

THE DOCTRINE OF SELF-DETERMINATION

by

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ABSTRACT

Poverty and underdevelopment plague millions of people in the world today. Interestingly, the 800 million people that are currently living on less than a dollar a day correlate very closely with the 750 million people who were under colonial subjugation in 1945. In an effort to understand how the disparities in development came about, the theory of self-determination will be defined and historically assessed.

Through qualitative evaluation of the principle and history of self-determination and case studies on three key regions that have never known genuine self-rule, it will become clear that the doctrine of self-determination only ever existed in rhetoric. Resource trap theory will be applied to those who have been plagued by outside rule and a general assessment of the state of self-determination in the world will be given. Lastly, an argument for what right transcendentally will be given based on the current state of affairs and on Kantian ethics.

DEDICATIONS

For my Dad because he taught me how to love learning.
For my Mom because she taught me how to be humble enough to do so.

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CHAPTER ONE: INTRODUCTION

In 1945, the year most consider to be the end of the colonial era, almost a third of the world's population (750 million) lived in territories that were dependent on colonial powers.¹ While a history of colonialism is not exceptionally relevant here, it is important to understand the situation of the world leading into the post-colonial era. Before 1945, political leaders were largely expansionist and adopted the idea of mercantilism, which includes the notion of finite wealth. Assuming that there is a limited amount of resources that would make their respective countries rich, these political leaders adopted various policies that would ensure newly found territories would belong to their respective countries.

The purpose of a colony is to increase the wealth of the mother country. That means that in 1945, a third of the world's population was perceived to exist to benefit an entity other than itself. Self-determination as an international ideal challenged the prevalent mercantilist paradigm of the prewar world. It at least gave a basis for the people living in colonial territory to argue for their own rights and sovereignty.

However, almost 70 years after the colonial era ended, 800 million people live on less than a dollar a day in Lesser Developed Countries.² Interestingly, a great majority of the third of the world's population that once lived in colonial subjection overlaps with the portion of the

¹ United Nations, "The United Nations and Decolonization: History"
<http://www.un.org/en/decolonization/history.shtml>

² Forth United Nations Conference on the Least Developed Countries, "Quick Facts," (Istanbul, Turkey: 2011) found at: http://www.un.org/wcm/content/site/ldc/home/Background/quick_facts

world that is now designated as a Lesser Developed Country.³ The continuing disparity in global wealth leads one to wonder what, exactly, is its cause and what is its remedy. Given the correlation between former colonies and their developing status and their ongoing relationships with the global north, the concept of self-determination is a relevant question.

Understanding the history of self-determination as it applied to the international community in the directly postwar world is vital before understanding how the concept relates to the world today. Considering former and ongoing colonial relationships, one is lead to question whether self-determination was ever actually implemented, if there is a legal or moral basis for self-determination, and what the world could look like today if the territorial integrity associated with sovereignty and self-determination was an actuality.

The initial concept of self-determination is generally credited to Woodrow Wilson who first explained an ideal international community is his “Fourteen Points” after the end of World War I. Interestingly, though, the term “self-determination” was never mentioned in his speech or in his written plan for peace in Europe. While he certainly described the concept in more words, the actual use of the term “self-determination” to describe its ramifications was first used in Britain in 1916.⁴ However, when it was initially espoused or mentioned by name is mostly irrelevant because the world leaders who were reconstructing Europe after the Great War largely ignored the concept entirely.

³ United Nations Conference on Trade and Development, “Least Developed Countries Report 2012” (United Nations: New York and Geneva, 2012). Annex Table 2, p. 16 and United Nations General Assembly, “Trust and Non Self-Governing Territories (1945-1999) found at: <http://www.un.org/en/decolonization/nonselgov.shtml>

⁴ Yonah Alexander and Robert Friedlander, *Self-determination: National, Regional, and Global Dimensions* (Westview Press: 1980) 308.

Given the failure of the League of Nations and the turmoil caused by the Second Great War, the concept of self-determination was revisited in the post-colonial era and carried some weight. The new world leaders, again tasked with reconstructing Europe, bore in mind the fact that their arbitrary lines and harsh peace plan for the first postwar era fueled Hitler's fire.⁵ Sobered, self-determination was adopted as a sound philosophical principle and eventually became, in theory and rhetoric, a right granted to all people.

Since its introduction, many theorists and international lawyers have delved into and attempted to define the concept of self-determination. Here, an important distinction has to be made. The principle of self-determination as explored by philosophers and theorists, while it may be problematic at times, has had enough attention to be at least accepted and understood by most. In contrast, the right to self-determination as defined by international law and implementation techniques remains murky at best.⁶

Before one can continue, there are certain terms that must be understood mutually in order to engage in a thorough understanding of self-determination as both a principle and a right. First, one must agree upon a definition for the concept of "nation." As defined by Oxford, a nation is, "a large aggregate of people united by common descent, history, culture, or language, inhabiting a particular country or territory."⁷ While it is true that in the post-colonial world there are some complications and confusion regarding the term, it is best for the purposes of understanding that the traditional definition will be used.

⁵ *Ibid.*,

⁶ Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination* (University of Pennsylvania Press: 1990) and *ibid.*

⁷ Also defined by Hugh Seton- Watson in *Nations and States*(Methuen, Limited: 1977), 1.

Likewise an important term to understand is, again according to Oxford, “a nation or territory considered as an organized political community under one government,” which is a state.⁸ Contrary to a nation, a state includes necessarily some form of government and political life. These two terms are integrated into a nation-state, which is traditionally defined as, “a sovereign state whose citizens or subjects are relatively homogeneous in factors such as language or common descent.” Basic understandings of self-determination call for these homogeneous political entities. However, the very definition of a nation-state quickly becomes problematic and is proven rudimentary given the geopolitical complexities in the postwar era.

The reason for these confusions has been the post-colonial trend, especially in the developing world, towards nationalism. In Africa, for example, the notion of nationalism and a nation-state has grown beyond that of homogeneous communities to be a rallying call for the people living in their arbitrary borders to join arms against their colonial rulers. Likewise, the common usage for the term nation-state in international legal settings has become convoluted, since most international lawyers assume all states are nations. For the purposes of this paper, it will be most helpful to stick to the traditional definitions of the terms discussed.

In the case of anti-colonial movements and what is sometimes termed “nationalist” movements in the developing world today, it will be helpful to use the term “statism”⁹ to refer to those in the interest of better understanding the overarching concept of self-determination. This more clearly indicates that the stands against colonialism made by many former colonies are being done in the interest of the state they currently inhabit, not necessarily in the interests of that

⁸ *Ibid.*

⁹ Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination* (University of Pennsylvania Press: 1990) 24

state's individual nations. However, on a side-note, the term "nation-building" will still be appropriately used to indicate some statist practices, since building a nation could and should certainly include the promotion of a more politically homogeneous society to complement the existing national structure of any given state.¹⁰

With a mutual understanding of the terms that will be frequently mentioned throughout this discourse on the concept of self-determination, it can now be stated that it is the hypothesis of this paper that historically and currently, the self-determination of peoples has been entirely denied in practice. Despite the history of its denial, though, the moral and legal basis for self-determination makes the principle compelling enough to assert that it should be included as a right laid out and enforced by international law; albeit with further and more clear stipulations as to the proper ramifications of it when the claim to self-determine a people is appropriate and should be accepted by the international community.

¹⁰ *Ibid.*

CHAPTER TWO: THE PRINCIPLE OF SELF-DETERMINATION

The original theorist in the field of self-determination is Woodrow Wilson. In his comparative politics text, The State¹¹, Wilson briefly addresses self-determination on the international political scale, though he only discusses it in principle rather than by name. In his initial text, the president as a scholar viciously critiques governments that rule foreign countries. He mentions, “nations still under the dominion of customary law have within historical times been conquered by alien conquerors...the alien throne was maintained by force of arms, and taxes were mercilessly wrung from subject populations...he really had no authority to govern, but only a power to despoil...”¹² Wilson’s early observations are very astute, and they will later lead to his more famous Fourteen Points, in which he lays out in further detail the right of all peoples to the determination of their own government.¹³ These Fourteen Points will also be the foundations for the League of Nations and lay the ground work for self-determination as not only a reputable theory but also as an international ideal.

Also writing in the early 20th century was Vladimir Lenin. Ironically, the Russian and American leaders made some of the same observations about the world’s political system. Like Wilson, Lenin was convinced that people who were ruled by alien thrones or governments in general were disadvantaged on a number of levels. Almost identically, the two leaders described

¹¹ Woodrow Wilson, *The State* (D.C. Health & Co. Publishers: 1898).

¹² *Ibid.*, 28

¹³ Woodrow Wilson, “Fourteen Points” in Woodrow Wilson: *Essential Writings and Speeches by the Scholar President* ed. Mario R. DiNunzio (New York: New York University Press, 2006).

rule by alien nations as essentially an abomination and a great disservice to those living within the areas ruled by outside forces. Lenin, however, is much more concrete in his definition of self-determination than Wilson. While Wilson hints at the right to self-determination in his writings, he does not call for it by name directly. Vladimir Lenin has no qualms with deeply criticizing and somewhat harshly addressing the presence of outside forces within other nations.¹⁴

Expectantly, Lenin's interest in self-determination is largely Marxist. In his descriptions of the concept, he frequently references the class struggle and Marx himself. More interestingly is the way in which Lenin defines self-determination. His definition of the concept states clearly that it is equivalent to the right of secession. He blatantly states in his essay entitled simply, "The Right of Nations to Self-Determination" that when one gets past political prattle, it is undeniable that self-determination is essentially "the political separation from alien bodies."¹⁵

These two leaders of the early 20th century laid the groundwork for popular theoretical discussion on the notion of self-determination. Since their initial essays and speeches and in the postcolonial world their notion has been severely complicated. However, these complications do not negate the observations that these two influential men used as a foundation for their writings. The ongoing truthfulness of these observations adds to the necessity of a deeper understanding of the principle of self-determination and an exploration into its place in the world today.

The principle of self-determination on its surface, as Wilson spoke of it idealistically, is a good that is hard to be denied. Naturally, all people want to determine their own form of government. However, when one critically observes the principle there are a number of

¹⁴ Vladimir Lenin, *The Right of Nations to Self-Determination* (United States of America: International Publishers Co., Inc., 1951).

¹⁵ *Ibid.*, 11

stipulations that must be incorporated into an adequate definition of the concept. First off, the claim that all people should get to determine their own government first begs the question, what people? The international community fails to be specific in its definition of “peoplehood” and, especially in situations in which the “people” in question are entitled to a claim; it is an important definition to have.

The concerns that bring forth the question of people hood in relation to self-determination stem from many theorists posits that self-determination is only granted to indigenous populations or former colonies. Many wonder if every fringe group ever to claim harm done on them by a larger power deserves the same treatment as those who have legitimately suffered decades or even centuries of misrule.¹⁶ Likewise, are people who identify as the same nationality across space entitled to their own government? Theorists wonder how to define just what people are to determine their political futures and which are not.¹⁷

From a theoretical perspective, the question of people hood is simple: every human being on Earth, regardless of age or position, is entitled to any right granted to another human being by virtue of inherent equality. The theory becomes problematic in reality because if that were the case, any action taken by any government at any time that suppressed a people’s self-determination would be immoral. However, with reasonable implementation of the principle of self-determination, it is not worthwhile to discuss here a definition of “people hood” as it would

¹⁶ Rodolfo Stavenhagen, “Self Determination: Right or Demon?” in *Self-Determination: International Perspectives* ed. Donald Clark and Robert Williamson, (United States of America: St. Martin’s Press, Inc, 1996). 7

¹⁷ Yonah Alexander and Robert Friedlander, *Self-determination: National, Regional, and Global Dimensions* (Westview Press: 1980), 5.

be unwise and immoral to endorse the exclusion of any human being from an international political principle.

