ARTICLES

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SELF-DETERMINATION: AN HISTORICAL AND ANALYTICAL INQUIRY INTO ITS ORIGINS AND EVOLUTION, 1400-1945

INTRODUCTION

I N the evolution of ideas, concepts and principles in the field of international law, none has produced an impact so great as that of "national self-determination" (hereinafter "the principle"). Ironically, the historical origins of the principle and the relationship between its evolution and development in the social, political and, above all, economic institutions associated with its historical origins hardly receive any serious attention in international law. Because of this, available literature on self-determination fails to explain in any rational manner specific discernible trends in the principle's evolution, and the possible relationship between such trends and certain contemporary phenomena associated with the principle. This problem is reflective of the tendency of Anglo-American

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law schools and legal tradition to study given juridical institutions as ends in themselves without an in-depth reference to the meta-legal (historical) forces that necessitate their establishment and influence their development.

The principal objective in this work is to trace the historical evolution of self-determination up to 1945 by analysing the complex inter-play of political, social and economic elements that contributed to its development at specific points in time. It is also proposed to show that the historical evolution of self-determination up to 1945 provided a logical and normative, legitimate basis for the separatist phenomena which are prevalent in post-Communist Europe today.

Self-determination is the right by virtue of which a people freely determines its political status and freely pursues its cultural, social and economic development.[1] In more simple terms, it is the right of peoples to rule themselves. For the purposes of this work "a people" is a collection of human beings knit together by a common cultural identity, manifested in common linguistic, religious and other traditional practices. A people may therefore be a tribe, an ethnic group or a linguistic or religious minority or sub-group.[2]

A claim to self-determination presupposes the existence of a dominated or non self-governing people on the one hand and a dominating or governing power on the other hand. The former as a prospective beneficiary of self-determination, pursues the principle as a remedial right against a situation of domination. In this paper, such prospective beneficiaries (and their sympathisers) will be referred to as "liberals". The demands they represent will be called "liberalism". Liberalism so defined is essentially a call for a redefinition of an associational relationship and an explicit rejection of the existing relations in a given body politic. On the other

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1   This definition was first adopted in 1952 by the United Nations Commission on Human Rights. Since then it has been used frequently as the standard definition in all United Nations literature on the principle. See for instance GA Res 1514 (XV), (1960); GA Res 2625 (XXV) 1970. Despite its apparent novelty, the United Nations definition is basically a reflection of previous statements on self-determination. See also fn30.

2   For other views on who may constitute a people for the purposes of self-determination, see Espiell, *The Right of Self-Determination: Implementation of United Nations Resolution*, UN Document, E/CN 4/ Sub 2/405/Rev 1 (1980) at 9; Cristesu, *The Right of Self-Determination: Historical and Current Developments on the Basis of United Nations Instruments* E/CB 4/Sub 2/404/Rev/ (1981) at 41; Eagleton, "Excesses of Self-Determination" (1953) 31 *Foreign Affairs* 592 at 595; Claude, *National Minorities: An International Problem* (Greenwood Press, New York 1955) p2.

hand, there is the governing or dominating power or group which may, for one reason or the other, seek to maintain the status quo in the form of the existing relationship. For the purposes of this work, this group will be called "conservatives". Its demands and the interest it seeks to protect will be referred to as "conservatism".

SELF DETERMINATION BEFORE WORLD WAR I

The Development of the Nation-State and the Evolution of the Principle of Self-Determination

The term "self-determination" is of recent origin. It appears to have been first used in the works of radical German philosophers in the mid-nineteenth century.[3] The term was also used in the report of the London International Socialist Congress in 1896.[4] However, the notion of the "rights" of peoples to self-rule, with all its parochial sentiments against alien rule, can be traced to the early beginnings of the institution of government.[5]

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3   The original term in German is *Selbstbestimmungrescht*. Literally, the term refers to the "right" to have a "voice" in matters affecting one's "self". In the German Declaration of Rights in 1848, the term had been implied in this sense as the basis of a policy of the voluntary and democratic unification of all Germany: Cobban, *The Nation State and National Self-Determination* (Collins, London 1969). It seems the first English translation of the word appeared in one of the resolutions adopted by the Conference of Socialists from Denmark, Holland, Norway and Sweden at Copenhagen in January 1915. The resolution had called for "the recognition of the right to self-determination of ... nations": Wambaugh, *Plebiscites Since the World War* (Carnegie Endowment for International Peace, Washington 1933) p3 note 1; Collins, "Self-Determination in International Law: The Palestinians" (1980) 12 *Case W Res Journal of International Law* 137 at 138.

4   Lenin, "The Right of Nations to Self-Determination" in *Selected Works* Vol I (Lawrence & Wishart, London 1947) p564. Shaheen however notes that

> the right of national self-determination had been proclaimed in the first manifesto of the Russian Social Democratic Labour Party at its First Congress in 1898, but it was at its Second Congress that a clause regarding the right of self-determination of all nations forming part of the State was, at Lenin's insistence, adopted in the party program. The term had been used principally in relation to the non-Russian nationalities in the Russian State.

Shaheen, *The Communist (Bolshevik) Theory of National Self-Determination: Its Historical Evolution up to the October Revolution* (Van Hoove, The Hague 1956) p1.

5   Umozurike, *Self-Determination in International Law* (Archon Books, Hamden, Connecticut 1972) p4. For a different opinion on this issue, see Acton, *The History of Freedom and Other Essays* (MacMillan & Co, London 1907). He

The evolution of the principle of self-determination in modern political and legal thought is closely related to the institutional development of nationalism and the modern state in Europe. Before the emergence of the state, European society was principally based on feudal institutions. Territory, as a rule, was the property of the monarch. It was their divine right to dispose of any part of their territory at any time as they thought fit.[6]

Under feudalism, political and economic organisation was wholly localised. The nation-state, as an organised political institution, did not exist.[7] These were in part the results of the limitations on the level of

suggests that in dealing with the evolution of self-determination the significant date must be 1831. He describes 1831 as the watershed year because in his view, before that period alien rulers were resisted as oppressors and not aliens as such. In other words, they were resisted "because they misgoverned (and) not because they were of a different race": p284. Acton's views are misleading. They seem to imply that prior to 1831, groups were quite happy to be governed by "aliens" so long as such rulers were not oppressive. He disregards the basic human parochial instinct that divides communities into "us" and "them" and the desire to associate with one's own kind. Historically, such sentiments have always existed and "social leaders have found (the) division into "us" and "them" a useful, if not always defensible, outlook on human existence": Buchheit, *Secession: The Legitimacy of Self-Determination* (Yale Uni Press, New Haven 1978) p1. Since primitive times, mankind has maintained parochial instincts in clan, tribe, village etc while generally looking on alien institutions with distrust: Kohn, *The Idea of Nationalism: A Study in its Origins and Background* (MacMillan Co, New York 1945) pp5-6. See also generally, Hayes, *Essays on Nationalism* (MacMillan Co, New York 1926) particularly ch1; Macartney, *National States and National Minorities* (OUP, London 1934), pp21-23.

6   Shukri, *The Concept of Self-Determination in the United Nations* (Al Jadidah Press, Damascus 1965) p18; Blum, *Historic Titles in International Law* (Martinus Njihoff, The Hague 1965) p1; Verzijl, *International Law in Historical Perspective*, Vol III (Sijthoff, Leyden 1970) pp1-3; Oppenhiem, *International Law* (Lauterpacht, ed) (Longman, London, 8th ed 1955) p545. See also generally Jennings, *The Acquisition of Territory in International Law* (Manchester Uni Press, Manchester 1963); Brierly, *The Law of Nations: An Introduction to the International Law of Peace* (Clarendon Press, Oxford, 6th ed 1963) p162.

7   In this period, people generally looked upon things not from the point of view of nations, nationality or race, "but from the point of view of religion. Mankind was divided not into Germans and French and Slavs and Italians but into Christians and Infidels.": Kohn, *The Idea of Nationalism* p79. Even at the beginning of the 15th century when the church and institutions of higher learning used the term "nation", it did not refer to the nation as a political collectivity in the sense that we have today. It was used to mean associations representing territorial groups without any regard to nationality. Such

technology and the means of communication in the period.[8] At the end of the fifteenth century, economic and social developments in European society precipitated revolutionary changes in the existing political system. The Renaissance brought in its train enlightenment and intellectual development.[9] The Reformation came to challenge Papal authority in particular, and ecclesiastical paramountcy in general.[10] Both phenomena served as catalysts for the eventual liquidation of feudalism and the emergence of new sources of power and influence in Europe.[11]

associations were nothing but parts of the existing whole subdivided for practical purposes to express a difference of opinion": p107. In fact, at the Council of Constance (1414-1417) voters were generally divided into four nations, French, German, English and Italian. The aim was to represent the major political divisions in Europe. Thus the German nation comprised Hungarians and Poles while the English also included Scandinavians: p108. See also, Akzin, *State and Nation* (Hutchinson University Library, London 1964) p47; Hayes, *Essays on Nationalism* pp4-5. Macartney, *National States and National Minorities* ch1.

8   Sabine & Thorson, *A History of Political Theory* (Dryden Press, Hinsdale: Illinios, 4th ed 1973) pp311-312; Kohn, *The Idea of Nationalism* p20; Hayes, *Essays on Nationalism* p31. Akzin also notes that two principal reasons accounted for this: on the one hand, the cultural immobility of the large masses of mankind coupled with their lack of literacy kept their outlook geared to their immediate social group, eg tribe, clan, village, etc. On the other hand, where loyalties transcended these confines, they were on the basis of charwoman religion or dynastic tradition more often than ethnicity: *State and Nation* pp49-50. See also, Hayes, *Political and Cultural History of Modern Europe* Vol 1, (MacMillan Co, New York 1916) p36.

9   On the Renaissance and its general impact on development in Europe, see generally Hudson, *The Story of the Renaissance* (Cassell, London 1912), esp ch1 & 2; Green, *Renaissance and the Reformation: A Survey of European History between 1450 and 1660* (Edward Arnold, London 1952) chII; Hay (ed), *The Renaissance Debate* (Holt, Rinehart & Winston, New York 1965).

10   On the Reformation and its general impact on development in Europe, see Grim, *The Reformation Era, 1500-1650* (MacMillan, New York 1964), esp ch 12; Koenigsberger, "The Reformation and Social Revolution" in Hurstfield (ed), *The Reformation Crisis* (Edward Arnold, London) pp83-94; Hay, "The Background to the Reformation", in Hay (ed), *The Renaissance Debate* pp8-20. See also generally, Murray, *The Political Consequences of the Reformation: Studies in Sixteenth Century Political Thought* (Russell & Russell, New York 1960).

11   For a comparative analysis of both developments and their combined effect on the social revolution in Europe see Slavin (ed), *The New Monarchies and Representative Assemblies: Medieval Constitutionalism or Modern Absolutism* (Heath & Co, Boston 1964) pviii. He notes that the Renaissance provided the secular and individualist impulse capitalised upon by the Monarchs, and the Reformation ended forever the absurdity of divided sovereigns, bringing to close the era of papal tutelage. See also generally, Pollard, *Factors in Modern History* (Archibald, Constable & Co, London 1907).

The extensive developments of trade in the late fifteenth century led to the rise of rich merchant classes. They derived their wealth principally from merchant shipping and general external trade which was booming in the period.[12] In this era, the merchant classes constituted a vital source of wealth in taxes for the monarchy. The latter in turn provided naval protection, naval stores and above all, the necessary protection in the home market for the merchants.[13] Thus the merchant classes and the monarchy came to find themselves in a convenient mutual alliance which was to grow at the expense of the feudal nobility.

By the beginning of the sixteenth century, all governments in Europe had adopted a policy of exploiting their national resources, encouraging trade at home and abroad and developing national power. With the expansion in internal and external trade, it became necessary to expand and regulate the markets. To meet the situation, the influential merchant classes favoured a removal of the internal boundaries of the feudal municipalities and the unity of whole territories under the monarchs into single territorial units. Furthermore, there came the need to control trade and prices and to standardise conditions of employment. Thus, it became necessary to develop a governmental machinery that transcended the feudal municipalities.[14]

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12   The commercial era in the 15th century is usually referred to as the "age of mercantilism". It must be noted that the eventual emergence of the mercantilist era was the result of complex developments in European commercial life. In the late 14th century a common feature of European commercial activity had been the merchant guilds which were formed principally to meet the need for protection against oppressive feudal lords and to control production and regulate the home market: Hayes, *Political and Social History of Europe* p38. With the development and expansion in trade, merchant guilds declined and were displaced by "Industry" or "Craft" guilds or "companies". It was these institutions which provided the foundations of industry and led to the rise of the wealthy and powerful merchant classes of Europe by the 15th century. On the role of the guilds and their operations, see generally, Unwin, *The Gilds and Companies of London* (Allen & Unwin, London 1908); Webster, *A General History of Commerce* (Ginn & Co, Boston 1903).

