

**SOAS CONFERENCE  
NEW APPROACHES TO SELF-DETERMINATION**

**The return of politics to self-determination: from Lenin to Lavrov; from the Baltic states and Georgia, to Abkhazia and Transdniestria**

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**Abstract**

This paper starts with an assessment of the recent books by Karen Knop (2002) and Antony Anghie (2005). I make the case that both of them, while in their own ways providing a new and powerful critique of traditional international law, avoid entirely the role of V. I. Lenin from the early years of the 20<sup>th</sup> century in working out and concretising in practice the principle of the “right of nations to self-determination”. For example, Lenin actively supported independence for Finland and the Baltic states, and would have done so for Georgia. They also miss the role of the USSR – in a highly contradictory manner, witness the “Brezhnev Doctrine” – in pursuing through diplomatic means the implementation of self-determination as a right in international law, and in supporting materially the National Liberation Movements. In both these texts the influence of Thomas M. Franck can plainly be seen. In recent years the focus has been on “internal self-determination”, and even “deliberative democracy”. Now the wheel appears to have come full circle. The botched emergence of Kosovo as a sovereign state has opened a Pandora’s box, to the evident satisfaction of S. V. Lavrov, the Russian Foreign Minister. Once again Georgia is the centre of attention. What should become of Abkhazia and South Ossetia? What about Transdniestria and Nagorno-Karabakh? Issues of self-determination now, once more, become inextricably tied to state recognition and state sovereignty.

**Introduction**

This paper develops themes which I have explored in my new book, *The Degradation of International Law?* My topic is the principle of the right of peoples to self-determination, which became firmly established as a right in international law during the second half of the 20<sup>th</sup> century. The principle, and the right, played a key role in the ideological motivation of the decolonisation movements which followed WWII and culminated in the 1960s and 1970s. It continues to resonate in the practice of international law, notably the 2004 Advisory Opinion of the International Court of Justice on the construction of the Wall in the Occupied Palestinian Territories.<sup>1</sup> Debates concerning the right to self-determination continue to generate an extensive scholarly literature. Taking two of the most significant recent contributions, Karen Knop’s *Diversity and Self-Determination in International Law*<sup>2</sup> and Antony Anghie’s *Imperialism, Sovereignty and the Making of International Law*<sup>3</sup>, I argue that neither of these authors takes any account at all of the role of politics, specifically, the politics of the Russian

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<sup>1</sup> See the International Court of Justice in the recent Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (ICJ Reps, 9 July 2004)

<sup>2</sup> Knop, Karen (2002) *Diversity and Self-Determination in International Law* (Cambridge: Cambridge University Press)

<sup>3</sup> Anghie, Antony (2005) *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press)

Revolution and the USSR, in their consideration of the principle and the right. I also show that this absence is to be found in almost all of the scholars writing at present on issues of sovereignty and autonomy.<sup>4</sup> There is one notable exception, although he is not an international lawyer: Pheng Cheah, in his *Spectral Nationality: Passages of Freedom from Kant to Postcolonial Literatures of Liberation*.<sup>5</sup>

In the first section of the paper I present in positive terms the broad themes developed by these two authors, each of them in different ways innovative and progressive. Second, I subject these scholars to criticism. Third, I trace the origins of the principle of self-determination of nations in the polemical writings of V I Lenin, especially in his fierce battle against the proponents of “national cultural autonomy”. Following in the footsteps of my colleague Ephraim Nimni<sup>6</sup>, I have written extensively on these topics.<sup>7</sup> Fourth, I seek to rehabilitate the highly contradictory, and now almost forgotten – perhaps for that very reason – role of the USSR in fostering and promoting self-determination in the context of decolonisation. Fifth, I turn to the consequences of this de-politicisation of the subject of self-determination for the consideration of sovereignty, supposedly now superseded by globalisation. I pay attention to the recent issues of Kosovo – as well as the four unrecognised entities which exist thanks to the support, acknowledged or not, of the Russian Federation. My conclusion argues for a reassertion of a politics of struggle – which does not apply in these cases.

### **The contributions of Knop and Anghie**

I do not wish at all to undervalue the importance of the contribution by these two authors. Both are equally radical in their respective departures from the academic norm.

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<sup>4</sup> See, for example, Koskenniemi, Martti (1994) “National Self-Determination Today: Problems of Legal Theory and Practice” 43 *International and Comparative Law Quarterly* 241; Cassese, Antonio (1995) *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge: Cambridge University Press); Franck, Thomas (1995) *Fairness in International Law and Institutions* (Oxford: Clarendon Press)

<sup>5</sup> Cheah, Pheng (2003) *Spectral Nationality: Passages of Freedom from Kant to Postcolonial Literatures of Liberation* (New York: Columbia UP)

<sup>6</sup> Nimni, Ephraim (ed) (2005) *National-Cultural Autonomy and its Contemporary Critics* (London: Routledge)

<sup>7</sup> Bowring, Bill "Austro-Marxism's Last Laugh?: The Struggle for Recognition of National-Cultural Autonomy for Rossians and Russians" (March 2002) v.54, n.2 *Europe-Asia Studies* pp.229-250; Bowring, Bill “Burial and Resurrection: Karl Renner’s controversial influence on the ‘National Question’ in Russia” in Ephraim Nimni (ed) *National-Cultural Autonomy and its Contemporary Critics* (London:Routledge, 2005) pp.191-206; Bowring, Bill “The Tatars of the Russian Federation and National-Cultural Autonomy: A Contradiction in Terms?” in Karl Cordell and David Smith (eds) *Cultural Autonomy in Contemporary Europe* (Abingdon: Routledge, 2008), pp.81-100

Knop makes it clear at the outset that her book is not concerned primarily with answers to the question whether and when the right of self-determination means a right to independence. Rather, she seeks to show that

“... there is something important that these answers systematically ignore: the challenge of diversity for the interpretation of self-determination and – conversely – the implications of the interpretive history of self-determination, once seen in this light, for the challenge of diversity in international law and perhaps law more generally.”<sup>8</sup>

While she investigates the problems of indigenous people in general, the third and perhaps most important part of her book examines “Self-determination interpreted in practice: the challenge of gender”.<sup>9</sup> In this she is truly innovative; and I admit, as I must, that issues of gender did not much trouble V I Lenin – nor did he pay any attention to the way, specified by Knop, that “... women have challenged their figuration as unequal members of the self and unequal participants in the process of self-determination.”<sup>10</sup> Nevertheless, as Knop shows, such issues arose during his lifetime, in the plebiscites held after WW I to determine the sovereignty of disputed border territories, and for the right to opt for another nationality. As Knop rightly points out, her only predecessors in this inquiry were Hilary Charlesworth and Christine Chinkin.<sup>11</sup>

The fact that the first word of Anghie’s title is the controversial word “Imperialism” should already alert us to the radical nature of his inquiry. His mission is to focus on “the colonial origins of international law.”<sup>12</sup> His broad argument is that:

“... colonialism was central to the constitution of international law in that many of the basic doctrines of international law – including, most importantly, sovereignty doctrine – were forged out of the attempt to create a legal system that could account for relations between the European and non-European worlds in the colonial confrontation.”<sup>13</sup>

Anghie has been inspired in particular by his research work for Judge Weeramantry of the International Court of Justice, and by the fact that Weeramantry’s jurisprudence “... draws from a variety of legal systems and traditions in an attempt to create a truly universal international

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<sup>8</sup> Knop, *ibid*, p.2

<sup>9</sup> Knop, *ibid*, pp. 275-372

<sup>10</sup> Knop, *ibid*, p.277

<sup>11</sup> Charlesworth, Hilary and Chinkin, Christine (2000) *The Boundaries of International Law: A Feminist Analysis* (Manchester: Manchester University Press), at pp.151-164; see also Chinkin, C and Wright, S “The Hunger Trap: Women, Food and Self-Determination” (1993) 14 *Michigan Journal of International Law* 262.