There is a looming problem that will need to be addressed in order for the principle of self-determination to be reasonably accepted and that will be the dangers of homogeneous societies. There hardly exists in the world today a state that is entirely homogeneous and few people who would promote such a creation in our increasingly interdependent and globalized world. In fact, a society like the kind promoted by the formation of a nation state in the traditional sense, that is homogeneous nationally, will likely produce more human rights violations than a heterogeneous society where principles of tolerance and diversity can be promoted.¹⁸ Using the claim to self-determination as a means to harm another minorities has occurred more than once in history. These kinds of intolerances and rivalries are the kind that the principle of self-determination is supposed to remedy, not exacerbate.

There will certainly not be a blanket answer to all of these concerns with the principle of self-determination. Every state and every nation will have their own experiences and struggles to face in their individual claims to self-determination. Rethinking the principle of self-determination would likewise help resolve some of the issues currently brought up by many concerned theorists. The principle of self-determination has been misunderstood and misconstrued since Wilson first introduced it.¹⁹ However, there are some theoretical stipulations that can be applied to the principle in general in order to remedy the problematic situations.

¹⁸ Hurst Hannum, *Autonomy, Sovereignty and Self-Determination* (University of Pennsylvania Press, 1996) 26.

¹⁹ Yonah Alexander and Robert Friedlander, *Self-determination: National, Regional, and Global Dimensions* (Westview Press: 1980)

A brief return to Lenin's idea of self-determination will remind the reader of his belief that the principle necessarily includes a nation's right to secession. However, it is impractical to posit that it would be the natural order of the world for every nation and perhaps every minority, since no people can be excluded, to be entitled to form their own state at any given moment.

There is an inherent problem with equating the principle of self-determination simply with secession as Lenin does in his early writing and speaking on the topic. Self-determination is an act of people, while secession is an act of a state.²⁰ While people can make the decision to secede, they cannot actually do so without forming said state first; in which case the formation of the state would be the act of self-determination, not the secession itself. In addition, simply understanding self-determination as a "collective existence" rather than a "one-time political happening" should help the reader further self-determination from being confined to its association with secession.²¹

Again, it should be remembered that the principle of self-determination is intended to be applied to people, not to states. It is important to understand that a government cannot exercise self-determination; only a people have the ability to do so. Many theorists express their concern over this distinction and their concern grows when faced with the fact that the international community has a higher sense of prevailing respect for territories than they do for nations of people. So, on the converse side of distancing the principle of self-determination with secession, it should still be noted that the insistence on the preservation of artificial boundaries causes the nations residing within them to resort to fighting. This is not to say that secession is always the

²⁰ Rodolfo Stavenhagen, "Self Determination: Right or Demon?" in *Self-Determination: International Perspectives* ed. Donald Clark and Robert Williamson, (United States of America: St. Martin's Press, Inc, 1996). 4

²¹ *Ibid.*, 5

answer. But when all legal and diplomatic means have been exhausted, new state formation and later secession should at least be offered as an option.²²

When secession is concerned, those peoples who have made the decision to form a state and declare independence; they should use their entitlement to the principle of self-determination reasonably. This means that the process would take time and a variety of efforts to come to a resolution of the issue that a certain people is facing. The principle of self-determination should stipulate that all legal means and diplomatic measures be taken before a people resort to the creation of a new state, which would then be in the strict interest of security and preservation of life.²³

Conversely, as an alternative to new state creation, democratization of the current state's political system could allow for more effective self-determination. If all states simply treated their citizens equally, with equal access to government and respect for minority rights, nations could preserve their cultures, languages, and traditions peacefully.²⁴ Along the same lines, self-determination could easily be thought of as a kind of reverse-Kantian concept; self-determination should not be considered an end in itself, but rather as a means to an ultimate end, which is functional and inclusive democratic governance.²⁵

²² Gudmundur Alfredsson, "Different Forms of and Claims to the Right of Self-Determination" in *Self-Determination: International Perspectives* ed. Donald Clark and Robert Williamson, (United States of America: St. Martin's Press, Inc, 1996).

²³ Erica-Irene Daes, "The Right of Indigenous Peoples to 'Self-Determination' in the Contemporary World Order," in *Self-Determination: International Perspectives* ed. Donald Clark and Robert Williamson, (United States of America: St. Martin's Press, Inc, 1996).

²⁴ Asbjorn Eide, "Peaceful Group Accommodation as an Alternative to Secession in Sovereign States" in *Self-Determination: International Perspectives* ed. Donald Clark and Robert Williamson, (United States of America: St. Martin's Press, Inc, 1996).

²⁵ Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination* (United States of America: University of Pennsylvania Press, 1990).

There are no particular rules for what a group of people determines once they come together and are given the opportunity to make their own political decisions. James C. Scott, in fact, suggests that there are some people that were once content on the periphery of society and who were perfectly satisfied with being stateless. These people should likewise be able to exist in this manner according to the principle of self-determination. While Scott's statelessness is not democratization or new state formation, which are traditionally associated with self-determination, it is a group of people determining their own political structure and, to be logically fair, their claim belongs with this principle.

Before the paper progresses to other understandings of the concept of self-determination, there should be a pause to consider what the basis for "a people" is in the sense of a group claiming their self-determination in any given way. Traditionally, nations as defined in the introduction are the groups laying claim to self-determination in one way or another. However, as was mentioned in the discussion of the principle of self-determination, homogeneity is not necessarily a quality that a society should strive for. Rather than "people" who are laying claim to self-determination be restricted to a certain nation specifically, the definition should be expanded to include simply proximity or similar histories as a people or shared experiences. Rather than dividing the notion of "people" along language, cultural, or ethnic lines, tolerance and diversity should be promoted even in the notion of self-determination.

In conclusion, the principle of self-determination is to be used reasonably and, as understood by philosophers and theorists, is 1. "meaningful participation in the process of

government”²⁶ 2. Inclusive to all peoples, regardless of the basis by which their group is formed, 3. Exclusive to people, not to be confused with states 4. An on going process, rather than a one time political happening, and 5. Not restricted to any particular form of governance, so long as the above four requirements are met.

²⁶ Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination* (United States of America: University of Pennsylvania Press, 1990). 30

CHAPTER THREE: THE RIGHT TO SELF-DETERMINATION

It may seem clear according to the definition of the principle of self-determination that it should exist freely in the world today. But given the complexities of competing state interests, miscommunications and misunderstandings, the principle of self-determination and the right to self-determination have suffered severe separations and rifts. The principle of self-determination functions freely in theory, but the definition of the right to self-determination in international law is convoluted and conflicting.

Self-determination as an international ideal is established in the Charter of the United Nations. In the very first Article, the founders on the United Nations highlight the development of self-determination of peoples as a fundamental goal of this international organization.²⁷ However, the declaration of self-determination as an ideal is clearly made with some reservations even within the Charter itself.

While the Charter endorses self-determination, its means of addressing post-colonialism is hardly reflective of that ideal. Unwilling to thrust independence onto the peoples living in former colonies, the United Nations instead outlines a Trusteeship System in which the victors of World War II would still have a say in how these former colonies transitioned into independence.

Under this Trusteeship System, there were to be designated “trust countries,” which were essentially those formerly controlled by Hitler’s Germany, those territories held as colonies, and

²⁷ United Nations, *Charter of the United Nations*, 24 October 1945, Chapter I, Article 1

any country whose government chose to be designated as such.²⁸ The governments of these trust countries were to be assisted by the Trusteeship Council, whose members were to include former colonial powers but also be voted on by the General Assembly. However, while it is true that the Trusteeship Council was to operate under the General Assembly, Article 83 gives the provisions that the Trusteeship Council can essentially not act without the approval of the Security Council, which includes the approval of the Permanent Five members of that body.²⁹

Even so, the Trusteeship Council's powers and functions were essentially regulated to report-writing and some advising. Already, a rift is forming between the principle of self-determination and how it will play out on the international scale as a right. However, its mention in the Charter of the United Nations establishes a legal basis for self-determination in international law.

Self-Determination is proclaimed by the Charter of the United Nations to be an international ideal,³⁰ but it is interestingly left out of the 1948 International Declaration of Human Rights. While the Trusteeship Council was bound by the Charter to assist trust countries in self-determination and self-government,³¹ those in the United Nations at the time clearly did not see the ideal of self-determination as significant enough to include it as a human right.

This assertion, though, is contradicted by the adoption of the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples, which establishes an international

²⁸ United Nations, Charter of the United Nations, 24 October 1945, Chapter XII, Article 77

²⁹ United Nations, Charter of the United Nations, 24 October 1945, Chapter XII, Article 83

³⁰ United Nations, Charter of the United Nations, 24 October 1945, Chapter I, Article 1

³¹ United Nations, Charter of the United Nations, 24 October 1945, Chapter XII, Article 76, part b.

consensus that is it indeed “the right of all peoples” to self-determine their government.³² This declaration essentially repeals the basis of the Trusteeship system. In the third operative clause, the General Assembly calls for the immediate independence “of all Trust and Non-Self Governing Territories.”³³ Clearly, the international community no longer ascribed to the kind of limited self-determination that was enacted with the adoption of the United Nations Charter.

The Declaration of Colonial Independence also briefly addresses the notion of territorial integrity. In the last clause, the General Assembly reaffirms each state’s right to regulate the affairs that occur within their borders. The document also mentions in passing the importance of state sovereignty; which leaves many questions surrounding it as to when, exactly, the right to self-determination that is being proclaimed by the General Assembly should be implemented. Whatever symbolic and rhetorical statements made with the passage of Declaration of Colonial Independence were drowned out by its vagueness. The Declaration’s lack of definition for the word “peoples” is a major source of weakness for the document. In addition, it is in the nature of General Assembly Resolutions that they are inherently unenforceable. In the end, the document has only been left with questions like, at what point is secession necessary for self-determination –when is territorial integrity no longer relevant and who should judge that?

The day after the General Assembly passed the Declaration of Colonial Independence, the same body passed Resolution 1541, which adopts principles that expound upon the ramifications of the Trusteeship System. Predominately, Resolution 1541 endorses a set of guidelines that gives Non-Self Governing Territories three options for the fulfillment of self-

³² United Nations, *1960 Declaration on Granting Independence to Colonial Countries and Peoples* 14 December 1960

³³ *Ibid.*

determination: independence, free association with an independent state, or integration into an independent state.³⁴ Their first option, independence is basically self-explanatory and has historically been what nations choose. Next, Non-Self Governing Territories are given the option to essentially remain a colony, although it is not directly stated. Free association with an independent state is not entirely defined by the principles adopted in Resolution 1541. All that is mentioned about the specifics of this option is that it must be done by democratic means, the culture of the territory must be maintained and popular sovereignty implemented regarding the constitution of the territory.³⁵ Last, the territory is given the option to become a province of the Trustee state. It is stipulated that those residing both in the Trustee country and the trust territory must be granted equal and full privileges of citizenship. Beyond those more detailed guidelines for the Trusteeship Council, Resolution 1541 is reaffirming what the UN Charter lays out in regards to the process of self-determination.

In many ways, this Resolution stands in direct contradiction to The Declaration of Colonial Independence. While the Declaration demands immediate independence of all former colonies, the Resolution is attempting to offer a less radical path for international actors who have remaining interests in the areas in question. Rather than thrusting independence on all trust territories, the General Assembly in Resolution 1541 is slowing down the process and, importantly, reminding the international community that the Trusteeship Council will still have a say in the development of their trust territories.

Two years after the adoption of Resolution 1541 and the Declaration of Colonial Independence, the General Assembly established a special committee on decolonization. This

³⁴ United Nations, *Resolution 1541*, 15 December 1960

³⁵ *ibid.*,

committee meets regularly to discuss how to better implement decolonization, maintain development of former colonies and keep an ongoing effort towards self-determination.

