people constituted by willing radical self-determination could place itself outside its present legal and political order, and create a new one. Among legal experts and scholars alike, however, this final ‘twist’ to the ICJ case has gone largely unnoticed, leaving the possible radical implications of the case under-investigated as well.

The dominance of the liberal-conservative idea of freedom in 20<sup>th</sup>- and 21<sup>st</sup>-century international discourse on ‘self-determination’ implied seeing the *outcome* of peace as a greater source of legitimacy than agents’ *status* of equality. It also signalled a corresponding drop in the value of ‘equality’ as an international standard of legitimation.<sup>13</sup> Nevertheless, despite having been mostly overshadowed by the liberal-conservative idea in the international discourse of the past hundred years, and having largely disappeared from view today, the radical idea did not vanish from international affairs. In fact, the widely-overlooked ending to the ICJ

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12 Also this has corresponded to broader international trends, including the securitisation of both international development and international statebuilding in the late- to post-Cold War era. See especially Mark Duffield: *Development, Security and Unending War: Governing the World of Peoples*, Polity Press, Cambridge 2007; also Bøås and Jennings 2005.

13 From a legal perspective, also Koskenniemi (2002, p.172) notes that international law’s focus on security comes at the cost of its dealing with issues of equality.

Kosovo case seems to have boosted the radical idea's standing.

This thesis has provided an examination of international uses of the language of 'self-determination' that has revealed the resilience and force of *both* ideas. In international discourse, the concept of self-determination still remains positioned in the tension between the radical and liberal-conservative ideas of freedom.



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