<sup>12</sup> Anghie, *ibid*, p.3

<sup>13</sup> Anghie, *ibid*, p.3

law that promotes a compelling vision of international justice.”<sup>14</sup> The case in question was the classic decolonisation case of the Nauru islanders, whose home, placed by the League of Nations under a mandate held by Australia, New Zealand and the United Kingdom, was destroyed by phosphate mining.<sup>15</sup>

Anghie’s aim is not to condemn ideals such as “the rule of law”, “good governance” or “democracy” as being “inherently imperial constructs, but rather:

“... to question how it is that these ideals have become used as a means of furthering imperialism and why it is that international law and institutions seem so often to fail to make these ideals a reality.”<sup>16</sup>

Both Knop and Anghie, therefore, are motivated by a response to injustice. In the case of Knop, this is the inability of international law to account for diversity, and especially the unequal treatment of women. Anghie wishes to show how the rank injustice and inequality of colonialism have torn international law from its proper ideals.

In both cases this is work that needed doing; and no-one had done it properly before them.

### **A critique of Knop and Anghie**

It should already have been noted that both these scholars share a fundamentally liberal foundation for their critique of international law. Both wish the law to make a better job of living up to its own ideals. Those ideals are not subject to question; and for this position there are political consequences.

Indeed, they have more in common than might at first appear. Not surprisingly, both books started life as research theses. Knop wrote her doctoral supervision under the supervision of James Crawford, himself the editor in 1988 of *The Rights of Peoples*, the collection which first interested me in these topics.<sup>17</sup> Anghie’s book originated as his SJD thesis at Harvard Law School, supervised by K. Anthony Appiah and Duncan Kennedy. These are all great names in critical international law. However, the scholar whose influence Knop and Anghie have in common is none other than the doyen of American liberal international law scholarship, Thomas M. Franck. Franck was one of Knop’s examiners, and he provided a home for her at New York

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<sup>14</sup> Anghie, *ibid*, p.320

<sup>15</sup> The islanders won their case in the ICJ: *Certain Phosphate Lands in Nauru (Nauru v Australia)*, ICJ Reports 1992, p.240

<sup>16</sup> Anghie, *ibid*, p.320

<sup>17</sup> Crawford, James (ed) (1988) *The Rights of Peoples* (Oxford: Clarendon Press)

University School of Law during the last year of her work on the book.<sup>18</sup> Franck also examined Anghie's thesis, and Anghie relates that Franck provided him with "...extremely acute, detailed and illuminating comments, the true significance of which, in some cases, I realised only years later."<sup>19</sup>

It seems to me that the intellectual space inhabited by the two scholars under discussion is very much that established by Franck in his extraordinarily influential works.<sup>20</sup> I have explained elsewhere in detail how Franck's scholarship can appear as "...the words of the most sunny optimist, the normative liberal par excellence, the true believer in the legitimacy of norms and rules in international law..." in his interpretations of US government action in Iraq (1991), Serbia (1999) and Afghanistan (2001).<sup>21</sup>

Knop's book does contain an excellent, if rather abstract, textual analysis of each of the ICJ's leading cases on self-determination – with the exception of the Wall case mentioned above, which came too late.

Her comments on the 1995 *East Timor*<sup>22</sup> case are especially illuminating; it should be recalled that in this case the ICJ recognised the right of self-determination as *erga omnes* – a right that all states are obliged to respect and in the observance of which all states have a legal interest<sup>23</sup>. She notes quite rightly that the UN Charter and the 1960 *Declaration on the Granting of Independence to Colonial Countries and Peoples*<sup>24</sup> represent two quite different approaches to decolonisation. The Charter "... envisaged self-government as the eventual outcome of the sacred trust. The trust would protect a colonial people while preparing them... for self-government." The Declaration and the resolutions which followed it<sup>25</sup> on the other hand "...demanded the immediate exercise of self-determination, which was assumed to result in

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<sup>18</sup> Knop, *ibid*, xii

<sup>19</sup> Anghie, *ibid*, xiv

<sup>20</sup> Franck, Thomas (1990) *The Power of Legitimacy Among Nations* (New York: Oxford University Press); Franck, Thomas (1992) "The Emerging Right to Democratic Governance" 86 *American Journal of International Law* pp.46-91; Franck, Thomas (1995) *Fairness in International Law and Institutions* (Oxford: Clarendon Press); Franck, Thomas (1999) *The Empowered Self: Law and Society in the Age of Individualism* (New York: Oxford University Press); Franck, Thomas (2002) *Recourse to Force: State Action Against Threats and Armed Attacks* (Cambridge: Cambridge University Press)

<sup>21</sup> Bowring, Bill (2008) *The Degradation of the International Legal Order? The rehabilitation of law and the possibility of politics* (Abingdon: Routledge Cavendish, 2008), p.40

<sup>22</sup> *East Timor (Portugal v Australia)* ICJ Reports 1995, p.90

<sup>23</sup> ICJ Reports 1995, p.102; Knop, *ibid*, p.191

<sup>24</sup> GA Resolution 1514(XV)

<sup>25</sup> The most important of these is the 1970 *Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations* GA Resolution 2625 (XXV)

independence.”<sup>26</sup> But she gives no explanation at all as to how this came about; that is, the momentous political history of bitterly opposed struggles for decolonisation of the years between 26 June 1945 and 1960. This is something I will attempt later in this paper.

This lack of attention to the politics of self-determination is also reflected in her passing reference<sup>27</sup> to the unofficial but highly influential 1976 Algiers *Universal Declaration of the Rights of Peoples*<sup>28</sup>, with no apparent understanding of its significance. This is despite the fact that she is aware of Antonio Cassese’s 1979 collection, bringing together leading scholars of the time, and focusing on the Algiers Declaration in particular.<sup>29</sup>

She makes reference to the *travaux préparatoires* for the 1966 International Covenant on Civil and Political Rights (ICCPR)<sup>30</sup>, in which the right to self-determination made its first appearance as a legal right in international law, taking pride of place as Article 1. But she has nothing at all to say as to how the right became the common Article 1 to both the ICCPR and the International Covenant on Economic, Social and Cultural Rights of the same year. This oversight is compounded when, a few pages later<sup>31</sup>, she asserts the “... liberal democratic values...” of the ICCPR.

Thus, her first reference to the 1960 Declaration<sup>32</sup> contains no reference either to its provenance, or as to the votes cast in relation to it. This Declaration, and the 1970 Declaration and GA Resolution 1541 (XV) are treated purely as abstract legal texts, out of their political and historical context. A few pages further on the Declaration is once again mentioned<sup>33</sup>, but only in the context of a discussion of – Thomas Franck’s “coherence story” of self-determination in his *Power of Legitimacy Among Nations*.