After the establishment of this body, the General Assembly also passed the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (The Declaration on Friendly Relations). Although it does not necessarily iterate any novel ideas, the Declaration on Friendly Relations serves as a reminder to the international community that all people have a right to self-determination and territorial integrity.³⁶

Finally, in 1983, the General Assembly also passes the Covenant of Economic, Social, and Political Rights, the Covenant on Civil and Political Rights, and the Optional Protocol, together deemed the International Covenants on Human Rights. These documents again explicitly and repetitively reiterate the right of all peoples to self-determination.³⁷ Although the General Assembly is not saying anything necessarily new, their insistence on these rights is reflective of how important the concept of self-determination is to the international community in the early post-colonial world.

The Charter of the United Nations, the Declaration on Colonial Independence and Resolution 1541 are the foundational documents in international relations concerning the right to self-determination. However, in between documents and since their passing 50 years ago, a number of other documents and international court cases have contributed to the principle of self-determination. The functions of these basic international documents in international law will

³⁶ The United Nations General Assembly, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 24 October 1970.

³⁷ The General Assembly, The International Covenants on Human Rights, 16 December 1983

be discussed below.

The International Court of Justice was established in the Charter of the United Nations.³⁸ Articles 92 through 96 outline the basic functions and structure of the court, but its more detailed rules and procedures are found in its annexed statutes.³⁹ Those aside, the International Court of Justice is the principle judiciary of the international community. Its interpretation of Resolutions and Treaties adopted by the United Nations may not have enforcement capabilities, but it is reflective of the prevailing legal perspective regarding international law.

In 1957, 12 years after the ratification of the United Nations and the exclusion of self-determination from the Declaration of Human Rights, the International Court of Justice (ICJ) heard a case regarding sovereignty over frontier lands near Belgium and the Netherlands. The details of the case notwithstanding, it is interesting for the purpose here to note that the people existing in the disputed area were not consulted once during the dispute.⁴⁰ As much as the United Nations may have granted lip service to self-determination in the Charter, the international community clearly had a less-than-developed notion of self-determination.

Four years later another example of how self-determination is being implemented legally can be examined. The 1961 case, Cameroon v. Great Britain, was heard in a different international political climate than 1957. The General Assembly passed the Declaration of Colonial Independence and subsequently Resolution 1541 in the same year as this was brought to trial. If the conflicting ideas of self-determination are not evident enough in the General Assembly's documents, it again appears in this judicial body's hearing. The Northern Cameroons

³⁸ United Nations, Charter of the United Nations, 24 October 1945, Chapter XIII

³⁹ International Court of Justice, Statute of the Court, 1945.

⁴⁰ "Case concerning Sovereignty over certain Frontier Land, Judgment of 20 June 1959: I.C.J. Reports 1959, p. 209."

and the United Kingdom's dispute directly involves the trusteeship system established in the United Nations Charter. The people of the Northern Cameroons maintained that the United Kingdom terminated their trusteeship without fulfilling the duties of Trust-holding states. Rather than promoting self-government, the government of the Cameroons argued, the United Kingdom simply drew them into Nigeria's control. Instead of addressing the underlying questions of trusteeship responsibility, self-government and the ramifications of territorial integrity, the ICJ discussed whether or not it has jurisdiction over this instance and ultimately decided, conveniently, that it was irrelevant to issue even an advisory hearing.⁴¹

In 1971, the ICJ released an Advisory opinion on the legal consequences for the continued presence of South Africa in South West Africa. Interestingly, the opinion was specifically tailored to prescribing international action for what is perceived as general wrongdoing. In 1960, the international community could not rebuke a state contractually bound to promoting the self-government of a trust territory for not following through with its responsibilities. Ten years later, the infringement of self-determination and self-government on South West Africa warranted international action. The court determined that it is the duty of all member states to hold South Africa to the standards and ideals espoused in international documents. While this is the most punishment the International Court of Justice could administer, its admission that South Africa was in the wrong for interfering with the self-determination of neighboring territories was monumental.⁴²

⁴¹ "Case concerning the Northern Cameroons (Cameroon v. United Kingdom), Preliminary Objections, Judgment of 2 December 1963: I.C. J. Reports 1963, p. 15."

⁴² Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J.

As the decade progressed, self-determination increased its prominence in international law. In the late 1970s, the ICJ cited Resolution 1514 in a case involving territory in Western Sahara.⁴³ The states involved (Mauritania and Morocco) each claimed that part of the territory was within its territorial sovereignty and so they both had legal claims to the land. The court ruled, however, that there was no evidence for any legal ties either of the states may have to the territory and so it is for the General Assembly to mandate that the people living in the territory are to self-determine their own political status. Note the stark difference between this territorial dispute and the similar situation between Belgium and the Netherlands in 1957.⁴⁴ In 20 years, self-determination had made significant strides in international legal terms.

Interestingly, a frontier dispute between Burkina Faso and the Republic of Mali led the ICJ to expound upon an aspect of self-determination not addressed in international treaties or resolutions. In this scenario, it was the job of the court to resolve a boundary dispute that was caused by ambiguous lines drawn during colonialism. The court resolved to take into account the boundary lines that each country considered legal and redrew lines that would be fair to both parties. In its judgment, the ICJ states outright that this course of action seems entirely contradictory to the right of self-determination demanded in most international documents at the time.⁴⁵ However, it also explains that this contradiction is accepted by the international and regional community as the best possible course of action for former colonies. The International Court of Justice insists that the maintenance of security is of utmost importance and that the

Reports 1971, p. 16.

⁴³ Western Sahara, Advisory Opinion, I.C.J. Reports 1975, p. 12.

⁴⁴ "Case concerning Sovereignty over certain Frontier Land, Judgment of 20 June 1959: I.C.J. Reports 1959, p. 209.

⁴⁵ Frontier Dispute, Judgment, I.C.J. Reports 1986, p. 554

parties concerned have conceded the boundaries established in the colonial era. Keeping colonial boundaries intact, the ICJ states, is accepted by those involved and should be taken into account when discussing self-determination as a right.⁴⁶ The general notion of maintaining colonial boundaries was implemented in a number of cases following the one in Mali and Burkina Faso. The problems with this, however, are noted in a dissenting opinion presented in a 1990 territorial dispute between the Libyan Arab Jamahiriya and Chad. Judge Sette-Camara points out that there are people living in this territory that deserve to be taken into account and that, when the colonial powers were drawing boundaries, they were concerned with resource allocation and profits: not the long-term political stability of the indigenous populations.⁴⁷

In 1991, questions concerning the status of East Timor were brought before the court by Portugal and Australia. Interestingly, the ICJ ruled that it did not have jurisdiction to issue an opinion about the situation because Indonesia was involved but not present at the proceedings.⁴⁸ This ruling appears to be a regression for self-determination in international law. At this time, the court states that it understands that East Timor is classified as a non-self governing territory and yet neglects to acknowledge that in international legal terms. In a dissenting opinion, Judge Weeramantry reprimands the court for failing to take action. He insists that the right to self-determination is *erga omens* [belonging to all] and can not be denied to the people of East Timor. He states that the court could have taken action to reprimand others for infringing on that right

⁴⁶ *ibid.*,

⁴⁷ Judge Sette-Camara, dissenting opinion in, Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, 1. C. J. Reports 1994, p. 6

⁴⁸ East Timor (Portugal v. Australia), Judgment, I. C.J. Reports 1995, p. 90

without the involvement of Indonesia.⁴⁹ This dissent shows that the concept of self-determination is still at the forefront of international law; but international organs like the ICJ is regressing towards hesitance in judiciary support for it.

In the same year, though, the ICJ heard a case regarding phosphate lands in Nauru. This territory was once a trust territory left to the care of Australia, New Zealand and the United Kingdom together. Nauru brought to the court's attention that Australia was still gaining access to natural resources that were supposed to be granted to Nauru in the termination of its Trusteeship. Despite the ideals of self-determination and sovereignty over natural resources, the court ruled that Nauru's claims are inadmissible.⁵⁰ The details of the case were just that: details. The court saw the more trivial aspects of the case as more relevant to the admissibility of the claim than the larger notion of self-determination and territorial integrity. In these details, though, one can find interesting contradictions to previous cases. Although all parties of the initial trust agreement were not present (New Zealand and the United Kingdom were not) the courts still ruled that it had jurisdiction to decide that case.⁵¹ In its previous ruling of the same year regarding East Timor, the ICJ ruled in the exact opposite way and rejected claims of self-determination made by the people of East Timor on those grounds.

In 1998-2002, an ongoing case was addressed by the court regarding the sovereignty over Palau Ligitan and Pulau Sipadan between the countries of Indonesia and Malaysia. The Philippines also involved themselves in the matter legally. However, not once in any ruling

⁴⁹ Judge Weeramantry, Dissenting Opinion in East Timor (Portugal v. Australia), Judgment, I. C.J. Reports 1995, p. 90

⁵⁰ Certain Phosphate Lands in Nauru (Nauru v. Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992, p. 240

⁵¹ Certain Phosphate Lands in Nauru (Nauru v. Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992, p. 240

concerning these territories is the notion of self-determination mentioned or its ideal espoused.⁵² Again in 2004, a frontier dispute very similar to that between Burkina Faso and Mali but this time between Benin and Niger. The Court again reiterates the importance of maintaining colonial boundaries but gives not even lip service to the idea of self-determination.⁵³ It appears that as far as the International Court of Justice is concerned, self-determination as a legal concept is essentially irrelevant.

⁵² Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), 4," Judgment, I. C. J. Reports 2002, p. 625

⁵³ Frontier Dispute (Benin/Niger), Judgment, I.C.J. Reports 2005, p. 90

CHAPTER FOUR: CASE STUDIES

Now that the way self-determination is understood by theorists and how it has been implemented in international law has been presented, it seems natural to examine a few examples to determine the role that self-determination played in these territories and how that applies to the rest of the world. In order to fully understand the ramifications of self-determination and its relevance to the development of each country, a comprehensive history of each area will be presented. The regions chosen in no way reflect the full effect self-determination, or the lack thereof, has had on the world. However the sampling of these places in particular gives the reader a small idea of its ramifications and importance.

Democratic Republic of the Congo

African history goes back as far as humankind and not much is entirely known about those societies before they began interacting with Europeans. In modern historiography, African peoples and their histories are studied based on language groups. In what is now known as the Democratic Republic of the Congo, ancestors to the native populations spoke languages common enough to deem them a family, Bantu, which is the most geographically widespread of the four major language groups. In this language family, which encompasses land as far north as the Niger River and south as modern-day South African and from the western coast to the eastern,

there are over 450 known languages, which can give the reader an idea of the diversity of the people living in and around the Congo River.⁵⁴

In the 1300s, a group of villages experienced enough prosperity and food surplus to give rise to the Kingdom of Kongo. Consisting of mostly farming villages along the lower Congo, the Kingdom of Kongo was considered to be one of the most powerful in Africa prior to a European presence. In the early 1400s, these prosperous villages had loosely associated themselves and agreed upon a single capitol of the Kingdom as well as a king. The villages had similar and organized religious practices, highly developed arts and crafts, and were likely skilled metal-workers, potters, and weavers.⁵⁵

Leading up to the Portuguese arrival to the Congo River basin in the 1480s, it is noteworthy to mention a few generalities about the people in the region. First off, they were organized into a Kingdom with functional governance. Their ways of life were necessarily cooperative. The villages along the Congo River consisted of farmers, hunters and fishers- all occupations that require a certain degree of cooperation from surrounding peoples for clearing land, setting traps or digging ditches, and for building dams.⁵⁶ Within the forest itself, there were a few large kingdoms and an array of smaller villages (usually about 30 to 200 adults per village).

