STATE FORMATION: WHEN POWER, LEGITIMACY, AND ACTION ALIGN OR COLLIDE

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By
Dahlia M. O. Khalifa, M.A.

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Dahlia M. O. Khalifa, M.A.

Dissertation Advisor: Anthony C. Arend, Professor, Ph.D.

ABSTRACT

Self-determination claims to statehood continue to be the basis for war, strife and contention. Often state power interests can either align or collide with legitimacy claims for self-determination. How, when and why is the noise made by such claimants accorded the space to become the voice of legitimate political aspirations, and under what conditions can the legitimated actors then attain their objectives of statehood? What are the international costs of failure? This research will study whether or not in the post Cold War era, the success of the formation of a new state depends on the nexus of two determinants, namely, state power interests and legitimacy of self-determination claim. The latter variable, legitimacy, is analyzed as an outcome of a dynamic process of legitimation grounded in both international law and communicative action, and how that process may impact identities and interests of all stakeholders including power states. This is being called the legitimacy-power gap model of self-determination legitimation. To assess this hypothesis, the model will be applied to the success cases of East Germany and East Timor, and the quasi-success case of Kosovo. The findings discerned will be considered within the context of the case of Palestine. Finally, the trajectories of the self-determination legitimation processes of these case studies will be juxtaposed to discern possible causes of success or failure and implications for ongoing and future self-determination claims.
This dissertation
is dedicated to my parents, Dr. Osama and Afaf Khalifa, daughter, Farida Raafat,
and husband, Zaidun Jawdat, for all being my earth and stars,

and in memory of Professor Christopher C. Joyner for his early advice that I finally
heeded to “Just do it.”

With everlasting gratitude,
Dahlia Khalifa
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Chapter 1
The Puzzle - What determines success or failure of self-determination claims?

In many ways, the Thirty Years’ War of Europe (1618-1648) was a war of competing claims—to territory, dominion, and sovereign recognition. Actors had been making political claims even prior to the 1648 Treaty of Westphalia, the oft-noted dawn of the state system of international relations, which brought the previous war period to a close. Since 1648, non-state actor claims to statehood have continued to be the basis for war, strife and conflict. State actors have pointed to the notion of legitimacy as the criterion for engagement with such claims, often after periods of contention, sometimes violent. Yet, how is this social status constructed and attained, and what are the international costs of failure? How, when and why is the noise made by such claimants able to break through the competing din and be accorded the space to become the voice of legitimate political aspirations, and under what conditions can the legitimated actors then attain their objectives?

In addressing these questions, I argue that statehood is the social construction that fulfills the political aspirations of social groups within the context of the prevailing global order, and the means of attaining and maintaining this status is through legitimation of self-determination movements. A self-determination actor is a particular form of a social movement and the campaign it wages, or communicative action, in serving its ends results in political contention. Self-determination is the ability of a group of people, self-identified as a group within a defined territory with common history, to make their own decision of their political being, including as a sovereign state free of internal or external impediments toward that end. In this way, self-determination is generally defined to include decolonization, freedom from

external control or occupation, internal suppression, as well as secession, which is the creation of a sovereign state from within an existing sovereign entity or across neighboring ones.

Statehood has taken its more modern form with the American and French revolutions resulting today in 193 member states in the United Nations.² This research will study whether or not in the post 20th century Cold War era marked by the fall of the Berlin wall, the success of the formation of a new state depends on the nexus of two determinants, namely, state power interests and legitimacy of self-determination claim and claimant. State power interests will be discussed while being assessed more as an observable condition, as the research around this concept is more solid. The latter independent variable, legitimacy, will be seen as an outcome of a dynamic process of legitimation, as an intervening variable, grounded in both international law and communicative action. This is what is being called the legitimacy-power gap model of self-determination legitimation.

Legitimation here is taken to be a process that impacts both state power interests and stakeholder support for self-determination claims garnered discursively through positive speech acts (and lost through negative ones) within the broader rubric of communicative action. In this way, it may be seen that the self-determination claimant to a limited degree is the forger of its own destiny if it is able to engage positively with power interests; but this impact is limited in that power interests, while they may be impacted by identity shifts, stand as an independent variable along the path to independence of an aspiring self-determination claimant. The research will give greater weight to understanding the mechanism of legitimation, and the resulting legitimacy of self-determination claim and claimant. As such, legitimation is defined as the process of arriving to a condition of validity, this latter term used instead of legitimacy to

introduce more conceptual sharpness and avoid circular references. To be more precise, the focus will be on the process of legitimation of actorhood as opposed to an analysis of the legitimacy of action or governance in international politics. As summarized by Ian Clark, “there is a distinction to be made between legitimacy understood as a principle about how international society is formed… and legitimacy understood as a principle about how that society behaves…”

The contention is that where this nexus joins, states are formed; where they do not, efforts fail. The explanatory and predictive hypothesis to be tested is that in the absence of both independent variables, legitimacy of self-determination claim and state power interests, statehood is elusive. Alternatively, should the alignment between the two variables shift, existing statehood will dissolve. Falsification of such hypotheses would be any case of a state that was durably formed absent these two variables. This will be tested by isolating the two variables to discern their manifestation. For power interests, the case studies will focus on regional and international states with direct bearing on the state from within which the self-determination claim is being made, as expressed in statements of major national representatives, actions taken at international and regional organizations such as the United Nations, NATO, the Arab League, etc., economic linkages or resource dependencies, and political or military action taken. For legitimacy of self-determination claim, the focus will be on identifying the non-state actors involved and assessing their behavior in terms of statements, actions, alliances, and outreach to third parties.

Finally, legitimation is being posited as a dynamic process and intervening variable facilitating the dependent outcome of state formation. Hence, the nature of the two independent variables will be assessed as mutually constitutive and manipulated by the actions of each vis-à-

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3 Ian Clark, "Legitimacy in a Global Order" Review of International Studies (2003, Volume 29) 84
4 The cases of East Germany, and North and South Yemen would be cases in point.
vis the other. This will involve assessing the speech acts of both the self-determination claimant and the responses, or lack thereof, of the state power interests. Static assessments of each variable along the timeline of events will be made to isolate the point of alignment and misalignment between each and thus enable a path to be discerned.

To limit the universe of observed outcomes, the research will be based on an assessment of the 38 states newly formed since 1989, or the fall of the former Soviet Union, and each of these states formed will be briefly analyzed in terms of the two dependent variables identified. In addition, a brief look will be taken at a subset of self-determination movements that have failed thus far to attain their aspiration of state formation, namely a set of movements involving violent conflict. A further subset of this universe is those states that died or deformed after 1989. Of this first subset, a more in-depth case study approach will be applied to analyze the state formation of East Timor and Kosovo, as positive or success/quasi-success cases, respectively. Of the third subset, consideration will also be given to what is being termed a negative success case of East Germany. Lessons gleaned will then be applied to the process of state formation in Palestine, from the second subset, to test the hypothesis that an independent state of Palestine shall remain an elusive endeavor, or, more bluntly put, arriving at a sovereign Palestine will remain a remote possibility as long as state power interests and legitimacy of the self-determination claim remain non-aligned, and, in fact, collide. Thus, state formation in Palestine is analyzed here as an ongoing, or, potentially, a failed case, to date.

Accordingly, the case studies will be analyzed historically to discern the impact of the two variables to the point of success, which for the present purposes can be defined as acceptance into the community of nations as a member state in the United Nations. Success here is assumed to be a permanent condition until such a time as that status no longer holds, such as in
the case of East Germany or North and South Yemen, which results when there is a misalignment between the two variables. Failure, on the other hand, is a static condition that can change to attain success in a dynamic process leading to the alignment of power interests and legitimacy. That process of alignment and misalignment is the focus of this analysis.

Figure 1: Attaining Statehood

The claims of non-state actors have been heard at least since the time of the Assasins with international effects ranging from trans-border groups such as in the case of Al-Qaeda to more localized and nationalist groups, as in the case of the Tamil Tigers. However, these actors vary both in terms of their political aspirations and where they sit along the legitimacy-illegitimacy continuum. The focus of this paper is on the illegitimate actor seeking to attain statehood, recognition as representing a legitimate claim for self-determination and recognition as the legitimate representative of that claim, as well as the degree to which a process of

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5 The story of the Shi’a Nizari Isma’ili (popularly known as the Assassins from their original name in Arabic “Assasseen – Arabic term for ‘the base’ or ‘fundamentals’, similar to the term used by present day terror network Al-Qaeda, also an Arabic term for ‘the base’) is one of a group of people who represent an internal religio-political resistance movement who, starting soon after the death of the Prophet Mohamed, took three hundred years to develop, saw the height of manifestation for approximately two hundred years and then fell into a silent existence through to modern times. They have captured the minds of the Western world since the time of the Crusades because of some of the tactics they employed at the pinnacle of their strength against perceived political adversaries as well as the seemingly ritualistic secrecy surrounding their most ardent followers. However, it should be noted that their movement was always grounded in rational political objectives, namely, the undermining of the ruling Sunni Abbasid Caliphate based in Baghdad and the restoration of the glory of Isma’ili Shi’a rule as in the heyday of the Fatimid Caliphate based in Egypt. As such, their claim to self-determination was to meet political ends. See Bernard Lewis (1967), Philip K. Hitti (1937), and Marshall Hodgson (1955).

6 See the Peace Research Institute Oslo (PRIO) for data sets on armed conflict since 1946 to present at http://www.prio.no/Data/Armed-Conflict/
legitimation is intervening. As such, the discussion will be informed by, but will not engage to any great degree with, the literature seeking to explain the wide scope of non-state actor types at the systemic level, such as civil society, non-governmental organizations, international financial institutions, multinational corporations, transnational organizations, which are collectively referred to herein as “transnational actors”. Nor will illegitimate actors such as trans-border violent politico-religious actors or illegal trans-national economic actors be considered. The focus here is on those voices that claim self-determination seeking sovereign statehood, which are referred to herein as “self-determination actors” or “claimants”. As of 2009, there were at least 22 armed secessionist movements. (Toft, 2012:582) How do these groups cross the Rubicon of illegitimate terrorist to legitimate freedom fighter, and how is that distinction connotated? Such questions will also tangentially address the persistent form of the Westphalian state as the preferred end of political aspiration.

In crossing the freedom fighter–terrorist divide, legitimacy tends to be the requisite credential. So, how does a group make a claim for self-determination be viewed as legitimate? And how does it change the public’s perception of it from that of an illegitimate pariah actor to a legitimate representative of a wider constituency? This is a two-step process that is naturally intertwined and conflated by the actors themselves and their audiences. The Palestinian people and the Palestinian Liberation Organization (PLO) were able to gain the legitimacy necessary to be awarded Observer Status at the United Nations, thus graduating to become the ‘official’ representative of the self-determination aspirations of a whole group.7 And although this was

7 In 1974 (according to UN General Assembly Resolution 3237 found at http://unispal.un.org/UNISPAL.NSF/0/512BAA69B5A32794852560DE0054B9B2) , the PLO was granted permanent observer status with non-voting participatory rights in all UN meetings. In 1988 the delegation was renamed Palestine and still led by the PLO. As of 2007 and until November 2012, Palestine was the only member with such a status in the UN. This status had also been granted in 1976 to the Namibian self-determination group, South West Africa People’s Organization (SWAPO) (see United Nations General Assembly Resolution 152 at
recently parlayed to an advanced status for Palestine, as a Non-Member Observer State, joining the Holy See as the only other state with such status, it has failed, to date, to attain full member status. At the same time, the African National Congress (ANC) whose rise to legitimacy coincided with that of the PLO was successful in eventually attaining its political aspirations. Or, by the same token, the once violent FRETILIN went from pariah status to that of the representative of the legitimate aspirations of the East Timorese for independence. Moreover, the South West African People’s Organization (SWAPO) likewise gained observer status at the United Nations in 1976 as the legitimate representative of the Namibian people and was in fact able to see an independent state of Namibia born in 1990.

Why? Is it simply because in the case of South Africa what was involved was enfranchisement within an already existing state, while in the case of the Palestinians the overdue birth of a new state is the objective, or are there other forces at play? Examples abound, from the long, yet successful outcome in the cases of Angola, Namibia, East Timor, Kosovo, and South Sudan, compared to the equally contentious, yet unsuccessful, efforts of the Chechen rebels, the Irish Republican Army (IRA), the Basque Separatists (ETA), the Western Sahara Polisario Front, and so on in the long list of unrequited political aspirations. Finally, is legitimacy of the actor in itself a sufficient pre-condition or are there other conditions, such as state power interests, that are necessary for the actor to attain its objectives? Are there, in fact,


8 In November 2012, Palestine was granted observer state status by the General Assembly of the United Nations with a vote of 138 in favor to 9 against, with 41 abstentions. See: \[\text{http://www.un.org/News/Press/docs//2012/ga11317.doc.htm}\] [last accessed 12/7/2012] and \[\text{http://www.un.int/wcm/content/site/palestine/}\] [last accessed 12/7/2012]

9 See the Peace Research Institute Oslo (PRIO) for data sets on armed conflict including secessionist movements since 1946 to present at \[\text{http://www.prio.no/Data/Armed-Conflict/}\]. Monica Duffy Toft also summarizes the PRIO findings in the online version of the appendix to her 2012 paper "Self-Determination, Secession, and Civil War" Terrorism and Political Violence, 24 (4).
two discreet mechanisms, and can they exert reinforcing, or conversely repellent, interaction
effects between them that ultimately impact the outcome? The thesis here is that the answer to
these questions is yes.

Most self-determination political groups stake their claim to legitimacy on the hopes,
aspirations, and self-proclaimed rights of the people they claim to represent. These aspirations
can spring from senses of imperial and colonial injustice or haphazard delineation of borders, to
conflicting dominion over natural resources, to splits on historical, linguistic, cultural, religious
and ideological grounds. Whatever the impetus for the sense of one group feeling a compelling
reason to rally together against another for independence, self-determination movements tend to
be led by a group or consortium of groups brought together for common cause, what has been
termed nationalism. As noted by E. J. Hobsbawm, “nationalism comes before nations. Nations
do not make states and nationalism but the other way around.” (1990: 10) ‘Political group’ here
refers to any non-state actor asserting a claim to represent a political aspiration grounded in a
sense of historical nationalism of an underlying group of people within a defined physical
boundary; accordingly, this definition does not address seamless political claims for global
socialism or an Islamic Ummah, for example.