13   Shafer, *Nationalism: Myth and Reality* (Harcourt & Brace, New York 1955) p75. In describing the reliance of the merchant classes on royalty, one commentator notes that

        in practice, mercantilists sought to bring all phases of economic life under royal control. In theory at least, they were almost pathetic in their childlike belief in the omnipotence and monicompetence of the central government.

      Woolsey, *Colbert and a Century of French Mercantilism* (Columbia Uni Press, New York 1939) p25.

14   Sabine & Thorson, *A History of Political Theory* p312.

During this period, improved communications and technology facilitated the development of centralised authority. The seeds were thus sown for the evolution of the nation-state as a unified territorial polity under the rule of the monarch. As a rule, the middle classes favoured a strong central government willing and capable of protecting trade at home and abroad. Hence their natural political alliance was with the monarchy. The relationship that developed between them provided the final blow to feudalism and gave birth to the monarchical state, and then the nation-state.[15]

Shafer describes the situation when he observes:

> Nearly everywhere in western Europe the feudal nobles were continuing to lose their peculiar functions as intermediaries between the rulers and peoples, as protectors and as administrators and military leaders. In England, to be sure, the nobility would open its ranks, share its responsibilities with the rising commercial classes and in a sense enter the bourgeousie. But more often, in western Europe as in France, the feudal lords were giving up their ... functions to the king and bourgeousie. When this happened they were losing their *raison d'etre* as a class and tending to be swallowed by larger entities; first the monarchical state and then the nation.[16]

The single territorial unit under the monarch became the basis of the monarchical state in which the king enjoyed absolute authority.[17] For the trading class, this territorial unit constituted an exclusive market.[18]

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15   See generally Tilly (ed), *The Formation of National States in Western Europe* (Princeton Uni Press, New Jersey 1975).
16   Shafer, *Nationalism: Myth and Reality* p103.
17   The extent of the monarch's authority under absolute monarchy was well summed up in the words of Louis XV:
> It is only in my person that the sovereign authority resides ... To me alone belongs the legislative power without any and without sharing. The whole public order derives from me. I am its supreme guardian. My people exist only in their union with me. The rights and interests of the nation which one does to separate from the monarch are necessarily united in mine and rest only in my hands.

Becker, *The Heavenly City of 18th Century Philosophers* (Yale Uni Press, New Haven 1932), quoted in Kohn, *The Idea of Nationalism* p200. See also Pollard, "The New Monarchy Thesis: Towards Absolutism" in Slavin (ed), *The New Monarchies and Representative Assemblies* pp1-8; Mousner, "Variations on the

With the development of trade, the middle classes grew in power and influence while the monarchy declined in authority.[19] Absolute monarchy was compatible with the emerging force of capitalism only to the extent that it protected the interests of the middle classes. Shafer observes that:

> When absolute monarchy could not, as in England in the seventeenth century ... defend the old social order as well as protect property, and afford opportunities for gain as the bourgeoisie desired, the bourgeoisie plus some aristocrats limited the monarchical power by constitutional provision and when this was not enough, removed the king's head [Charles I, Louis XVI]. When the kings were limited or dethroned, the propertied citizens became (the) sovereign and they, the Cromwellians and the French Revolutionaries, calling themselves the nation, ruled in the name of the nation.[20]

Given the relationship between the nation-state and the rise of capitalism, the true nationalist by the end of the seventeenth century was seen as the one who favoured liberty and free trade and the protection of private property. The basis of the nation-state then was seen as comprising "citizens, propertied citizens usually, who inhabited a common territory, possessed a voice in their common government, and were conscious of their ... heritage and their common interests".[21]

Main Theme" in Slavin (ed), *The New Monarchies and Representative Assemblies* pp9-13, esp pp11-12.

18   Kohn observes that due to its demands for market exclusivism, mercantilism became a corollary of the new division of Europe into separate warring states: *The Idea of Nationalism* p201.

19   This was essentially because the wealth that came with the development of trade in Europe did not go to the nobles and the prelates only. It was rather noticeably concentrated in the hands of the bourgeoisie or "town people". Hayes observes that in the towns of Europe, there emerged bankers, merchants and shopkeepers, wealthy enough to live like kings or princes. These bourgeoisie were to grow in intelligence and political influence, "they were destined to precipitate revolutions in industry and politics, therefore establishing their individual rule over factories and their collective rule over legislatures.": Hayes, *Political and Cultural History of Modern Europe* p69.

20   Shafer, *Nationalism: Myth and Reality* p102.

21   As above, p105. The emphasis on property is rather interesting. The physiocrats in this period saw wealth mostly in terms of property, particularly property in the soil. The labour of the toiling masses as such was not recognised as inclusive in wealth: Kohn, *The Idea of Nationalism* pp229-232. It needs to be noted that in its formative years, the concept did not emphasize ethnicity. Cobban notes that in the development of the nation states of today, a common

Unlike the situation under absolute monarchy, the nation-state that emerged at the end of the eighteenth century was not just the sovereign, their subjects and their territory of which they could dispose at will. The

language and culture have more often been a result than a cause and that even the names of the nations rarely correspond to any former anthropological, linguistic or ethnographic unity: *The Nation State and National Self-Determination* p126. Similarly, Stalin argued:

> a nation is not a racial or tribal (unit) but a historically constituted community of people. [It is] a stable community of language, territory, economic life and psychological make-up manifested in a community of culture.

Marxism and the National Question (International Bookshop, Melbourne 1945) pp8, 11. The nation then, is not the result of any natural forces but rather the product of a definite historical period - the period of rising capitalism. Before this era, there could have existed human institutions similar to the nation but they were not the same. See comments of Kamenka (ed), *Nationalism: The Nature and Evolution of an Idea* (ANU Press, Canberra 1973) pp4-5. The development of a common language within the nation was a later development and also subject principally to the political and economic forces that led to the formation of the nation. Kohn provides a useful insight into the early efforts to introduce a common language in France for instance in the late century: *The Idea of Nationalism* pp229-232. Within the context of the rise of capitalism, Lenin also offers an analysis of the role and the *raison d'etre* of the development of a common language in the nation. He observes:

> in order to achieve complete victory for commodity production the bourgeoisie must ... have politically united territories speaking the same language and all obstacles to the development of this language and to its consolidation ... must be removed.

He explains that as the most important means of human intercourse,

> [the] unity of language and its unimpeded development are the most important conditions for genuinely free and extensive commercial intercourse on a scale commensurate with ... capitalism, for a free and broad grouping of the population in all its separate classes and lastly, for the establishment of close connection between the market and each and every proprietor, big or little, seller or buyer.

Lenin, "The Right of Nations to Self-Determination" in *Selected Works* Vol I p565. On the development and the role of language as an effective tool of assimilation for the dominant classes, see Deutsch, *Nationalism and Its Alternatives* (Knopf, New York 1969) pp25-27; for critical comments on the views of Lenin and the economic analysis of the emergence of the state generally, see Friedman, *The Crisis of the National State* (MacMillan, London 1943), chIII, pp60-70. For different conceptions and analysis of the emergence of the nation, see Hinsley, *Nationalism and the International System* (Hodder & Stoughton, London 1973), pp35-63; Wright, *A Study of War* (University of Chicago Press, Chicago 1942), Vol II. For an analysis of the evolution of the state based on modernisation and communication, see Deutsch, "Social Mobilization and Political Development", (1961) 55 *Am Pol Sc Rev* 493; Deutsch & Foltz (eds), *Nation Building* (Atherton, New York 1963).

emphasis in the nation-state was on the citizens as represented by their "voice in their common government". It was the voice that came to be expressed in more manifest terms as the "will" of the governed; the will that had to determine any future political association and any peacetime territorial changes.

It would be an overstatement to suggest that the rise of the nation-state was due purely to economic factors and the role of the middle class. It was due to a complex interaction between these two elements and the prevailing social forces and conditions during the various historical periods. The economic factor and the middle class receive a great deal of attention in the discussion because they played progressively influential roles from the time of the liquidation of feudalism to the emergence of the nation-state.[22]

The evolution of the nation-state did not follow a consistent pattern in Europe. Since the development of the absolute monarchical state and the nation-state were directly related to the social and economic conditions of the times, the evolution of the nation-state varied according to the peculiar conditions of each community.[23]

In Europe the successive revolutionary changes produced corresponding changes in political and legal theories. This was reflected in the works of theorists such as Machiavelli, Austin, Hobbes, Locke, Bentham, Bodin, Rousseau and others.

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22   Kamenka notes the singular importance of the economic element:
            The logic of communication, scientific cultural and industrial process,
            working itself out in a specific, initially European context, led to the
            vastly accelerated scientific and industrial change and development ...
            The conception and reality of economic progress were to change the
            (face) of the world.
        Nationalism: the Nature and Evolution of an Idea p17.
23   This hypothesis has been used to explain why the first major national uprising in
        Europe occurred in France. Kohn claims: "The revolution occurred in France
        for the very reason that France was in many ways the most advanced country on
        the continent.": *Prelude to Nation States: The French and German Experience,
        1789-1815* (Van Nostrand, New Jersey 1967) p7. See also, Watkins, *The Age of
        Ideology - Political Thought: 1750 to the Present* (Foundation of Modern
        Political Science Series, Prentice Hall, New Jersey 1964) p21; Shafer,
        Nationalism: Myth and Reality p98.

The Emergence of the Principle of Self-Determination

Even though the notion of the nation-state had originated in Europe, the earliest significant practical expression of the "will" of the governed occurred in colonial America. With the development of trade in the seventeenth century, there had emerged in the colonies a wealthy and influential merchant middle class. Led by such classes, the colonists objected generally to British colonial rule and particularly to British regulation of commerce and taxation without colonial representation. The general anti-imperial sentiments culminated in the American Revolution championed by the colonial upper classes.[24] The mood of the times among the colonists emphasising the will of the governed was clearly expressed in the famous Declaration of Independence:

> We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness. That to secure these

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24   McIlwain, *The American Revolution: A Constitutional Interpretation* (Great Seal Books, New York 1958), Ch III. See also, Robson, *The American Revolution: In Its Political and Military Aspects, 1763-1783* (Archon, Hamden: Connecticut 1955), pp37-39. In explaining the role of the middle class, Robson suggests that the American Revolution was the result of two general movements in the colonies, "one concerned with Home rule, the other with the question of who should rule at home". In the colonies there were class divisions that even the British policies could not efface. There were the upper (bourgeois) classes and the lower classes. For the purpose of the revolution however these classes seemed united. Robson cautions that the interest of the middle class in the revolution was not dictated by their concern for the common person. As far as the middle classes were concerned,
>   the common people, if properly reined, could certainly be used as, but
>   the gentry were to reap the benefits: this was to be a safe and sane
>   revolution of gentlemen by gentleman for gentlemen.
The American Revolution p39. See also generally, Jameson, *The American Revolution Considered as a Social Movement* (Beacon Press, Boston 1967). The desire for such a revolution among the middle classes was dictated by the deep seated conflicts between their commercial interests and those of the industrial establishments in Britain. Such conflicts were manifested in several instances. For example, in 1719 the British House of Commons declared that "the erection of manufactures in the colonies tends to lessen their dependence on Great Britain". In the colonies the abundance of beavers had given rise to a prosperous hat manufacturing industry. However, in 1732, the House of Commons enacted a Bill abolishing the importation of hats from the Colonies. In 1750, the British Parliament further prohibited the erection of any rolling mills and all manufacturing of steel in the colonies: p53.

Rights, Governments are instituted among Men, deriving
their just Powers from the Consent of the Governed, that
whenever any form of Government becomes destructive of
these ends, it is the Right of the People to alter or to abolish
it.[25]

In Europe the concept of the will of the governed received a major
expression in the French Revolution with the "Declaration of the Rights of
Man and Citizen" issued after the revolution emphasising the primacy of
the will of the people.[26]

Given the primacy of the wishes of citizens as the basis of government, it
was logical that any territorial transfers had to be preceded by the
expressed wishes of the people affected. After the French Revolution, a
common method used to ascertain the wishes or the will of the people
became the plebiscite. In 1791, it was used to determine the union with

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25   On the basis of the declaration, and subsequent American commitment to self-
      determination a considerable number of authors have suggested that the
      principle took its roots from the American Revolution. See Tonybee, "Self-
      Determination" (1925) *Quarterly Rev* 317; Barbour, "The Concept of Self-
      Determination in American Thought" (1954) 32 *Dept of State Bull* 576; Murphy,
      "The Principal of Self-Determination in International Relations" (1955) 33 *Dept
      of State Bull* 889; Rivlin, "Self-Determination in Dependant Areas" 50 *Int Conc*
      195. Also see fn26.