The Portuguese, when they arrived in 1480s, first established diplomatic relations with the Kingdom of Kongo. The king hoped that these foreigners would give teachers and craftsmen to teach and train his people but also hoped they would give him weapons and mercenaries to

⁵⁴ Kevin Shillington, *History of Africa* (St. Martin's Press, 1995) 51

⁵⁵ Kevin Shillington, *History of Africa* (St. Martin's Press, 1995) 142

⁵⁶ *ibid.*, 195

keep his military strength up. The Portuguese, on the other hand, hoped that these relations would bring profitable trade for the luxury minerals and spices that were being demanded back in Europe. However, the kingdom is not rich in those minerals so the Portuguese settled for the next most valuable resource the Congo could offer: its people.

Now engaged in the slave trade, the people of the Kingdom of Kongo began to fight over whether these foreign relations should be maintained. The people previously in cooperation began to form warring parties over the issue of continued alliance with the Portuguese. However, with the help of Portugal, its weapons and its mercenaries, those in favor of maintaining relations prevailed. The next King of Kongo, Alfonso I, was a Christian convert.⁵⁷

As King, Alfonso increased relations with Portugal. He communicated directly with the King of Portugal and imported priests and soldiers to consolidate his power in the Congo. He expanded his territory with wars and sold the captives of these skirmishes into the slave trade. As demand for slaves increased, so did his raids to find more captives. Portuguese settlers in the area went so far as to incite rebellions in order to give the king a reason to sell more people into slavery. In 1568, the kingdom suffered an invasion from the east. Not much is known of the invaders but they decimated the king's army, ravaged the land and sent the king into exile.

Years later, a king was reinstated in the Congo. However, he did not have much credibility with his people and with the continually increasing demand for more slaves, he faltered. Instead, professional traders developed alternate routes for getting captives for the slave trade. Eventually, the kingdom disintegrated entirely and a number of warring factions remained

⁵⁷ Kevin Shillington, *History of Africa* (St. Martin's Press, 1995) 196

in the area, each selling their captives into slavery.⁵⁸ While Portuguese influence was strong throughout the 16th century, it did not last.⁵⁹ Once the king that was propped up by the Portuguese fell, political groups in the area dissolved back into small, though no longer unified, factions.

In the centuries following, the demand for slaves from the region ran the economy and the way of life for these people. Politically, they remained in warring factions and continued to sell off their captives. Leading up to the 19th century, not only Portuguese but also Dutch and German traders set up posts throughout the area, which dealt in trade of not only people but also other goods natural to the area.⁶⁰

When the Atlantic Slave trade came to an end in the mid-1800s, the Congo region experienced a population boom that put a strain on its resources. In addition, new sources of trade became prevalent to maintain the economies and people in the territories. Various groups and factions specializing in different forms of trade popped up to consolidate people and power. The Chokwe, for example, were ivory hunters and also collected beeswax to sell to the Europeans. In addition, the Ovimbundu also specialized in long-distance trading, simply replacing slaves with ivory or other luxury goods in demand in Europe. In addition to ivory and beeswax, Africans in the interior traded rubber as demand for that grew in the western world. The Ovimbundu in particular developed trading caravans and were increasingly efficient at trading these goods with the Europeans on the coast.

⁵⁸ *ibid.*, 198

⁵⁹ Lewis Henry Gann, *The Rulers of Belgian Africa 1884-1914* (Princeton University Press, 1979) 207, 51

⁶⁰ Lewis Henry Gann, *The Rulers of Belgian Africa 1884-1914* (Princeton University Press, 1979) 51

Meanwhile, similar types of political consolidation were occurring on the floodplains of the Congo region. Those with the most effective techniques to maximize profit from the resources available to them were those who gained the most power politically. On the floodplains the Litunga learned to use the fertile land by moving on and off of it during rainy and dry seasons.⁶¹

In the early-to-mid 1800s, the ivory trade became increasingly prevalent. Demand for ivory on the coast led those political leaders to creep into the interior and continue to consolidate power there. Eventually, the most powerful agents of this trade were the Swahili and the Arabs. They moved deep into the interior and set up permanent trading posts, which will be important facilitators of colonization in the coming years.⁶²

While the political life of the Africans was free in theory, Europeans still essentially controlled the day-to-day activities of the people living there. Europeans dominated the trading routes and people outside the region also determined what goods were in demand. The politics of the area were based on who could consolidate the most resources and therefore secure the most wealth.⁶³ Overall, the time period leading up to formal colonization may not have had much European influence directly, but there is still a clearly exploitative relationship between the Europeans and the Africans.

As the Congo region is developing and consolidating politically to meet the demands of the Europeans who are still supplying them with guns and money, a number of other factors are

⁶¹ Kevin Shillington, *History of Africa* (St. Martin's Press, 1995) 244

⁶² Kevin Shillington, *History of Africa* (St. Martin's Press, 1995) 252

⁶³ Lewis Henry Gann, *The Rulers of Belgian Africa 1884-1914* (Princeton University Press, 1979) 50

occurring in the region that is laying the groundwork for colonization.⁶⁴ Exploration and the presence of missionaries are both paving the way for European imperialism. Likewise the rise of more legitimate forms of trade since the end of the slave trade gave Europeans increasing control over the regions in which they were trading. Europeans themselves were moving further into the African interior, though in the 1870s they still generally recognized African leadership and made alliances with them. However, the colonial age will bring an end to those types of relationships.

In 1879, European countries began to drop the pretenses of fair trade and simply take the land in Africa. The “scramble for Africa” began as just that: a race to claim as much of the continent as possible. Eventually, though, in 1884, Bismarck called the major European powers to the Berlin West Africa Conference in order to maintain some kind of European unity and diplomacy regarding the new colonies in Africa.

There, specifically, the Congo River was an utmost concern. The navigatability of the Congo made it vital to controlling trade in the interior of Africa. There, Leopold was determined specifically to maintain control over the Congo River Basin. The European powers consented and so the Belgium Congo was officially dubbed the “Congo Free State” and Leopold was granted legitimate authority over the territory. While the Congo Basin was claimed to be free by the Belgium king, it was only said so because he considered it his own personal kingdom⁶⁵ - meaning it was free from any European government. However, the people in his “free state” lived in just as bad of subjugation as the rest of the colonial world.

⁶⁴ *ibid.*

⁶⁵ Martain Ewans, *European Atrocity, African Catastrophe: Leopold II, the Congo Free State and its Aftermath* (RoutledgeCurzon, 2002)17

Upon gaining power in the region, Leopold faced some initial dissent from the natives of the area.⁶⁶ In particular, the Arab population under Tippu Tip, who diplomatically attempted to ward off the power of Leopold. While his initial attempts failed, he was able to remain in power and simply do business with the Belgians, though that arrangements made his fellow Arab merchants angry. By the time that Tippu Tip retired, the Belgian government had had enough with the merchants and attacked all their strongholds. While the natives resisted for 18 months, they were eventually brutally overcame. In Kagtanga, a southern region of the Congo and very rich in mineral resources, another strong leader refused unfair trade agreements and would not fly the flag of the free state. He was simply shot and his land's resources were taken at Leopold's will.⁶⁷

When Leopold took over the Congo he directly declared all unoccupied land as his own. Since most people in the territory were nomadic, most of the land was left to the leader of Belgium, all of which he leased to private companies in order to collect the taxes from the trade of the Congo's vast mineral resources. However, his violently oppressive regime led to increasing resistance from the natives. Those coupled with falling rubber prices and international pressure led him to hand over the Congo Free State to the Belgian government, who reluctantly accepted the colony. While the government ended most of the abuses, private European corporations remained in control of much of the land and resources in the territory.⁶⁸

As time went on, the Congo continued to sow a variety of profitable resources for the Belgians to reap. In the early 1900s, cash crop production became a worthwhile enterprise for

⁶⁶ *ibid.*, 115

⁶⁷ Kevin Shillington, *History of Africa* (St. Martin's Press, 1995) 336

⁶⁸ *ibid.*

many Africans. Small-scale peasant farmers maintained their own farms but Europeans on the coast maintained the price of their crops and ensured that African farmers were paid very little and kept most of the profits for themselves. In addition the influx of European, industrial-made cloths and other goods undermined the ability for Africans to further their own industrialization. Farming equipment, for example, was imported from Europe, which means the knowledge required to produce that technology was entirely lost to the Africans.⁶⁹

Politically, the Belgian government ruled the Congolese people in a way to ensure the longevity of their questionable colonial practices. While the government assimilated some Christian-raised natives, even they were not allowed to take part in any political action. In addition, African education beyond basic reading and writing was verbally and actively discouraged.

The colonial economic and political relationship that was established in the early 20th century continued throughout the First World War and interwar era. It should be noted here that self-determination was hardly thought of at this point in time. Despite the minimal amounts of thought given to the idea that was just beginning to be discussed by leaders like Woodrow Wilson and Vladimir Lenin, the lack of self-rule in regions like the Congo was already immensely destructive to human life and resources in the area.

When colonialism came to an end with the Second World War in 1945, independence did not come for the Congolese people as it did for the rest of the African continent. Rather, the Belgians were determined to maintain control of their major African colony. In fact, the

⁶⁹ *ibid.*, 351

possibility of an African-controlled government was not even discussed by the Belgians until 1956.⁷⁰

In all actuality, the Belgian government never intended to grant independence to their African colony. Rather, the unrest sweeping through the territory became essentially unmanageable. Firsthand accounts of the climate insinuate the same: “In 1952, when I first left the Congo, Progressive Europeans and Congolese in Leopoldville all seemed to be living in fear—the fear of meeting outsiders or visitors who might give them cause to think, and aggravate their frustration at learning to endure the bitterness of the colonial situation that they could do nothing to change.”⁷¹ In 1958, the Belgian government allowed some voting to occur in local elections. This small bit of allowed political activity opened the floodgates. In no time, political parties formed along regional lines and the leaders of these regions carried their people’s demands to a demand for independence from colonial rule.⁷²

The three major regional/political groups were divided as such: ABAKO under Joseph Kasavubu, CONAKRAT in the Katanga region led by Moïse Tshombe and the MNC (Movement for National Congolais) under Patrice Lumumba, which was the only group interested in uniting the Congo. Most noteworthy of the three is Patrice Lumumba, who was said to appear “as the living symbol of mankind’s struggle for emancipation.”⁷³ Lumumba was a visionary and the only leader ever democratically elected to rule the Democratic Republic of the Congo.

The story of Congolese independence that was brought about by the rallies and riots for self-government are surrounded with secrets and questions. Bear in mind that at this point in

⁷⁰ Kevin Shillington, *History of Africa* (St. Martin's Press, 1995) 394

⁷¹ Thomas R. Kanza, *The Rise and Fall of Patrice Lumumba* (G. K. Hall, 1979) 18

⁷² Kevin Shillington, *History of Africa* (St. Martin's Press, 1995) 394

⁷³ Thomas R. Kanza, *The Rise and Fall of Patrice Lumumba* (G. K. Hall, 1979) 29

time, international rhetoric promoting self-determination was near its height. The generally accepted history of the events is as follows:

The Belgian government surprised the entire world when they informed African leaders that they would be granted independence in only six months. Historians now generally believe this was a tactical move to maintain political power behind the scenes of an African government. In addition, the Belgian government amended the Congolese constitution to allow for Katanga to be its own province that could easily secede if the African government got out of hand. Shortly after that change, the Congo had its one and only free election in which Lumumba was elected Prime Minister and Kasavubu the President. At the independence ceremony, the Belgian king made a paternalistic speech that went as far as praising Leopold and imploring the new government to resist change. Lumumba responded with a nationalistic speech that proclaimed the Congolese people free of their oppressors; an act that likely sealed his fate.⁷⁴

Soon after the independence of the Congo, the election of Lumumba and his fiery speech, the Congolese Army rebelled against the Belgian officers who refused to abandon their positions of power.⁷⁵ Lumumba intervened on the side of the soldiers and asked they put forth African leadership for the Congolese Army. When the natives continued to fight against the Belgian officers who would not step down, the Belgian government sent in their own forces to protect them and their supporters. With this protection, African leader Tshombe declared Katanga an independent state. With the ongoing military and diplomatic support of Belgium and the United States, Lumumba's government was stalled.