It is also useful to specify what the scope of this enquiry is not limited to. While violence
is often a characteristic of self-determination political groups, it is not here assumed to be a
defining element. Hence many of the contentious self-determination movements resulting in
eventual state formation, such as in the case of most of the Baltic states, violence was not a tool
of the political discourse. Furthermore, while these claims are concerned with issues of self-
determination, hence potential statehood, the process of legitimation is often distinct from the

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final attainment of such objectives, and as such the focus of this analysis will not involve a normative assessment of the underlying claim to a right to self-determination or of the ultimate outcome. Rather, the focus will be on the conditions within which both legitimation of the political group as an actor is attained, and whether and under what conditions these translate into statehood. In short, a descriptive methodology is used which is based on a deconstruction of the elements of legitimation, as deduced from case analysis. Accordingly, legitimation here is a process de-linked from the normative outcome of the ultimate political aspiration, and is focused on success or failure as indicative of the causal factors embodied within the process of legitimation and its interaction with power interests.

Review of existing literature has not revealed any significant research that has systematically looked at the conditions under which state formation is likely to occur, or conversely, dissolve. For example, while realist approaches, from neoclassical to structural, would suggest that state power interests are likely to have the most direct bearing on whether or not an aspiring state is welcomed into the community of nations, it does not satisfy the question of what brings the self-determination claim to that tipping point, and under what conditions the assessment of those power interests can be changed. Likewise, international legal opinion is quite prolific on the topic of state creation and self-determination. However, there would appear to be a lacuna in the research addressing how self-determination claims rise to the level of being considered candidates for realization, other than some recent work which suggests that self-determination is simply a function of great power politics.11 Some claims find their path to statehood, and others do not. Some claimants are able to make their message heard and acted upon, while others fail. The reason why and the corollary of how has not been satisfactorily

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addressed. Identifying causal mechanisms may benefit from considering the range of scholarly approaches, especially liberal realist and constructivist perspectives, and perhaps borrowing from other disciplines such as communication and business theory.

Ultimately, the issue of non-state political actors is of concern to the extent that the claims of such actors by not being given the space for airing due to legitimacy barriers, or power interests, entails international costs in the form of security threats and humanitarian concerns and all that such a cycle entails. As noted by David Armitage (in Doyle, 2010:38),”[t]he most comprehensive recent macrohistorical account of warfare around the world counts 484 separate wars between 1816 and 2001; 296 of those were civil wars, of which 109 were fought with the goal of creating a new state rather than taking control of an existing one. Secessionist conflicts thus comprise more than a fifth of all wars in the past two centuries and account for a substantial minority of the civil wars in this period.” Monica Duffy Toft notes that “[s]ince 1990, about half of all civil wars resulted from ethnic groups seeking greater autonomy or statehood.” (Toft, 2012: 581). She extracted from the PRIO dataset the data point that since 1945, 94 wars or violent conflicts resulted from secessionist movements, in addition to the 22 ongoing conflicts.12 According to the Heidleberg Institute, of the 28 cases of severe crisis and war ongoing in 2012, seven were directly due to secessionist movements, and the remainder being due to three other reasons: ideological differences, natural resources, and national power. Moreover, the Heidleberg Institute’s 2010 report observes that conflicts due to secessionist movements were, of the four reasons discerned, the most likely to be violent.13

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12 See Toft (2012: online appendix). Also see the data source at the Peace Research Institute Oslo (PRIO) noted above.
The drivers for claims to self-determination have been wide and varying over the past centuries since the American and French revolutions resulted in the concept of statehood as fulfilling aspirations of a people rather than a ruler. “Today’s separatist turmoil in parts of Africa, Asia, Eastern Europe, and the Middle East… very often stems from ethnic and religious conflict within states established by imperial edict rather than popular will.” (Doyle, 2010:3)

The dissolution of the Soviet Union and Yugoslavia, gave impetus to a renewed recognition that self-rule in the form of statehood embodies a means to claim and establish a group identity. It is this popular will which lies at the heart of self-determination claims. If legitimation becomes the path through which these claims are heard, then it is an issue which has bearing on international relations.

This research will begin with a discussion of the role of legitimacy as a characteristic of international law and what role that plays in the international relations of state and non-state actors. The concept of legitimacy will then be assessed within the context of the international legal view of self-determination claims versus that of sovereignty, and how this plays out from the perspective of global governance. Focusing on the incidents of state formation since the dissolution of the Soviet Union, both cases of successful, ongoing, and failed self-determination efforts will be identified. How these self-determination claims gain legitimacy through the process of legitimation involving communicative action will then be analyzed. Finally, through case studies involving an assessment of the process of state demise in East Germany and state formation in East Timor, Kosovo, and Palestine, the hypothesis that an alignment between legitimacy of self-determination claim and power interests is causal will be tested.
Chapter 2
Legitimacy in International Law and International Relations

Much like justice is the essence of law, legitimacy is the thread that runs through
ternational law.\textsuperscript{14} It is also the principle to which states claim to adhere in much of their global
actions and interactions, including considering issues of sovereignty at one end of the spectrum,
secession (and its related concept of irredentism\textsuperscript{15}), separatism and ultimately self-determination
at the other. In this way, legitimacy is intertwined with international law as a basis for state
action, hence it directly impacts international relations. Yet, Thomas Franck lamented the fact
that international lawyers tended not to interact with concepts of legitimacy as much as
international relations scholars.\textsuperscript{16} To Jurgen Habermas, legitimacy was a condition attained
through a discursive process of legitimation in society through which validity was ascertained.\textsuperscript{17}
In Franck’s view that was the essence of legitimacy: societal recognition of validity. Taken to an
international level, Franck defined legitimacy as: \textit{“a property of a rule or a rule-making
institution which itself exerts a pull toward compliance on those addressed normatively because
those addressed believe that the rule or institution has come into being and operates in
accordance with generally accepted principles of right process.”} (Franck, 1990: 24, italics in
original) This is the definition of legitimacy that will be adopted in this research and which is
the focus of the legitimation process that will be assessed in the Habermassian paradigm.

It is important to note the distinction between the concepts of legitimacy \textit{in} international
law versus legitimacy \textit{of} international law, where the latter, as defined by Allen Buchanan is

\textsuperscript{14} See Allen Buchanan (2010) and John Rawls (2005)
\textsuperscript{15} Irredentism is defined as a self-determination movement involving territory that covers more than one state,
such as the Kurdish self-determination movement, for example. See Musgrave (1997: 221)
\textsuperscript{16} Hillary Charlesworth and Jean-Marc Coicaud (2010: 389). Also see Thomas M. Franck (1990)
\textsuperscript{17} See Jurgen Habermas
such that “international laws are legitimate only if the institutions that make them are legitimate”\(^\text{18}\) whereas the former he saw to be more normative in nature and required moral justification, both similar to Frank’s construction. (Buchanan, 2004: 235) In this way, legitimacy of a law is seen as a legal fact as opposed to an evaluation of the morality behind the law itself, this latter being a normative assessment. However, it is possible to address the question about the role of legitimacy in international law in terms of the principles which undergird what constitute it, by focusing on the basis upon which it is constructed, irrespective of the morality with which it may or may not be imbued. What defines legitimacy in international law in this way is the focus here rather than an assessment of whether the elements are themselves moral or just. This approach is more in line with the liberal realist school as outlined by Barry Buzan and others.\(^\text{19}\)

International law in this context is held to be a set of rules that states consider binding and regulates behavior at the international level.\(^\text{20}\) Arend writes that these rules, and all that they connote in terms of rights and duties, also apply to non-state international actors. (1996: 290) Hence the relevance to self-determination groups (such as the PLO and SWAPO) is apparent and why being designated observer status by the United Nations is an important landmark in the legitimation process; it is also the basis for making distinctions between legitimate actors and illegitimate acts. Although Buchanan argues that “there is nothing approaching an adequate theory of legitimacy for international law,”\(^\text{21}\) a brief review of the emergence of legitimacy in the context of international law and the various approaches in legal philosophy is instructive in the discussion of why legitimacy, as a concept, and in turn of the self-determination claim, is

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18 Buchanan (2010: 134)
19 See Barry Buzan (2004) and Andrew Linklater and Hidemi Suganami (2006)
21 Buchanan (2010: 135)
necessarily a causal, but not a sufficient condition, for state formation. After such a review of its situation in international law, there will be a return to a consideration of how legitimacy from that context is applied in international relations.

“In their latter histories, the Holy Roman Empire, the Spanish Empire, and Europe’s nineteenth-and twentieth-century empires all suffered severe crises of legitimacy.” (Reus-Smit, 2011: 217) More modern concepts of international legal philosophy have evolved over the past four hundred years or so coinciding with the advent of European discovery of ‘new worlds’ building on the philosophies and works of earlier scholars and practices from ancient Egypt, to Greece to the Romans.22 The development of legal philosophy rested on concepts of sovereignty of rulers over their dominion, rights and duties of people vis-à-vis the state, or, more precisely, their ruler/sovereign, such that the emergence of the Hobbesian social contract at a state level was seen to be reflected at an interstate level in a Kantian fashion. As empires expanded their dominion over lands and peoples, and the modern Westphalian nation state emerged, rules and norms to regulate the interaction of states, in a merger between Grotian notions of sovereignty and Kantian visions of international society, became a matter of utility, evolving over time to encompass rules and practices. This evolution of international law resulted in differing, if complementary, schools of thought. How concepts of legitimacy are situated in that evolution is relevant to this research.

The natural law approach to international legal philosophy views law as based on the concept of the universality of morality and the ability of humanity to arrive at such morality by way of reason because man is a rational being. Essentially, natural law assumes that rational man can naturally identify right from wrong, good from evil, and that good/right will naturally

22 Joyner (2005: 15)
be preferred to evil/wrong. Furthermore, this approach also assumes that morality is neither relative nor subjective, but rather absolute, universal in its essence, applicable throughout humanity and across time, and thus eternal in nature and representative of the lowest (or rather highest in the moral sense) common denominator. It is this universal code of morality which defines the parameters of law; it assumes a sense of higher consciousness which is akin to an economist’s view of perfect equilibrium; it will never be attained but should always be aspired to and thus (manmade) tools may be needed to guide the process towards that goal.

The natural law approach emerges from the 13th Century works of St. Thomas Aquinas (b. 1225), a canonized Christian theologian and also one of Catholicism’s 33 Doctors of the Church who rediscovered the works of Aristotle, a legacy that had been preserved by Arab Moslem scholars who had translated his work from Greek into Arabic. Aquinas’ natural approach to law recognized that all that comes from reason naturally is not necessarily all that is required to address the human condition, and as such, may be augmented (but never reduced) by human law. As defined by Aquinas, there are four kinds of law: eternal law (laws that govern the eternal universe such as physics and mathematics and is ultimately only known by God); natural law (laws that are naturally arrived at by way of human reason); divine law (laws that speak of God’s guidance to achieve ultimate salvation and which encompass natural law), and human law (law created by and for humankind). Aquinas defines law as “nothing else than an ordinance of reason for the common good, made by him who has care of the community, and

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23 Aquinas, in fact, is said to have been influenced by Islamic scholarship emerging from the Brethren of Sincerity (which first emerged in present-day Iraq and Iran in the 9th Century) and their Neoplatonic and Pythagorean approach to morality, law, and science. The Brethren were a secretive Isma’ili sect whose aim was “to overthrow the existing political order by undermining the predominant intellectual system and religious beliefs.” Burman (1987: 54) Their doctrines were based on epistles written by a group of scholars at the time covering the gamut of subjects from mathematics to sciences to music, ethics and philosophy. See Burman (1987) and Lewis (1967).
promulgated.”24 His definition sets out the basic parameters of law, that it is arrived at by human reasoning, that it be for the common good, that it be identified by a legitimate authority, and that it be proclaimed for all time. Furthermore, he states that a law that veers away from that which can be determined naturally, or through natural law, is not law at all. Thus, a law that is not directed toward the common good does not constitute law. Law that is not legitimately proclaimed, as by God or a legitimate community ruler such as a king, is also not law. Further, a law that does not lend itself to be applicable to other societies is also not law. With this last element, law is put in an international legal context. Moreover, in this tradition, legitimacy is derived from a higher authority or from the ruler.

It is here that Aquinas’ approach to law is built upon by both Francisco de Vitorio (b. 1492)25 and Hugo Grotius (b. 1583 Huig de Groot). Both men were also Christian theologians but addressed their respective nations during times of colonial expansion, very relevant to the issues related to self-determination in more modern times. Vitorio was concerned with Spain’s treatment of the Indian aborigines in the new world and ultimately determined that conquest did not legitimize confiscation of property, loss of life, or enslavement of the newly vanquished, and that Christianity and the Pope were neither the law nor the ruler, respectively, of all peoples. In his view, as natural law was arrived at by reason by each person and thus conferred not only rights but also obligations, so the same could be applied to nations. He also determined that conquest for the sole purpose of possession of goods was tantamount to stealing and did not result in a just war. He surmised that what advantaged one nation and injured the world was

24 St. Thomas Aquinas, Summa Theologica: The Essence of Law (Question 90- Whether promulgation is essential to a law?) found at http://www.sacred-texts.com/chr/aquinas/summa/index.htm
ultimately unjust. As such, Vitorio is often recognized as the founder of international law, and why justice is the basis of the legitimacy of such law.

Like Vitorio, Grotius argued that the affairs of nations must be guided by principles of equity and justice, and that conquest or war for the sole purpose of national gain was unjustifiable. In his view, the sovereignty of the ruler and the state was the basis of national and global governance, and that such authority was not unbounded but rather was checked by concepts of justice, rights, and duties, both on the part of the ruler and the ruled. As he despaired of the events of the 30-years war in Europe, Grotius wrote his seminal treatise, De Jure Belli Ac Pacis, (On the Law of War and Peace) in which he expounded on when war was legitimate between “contending parties.”

Grotius, reflecting on the conquests of the Dutch empire, noted that indigenous peoples had rights to be respected in terms of dominion over property, although they could be limited by the reasonable needs of the conquering empire. He ultimately viewed war as an undesirable remedy that should only be resorted to in cases of self-defense, protection of property, and justifiable punishment—not as retribution but as deterrence. In his view international law “which is concerned with the mutual relations among states or rulers of states” was derived from divine edict, nature, “custom and tacit agreement.” With these sources of international law, Grotius recognized that law was both divine and manmade, and that it organized the relationship between states.

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26 Scott et al (2007)
At the same time, Grotius recognized that “social life” was the natural need of man arising from being an animal of superior traits and that the need for society should be “with those who are of his own kind.”\textsuperscript{32} The most obvious expression of this natural proclivity was in community and ultimately the state, and in recognizing it, Grotius was in fact laying the ground for the legitimacy of self-determination. In Chapter 3 of Book 1 of \textit{De Jure Belli Ac Pacis} Grotius is aware that there is the possibility of tension between private and public interests that could result in situations of war, giving scope to recognition of sub-groups within the larger body politic. In certain instances he recognizes that that “every Man should be allowed to do himself Justice in his own Cause.”\textsuperscript{33} Grotius lays out the limited scope in which a private, such as for a group of people within a state, redress against a public authority, such as the state, is ‘right’. He concludes that private redress is right in instances where the law does not exist, where it is denied or is what is causing the need for redress, or where access is delayed and the danger or damage is imminent.\textsuperscript{34} In this way, Grotius was essentially legitimizing self-help remedies to people within a state against wrongs for which no other recourse to justice is available.

