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À la carte Secession

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By Shorena Nikoleishvili

According to the traditional understanding of the trade, international law, the legal vernacular of international relations, is created by states. But how are states made? That is the question. Despite its obviousness and centrality for the edifice of international law, the answer to that question remains elusive. In

this blog post, I explore the inherent instability of secession as a mechanism for establishing new states, revealing how self-determination, secession, and statehood are legally and politically contested.

Secession, often framed as a tool for upholding human rights and the rule of law, paradoxically fuels both instability and interventionist agendas. While the doctrine of remedial secession is intended to protect oppressed groups, it has been co-opted to justify expansionist politics and military interventions, all while failing to address systemic human rights abuses such as apartheid. Using the cases of Western Sahara and Abkhazia, Georgia, I examine two distinct trajectories of secessionist struggles. Western Sahara exemplifies the failures of decolonization, with a former colony remaining perpetually on the list of non-self-governing territories. Conversely, Abkhazia, Georgia illustrates how limited recognition of secession has become a tool for freezing internal political changes, a phenomenon that has shaped conflicts like Ukraine. Through these examples, I aim to unpack the historical, cultural, and legal dimensions of secession, highlighting its dual role as a pathway to sovereignty and a source of geopolitical tension.

Making States

International law does not remain silent on the questions of state-making. Ordinarily, the first step towards an answer to a question concerning make-up of a state is to look for its definition. In 1933, the American states agreed upon such a definition in the Montevideo Convention on the Rights and Duties of States, which has since become a widely accepted, customary definition of statehood. The Montevideo Convention establishes a state on four criteria: a permanent population, a defined territory, an effective government, and a capacity to enter into relations with other states. Yet, as the decades since have shown, while it is relatively easy to fulfil the formal criteria of statehood, there is more to becoming a state. All regions that meet these formal criteria do not want to be states, and some such regions, despite their desire, are not accepted as states. It is with this latter category that my blog concerns with.

It is imperative to look back to understand why statehood is not a matter of formal adherence to rules accompanied with an interest to rely on them. For long, statehood was reserved only to European nations from where it first expanded to American colonies of European states during the 19th century. The budding nationalism of the era justified the separation between the

metropole and the colony, claiming – like nationalism everywhere – a distinction of a group from those residing in Europe. It was on this idea of distinct groups of people that the idea of them having a right to dictate their future, of their self-determination, was born. Yet, it was not there and then that self-determination emerged as a right.

For the emergence of self-determination as an international legal concept, the period around the end of the First World War marks a critical moment. It sees liberal internationalism embracing self-determination as a response to the vision of socialist internationalism: the U.S. President Woodrow Wilson's idea face-to-face that of Bolshevik revolutionary leader Vladimir Lenin. But the time was not right for the idea. The United States never embraced the interwar international order, and the Soviet Russia gave up on the revolutionary ideals of its leader soon after Finland gained independence. The international order that emerged from the ashes of the First World War remained colonial through-and-through, but nothing much changed. It was only the Second World War and its aftermath that brought the idea of self-determination to fruition.

Breaking states

The first few decades of the United Nations era reveal the power of an idea. According to the Charter of the United Nations, one among the purposes of the organisation is “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.” Further, the Charter extended the recognition of peoplehood to those who “have not yet attained a full measure of self-government”, namely, the people in the colonies. And despite no recognition for a right to gain statehood, by 1970 the United Nations had grown from 51 original members to 127 members. People everywhere were demanding their right to self-determination, and gaining it either through peaceful transition, protracted spells of violence, or something in-between.

But where did these new states emerge, and what did they replace? After all, there were few no-mans-lands on the face of the Earth, or what international lawyers of yore called terra nullius. Something had to give way for the new states to emerge, and that something was the hold of former colonisers over their overseas colonies. A condition for all this reshuffling was the emergence of new peoples for international law to see. The question for this new era then

turned from the existence of states to that of finding and recognising people. As British international lawyer [Ivor Jennings](#) noted in the heat of the era, “people cannot decide until somebody decides who are the people”. There seemed to be countless people, and granting self-determination seemed to be precisely that dynamite its critics during the interwar era had portrayed it to be. International law of the era sought for and found ways to limit its promise for respect of equal rights of all peoples to self-determination.

A key to break the breaking of states was to break the cascading effect of ever smaller groups within smaller groups claiming for peoplehood. This called for another Latin adage that confined peoplehood to borders of the past administration – *uti possidetis juris*. Recognizing people and states only within what already administratively existed, limited formation of new states through breaking up of old ones, or secession, to overseas colonies of European metropolises. That is how international law explained, on the one hand, why people of Nigeria had a right to statehood through self-determination while, on the other hand, the people of [Biafra within Nigeria](#) did not possess such right. The cases of [Biafra and Bangladesh](#) demonstrated that international law lacked a consistent rule for secession driven by self-determination. However, from the 1950s onward, General Assembly declarations signaled a growing *opinio juris* in favor of such secession within the colonial context. This trend shaped the legal framework surrounding the decolonization of Western Sahara in the early 1970s, where *opinio juris* had solidified into a norm of customary international law. Western Sahara, a former Spanish colony in North-West Africa, became Spain’s last possession in the region.