⁷⁴ Kevin Shillington, *History of Africa* (St. Martin's Press, 1995) 397

⁷⁵ J. King Gordon, *UN in the Congo: A Quest for Peace* (Carnegie Endowment for International Peace, 1962)13

Lumumba appealed to the international community for assistance multiple times. He initially turned specifically to the United Nations for the purposes of maintaining international neutrality. His urgent request for troops from the United Nations came alongside the assertion that the Belgian government was conspiring against the Congolese specifically in Katanga. Lumumba asked the United Nations to help defend Congolese territory.⁷⁶ In a time when self-determination was entirely relevant and the maintenance of colonial boundaries (i.e. including Katanga) was in the court decisions, the United Nations only sent troops to settle military action; not to defend the democratically elected Prime Minister. Under this duress, Lumumba turned to the Soviet Union: a move that angered Americans and further sealed his fate.

Eventually, the CIA compelled Kasavubu to remove the democratically elected Prime Minister from office and place him under house arrest. Months later, Lumumba was kidnapped and assassinated by firing squad in the presence of Belgian officers. Katanga's secession continued for 2 years until the United Nations finally stepped in and ended it.⁷⁷

Since Lumumba's assassination, corrupt leaders and multinational corporations have ravaged the Democratic Republic of the Congo. First, Joseph Mobutu renamed the country previously known as the Congo to Zaire and ruled as a dictator for 32 years. Ethnic strife and a myriad of civil wars and violence eventually toppled Mobutu's government. Rwanda and Uganda supported the next dictator, Laurent Kabila. He formally named the country the Democratic Republic of the Congo despite the fact that there was nothing democratic about leadership selection. Rwanda and Uganda supported yet another coup, this time unsuccessfully

⁷⁶ J. King Gordon, *UN in the Congo: A Quest for Peace* (Carnegie Endowment for International Peace, 1962)15

⁷⁷ Kevin Shillington, *History of Africa* (St. Martin's Press, 1995) 398

although Larent Kabila was killed. His son, Joseph Kabila, however, lived to continue his father's rule. In 1999, a peace deal was signed and the younger Kabila was eventually successful in removing Rwandan troops from within the borders. Through disputed elections, Kabila has remained in power since.⁷⁸

The standard of living in the Democratic Republic of the Congo is staggering. An assessment of statistics alone shows the reader how badly the people living in this territory have suffered from the multitude of regime changes and the violence associated with them. In addition, the absence of a functioning economy has left the majority of the population in poverty. The life expectancy for a person born in the DRC is a mere fifty-five years. Seventy-one percent of the population lives below the poverty line.⁷⁹

The foundations for privatization that were laid by Leopold during the time of colonization continue to plague the area today. In 2002, the United Nations released a report written by a panel of experts that noted the atrocities being committed by the private sector in the Congo. The report mentioned a number of mining industries, namely metals and diamonds that were controlled by warlords who were supported by foreign companies. Additionally, the environmental resources of the territory were being severely exploited by those in the area. The report explicitly names eighty-five multinational corporations that are in violation of international law in its exploitation of the Democratic Republic of the Congo's resources.⁸⁰

⁷⁸ Central Intelligence Agency, World Factbook: Democratic Republic of the Congo

⁷⁹ *ibid.*

⁸⁰ United Nations, Security Council, Final report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, 24 October 2002

As of 2013, the Human Rights Watch still lists a number of problems that the Democratic Republic of the Congo is faced with. Severe poverty, attacks on political opposition, war crimes, the Lord's Resistance Army notorious for child soldiers and a myriad of ongoing mining and resource exploitations all continue a cycle of injustice and underdevelopment in the region.⁸¹

Iraq

The history of Iraq is similarly traceable to the very beginnings of mankind. The very first civilizations known to historians and archeologists are found in the areas in and around Iraq. For the purposes of discussing civilization, Iraq's history makes for a more complicated situation. The territory now considered modern-day Iraq has been marred by interventions and various conquerors and rulers for almost the entirety of its history.

Modern-day Iraq, though, is important to the discussion of self-determination in particular because of its Kurdish population that is still struggling for it. How the Kurdish situation came to be and the direction it is going in is directly related to the history of the entire area. In order to understand how exactly this situation came to be and the role that self-determination has played and will play, an examination of the history of the area will be presented.

Modern-day Iraq was the cradle for the ancient civilization Mesopotamia. The existence of this city-state was revolutionary in the history of all people. For the first time, perhaps ironically in the region now struggling with national identity, small cities and villages combined to form one single society. Eventually this society evolved into kingships and empires, each

⁸¹ Human Rights Watch, 2013 World Report: Democratic Republic of the Congo

consolidated by warlords or warriors. These empires and kingships expanded and retracted, eventually settling into the Byzantine and Sasanian Empires, and remained in control of Southwest Asia until the dawn of Islam.⁸²

Once Islam established itself as a political and religious entity, it began to spread and conquer the people living in the region. Iraq specifically fell from Byzantine control to Arab hands in 637. As the Arabs consolidated their power in the area, they reworked farms lands and irrigation systems to rejuvenate the land; though initially only in areas where Arab people would benefit, eventually those who were conquered assimilated into the Arab culture and empire seamlessly. The Arabic language spread throughout the territory and quickly became the most spoken; many people converted to Islam and took part in political and governmental activities. Overall, the Arabs changed the mostly tribal people living under the Byzantines to an “urban” people with common customs, religion, and language.⁸³

The Arabic empire, throughout the centuries, had a number of different rulers and regimes that changed some of the dynamics within Iraq. The Abbasids, for example, made Baghdad the capital of the Caliph. This quickly made Baghdad a huge urban center; the biggest in the history of the region thus far, in fact. Baghdad as the capital city made Iraq central to the structure of the Abbasids. The city itself was a bustling metropolitan center filled with a very diverse citizenry and with a strategic location. Iraq was obviously directly controlled by the Abbasids, but with hierarchical governments that allowed for some local and regional control. All in all, Iraq was entirely Arab under the Abbasids: Arab language, religion, administration,

⁸² Ira Lapidus, *A History of Islamic Societies* (Cambridge University Press, 2002) 3

⁸³ *ibid.*, 44

economic policies and governance all pervaded the territory.⁸⁴

Eventually, the central control of the Abbasid empire began to falter. In many areas, different sects of Islam began to be preached, undermining the very basis of the Caliph. Attacks from other empires left the Abbasids weakened and, eventually, the government could not maintain centralization and Iraq was no longer the center of the Abbasids. The decline in the government was accompanied by a decline in international trade, which Baghdad severely suffered from. Additionally, crops began to fail and overall Iraq suffered an economic decline in addition to its governmental issues.⁸⁵

The Buwayhids took over after the Abbasids collapsed, though initially much of the day-to-day life remained the same for Iraqis, minus the economic downturn. However, eventually the Buwayhids implemented a new way to maintain the regime, which was essentially decentralized with much of the power in the hands of local Caliphs.⁸⁶

In 1055, the Saljuq Turks conquered the Buwayhids. They spread their power as far as the Mediterranean, which basically reunited the Abbasid Empire. Baghdad, however, no longer had an economy that could support the kind of central government that was in control of the Abbasids, and so the Saljuqs maintained the kind of decentralized power that was implemented by the Buwayhids.⁸⁷

It is noteworthy that through the time of changing regimes, Baghdad also became an intellectual center for students from all over the world. Particularly the schools of law, or

⁸⁴ *ibid.*, 64

⁸⁵ Ira Lapidus, *A History of Islamic Societies* (Cambridge University Press, 2002) 110

⁸⁶ *ibid.*, 114

⁸⁷ *ibid.*, 119

madrasas, that were prevalent in Baghdad were the best in the world at the time.⁸⁸ Although these were informal schools of Muslim Law, they were often catalysts of religious movements, and, for the purposes here, evidence of the development of the region unhindered by exclusively colonial forces.

Iraq stayed under the control of the Saljuqs until the 11th century. During this time, the Muslim world inadvertently synced with itself. While there was not a consolidated political system, there was at least a common identity. In addition, Muslim peoples controlled leadership positions and educational institutions, but the majority of the people living in these areas were still Christian. Notably, these people lived without religious conflict. In Iraq, though, Islam solidified itself as a basis for political, cultural, and social life.⁸⁹

In 1258, Baghdad was taken by the Mongols. It seems as though their raids had little point other than destruction and the center of Islamic society was ravaged. Significantly, the canal system that kept the land irrigated and prosperous was destroyed. Still today, the country is attempting to recover from the destruction caused by the Mongols.⁹⁰ The Mongols ruled Iraq for the next couple of centuries. In general, the time of their rule is associated with political chaos, economic depression and social and cultural ruin.⁹¹

In the 15th century, the Ottoman Empire conquered Iraq from the disarray that was the Mongol Empire. The territory remained Ottoman until the empire fell after the First World War. During Iraq's time in the Ottoman Empire, it became clear how strategically significant Baghdad was to trade, naval operations, and business. Germany, Russia, and Great Britain made attempts

⁸⁸ *ibid.*, 137

⁸⁹ Ira Lapidus, *A History of Islamic Societies* (Cambridge University Press, 2002) 146

⁹⁰ George Harris, *Iraq* (Hraf Press, 1958) 19

⁹¹ *ibid.*, 20

to exert control over Iraq.⁹² However, those advances fell under the maintained control of the powerful Ottoman Empire, and Iraq's internal history remained relatively uneventful throughout the 19th century.

For the purposes of this paper it is significant to mention that while the territory that is Iraq has been developing under various rulers and empires, the people that will be the most significant subject of self-determination has been developing independently of their future country. The Kurdish people have a history of their own.

The origins of the Kurdish people are generally unknown. Recently, though, it has been asserted that they can be traced back to Turkish and Arab tribes.⁹³ Regardless, the Kurdish people have occupied the mountainous region that now touches Iraq, Iran, and Turkey.⁹⁴ The mountains that Kurdistan exists on have allowed for the population to develop essentially isolated from the rest of the Middle East. By the time that the Kurdish people encountered others, they had developed entirely their own language and customs. Especially their language though, has become the foundation for their nationalism.⁹⁵

In the 15th Century, the Safavid movement became popular in Iran. Eventually known as the Safavid Empire, it was initially supported by Kurds in Iran in order to avoid the power of other nearby warlords.⁹⁶ It is clear from this strategy that as early as the 15th Century, Kurdistan had its own isolated and developed identity that they were interested in maintaining a part from the rest of the region.

⁹² George Harris, *Iraq* (Hraf Press, 1958) 21

⁹³ Hakan Ozoglu, *Kurdish Notable and the Ottoman State* (University of New York Press, 2004)

⁹⁴ William L. Cleveland and Martin Bunton, *A History of the Modern Middle East* (Westview Press, 2009) 529

⁹⁵ Mahir Aziz, *The Kurds of Iraq* (I.B. Tauris, 2011) 49

⁹⁶ Ira Lapidus, *A History of Islamic Societies* (Cambridge Universtiy Press, 2002) 234

Under Ottoman rule in modern-day Iraq and Turkey, Kurdistan remained relatively free. The rest of the Middle East was governed through Ottoman governors that had mostly local autonomy but that still paid taxes to and abided by Ottoman rule. Kurdistan, though, remained outside of Ottoman centralization.⁹⁷ While the Kurdish people were generally separate from the ruling entity in Iraq, Kurdish mercenaries and trained soldiers often played a significant role in military operations and served as a reminder of their ongoing usefulness and presence.⁹⁸ Regardless of any military training or autonomy that Kurdistan maintained, the Ottoman empire effectively kept the Kurdish population in subordination to its central power.