Accordingly, it can be argued that natural law does open the door for struggles of self-determination when the rights of the group making the claim require redress, a point more recently stressed by Buchanan and others as shall be noted. In these instances, Grotius might have argued that they were legitimate. In fact, he goes on in Chapter IV to make that very case. He argues that subjects have the right to resistance but that it is not unlimited “for if that promiscuous Right of Resistance should be allowed, there would be no longer a State.”\textsuperscript{35} (This too has carried across time and is today a prevailing line of thinking as to the applicability of

\begin{itemize}
\item \textsuperscript{32} Grotius, \textit{Prolegomena} in Beck et al (1996: 40)
\item \textsuperscript{33} Grotius, \textit{De Jure Belli Ac Pacis}, (I.III.1) in Barbeyrac (2005)
\item \textsuperscript{34} Grotius, \textit{De Jure Belli Ac Pacis}, (I.III.2) in Barbeyrac (2005)
\item \textsuperscript{35} Grotius, \textit{De Jure Belli Ac Pacis}, (I.IV.2) in Barbeyrac (2005)
\end{itemize}
self-determination and how this principle is secondary to that of sovereignty for the preservation of the state and to avoid state-breaking as shall be suggested in the next chapter.). However, he goes on “to admit of tacit Exceptions in Cases of extreme Necessity,”36 such as in instances where religious practices of a people were being denied to them. Further, Grotius held that when a people’s identity was being challenged, or in instances of tyranny, or when a social contract was being abrogated by the ruler, such circumstances would rise to the level of a cause for legitimate calls to resistance, and by extension to justify secessionist and self-determination movements, as well as revolution and revolt.

Much of these elements of justice and legitimacy of the natural law doctrine continue to be the basis of international law in modern day, and, as was the case then, are most vexing in their application. As in the case of economic perfect equilibrium, natural law requires an assumption of a hidden hand of divine guidance, which even if augmented by legitimate human tools or law, is never a state of affairs which, on its own, will lead to peace and justice and the common good. Accordingly, natural law is deficient as a singular approach to law and international law primarily because the human condition is not one of naturally wanting to maximize the common good within communities and across communities. It is one in which private utility, on the level of the individual or state, is what ultimately dominates and which, thus, requires rules and laws which recognize this inherent personal bias for the realization and preservation of the common good within and among nations.

While natural law theory offers guidance to appreciate that law is but an expression of a society’s morality, a legal positivist approach offers the tools to understand how, as Aquinas termed it, human law is developed to augment the natural law and regulate the day-to-day affairs

of society. In this way there is no contradiction, but rather a convergence, between natural law embedded in morality and human law which frequently deals with the mundane aspects of regulation not even related to a moral issue, such as determining on which side of the road cars should be driven, with reference to H.L.A Hart’s driving analogy.37 Natural law/morality decrees that while driving, one should not cause harm, and from this it can be deduced that orderly driving is required. Human law decrees that we can best drive orderly if we all drive on the same side of the road, whether right or left. The positivist approach points to the determination by society that driving will be on the right (or left) side, but does not delve into why society has felt the need to make such a determination, namely that driving should not cause harm.

According to the legal positivists, through this process of societal determination of the rules, a body of rules emerges, from which the legal system is based. The positivist does not delve into the pedigree, morality, or origin of the law, but rather focuses on what makes a law identifiable as a law, namely, that it be recognized as a law, engender a sense of obligation and empower a sanction against the delict, using Hans Kelsen’s terminology.38 Extending this to international law, as Kelsen does, would suggest that rules determined by the community of states are therefore legitimate. In other words, if the principle of self-determination is considered an article of international law, a legal positivist may argue that this makes a claim, if stemming from the condition defined to be within the principle for such, legitimate.

Hence, the body of law which emerges from this societal process, as the positivists would view law, is basically the human law as defined by the naturalists. While the positivists offer the tools to determine when a rule is actually a law, the naturalists offer the insight as to why society,

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38 Hans Kelsen (1949)
or the community of states, chose to establish the rule. Just as not all that may be determined to
be moral by way of reason actually results in law, as suggested by the naturalists, the positivists
offer the means to identify what rules actually is law. Thus, while one focuses on substance and
origin, the other, positivism, focuses on content and form. Neither offers a complete view, but
both are necessary to comprehend law within a state, but perhaps insufficiently to fully
appreciate it at an international level.

Kelsen posits that international law is akin to primitive law of early societal arrangements
because it is based on a recognized set of rules that inherently offers the aggrieved a basis for
sanction against the delict, or the transgressor. He carried the argument further by indicating that
while international law may not portray the element of sanction in the same norm as in municipal
law with the existence of judicial process and sovereign executive, in international law the
sanction norm is nevertheless as effective. In international law, a transgressing state, or a delict,
may suffer sanction from the aggrieved state in many forms, from the extreme of violence to
economic blockade to removal of diplomatic ties. Hart, building on this argument, suggested in
his rule of recognition and legal validity, that international rules are actually law because they are
recognized and practiced as such. (Hart, 1997: 100, 233). Hart’s rule of recognition is the basis
for his determination that a body of rules recognized as obligatory is actually a legal system.
That rules are recognized as such at a global level is evidence that an international legal system
does actually exist, as argued by international legal scholars such as Frank, Cassese, and
Crawford. Under this legal theory, states adhere to rules because they recognize them to be
rules, and that would be the basis for finding within them legitimacy.

Embedded within this argument of recognition as the means engendering the obligation
of states to follow international law lies another potential weakness of the positivist approach,
namely, that states in their international legal system feel a sense of obligation to follow the law, lest they suffer such a sanction. This is manifestly a weakness in their argument since it can be asserted that states are driven less by their sense of obligation and more by either the fear of retribution or absence of reciprocity. Hart would disagree with such a conclusion noting that a sense of obligation may not be the primary motivation for adherence to a law, but equally, he rejects that “calculation of long-term interest, or by the wish to continue tradition or by disinterested concern to others” noting that such arguments are equally unsatisfactory reasons “for identifying any of these as a necessary condition of the existence of law either among individuals or states.” (Hart, 1997: 232) Hence, the recognition of a rule suffices to establish its existence, in the legal positivist view, as an international legal precept.

Again, the weakness of the positivist approach is that it only offers a partial view. The international legal system is powered not only by the fact that states recognize that there exists a body of rules, that they practice these rules, and that they may suffer sanction if they don’t, hence feel bound by them, but also that if they fail to “play by the rules of the game” they may be excluded, or worse, negatively impacted by them. In the context of self-determination, such a tendency can explain why issues of sovereignty are seen to take priority. Each state has a vested interest in preserving the sovereignty of each other member of the community of states as it could one day become a matter of self-preservation. For example, Russia’s reluctance to recognize Kosovo is better understood when viewed from the prism of Chechen calls for self-determination within its own borders. Although emerging literature and realities on the ground would suggest that the balance is tipping away from the ultimate supremacy of sovereignty and more in the favor of giving more credence to self-determination claims, as shall be discussed later and considered in the case study of Kosovo. Ultimately, positivism offers the tools to
understand how law may develop, through Hart’s secondary legal development construct, into a mature legal system which expresses the international community’s recognition of what law is, and what within that construct is considered legitimate.

Legitimacy has become a well-established precept of international law and politics. In addition to the approaches of natural law and legal positivism, realist approaches to legitimacy in international relations have evolved from the classical realists view of Hans Morgenthau to the structural realism of Kenneth Waltz, as shall be considered more fully in the discussion of self-determination. Both liberalism, with one of its founding fathers, Immanuel Kant, and the integrative approaches of the English School of thought, or liberal realism, with the work of Hedley Bull, Martin Wight, Barry Buzan, and Ian Clark, addressed legitimacy as a basic precept of international politics and law. As noted by Weller, “[t]he English School is a natural home for the study of legitimacy in that it sees the state as embedded in a social context.” (2007: 11) Thus, legitimacy is seen as constitutive of the interaction of states and in the study of that interaction within the context of International Relations (“IR”).

It is the nature of the principle in relation to sovereignty and self-determination principles, which continues to evolve. Since Kant established the concepts of a community of nations based on a mutual understanding of the legitimacy of the other and a common understanding that a competition of powers ultimately preserves the peace, sovereignty and the state as the unit of analysis of the international system continued to be held as a basic principle of international law and global governance. However, the Kantian view also held that a community of states based on mutual respect was due primarily because the other’s internal governance structures were similar to their own, and by extension this entailed respecting the internal rights of their peoples and the states which represent them; basically sovereignty entails a reciprocity of
recognition and respect for other societies. With Kant’s “To Perpetual Peace,” the literature has tended to view legitimacy, as a principle and as a form of governance, as an element of the construction and discussion of international society. “Kantianism is based on increasing homogeneity of the domestic structures of states with a liberal international society becoming the supporting framework for cosmopolitan values.” (Buzan, 2004: 93) Kantian world society philosophy gave rise to the democratic peace, or liberal peace, theory which holds that liberal states are less likely to wage war against each other. The democratic peace research agenda is comfortable with the centrality of legitimacy for its explanatory value in concluding that “democracies [take] into account their view on the legitimacy of their rivals’ domestic constitutions before deciding to use force.” (Hurd, 2007: 11)

Concurrently, legitimacy in this way is seen as the barometer through which to assess state actions and maintain respect for state sovereignty. Michael W. Doyle summarizes as follows: “[s]tates have the right to be free from foreign intervention. Since morally autonomous citizens hold rights to liberty, the states that democratically represent them have the right to exercise political independence. Mutual respect for these rights then becomes the touchstone of international liberal theory.” (1983: 213) This logic is what is reflected in liberal views of the world such that “sovereign states are the equivalent of free individuals” (R. H. Jackson, 1990:10) Extending this line of thinking to self-determination would entail a support to peoples within states yearning for a form of government that would respect their identity and rights, and maintain them by liberal democratic means, and conversely, the state derives its legitimacy from the acceptance of the people perceiving it as such. “Self-determination is not only a right

39 Reus-Smit (2011: 238)
exercised by peoples or groups. It is also a human right of individuals. Hence, individuals are entitled to participate in the political, economic or cultural system of their state,” (Weller, 2008: 23) as suggested in various United Nations instruments including the Convention on Civil and Political Rights.\(^\text{42}\) Such a philosophy became a capstone on the evolution of the legal philosophical thinking that gave way to a growing body of scholarship on international law. In so doing, the discussion of legitimacy in global governance greatly benefits from the thinking of the liberal realists.

The liberal realist view of international relations, embodied within it international law, is necessarily a pluralistic view of the world that weaves elements of Hobbesian, Grotian and Kantian views of society and international society into what Barry Buzan has referred to as the English school triad, and which draw upon all three mainstream IR approaches of realism, liberalism and constructivism.\(^\text{43}\) Within this worldview, “international system, international society and world society all exist simultaneously, both as objects of discussion and as aspects of international reality.” (Buzan, 2004: 10) The state in this triad is the central character emerging from a realist view of the international system to a Grotian/rationalist/pluralists notion of international society to a Kantian vision of a world society, which itself has been expanded upon to what is referred to as solidarist/cosmopolitan views of the world where the state shares the stage with nonstate actors and where the delineations become less vivid.

This approach starts with the state as a unit of analysis and reflects in an inside-outside way the interaction within a state such that “human beings as individuals live in societies which they both shape and are shaped by, so also states live in an international society which they shape and are shaped by.” (Buzan, 2004: 8) Sovereignty in this context sits between both pluralists

\(^{42}\) Weller (2008) points to Article 23 in footnote 26 on 23.

\(^{43}\) See Barry Buzan (2004) and Andrew Linklater and Hidemi Suganami (2006)
and cosmopolitan/solidarist world where “the type and extent of norms, rules and institutions that an international society can form without departing from the foundational rules of sovereignty and non-intervention that define it as a system of states” (Buzan, 2004: 8) provide a wide space from within which to operate. Within this context, rules and norms are mutually constituted among states and international organization and institutions are empowered by states with their own form of sovereignty, rules and legitimacy. For example, building on this approach and extending it to fuse both rationalist and constructivist approaches to sovereignty, Hurd suggests that international institutions are thus imbued with sovereignty such that “the ‘right to exercise final authority’ over a people and territory, is distributed among various types of actors in the international system. This includes states, of course, but also …any international institution… which exercises legitimated power over states.” (Hurd, 2007: 3) Accordingly, the international system consists of an international society of legitimated actors, both state and non-state, operating on the cusp of a world society, as the liberal realist would view it. It is within this space that self-determination must attain the status of legitimacy through the process of legitimation.

From this perspective, existing liberal realist literature tends to view the question of legitimacy from two main vantage points. The first is the debate on the very concept of legitimacy and its meaning and relevance at an international level. This approach lies somewhere between positivism and normativity such that Martin Wight noted that “[i]nternational legitimacy is an elusive and nebulous notion, on the frontiers of morality and law.” 44 (1972: 1) At one end of this approach, legitimacy is viewed in terms of authority and

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44 Or, as also put, “[l]egitimacy is an opaque and elusive concept on the border between empirical and normative social science, and the literature fully reflects this ambiguity.” (Jens Steffek, 2003: 241)
global governance and tends to be informed by representation of claim and claimant within international law. This approach appears to weigh in the most on the role of non-state political actors where the recognition of statehood is approached from a strictly legal perspective. Has the actor seeking to represent and lead a people into statehood fulfilled the prerequisites for such status? Does it have control of a territory, with permanent population, and able to fulfill its international legal obligations? Has this status been attained through what is recognized as ‘legitimate’ means? Statehood in this sense can be viewed as almost mechanical. However, the issue here is not merely concerned with that point at which the entity is seen as legitimate and is on its road towards sovereign statehood. The focus here is on the initial phase of staking such claims, and how that legitimate status is attained, and on the role that a discursive process of legitimation can play.