26   There is a further class of authors who take the view that the French Revolution
      provided the basis for the principle of self-determination. See for instance,
      Woolsey, "Self-Determination" (1919) 31 *Am Journ Int'L Law* 302; Mattern,
      The Employment of Plebiscites in the Determination of Sovereignty (John
      Hopkins Group, Baltimore 1921) p77; Carr, *The Bolshevik Revolution, 1917-
      1923* Vol 1 (MacMillan, London 1954) p417. See also, Sureda, *The Evolution
      of the Right to Self-Determination: A Study of United Nations Practice* (Sijthoff,
      Leiden 1973) p17. If one should accept "popular will" as manifested in
      revolutions as the test, then arguably one could use the American Revolution as
      the starting point since it was first in time. However, it needs to be emphasised
      that there is an inherent risk in using these revolutions as the cut-off points for
      the emergence of the principle. The idea of self-determination, like many
      others, was not formed overnight in one massive revolutionary action. It was
      rather the product of social economic and political forces that were prevalent in
      definite historic periods. Admittedly, these forces precipitated the great
      revolutions in France and America. But, to say that the idea itself started with
      the revolutions would amount to disregarding the formative processes of the idea
      itself. If one addressed oneself to the continuous historical forces that shaped
      the principle and the great significance of the formative years behind it, it would
      be impracticable and in any case not prudent to use either revolutions as a
      definite starting-off point for self-determination. The two revolutions are at best
      significant land-marks in the evolution of the principle.

France of Avignon and Vanassin and again in 1792 in the case of Savoy and Nice.[27]

In Europe generally, the prevailing concept of the primacy of the will of the governed and their expressed wishes as to their future political destiny produced revolutionary results, and the eventual reshaping of the geopolitical boundaries. Thus by the mid-nineteenth century the plebiscite was in use in Europe. The wishes of the people expressed through plebiscites were used as the basis of the new Italian Kingdom and the cession of the Ionian Islands in 1863.[28] Within the Turkish Empire and the Austrian Empire that comprised races of Germans, Slavonians and Macedonians, the concept of the wishes of the people as the basis of government and political association was used as a justification for the union of the fragmented groups into homogeneous nations. We therefore see the inception of Pan Slavic and Pan German groupings supported in the latter part of the nineteenth century by Russia and Germany in their quest for the spoils of the diminishing empires.[29]

Even though plebiscites were quite common in the nineteenth century, the term "self-determination" was hardly ever in use then. However, the principle which it represents was well embodied in the general idea of the plebiscite.[30] The declarations after the American Revolution and the French Revolution mentioned the "inalienable rights" of Man. Article 3 of the French Declaration provided that the end of political institutions is "the preservation of the natural and imprescriptible rights of man". The preamble of the American Declaration also provided that "whenever any form of government becomes destructive of these ends, it is the Right of the People to alter or abolish it". Admittedly, such allusions to the rights of "Man" were reminiscent of natural law philosophies prevalent in the eighteenth and nineteenth centuries.[31] It is therefore tempting to argue

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27   Cobban, *The Nation State and National Self-Determination* p41; Woolsey, *Colbert and a Century of French Mercantilism* p302; Prakash Sinha, "Is Self-Determination Passe?" (1973) 12 *Columbia Journ Trans Law* 260 at 265; Kohn, *Prelude to Nation States* (Van Nostrand Co, New Jersey 1967) pp35-38.
28   Wambaugh, *Plebiscites Since the World War* p3.
29   Thomson, *Europe Since Napoleon* (Longman, London 1958) pp326-327.
30   Wambaugh suggests that even though the English term or expression 'self-determination' is no older than WWI, its inherent principle "dates, as it logically should, from the end of the 18th century": "Frontiers by Plebiscite" (1923) 107 *Century* 70, quoted in Ofuatey-Kodjoe, *The Principle of Self-Determination in International Law* (Nellen, New York 1977) p198, fn1.
31   Vattel, for instance, argued that a group could abolish its government in the event "of clear and glaring wrongs" to the people. He cites an example of such

that the purpose for which self-determination was pursued in these path-breaking revolutions and in other nationalist demands of the period was purely the preservation of the natural or human rights of "Man".[32] Such an argument would be an overstatement. The pursuit of the principle by the middle classes in the eighteenth and nineteenth centuries was motivated principally by territorial aggrandisement and the benefits of economic exclusivism. In the case of the United States, it has been indicated earlier that the proponents of the revolution were not moved necessarily by the rights of the common people as such and that they were motivated by the economic advantages in displacing the British dominance.[33] Similarly, the protection of the rights of "Man" as such was, particularly in Europe, only incidental in the overall objectives of supporting the principle. In fact where the pursuit of the principle did not permit territorial or economic benefits, the status quo was maintained and sometimes self-determination was expressly discouraged.[34] In Europe, the principle of self-determination was mostly supported in cases that threatened the break-up of the Austro-Hungarian and Russian empires. Thus in the frantic nationalist activities that swept Europe in the mid-nineteenth century Polish, Italian and German claims held good while most other claims were dismissed.[35]

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wrongs as "when a prince for no apparent reason attempts to take away our life or deprive us of things without which life would be miserable": Vattel, *The Law of Nations or the Principles of Natural Law*, Fenwick trans Bk I, Ch 4, p54 (Johnson, Philadelphia 1916); Grotius also maintained that even though resistence to civil authority is generally not permissible, it could be excused where a minority suffer oppression under a given government: Grotius, *De Jure Bellis Ac Pacis Libri Tres*, Kelsey trans ch6, 4, 7(4) (Oceana, New York 1964); Locke also argued that the power of government is

> limited to the public good of the Society. It is the power that hath no other end but preservation, and therefore can never have a right to destroy, enslave or designedly to impoverish the Subjects.

Consequently, where governmental authority fails to serve these ends and there is thus a long train of Abuses, Prevarications and Artifices then "the body of the People or any single Man" may take steps to save the situation (Locke, *Two Treatises of Government*, Vol I Laslett trans (CUP, Cambridge 1970), ss135-225. See generally the works of Spinoza, "A Theologico-Political Treatise" in Elwes (trans), *The Chief Works of Benedicte de Spinoza* Vol I (Bell, London 1889) p10.

32   See for instance the discussions on the relationship between the declarations and natural law tenets by D'Entreves, *Natural Law: An Introduction to Legal Philosophy* (Hutchinson Uni Library, London, 8th ed 1964), Ch III.

33   See fn24.

34   See fn38.

35   Carr, *The Bolshevik Revolution, 1917-1923* p417.

The view that the support for self-determination in this period was motivated principally by "non-humanitarian reasons" is underscored by two significant factors: (1) the development of colonialism and (2) the decline of the principle at the end of the nineteenth century.

The Development of Colonialism

The upsurge of nationalism in nineteenth century Europe was not an historical accident. This period marked the beginning of the industrial revolution. The development of industry meant a corresponding increase in production and a concomitant need for exclusive markets in Europe in the form of national territories. With the expansion in trade but with no 'new' territorial markets in Europe it became necessary and in any case desirable to look for markets overseas.

As a result of the scramble for exclusive overseas territorial markets needed for general export and the importation of cheap raw materials, the Berlin Conference was called in 1878. The aim of the conference was to regulate the acquisition of overseas territories by the European Powers, particularly in respect of Africa. One of the main outcomes of the Berlin Conference was the infamous Partition of Africa which carved up the continent into definite territorial markets for the powers and in effect endorsed colonialism.

The institution of colonialism is in itself a prima facie antithesis of self-determination; however, both institutions emerged within the same century. The development of colonialism with its unsavoury aspects of oppression, exploitation and domination therefore represented an apparent historical contradiction and paradox.

It is tempting to explain the "paradox" on the basis of the "Eurocentric" nature of political and legal norms in nineteenth century international relations. That is to say that the norms of the period were generally considered inapplicable to the "backward" peoples of the world. The falsity and the double standards in the Eurocentric argument have been demonstrated elsewhere.[36] But, assuming it is correct, it is submitted that any such explanation would amount to begging the question. One would still be faced with the question as to why self-determination was considered inapplicable to the so-called "backward" peoples. One would also fail to explain why any reasonable group of people would travel

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36   Alexandrowicz, "Doctrinal Aspects of the Universality of the Law of Nations" (1961) 37 *British Ybk of Int'L Law* 506 and works cited therein.

lengthy voyages at great cost to colonise a territory inhabited by "backward" peoples and maintain the territory under their exclusive authority. Rather, the paradox and contradiction are better explained by reference to general economic necessities and the desire for exclusive territorial markets. I have already indicated that these two factors are principally accountable for the rise of the nation-state and the development of the principle of self-determination in the eighteenth century. The nation-state and the principle helped to ensure definite exclusive territorial markets for the merchant middle classes. Nineteenth century European liberal thought and philosophy found ample room to accommodate colonialism because the institution fitted quite well into the "nationalist" designs of the period - it provided exclusive overseas territorial markets for metropolitan European states and gave them access to the colonial wealth in metals and raw materials needed for metropolitan treasuries.[37]

The emergence of colonialism in the nineteenth century was a logical consequence of the economic developments in Europe, just as were the evolution of the nation-state and the principle of self-determination. There is therefore a logical relationship between the three institutions. The

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37   Hayes suggests that "it was not merely the greed for gold and thirst for glory which inspired the colonising movement" and that to the merchants' eager search for precious metals and sense of adventure was added "the inspiration of an ennobling missionary ideal": *Political and Cultural History of Modern Europe* Vol 1, p61. It must be noted, however, that the missionary element was of only relative significance since all the competing colonizers were preaching Christianity. Hayes himself admits the economic imperative element elsewhere as the raison d'etre for the development of colonialism. He notes that in the colonisation process, the European monarchs proceeded on the assumption that if a nation exported costly manufactures to its own colonies and imported cheaper raw materials from them, the money paid into the home country for manufactures would more than counter-balance the money paid out for raw materials and this favourable balance of trade would bring gold to the nation. "*In order to establish such a balance of trade, the government might either forbid or heavily tax imports of manufactures from abroad, might prohibit the export of raw materials, might subsidise the export of manufactures and attempt by minute regulations to discourage competition in the colonies*:" pp63-64, emphasis added.. See also Moon, *Imperialism and World Politics* (MacMillan, New York 1927) p13. For other similar views, see Worsley, *The Third World* (Weidenfeld & Nicholson, London 1964) p69. "It is no ideological assertion, but a simple generalisation rooted in empirical observation, that the prime content of colonial rule was economic exploitation". Hobson, *Imperialism; A Study* (Nisbet & Co, London 1902); Fieldhouse, *The Theory of Capitalist Imperialism* (Longman, London 1967), esp pp82-84. For critical comments on this approach, see Smith, *State and Nation in the Third World: The Western State and African Nationalism* (Wheatsheaf, Brighton 1983) ch2.

raison d'etre of colonialism was the establishment of the overseas market exclusivism needed to complement the exclusive metropolitan home market which was ensured under the institution of the nation-state and the principle of self-determination.

The Decline of the Principle of Self-Determination (before World War I)

The redrawing of the geo-political boundaries of Europe that started with the nationalism of the eighteenth century appeared to come to an end by the late nineteenth century. If the pursuit of self-determination was motivated purely by humanitarian reasons, then one would expect that after the settlement of geo-political boundaries in Europe, the right of nationalities to determine and live under their chosen forms of government would have become entrenched in European international relations. Quite a contrary situation emerged by the end of the nineteenth century.