Much later in her book, in a discussion of the post WW1 situation, she states that “At the time, self-determination was not yet recognised as a principle of international law, so its application depended on mustering sufficient political will to give it binding expression in the various peace treaties.”<sup>34</sup> But she has nothing at all to say on the contribution made by V I Lenin to the

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<sup>26</sup> Knop, *ibid*, pp.200-201

<sup>27</sup> Knop, *ibid*, p.25, note 85

<sup>28</sup> *Universal Declaration of the Rights of Peoples*, Algiers, 4 July 1976

<sup>29</sup> Cassese, Antonio (ed) (1979) *UN Law/Fundamental Rights: Two Topics in International Law* (Alphen aan den Rijn: Sijthoff & Noordhoff); his own piece is entitled “Political Self-Determination – Old Concepts and New Developments”, pp.137-165

<sup>30</sup> Knop, *ibid*, p.58

<sup>31</sup> Knop, *ibid*, p.59

<sup>32</sup> Knop, *ibid*, p.74

<sup>33</sup> Knop, *ibid*, p.85

<sup>34</sup> Knop, *ibid*, p.282

political deployment of the principle of self-determination. Nor does she mention even in passing the role of the USSR in bringing about the enshrinement of the principles as a right in international law.

V I Lenin does not appear in her index; neither do the USSR or Soviet Union.

Failure to notice the role of the USSR is something she has in common with Anghie. Anghie mentions Lenin only in a footnote<sup>35</sup>, and only in the context of analysis of Lenin's analysis of imperialism, not his advocacy of self-determination – although Anghie does note that “Lenin went a stage further in his analysis, which pointed to the centrality of colonialism to the entire capitalist system.” In the same vein, he refers to “...Woodrow Wilson's forceful promotion of the concept of self-determination”<sup>36</sup> without mentioning Lenin's even more forceful promotion. This is curious, since Lenin's vision extended to the colonial empires, which Wilson's most certainly did not.

Indeed, Anghie is guilty of writing the following passage<sup>37</sup>, betraying an extraordinary ignorance as to the political and historical origins of the principle and right to self-determination.

“Even when the colonies were perceived to challenge some of the fundamental assumptions of the discipline, as in the case of the doctrine of self-determination which was used in the 1960s and 1970s for the purpose of effecting the emergence of colonial territories into sovereign states, these challenges were perceived as threatening to disrupt a stable and established system of international law which was essentially and ineluctably European and which was now faced with the problem of now accommodating these outsiders. The conceptualisation of the problem in this way suggested again that the non-European world was completely peripheral to the discipline proper; and it was only the disconcerting prospect of Africans and Asians acquiring sovereignty in the 1950s and 1960s that alerted international lawyers to the existence of a world that was suddenly discovered to be multicultural.”

This is to turn history entirely on its head.

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<sup>35</sup> Anghie, *ibid*, note 115 on p.142

<sup>36</sup> Anghie, *ibid*, p.139

<sup>37</sup> Anghie, *ibid*, p.35

Indeed, for Anghie, the history simply does not exist. In Chapter 3 of his book<sup>38</sup> “Colonialism and the birth of international institutions: the Mandate System of the League of Nations” he has nothing at all to say about V I Lenin, the Russian Revolution, the USSR, or even the principle of self-determination itself.

### **Lenin, the Bolsheviks and self-determination**

The Bolshevik and then Soviet doctrine of the right of nations to self-determination was no academic pipe-dream. It had its origin in the uncompromising pre-WW I struggle between Lenin, Stalin and Trotsky (and orthodox Marxists with Karl Kautsky at their head) on the one side, and the Austro-Marxist theorists such as Karl Renner and Otto Bauer on the other.<sup>39</sup>

Austro-Marxist ideas of non-territorial personal autonomy, developed as a socialist alternative to the seemingly inevitable dissolution of the multi-national Austro-Hungarian Empire under the pressure of Hungarian, Czech, Slovak and Balkan nationalism, found a ready audience among the Jews of the Russian Empire. The Jews, although concentrated in the “pale of settlement”, had no “historic” or “consolidated” territory. The Jewish Socialist “Bund” (*Algemeyner Yidisher Arbeter Bundin Lite, Poyln un Rusland*) was founded in Vilna (now Vilnius, capital of Lithuania) in 1897, as a Jewish political party espousing social democratic ideology as well as cultural Yiddishism and Jewish national autonomism.<sup>40</sup> The First Congress of the Russian Social Democratic Labour Party in 1898 decided that the Bund “is affiliated to the Party as an autonomous organisation independent only in regard to questions specifically concerning the Jewish proletariat.”<sup>41</sup> It was from the start influenced by the ideas of Renner and Bauer, although Renner’s model did not allow for diasporas or scattered minorities.<sup>42</sup> As Yves Plasseraud points out:

“The leaders of the Bund and the Jewish Socialist Workers Party therefore took on the task of adapting Renner’s ideas to the situation of the Yiddish-speaking Jews of Central and Eastern Europe... The Bundist leaders proposed that Russia, like the Austro-Hungarian Empire, should become a federation of autonomous peoples.”<sup>43</sup>

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<sup>38</sup> Anghie, *ibid*, p.115 et seq

<sup>39</sup> Bowring, Bill “Burial and Resurrection: Karl Renner’s controversial influence on the ‘National Question’ in Russia” in Ephraim Nimni (ed) *National-Cultural Autonomy and its Contemporary Critics* (London:Routledge, 2005) pp.191-206

<sup>40</sup> In the Bund Archive at the Russian State Archive of Social and Political History (GRASPI), Moscow

<sup>41</sup> *The CPSU in Resolutions and Decisions of Its Congresses, Conferences and Plenary Meetings of the Central Committee* (Moscow: Progress, 1954) Part 1, 14

<sup>42</sup> Plasseraud, Yves (2000) “How to solve Cultural Identity Problems: Choose your own nation” *Le Monde Diplomatique* May 2000, p.4 at [www.globalpolicy.org/nations/citizen/region.htm](http://www.globalpolicy.org/nations/citizen/region.htm)

<sup>43</sup> Plasseraud, *ibid*, p.4

Vladimir Ilich Ulyanov (V I Lenin), the leader of the Bolsheviks following the split in the RSDLP in 1903, was a bitter opponent of the Bund and of the Austro-Marxist prescription. In October 1903 he published an article entitled “The Position of the Bund in the Party”.<sup>44</sup> He was especially critical of the Bund’s idea of a Jewish nation. He argued that: “Unfortunately, however, this Zionist idea is absolutely false and essentially reactionary. ‘The Jews have ceased to be a nation, for a nation without a territory is unthinkable’, says one of the most prominent of Marxist theoreticians, Karl Kautsky.” Lenin was wholly in agreement with Kautsky on this point, which, however, clearly falls short of a demand for self-determination of each nation. The fact that there is a nation at home in its territory does not mean that the nation will become an independent state.

At this point therefore, in 1903, Lenin adopted Kautsky’s orthodox “scientific” definition of the concept “nationality”, with two principal criteria: language and territory.<sup>45</sup> Both Lenin and Kautsky were in favour of Jewish assimilation.

The logic of Lenin’s position was therefore that national self-determination was the path of modernisation. This was the Russian Marxist thesis, of Plekhanov and others, that the most advanced bourgeois polities, advanced, that is, in terms of industrialisation and technology, were also the most likely sites of successful proletarian revolution. Austria and Prussia were backward as essentially agricultural, pre-industrial polities, as was Russia too. This, incidentally, was not Marx’s position, as his correspondence with Russian socialists shows.<sup>46</sup> By 1917 Lenin too had changed his position as to where revolution was possible. But his views on national cultural autonomy did not change.

It follows that sovereignty, for Lenin, had he considered the point expressly, would necessarily have encompassed not only a nation inhabiting its territory, but also a project of economic and technological modernisation.

Also in early 1913, J. V. Stalin published, under Lenin’s instruction, his one substantial work of theory, *Marxism and the National Question*.<sup>47</sup> This text, which represented orthodoxy for the next 40 years, devoted a whole chapter to “Cultural-National Autonomy”, and was primarily designed as a reply to the Bund. Stalin attempted his own definition of a nation:

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<sup>44</sup> Lenin, V. I (1968) *Complete Collected Works* (2nd ed) Vol 7 (Moscow: Progress), 92, first published in Iskra 22 October 1903, n.51

<sup>45</sup> Kautsky, Karl (1903) *Neue Zeit* No.2

<sup>46</sup> Shanin ???