At the other end, legitimacy tends to be embedded within a certain political theory and as such is normative in nature. As defined by Hurd, legitimacy “refers to the normative belief by an actor that a rule or institution ought to be obeyed. It is a subjective quality, relational between the actor and institution, and defined by the actor’s perception of the institution,” (1999: 381) a definition similar to that of Franck in its various elements. Yet, such an approach appears to be symbolic of what Patrick Jackson has termed “West-Pole Fallacy” through the “the conflation of empirical and normative judgment.” (2006: 8). Hence, treating legitimacy as a socially constructed fact divorced from any ontological dependence on human existence avoids such a

47 The following chapter will delve into more detail on the attributes of a state and how it is recognized as such by the international community of actors, or international society.
48 Hurd reiterates this definition of legitimacy in 2007: "an actor’s normative belief that a rule or institution ought to be obeyed." (2007: 7)
49 Although Jackson uses this concept in the context of his discussion on civilization, his logic is portable to the determination of legitimacy, as well.
conflation and allows for its analysis as a social device with social impacts. From this
perspective legitimacy is socially tangible in that actors are able to discern what from their
perspective is illegitimate, or outside the bounds of what has been determined to be an agreed
upon mode of behavior within the context of an agreed upon institutional framework. In this
case, self-determination claims (the belief) if legitimate can be redressed with a move to
statehood (the institution).

This view is consistent with the work of Max Weber who approached legitimacy by
decoupling it from such a normative legacy and established it as social fact. “Since Max Weber,
it has been commonplace to make the distinction between normative theories of legitimacy that
set out general criteria in terms of which the right to rule can be appraised, and empirical theories
which take as their focus the belief systems of those subject to government.” (Ian Clark, 2003:
79). This analysis will build on such a stance whereby legitimacy will be seen as enjoying “the
prestige of being considered binding.” (Weber, 1978: 31) Rather than debate the existence of
legitimacy as a social fact, the focus will be on the process by which legitimation occurs, in other
words the claim of self-determination goes from being a demand of a group to being perceived as
a right of the group, such that ultimately the designation upon a particular group is recognized as
‘binding’. Hence, political action and association is considered legitimate if that “prestige” is
“bestowed” by those who perceive it. (Weber, 1978: 903-904)

Weber, thus, frames the salient issues such that legitimacy is seen to be manifested in an
authoritative actor or in an obligatory rule. Hence, legitimacy is both the authority vested in an
actor, which is the definition applied by Buchanan, and the obligation inherent in a rule as
accepted by the impacted stakeholder and discerning bystanders, as argued by Hart. In the
context of international politics, the impacted stakeholder can range from interested state actors,
domestic audiences, stateless peoples, to transnational actors whereas the discerning bystander may be all those with no direct interest, yet forming a position nevertheless. To take this further, in the context of state sovereignty, Wight defines “international legitimacy as the collective judgment of international society about rightful membership of the family of nations; how sovereignty may be transferred; how states succession should be regulated, when large states break up into smaller, or several states combine into one.” (1972: 1) In the context of the legitimacy of international organizations, Hurd suggests that “[l]egitimacy gives strength to rules set down by international institutions that have little or no capacity to enforce them; it affects how states think about complying with or violating rules; and it affects how states react to instances of violation or compliance by others.” (2007, 194) Hence, legitimacy provides the basis for states to discern the validity of actors to engage in international relations, the legitimacy of the rules they act by, and the legitimacy of the institutions that they act within.

From this derive the concepts of legitimate actor and legitimate actions. Legitimation, then, is the process through which, and the point ending at which, an actor attains such a status, after which its actions and governance are then judged as legitimate or illegitimate. In turn, once illegitimate actions and governance also go through a process of legitimation even after the wielding authority has been bestowed with the privileged status. For example, the PLO may have attained a certain legitimacy in 1974 when it was accorded “observer status” at the United Nations and designated by the UN General Assembly and the Arab League as the “sole legitimate representative of the Palestinian people,” while the legitimacy of its actions and governance continued to be questioned. After the political success of the relatively nonviolent first Intifadeh in the late 1980s, certain factions within the PLO joined with others to implement

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50 Jackson (2006:16) defines legitimation “as the process of drawing and (re)establishing boundaries, ruling some courses of action acceptable and others unacceptable.”
forms of violent resistance to Israeli occupation, and such acts were seen as illegitimate, even though the PLO’s legitimated actorhood status itself was no longer, for the most part, challenged, albeit it could arguably be seen as eroded. This legitimacy existed despite the fact that prior to 1974, violent resistance was often resorted to, both locally and internationally. However, it can be argued that prior to 1974, the PLO had not yet attained the full status of legitimacy, whereas after 1974, while it was considered a legitimate representative, some of its acts were not viewed as legitimate. Such a fine distinction is necessary to discern the impact of legitimate actorhood versus legitimate acts on the process of self-determination and the operable causal mechanisms. This approach is analogous to the distinction that Buchanan makes between legitimate states versus legitimate governments. “In spite of the fact that the conditions or the legitimacy of states and governments are essentially the same, it does not follow that if a state is legitimate its government is legitimate.” (Buchanan, 2004: 282) A state may have been formed on a legitimate basis and recognized by international society as such, but its government may nevertheless commit illegitimate acts, for example, of military intervention against the territorial integrity of a sovereign state, as in the case of Saddam Hussein’s invasion of Kuwait, or in the form of human rights abuses against its own citizens, as in the case of Saddam Hussein’s use of chemical weapons against Iraqi Kurds. In both cases, the government acts were seen as illegitimate, but this did not impact the legitimacy of the statehood of Iraq.

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In a seemingly counter argument, in his case concerning international organizations, Hurd notes that legitimation once attained is nonetheless susceptible to being eroded by acts of the legitimated actor, which is analogous to the legitimation efforts of non-state actors such as self-determination movements. Acts that are considered illegitimate can impact legitimacy gains and set back the process of legitimation. “The sovereign power gained by international organizations from legitimation is fragile. It can be damaged by mismanagement by the organization and by strategies of delegitimation [sic] backed by a competing power.” (2007, 194) This point is relevant to the collision course that self-determination claimants can find themselves on with state power interests, especially host states in cases of secession or occupation. As the self-determination claimant attempts to gain adherents among secondary power interests, its local and international audience, and thereby establishes legitimacy of the claim and themselves as representatives of the claim, the countervailing winds or push-back from the primary state power interests can provide a high level of head wind, or even drive the movement off course. This is evident, for example, in the interactions of Russia vis-à-vis Chechnya, India vis-à-vis Kashmir, or Israel vis-à-vis Palestine. This, in fact, does not necessarily stand against the contention here that legitimacy of an actor should be seen as separate from the legitimacy of its acts. However, it does suggest that the stronger the efforts at delegitimation are by state power interests, the more tenuous will be the attainment of actor legitimacy. Moreover, after legitimacy has been attained, delegitimation efforts, to the extent that they exist, are indicative of the fact that state power interests and self-determination legitimacy are still colliding and not yet aligning. Alignment can then be seen to be at the point where such delegitimation efforts cease, which is then the tipping point toward statehood.
It is the contention here that only at the point of legitimate actorhood is the process of 
self-determination put on the track towards fulfillment of the political aspiration of sovereign 
statehood. This contention is supported by the fact that no sustainable post-World War I state 
construction based on self-determination claims has occurred without as a precondition an earlier 
legitimation of the movement. The opposite, however, is also true; states that have been created 
without a legitimated self-determination claim, such as East Germany, lacked sustainability.  
In other words, it is posited that one of the requirements for eventual and sustainable statehood is a 
legitimated self-determination movement, in the sense that Habermas suggested, as this 
conferred a sense of validity.

Hence, legitimation is defined as the process that brings about a condition of validity of 
the underlying ideational construction, in this case the self-determination claim and claimant; 
validity is used here rather than legitimacy to provide greater clarity and intellectual sharpness, 
and to avoid circular references. Legitimation then brings about a new reality in that a new 
actor, rule, and institution are now recognized as valid, having an impact on both state 
calculations and their identities and behavior in executing those calculations. Hurd identifies two 
main approaches to the concept of legitimation in IR. The first relates to a notion of “favorable 
outcomes” in which “states accept as legitimate those international laws or institutions that 
generate outcomes from which they stand to benefit.” (2007: 67) In this approach, legitimation 
and the resulting legitimacy of the underlying actor, rule or institution is seen as a rational 
calculation “derived from the production of material payoffs and the satisfaction of perceived 
self-interests.” (Hurd, 2007:67) This approach tends to be the dominant one assumed by the 
realist, liberal institutionalist and rational choice approaches to the interaction of states in the

international system. To this is a second approach followed by Franck and Buchanan in which fairness is seen to be at the core of legitimation where “people perceive as legitimate rules or institutions that they believe are ‘fair’.” (Hurd, 2007: 67) There is a third approach that Hurd suggests should be given more prominence in the IR literature that derives from a more positivist stance, that which he calls the “procedural approach.” “As long as rules are passed according to accepted procedures and by established authorities, people appear to accept them as legitimate, all else equal… [This approach is] based on the observation that as an empirical matter people sometimes accept as legitimate decisions that seem to go against their interests.” (Hurd, 2007: 67) For example, states will take cases, or agree to be a party to such cases, at the International Court of Justice (“ICJ”) even though the outcomes may not necessarily be perceived as within their interest, as in the Western Sahara case opined on by the ICJ in 1975, or the more recent case involving Kosovo in 2010. In both cases, sovereign states, Morocco and Serbia, respectively, were faced with decisions that ex poste differed from their perceived initial self-interests. Moreover, the role of an international body such as that of the ICJ, in that it adjudicates on rules and norms, has a behavioral and ideational impact on states and by extension on international relations.

From the perspective of the legitimation of a self-determination claim and claimant, all three approaches are here held to impact the ultimate outcome. Moreover, at the point of complete legitimation, the distinction between the three approaches is blurred for the simple reason that the reality has shifted in the direction of legitimacy in the new equilibrium. As legitimacy takes hold, the identities of states and the calculations of state behavior in pursuit of self-interests embedded in such identities shift, as shall be discussed more fully in the context of constructivism. Hence, the rational choice of states now operates within the context of
perceptions of a new legitimated actor in which behavior is acclimated by perceptions of ‘fairness’ within the new legitimacy equilibrium, and, hence, decisions taken vis-à-vis the newly legitimated actor must also be within accepted ‘procedure’. As Hurd himself notes, legitimacy does not trump interests, but rather changes them “because the process of legitimation has affected the actor’s own definition of its interests not just the value of the payoffs of the different options….Thus, in the presence of a legitimated institution, the actor may have lost any sense that previously existed that its interests are in conflict with the institution. Attempting to separate interests and legitimacy at this point is fruitless.” (Hurd, 2007: 45)

The mechanisms that bring about such legitimation are the dual requirements of primary stakeholder and secondary stakeholder support. Primary stakeholder support is defined as direct state power interests, in turn defined as states with primary ‘national interest’ in the outcomes of the self-determination movement for strategic, geo-political, security and/or economic reasons, and who have the ability to support or impede the outcome of the self-determination claim. Clearly, such a loose definition could encompass a wide range of states, depending on the prevailing global order and the positioning of states within it, which is appropriate as it reflects the multi-layered calculations of states in their international relations. Secondary stakeholder support is defined as those non-state-centric forces that Barry Buzan,53 and others, have deemed international society, itself a catchall for the community of states (with an indirect stake in the outcome), transnational actors, domestic audiences and the disenfranchised and stateless, a definition that will be expounded in a subsequent chapter.

Alternatively, it is argued, especially by those of the realist school, that the causal factor for effectuating statehood for an aspiring self-determination movement is solely state power

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53 See Buzan (2004), Wight (1972), and Linklater and Suganami (2006)
interests. On the other hand, pluralists and social constructivists might argue that the causal factor is the collective impact of international society, through such mechanisms as communicative action and norm cascading, that leads states to change their view, i.e., identities, and hence their interests so as to support such outcomes. I argue that it is both factors acting together. The fact that such mechanisms are mutually constitutive does not compromise either the empirical or theoretical basis for analyzing them separately; nor does it prevent one from being able to discern situations where one is absent, or where both operate in tandem (or conflict), leading to the possibility of numerous outcomes.

State power interests as it relates to concepts of legitimacy, as held by those of the rationalist schools, as discussed below, are derived from the general concept of power. For example, Krasner argues that in international politics, it is the logic of consequences that trumps that of appropriateness, or, in other words, it is rationalist calculations of state interests that supersede senses of obligation as implied in logics of appropriateness. Hence, he argues that while sovereignty is built on the logics of appropriateness, it is the logics of consequences that states often resort to, thereby contravening their own sovereignty principles when necessary. (Stephen D. Krasner, 1999) Such delineation of the two logics is embodied in the concepts of coercion, self-interest and legitimacy where the latter is a more complete specification of notions of appropriateness.

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54 See Krasner (1999).
57 See March and Olsen (1998)
58 Hurd argues that [a]bsent an account of legitimacy, much of constructivism’s empirical work on the “logic of appropriateness” remains ungrounded; legitimacy is inherent in the constructivist approach, and yet to date there has not been a full-fledged exploration of the concept and its operation.” (2007:2)
As noted by Hans J. Morgenthau, “[w]hen we speak of power, we mean man’s control over the minds and actions of other men… Political power is a psychological relation between those who exercise it and those over whom it is exercised… That impact derives from three sources: the expectation of benefits, the fear of disadvantages, the respect or love for men or institutions.” (1993, 30) And, while Morgenthau agrees that this view of power may be evident at the domestic level, it is “no less real” in international politics and he goes on to note “legitimate power, that is, power whose exercise is morally or legally justified, must be distinguished from illegitimate power…” (1993, 32) In other words, power can be parsed into three sources, consistent with Weber’s synthesis, namely “coercion, self-interest, and legitimacy”, or the “three currencies of power.” (Hurd, 1999: 379) Power is thus the sum-total of coercive power, self-interested power, and legitimate power, and all three are “ideal-type mechanisms of social control.” (Hurd, 1999: 379) Hence, a utilitarian argument can be made, and has been made from Weber to Morgenthau to positivists and rationalists, on the relevance of legitimacy to international affairs. Yet, all three devices, while related and mutually constitutive, can be isolated as independent variables affecting the nature, durability and extent of power, both at the domestic and international levels.

While, “like all political principles, [legitimacy principles] are guides not rulers,” and on “occasions when it is prudent to subordinate them to overriding interests,” (Wight, 1972:27) the utility of legitimacy is that it lends sustainability to power; it is a long-term investment. Coercion, also a feature of power and often an expedient one, if approached as its only manifestation, disables the legitimacy function and triggers the self-interest function in others. Here, coercion is not necessarily the use or threat of force; it also includes a wide range of adverse consequences including a mere diplomatic slight to economic sanctions, for example, as
noted earlier by Kelsen. “[E]ach application of coercion involves an expenditure of limited social capital and reduces the likelihood that the subject will comply without coercion in the future. For this reason, few complex social orders are primarily based on coercion although all likely resort to force at some point.” (Hurd, 1999: 385) In other words, coercion is an inefficient form of power. Self-interest, as an ideal-type device, may be seen to exist on its own; a state or actor may perceive self-interest in a certain course of action without such a perception being coerced or out of a sense of obligation derived from legitimacy. On the other hand, coercive power can trigger self-interest on the part of the coerced so as to render future coercive efforts ‘powerful’ through self-interested compliance until such a time that they are ‘powerless’ through self-interested defenses. In addition, the likely demonstration effects on those perceiving the application of coercion on others will likely trigger measures of protection; self-interest is generated such that it acts as a power to combat the possibility of coercive power being suffered.