Even though France was the first to adopt the plebiscite in Europe, it did not encourage self-determination where it affected the cession of French territory. Thus as far back as 1792, the French Assembly passed a decree that made illegal, and imposed the death penalty for, any attempt to cede any part of French territory.[38] France could thus annex any territory by plebiscite but would not cede any part of its own territory through a plebiscite. By the end of the nineteenth century, the use of the plebiscite offered no promise of territorial expansion since European boundaries were well settled.[39] For the states with any designs for territorial expansion, the only method available was brute force. Prussia for instance annexed Hanover by force in 1866, Schleswig in 1868 and continued to annex Alsace-Lorraine in 1871.[40] Wambaugh has observed that these annexations dealt a death-blow to the principle.[41] The state of the principle by the end of the nineteenth century is best described in the words of Lecky when he wrote in 1896:

> On the whole the doctrine of the absolute and indefeasible
> right of ... nationalities to determine their own form of
> government seems ... now less prominent among the
> political ideas of the world than it was in 1848.[42]

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38   Umozurike, *Self-Determination in International Law* p11.
39   In fact after 1870, there were only two plebiscites: that of Saint Bartholemew in 1877 between France and Sweden, and the case of the separation of Sweden from Norway in 1905: *The Evolution of the Right to Self-Determination* p20.
40   Wambaugh, *Plebiscites Since the World War* p3.
41   As above.
42   Lecky, *Democracy and Liberty* (Longman, London 1896) Vol 1, p418.

Therefore, by the end of the nineteenth century the principle of self-determination had virtually been 'rejected' in European international relations. Territorial expansion (sometimes by force) again emerged in European politics.

In the international relations of nineteenth century Europe, annexation by force or otherwise was not new. Given the relative novelty of nationalities in the ethnographic sense, it was also not unusual to find smaller nationalities (ie, minorities) within states. The 'plural' state, in any case, was the rule rather than an exception.[43] What was unique was the reaction of the smaller nationalities to the wave of annexations and the implied rejection of the right of nationalities to determine their own government. Their reaction consisted of specific demands for self-rule on the basis of racial homogeneity. By the late nineteenth century and early twentieth century, such demands had taken a more consolidated form and given rise to a brand of nationalist sentiment very distinct from the economically motivated nationalism that had characterised Europe in the previous centuries. It was the nationalism of the 'oppressed nationalities' and a result of the apparent spirit of liberalism that had prevailed in Europe in the mid-nineteenth century.

The underlying dynamics of the new nationalist movement can be best explained within a framework of some definite theoretical formulations in respect of the nationalities' articulated demands and their expectations.

Articulated Demands and Group Expectations

By articulated demands I mean the sum total of grievances submitted by a group for redress. By their very nature, such demands are influenced by the group's perception of its values, real or mythical, and for which it seeks promotion or protection. The articulated demands are not formulated in a vacuum. They are a response to an external stimulus that consists of an institutional development within a specific period. The formulation of such demands is further determined by the group's perception or anticipation of the possible optimum benefits derivable from a given institutional development. Articulated demands are therefore a function of the prevailing social conditions on the one hand and group perceptions of existing institutional processes for appropriate solutions on the other.

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43   See generally, Macartney, *National States and National Minorities* chIV, pp92-156, for a discussion of the components of nationalities before 1714. See also Hayes, *Essays on Nationalism* p133.

On the basis of its articulated demands and the anticipated benefits, a group develops a scale of expectation. The scale of expectation is a measure of the group's perception in a given instance of the extent to which the anticipated benefits from the institutional processes will meet its articulated demands.[44] In each given case, the results of the general state of affairs may be represented on the group's projected scale of expectation as satisfactory or unsatisfactory depending on how far the anticipated benefits coincide with the perceived benefits. Where the situation is unsatisfactory on a scale of expectation, some groups persist in their pursuit of the appropriate benefits by challenging the legitimacy of the established order. The reactions of such groups constitute an assault on the status quo and a source of tension in the given social order. The foregoing hypothesis can be used to explain the rise of nationalism among the oppressed nationalities at the end of the nineteenth century and indeed, of separatist phenomenon throughout history as I shall come to demonstrate.

It has been indicated earlier that, even though nationalism and self-determination were supported in the eighteenth century basically for economic and other non-humanitarian reasons, they were nevertheless presented in terminologies reminiscent of natural law philosophies. The emphasis had therefore been on the natural rights of humankind and the will of the governed, both of which subsequently came to be considered as the basis of legitimate government. A logical, but later, development was the institutionalisation of the right of 'nations' - homogeneous nations - to self-government (as based on consent). This had led to the wave of nationalism in the nineteenth century and the extensive use of plebiscites in the period to determine the wishes of some nationalities as to their future government.

These institutional developments created room for group perceptions of possible benefits among several nationalities in Europe. They subsequently articulated demands for self-government in pursuance of the anticipated benefits. For some groups, their anticipated benefits coincided

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44   The concept of group expectation is developed and used frequently in the works of McDougal and Lasswell and has subsequently been adopted by a group of authors. However the concept is defined differently and is thus not the same as the "scale of expectation" being developed for the purpose of this work. In the McDougal and Lasswell school, "group expectation" is usually defined as the "group's perception of past, present and future events, in its efforts to maximise its preferred values": Suzuki, "Self-Determination and World Public order: Community Responses to Territorial Separatism" (1975-1976) 16 *Va J of Int'L Law* 779 at 854.

with the actual benefits from the developments, thus leading to the creation of new states and new national alliances in Europe.[45] However, for other groups, their articulated demands were neither met nor considered. The general state of affairs ranked 'unsatisfactory' on their projected scale of expectation. Such groups included the Flemish, the Germans of Alsace-Lorraine, the Serbians, the Finns, Estonians and many more.

By the early twentieth century, these unsatisfied nationalities became organised and generally referred to themselves as the "Oppressed Nationalities". They also engaged in a persistent movement in pursuit of their demands for self-determination. Their agitations and the subsequent support from sympathetic sovereign states constituted a challenge to the legitimacy of the established order and the general status quo in Europe. They also became a source of tension and conflict in European international relations and contributed significantly to the outbreak of World War I.[46]

The Foundations for the Support and Denial of Self-Determination

Before discussing the treatment of self-determination in the WWI era, it is necessary to analyse briefly the rational basis for the support and denial of self-determination in the pre-war period. I have indicated that despite the potential liberal aspects of the principle, its proponents had been motivated principally by non-humanitarian factors and self interests. The principle had, therefore, usually been patronised where it promised to enhance such interests. A logical result was that once a desired objective was achieved through the principle, the latter lost its appeal in the eyes of the proponents who then became ardent advocates of maintaining the status quo. In any case, the principle had no attraction where it conflicted with the existing or potential interests of the incumbent power. Thus in Europe, self-determination had been developed and applied selectively; outside Europe,

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45   See text accompanying fn28, 29.
46   Hereinafter "WWI". Commenting on the singular importance of the national
      issue and the demands of the oppressed nationalities, Macartney notes:
            Thus the grouping of forces in Europe in 1914 had been determined
            very largely by national issues and the event soon proved that the
            national factor was even more important than had been anticipated ...
            [Thus it came about that once the lists were fully joined in Europe] *one
            side was found to consist almost entirely of states with unsatisfied
            national ambitions, the other of states containing dissatisfied
            minorities.*
      National States and National Minorities, p181. Emphasis added.

colonialism had been actively encouraged. To this extent, the proponents were in fact conservatives.   On the other hand, their liberal promises and their patronage of self-determination bred a wave of potential beneficiaries with projected scales of expectation. The potential beneficiaries pursued self-determination to its logical and liberal humanitarian conclusions in their demands.   In this respect, such groups represented liberalism as opposed to the conservatism of the proponents. The dialectical demands of conservatism and liberalism constituted a fundamental element in the tensions that characterised pre-WWI European international relations. The pattern of behaviour of the proponents, the general conflict between conservatism and liberal humanitarianism and the attendant tensions generated in the social order can be found throughout the stages of the historical evolution of the principle of self-determination.   In the early twentieth century, the liberal demands of the Oppressed Nationalities on the one hand and the conservative demands of the existing states and empires to maintain the status quo on the other hand, constituted the main sources of tension in the established international order and precipitated WWI.

THE EVOLUTION OF SELF-DETERMINATION AND THE FIRST WORLD WAR

The outbreak of WWI revived self-determination in European international relations. Given the multiplicity of small nationalities under domination, the principle had a great strategic value for both the Allies and the Central Powers. In the course of the war, both sides tried to win the support of states and uncommitted nationalities with promises of territories, populations and sovereignty.[47] The Allies announced that they were fighting for the liberation of small nationalities and the strengthening of democracy.[48] The Central Powers, on the other hand, sympathised with

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47   In some cases such promises were backed with treaty commitments. Thus by the Treaty of London, the Allies secured Italian support in return for the Brenner Pass which involved the transfer of over 250,000 Germans and territories that belonged to Yugoslavia, Greece and Albania. A similar treaty with Romania involved the eventual transfer of several hundreds and thousands of non-Romanians. By virtue of the secret treaties in respect of Turkey, Russia was to receive Constantinople, eastern Thrace and Gallipoli. On the side of the Central Powers, Bulgaria, for instance, was promised substantial territories far beyond what it could claim on enthnographic grounds. See above p182.

48   The foregoing statements by Allied Statesmen in the course of the war were typical: "we shall never sheathe the sword ... until the rights of the smaller nationalities in Europe are placed on an unassailable footing" (per Mr Asquith, Nov 1914 quoted in Macartney, *National States and National Minorities* p182);

Flemish nationalist sentiments and even endorsed the conference of Nationalities in Laussane in 1916.[49] They further made political capital out of the British and Italian possessions in Africa and elsewhere.[50]

The principle assumed greater significance with increased official statements and commitments. In May 1917, President Wilson declared in the American Congress that:

> No peace can last, or ought to last, which does not recognise and accept the principle that governments derive all their just powers from the consent of the governed, and that no right anywhere exists to hand peoples about sovereignty to sovereignty as if they were property.[51]

While the speech did not specifically refer to self-determination, it nevertheless embodied the notion of the principle. President Wilson referred to the principle in more explicit terms when he again declared in Congress that the war was a struggle for "the liberty, the self-government, and the undictated development of all peoples". Consequently, "every feature of the settlement that concludes this war must be conceived and executed for that purpose".[52]

Macartney writes that Lord Grey, in *Speeches* of March 23 1915, Oct 23 1916, declared that "the Allies would fight to ensure the right of nations to develop freely under equal conditions": p182. See also the text of fn48, 49.

49   Macartney, *National States and National Minorities* p183; Umozurike, *Self-Determination in International Law* pp12-13.

50   The general position of the Central Powers was summed up in identical notes issued by Germany and Austria:
> If the adversaries demand above all the restoration of invaded rights and liberties, the recognition of the principle of nationalities and of the free existence of small States, it will suffice to call to mind the tragic fate of the Irish and the Finnish peoples, the obliteration of the freedom and independence of the Boer Republics, the subjection of North Africa by Great Britain, France, Italy and, lastly, the violence brought to bear on Greece for which there is no precedent in history.

"Austro-Hungarian Comment upon the Entente Reply to President Wilson, 12 Jan 1917" in Scott, *Official Statements of War Aims and Peace Proposals: December 1916 to November 1918* (Carnegie Endowment for International Peace, Washington 1921) p44.

51   "Address of President Wilson to the Senate", 22 Jan 1917 quoted in Scott, *Official Statements of War Aims and Peace Proposals* p52.

52   "Message from President Wilson to Russia on the Occasion of the Visit of the American Mission" 9 June 1917" quoted in Scott, as above, p105.

Following a request by President Wilson, the Allies declared their war aims, which included self-determination implicitly. In concrete terms their aims included:

> the restoration of Belgium, Serbia, Montenegro ... the reorganisation of Europe, guaranteed by a stable regime and based at once on respect for nationalities and on the right to full security and liberty of economic development possessed by all peoples, small and great ... the restitution of all provinces torn from the Allies by force or against the wish of their inhabitants, the liberation of the Italians, as also of the Slavs, Rumanes and Czechoslovaks from foreign domination; the setting free of the populations subject to the bloody tyranny of the Turks.[53]

Even though Allied support for self-determination had been implicit in their war aims, they refrained from giving a general recognition to the principle because of their bonds with imperial Russia which had minorities under its rule.[54] However, following the overthrow of the Czarist regime, the Petrograd Soviets also announced that peace after the war should be based on no annexations or indemnities and the self-determination of nations.[55] The new Russian policy which amounted to an acceptance of the Allied War aims was further underscored by the Bolshevik's support in November 1917 for the equality of Russian nationalities, and the right of such nationalities to free self-determination including secession.[56]

In early 1918, President Wilson reinforced the foregoing Allied commitments with his declaration in the famous Fourteen Points which, again, implicitly affirmed his support for self-determination. In a later speech, the President announced in more specific terms that self-

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53   Paragraph VIII of the "Allies' reply of 10 January 1917, to President Wilson's request of 18 December 1916" quoted in Temperly (ed), *A History of the Peace Conference of Paris, Vol I* App I, (OUP, London 1920) p428.