<sup>47</sup> Stalin, J V (1913) *Marxism and the National Question* nos 3-5 *Prosveshniye (Enlightenment)* March-May 1913, at [www.marxists.org/reference/archive/stalin/works/1913/03.htm](http://www.marxists.org/reference/archive/stalin/works/1913/03.htm)

“A nation is 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.”

It is noteworthy that Stalin’s definition of the nation is not so far from contemporary orthodoxy.

Anthony D. Smith defines *ethnie* as:

“... a named unit of population with common ancestry myths and shared historical memories, elements of shared culture, a link with a historic territory, and some measure of solidarity, at least among the elites.”<sup>48</sup>

Note the importance of the link to territory. Again, Smith defines the modern nation, in ideal-typical terms, as “... a named human population sharing a historic territory, common myths and historical memories, a mass, public culture, a common economy and common rights and duties for all members.” John Hutchinson, too, contends that “... Nations are distinguished in addition by a commitment to citizenship rights, and the possession of a high literate culture, a consolidated territory and a unified economy.”

They are all agreed on the importance of territory.

In December 1913 Lenin began himself to write on the question of the “right of nations to self-determination”. In a short polemic<sup>49</sup> on the question of independence for Ukraine, he insisted on “... *freedom* to secede, for the *right* to secede”, while conceding that “... the *right* to self-determination is one thing, of course, and the *expediency* of self-determination, the secession of a given nation under given circumstances, is another.” Later in December 1913<sup>50</sup> he again declared that “A democrat could not remain a democrat (let alone a proletarian democrat) without systematically advocating, precisely among the Great-Russian masses and in the Russian language, the “self-determination” of nations in the political and not in the “cultural” sense.” The latter, he said, meant only freedom of languages.

In April-June 1914 Lenin published his own substantial work on the question, a polemic against Rosa Luxemburg, who opposed the break-up of the Tsarist Empire, on the grounds that the proletariat, having thrown off the shackles of national sentiment, should have the widest

<sup>48</sup> Smith, Anthony D. (2001) “Nations and History” in M. Guibernau and J. Hutchinson (eds) *Understanding Nationalism* (London: Polity), pp.9-31, at p.19. See also Smith, Anthony D. (2002) “Dating the nation” in Daniele Conversi (ed) *Ethnonationalism in the Contemporary World: Walker Connor and the study of nationalism* (London: Routledge), pp.53-71

<sup>49</sup> Lenin, V. I (1913) The Cadets and “The Right of Nations to Self-Determination”, *Proletarskaya Pravda* No.4, 11 December 1913, *Collected Works* (1977) vol.19, 525-527, at <http://www.marxists.org/archive/lenin/works/1913/dec/11.htm>

<sup>50</sup> Lenin, V. I. (1913) ‘National-Liberalism and the Right of Nations to Self-Determination’ *Proletarskaya Pravda* No.12, 20 December 1913, *Collected Works* (1972) vol.20, pp.56-58 at <http://www.marxists.org/archive/lenin/works/1913/dec/20.htm>

possible terrain on which to unite and fight. This was entitled “The Right of Nations to Self-Determination”.<sup>51</sup> In the first chapter, he insisted that “... it would be wrong to interpret the right to self-determination as meaning anything but the right to existence as a separate state.”<sup>52</sup> Furthermore, “... the national state is the rule and the “norm” of capitalism: the multi-national state represents backwardness... from the standpoint of national relations, the best conditions for the development of capitalism are undoubtedly provided by the national state.”<sup>53</sup>

His understanding of the historical significance of the demand is highly significant for this paper:

“The epoch of bourgeois-democratic revolutions in Western, continental Europe embraces a fairly definite period, approximately between 1789 and 1871. This was precisely the period of national movements and the creation of national states. When this period drew to a close, Western Europe had been transformed into a settled system of bourgeois states, which, as a general rule, were nationally uniform states. Therefore, to seek the right to self-determination in the programmes of West-European socialists at this time of day is to betray one’s ignorance of the ABC of Marxism.

In Eastern Europe and Asia the period of bourgeois-democratic revolutions did not begin until 1905. The revolutions in Russia, Persia, Turkey and China, the Balkan wars - such is the chain of world events of *our* period in our “Orient”. And only a blind man could fail to see in this chain of events the awakening of a *whole series* of bourgeois-democratic national movements which strive to create nationally independent and nationally uniform states. It is precisely and solely because Russia and the neighbouring countries are passing through this period that we must have a clause in our programme on the right of nations to self-determination.”<sup>54</sup>

Thus, Lenin’s conception of self-determination in 1914 was wholly and necessarily applicable not only to the Tsarist (territorial) Empire but also to the European (maritime) colonial empires. It was an essential component of modernisation, of the escape from backwardness.

He spelt this out further in 1915, in a polemic with his fellow revolutionary Karl Radek:

“We demand freedom of self-determination, i.e., independence, i.e., freedom of secession for the oppressed nations, not because we 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. Just as Marx, in 1869, demanded the separation of Ireland, not for a split

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<sup>51</sup> Lenin, V. I. (1914) ‘The Right of Nations to Self-Determination’ *Prosveshcheniye* Nos.4, 5 and 6, *Collected Works* (1972) vol.20, pp.393-454, at <http://www.marxists.org/archive/lenin/works/1914/self-det/index.htm>

<sup>52</sup> Lenin (1914), <http://www.marxists.org/archive/lenin/works/1914/self-det/ch01.htm>, p.2

<sup>53</sup> Lenin (1914) <http://www.marxists.org/archive/lenin/works/1914/self-det/ch01.htm>, p.5

<sup>54</sup> Lenin (1914) <http://www.marxists.org/archive/lenin/works/1914/self-det/ch03.htm>

between Ireland and Britain, but for a subsequent free union between them, not so as to secure “justice for Ireland”, but in the interests of the revolutionary struggle of the British proletariat, we in the same way consider the refusal of Russian socialists to demand freedom of self-determination for nations, in the sense we have indicated above, to be a direct betrayal of democracy, internationalism and socialism.”<sup>55</sup>

Indeed, Marx insisted that freedom for Ireland was the necessary condition for the emancipation of the British workers. Lenin, however, appeared to have moved from an argument for the instrumental importance of modernisation, including the nation-state, as a condition for the proletarian revolution, to advocacy of national self-determination as an absolute principle deviation from which would constitute betrayal.

Finally, in 1916, in a long article entitled ‘The Discussion on Self-Determination Summed Up’<sup>56</sup>, Lenin wrote, with regard to the colonies:

“Our theses say that the demand for the immediate liberation of the colonies is as “impracticable” (that is, it cannot be effected without a number of revolutions and is not stable without socialism) under capitalism as the self-determination of nations, the election of civil servants by the people, the democratic republic, and so on—and, furthermore, that the demand for the liberation of the colonies is nothing more than “the recognition of the right of nations to self-determination””

It is, therefore, perfectly clear that Lenin’s conception of self-determination had nothing in common with that propounded by Woodrow Wilson after WWI. It should be recalled that the standard texts on international law usually refer only to Wilson as progenitor of the concept. For Wilson, self-determination applied – and applied only – to the former Ottoman, Austro-Hungarian and Russian empires. The British, Belgian, French, Dutch, Spanish and Portuguese Empires were in no way to be threatened. And American interests in Puerto Rico and the Philippines were also sacrosanct. Lenin’s approach, on the other hand, was consistent, and revolutionary.