Legitimacy can be seen to be the basis for sustainable power, just as legitimation is the basis for a sustainable end toward that legitimacy status and thus toward fulfillment of self-determination aspirations; “the language of legitimacy is a way of describing what we mean by international stability, rather than a separate source of it.” (Clark, 2003: 95) As noted by Weber,

But custom, personal advantage, purely affectual or ideal motives of solidarity, do not form a sufficiently reliable basis for a given domination. In addition there is normally a further element, the belief in legitimacy. Experience shows that in no instance does domination voluntarily limit itself to the appeal to material or affectual or ideal motives as a basis for its continuance. In addition every such system attempts to establish and to cultivate the belief in its legitimacy. (1978: 213)

Yet, there is a possible relation that can be pointed to between coercion and legitimacy. “Many governance relations that are today widely accepted as legitimate began as relations of coercion, including perhaps all modern liberal democratic states.” (Hurd, 1999: 389) However, to take
such a position is a form of perspectivism in that the coercion being wielded can also be argued to be a reaction to a preceding coercion by the ‘other’. In other words, this coercion derives from self-interest through which legitimacy is created.

Nevertheless, once legitimacy becomes a ‘binding’ social fact, it operates quite distinctly from both coercion and self-interest, rendering it an independent and sustainable component of power within the global order. “The existence of a dominant form of legitimate authority in the international system is a feature of its culture, and that culture is a feature of its structure.” (Bukovansky, 2002: 8) At the systemic level, a global order, or culture, imbued with processes of generating and maintaining legitimacy is capable of reproducing and sustaining its structure, which, in turn brings about stability and sustainability. The state thus becomes an expression of this legitimacy in terms of its own being and its ability to interact with equally endowed legitimate structures—the international community of states and actors, including international organizations and non-state actors.

In the context of what this means for how states interact, Hurd concludes that the “legitimacy of an international organization [or non-state actor, for example] affects power politics among states in three ways. First, when states are socialized to believe in the legitimacy of a rule or organization, that state’s conception of its own interests is altered… Second, when a number of states in the system share a common belief in the legitimacy of a rule or institution, there is a structural change in the international system. The condition that Weber called the “validity” of the system is created: the pattern of actor compliance with the legitimated norm affects the expectations of all states, not just those that have internalized it… Finally, the symbols associated with a legitimised international organization are powerful tools. States work to deploy them in the defense of their interests.” (2007: 195) Hence, a non-state actor, like an
international organization such as the United Nations or a self-determination movement such as the African National Congress (ANC) or the PLO, once considered legitimate, impacts how states perceive it as a legitimate actor, their calculations of their self-interest in that context, and thus how they will behave—both toward it and with one another—as far as it is concerned. A state in its dealings with a legitimate actor will assess its options in those terms. In other words, legitimacy changes the language of the discourse for all parties in the communication.

The basis of the hypothesis herein starts from a rationalist and realist view of state power interests as a given, and, indeed, constitutive characteristic of the international system and international society. Thus, states, bounded to some degree by recognition of the parameters of legitimacy and international norms, which borrows from a structural realist perspective, operate to maximize their perceived self-interest within the context of their perceived identity. These perceptions may at times entail supporting or impeding self-determination claims. This delineation of identities and the consequent self-interests define a trajectory of actions for that state. From a constructivist perspective, the ability to change the arc of that trajectory by causing a shift in identities and redefinition of the perceived self-interest of the primary state actors is the space within which the self-determination claimant must operate. In this way, the self-determination claimant follows a path that involves, firstly, gaining legitimacy for both its claim and claimant, the process of legitimation, and secondly, changing the arc of primary state power interests; both are impacted, it is suggested here, by the discursive communicative action of the self-determination claimant. This may seem to lay the burden of the ultimate outcome at the feet of the self-determination claimant, and, indeed, that is where the initial force for motion emanates once the call for self-determination is made. This does not suggest that the instigator of the drive to initiate such a call resides within the group, however; the cause for that is not the
focus of this analysis and it is assumed that the desire for self-determination emanates from a confluence of historical circumstances, in addition to conditions within and actions of the host state itself.

Daniel Philpott suggests that the international order is held together by an “international constitution”, a concept similar to international law, but seen from an ideational ontological perspective where the global system is a function of “a set of norms, mutually agreed upon by polities who are members of the society that define the holders of authority and their prerogatives, specifically in answer to three questions: Who are the legitimate polities? What are the rules for becoming one of these polities? And, what are the basic prerogatives of those sanctioned by authoritative agreements—and practices, generally respected by all polities that are powerful enough regularly to violate them.” (2002: 12) Those are the parameters of legitimacy in the international system and they are the drivers for what is accepted as legitimate self-determination claims. Accordingly, states are the sanctioned legitimate polities which are endowed with legitimate sovereignty to act within an agreed upon set of legitimate rules, which sometimes they uphold and at others they do not, but in all cases they are aware of. It is within this context of the evolution of legitimacy of the international relations of states that concepts of self-determination are equally evolving.
Chapter 3
The Self-Determination and Sovereignty Continuum

In an analysis of the changing nature of Westphalian sovereignty since 1648, Mlada Bukovansky (2002) notes that whereas state sovereignty was once vested in a “sovereign” ruler, it transferred, with the assistance of both the American and French revolutions, to a ‘sovereign’ people. Accordingly, sovereignty has become associated with an expression of the free-will of an independent ‘people’ who define themselves either in terms of a common identity, as captured by Rousseau, or a common purpose, such as in a Lockean contractarianism. Such a commonality finds its political expression only in the “self-governance of the national community. Such an exclusive notion of legitimate governance, which posits that ‘we’ cannot be represented by ‘them’ obviously sets narrow limits to governance...” (Steffek, 2003: 256) However, sovereignty has not always carried those meanings. This newly emerged view of political life set the stage during much of the post-Westphalia and 18th century revolutionary era for the ‘inalienable right’ of a people to choose its political destiny which had at its core the concept of self-determination. “Self-determination originally postulated peoples rather than princes as the only grounds of international legitimacy: that is, national self-determination.” (R. H. Jackson, 1990: 75)

As Philpott argues, the concept of sovereignty evolved over several stages pre and post Westphalia to the period of decolonization post 1945 and to the present period post-1989 period and intertwined with it was an evolving norm of self-determination that coincides with the development of the ‘international constitution’ noted earlier. His emphasis is on the ideational nature of how this social fact is constructed with its “three faces” of legitimacy of the state endowed with sovereignty, operating within (or ignoring but yet aware of) a set of rules, to exercise prerogatives that only they as legitimate actors can enjoy. (2002: 11-21) “If the
sovereign state provides a people with one sort of liberty, it also provides a carapace under which regimes may, and have, suppressed liberal and democratic rights, other forms of liberty. Ideas directed at these injustices are also concerned with liberation. Their calls for international institutions that would restrict the authority of sovereigns on behalf of the liberties of their subjects may well be the seeds of the more recent revolutions in sovereignty which have begun to circumscribe the global system of sovereign states” (Philpott, 2002: 10), thus creating the space for the emergence of new rules of self-determination. This view of history ties with a similar view held by Reus-Smit where he posits that this relationship between sovereignty and self-determination evolved in three distinct phases beginning with the post-Westphalian expansion of empires and subsequent dissolution of empires in the second phase of Latin American decolonization followed by the post-1945 period of collapse of European and Ottoman empires. In this latter phase, the right of the individual defined the relationship between sovereignty and self-determination such that the latter became entwined with concepts of individual freedoms. (Reus-Smit, 2007)

Sovereignty is here defined as the condition of a state such that it is able to supremely rule over a defined territory and population with its implied consent, enter into agreements, explicit and implied, with other sovereign states, and is recognized as embodying such attributes by those states. Self-determination is the condition in which a distinct population within a defined territory is able to determine their own political condition such that they are free from both internal and external domination to attain such a state of sovereignty, if that be the ultimate end desired recognizing that there is a span of remedies short of statehood that could be considered satisfactory by those making the claim. It is here assumed that claims to self-
determination include cases of decolonization, foreign or external domination, and secession.59 Yet, this broad definition of the applicability of self-determinant also emerged from a process of evolution, as shall be discussed below. Such a new global order places self-determination as an international norm that finds its ultimate expression in the sovereign state as though in a continuum. The fact that this continuum appears to fuse at either end to form a taut ellipse suggests that the resulting tension can either be an upward virtuous cycle or a downward spiraling vicious one, and what may define the direction of the momentum can be explained by the interplay of power interests and the nature of the self-determination discourse.

Building on the definitions of international law as expounded upon above, it is assumed here that the United Nations and all that it embodies in terms of what is agreed to among the international community of nation states, such as resolutions and actions, is in fact an expression of the collective intent and agreement, and as such shall be taken to be elements of the body of international law. “Self-determination, perhaps the leading idea involved, was institutionalized as a primary international value in the Charter of the UN. And it was in that world body, particularly its General Assembly, that the doctrine was not only voiced but also incorporated into various Declarations and Resolutions which acquired moral and legal force.” (R. H. Jackson, 1990: 16) Accordingly, a point of departure in this discussion can be taken to be the principles of self-determination and the sovereignty of nations as codified in Articles 1 and 2 of the United Nations Charter.60 In fact, as indicated by the inclusion of self-determination in the opening

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59 Secession as defined by Pavkovic and Radan (2007: 10-11) “involves first, a transfer of sovereign supreme powers from one set of state institutions and office holders to another, newly created, set and, second the recognition by other states and international organization of the sovereignty of the state which these newly created institutions represent.”


Article 1, Paragraph 2

“To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;”
Article 2, Paragraph 1
“The Organization is based on the principle of the sovereign equality of all its Members.”

63 For more discussion situating on historical context of evolving nature of both sovereignty and self-determination norms, see Philpott (2002), Bukovansky (2002), Reus-Smit (2011), and Charlesworth and Coicaud (2010)
As sovereignty became a universal principle it drove self-determination to be embraced as a universal one as well. Two main points are apparent from such a view of the evolution of the self-determination norm. First, the evolution of self-determination is a story of the struggle of people against the sovereignty-imbued, reified global system. In the lead up to World War II and thereafter, empires were renegotiating their view of their global reach both internally and in the global arena, perhaps, taking a realist perspective, due to their atrophying global power and reach, hence viewing peripheral colonies as less strategic. (Reus-Smit, 2011: 231) As noted, sovereignty was redefined in its membership and parameters, and this entailed an acceptance of the claims of former colonies to membership in the international community of sovereign states. As suggested by Philpott, in the post-colonialist stage of the revolutions that established sovereignty as a norm, “[s]elf-determination was to apply only to colonies, not to nations or regions within existing states or within the territory of colonies once they became independent.” (2002: 156) In fact the 1960 United Nations Declaration (Resolution 1514) suggested as much in its very title: “Declaration on the granting of independence to colonial countries and peoples.”

This question of what constituted self-determination became known as the Belgian thesis which held that Chapter XI of the Charter, regarding non-self-governing territories, could not reasonably be held to apply only to colonies, particularly as it does not refer specifically to colonies. This proposition, first put forward in 1952 by the Belgian representative to the United Nations, was seen as too radical at the time as it opened the door for state-breaking

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65 Chapter XI of the United Nations Charter
66 See Thornberry (1989: 873-875) and Crawford (2006: 603-608). Crawford quotes the Belgian stance as follows: “To maintain that it is only colonies that are intended [in Chapter XI] is therefore to limit arbitrarily the number of States bound by ch XI and to discriminate to the disadvantage of man peoples which are not yet completely self-governing.” (2006: 607)
through a lowering of the bar for self-determination, however, it did serve to set a new marker. “The thesis radicalizes (sic) self-determination by insisting that it can apply to indigenous groups and minorities.” (Thornberry, 1989: 873) During this time what emerged instead was what is called the “salt-water rule (or test)” implied by Resolution 1541, providing guidance to member states on how to apply Article 73 of Chapter XI of the UN Charter regarding “territories whose peoples have not yet attained a full measure of self-government,” thus defining this obligation to extend to peoples “of a territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it.” This definition was interpreted widely to apply to territories separated by a body of salt water since colonies at the time were held by European states in other continents. These territories were to be put on a path toward independence and hence this defined the parameters within which the legitimacy of self-determination claims were to be assessed. In the typology of self-determination embodied within the international law and norms in the 20th Century, this became the first type of self-determination as it became an accepted rule of international law.

The global call for equal standing and opportunity was itself a series of struggles for self-determination and in validating these claims, in accepting them as legitimate, self-determination was wrested as an established norm from the claws of former imperial powers and states with heterogeneous communities. “Sovereignty was not yet a universal organizing principle, however—sovereignty in the core and empire in the periphery remained the norm. It was the struggles for individual rights waged by subject peoples within particular colonies, and by newly independent post colonial states in the United Nations, that universalized this principle.” (Reus-

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69 For more on the ‘salt-water rule’, see Philpott (2002), Buchanan (2004), and Crawford (2006).
Smit, 2011: 211-212) Hence self-determination was extended to former colonies, and through the discursive efforts of those claims and the secondary stakeholders, consisting of the other states which had benefitted from this process themselves with recent statehood, the norm took hold. The point here is that communicative action on the part of self-determination claimants, defined as acts from the range of declarations in public and private fora to violent acts, was the operating mechanism and achieved results as is indicated by the surge and growth in the member states of the United Nation post 1945 with respect to decolonization, and, post 1989 in a broader applicability of the norm. Nevertheless, the number of self-determination movements in play and that died during this same period, and in the post Cold War period is yet much greater than those that have succeeded. That is one conclusion. On the other hand, in the absence of self-determination claims, the number of sustainable states formed is likely to have been fewer still, and, it is being posited here, is likely to be zero.