Iraq and the Kurdish people's history became directly relevant to each other after World War I and with the fall of the Ottoman Empire. The Sykes-Picot Agreement specifically divided up the Ottoman provinces in much the same way that the West Africa Berlin Conference partitioned Africa. Sykes-Picot granted Iraq to the British Government, thus ending Ottoman Control of the area and officially submitting the region to the imperialism of the time.⁹⁹ In addition, the boundaries that were granted to the British government included parts of Kurdistan in Northern Iraq.

The Iraq that the British were faced with was extremely diverse and distinctly divided into three sections, including the Kurdish. At the end of World War I, the idea of self-determination was buzzing in the international community. In its governance of the former Ottoman Empire, the Allied powers were obligated to at least give lip service to the idea. However, the Allies made it clear that self-determination would only apply in some areas,

⁹⁷ Ira Lapidus, *A History of Islamic Societies* (Cambridge University Press, 2002) 296

⁹⁸ *ibid.*, 277, 307

⁹⁹ Sykes-Picot Agreement. 15 and 16 May, 1916

namely not guaranteeing it to the Armenian or Kurdish populations seeking autonomy in the area.¹⁰⁰ In order to do so and to maintain some sort of control over this volatile population, the United Kingdom implemented the mandate system in order to grant the new state an indigenous government but still make sure that it did not implement any policies that would be contrary to British interests.¹⁰¹

King Faysal was thus crowned the king of a “hereditary constitutional monarchy” under the British mandate system in 1921.¹⁰² However, at the time of his crowning, the territory of Iraq did not have any governmental institutions, defense or education systems. In fact, it was not until 1925 that the Iraqi constitution, also known as the Organic Law, was passed. Interestingly, and in a time where self-determination was trying to be upheld, the written document gave a significant amount of power to the King. Although there was a legislative body, and it was stated that the King’s power was derived from his people, he still essentially had power to act unilaterally.¹⁰³

Through a series of treaties with the British government, which was continually overseeing the actions of the new King, it was decided that Iraq would gain full independence in 1932. However, with that independence, Britain was to retain certain military powers and associations, including the mandate to come to Iraq’s aid in case of war and the right to all of their defense capabilities in that event. In addition, Britain was granted the right to keep two airbases on Iraqi soil, and a foreign individual other than Britain could train no Iraqi soldier.

¹⁰⁰ William L. Cleveland and Martin Bunton, *A History of the Modern Middle East* (Westview Press, 2009) 164

¹⁰¹ Aheed Dawisha *Iraq: A Political History* (Princeton University Press, 2009) 13

¹⁰² William L. Cleveland and Martin Bunton, *A History of the Modern Middle East* (Westview Press, 2009) 207

¹⁰³ Aheed Dawisha *Iraq: A Political History* (Princeton University Press, 2009) 16

Additionally, and very significantly, the British government positioned itself in control of Iraqi oil resources. In 1925, King Faysal folded under British pressure and allowed for the formation of the Iraq Petroleum Company, which gave Iraqis some of the revenue but entirely excluded them from ownership of their own resources.¹⁰⁴ Obviously, the British were not simply granting independence as they made it appear to be.

As World War II approached, Iraq's political situation worsened. In particular, after the death of King Faysal, Iraqi government cascaded into instability. Without the qualities that Faysal brought to the throne, Iraq's population grew more and more angry and eventually the military took matters into its own hands. Between the years of 1936 and 1941, Iraq experienced six coups. Interestingly, though, despite the large amount of power that the Iraqi military was playing in the government, it never made an attempt to control it.¹⁰⁵ Instead, the military sponsored civilian leaders, proving that the people there had respect for the written law but too many conflicting interests to decide on a ruler.

Iraq stayed in a general state of chaos throughout World War II. Many saw the war as an opportunity to free Iraq from the British entirely. Obviously, not all of the population was interested in doing so. Eventually these competing interests would come to a head in a military conflict, the Anglo-Iraqi War of 1941, and leave the country under British occupation for the remainder of the war. This incident solidified the idea that Iraq was still not much more than a British colony and built resentment within the borders of Iraq that would last for years to

¹⁰⁴ William L. Cleveland and Martin Bunton, *A History of the Modern Middle East* (Westview Press, 2009) 208

¹⁰⁵ *ibid.*, 211

come.¹⁰⁶

The Iraqi monarchy remained in place for roughly the next decade. The anti-British sentiment remained but also remained in check; memory from the failed revolution and occupation kept dissenters either without will or capacity to rebel again. During this time, the political structure was mostly ran by Nuri al-Sa'id, who was pro-western and pro-British.

During the time of British-dominated rule, which has lasted 37 years in 1958, some political themes were developed and remained a vital part of the Iraqi political structure in the coming decades. In particular, the Sunni-run government will become typical of Iraq. Shi'a community will be grossly underrepresented in Iraqi politics. In addition, the Kurdish population, although Sunni, still maintained the will for their autonomy and stressed their pressing differences to the rest of not only Iraq but the entire Arab world. These pressing complexities remain throughout the volatility of Iraqi governance and further complicates the already multitude of issues facing the Iraqi state.¹⁰⁷

In 1958, the British-supported government was overthrown in a bloody coup by Brigadier Abd al-Karim Qasim; all of the previous leadership was killed including Nuri al-Sa'id. After this coup, Iraq fell into another decade of political chaos. During this time, it is most relevant to mention that the Kurdish population rose to a position of urgency to the Iraqi government. Qasim, the first anti-British leader who overthrew Nuri, made an effort to legitimize his regime with Kurdish approval. He promised the population national rights but, when he could not (or would not) deliver, the Kurds rebelled. This particular rebellion raged until 1963, when

¹⁰⁶ William L. Cleveland and Martin Bunton, *A History of the Modern Middle East* (Westview Press, 2009) 213

¹⁰⁷ *ibid.*, 326

Qasim was overthrown. However, throughout the years to follow a number of treaties and pacts will be made and broken, and the Kurdish national movement will continue.¹⁰⁸

In 1968, another coup, which initially seemed typical, brought to power the first lasting regime in Iraq since Great Britain. The Baathists were ruthless from the beginning of their time in power, placing those whose loyalties were in question in prison for long periods of time and executed those who outright opposed them. The Baathists were determined to establish a one-party state and extended themselves into all aspects of Iraqi society, always consolidating power.

Ethnic and religious relations remained tense between the new regime and the Shi'a and Kurds. Specifically, the Kurdish population was again in rebellion at the time the Baathists came into power. This time, though, the Kurds were supported by Iran, who was weary of the eminence of Baathist power. The Kurdish rebellion was experiencing considerable success until the Iranian and Iraqi governments came to an agreement and the Iranian support stopped for the Kurds. They were then decimated by the Iraqi government and forced to seek a cease-fire. Unfortunately for the Kurdish population, though, the Baathist regime took steps to stop future rebellions: including ruthlessly uprooting thousands of Kurdish people and relocating them throughout central and southern Iraq.¹⁰⁹ In 1976, Saddam Hussein became the leader of Iraq and immediately imprisoned or executed those who he considered a threat to his power.¹¹⁰

Hussein's leadership will continue for the next three decades. The Baathists in general, though, brought the most change Iraq had seen since its independence. The nationalization of the

¹⁰⁸ William L. Cleveland and Martin Bunton, *A History of the Modern Middle East* (Westview Press, 2009) 330

¹⁰⁹ William Polk, *Understanding Iraq* (Harper Perennial, 2006) 124

¹¹⁰ William L. Cleveland and Martin Bunton, *A History of the Modern Middle East* (Westview Press, 2009) 410

oil industry was an immensely popular move that brought enough money into the country to start a social welfare state.¹¹¹ The people running the country, though, had barely ever left the Middle East and understood very little about the countries around them. In addition, Saddam Hussein, whose political ambitions would not stop short of dictatorship, led Iraq.¹¹²

From the point of his leadership on, Hussein's ruthlessness worsened. During the Iran-Iraq war, for example, the Kurdish population, who were was in a state of rebellion, was attacked by the Iraqi air force with chemical weapons, killing at least 5,000 Iraqis.¹¹³ The leaflets that dropped from the sky before the chemicals were not enough to save the thousands he killed, and this attack alone was only the most dramatic of a series of attacks against the Kurds in this time period.¹¹⁴ His support from the United States (which totaled billions of dollars), ambitions, and possession of chemical weapons asserted his power over his country and in the region. Although a United Nations cease-fire ended the Iran-Iraq War in 1988, the Iraqi military remained extremely strong.¹¹⁵

In an effort to maintain his military and political strength, Hussein invaded Kuwait in 1990, a move that the international community, particularly the United States, could not allow. Although the U.S. had thus far supported the Iraqi regime, Hussein's effort to control the oil-rich region spurred action against him. Operation Desert Shield was a raging success for the United

¹¹¹ William Polk, *Understanding Iraq* (Harper Perennial, 2006) 127

¹¹² William L. Cleveland and Martin Bunton, *A History of the Modern Middle East* (Westview Press, 2009) 414

¹¹³ *ibid.*, 418

¹¹⁴ William Polk, *Understanding Iraq* (Harper Perennial, 2006) 135

¹¹⁵ William L. Cleveland and Martin Bunton, *A History of the Modern Middle East* (Westview Press, 2009) 420

States. It achieved its goals, freed Kuwait and did so with the support of the region. However, the liberation of Kuwait did not do much to save those living within the borders of Iraq.

Overall, the Gulf War was bad for the people of Iraq. Estimates for lives lost are unsure, but go as high as 100,000 individuals. Particularly the Kurds, who again took the opportunity of outside conflict to assert their independence, suffered thousands of deaths as a result. In addition, the cease-fire with Kuwait was accompanied by UN-supported economic sanctions as punishment for the invasion. Unfortunately, these did little to punish the regime and mostly affected the people of Iraq and made their lives much harder.¹¹⁶

Hussein remained in power despite the hardships and devastations of his people. Meanwhile, the United States continued to assert its power over the region and was taking an increasing interest in Iran and Iraq. In its containment policy towards Iraq specifically, the United States was determined to limit its chemical and nuclear weapon capabilities. However, Hussein would not cooperate fully until the economic sanctions on his country were lifted. His lack of cooperation resulted in a United States and Great Britain-led airstrike that infuriated the rest of the Arab world and increased the suffering of the Iraqi people.¹¹⁷

In 2003, the United States led an invasion of Iraq. The reasons why are generally unclear, but likely associated with the large number of oil reserves in the country and the personal relationship many members of Congress and the younger Bush's administration had to Hussein's regime. The occupation of Iraq has been its political standing since the invasion. Saddam was deposed and elections were held, but the vast differences in ethnicities and interests remain

¹¹⁶ William L. Cleveland and Martin Bunton, *A History of the Modern Middle East* (Westview Press, 2009) 486

¹¹⁷ William L. Cleveland and Martin Bunton, *A History of the Modern Middle East* (Westview Press, 2009) 560

debilitating for the Iraqi government. Violence among competing interests is typical to this day. Iraq post-invasion is a pool of competing and stubborn interests and democracy in the area does not seem promising given the determination for independence and history of subjugation amongst the various groups living within Iraq.

Specifically, the Kurdish population remains in the north on their oil-rich mountainous lands. Since the break-up of the Ottoman Empire, the Kurds in Iraq have been dismissed as “the Kurdish problem.” Before Iraq was granted its independence, though, the British granted the Kurdish population a certain degree of autonomy. In 1922, the Anglo-Iraqi joint declaration accepted that the Kurdish population would be electing its own legislative assembly. However, the next year those promises were entirely ignored and the Local Language Law was passed instead to pacify the demands of Kurdish Lawmakers. While this made it the law that Kurdish was the language of northern Iraq, there was no enforcement or formal recognition of the law. The fact of the matter was that even in that time, the economic significance of the Kurdish region was vital to the wellbeing of Iraq and so the appeals for independence were necessarily ignored.¹¹⁸ Eventually, things would turn violent and accumulate with Saddam’s regime when the Kurdish people were continually suppressed through torture, arrests and destruction of property.¹¹⁹ The Kurdish population would be continually denied self-determination because they were arbitrarily drawn into a country that decided its land was too valuable to lose.