### **Pheng Cheah on Lenin**

Pheng Cheah's book *Spectral Nationality* draws from Benedict Anderson and others on the importance of what Cheah terms the “organismic” content of decolonising nationalism. Cheah, unlike Anghie and Knop, recognises the crucial role played by Lenin's contribution. Lenin’s

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<sup>55</sup> Lenin, V. I. (1915) ‘The Revolutionary Proletariat and the Right of Nations to Self-Determination’, *Collected Works* (Moscow: Progress, 1974) Vol.21, pp.407-414, at <http://www.marxists.org/archive/lenin/works/1915/oct/16.htm>

<sup>56</sup> Lenin, V. I. (1916) ‘The Discussion on Self-Determination Summed Up’ *Sbornik Sotsial-Demokrata* No.1, October 1916, *Collected Works* (Moscow: Progress 1974) Vol.22, pp.320-360, at <http://www.marxists.org/archive/lenin/works/1916/jul/x01.htm>

importance for Cheah is as precursor and constant point of reference for Amilcar Cabral<sup>57</sup> and Franz Fanon<sup>58</sup>. Indeed, this section of his book is headed “Acts of culture: The return of the nation-people in socialist decolonisation.”<sup>59</sup> According to Cheah, Lenin made a distinction between two successive stages of capitalism: a stage where national state-formation is the norm because the nation is the condition for the growth of capitalism and its victory over feudalism and absolutism; and an advanced stage, immediately preceding the transition to socialism, in which national barriers are eroded.<sup>60</sup> Thus, again in Cheah’s formulation, based on Lenin’s argument with Rosa Luxemburg, Western European nationalism was by then reactionary, with no mass democratic movements. But the proletarian movement was under a duty to support the struggle for self-determination elsewhere in the world, “because political democracy is a step closer to socialism.”<sup>61</sup>

As Cheah observes, Lenin revelled in the spontaneous vitality of the national liberation movements: “*Hundreds* of millions of people are awakening to life, light and freedom. What delight this world movement is arousing in the hearts of all class-conscious workers...”<sup>62</sup> For Cheah, Cabral’s and Fanon’s “... exemplary theories of decolonising nationalism continue this legacy.”<sup>63</sup>

### **The Soviet practice of self-determination**

On the question of self-determination, at least, Lenin was no hypocrite. Self-determination was not a mere slogan, but a principle he put into practice with immediate effect within the former Russian Empire following the Bolshevik Revolution. Lenin’s Decree on Peace of 26 October 1917, for the first time extended the principle of the right to self-determination to all peoples,

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<sup>57</sup> Cabral, Amilcar (1979) *Unity and Struggle: Speeches and Writings* (New York: Monthly Review Press)

<sup>58</sup> Fanon, Franz (1963) *The Wretched of the Earth* (New York: Grove Weidenfeld)

<sup>59</sup> Cheah, Pheng (2003) *Spectral Nationality: Passages of Freedom from Kant to Postcolonial Literatures of Liberation* (New York: Columbia UP), p.208

<sup>60</sup> Cheah (2003) p.210

<sup>61</sup> Cheah (2003) p.211

<sup>62</sup> Lenin, V I “Backward Europe and Advanced Asia” v.19 *Collected Works* p.100, cited at Cheah (2003) p.212

<sup>63</sup> Cheah (2003) p.214

thereby, according to the late Igor Blishchenko<sup>64</sup>, discarding the imperialist distinction between “civilised” and “uncivilised” nations.<sup>65</sup> The Decree declared that:

“By annexation or seizure of foreign territory the government, in accordance with the legal concepts of democracy in general and of the working class in particular, understands any incorporation of a small and weak nationality by a large and powerful state without a clear, definite and voluntary expression of agreement and desire by the weak nationality, regardless of the time when such forcible incorporation took place, regardless also of how developed or how backward is the nation forcibly attached or forcibly detained within the frontiers of the [larger] state, and, finally, regardless of whether or not this large nation is located in Europe or in distant lands beyond the seas.

If any nation whatsoever is detained by force within the boundaries of a certain state, and if [that nation], contrary to its expressed desire whether such desire is made manifest in the press, national assemblies, party relations, or in protests and uprisings against national oppression, is not given the right to determine the form of its state life by free voting and completely free from the presence of the troops of the annexing or stronger state and without the least desire, then the dominance of that nation by the stronger state is annexation, i.e., seizure by force and violence.”<sup>66</sup>

In an article written in 1968, Blishchenko answered the Western scholars who argued that the Decree was entirely hypocritical, first having no application to peoples within the USSR, and second, having been applied only to Finland in the former Tsarist Empire. He pointed to the substantial autonomy, if short of secession, enjoyed by Union and Autonomous Republics in the USSR in accordance with Article 17 of its Constitution. More importantly, he underlined the extent to which the principle was indeed put into practice by Lenin in the early years of the USSR. On 4 (17) December 1917 the Soviet government recognised the right to self-determination of Ukraine. In response to the request of the Finnish government, the Soviet of Peoples’ Commissars on 18 (31) December 1917 resolved to go to the Central Executive Committee with a proposal to recognise Finland’s independence. In fact, it was the Whites, including Tsarist officers, who opposed Finnish independence, seeking to restore the Russian Empire. By a Decree of 29 December 1917 (11 January 1918) the right of the people of “Turkish Armenia” to self-determination was recognised. In answer to a request from the

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<sup>64</sup> Igor Blishchenko (1930-2000) was one of the best Soviet scholars of international law, although the text cited was published, ironically, in 1968, the year that the USSR crushed the “Czech Spring”. I worked with Blishchenko, who became the leading expert on humanitarian law, for a number of years, in particular on the draft of the Rome Statute of the International Criminal Court; for a touching obituary by the International Committee of the Red Cross, see <http://www.icrc.org/Web/eng/siteeng0.nsf/html/57JREV>

<sup>65</sup> Blishchenko, Igor P (1968) *Antisovyetizm i mezhdunarodnoye pravo (Antisovietism and international law)* (Moscow), p. 69

<sup>66</sup> <http://www.firstworldwar.com/source/decreeonpeace.htm>

government of Soviet Estland, on 7 December 1918 Lenin signed a Decree on recognition of the independence of Estonia, Latvia and Lithuania.<sup>67</sup>

And on 5 February 1919 Soviet Russia insisted, in a principled manner, that in implementing the principle of self-determination, the issue was to be resolved by the self-determining nation itself, that is by the people itself. The dictatorship of the proletariat was not a condition for self-determination, which applied equally to bourgeois independence movements. Thus, the Soviet government recognised the republics of Bukhara and Khorezm, which were not socialist.

What Blishchenko failed to point out, not surprisingly in 1968, is the fact that one of Lenin's most bitter struggles with Stalin concerned independence for Georgia.<sup>68</sup> Ironically, Lenin, true to his principles, was an unconditional supporter of Georgian independence, even under Menshevik control, while Stalin was committed to the extension of the USSR to the frontiers of the Tsarist empire and beyond.