Over the course of the 1960s and 1970s, there was resistance to the broadening application of the concept of self-determination beyond former colonies, however, this resistance was no longer coming so much from former imperial states. Rather the contestation was now emanating from states, some former colonies themselves, with significant minority communities within them, such as India.70 In 1966, the International Covenants on Human Rights was more definitive in asserting the right of self-determination for all peoples by stating in Article 1 that “[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” 71 Several states issued declarations and reservations to the Covenants even as they were ratifying them, which limited or excluded elements of them from application. For example, Israel stated:

“To the extent that such law [Israeli law] is inconsistent with its obligations under the Covenant, Israel reserves the right to apply that law.”\textsuperscript{72} Turkey stated: “The Republic of Turkey reserves the right to interpret and apply the provisions of Article 27 of the International Covenant on Civil and Political Rights in accordance with the related provisions and rules of the Constitution of the Republic of Turkey and the Treaty of Lausanne of 24 July 1923 and its Appendixes.”\textsuperscript{73}

The Netherlands, France and Pakistan, among others, objected to the declaration that India made upon ratification which stated: “the Government of the Republic of India declares that the words ‘the right of self-determination’ appearing in [this article] apply only to the peoples under foreign domination and that these words do not apply to sovereign independent States or to a section of a people or nation--which is the essence of national integrity.”\textsuperscript{74} India was voicing the concern, shared by several states, that this Covenant opened the door to self-determination claims from within their own borders. The Netherlands, amongst others, rejected India’s declaration upon its ratification in 1981 stating: “The Government of the Kingdom of the Netherlands objects to the declaration made by the Government of the Republic of India in relation to article 1 of the International Covenant on Civil and Political Rights and article 1 of the International Covenant on Economic, Social and Cultural Rights, since the right of self determination as embodied in the Covenants is conferred upon all peoples…Any attempt to limit the scope of this right or to attach conditions not provided for in the relevant instruments would undermine the concept of self-determination itself and would thereby seriously weaken its

\textsuperscript{72} All statements of reservations and otherwise to the 1966 International Covenant on Civil and Human Rights can be found here \url{http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en#EndDec}
\textsuperscript{73} See previous note.
\textsuperscript{74} Declaration made by India upon ratification of the Covenant in 1979 found here \url{http://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&lang=en&mtdsg_no=IV-3&src=TREATY#EndDec}
universally acceptable character.” Moreover, the principle has since been further reaffirmed by the Security Council in various resolutions in the 1970s concerning the self-determination claims emanating from the Western Sahara, East Timor, and Namibia. (Crawford, 2006: 113)

During the period of dialectic in the United Nations on the meaning of self-determination, discussion of the definition of what constituted a ‘people’ as referred to in Article 1 (2) of the United Nations Charter emerged. There was a narrow, also referred to as negative, interpretation which took it to refer to the ‘people’ as a single body politic of a state, a view put forth by China, for example. The broader, or positive, definition that was put forth, including by many former imperial states, held that ‘people’ referred to the identity that a community ascribed to itself, and hence a body politic may entail more than one people or minority group. In this way, the negative view held self-determination to be an external attribute that should be regarded in light of safeguards to territorial integrity against possible state break-up and applicable for all the people of a territory. This seemed to have been affirmed by the International Court of Justice in a case concerning Namibia in 1971: “the right [of self-determination] extends to a people as a whole: if the population of a colonial territory is divided up into various ethnic groups or nations, they are not at liberty to choose by themselves their external status. This is because the principle of territorial integrity should here play an overriding role.” Because of concerns for territorial integrity within the context of sovereignty principles, “[t]he distinction between internal and external self-determination serves the purpose of limiting secession to extremely narrow circumstances.” (Sterio, 2013: 22) The fear of perpetual state breaking emerges as a possible consequence to the hundreds of self-determination claims and arbitrating principles such as that

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77 ICC ruling quoted in Cassese (1995: 72)
of remedial rights, as shall be discussed below, becomes significant. This dialectic refined the
main criteria for consideration of any self-determination claim as applying to a ‘people’, as
defined as a group who ascribe to themselves such a designation due to commonalities such as
culture, religion, ideology, history, or community within a geographic area at some historical
juncture. It also defined that there are indeed two courses for self-determination, internal and
external, as discussed below.

The United Nations addressed the issue of minorities within states, seemingly to settle the
question, by noting in the Friendly Relations Declaration of 1970, UN General Assembly
Resolution 2625, and reaffirmed in subsequent resolutions in 1971 and 1972,\(^78\) that self-
determination is a right of a people, but that this right is subject to the territorial integrity of a
state as long as that state is respecting their equal rights in line with the ‘whole people’ of the
state. The resolution also affirms not only the right of self-determination, but the obligation of
member states to assist toward that end. The bar for claiming self-determination then became an
assessment of the legitimacy of claim in relation to the treatment of the claimant by the host
state. In other words, it became an assessment of whether or not a redress was warranted.
Nevertheless, this right is not absolute and states are to be protected from its indiscriminate
application as indicated in the last paragraph below in what is referred to as the ‘safeguard
clause’\(^79\):

Every State has the duty to promote, through joint and separate action, realization
of the principle of equal rights and self-determination of peoples, in accordance
with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle


\(^79\) Crawford (2006: 118)
Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour. 80

The evolving nature of the meaning of self-determination and its application seems to have hit a new milestone in 1989. The transformation of what became accepted under international norms as legitimate basis of self-determination expanded. A realist reading would suggest that this change emerged from a shifting political landscape. As noted by Weller, “there was a profusion of new self-determination conflicts triggered by the unfreezing of Cold War blocs. These risked causing regional destabilisation [sic], especially in Europe. Hence, settlements were imposed in relation to some of them, in particular the former Yugoslavia.

Second, long-running conflicts in other regions were finally starved of assistance from their former Cold War supporters. A settlement suddenly became an attractive option…” (2008, 20)

With the dissolution of the Soviet Union and Yugoslavia and the end of the Cold War, “[a] new climate set in, presenting an opportunity to reassess the concepts of state sovereignty and self-determination.” (Weller, 2008: 20) In this new era, the applicability of self-determinant was

80 United General Assembly Resolution 2625 found here http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/348/90/IMG/NR034890.pdf?OpenElement
extended beyond the classical boundaries of decolonization to former independent states, federal units within states, and ‘people’ with a distinct sense of common history and nationalism.  

None of these cases involves the concept of self-determination as defined by the decolonization cases post-1945. As shall be indicated in Table 1, the new cases of state formation post 1989, other than Pacific Island states, are of a new kind. These new states all involve secession in one form or another from either a federal system formed during a period of war, military domination or political strife, or involve a minority group who viewed their human, political or economic rights subsumed within a larger sovereign state. These conditions remain the overriding basis for self-determination claims today. “Self-determination claims are now being settled in a variety of ways.” (Weller, 2008: 152) With the fall of the Berlin wall and the resurgent cry for independence by subsumed peoples, the view of what constitutes a legitimate claim for self-determination dramatically changed to its present condition of being held as a remedial right, as discussed below. To this point, self-determination was considered a norm in cases of colonial rule. In the new typology, self-determination now extended to distinct ‘peoples’ who could claim such a right in one of two forms, internal or external, where the latter involves the creation of a new state, while internal self-determination involves all categories of self-rule short of statehood such as federalism and autonomous self-governance. The question then became under what conditions external self-determination, usually involving secession, could be claimed.

Legitimate external self-determinant now involves making the case that treatment of the underlying group, the claimant, is not in line with principles of equal human rights for all within

81 See Pavkovic and Radan (2007) for discussion of the dissolution of the Soviet Union and Yugoslavia and how this redefined the parameters of self-determination in the context of legal secession. Also see Hobsbawm (1990) for a discussion and definition of nations and nationalism.
the context of the host sovereign state, on the one hand, and that a particular group was in a position to be considered the legitimate representative of those making the claim, on the other. Calls for self-determination are often made by groups claiming to represent those claims. R. H. Jackson suggested that during the period of decolonization, states went from a legal status of a colony to that of a sovereign state seemingly overnight with most other attributes of statehood such as size or institutional capacity being rendered irrelevant. He noted, “[a]ll that is required is the evident desire of the population to be independent. I say ‘evident’ because it is usually attributed to a population rather than expressed by them, as in a referendum.” (R. H. Jackson, 1990: 18) Suggesting that more may be needed in the form of self-governing institutions was an assumed level of patronage within the UN attitude toward decolonization and on the part of the granter of independence as in the case of imperial powers relinquishing control and by so doing enabling sovereignty. However, even in those instances, there was a party in the newly formed state with which this dialogue occurred, whether that is a tribal leader, a monarch, or some other ‘legitimate representative’ of the ‘people’.

Cassese noted that two sets of questions are posed when assessing whether or not a self-determination claim should be accorded a legitimate status followed by questions on how to assess the legitimacy of the representative claimant. He asks, “[d]o the movement’s goals fall within the scope of the principles of self-determination; is the movement fighting a colonial power, foreign occupier, or racist regime? In addition, is the aim to acquire effective control over a population living in a given territory? Secondly, the representative factor is called into account. Is the movement a legitimate representative of the oppressed people? Does it have a broad-based support among those it claims to represent?” (1995: 166-167) In other words, the representative claimant must also be legitimated within the context of the legitimation of the claim itself. When
states designate a group as the ‘sole legitimate representative’ of a struggle, they confer upon that group a form of legitimacy that is both political and sometimes legal. As noted by Stefan Talmon, “[r]ecognition of a rebel group as the legitimate representative of the people, as a rule, confers several advantages: (1) it legitimizes the struggle of the group against the incumbent government; (2) it provides international acceptance; (3) it allows the group to speak for the people in international organizations and represent it in other States by opening “representative offices”; and (4) it usually results in financial aid.” (2011: 2)

During the recent so-called ‘Arab Spring’ in the Middle East starting in late 2010, revolutions have swept through five countries of the region, namely Tunisia, Egypt, Yemen, Libya and Syria. In the cases of Libya and more recently Syria, these struggles have emerged as civil wars in which large swaths of often diverse elements of society is pitted against an entrenched ruling regime. In both of these cases, governments, both Western and in the region, have recognized coalitions claiming to represent the struggle against the regimes as the “sole legitimate representatives” of the Libyan and Syrian people, respectively, and began to entertain meetings and other official acts of recognition.82 For example, in the summer of 2011, the United States, European and Arab governments recognized the Libyan National Transitional Council as the sole representative of the Libyan people,83 and, in November 2012, the United Kingdom, among other states, designated the “National Coalition of the Syrian Revolutionary and Opposition Forces as the "sole legitimate representative" of the Syrian people.”84 This was capped on December 12, 2012, when 130 representatives of the “friends of Syria” met in Marrakesh, Morocco, and announced that they were collectively recognizing “Syria's new

opposition coalition as ‘the legitimate representative of the Syrian people’ and called on President Bashar al-Assad to ‘stand aside,’” as reported by Reuters.85

This trend builds on earlier acts of recognition by the United Nations of self-determination movements whereby a group was designated as the legitimate representative of the underlying self-determination claim. As quoted above, based on the 1970 Friendly Relations Declaration, self-determination movements can ask and receive support from member states. Hence designating which groups qualify to be considered legitimate representatives of such movements becomes a matter requiring positive recognition if this declaration is to be acted upon. The UN continued to be explicit on this point in subsequent resolutions. For example, the General Assembly Resolution 3070 of 1973 - Importance Of The Universal Realization Of The Right Of Peoples To Self-Determination And Of The Speedy Granting Of Independence To Colonial Countries And Peoples For The Effective Guarantee And Observance Of Human Rights – called “upon all States, in conformity with the Charter of the United Nations and with relevant resolutions of the United Nations, to recognize the right of all people to self-determination and independence and to offer moral, material and any other assistance to all peoples struggling for the full exercise of their inalienable right to self-determination and independence.”86

The Organization of African Unity (OAU, now called the African Union) in its first meeting in 1963 laid down the framework for supporting liberation movements and invited “all national liberation movements to co-ordinate their efforts by establishing common action fronts wherever necessary so as to strengthen the effectiveness of their struggle and the rational use of

the concerted assistance given them,” and further decided “to promote, in each State, the transit of all material aid and the establishment of a body of volunteers in various fields, with a view to providing the various African national liberation movements with the assistance they need in the various sectors.”

Cassese in his interpretation of the parameters of what is authorized by the United Nations and under international law, holds the view that moral, economic and political support to self-determination movements is legitimate, but that the line is drawn at military assistance. This view is still in contestation with differing views from Buchanan, Hurd, Franck, and Reus-Smit.

The United Nations and regional organizations such as the African Union and the Arab League, have issued resolutions recognizing particular groups as “sole legitimate representative” of underlying self-determination claims and struggles. As noted by Talmon, the UN and international law in general are silent on how the will of a people claiming self-determination can be assessed including in who their representative should be. “[T]he International Court of Justice emphasized in the Western Sahara, Advisory Opinion, ‘the application of the right of self-determination requires a free and genuine expression of the will of the peoples concerned.’

The crux of the matter thus is whether a proclamation by an authority in exile can be deemed to constitute a “free and genuine expression of the will” of the people... There will usually be no doubt about its representative character if the national liberation organization proclaiming independence has been recognized by the international community (i.e., the United Nations or a

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89 See Stefan Talmon “Who is a legitimate government in exile? Towards normative criteria for governmental legitimacy in international law”, in Guy Goodwin-Gill/Stefan Talmon, eds (2009: 499-537). Also see website of African Union at
regional organization such as the Organization of African Unity) as ‘the sole and legitimate representative of the people’.” (Talmon, 1999: 505) In fact, the UN has taken the position that the determination of the legitimacy of a self-determinant claim ‘representativeness’ is more effectively left to regional organizations where they exist. “UN General Assembly Resolution 2918(XXVII), adopted in 1972, entrusts the task of weighing the ‘representativeness’ of African movements to the OAU. Resolution 3102(XXVIII), passed in 1973, delegates responsibility vis-à-vis movements in the Middle East to the Arab League. The General Assembly judges the ‘representativeness’ of liberation movements existing in other areas of the world.” (Cassese, 1995: 167)

The UN has tended to follow the lead of regional organizations in recognizing the legitimacy of self-determination claimants. In the case of the Palestinian people, immediately following recognition by the Arab League in 1974, the United Nations passed Resolution 3236 in 1974 in which it reaffirmed the right of the Palestinian people to self-determination and recognized the Palestinian Liberation Organization (PLO) as their legitimate representative granting it observer status at the United Nations. In the case of the self-determination movement in Namibia, the OAU affirmed “the inalienable right of the people of South-West Africa to self-determination and independence” in its 1963 inaugural session, and the South West Africa People’s Organization (SWAPO) also received recognition by both the OAU in 1965 and the United Nations in 1973 as the “sole authentic representative of the Namibian

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93 See Note 7 above
people,” and in 1976 granted it observer status at the United Nations. In fact, Namibia in 1967 became the only territory for which the United Nations took direct responsibility, declaring various actions by the apartheid government of South Africa to gain control and maintain its administration of Namibia as “invalid and illegal.” It is interesting to note that since its founding in 1960, SWAPO led Namibia to statehood in 1990 and still rules the country to this day.