54   Cobban, *The Nation State and National Self-Determination* p50.

55   Golder, *Documents of Russian History, 1914-1917* (Peter Smith, Massachusetts 1964) p341.

56   Umozurike, *Self-Determination in International Law* p5; Even at this stage, the genuine commitments of the Bolsheviks to the principle in respect of all the Russian nationalities were very doubtful. The Poles and the Baltic states were the only nationalities which were to benefit from the promises of the Bolsheviks. But even then this was dictated more by "the stress of military necessity" than a respect for nationalities as such: Macartney, *National States and National Minorities* pp187, 454.

determination shall be a cardinal feature of Allied War objectives. It was
to become an essential and complex aspect of the peace settlements after
the War.[57]

The war-time commitments of the Allies to the principle of self-
determination had been based ostensibly on liberal considerations and
emphasis on the equality of nationalities. This is evidenced by the use of
phrases and words such as "liberation", "emancipation", "freed
development", "bloody tyranny", "respect for nationalities" and "just
powers from the consent of the governed" in the declaration of war
objectives and other general pronouncements on the principle. The
apparent spirit of liberalism rekindled the institutional development of the
right of national self-determination that had characterised similar
ostensible liberal outlooks in the mid-nineteenth century. It strengthened
the hopes of the unsatisfied nationalities and bred a new wave of potential
beneficiaries, all with projected scales of expectations for sovereign
statehood based on respect for nationality.[58]

In the course of the war, various nationalities exhibited their aspirations
for sovereign status in pursuit of the liberal Allied war objectives. For
instance, the Central Organisation for Durable Peace, patronised by the
Oppressed Nationalities, advocated the recognition of the rights of
homogeneous nationalities to form independent states. They further
advocated the right of different nationalities to form federal states in free
association with each other at its conferences in 1915 and 1916.[59] The
Convention of Oppressed Nationalities had also made similar demands at
its conferences in Rome and Laussane.[60] Some nationalities even declared

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57   President Wilson made reference to the principle in several of his major
      speeches during the war. For a survey of the President's pronouncements and
      views on the principle, see Temperly (ed), *A History of the Peace Conference of
      Paris, Vol I* pp398-399; Umozurike, *Self-Determination in International Law*
      p19; Notter, *The Origins of the Foreign Policy of Woodrow Wilson* (Russell &
      Russell, New York 1965), p104. Pomerance, *Self-Determination in Law and
      Practice: The New Doctrine in the United Nations* (Njihoff, The Hague 1982),
      ch1.

58   Gordenker, "Self Determination, Yesterday and Today" in Gordenker & Davison
      (eds), *Resolving Nationality Conflicts: The Role of Public Opinion Research*
      (Praeger, London 1978) pp1-10. As a result of the war-time promises, European
      nationalities came to look on "one nation, one state" as a principle for the
      reorganisation of Europe. See also, Pomerance, *Self-Determination in Law and
      Practice* pp1-2.

59   Macartney, *National States and National Minorities* pp213-214.

60   At the Rome Conference in 1918 the Italians, Romanians, Poles Czecho-Slovaks
      and Southern Slavs resolved to proclaim complete independence and to pursue

their independence in the hope of their eventual emergence as sovereign states after the end of the war on the basis of the war-time commitments to the principle of national self-determination.[61]

The general attitude of the nationalities in this period represented a demand for liberalism. When the time came to apply the principle in the post-war settlements, the state of affairs turned out to be very similar to the general pattern we saw in the case of the nineteenth century: whenever the demands of liberalism conflicted with those of conservatism, the latter took precedence. The selective approach to the principle was well evidenced in three separate regimes: (1) European nationalities; (2) colonial possessions of the defeated powers; and (3) colonial possessions of the Allies.

European Nationalities

In conformity with the Allied promises, some oppressed nationalities were liberated. This led to the creation of several new, free and sovereign states in Europe.[62] However, as Umozurike observes, "the new states contained minorities whose lot was often worse than it had been before".[63] At the post-war Peace Conference, several thousand German-speaking Austrians were handed over to Italy without their consent, contrary to the general Allied declarations that settlements in the post-war period must be based on consent and self-determination. Similarly, Western Prussia was awarded to Poland while German-dominated Danzig was made a free city in order to give Poland access to the sea.[64] The new state of

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in common the war of liberation against the Monarch: Macartney, *National States and National Minorities* p191.

61   This became the case particularly among the Russian nationalities. It involved, among others, the Ukranians, the peoples of the Northern Caucasus, the Finns and the peoples of the Baltic States: as above, p187.

62   The new states included Poland, the Kingdom of Serbs, Croats and Slovenes (Yugoslavia), Czechoslavakia, Romania, Greece, Finland, The Baltic States - Estonia, Latvia and Lithuania. The Baltic States were later to be absorbed into the Soviet Union.

63   Umozurike, *Self-Determination in International Law* p22. For a treatment of the position of the minorities and the minorities regimes as a whole, see generally Azcarate, *League of Nations and National Minorities: An Experiment* (Carnegie Endowment for International Peace, Washington 1945), esp chII; Ladas, *The Exchange of Minorities: Bulgaria, Greece and Turkey* (MacMillan, New York 1933).

64   The territorial concessions made to Poland at the expense of Germany were massive and naturally drew waves of protests from it. In the case of Upper Silesia for instance, the whole of the area was awarded to Poland. After protests

Czechoslavakia was given the German territory of Kreis Leobschutz and Belgium got the Prussian Moresnet.[65] Austria indicated its willingness to join Germany, but this was not allowed.[66]   Apart from the German

from Germany, the Allies agreed to partition the territory on the basis of a plebiscite. The partition gave more territory to Germany, but the bulk of vital industrial resources remained with Poland. Both states came to regard the arrangements as unsatisfactory. See generally Stone, *Regional Guarantees of Minority Rights: A Study of Minorities Procedure in Upper Silesia* (MacMillan, New York 1933) pp1-5; Azcarate, *League of Nations and National Minorities* chV, pp137-160, 28, 35; Modeen, *The International Protection of National Minorities in Europe* (Abö Akademi, Finland 1969) p61.

65   After the war, defeated Germany also joined the ranks of the potential beneficiaries of the Allied promises on self-determination.   The German delegation at the Peace Conference had initially summed up the German expectations as follows:

In this war, a new fundamental law has arisen which the statesmen of all belligerent peoples have again and again acknowledged to be their aim: the right of self-determination. To make it possible for all nations to put this privilege into practice was intended to be one achievement of this war.

New York Times, Current History, Pt 2, Vol 7, p272, cited in Umozurike, *Self-Determination in International Law* p18. The obvious contradictions between the practice of the Allies and their stated war objectives consequently became a major ground of protest for Germany. It argued that the Allied treatment of the principle was "in full and irreconcilable conflict with the bases agreed upon for a just and durable peace". More significantly, it also maintained that it was inadmissible that German territories "should be battered about from sovereignty to sovereignty as if they were chattels in a game for the purpose of giving guarantees for financial or economic claims of the adversaries of Germany": Wambaugh, *Plebiscites Since the World War* p19. The Allies on the other hand, counter-argued that the settlements were in fact following the principle of self-determination to the letter. Where there were deviations, they explained, it was due to the "inevitable fact that an appreciable portion of the German Empire consists of districts which had in the past been wrongfully appropriated by Prussia or Germany": Macartney, *National States and National Minorities* p195. For a detailed treatment of the distribution of the German population in Europe, see the introduction of Wambaugh's work cited. For a specific treatment of the German territory (Sudetenland) granted to Czechoslovakia, see Azcarate, *League of Nations and National Minorities* pp35-43; Mair, *The Protection of Minorities: The Working and Scope of the Minorities under the League of Nations* (Christophers, London 1928), pp116-141.

66   The Peace Treaty with Austria made such a union subject to the approval of the League. See the text of the Treaty in *British Treaty Series* Vol II (1919). In the view of the Allies, such a union was politically and strategically objectionable on the grounds that it could provide a strong political and economic base for a new powerful Germany. In the course of the war, the British had in fact indicated that even though the principle of nationalities should be one of the governing factors in the post-war territorial arrangements, it would not be

populations spread over Italy, Czechoslovakia, Poland and Belgium, the Bulgars, Magyars and Albanians were also trapped in Yugoslavia and Romania.[67]

In an attempt to remedy the situation and thus protect the rights of the 'trapped' minorities, the Allies executed the Minority Treaties[68] with the new states.[69] Where a Peace Treaty or any other treaty was signed instead of a Minority Treaty special provisions were inserted for the protection of the minorities.[70] In the case of states with which no special treaties were executed, they were required to make special declarations (before the

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pushed "so far as unduly to strengthen any State which is likely to be a cause of danger to European peace in the future": see George, *The Truth About the Peace Treaties* Vol I (Victor Gollancz Ltd, London 1938) p32. Pomerance also attempts to rationalize the several inconsistencies in the Allied treatment of self-determination in respect of Austria and other territories by noting that in the post-war settlements,

> principles which formed part of traditional international law could not be dismissed out of hand [in favour of self-determination] ... other considerations, of an economic, strategic and historic nature, could be ignored, it was felt, only at great peril. Thus, if Austria was denied true "external" self-determination - her desire to accede to Germany barred - this was done for the sake of European peace and security.

Self-determination in Law and Practice pp4-5. For similar justifications for the inclusion of the German territories (Sudetenland) in Czechoslovakia, see Seymour, "The Paris Education of Wilson", (1956) 32 *Virg Quart Rev* 591 at 591- 592.

67   At the end of the Peace settlements, over 47 million Europeans comprising of different races were living under alien rule. This figure excluded over 10 million Jews in Europe and the Russian nationalities. For a statistical analysis of the distribution of these nationalities, see Heyking, "The International Protection of Minorities - The Achilles' Heel of the League of Nations" (1928) XIII *Trans Grotius Soc* 31. See also Brown, "Self-Determination in Central Europe" (1920) 15 *Am Journ Int'L Law* 235.

68   On the Minorities Treaties, see Leowenfeld, "The Protection of Private Property Under the Minorities Protection Treaties" (1931) XVI *Trans Grotius Soc* 41 at 41-54, 41-43. See also the works on Minorities Protection cited in fn63. For a treatment of the defects of the scheme for minorities protection, see Heyking, "The International Protection of Minorities - The Achilles' Heel of the League of Nations" (1928) XIII *Trans Grotius Soc* 31 at 39-52, and Heyking, "Some Defects in the Protection of Racial and Religious Minorities" (1925) X *Trans Grotius Soc* 143.

69   The states involved were Poland, the Kingdom of Serbs, Croats and Slovenes (Yugoslavia), Czechoslovakia, Romania, and Greece: see Modeen, *The International Protection of National Minorities in Europe* pp49-57.

70   The states were Austria, Bulgaria, Hungary and Turkey.

Council of the League) that embodied protection of minorities.[71] Minority safeguards were also written into the German-Polish Convention on Upper Silesia and the Convention on the Memel Territory.[72]

At the plenary seesion of the Peace Conference, President Wilson explained the rationale of such minority safeguards:

> Take the rights of minorities. Nothing ... is more likely to disturb the peace of the world than the treatment which might in certain circumstances be meted out to minorities. And, therefore, if the Great Powers are to guarantee the peace of the world in any sense, is it unjust that they should be satisfied that the proper and necessary guarantee has been given?[73]

Each of the treaties had its specific peculiarities depending on the uniqueness of the beneficiary minority group.[74] However there were some provisions that were common to all. These included guarantees of:

- full and complete protection of life and liberty to all inhabitants without distinction as to birth, nationality, language, race or religion;

- the free exercise, whether public or private, of any creed, religion or belief (of all inhabitants) whose practices were not inconsistent with public order or morals; and

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71   Such declarations were made by Albania, Estonia, Latvia, Lithuania and later by Finland in respect of the Aaland Islands.

72   Sohn & Buergenthal, *International Protection of Human Rights* (Bobbs-Merrill, Indianapolis 1973) pp213-214; Modeen, *The International Protection of National Minorities in Europe* p61. See esp Stone, *Regional Guarantees of Minority Rights* (MacMillan, New York 1933) pp19ff.

73   Quoted in Sohn & Buergenthal, *International Protection of Human Rights* p216 -217. It has thus been noted that the objective of the minorities protection was not humanitarian, but political, see Azcarate, *League of Nations and National Minorities* p14.