¹¹⁸ Adeed Dawisha *Iraq: A Political History* (Princeton University Press, 2009) 28

¹¹⁹ William Polk, *Understanding Iraq* (Harper Perennial, 2006) 149

International Monetary Fund: Ongoing Deprivation of Self-Determination

The International Monetary Fund was created in the wake of World War II in an effort to provide funds for the reconstruction of Europe. The International Monetary Fund asserts that it exists in the world today to assist the international community in regulating the global economy and promote positive global economic growth for all countries.

The International Monetary Fund (IMF) began with the Bretton-Woods Agreement, which allowed for the members of the organization to agree upon a common framework for international trade and exchange. At the time of its inception, the IMF was intended simply to stabilize the global economic situation.¹²⁰ However, when the United States abandoned the gold standard in the 1970s, the reason for IMF's existence was lost. At this point, the organization became more interested in the developing world.¹²¹

How the IMF operates every day is complicated and involves a discussion of international economics that is not necessarily relevant here. What is important begins with the voting structure of the IMF. Votes in the Fund are based on a quota-system, which is dependent on the size of each country's economy and the amount of money it gives to the IMF.¹²² Votes at any given point in time are dependent on how much money the individual countries have in the Fund at that time.¹²³ Obviously, this system favors those countries that have already reached a

¹²⁰ Graham Bird, *The International Monetary System and Less Developed Countries* (London: Macmillan Press, 1978) 1

¹²¹ James Raymond Vreeland, *The International Monetary Fund, Politics of Conditional Lending* (Routledge, 2007) 9

¹²² International Monetary Fund, Articles of Agreement, Article XII section 5

¹²³ James Raymond Vreeland, *The International Monetary Fund, Politics of Conditional Lending* (Routledge, 2007) 15

high level of economic development, which means that a country asking for money from the IMF will not get to vote on its own situation.

Additionally, the IMF developed a program of conditions that are associated with the loans it gives. These conditions are allowed for in various areas of the Articles of Agreement, despite the fact that the IMF was supposed to be founded for purposes entirely separate from developmental aid. As the Fund evolved, though, into a source of liquidity for developmental projects in the developing world, the IMF implemented conditions that the countries in need would be required to meet in order to receive the aid. These policy conditions are intended to right the wrong economic policies that put the country in need in the first place.¹²⁴

The IMF's policies of conditionality are immensely controversial. Many make the argument that because of the undemocratic voting structure and the prominent role western capitalist democracies play in it, the IMF is little more than modern-day imperialism.¹²⁵ Others do not necessarily make such radical, albeit valid, claims but do point to the statistical fact that these conditionality programs frankly do not work much of the time. Some scholars maintain that the reason for the failures is a reflection of the fact that the IMF was intended for short-term stabilization rather than long-term development aid.¹²⁶

Regardless of the competing views on the IMF, the fact remains that the countries in need of developmental aid are not allowed a say in their economic fate. While the claims made by those in support of structural adjustments that the countries in need are in need for a reason and

¹²⁴ *ibid.*, 20

¹²⁵ Rajen Harshe "Changing Profile of Imperialism in Global Political Order/Disorder" *Economic and Political Weekly*, Vol. 40, No. 20 (May 14-20, 2005), pp. 2071-2076

¹²⁶ Graham Bird, *The International Monetary System and Less Developed Countries* (London: Macmillan Press, 1978) 184

that the Fund is imposing measures that are supposed to right those wrongs make logical sense, they are also shortsighted. Many lesser-developed countries that appeal to the IMF for assistance are not necessarily unable to function economically but likely have been subject to colonialism and developmental complications that far surpass economical mishandling.

The structure of the IMF, and its continual failure as a developmental aid, points to the ongoing lack of self-determination in the developing world. The international community's expectation of each country to have the capacity to make collective political decisions as a democracy but not collective economic decisions is a severe disparity in thought.

CHAPTER FIVE: SOLUTIONS

Why self-determination has historically been denied

Self-determination was never necessarily dismissed or disproven; it simply fell out of favor among both political theorists and international leaders. Leaders of western, industrialized nations likely decided to drop the pretenses. For political theorists, the situations in many former colonies became so complex that self-determination no longer was a viable solution. Likewise, many other theories have come to popularity that made the answers to tough developmental questions easy to answer dismissively.

The mistakes of the past are not prescriptions for the future. While many theorists are likely rational in their dismissiveness, since self-determination has never been implemented in practice and it does not appear as though the international political structure will change any time soon. However, many of these theorists ignore the idea of linear human progress. To think that states and the human beings that comprise them are incapable of growing past their own self-interest is a mistaken continuation of the mindset that the past dictates the future. Leaders and theorists alike are remiss to continue this way of thinking. Ignoring the reasons for international political disparities is equivalent to giving up on the development of the human race. Our commitment as human beings to each other will be discussed below. In the meantime, a more political assessment of why developing countries are still developing will be undertaken.

The current most accurate popular line of thought among political theorists as to why certain countries are underdeveloped is the Natural Resource Trap (also called the Dutch Disease or Paradox of the Plenty). The basic premise of the Natural Resource Trap follows along with

recent theoretical trends regarding the self-interest of historical rational actors. However, there are many different assessments and explanations of the Natural Resource Trap. Perhaps the most basic point of agreement amongst these theorists is the observation that countries with high levels of natural resources have low levels of political, social, and economic development.

Theorists who study the Natural Resource Trap give explanations for the trap that range from the assertion that governments with export booms are merely “living beyond their means”¹²⁷ to the idea that “resource rents make democracy malfunction.”¹²⁸ More plausibly is the discussion of export-booms making other export commodities devalue and complicate the economy in a way that local goods and services become too expensive to afford.¹²⁹ In addition, other theorists point to governmental credibility and corruption as the fundamental problem and seek a contract that will balance the interests of both the foreign investors and the governments.¹³⁰

While these theorists are certainly right in their initial observations, their assessments of the causes are shortsighted. Resource Trap Theory should answer the question, why are countries with high levels of natural resources slower to develop with the very realist answer: because they have been and currently are the target of foreign interests. Historically it is clear that in countries with natural resources that will benefit an industrialized nation, their territorial and political integrity are entirely ignored.

¹²⁷ Francisco Rodríguez and Jeffrey D. Sachs, “Why do resource-Abundant Economies Grow More Slowly?” *Journal of Economic Growth*, Vol. 4, No. 3 (Sep., 1999), pp. 277-303

¹²⁸ Paul Collier, *The Bottom Billion* (Oxford University Press, 2007) 42

¹²⁹ *ibid.*, 40

¹³⁰ Federico Sturzenegger and William Hogan, *The Natural Resource Trap: Private Investment Without Public Commitment* (MIT Press, 2010) xiii

As we learned in our case studies of Iraq and the Democratic Republic of the Congo, the interests of the British and Belgian government respectively surpassed the importance of self-rule. Territorial integrity, an important aspect of self-determination, is entirely overlooked if that territory is considering the nationalization of its resources. These incidents are not exclusive to the two regions discussed; similar situations occurred in much of the Middle East (Kuwait, Jordan), Africa (Egypt by competing governments, many others by multinational corporations) and Latin America (Panama, Cuba, Venezuela).

International steps to be taken

In order to solve the ongoing issue of foreign intervention and the resource trap, as it is understood in this paper, a modern revisiting of the doctrine of self-determination should be undertaken by political theorists. First of all, its accepted definition, as mentioned in chapter one should be: 1. “meaningful participation in the process of government”¹³¹ 2. Inclusive to all peoples, regardless of the basis by which their group is formed, 3. Exclusive to people, not to be confused with states 4. An on going process, rather than a one time political happening, and 5. Not restricted to any particular form of governance, so long as the above four requirements are met.

In addition to the above understanding of self-determination as a political theory, there is a serious need for leadership in the international court system. Even if the International Court of Justice’s decisions hold no enforcement mechanisms, the ability to interpret international law and prescribe the proper course of action with continuity and decisiveness is vital to maintaining

¹³¹ Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination* (United States of America: University of Pennsylvania Press, 1990). 30

an international standard for development. In addition, these decisions should be reached with the well being of the people in mind, not necessarily the well being of the state. If any entity in the international political system should be devoid of politics as much as possible, it should be the court system. Along the same lines, judges should be elected based on their dedication to humanitarian affairs rather than nationalistic or statist intentions.

The above solutions for the enactment of self-determination in international law require some basis for self-determination as a rule of law. It should be explained that there is a clear and undeniable international legal basis for the definition of self-determination as explained in this paper. First, the definition calls for meaningful participation in a government that is inclusive to all peoples regardless of the basis on which the group was formed. Article 76 of the United Nations Charter explicitly forbids any governmental entity to distinguish between race and sex, a clear legal basis for inclusivity in government.¹³²

Likewise, the definition of self-determination in theory states that it should be understood as an ongoing process rather than a one-time political happening; a sentiment also expressed in the Charter of the United Nations. The Charter clearly expresses each people's right to develop self-government. The key word in the framing of the legal basis is "develop." If the drafters of the UN Charter were to state that each group of people has the right to "achieve" self-determination, the theoretical definition would have a hard time applying to real-life international legal contexts.

Lastly, territorial integrity is an integral aspect of self-determination. The undisputed control over the resources of a country is vital to its genuine sovereignty. This sentiment is

¹³² United Nations, *Charter of the United Nations*, 24 October 1945, Article 76

expressed in the 1960 United Nations Declaration on the Rights of Indigenous Peoples in the final operative clause of the document.¹³³ Obviously, international law makers at the time in which self-determination was a popular way of thinking saw that one could not be feasible without the other.

Ethical standing for the solutions:

The above basis for self-determination as a rule of law is entirely positivist. Various state leaders, as self-determination stands in international law today, wrote it into place over time. To accept self-determination as international law just because it was written there is a dangerous step to take towards positivism in legal interpretation. The fact of the matter is that self-determination is not the right form of international political structure just because it was written that way. Rather, the principle of self-determination has a transcendently right quality because of its basis in rationality.

Immanuel Kant was a German philosopher that lived from 1724-1804. Although he lived in a time period before self-determination was ever formally thought of, Kantian ethics provides basis for self-determination as a right of peoples without having to ascribe to positivism in international law. Kant's morality has been analyzed and encompasses all aspects of human life, so an in-depth discussion of his ethics will not be warranted here. Rather, a brief explanation of the foundations of his ethical thought and the areas of his ethical theory that most relates to self-determination will be discussed.

¹³³ United Nations, *1960 Declaration on Granting Independence to Colonial Countries and Peoples* 14 December 1960

Kantian morality has its basis in reason. He derives his moral law from the strife that humans experience in the state of nature. He maintains that we must rise above our desires that we would often prefer to pursue in order to follow moral law -which makes morality imperative. Additionally, there is nothing in the world that can justify us ignoring our moral imperative, which makes morality categorical.¹³⁴ Kant proposes that an action done from duty, or imperative, derives its moral worth and that duty is the necessity of acting in accordance with the moral law. He follows that therefore, human beings, since we are rational entities, can derive moral law from categorical imperatives.¹³⁵

Kant formulates his principles of the categorical imperative from his foundations of rationality and thought. The first principle of the categorical imperative is universalization. Specifically, Kant states, “Act only on that maxim whereby thou canst at the same time will that it should become universal law.”¹³⁶ This means, for example, that an act is morally justified if it is conceivable if all people also acted similarly at any given time. One can lie, for example, but if any given person lied at any given time, the world would not function as it does and is therefore not a moral action.