### **The USSR and self-determination after WWII**

In his 1968 text Blishchenko celebrated the break-up of the colonial system of imperialism, and the broad national liberation movements in Asia, Africa and Latin America after WWII, which had posited the right of peoples to self-determination with new force. He asserted, with reason, that the USSR had done everything to ensure that the right became one of the fundamental principles of contemporary international law. This was due in part the work of the Soviet Delegation at the San Francisco Conference<sup>69</sup> which drafted the Charter of the UN, as a result of which Article 2(1) of the Charter refers to "respect for the principle of equal rights and self-determination of peoples...".<sup>70</sup>

The colonial empires were remarkably persistent. As Morsink points out<sup>71</sup>, Lenin calculated in 1914 that more than one half of the world's population lived in colonies, which covered  $\frac{3}{4}$  of the world's territory, a calculation that was still roughly correct at the end of the 1940s. The UN's Universal Declaration on Human Rights was drafted just as the European maritime empires began to break up. Two leading participants in the drafting process, Malik from Lebanon and

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<sup>67</sup> Blishchenko (1998) at p.71; see also, on national liberation movements: Baratashvili, D I (1967) *Natsionalno-osvoboditelnoye dvizheniye i razvitiye mezhdunarododnovo prava* (The national liberation movement and the development of international law) No. 9 *Sovetsoye gosudarstvo i pravo* (Soviet state and law) pp.69-75

<sup>68</sup> See Lewin, Moshe (2005) *Lenin's Last Struggle* (Ann Arbor: University of Michigan Press)

<sup>69</sup> United Nations Conference on International Organisation, 1945, v. III, 622; and see Tunkin (1970) at p.67

<sup>70</sup> Blishchenko (1968) at p.75

<sup>71</sup> Morsink, Johannes (1999) *The Universal Declaration of Human Rights. Origins, Drafting and Intent* (Philadelphia: University of Pennsylvania Press), p.96

Romulo from the Philippines, were from countries which became independent in 1946, together with Syria. India, Burma, Pakistan gained their independence in 1947, together with Ceylon in 1948. India and Pakistan were both active players in the drafting process.

At the same time, Andrei Zhdanov, Stalin's favourite, delivered the key speech at the founding meeting of the Cominform (Communist Information Bureau), and announced that the world was divided into two camps, "the imperialist and anti-democratic camp" led by the United States, and the "democratic and anti-imperialist camp" led by the USSR. He asserted that there was a "crisis of the colonial system" and that "the peoples of the colonies no longer wish to live in the old way. The ruling classes of the metropolitan countries can no longer govern the colonies on the old lines."<sup>72</sup>

It is clear that this was anathema to the United States and its allies. Cassese relates that the Dumbarton Oaks Proposals, the basis for the UN Charter, did not contain any reference to self-determination. The demand for self-determination was reconsidered at the end of April 1945, at the UN Conference on International Organisation in San Francisco – at the insistence of the USSR.<sup>73</sup> Thus, a draft was presented referring to "...respect for the principle of equal rights and self-determination of peoples."

At the II Session of the UN General Assembly the Soviet delegation proposed an article for the Universal Declaration on Human Rights as follows:

"Each people and each nation has the right to national self-determination. A state which has responsibility for the administration of self-determining territories, including colonies, must ensure the realisation of that right, guided by the principles and goals of the United Nations in relation to the peoples of such territories."<sup>74</sup>

However, under pressure from the colonial powers this proposal was rejected, with the result that the principle of self-determination does not appear in the UDHR.<sup>75</sup> Nevertheless, the USSR, with the support of the socialist countries and the newly independent states of Asia continued to

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<sup>72</sup> cited in Morsink *Ibid* at p.97

<sup>73</sup> Cassese, Antonio (1995) *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge: Cambridge University Press), p.38

<sup>74</sup> Tunkin was the best known Soviet scholar of international law. He was born in 1906, and died aged 87 in 1993, while completing the last edition of his *Theory of International Law*, and having just submitted an article – on customary international law - to the *European Journal of International Law*. Here he wrote of the attempt "... to create a new world order based on the rule of law": Tunkin, G. I. (1993) 'Is General International Law Customary Only?' vol.4, n.4 *European Journal of International Law* 534-541, p.534

<sup>75</sup> Tunkin, G. I. (1970) *Teorii Mezhdunarodnovo Prava (The Theory of International Law)* Moscow: Progress, 2nd revised edition), p.69

campaign for the establishment of practically unlimited right to self-determination of colonial and dependant countries and peoples.<sup>76</sup>

At the X session of the UNGA in 1955 the states which opposed inclusion of the right to self-determination into the Covenants argued that the UN Charter only refers to a “principle” and not a “right” of peoples to self-determination, and that in various instruments the principle is interpreted in different ways. To the extent that the right to self-determination is a collective right, then it was inconsistent to include it in a document setting out the rights of individuals. Supporters however responded that despite the fact that the right to self-determination is collective, it affects each person, and that to remove it would be the precondition for limiting human rights. Furthermore, a state accepting the UN Charter and recognising it, must respect the “principle of self-determination” and the “right” flowing from it. The latter point of view, championed by the USSR, triumphed, and the new “right” found its way into the common Article 1 of both the International Covenants on Civil and Political Rights, and Social, Economic and Cultural Rights, respectively.<sup>77</sup> In the next section I show how this was achieved.

### **How self-determination became a legal right in international law**

Heather Wilson reminds us<sup>78</sup> that the admission of seventeen newly independent States at the opening of the fifteenth session of the General Assembly had a decisive effect on the UN. On 23 September 1960, the Soviet Union, grasping the opportunity presented by this dramatic development, requested the addition of a ‘declaration on the granting of independence to colonial peoples and countries and peoples’ to the agenda.<sup>79</sup> This was a truly climactic moment in the development of contemporary international law.

It was the USSR which submitted to the XV Session of the UN General Assembly the draft of the historic Resolution 1514 (XV) of 14 December 1960, the “Declaration on the granting of independence to colonial countries and peoples”. This historic resolution aroused a whole wave of reactions and protests, but, none the less, was adopted. It noted the connection between the right of peoples to self-determination and individual freedoms.

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<sup>76</sup> Grushkin, Dmitrii (1997) “Pravo Narodov na Samoopredeleniye: Istoriya Razvitiya i Voploshcheniye Ideyi (Right of Peoples to Self-Determination: History of the Development and Realisation of the Idea)” in Aleksandr Ossipov *Pravo Narodov na Samoopredeleniye: Ideya i Voploshcheniye (Right of Peoples to Self-Determination: Idea and Realisation)* (Moscow: Memorial.), p.10

<sup>77</sup> Grushkin *Ibid* p.12

<sup>78</sup> Wilson, Heather Anne (1990) *International Law and the Use of Force by National Liberation Movements* (Oxford: Clarendon Press) , pp.67-68

<sup>79</sup> UN Doc A/4501, 23 September 1960

Following on the heels of Resolution 1514 (XV) came a number of documents of a similar type: Resolution 1803 (XVII) of 14 December 1962 on “Inalienable sovereignty in relation to natural resources”; and Resolution 2105 (XX) of 20 December 1965 “On the realisation of the Declaration on the granting of independence to colonial countries and peoples”, in which the General Assembly recognized the legitimacy of the struggle of colonial peoples against colonial domination in the exercise of their right to self-determination and independence, and invited all States to provide material and moral support to national liberation movements in colonial territories.