Likewise, both the OAU in 1963 and the United Nations in 1966 recognized the legitimacy of the self-determination movement of South Africa against the apartheid government of the period, which it reaffirmed in over two dozen resolutions. The United Nations issued its first resolution concerning South Africa in 1950 on the topic of the treatment of people of Indian origin and in 1962 issued a resolution initiating economic sanctions against South Africa. The OAU recognized the African National Congress (ANC), along with the Pan Africanist Congress of Azania (PAC), as the two legitimate representatives of the struggle for the self-determination of South Africa.


98 While the UN had expressed concern over the apartheid practices of the South Africa government since its initial meeting in 1946 and in subsequent General Assembly and Security Council resolution, Resolution 2202 was the first to use the language of independence and self-determination. See United Nations General Assembly Resolution 2202 of 1966 found here [http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/005/05/IMG/NR000050.pdf?OpenElement](http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/005/05/IMG/NR000050.pdf?OpenElement) (accessed 12/29/2012)

of the South African people against its apartheid government. While the UN accepted the
determination of the OAU, it never explicitly used the exact words expressing the ANC to be the
legitimate representative of the South African people. It did note its acceptance of the
determination of the OAU, and in 1973 in General Assembly Resolution 3151\textsuperscript{100} it called for
discussions with those movements recognized by the OAU, and the ANC was invited as an
observer in relevant meetings. This implied recognition continued in all its resolutions,
including, for example, in 1981 where it commended the ANC for its efforts and requested
member states to support the ANC, including as per General Assembly Resolution 36/172 on the
occasion of the ANC’s seventieth anniversary, which reaffirmed the “legitimacy of the struggle
of the oppressed people of South Africa and their national liberation movement, by all available
means including armed struggle, for the seizure of power by the people, the elimination of the
apartheid regime and the exercise of the right of self-determination by the people of South Africa
as a whole.”\textsuperscript{101}

The African National Congress was officially founded in 1912, and its military wing
began to operate against the apartheid government of South Africa in 1961 including various
attacks in which civilians were killed. Hence, the fact that the UN not only commended the
ANC for its efforts, but also affirmed that member states should assist the ANC in its armed
struggle, suggests that that armed resistance in the struggle for self-determination can attain a
level of legitimacy against what is considered illegitimate sovereign state actions. On the other
hand, although the ANC was recognized by the OAU and the UN as the legitimate representative
of the self-determination movement of South Africa, the ANC was considered a terrorist

\textsuperscript{100} United Nations General Assembly Resolution 3151 of 1973 found here \url{http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/282/23/IMG/NR028223.pdf?OpenElement}

organization by both the United Kingdom and the United States, in addition to a few other European states; it was only officially removed from the US terrorist list in 2008.\textsuperscript{102} This, however, did not stand in the way of the ANC taking the reins of government in South Africa in 1994, which it controls to this day.\textsuperscript{103}

During the period of decolonization, the United Nations aggressively backed the self-determination efforts sweeping Africa and maintained a close partnership with the OAU. In addition to the instances noted in Namibia and South Africa, the UN General Assembly Resolution 2918 of 1972 granted recognition to the liberation movements in several African colonies of Portugal, including the African Party for the Independence of Guinea and Cape Verde (PAIGC),\textsuperscript{104} and affirmed the following: “the national liberation movements of Angola, Guinea (Bissau) and Cape Verde and Mozambique are the authentic representatives of the true aspirations of the peoples of the Territories and recommends that, pending the accession of those Territories to independence, all Governments, the specialized agencies and other organization within the United Nations system and the United Nations bodies concerned should, when dealing with matters pertaining to the Territories, ensure the representation of the Territories by the liberation movements concerned in an appropriate capacity and in consultations with the Organization of African Unity.”\textsuperscript{105}

The Western Sahara is another case of decolonization involving Spain in a territory between Mauritania and Morocco, to which both later laid claimed. In 1966, the UN General

\textsuperscript{102} See Holland (1989) and Cherry (2011).
\textsuperscript{103} The official website of the African National Congress includes a history of the United Nations actions and resolutions concerning South Africa and the ANC here \url{http://www.anc.org.za/themes.php?pageNum_rs=11&totalRows_rs=233&t=United%20Nations} (accessed on 12/29/2012)
\textsuperscript{104} See UN General Assembly Resolution 3061 of 1973 here \url{http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NRO/281/33/IMG/NR028133.pdf?OpenElement}
assembly in Resolution 2229 declared the territory should receive independence in fulfillment of
the self-determination aspirations of the population. 106 This Resolution invites in paragraph 4:
“… the administering Power to determinate at the earliest possible date, in conformity with the
aspirations of the indigenous people of Spanish Sahara and in consultation with the Governments
of Mauritania and Morocco and any other interested party, the procedures for the holding of a
referendum under United Nations auspices with a view to enabling the indigenous population of
the Territory to exercise freely its right to self-determination…” 107 This clearly indicates that
self-determination can indeed be supported or impeded by state power interests. The idea of a
referendum did not suit the interests of Mauritania and Morocco who took the case to the ICJ
suggesting that the region in fact belonged to one of them and should not be treated as an
unoccupied colony of Spain. The ICJ issued an Advisory Opinion in 1975 agreeing that Spain
had no claim and that both Morocco and Mauritania did have historical ties to the region, but that
neither state’s sovereignty extended over the territory, and reverted to Resolution 1514 granting
the right of self-determination to the indigenous population. In its view, it did “not [find] legal
ties of such a nature as might affect the application of General Assembly resolution 1514 (XV) in
the decolonization of Western Sahara and, in particular, of the principle of self-determination
through the free and genuine expression of the will of the peoples of the Territory.” 108 Not only
had the ICJ rejected the claims of all state power interests, it had also put down a marker that
self-determination involved expression of free will of the underlying people.

Based on this and subsequent UN General Assembly resolutions in 1975, war broke out
with troops being dispatched by both Morocco and Mauritania into the Western Sahara. At this

(accessed 12/13/2012).
108 See International Court of Justice Advisory Opinion of 16 October 1975 found here http://www.icj-
time, independent militant groups joined forces to establish the Polisario front with the aim of the independence of the region under the name of Saharan Arab Democratic Republic (SADR), which was subsequently recognized by both the Arab League and the OAU in 1976. After Palestine gained nonmember state status, the Polisario-led self-determination movement of the Western Sahara remains the sole group recognized by the UN, according to UN General Assembly Resolution 34/37 of 1979, as the legitimate representative of an underlying self-determination movement, following the recognition of the OAU. It is interesting to note that despite this, Polisario, like the ANC prior to ascending the South African government, is also designated a terrorist organization by the United States and the EU.

Since its founding in 1973, Polisario has led operations against troops of both neighboring states. In 1979, Mauritania relinquished its claims to the Western Sahara, but Morocco still maintains its claims despite an Algerian-brokered peace that still holds to today in which the SADR and Polisario await a promised UN-backed referendum. In 1984, the OAU accepted SADR as a member state, causing Morocco to withdraw, while the Arab League since its original recognition in 1976, and on the back of protests from Morocco, has since withdrawn its recognition. As of 2009 “only twenty-one of the fifty-two state members—that is, less than half—of the African Union formally recognize the SADR…. In contrast, some fifteen members of the AU have canceled or suspended the recognition that they previously accorded to

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109 See member state page at the OAU here [http://www.au.int/en/content/republic-arab-saharawi-democratic](http://www.au.int/en/content/republic-arab-saharawi-democratic) (accessed 12/30/2012)


112 According to a count found on Wikipedia, the number of states recognizing SADR is 52 down from a high of 84. (accessed 12/30/2012)
the SADR.” (Pham, 2010: 9) Nevertheless, the Polisario is still recognized by the UN as the official representative of the self-determination claim of the people of the Western Sahara. This case is indicative of the role of state power interests in the outcome of self-determination claims and the meandering and backtracking path that legitimation of the claim and claimant can take.

Hence, not only is the self-determination claim to be assessed for its legitimacy, but an assessment of who the legitimate representative of that claim must also be made. In this way, recognition of the ‘sole representative’ signifies that both the claim and the claimant has attained the first measure of legitimation. Recognition of the claimant as the legitimate representative also carries with it a legal weight in that states and organizations deal with the group as a ‘legal entity’ and this also further secures the legitimation process. (Cassese, 1995: 169) After that point, the actorhood of claimant on the path to potential statehood then becomes one in which legitimacy of its acts is what further supports or undermines the legitimation process thus intervening to sway the independent variables of both state power interests and self-determination to meet or collide toward success or failure.

This reality is even more apparent, if only because it is more contemporary, in the case of newly born states since 1989. The forming of the Unrepresented Nations and Peoples Organization (UNPO), founded in 1991, is an interesting case in point. It currently has 41 ‘member nations and peoples’ “united by one shared condition – they are not adequately represented at major international fora, such as the United Nations. As a consequence, their opportunity to participate on the international stage is significantly limited, as is their ability to access and draw upon the support of the global bodies mandated to defend their rights, protect
their environments, and mitigate the effects of conflict.\textsuperscript{113} The desire for recognition of the claimant as representative of the claim to self-determination is a powerful means of propelling toward statehood.

Yet, recognition by a regional organization is not a prerequisite for recognition by the General Assembly of the United Nations as was evident in the case of independence movements in Ethiopia. (Cassese, 1995: 168) Moreover, recognition by the UN is also not the only means through which a self-determination claim and claimant can receive legitimation and move toward statehood. The struggle for self-determination in East Timor is a case in point in which the FRETILIN were never actually recognized by the UN or any regional group as the sole and legitimate representative of the East Timorese, even as the world did appear to accord them that status, as shall be discussed later. In all these cases, legitimation of both the claim and the claimant took different paths, but, in each case, the acceptance of the self-determination group by secondary power interests was required.

Finally, the use of force, which sometimes involves the death of innocent civilians, toward the end of self-determination has been endorsed by the United Nations, as in the case of the African National Congress in their struggle for self-determination in South Africa. And while the group was officially declared a terrorist organization by some states (such as the United States and the United Kingdom), many of those same states heralded the efforts of the group. On the other hand, the Polasario, which also used force, went through various stages of recognition followed by disavowal by states, even as the United Nations maintained its recognition of the group. However, in this case, the distancing of some states was due more to the pressure of the state with direct, or primary, power interests. Likewise, both the FRETILIN and the PLO, as

\textsuperscript{113} Unrepresented Nations and Peoples Organization website found here http://www.unpo.org/ (accessed 01/03/2013)
shall be noted, resorted to violence, and went through zigzagging processes of legitimation with the former attaining statehood and the latter failing. In each of these cases, there were evident states with primary power interests and others with secondary interest, and in each case the state’s interaction with the self-determination group impacted the ultimate outcome. Thus, violence is not necessarily a disqualifier in the legitimation process, nor is it a guarantor of success.

A second observation concerning the evolution of the self-determination norm is that sovereignty and self-determination can be viewed as two sides of the same coin. As is often noted, inherent in these dual principles is a potential conflict of purpose. By maintaining the principles of equality of nations and sanctity of the sovereign state from external interference, while at the same time establishing the right of self-determination, the United Nations has set up a conflict; however, self-determination is not an absolute right. Invariably, self-determination movements emerge from within the borders of sovereign states, such as in the case of separatism, secession or irredentism, or involve breaking ties with dominating states thus abrogating their claim to sovereign control, as in independence movements during the post-colonial period. Hence, in upholding the right of peoples to self-determination, states are, in fact, contradicting their pledge to respect the territorial integrity and sanctity of state sovereignty insofar as one may require the decimation or alteration of the other. As noted by Toft, “[t]he right of self-determination for ethno-national groups continues to clash with states’ rights to territorial integrity. In fact, both of these claims have become enshrined in international law, which makes sorting out which claim is the (more) legal or legitimate all the more complex.” (2012: 582) Hurd (as well as Buchanan) has suggested that international law should uphold the right to self-determination as one of remediation and not absolutism. “From the standpoint of international
law, the unilateral right to secede—the right to secede without consent or constitutional authorization—should be understood as a remedial right only, a last-resort response to serious injustices. In affirming a remedial understanding of the right to secede, international law should unambiguously repudiate the nationalist principle that all nations (or “people”) are entitled to their own states." (Hurd, 2007: 331)

As noted by R. H. Jackson, sovereignty during the post 1945 period evolved from one of being an empirical fact to one of being a legal fact. States can no longer “be deprived of sovereignty as a result of war, conquest, partition, or colonialism such as frequently happened in the past. The juridical cart is now before the empirical horse.” (R. H. Jackson, 1990: 23-24) He describes this period as witnessing the emergence of the concept of negative sovereignty in which, irrespective of the internal capacity of the state, outwardly it is a member of the international community of states, and as such is protected from intervention, a principle codified in the UN Charter.\(^{114}\) ‘Negative’ as used here is not a normative characterization, but rather an indication that sovereignty is not a status that requires positive action or capacity to preserve. Accordingly, all states are equal in their legitimacy and potential agency, a fact underscored by realist thinking, although structural realists recognize the binding constraints of operating within a global system. This is also a position accepted by neoliberals and rationalists. “Categorical self-determination of former colonies is the fundamental innovation which established the negative sovereignty regime.” (Jackson, 1990: 41) In this way, the self-determination claim also becomes one of the limited challenges to this negative sovereignty status, while at the same time also being the way this status was solidified. Thus, the making of a self-determination claim is

\(^{114}\) See Robert H. Jackson (1990) who attributes this line of analysis to Isaiah Berlin’s conceptualization of negative and positive liberty (1990: 26-27).
simultaneously the greatest challenge to sovereignty and the only route through which it durably is attained.

Hence, while self-determination should be seen as a legitimate right, it is a right that needs to be considered on a case-by-case basis, and, thus the process of legitimation is often the means through which that assessment is made. In short, two forms of legitimacy claims are at odds – the reified legitimacy of the state as sovereign and the conditional and earned legitimacy of self-determination.115 Here emerges the tension between coercion, self-interest and legitimacy, the three sources of power, at the international level. Legitimation is then seen to be a function of the operation of all three sources. In upholding the staying power of legitimacy inherent in state sovereignty, support of self-determination requires a call upon all forms of power, including coercion and self-interest within a process of legitimation. As these forces converge, a new legitimacy is born with equal sustainability. In other words, there is a shift from the status quo ante to a new legitimacy status.