74   Examples of such groups were Jews in Greece, Poland and Romania, the Valchs of Pindus in Greece, the non-Greek monastic communities of Mount Athos; the moslems of Albania, Greece, the Kingdom of the Serbs, Croats and Slovenes, and the Czechs and Saxons of Transylvania in Romania.

- the same treatment and security in law and in fact as the original subjects of the ... state.[75]

It is conceded that insofar as the treaties sought to protect the political, cultural, religious and economic development of specific groups, they promoted their right to self-determination within those states of which such minorities formed integral parts.[76] It must, however, be emphasised that, in supporting self-determination, the main concern of the Allies was to weaken Germany and to satisfy their own strategic requirements. As Brown notes, the dominant motives of the Allies at the Peace Conference were not humanitarian, but rather, first, the urge to gratify their faithful allies; secondly, to show severity to the conquered; and thirdly, to establish a new balance of power.[77] Consequently, nationalities whose disposition did not have any direct relevance to the overall scheme of strategy for the Allies were virtually ignored.

The Colonies of the Central Powers

With the defeat of the Central Powers, the Allies set about the task of disposing of the latter's colonial possessions. The Allies did not specifically mention self-determination for or the liberation of all colonial peoples under the enemy's administration as part of their war aims. However, in several commentaries on the war aims, leading Allied statesmen indicated that the principle was applicable to territorial settlements including those affecting overseas possessions.[78]

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75   The provision "whose practices are not consistent with public order or morals" in para 2 was not inserted in the treaty with Turkey. The treaty with Poland was the first. See text in (1919) 13 *Am Journ Int'L Law*, supp, for the treaties with Bulgaria, Austria, Romania, Czechoslovakia and the Kingdom of the Serbs, Croats and Slovenes. See also, (1920) 14 *Am Journ Int'L Law* supp, 5; (1933) XVIII*Trans Grotius Soc* XVIII (1933) 14-16. For a brief but comprehensive survey of the treaties, see Macartney, "League of Nations and Protection of Minority Rights" in Luard (ed), *International Protection of Human Rights* (Thames & Hudson, London 1967) pp22-37.

76   It is of interest to note that in the course of the war, the Central Powers had emphasised this point. In the Brest Litovsk agreement, they had indicated that the protection of minority rights was an essential aspect of the right of peoples to self-determination. The protection of minorities' rights as such had not been part of the Allied war-time objectives. It was rather adopted out of the post-war expediences. See Macartney, *National States and National Minorities* p212.

77   Brown, "Self-Determination in Central Europe" (1920) 15 *Am Journ Int'L Law* 235 at 237.

78   For instance, it had been observed by Lloyd George in reference to the colonies that:

When the time came to discuss the colonies at the Peace Conference, a majority of the Allies adopted a contrary view. They argued generally that the possessions should be annexed. In what came to be called "the Smut' Plan", General Smuts rationalised the annexation proposals on the grounds that the colonies are:

> inhabited by barbarians, who not only cannot possibly govern themselves ... to whom it would be impracticable to apply any idea of political self-determination in the European sense.[79]

The idea of annexation was rejected by President Wilson. In his view, if self-determination was impracticable for the "barbarians", and the latter were not to be returned to Germany, then "some other institution must be found to carry out the idea all had in mind, namely the development of the country for the advantage of those who will live there later".[80] The institution the Allies found was the Mandate System.

The ostensible theoretical foundations of the Mandate System were consistent with the patronising philosophy that the colonies constituted a responsibility, a trust of civilisation, the "white man's burden".[81] Thus the system as incorporated in Article 22 of the League Covenant provided for the tutelage of the "colonies and territories" whose inhabitants were "not yet able to stand by themselves under the strenuous conditions of the modern world" by the more "advanced nations".

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the natives live in their various tribal organisations under chiefs and councils who are competent to consult and speak for their tribes and members and thus to represent their wishes and interests in regard to their disposal. The general principle of self-determination is therefore applicable in their cases as in those of the occupied European territories.
See Temperly (ed), *A History of the Peace Conference of Paris, Vol 2*, pp226-227.

79   Miller, *The Drafting of the Convenant*, Vol II, p28. See also generally, Smuts, *The League of Nations: A Practical Suggestion* (Hodder Stoughton, London 1918); Zimmern, *The League of Nations and the Rule of Law*, 1918-1935 (Russell & Russell, New York 1938), chIII, esp pp211-212.

80   Quoted in Wright, *Mandates Under the League of Nations* (University of Chicago, Chicago 1930) p35.

81   Batty, "Protectorates and Mandates" (1921-2) *British Ybk Int'L Law* 109; see also, Oppenheim, *International Law* Lauterpacht (ed) p214; *Status of South-West Africa*, 150 ICJ Rep 128, particularly the opinion of Judge McNair at 153-156.

Under Article 22(4) the selection of mandates in the case of "A" Mandated area was to be principally determined by the wishes of the inhabitants or communities affected. Even though such areas were not made sovereign, it must be conceded that the provisions assured them a certain immediate degree of self-determination.[82]

In the case of "B" Mandated areas, Article 22(5) made it obligatory for the Mandatory to provide an administration which will guarantee freedom of conscience and religion subject only to the maintenance of public order and morals. Slave trading in such areas was also to be abolished. These safeguards "in the interest of the indigenous population" was also made applicable to "C" Mandated areas under Article 22(6).[83]

It has been suggested that the concept of tutelage and thus the Mandate System generally is illogical unless the system is defined in terms of developing or tutoring the wards towards a status of maturity and self-sufficiency. So "the logic as well as the intent of the mandate system was the development of the peoples to a point at which they would be capable of exercising their right of self-determination".[84] Thus at least on the face of it, the Mandate System seemed liberal and thus plausible.[85] It is however, debatable whether Wilson's rejection of the annexation proposal and his acceptance of the mandate system were motivated primarily by any philanthropic desire to protect the rights of the inhabitants of mandated areas as such. If one maintains that Wilson was motivated by the concern for the rights of such people then he chose a rather vague and

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82   'A' Mandates included Iraq, Palestine (and TransJordan), Syria and Lebanon. On the international status of these territories however, see Lewis, "Mandated Territories, their International Status", (1923) 39 *LQR* 458. He takes the view that at best these territories were "truly caricature states": at 464.

83   'B' Mandates were Tanganyika, British Togoland, French Togoland, British Cameroon and French Cameroons. The 'C' Mandates comprised New Guinea, Nauru, Western Samoa, Pacific Islands and South West Africa. In practical terms, the distinctions between the two classes of mandates in respect of administration and the discretion of the Mandatories were hardly noticeable. See the comments of Batty, "Protectorates and Mandates" (1921-2) *British Ybk Int'L Law* 109 at 119; Lewis, "Mandated Territories, their International Status" (1923) 39 *Law Quart Review* 458 at 467; Wright, "Sovereignty of the Mandates" (1923) 17 *Am Journ Int'L Law* 691-703 at 696.

84   Ofuatey-Kodjoe, *The Principle of Self-Determination in International Law* p89.

85   This feature of the System leads Umozurike to conclude that "it" was the fruit of the ideas of philanthropists, idealists, statesmen and religious leaders: Umozurike, *Self-Determination in International Law* p27.

poor system to safeguard their rights.[86] It was generally admitted that the Mandated territories were "politically speaking minors" and that the system was to allow them to mature and thus "to arrive one day at full self government".[87]   However, the League Covenant did not specify any machinery for determining the point at which a people could be said to be able to stand by themselves "under the strenuous conditions of the modern world". The League thus failed to evolve any definite criteria indicative of the attainment of such a condition.[88]

Under the covenant, a Mandatory was required to submit annual reports on the progress of the Mandated Territories under its charge.[89] Presumably this was to enable the League to monitor the gradual development of such territories towards self-determination. The reporting system was quite

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86   For a critical account of the operation of the Mandate System, see Hales, "Reform and Extension: A Legal Solution of the Colonial Problem" (1940) XXVI *Trans Grotius Soc* 153. See however, Campbell Lee, "Mandates, How they are Working" (1926) XII *Trans Grotius Soc* 31 for a positive account.

87   League of Nations, Permanent Mandates Commission (PMC) *Minutes of the Session* VII, 202.

88   Wright, "Sovereignty of the Mandates" (1923) 17 *Am Journ Int'L Law* 691 at 700-701. However, the issue of the termination of Mandates did come up in respect of Iraq.   The Council of the League subsequently requested the Permanent Mandates Commission (PMC) to provide suggestions as to the general conditions which needed to be fulfilled before a Mandated could become independent.   The PMC considered the issue at its session in 1931 and recommended that: (1) there must exist in the territory concerned "*de facto* conditions justifying the presumption that the country had reached the stage at which a people had become able to stand by itself under the strenuous conditions of the modern world", and (2) the territory must furnish guarantees "to the satisfaction of the League in whose name the Mandate has been conferred". In specific terms, the PMC recommended that (a) the territory must have a settled government capable of rendering essential services; (b) it must be capable of maintaining (i) its territorial integrity and political independence and (ii) public peace; (c) it must have adequate financial resources; (d) possess laws and a judicial organisation which will afford equal and regular treatment. The territory had to guarantee the protection of minorities and aliens and the maintenance of international conventions. By the nature of the foregoing requirements, 'B' and 'C' mandates were virtually precluded from attaining independence on the criteria generally. See the comments by Hales, "Some Legal Aspects of the Mandate System: Sovereignty - Nationality - and Termination" (1938) XXIII *Trans Grotius Soc* 85-126, 112-122; Ritsher, *Criteria of Capacity For Independence* (Syrian Orphanage Press, Jerusalem 1934) pp1-4 (intro); Wright, "Recognition and Self-Determination" (1954) *Proceedings of the Am Society of Int'L Law* 23 at 34; "Proposed Termination of the Iraq Mandate" (1931) 25 *Am Journ Int'L Law* 436.

89   League of Nations Covenant, Art 22(7).

inadequate because it is doubtful whether any Mandatory would have submitted a report which was adverse to its interests in the territory. In any case, given the peculiar situation of "B" and "C" mandates, their chances of emerging to full independence could not even be contemplated as a possible event on the horizon in the absence of any specific criteria. The hopelessness and vagueness of their general situation was summed up in the observation of an Allied statesman in relation to the African colonies:

> The time when the bulk of tropical Africa will be able to stand alone in the strenuous conditions of the modern world may not be on the Horizon, but the Mandate imposed upon the powers which have accepted them, the obligation to conduct the people towards that goal.[90]

Being charged with an obligation is one thing, the actual discharge of such an obligation is another. It is significant to note that from the period of their creation as Mandated areas to the end of WWII, none of the type "C" Mandated areas was adjudged able to stand by itself.[91]

Possible Conservative Basis for the Mandate System

Given the approach to the issue of self-determination for Mandated Territories, it has been suggested that Wilson's major concern in accepting the idea of the mandate system was not necessarily the humanitarian one of protecting the rights of the backward nations. He was motivated principally by economic factors.[92] Whatever cynicism one may have towards this view, it could be said that it raises some thought provoking possibilities. One of the underlying philosophies of tutelage or trusteeship as implied by the Mandate System was that "the mandatories should make no profit from administering the areas ... they are precluded from gaining a

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90   Statement of Sir Frederick Lugard, PMC (Minutes), VII, p196.
91   The situation was not very different in the 'A' areas. For two decades none was adjudged capable of exercising full self-determination. In the case of Iraq there was no special Mandate Agreement. However, in 1930 its status as a Mandated Territory was renounced and it was subsequently admitted to the League in 1932. By an agreement executed in 1928, Britain recognised a *de facto* independent government in TransJordan. However, it was not until 1946 that it emerged as the State of Jordan and subsequently joined the UN in 1955. Syria and Lebanon emerged as independent republics in 1941. See Crawford, *The Creation of States in International Law* (OUP, Oxford 1979) p4.
92   Pomerance, "The United States and Self-Determination: Perspectives on the Wilsonian Conception" (1976) 70 *Am Journ Int'L Law* 1.

direct financial profit or direct military advantage". It would seem that a mandatory was also prohibited from giving its own or its friends' nationals special advantages of any kind in the areas.[93] In a way, then, the idea of the mandate system fitted quite well into the "Open Door" concept which was characteristic of American international trade and commercial policies in that period.[94] The annexation proposal did not.

I have indicated earlier that by its very nature a colony generally provides the metropolitan state with an exclusive market for export and the import of cheap raw materials. The defeat of Germany and Turkey meant a break in their monopolies over their possessions. To allow annexation of any of such territories would have implied simply replacing German or Turkish monopoly with Allied exclusivism. As an emerging economic power in the period, the Open Door approach through the Mandate System was quite significant to the United States insofar as the system opened up the markets in the Mandated Territories.