In the 1966 Covenants on human rights, which to begin with were developed as a single document, it was decided that the provision on self-determination be included on the basis that:

- a) it “...is the source or essential foundation for other human rights, since there cannot be authentic realisation of individual rights without realisation of the right to self-determination”
- b) in drafting the Covenants the realisation and protection of the principles and goals of the UN Charter must be taken into account, including the principles of equal rights and self-determination of peoples
- c) a series of provisions of the Universal Declaration of Human Rights are directly connected to the right to self-determination
- d) if the right was not included in the Covenants, they would be incomplete and ineffective.<sup>80</sup>

Writing in 1970, Tunkin also pointed out that if in 1919 as many as 64% of the population of the planet lived in colonies and semi-colonies, then at the start of 1969 only 1% of humanity remained in colonies. It was on this basis that both the International Covenants have a common Article 1, on the right in international law of peoples to self-determination. This was a remarkable achievement by the USSR and its allies in the de-colonised world.<sup>81</sup>

### **The National Liberation Movements**

The success of the USSR and its allies in the 1960s had momentous consequences for the legal and political process of decolonisation. Later resolutions of the UNGA ensured that the so-

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<sup>80</sup> Grushkin, *ibid*, p.12, citing Kristesky, A (1981) *Pravo narodov na camoopredeleniye: istoricheskoye i sovremennoye pazvitiye (Right of peoples to self-determination: historical and contemporary development* (New York: UN ECOSOC)

<sup>81</sup> Tunkin (1970) at p.70

called “national liberation movements”<sup>82</sup> were recognised as the “sole legitimate representatives” of the relevant peoples. In other words, ex-territorial social and political organisations were in fact made equal to sovereign subjects of international law. Examples were the Palestine Liberation Organisation (PLO), the South West African Peoples Organisation (SWAPO), the ANC (African National Congress) and PAC (Pan African Congress). In 1973 the UN declared that it recognised SWAPO as the “sole authentic representative of the people of Namibia.” And in 1974 the PLO was recognised by the majority of member states of the UN as the lawful representative of the Palestinians, with corresponding status at the UN.

The Western literature on Soviet support for the national liberation movements largely dates from the late 1980s and early 1990s, that is, it is retrospective and ideological, in the sense that it surveys what is assumed to have been a failure. Indeed, there were scholars such as Christopher Quaye, who ignored the Soviet role in promoting the legal right to self-determination or supporting the national liberation movements.<sup>83</sup> However, Galia Golan, although seemingly unaware of the international law dimension, wrote in the context of national liberation movements that: “The term preferred by the Soviets [to “independence”] as an overall, all-inclusive type of objective was self-determination.”<sup>84</sup> Her book demonstrates the huge resources devoted by the USSR to support of all kinds for a very wide range of national liberation movements in the Third World. The tables she prepared list 43 movements in 26 countries, with 13 instruments of what she described as “Soviet behaviour”.<sup>85</sup> Roger Kanet, in turn, noted that “Soviet trade with the developing nations increased more than eleven times from 1955 to 1970”. In 1970 it increased an additional 15.7 percent.<sup>86</sup> Furthermore, Bhabani Sen Gupta pointed out:

“... in cultivating friendly, viable forces, the Soviet union has persistently tried to satisfy some of the *felt* needs of the power elites of Third World societies. In South Asia, they have come forward to provide aid for industrialisation programs in India, for which the Indians could not secure resources either domestically or from Western nations...”<sup>87</sup>

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<sup>82</sup> See Golan, Galia (1988) *The Soviet Union and National Liberation Movements in the Third World* (Boston: Unwin Hyman)

<sup>83</sup> Quaye, Christopher (1991) *Liberation Struggles in International Law* (Philadelphia: Temple University Press)

<sup>84</sup> Golan (1988), p.136

<sup>85</sup> Golan (1988) at pp.262-267

<sup>86</sup> Kanet, Roger (1974) “The Soviet Union and the Colonial Question 1917-1953” in Roger Kanet (ed) *The Soviet Union and the Developing Nations* (Baltimore: Johns Hopkins UP), pp. 1-26, at p.1

<sup>87</sup> Gupta, Bhabani Sen (1974) “The Soviet Union in South Asia” in Roger Kanet (ed) *The Soviet Union and the Developing Nations* (Baltimore: Johns Hopkins UP), pp.119-152at p.123

I would contend, contrary to these authors, that it was not as a result of Soviet propaganda, but through the logic of the new international law, developed through the efforts of the USSR and its allies, that a people with the right to self-determination faced with aggressive attempts to deny that right enjoyed the right of self-defence under Article 51 of the Charter, and was in all respects be considered a subject of international law. Thus, in 1968, two years after adoption of the two UN International Covenants, Portugal was waging war against the peoples of Angola and Mozambique. Those peoples were therefore victims of aggression and enjoyed the right of self-defence, and third party states had the right and duty to come to their assistance.<sup>88</sup>

### **US perceptions of Soviet support for national liberation movements**

In 1970 the US scholar Alwyn Freeman observed:

“In the years following World War II increasing interest has been evidenced in the extent to which Soviet theory and practice may have influenced the development of the law of nations. This is to be expected in view of the prominence and power which the USSR has come to enjoy in the world community.”<sup>89</sup>

Freeman denounced what he saw as a “political dogma dressed in treacherous legal trappings”, namely the official Soviet doctrine of “peaceful coexistence”. He referred, as do so many American scholars of the period, as well as President Kennedy in his post-inauguration speeches, to an alleged address by Khrushchev to a Soviet Communist Party audience on 6 January 1961.<sup>90</sup> In one account:

“Soviet Premier Nikita Khrushchev delivered a speech behind closed doors in which he asserted that “a mighty upsurge of anti-imperialist, national-liberation revolutions” was sweeping through the “third world.” He went on to say that “Communists fully and unreservedly support such just wars . . . of national liberation.”<sup>91</sup>

The impact of Khrushchev’s words was felt in the US itself and in its subsequent policy:

“The speech, published in the Soviet press just two days before the newly elected President John F. Kennedy took his oath of office, had a profound effect on the new administration which regarded it as a portent of wars to come. Kennedy and his advisers concluded that the Cold War was entering a new phase which would take place in the “third world,” and would be characterized by guerrilla wars. Accordingly, they sought to improve the nation’s ability to conduct counter insurgency warfare by dramatically expanding the Army’s Special Forces or, “green berets.” Before Kennedy’s assassination

<sup>88</sup> Blishchenko (1968) at pp.76-77

<sup>89</sup> Freeman, Alwyn M (1968) “Some Aspects of Soviet Influence on International Law” *American Journal of International Law* v.62, n3, pp. 710-722, at pp.710-711

<sup>90</sup> Quoted in the American Bar Association (1964) *Peaceful Coexistence: A Communist Blueprint for Victory*, 14

<sup>91</sup> <http://hnn.us/roundup/comments/19470.html>

in Dallas in 1963, he had dispatched over 16,000 of them to South Viet Nam in order to engage in just such a conflict. The war for the “third world,” and a new phase of the Cold War had gotten under way in earnest.”<sup>92</sup>

This address may well be apocryphal; it has proved impossible for me to track down a definite reference. But there is every reason to believe that its effect was as described.

It had its effect on the scholars too. For Freeman, while accommodations of mutually acceptable principles were possible in 1968, no progress in international law was possible until “the Soviet Union is prepared to abjure its messianic and compulsive espousal of the doctrine of world revolution.”<sup>93</sup> Freeman was of course writing at the height of the Vietnam War: he expresses outrage that the public opinion barrage orchestrated by the USSR “...actually inhibited the United States from using tear gas where such use was in the interest of humane treatment of the civilian population.”<sup>94</sup>

The leading Soviet scholars were, in the end, obliged to abandon both positivism and the revolutionary content of self-determination. Writing in 1991, just before the dissolution of the USSR, and using the new language of “perestroika”, “common human values” and “common European home”, Blishchenko also argued for “re-thinking the periodisation of the contemporary history of international law, and for reading its formation not in the October Revolution of 1917 but the French bourgeois revolution, for the first time promoting such generally recognised norms and principles of international law as the right of peoples to self-determination...”<sup>95</sup>

However, the principle, then right, of self-determination played in my view a much more significant role, both in its practical effects in the international order, and as the “obscene other” of Soviet positivism in international law.