Kant’s second categorical imperative is most important to our discussion of self-determination. The second imperative states that each individual should be treated as an end in himself and never as a means to another end.

¹³⁴ Roger J. Sullivan, *An Introduction to Kant’s Ethics* (Cambridge University Press, 1994) 28

¹³⁵ Immanuel Kant, “The Fundamental Principles of the Metaphysic of Morals” in *Toward Perpetual Peace and Other Writings on Politics, Peace, and History* ed. David Colclasure (Yale University Press, 2006)

¹³⁶ *ibid*

Throughout the development of the world political structure, there have been and continue to be numerous instances in which the second framework of the categorical imperative has been entirely ignored. The people living in colonies were directly used to benefit mother countries. Upon independence, they were again used as a means to political power plays made by the rest of the world, both domestically and internationally. Today, through measures imposed by the World Bank and IMF and through the ongoing resource abuses made by multinational corporations, the people living in the territories innocently are the first to suffer, again used as a means to some one else's end.

The Article "A Neo-Kantian Foundation of Corporate Social Responsibility" points out that in American culture corporations are seen as doing good when they promote corporate responsibility in their business practices.¹³⁷ However, corporate responsibility is not seen as a moral imperative as it should be. Corporations are praised for doing good but not reprimanded for doing bad. It is clear from our case study on the Democratic Republic of the Congo that multinational corporations are not being held to the same moral standards that individual people are.

Individuals control corporations. Therefore, each individual in a corporation has the same moral imperative as any other individual in the world. The actions of multinational corporations in places like the Democratic Republic of the Congo are not only a violation of international and domestic law, but also transcendentally and morally wrong. Kantian categorical imperatives, though, are not the only aspect of Kantian morality that relates to the atrocities historically committed by corporations and governments or how one individual treats another.

¹³⁷ Wim Dubbink and Luc van Liedekerke "A Neo-Kantian Foundation of Corporate Social Responsibility" *Ethical Theory and Moral Practice* , Vol. 12, No. 2 (Apr., 2009) 136

In “Towards Perpetual Peace” Kant interestingly lays out the foundations for peace among nations. Although he was writing in the late 18th century, Kant’s assessment and prescriptions for peaceful international relations are entirely relevant today. In his first section, Kant lays out six foundational necessities for peace among countries, each that are based on his ethics. While each has an entirely relevant explanation to the perpetuation of peace, the two most relevant to our discussion on ethical foundations for self-determination are numbers two and five.

The second absolute necessity for peace among nations is stated as such: “No independently existing state, (irrespective of whether it is large or small) shall be able to be acquired by another state through inheritance, exchange, purchase, or gift.”¹³⁸ Kant rightfully asserts that a state is not something that can be owned by an outside entity. Rather, it is “a society of human beings, whom no one but the state itself can command.”¹³⁹ He goes on to equate annexation to his second categorical imperative, stating that to annex a state is to treat it as a mere thing rather than the accumulations of humans that it is. He also mentions that a state can not be inherited because the right to rule does not pass on automatically. Rather eloquently, he states: “The state acquires the ruler, whereas the ruler as such does not acquire the state.”¹⁴⁰

Kant’s second principle of perpetual peace is directly relevant to the atrocities of colonialism and the deprivation of self-determination that has been rampant in the developing world since. Although states subject to colonialism were often not bought, inherited, exchanged

¹³⁸ Immanuel Kant, “Perpetual Peace” in *Toward Perpetual Peace and Other Writings on Politics, Peace, and History* ed. David Colclasure (Yale University Press, 2006) 68

¹³⁹ *ibid*

¹⁴⁰ Immanuel Kant, “Perpetual Peace” in *Toward Perpetual Peace and Other Writings on Politics, Peace, and History* ed. David Colclasure (Yale University Press, 2006) 68

or given as gifts, they were still taken in the same arbitrary spirit and used as mere things for the benefit of others.

Kant's fifth principle for perpetual peace reads: "No state shall forcibly interfere in the constitution and government of another state." Kant does not even take time to lay out an explicit explanation for why this interference undermines peace, but rather simply asks, "what can justify its doing so?"¹⁴¹ This fifth principle for perpetual peace is a direct endorsement of self-determination in modern terms.

Kant also does not define force in relation to this interference. A modern interpretation of this principle of peace could include economic coercion and political imperialism as equivalent to forcible intervention of the activities of another state. The inclusion of economic coercion as a part of forcible interference places the International Monetary Fund in very questionable moral light.

Additionally, the Belgian government's activities in the death of Patrice Lumumba are unquestionably immoral and definitely undermine this principle of international peace. British action in Iraq historically and the presence of the United States there today are likewise ethical atrocities.

Kant's fifth principle of perpetual peace also goes as far to discuss the intervention of other states in a time of civil war. He states that as long as the conflict is still undecided, "the intervention of external powers would constitute a violation of the rights of a people...that is

¹⁴¹ Immanuel Kant, "Perpetual Peace" in *Toward Perpetual Peace and Other Writings on Politics, Peace, and History* ed. David Colclasure (Yale University Press, 2006) p. 70

merely struggling with its own internal infirmity”¹⁴² Here an interesting perspective of the morality of secession can be addressed because Kant states further that, “...if a state, through internal conflict, were divided into two parts, each of which regarded itself a separate state and laid claim to the whole...for in this case there is anarchy.”¹⁴³ Here, Kant gives a politically justified instance in which secession is entirely appropriate. The international community’s insistence to maintain colonial boundaries has allowed the anarchy that rules many countries in the world to persist.

In addition, morality of political violence is important to be discussed in order to complete the Kantian moral basis for self-determination. Although an in-depth discussion of just war is not allowable here due to time constraints, Kantian permissibility and his idealized direction towards republicanism and world peace is relevant to our discussion of secession and inclusive government. For Kant, the foundations for perpetual peace were found in a republican government based on the federalism of free states. Likely because of this ideal, Kant was fundamentally against revolution.

In fact, Kant was against any kind of rebellion against the state and was under the impression that death is a justifiable form of punishment for high treason. In a statement reminiscent of Socrates’ before he drank the hemlock, Kant says that, “The reason for the duty of the people to endure even what is taken as an intolerable abuse of the highest legislation must be

¹⁴² Immanuel Kant, “Perpetual Peace” in *Toward Perpetual Peace and Other Writings on Politics, Peace, and History* ed. David Colclasure (Yale University Press, 2006) 70

¹⁴³ *ibid*

conceived as nothing more than against the law, indeed, as nullifying the entire legal constitution.”¹⁴⁴

However, Kant’s ideals of republicanism and the rule of law in the federalism of free states naturally would lead him to be against the nullification of the constitution. Bear in mind that Kantian morality is categorical, which means that he does not make exceptions to ethics. So in all instances of revolution, not matter how ruthless the dictator, revolution is still treason, and it is still morally wrong. This seems like a major flaw in the basis of Kantian morality for self-determination.

Kant, though, had an idea of a state as a republican and free institution. Likely Kant may not take such a harsh stance towards civil disobedience towards any entity that called itself a state but did not conduct itself as such. Likewise, if the constitution of the state includes the individual’s right to rebel against it, then each person is entirely moral and justified in doing so.¹⁴⁵

However, even in instances in which rebellion is wrong, Kant’s other writing suggests that it can be tolerated. For example, Kant maintains that if the revolution is a successful one, then the citizens now have an obligation to obey the new regime just as much as they did the old. While it is true that this line of thinking is problematic, it is necessary to mention that Kant believed in human progress and that through rational action and moral thought, peoples living

¹⁴⁴ Immanuel Kant, “The Fundamental Principles of the Metaphysic of Morals” in *Toward Perpetual Peace and Other Writings on Politics, Peace, and History* ed. David Colclasure (Yale University Press, 2006) 119

¹⁴⁵ Jeremy Waldron “Kantian Theory of State” in *Toward Perpetual Peace and Other Writings on Politics, Peace, and History* ed. David Colclasure (Yale University Press, 2006) 197

within a state would eventually reach the best possible solution.¹⁴⁶ Additionally, in his Theory of History, Kant mentions that some bloodshed and hardship and moral wrong will be necessary to achieve the state of perpetual peace that mankind is striving for.¹⁴⁷

All in all, Kantian ethics is the most fundamental way to assess the morality of the self-determination of peoples. His categorical imperative stresses the treatment of people as an end in themselves and not as a means in their own end, which is a direct contradiction to the colonial and imperial doctrine typical of the late 19th and early 20th centuries. In addition, his moral imperatives on how to treat individuals give a blueprint for corporate responsibility and the moral foundation for their historical wrongdoing.

Kant's writings on perpetual peace lay the ethical groundwork for self-determination before it was introduced by name. His second and fifth principles of perpetual peace directly endorse the right to self-determination of all peoples in the world. While Kant's beliefs regarding political revolution seems like a deal breaker where secession is concerned, his understanding and definition of a state make it clear that in many areas of the world today, the people are actually living in anarchy. Just as Kant allows for intervention into another state's affairs in the case of absolute stalemate, which he calls anarchy, it is unlikely that Kant would oppose political opposition to a de facto anarchic regime.

¹⁴⁶ Stanford Encyclopedia of Philosophy, Immanuel Kant
<<http://plato.stanford.edu/entries/kant/>>

¹⁴⁷ Louis Dupree, "Kant's Theory of History and Progress" *The Review of Metaphysics*, Vol. 51, No. 4 (Jun., 1998) 822

Conclusion

The case studies that were explained above and the many other similar instances prevalent in the history of the world teaches the international community that despite changes in rhetoric throughout the years and the perception that the international situation has improved, the plight of millions of people remains entirely real. The international community, despite its spoken importance, frankly never implemented self-determination. The denial of self-determination to millions of people throughout the world has led to a myriad of political, social, and economic debacles that continues to plague the lives of millions of people.

In just the two countries discussed in this paper, the lack of self-determination has led to extreme loss of life and poverty for millions of people. The Democratic Republic of the Congo is subject to some of the most corrupt governmental regimes in the world. In addition, its natural resources are abused by multinational corporations willing to pay little to nothing in wages for production labor or do business with warlords for precious minerals used in smart phones and computers.

In Iraq, the lack of political development continues to bring violence to the people living in the country. The ongoing American occupation and the failure on the part of Iraqi government to control the activities within its own borders is evidence enough of the mess that arbitrarily drawn borders and foreign intervention has left it with. In addition to the now-approaching millions of people killed in the history of the country's political violence, the Kurdish population to the north, though perfectly capable of maintaining an independent state, is subject to violence and political exclusion.

The correlation between those countries that were subject to foreign rule and those that are plagued with underdevelopment and poverty today is an observation that has been made many times throughout human history. This correlation is not a coincidence; rather, there has simply been no world leadership willing to take steps to end the ongoing interventions into other country's affairs.

Kantian reason is the moral basis for self-determination. However, at the conclusion of this argument the reader should be reminded that there is also positivist basis for self-determination in international law. Self-determination has not been implemented in the international political structure simply because of the greed prevalent among the countries that had the means to exert power over those who had the resources they wanted. If that greed is replaced with morality, rationality, integrity and effective leadership, the face of the global community would be entirely changed.

Perhaps the final disclaimer that should be made is that the arguments made in here are not isolationist. This paper is not anti-globalization. Rather, this paper is anti-exploitation. The application of Kantian categorical imperatives and fair trade agreements to multinational business practices and governmental interaction will lead to effective globalization that will be prosperous for all. The historical denial of the right of self-governance is morally wrong not only according the international law but also according to ethical principle. In order for the international community to have a chance at peace with justice in a moral society, people living in all parts of the world will need to be granted the right to self-governance, territorial integrity and inclusion in political processes.

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