Article 22 of the Covenant specifically provided that in "B" Mandated Territories the Mandatory "will ... secure equal opportunities for the trade and commerce of other members of the League". No such requirement was provided for the "A" areas. However, the League Assembly and the United States insisted that the economic open door policy must apply in such territories too.[95]

In the case of "C" areas, the Covenant provided that they must be administered as though they were integral parts of the Mandatories concerned, subject to the safeguards of the interests of the indigenous population.[96] The Open Door policy was therefore not legally required.[97]

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93   Wright, *Mandates Under the League of Nations* p476.
94   On the "Open Door" Policy, see generally the work of Gerig, *Open Door and Mandates System: A Sudy of Economic Equality before and since the Establishment of the Mandates System* (Allen & Unwin, London 1930).
95   Wright, *Mandates Under the League of Nations* p477.
96   In real terms, 'C' Mandates were more like annexed territories of the Mandatories. Commenting on their status, General Smuts, Prime Minister of South Africa, noted that the territories were annexations in every respect but name. See Wright, "Status of the Inhabitants of Mandated Territory" (1924) 18 *Am Journ Int'L Law* 306-315 at 311.
97   Japan contended that the Open Door Policy for 'B' areas was in the interest of the indigenous population and consequently applied to the 'C' areas too. The contention was rejected: see Wright, *Mandates Under the League of Nations* 478. See also Batty, "Protectorates and Mandates" (1921-2) *British Ybk Int'L Law* 109 at 119.

However, the Permanent Mandates Commission required economic equality in the commercial transactions affecting the territories.[98]

In all, the political situation, particularly of "B" and "C" Mandated territories in respect of self-determination, was hardly meant to be any different from other colonies in practical terms. As one cynic observed, the Mandate System was the "old hag of colonization which put on a fig leaf and calls itself mandate".[99]

The Colonial Possessions of the Allied Powers

The status of the Allied Colonies remained unaffected by the political changes of the post-war period. Despite the war-time rhetoric of the Allies, their general post-war position appeared to be that subject communities did not necessarily have a right to self-determination except as it accrued from international obligations at the Peace Conference or under the Mandate System. Thus the colonies of the Allies were, properly speaking, not considered as subjects for self-determination.

The attitude of the Allies towards their own colonies could be explained essentially by economic factors. In the colonial period the economic and military exploitation of natives and the general monopoly of colonial trade for the benefit of the colonies as sources of cheap raw materials became very significant particularly for the war-torn economies. The continued and exclusive control of their colonies was imperative. Any possible additions to their possessions, through the annexations proposed, was also very desirable for that reason. Economic logic therefore dictated the exclusion of the Allied possessions from the post-war arrangements.

The treatment of self-determination in the post-war period was selective. One sees that in almost all cases, despite the war-time rhetoric of the Allies, self-determination was only honoured where it was likely to advance their material, diplomatic or strategic interests. Conversely, they flatly denied it to nationalities where it promised to be in conflict with their economic or strategic interests. To these extents, the attitudes of the

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98   A reference to an Australian law that restricted trading with New Guinea to Australian vessels was immediately repealed. Similarly, a reference to Japanese monopoly over her 'C' mandated areas drew explanations and denials from Japan: Wright, *Mandates Under the League of Nations* 479.

99   De Madariaga, *The World's Design* (Allen & Unwin, London 1938) p7, quoted in Claude, *Swords into Plowshares: The Problems and Progress of International Organisation* (University of London Press, London, 3rd ed 1964), p321.

Allies was very similar to the conservatism of the proponents of the principle in earlier times.

More significantly, the post-war conservatism of the Allies produced results that were similar to the general conditions that prevailed in Europe prior to WWI. After the peace settlements, the articulated demands and projected scales of expectations of those nationalities that were not satisfied remained alive and became the basis of a new form of nationalism. This new movement was evident among non self-governing nationalities in general and the Germans living in the new states in particular. The liberal demands of such nationalities on the one hand and the demands of conservatism on the other hand, bred tensions in the international order and created fertile grounds for conflict particularly in Europe. More specifically, it was the attempt by Germany to exploit the imperfections of the post-WWI settlements and demands of the trapped minorities that contributed significantly to WWII.

WORLD WAR II AND THE DEVELOPMENT OF SELF-DETERMINATION

Background to the Support for Self-Determination in WWII

After the territorial settlements in post-WWI Europe, the principle of self-determination generally declined. It was not until the late 1930s that the principle was revived once more with liberal undertones.[100] The earliest manipulations of the principle were implicit in Hitler's exploitation of the many imperfections of the post-war territorial settlements, in his campaign to liberate all Germanic peoples and to build a Greater Germany.[101] When

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100   Brownlie, "An Essay in the History of Self-Determination" in Alexandrowicz (ed), *Studies in the History of the Law of Nations* (Grotius Society Papers, London 1969) p97. After 1930 the few cases in which the principle received any serious attention included the July 1940 Act of Habana Concerning the Provisional Administration of European Colonial Possession in the Americas, and the case of the British Dominions. Iraq also became independent.

101   In his pre-war and war time speeches Hitler made several references to self-determination and left no doubt about the significance of the principle to his campaign for a Greater Germany. As far back as 1924 he expressed discontent with the Treaty of Versailles and the subsequent territorial settlements in Europe. He argued: "Self-determination yes, but self-determination for every negro tribe; and Germany does not count as a negro tribe": Baynes, *Speeches of Adolf Hitler, April 1922-August 1939* Vol I (OUP, London 1942) p83. Commenting on the Austrian situation, Hitler argued:

      while the Allies ... upheld the right of self-determination for primitive negro tribes, they refused in 1918 to grant to a highly civilised nation

Germany invaded Czechoslovakia and thus started the general campaign of expansion leading to the invasion of Poland and the eventual escalation of WWII, the Allies also declared their support for the invaded countries and for their right of self-determination. Thus within the context of the war, a commitment to the principle was strategically desirable for the Allies as well as the Germans in their bid to win the support of the "oppressed" or invaded territories.

The first official Allied Commitment to the principle was contained in the Atlantic Charter of 1941, concluded initially between the United Kingdom and the United States. In the first three paragraphs of the Charter, the signatories pledged that:

- they seek no territorial or other aggrandisement;

- they desire to see no territorial changes that do not accord with the freely expressed wishes of the peoples concerned; and that

- they respect the right of all peoples to choose the form of government under which they will live.[102]

The provisions appeared universalist and were reminiscent of the ostensible liberalism that had characterised assertions of self-determination in previous times. However, despite this outlook, there was evidence to suggest that these commitments were made with particular reference to the Balkan States and those European territories to be liberated from the Nazi occupation.[103] On the part of the United States, this restrictive approach to the principle was implicit in the statements of Roosevelt.[104] Churchill was unequivocal on the United Kingdom's

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like the Germans the right of man which had previously been ... promised ... the Peace Treaty of Versailles even forbade the union of the Germans of the Ostmark with the Reich ... I myself, as a son of Ostmark, was filled with the sacred wish to solve this problem and thus lead my homeland back to the Reich. In January 1938, I finally resolved that in the course of that year, in one way or another, I would fight for and win the right for self-determination for the six and a half million Germans in Austria.

Vol II, p1568.

102   Churchill, *The Second World War*, Vol III, (Facsimile of the Original Draft of the Atlantic Charter) (Cassel & Co Ltd, London 1950) p395.

103   Ofuatey-Kodjoe, *The Principle of Self-Determination in International Law* .

104   In a memo to Myron Tayor, a personal representative to Pope Pius XII, President Roosevelt had noted that self-determination was a useful concept and could be applied to "certain populations and areas which have conducted century

positions.   In a debate in the House of Commons, he declared that
paragraph three, and indeed the entire concept of self-determination as
incorporated in the Atlantic Charter, did not apply to India, Burma or any
of the colonies of the British Empire but only to European states.[105]

The Anglo-American desire to restrict the Atlantic Charter to European
nationalities at this stage is very significant and can be explained within
the framework of the general hypothesis of this paper - conservative
proponents of self-determination will, as a rule, only support its
application where it promises to enhance their specific strategic economic
or political interests and vice versa.   In Europe, the support for the
principle within the context of WWII was a strategic necessity.   In the
relative calm of the colonies, similar commitments to self-determination
for the "backward" peoples was not only unnecessary, but economically
undesirable from the British point of view.[106]   In the initial stages, the
United States was not a party to the war.   Its general attitude to the
principle within the context of the conflict was therefore largely influenced
by the British perspectives.   Thus, at this stage of the war, the two states

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old feuds".   He then indicated: "As an example, the people of Croatia should not
be forced into a government with the Serbs or with the Italians or with the
Hungarians."   On the question of the future of colonial peoples the President was
of the view that

> for the time being at least, there are many minor children among the
> peoples of the world who need trustees in their relations with other
> nations and peoples just as there are many adult nations or peoples
> which must be led back into a spirit of good conduct.

Memo to Myron C Taylor, Sept 1, 1945, Papers of President Franklin D
Roosevelt, Secretary's File (Box 76), Hyde Park Library, cited in Russell &
Muther, *A History of the United Nations Charter: The Role of the United States,
1940-1945* (Brookings Institution, Washington 1958) p43.

105   UK, Parl, *Debates* House of Commons [1941] 374, H O Deb cols 76-69.
       Winston Churchill emphasised this point again in his oft quoted statement that
       he had not "become the King's First Minister in order to preside over the
       liquidation of the British Empire": *London Times* November, 1942).

106   By the outbreak of the war in 1939, the United Kingdom controlled a total area
       of 61,500,000 sq miles in colonial territories involving some 61,500,000
       subjects: Ward, *The International Share-Out* (Nelson & Sons, London 1938)
       pvi, Table I; also Jeffries, *The Colonial Office*, (Allen & Unwin, London 1956),
       p206. In Africa, South of the Sahara alone, British Investments in the colonies
       totalled £941.3 at 1938: Frankel, *Capital Investment in Africa*, (OUP, London
       1938) Table 28, p150.   While the actual volume of trade between the United
       Kingdom and her colonies may have been relatively small in percentage terms,
       the strategic significance of her colonial possessions was very great: Ward, *The
       International Share-Out* pp33-38, 82-85.

were in mutual agreement as to the exclusion of non-European peoples from the benefits of the principle.

Changes in Allied Policy

After Pearl Harbour the United States actively entered WWII as a party. With its involvement, the United States developed different perceptions of strategic, political and economic interests which led to subsequent changes in its policy on the scope of self-determination. In December 1941, under American initiative, the United Kingdom, the USSR, China, and all anti-Axis states issued a joint declaration that came to be called the "Declaration of the United Nations".[107] For the purposes of this work, the significance of the declaration lay in the fact that its signatories pledged themselves to uphold the principles of the Atlantic Charter which was to play an important role in the evolution of the principle.[108] In May 1942, American Under-Secretary of State, Welles, announced that Allied victory must bring in its train "the liberation of all peoples" and that "the age of imperialism is ended". More importantly, he declared that "the principles of the Atlantic Charter must be guaranteed to the world as a whole - in all oceans and in all continents".[109] By implication, the principle of self-determination was to be applied to European nationalities as well as the dependent peoples elsewhere.

Even though the statement by Welles indicated the change in American policy, it proved to be rather too radical from an official point of view. In a more comprehensive statement at the inauguration of the New Deal for Colonies, Secretary of State, Hull, watered-down Welles' statement and summed up the basis of the American policy as follows:

> We have always sought - and we seek today - to encourage and aid all who aspire to freedom to establish their right to it by preparing themselves to assume its obligations ... It has been our purpose in the past - and will remain our

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107 The declaration was proposed originally between the US, UK and USSR. China became a signatory on the 1 January 1942 along with the three powers who also formally signed the declaration on that day. On 2 January 1942, 22 more states at war with either Japan or Germany or Italy also signed. The States were Australia, Belgium, Canada, Costa Rica, Cuba, Czechoslovakia, Dominican Republic, El Salvador, Greece, Guatemala, Haiti, Honduras, India, Luxembourg, Netherlands, New Zealand, Nicaragua, Norway, Panama, Poland, South Africa and Yugoslavia: Russell & Muther, *A History of the UN Charter* p51, fn17.