This paradoxical, dialectical aspect of Soviet international law is entirely missed by almost all the scholars of international law. It seems to me that a radical re-working of all accounts of self-determination and sovereignty is required in order to account satisfactorily with the role of law in a world in which capitalism has – as it must, and as Marx predicted – spread to every corner. Turbulence has grown proportionately with interdependence. The Iraq adventure is a compelling

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<sup>92</sup> Speed (2005)

<sup>93</sup> Freeman (1968) at p.722

<sup>94</sup> Freeman *Ibid* at p.720

<sup>95</sup> Blishchenko (1991), at pp.135-136

example not of the omnipotence of US power, but of its radical limitations, and the indomitable human spirit.

The right of peoples to self-determination in international law achieved the status of a right in the context of de-colonisation and – thoroughly paradoxical and hypocritical – Soviet support both for the principle and for national liberation movements. It was law, indeed a pillar of the international rule of law.

### **Self-determination in and around the former USSR**

I am sure that on Lenin's principles and criteria, the Chechens, as an undoubted “people” and indeed “nation”, have the right to self-determination, and should be supported in their just struggle. As is now well-established, this need not take the form of full secession from the Russian Federation. The almost complete autonomy enjoyed by Tatarstan (although now under threat) is a possible model. The same is true for the Kurds.

However, considerably greater doubt must be expressed as concerns Kosovo. One consequence of the Ottoman Empire is that there are significant Turkish, Turkic, Albanian and Muslim populations to be found in Serbia (especially in the Preshovo Valley), in Macedonia (around Tetovo and Gostivar), in Bosnia-Herzegovina (around Sarajevo), and not least in Bulgaria. But these populations do not present the picture of tragically divided nationhood, as suffered by the Kurds after the First World War.

To take Serbia and Macedonia, the former ratified the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM) even before it joined the Council of Europe, and, with the help of the OSCE, something of a model regime has been developed in the Preshovo Valley, including the election of Albanian Mayors, and the creation of multi-ethnic police. With help from the former High Commissioner on National Minorities, Max van der Stoel, a new university, now named after him, has been created in Tetovo, and important rights have been granted to the Albanian minority.

Kosovo is a rather different issue. As Christopher Borgen has written: “One may argue that the Kosovars are a “people”, having inhabited Kosovo for centuries. However, the Kosovar Albanians are more generally perceived as an Albanian ethnic enclave, rather than a nation unto themselves. This definition of the word "people" as “nation” has been criticized for being too restrictive. Consequently, it remains an open question whether widespread support of Kosovo's independence would signal a shift in the definition of "people" so that the term no longer

represents a *complete ethnic nation* but can be used to refer to a *homogenous ethnic enclave* within another nation.”<sup>96</sup>

Borgen raises the following crucial questions. Given the ambiguity of the claim of a legal privilege of secession and the fairly broad leeway that states have to recognize Kosovo, should they choose to do so, is the example of Kosovo of legal relevance to other separatist conflicts, such as those in Abkhazia, South Ossetia, Nagorno-Karabakh, and Transnistria? Or is Kosovo *sui generis* and of no precedential weight? He notes the diametrically opposed positions of the USA and Russia. In announcing the recognition of Kosovo by the United States, Condoleeza Rice explained:

“The unusual combination of factors found in the Kosovo situation – including the context of Yugoslavia’s breakup, the history of ethnic cleansing and crimes against civilians in Kosovo, and the extended period of UN administration – are not found elsewhere and therefore make Kosovo a special case. Kosovo cannot be seen as precedent for any other situation in the world today.”<sup>97</sup>

By contrast, the Russian Duma issued a statement that read, in part:

“The right of nations to self-determination cannot justify recognition of Kosovo’s independence along with the simultaneous refusal to discuss similar acts by other self-proclaimed states, which have obtained de facto independence exclusively by themselves.”<sup>98</sup>

Moreover, Bosnian Serbs had earlier stated that, should Kosovo declare independence, they would seek independence for “Republika Srpska,” the self-proclaimed Bosnian Serb ethnic enclave within Bosnia.<sup>99</sup>

<sup>96</sup> Borgen, Christopher (2008) ASIL Insight: “Kosovo’s Declaration of Independence: Self-Determination, Secession and Recognition”, 29 February 2008, Volume 12, Issue 2, at <http://www.asil.org/insights/2008/02/insights080229.html>

<sup>97</sup> U.S. Recognizes Kosovo as Independent State, statement of Secretary of State Condoleeza Rice, Washington DC (Feb, 18 2008) available at <http://www.state.gov/secretary/rm/2008/02/100973.htm>. Moreover, In a statement to the UN Security Council following Kosovo’s declaration, British Ambassador John Sawers said that “...the unique circumstances of the violent break-up of the former Yugoslavia and the unprecedented UN administration of Kosovo make this a *sui generis* case, which creates no wider precedent, as all EU member States today agreed.” Ban Ki-moon urges restraint by all sides after Kosovo declares independence, UN News Centre (Feb. 18, 2008), available at <http://www.un.org/apps/news/story.asp?NewsID=25659&Cr=Kosovo&Cr1..>

<sup>98</sup> Nicholas Kulish and C.J. Chivers, “Kosovo Is Recognized but Rebuked by Others” NY Times (Feb 19, 2008) available at <http://www.nytimes.com/2008/02/19/world/europe/19kosovo.html?pagewanted=2&hp>.

<sup>99</sup> Bosnian Serb nationalists threaten secession, Southeast Europe Times (Feb. 15, 2008) available at [http://www.setimes.com/cocoon/setimes/xhtml/en\\_GB/features/setimes/features/2008/02/15/feature-01](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2008/02/15/feature-01).

The views of a Russian human rights activist – from Kabardino-Balkaria – have received widespread attention. “There is no conflict between the right to self-determination and the principle of territorial integrity” observed Kabardino-Balkaria's Human Rights Center’s Valeri Khatazhukov.<sup>100</sup> According to him:

“...self-determination is a basic human right. The principle of territorial integrity of a country was not established to prevent this human right from being exercised, but rather to prevent existing countries from invading and annexing parts of other countries. Some see contradictions between international principles of self-determination and preservation of territorial integrity of states. As a matter of fact, there are no contradictions. The principle of self-determination is consistently recognized in the provisions of international organizations, first of all, in the Charter of the United Nations. It is even possible to say that it prevails. The territorial integrity of Georgia can only be violated if Abkhazia or South Ossetia were to join Russia, i.e., if they were annexed.”

He welcomed the recent statement by Russia's Lower House of Parliament, the Duma, which supports the striving of Abkhazia, South Ossetia and Transdniestria towards internationally recognition of their independence.

Thus, this opinion was welcomed in Transdniestria (officially: Pridnestrovie) as the new and emerging country enters its 18th year of 'de facto' independence. According to Marius Oroveanu, a freelancer for The Tiraspol Times & Weekly Review: “In the past, Transdniestria was never part of any sovereign Moldovan or Romanian state at any time in history. A historically and linguistically different area, Transdniestria also has an ethnic markup which is different from Moldova's: In Transdniestria, Moldovans are in the minority and ethnic Slavs make up the majority. In Moldova, the opposite is true.”<sup>101</sup>

These statements are very far from Lenin’s conception.

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<sup>100</sup> <http://www.regnum.ru/english/975595.html>

<sup>101</sup> See [http://www.tiraspoltimes.com/news/territorial\\_integrity\\_cant\\_trump\\_the\\_basic\\_human\\_right\\_to\\_self\\_determination\\_expert.html](http://www.tiraspoltimes.com/news/territorial_integrity_cant_trump_the_basic_human_right_to_self_determination_expert.html)