In [December 1974, the United Nations General Assembly requested an Advisory Opinion](#) from the International Court of Justice (ICJ) on the legal status of Western Sahara. The Court concluded that Western Sahara was not *terra nullius*—a territory without an owner—acknowledging the historical connection between the Sahrawi people and the land. Despite administrative ties to Morocco and Mauritania, the ICJ held that these links were insufficient to establish legal claims over the territory. It rejected an expansive application of the *uti possidetis juris* principle, which would have allowed former colonial powers to extend their borders over territories seeking independence. Instead, the ICJ affirmed the Sahrawi people’s right to self-determination through a free and genuine choice about their future.

Despite this legal precedent, the right to self-determination for Western

Sahara was obstructed. After Spain renounced its role as the administering power, Moroccan and Mauritanian troops entered the region, frustrating the prospect of a referendum. To this day, the United Nations considers a vote by the Sahrawi people to be the only solution to the impasse. However, despite facilitating numerous dialogues between Morocco and the Polisario Front, the UN has failed to bring about a self-determination referendum. Meanwhile, Morocco continues to occupy and exploit the region's resources, transporting goods to Europe and consolidating its control over the most resource-rich territories.

Western Sahara remains on the UN's list of non-self-governing territories, with its future uncertain. The Sahrawi people continue to fight for their right to self-determination, but international positions on the issue vary. The United Nations maintains its stance, refusing to recognize Moroccan sovereignty over Western Sahara and holding out hope for a referendum. In contrast, the United States has supported Morocco's claims, while the European Union remains ambiguous, navigating a middle ground between recognition and non-recognition. The situation highlights a profound geopolitical and legal stalemate, leaving Western Sahara in a state of limbo with no clear path to prosperity.

Abkhazia serves as a compelling example illustrating that external self-determination and secession are not merely rights of people, but tools subject to manipulation by major political powers. This phenomenon is particularly prevalent in the post-Soviet space, where the Russian Federation actively supports secessionist movements, exacerbates ethnic tensions within sovereign states, and flagrantly violates their territorial integrity—sometimes as a disruptor of peace, other times as a self-proclaimed peace broker. The principle of self-determination and the expressed will of the people often provide a convenient pretext for such geopolitical maneuvers. The Georgian-Abkhazian-Russian conflict has unfolded in two major phases: the initial conflict from 1992 to 1994 following, and the events of 2008, when Russia used military force against Georgia and unilaterally recognized the statehood of Abkhazia and This recognition was accompanied by the erection of militarized administrative boundaries, effectively fragmenting Georgia's territorial integrity. This occupation has been weaponized, not only through physical borders but also through interference in Georgia's internal politics. This complex interplay of power dynamics highlights significant contradictions

in the application of international law and the exploitation of self-determination as a geopolitical strategy.

Mending wounds

Although the language of international law can be employed to justify its violation, even though it can be transformed into a distorted picture of itself we conceal in the attic, it also provides a key to mend the wounds inflicted in its name. On this blog post I looked beyond my bewilderment to the ways in which international, transnational, and global law have sought to address senselessness invoked by hypocritical or cynical uptake of the language of international law. The outcome is a mixed baggage.

On the one hand, international law has in recent decades played with the idea of statehood as an entitlement from suffering or a remedy from injustice incurred. The international authority has stepped in to endow self-determination and statehood in all corners of the world on 21st century. But it has equally much failed to do so elsewhere, showing the limited promise of statehood mediated by international administrative authority. A more promising route, the one employed for example by the Sahrawi people of Western Sahara, has been a turn to other than strictly international tribunals for the enforcement of rights. While it has not led to political rights for the Sahrawi people, it has made certain that others cannot use such political power over the people either. On the other hand, the past few years have shown that the sense of powerlessness felt by many in Georgia towards Russia's creeping expansion, is not unique to Georgia but unique to Russia. It has become increasingly apparent that the consequences of the failure of international law and international legal scholarship to come to terms with the landed imperialism of Russia in the immediate aftermath of the collapse of the Soviet Union are manifest. A perverted ideology of Russian national and cultural supremacy towards those who were in the past part of the Soviet Union has justified the suppression of peoples and nations by the Russian Federation. I conclude here that quite like it has been imperative for international law to explore its colonial past, it would be imperative for international law to explore its structures that naturalise landed imperialism.

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