108 As above at pp51-52.

109 US Dept of State Bulletin, Vol 6 (30th May 1942).

> purpose in future - to use the full measure of our influence
> to support attainment of freedom by all peoples who by
> their acts show themselves worthy of it and ready for it.[110]

When the United States entered the war, it came to favour a wider application for self-determination as opposed to the restrictive British approach.

On the face of it the general American policy on the principle in WWII appeared liberal. In fact, Ofuatey Kodjoe rationalises the American attitude by observing that:

> US Official policy, as well as the general feeling of
> informed groups, had always upheld the view, going back
> to the American revolution, that colonial peoples had a
> right to self-government and independence; that is to say,
> they had a right to self-determination.[111]

It is submitted that even though his view is reminiscent of Hull's New Deal statement, it is an inadequate explanation of the rational basis of American colonial policy. He sees the policy in purely liberal terms and ignores the non-liberal factors that helped to shape it.

That America was once a colony and therefore tends to show some anti-colonial sentiments is undisputed. One must also admit that several "informed" pressure groups in America advocated an end to colonialism on humanitarian grounds as a post-war policy.[112] However, these factors do not in themselves explain why America insisted on a broader interpretation of the Atlantic Charter in 1942 instead of 1941 when the Charter was concluded. They also fail to explain why America advocated

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110   *Post-War Foreign Policy Preparation 1939-45*, Department of State, Publication No 3580 Washington (1950) p109. The speech was delivered on 23 July 1942.

111   Ofuatey-Kodjoe, *The Principle of Self-Determination in International Law* p99.

112   For instance a group of Protestant leaders urged the United States government to adopt a liberal posture at San Francisco by arguing thus: "We can find no moral grounds to support the acquisition of bases by a single nation, first through forthright annexation, or, second under the guise of trusteeship. Either procedure would violate a pledge made in the Atlantic Charter": Commission to Study the Organization of Peace, "Preliminary Report and Monographs" (1941) 369 *Int'L Con* 519. The final position adopted by the United States at San Francisco would seem to support the view that such a "general feeling of informed groups" hardly influenced the formation of American colonial policy to any significant degree.

for a trusteeship system instead of outright independence for dependent peoples.

In the evolution of the principle of self-determination, then, how far was America's pursuit of the principle, particularly in the WWII period, motivated by liberalism and what was the role of the conservative factor? The general American attitude can be explained within the framework of the basic hypothesis that proponents of self-determination would support the principle within a given context only insofar as it is in harmony with their specific interests. In the context of WWII, American conservatism found ample room to accommodate a wider application of the principle because it satisfied American interests within that period. Even though liberalism played a role in American colonial policy, it by no means constituted the only policy motivations. From the American point of view, interpreting the Atlantic Charter to include all dependent peoples after 1941 was a strategic necessity and not a simple act of liberalism. Japan's occupation of Indochina in 1941 had been followed by a chain of victories in South East Asia. Within five months after Pearl Harbour, Japan had overrun Singapore, the Dutch East Indies and the Philippines. Following its successes in the Malaya campaign, Japan was advancing towards Burma. More significantly, some nationalists in Far Eastern colonies and the subcontinent were quite willing to fight on the side of the Axis for promises of post-war sovereignty.[113] American sentiments about the

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113   For instance, Subhas Chandra Bose, the Indian war-time nationalist argued in
       the war period that

          in spite of being in a precarious [war] position, the British would not
          hand over power to the Indian people and the latter would have to fight
          for their freedom ... India would win her independence if she played her
          part in the war against Britain and collaborated with those powers that
          were fighting Britain.

       Bose, *The Indian Struggle, 1920-1942* (Asia Publishing House, Bombay 1952)
       p345. Bose later took over the leadership of the Indian Liberation Movement in
       East Asia and formed the Indian National Army (INA) which fought on the side
       of the Axis in the Burma campaign. In Burma, the Japanese threat was
       manifested in considerable concessions that were promised. The territory was
       later to be proclaimed independent and an autonomous part of Greater East Asia
       in alliance with Japan. On the Japanese threat in Asia see generally McDonald,
       Trusteeship in the Pacific (Angus & Robertson, Sydney 1949) pp103-117. In
       view of the Japanese threat in East Asia, President Roosevelt lost no time in
       declaring to colonial peoples that their capacity and desire for self-government
       "in the present moment of world emergency" should be demonstrated by
       contributing "towards the defeat of the Axis who were foes of all freedom and
       independence": Russell & Muther, *A History of the UN Charter* p89. Earlier in
       1941, the President had also indicated to the British that India would co-operate

inevitability of the rising nationalism and the need to make concessions to the dependent peoples were underscored by the Japanese successes in the Southwest Pacific coupled with the Japanese slogan "Asia for Asians".[114] From the American point of view then, an apparent liberal commitment to self-determination as embodied in the Atlantic Charter was necessary to attract the support of the influential nationalist groups.[115]

In Roosevelt's thinking, international peace and security on the one hand and the rights of dependent peoples on the other were inseparable. In any case, strategic necessities for world peace and security had to be balanced with the self-determination for dependent peoples.[116] It would seem, however, that whenever there was a conflict between the two, the American view of the requirements of international peace and security took precedence.

In pursuing the idea of the trusteeship, American security interests were never lacking in the motivations. This fact is under-scored particularly in the case of the Japanese mandated territories and other possessions in the Pacific. In June 1944, Roosevelt indicated that in proposing the idea of the trust, he anticipated that the United Nations would ask the United States to act as trustees for the Japanese possessions.[117] The importance of the Pacific islands lay in their strategic military value.[118] From the American point of view, strategic realities and not the inhabitants were to determine the political future of the islands. As one American Senator clearly described the situation:

> The American military and naval authorities know that islands in the Pacific must be permanent strongholds ... American military and naval opinions and judgments should be consulted. It is no part of the business of the UN

better in the war effort if the country was assured of independence at the conclusion of the war: p79.

114   As above p76.
115   As above.
116   Haas, "The Attempt to Terminate Colonialism: Acceptance of the United Nations Trusteeship System" (1953) 7 *Int'L Org* 1 at 5.
117   In a letter to the Joint Chiefs of Staff in July 1944, President Roosevelt wrote: "I am working on the idea that the United Nations will ask the United States to act as a Trustee for the Japanese mandated islands." See Hull, *The Memoirs of Cordell Hull*, Vol II (Hodder & Stoughton, London 1948) p1466.
118   On the strategic value of the islands, see Blakeslee, "Japan's Mandated Islands", *Department of State Bulletin*, 17 December 1944.

> Conference of San Francisco. It is not the business of any
> nation in the world except the USA.[119]

Due to the singular strategic importance of the islands, some groups in American political, naval and military circles did not favour even the idea of trusteeship. To appease such groups another Senator summed up the basic subtlety implied in the trusteeship proposed for the island:

> under our conception, all we have to do is to hold on to
> them until such time as we need to give them up. I do not
> think we would want to give them up if they are in strategic
> areas. If we did, we would give them up with strings on
> them.[120]

The question is: if the United States wanted to keep the islands why did it not annex them outright instead? After all, it had the power and the influence in that period to do so. It is submitted that any such action was risky to the extent that it could trigger off a chain reaction of annexations by other Allied States.[121] From the American point of view, such annexations would have been undesirable for two major reasons. First, it would have been contrary to the spirit of the Atlantic Charter for which the United States had declared its total commitment. Secondly, annexations would have meant economic exclusivism over the territories in favour of the annexing powers. This would have been contrary to the general Open Door policy advocated by the United States since the period of WWI. In

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119   National Conferences of Christians and Jews: United Nations Conference on
       International Organization (UNCIO) Memos No 2, 9th May 1945.
120   Hearings before the Committee on Foreign Relations, US Senate, 79th Congress,
       Sess, Washington (1945) 314-316.
121   At San Francisco, the Chinese delegate put a similar view when he argued:
       > For the US to annexe or lay permanent claim to a single trusteeship of
       > the Pacific Islands would be unfortunate indeed. This would constitute
       > a dangerous precedent for England and Russia to do likewise with
       > territories they have torn from the enemy.
       National Conference of Christians and Jews, UNCIO Memos No 3, 16 May
       1945. Secretary Hull was equally apprehensive about any attempt to annexe the
       territories. He argued that US security interests were well protected within the
       trusteeship system. He was of the view that even though Russia would oppose
       outright acquisition of the Pacific Islands by the United States,
       > it was also not hard to see that Russia would thereupon use this acquisition
       > as an example and precedent for similar acquisitions by herself. Our
       > acquisition of these islands estopped us from objecting to similar
       > acquisitions by other nations.
       Hull, *The Memoirs of Cordell Hull* Vol II, p1466.

effect, the trusteeship system advocated by the United States afforded a convenient tool for acquiring control over strategically desirable areas without seeming to violate the pledges of the Atlantic Charter. It also had the potential advantage of ensuring compliance with the Open Door policy.

It would be simplistic to suggest that liberalism played no role in the shaping of American colonial policy. It would however be inaccurate to argue that such a factor was solely accountable for the American attitude to self-determination during the war. The American war-time policy embodied elements of liberalism, but above all, it was also designed to meet American strategic and other national interests.

The ostensible American liberalism dominated the general Allied policy on self-determination during the war. Subsequently there emerged potential beneficiaries with articulated demands and expectations based on the relevant provisions of the Atlantic Charter and other liberal statements of the Allies. However, unlike the previous situations, post-WWI prospective beneficiaries comprised not only European nationalities and peoples of occupied territories, but also former mandatories and colonial peoples generally. The articulated demands common to all these groups were for the end of alien rule and the right to self-government in one form or the other. It was against the background of such demands and expectations that the Allies and the new states met to draw a blue-print for international relations at San Francisco in 1945.

At the San Francisco Conference self-determination was included in the United Nations Charter. This symbolised a new institutional recognition of the principle and underscored its role in the post-war world order; an order partly based on the ideal that every people has the right to determine its own political destiny. The war-time promises of the Allies and the incorporation of the principle in the United Nations instrument raised the hopes and expectations of non-self-governing peoples for self-determination. However the demands of such peoples for a general application of the principle were to be unresolved in the immediate post-war period as a result of the demands of imperial conservatism. Thus in the period after 1945, the dissatisfaction of the non-self-governing peoples and their agitation for immediate independence became manifested in the wave of nationalism that characterised twentieth century international relations for several decades.

Post-war nationalism, coupled with the agitations of liberal groups in the United Nations, constituted a combined assault on the imperial status quo and a challenge to the legitimacy of colonialism in world order. However, unlike the situations in the nineteenth century and in 1919, the creation of the United Nations and its subsequent recognition of the principle provided an institutional process and forum for the orderly resolution of the conflicts generated by the demands of imperial conservatism on the one hand and the liberalism of the nationalists on the other hand. The successful propagation and application of the self-determination provided the basis for decolonisation and the consolidation of the principle into a norm of international law and a human right.[122]   Above all, this singular success of the principle after 1945 has also led to the emergence of a new regime of potential beneficiaries, this time within the frontiers of (the former colonies and beneficiaries, but now) new sovereign states. The new potential beneficiaries comprise tribes (eg, the Biafrans), ethnic minorities (eg, the Tamils of Sri Lanka) and religious minorities (eg, Sikhs) who demand or have demanded a redefinition of their existing associational relationships for one reason or the other. For such peoples, the international recognition of self-determination as the right of all peoples to determine their own political destiny now provides the normative legitimate basis for the articulation of their demands and their projected expectations. In theoretical terms the demands of such peoples represent a new regime of liberalism which can be aptly described as "neo-liberalism". The former colonies and beneficiaries (ie, the new states) on the other hand have come to be preoccupied with the preservation of their territorial integrity and sovereign status quo. In theoretical terms they now represent a new brand of conservatism which one can describe as neo-conservatism.

The tensions between the antithetical demands of neo-conservatism and neo-liberalism constitute the foundations of contemporary separatist phenomena in the new states (particularly of Africa and Asia). For the purposes of the general theme, it may be concluded that the emergence and assertion of purported separatists claims to legitimacy in such societies are in themselves the logical results of the historical evolution of self-determination. A fortiori, these modern day separatist agitations and the responses they attract from the affected states are consistent with the

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122   Espiell, *The Right of Self-Determination: Implementation of United Nations Resolution* pp17-19; Brownlie, *Principles of International Law* (OUP, Oxford 1979) p259; Nawaz "The Meaning and Range of the Principle of Self-Determination" (1965) *Duke Law Journ* 82.   But see Pomerance, *Self-Determination in Law and Practice*, chXI.

basic thesis that the successful propagation of self-determination in any period in history produces an emergent wave of liberal expectations and a corresponding antithetical conservative reaction.