Sovereignty is thus a manifestation of legitimacy in that it is recognized as a binding condition, and self-determination is the road to get there. It is this one fact, perhaps most poignantly, which ultimately nullifies arguments of the epiphenomenal nature of legitimacy in international relations. Rationalist theories of international relations, especially those of the realist school, have at their core the concept of the state as a unitary actor. If this actor is nothing but an expression of legitimacy at the systemic level, there needs be no other case made. Yet, even recognizing the role of sovereignty, arguments are made that, ultimately, it is a status that is more a function of agency in the form of a ruler of a self-interested state, than the structure of the international legal order. As Krasner argues, “[w]hether international legal sovereignty and Westphalian sovereignty are honored depends on the decisions of rulers….. Rulers can

115 See Joyner (2005: 46-47)
recognize another state or not…” (1999: 7) Yet, the empirics of international relations would suggest otherwise; it would lend more credence to the fact that once an actor is legitimated, even if the underlying mechanism was agentic self-interest or coercion, it becomes a legitimate actor and such a status embodies a distinct set of characteristics and effects that has staying power. For example, Tanisha M. Fazal finds in her qualitative analysis of the reasons for state death that legitimacy “… does appear to wield an independent, substantive effect on state survival.” (2007: 86)

Today, a sovereign state attains such a status when it is recognized as such by other states (“constitutive statehood”), or declares itself a sovereign state (“declaratory statehood”). Ultimately, the effectiveness of the sovereignty principle is manifest in the recognition of this status by other states. In the context of how states interact with one another in their international relations, the principle undergirding constitutive statehood, is what eventually results in membership in the United Nations. This is the definition of ultimate and complete statehood being employed in this research. “Historically, international recognition of statehood has been the major foreign policy goal of any secessionist movement…. For recognition to receive its constitutive function the most effective means by which it can be achieved is…to be admitted to the United Nations…” (Pavkovic and Radan, 2007: 11) Biafra in Nigeria and Somaliland in Somalia are cases in which formal recognition into the United Nations did not occur and suggest that this lack of recognition relegated these would-be states to being ineffective. “Such entities may display the objective criteria of statehood, namely, territory, population and government. However, this will not trigger the statehood that would ordinarily result. Instead, these entities are non-states and all states may be under an obligation to refrain from recognizing them as states or from assisting them in maintaining their illegal status.” (Weller, 2008: 33)

116 See Crawford (2006) for a detailed discussion of the terms of state sovereignty under international law.
On the other hand, for example, the recognition of Bangladesh by India, despite contestation from Pakistan, was a key means through which Bangladesh ultimately attained recognition by other states and membership into the United Nations. The importance of recognition in cases of secessionist self-determination and its impact on the fact of statehood is underscored by Crawford, who notes the statehood of the former Soviet Republics and the units of Yugoslavia were greatly assisted on their path to UN membership after the “European Community issued Guidelines on Recognition of New States in Eastern Europe and the Soviet Union, and an associated Declaration on Yugoslavia, both dated 16 December 1991. The Guidelines on Recognition referred to the ‘principles of the Helsinki Act and the Charter of Paris, in particular the principle of self-determination’, as well as to ‘the normal standards of international practice [on recognition of new States] (sic) and the political realities in each case.’” (2006, 397) This move by the European community laid the groundwork for each of the states emerging from the dissolution of both the Soviet Union and Yugoslavia to apply for membership to the United Nations.

The benefits of such recognition range from the ability to enter into treaties, join and partake in membership in international organizations, such as the World Trade Organization or the International Monetary Fund, as well as “being a primary participant in the processes by which international law is made and adjudicated and by which measures designed to increase compliance with international norms are devised and implemented.” (Buchanan, 2004: 265) Moreover, recognition accords a state the status of sovereignty and the protection of that status by the international society of both state and non-state actors; it is the ultimate form of preservation afforded within the context of the existing international system. Such standing is not secured for de facto states such as Somaliland or Northern Cyprus, or even for the newly

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117 See Pavokovic and Radan (2007)
acquired non-voting membership status of Palestine. In the post-1945 global order, to the extent that this recognition is unanimous, or at least not expressly objected to in the form of a Security Council veto from one of the five veto members, acceptance into the United Nations is the ideal-type expression of sovereignty.

A sovereign state, according to positive international law and declaratory statehood, is characterized by territorial boundaries, a permanent population, and a government with authority and control, able to enter into and maintain international relations and obligations, as noted by article one of the 1933 Montevideo Convention on Rights and Duties of States.118 Such is the ultimate end of the continuum between an independence aspiring population to a recognized sovereign state. In assessing the validity of a statehood claim, these minimum characteristics are required. Yet, as suggested, not all self-proclaimed states attain recognition by merely exhibiting them. Conversely, loss of some of these characteristics does not automatically result in revocation of the statehood recognition. For example, failed states such as Somalia and Afghanistan, unable to protect borders or maintain international relations, did not lose their membership in the United Nations. “These examples demonstrate that the criteria of statehood only matter at the initial stages, when a self-determination-seeking entity is seeking to attain statehood… However, once the determination of statehood is met and an entity joins the sovereign club of states, the retention of the four criteria of statehood becomes irrelevant. A state remains a state, absent extraordinary circumstances, such as when a state dissolves into smaller subunits… Thus statehood matters at the time of state creation; it no longer matters during state existence…” (Sterio, 2013: 47) Such is the powerful impetus to self-determination claimants to pursue their aspirations as it guarantees them a seat at the international table as indefinitely as is relevant to current affairs. Sovereignty once attained, for all intents and purposes, is a binding

118 See the text of the Montevideo Convention in Lori E. Damrosch et al (2001), 44-45
condition, until such a time, as in the case of East Germany, there is a misalignment between that which provides for the stickiness of statehood, state power interests and legitimacy of the belief in the statehood by the underlying people, as will be discussed in a later chapter.

Moreover, there are many other forms and points at which self-determination can end short of statehood. “Thus far international law has distinguished between the right to self-determination and the actual achievement of statehood, and for good reason. Even the exercise of external self-determination need not result in independence; there are other options …” (Crawford, 2006: 446) as evidenced by the continuum between political aspiration and sovereign statehood. In-between are a wide range of political organizations including, but not limited to, disputed territories, quasi-states, mandates, colonies, autonomous regions, principalities, and protectorates. Somewhere along this continuum, for example, may sit the new condition of the Palestinians with its toothless designation as the non-member observer state of Palestine. Prior to its administration by the United Nations in 1999 and its subsequent declaration of independence in 2008, Kosovo was legally an autonomous, self-governing region within both the Socialist Federal Republic of Yugoslavia and the later smaller state of the Federal Republic of Yugoslavia. Yet, the Kosovars persisted in their claim toward statehood and this claim has been argued to fall squarely within the domain of what is covered by remedial claims to self-determination due to the events that ensued during the 1990s in which the ethnic Albanian Kosovars suffered at the hands of the state, controlled by ethnic Serbs.119

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119 An alternative theory has been suggested by Sterio (2013), who argues that the only reason statehood became an option was because state power interests saw it in their self-interest to support such a move, and there was no legal basis to claim statehood because its basic autonomy was already established. She does not see self-determination claims as a casual variable in the statehood equation. Her theory of Great Power rule sees all other factors as intervening at best or epiphenomenal at worst.
Accordingly, for the purposes of this research, a state is defined as a member of the United Nations, having a vote, which is an expression of its constitutive statehood. Recognizing that the literature is rich in the characterization of the ontological fact of statehood, this simplistic positivist definition will be maintained. Adopting this definition also embraces the fact that the only means toward complete statehood is a recommendation by the Security Council, itself requiring a majority vote with no permanent member veto, followed by a two-thirds vote by the General Assembly, as laid out in Article 4, paragraph 2, of the UN Charter and the further explanatory rules of procedure. Effectively, this means that five UN Member states carry the keys for self-determination claimants to pass through the door of statehood, as both the cases of Kosovo and Palestine, as well as many of the ongoing self-determination struggles (see Table 2) illustrate. While effective, or de facto, statehood is no less real, as suggested above in the various other forms of relative autonomy, as can be argued in the case of Somaliland, or, even more effectively, in the case of Taiwan, membership in the United Nations connotes recognized legitimacy. It is this legitimacy that has led the Palestinian people to view their membership, albeit limited, as a step towards the ultimate recognition of their self-determination claims. It remains the objective of Kosovo, even though it has effectively attained that status otherwise.

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120 This definition seems to be the basis for constitutive state recognition as included in The International Law Commission - Working Group on the Long-Term Programme of Work – Annex 2 – Outline of Issues on the Topic of Statehood, reprinted in Crawford (2006: 757-759)
Chapter 4
The Journey to Statehood – Successes and Ongoing Efforts

Since 1945, 142 states have been created including states that were constituted and dissolved into separate parts later, some gaining/regaining their independence following self-determination efforts. Of the five states that dissolved after 1945, all had been created absent a prior self-determination movement or had been forced into statehood by previous colonial powers. These latter are the German Democratic Republic (joining the Federal Republic of Germany), Czechoslovakia, Democratic Yemen (uniting once again as Yemen), Tanganyika, and Zanzibar (the latter two uniting as the United Republic of Tanzania). Russian Federation, Republic of Serbia, and Malaysia retained the membership of their geographically larger predecessors, namely and respectively, the Union of Soviet Socialist Republics, Socialist Federal Republic of Yugoslavia, and the Federation of Malaya. Tanisha M. Fazal notes that, “[s]ince 1816, 66 of 207 states have died.” (2007: 3) She suggests that the division of Germany and the creation of the Soviet Union were in fact state deaths, for those states were incorporated into the newly created states in which the former state lost capacity to engage in foreign relations, which is her definition of state death. She attributes this phenomenon to geographic conquest between rival states.

While geographic and resource competitiveness may indeed be the impetus for territory-based wars, it also suggests that the reason that these states cease to exist once the call for self-determination arises may be linked to the fact that the earlier demise and the subsequent consolidation into a new state was not an expression of legitimacy; in other words, the...

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123 See Crawford (2006)
aspirations of the people engulfed or overtaken by a new state did not recognize the validity of
the status quo giving rise to their call for the status quo ante, and in the case of East Germany
discussed in a later. Many of the states formed after 1989 were in fact resurrections of previous
states, to use Fazal’s term. That may be the case but it does not address the question of what was
the impetus that brought about the resurrection. A condition of previous statehood does not
address the causal mechanism at work that allowed the call for self-determination to be heard,
opening the way for statehood. Michael Ignatieff (1995) noted that there was a spurt in
nationalist sentiments the world-over in the aftermath of the fall of the Berlin war.\textsuperscript{125} As self-
determination became the basis for state formation, the legitimacy of the emerging statehood
status has a higher likelihood to ‘stick’. It is this stickiness that is the outcome of legitimation,
and the holding power or magnitude of stickiness is a function of the stability or fragility of the
legitimacy, which itself is impacted by the nature of the acts of the legitimated actors.

The definition of state death adopted here is one in which membership in the United
Nations ceases. It is interesting to note in this context that after the fall of the Soviet Union in
1989, there have been no state dissolutions except that of East Germany (unifying with West
Germany), and South Yemen (unifying with North Yemen), which defines the first subset of this
research. Those states that did emerge with the dissolution of the Soviet Union and Yugoslavia
in their pre-1989 configuration (as well as the demise of East Germany and its subsequent
reunification with Germany) gained new membership in the UN, while the original host states
maintained the seats of their predecessor forms, and hence are not considered state deaths. This
may appear to be a mechanical definition, however, it is also substantive in that the characteristic
of recognition by other states is retained.

\textsuperscript{125} See also Christian Reus-Smit (2011), Tanisha M. Fazal (2007) and David Armitage (in Doyle 2010).
The second subset of the universe of observations of this research are those states admitted into the United Nations since 1989, which number 38 and are depicted in Table 1, including South Sudan added in 2011. One more, Kosovo, may be added as soon (assuming alignment between all primary state interests), although it is accepted as a sovereign state with full recognition in most United Nations organizations, including, as of 2009, the World Bank and the International Monetary Fund. Accordingly, Kosovo statehood is here being considered a case of quasi-success. This is the universe of observations of success cases of this research. Of this list of new states, many attained such a status after a period of political contention around self-determination claims including claims for a return of independence or sovereignty, especially those of the former Soviet Union and Yugoslavia, as well as some who were able to rest their claims on remnants of decolonization, as in the case of most of the Pacific Island states other than East Timor; others attained such a status in a non-contentious manner due, it is suggested here, to the pre-alignment of both power interests and legitimacy claim, as is depicted in Table 1.

Political contention here adopts the construction employed by Charles Tilly and Sydney Tarrow, defining it as “interactions in which actors make claims bearing on someone else’s interests, leading to coordinated efforts on behalf of shared interests or programs, in which governments are involved as targets, initiators of claims, or third parties.” (2007: 4) Political contention is the stuff of social movements as they entail mobilization of like-minded people in a discourse against opposing views, identities, and positions. Tilly notes that social movements,

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126 To date (and it changes almost daily), 98 UN member states have formally recognized the state of Kosovo. See [http://www.kosovothanksyou.com/?order=a#recognitions](http://www.kosovothanksyou.com/?order=a#recognitions) [last accessed March 5, 2013]


of which self-determination claimants would be a distinct form, lead to contentious politics and
collective action because they “involve collective making of claims that, if realized, would
conflict with someone else’s interests…” (Tilly, 2004:3) Moreover, the acts of self-
determination claimants, or political actors in the language of Tilly and Tarrow, often results in
collective action that amounts to violent contention. As shall be noted in both Table 1 and 2
below, violent contention tends to be the norm, although not the absolute, in the pursuit of self-
determination claims.

The dissolution of the Soviet Union into separate states did involve political contention,
albeit not necessarily violent, as opposed to the case of the dissolution of Yugoslavia which
involved various cases of violent secession. “Although the Soviet government attempted to
counter the secessionist moves in the Baltic (as well as in other republics) in various ways,
including threats to use military force, it was not ready to crush the secessionist movements
using its formidable military and security forces…the Soviet military and civilian leaders were
not ready to incur large causalities among civilians and Gorbachev was not ready to forgo the
support of the US and its European allies which would have been lost, had such causalities
occurred.” (Pavkovic and Radan, 2007: 141) The Soviets hesitated despite the fact that the
popular self-determination movements in the Baltics were causing a knock-on effect throughout
the Soviet federation. “In the final years of the Soviet experiment, nationalist movements in
Estonia, Latvia and Lithuania not only destroyed the structures of Soviet power in their own
republics, but 'exported their revolutions' to other areas of the Union as well.” (Mieznieks, 1995:
3) Hence, the trigger for violence depends ultimately on a calculation of self-interest by the
parties involved, as shall be discussed later. How this identity can be forged to realign such self-
interests is what charts the course of each self-determination movement.
Whether or not the contention turns violent is an outcome of the interaction of the various parties to the self-determination claim and sovereignty challenge continuum. However, contention is a characteristic of all self-determination movements, by definition; if there were no contention, there would be no movement and statehood would proceed unimpeded and mechanically as an expression of the will of the underlying people. In this context, the parties to the contention are the political group claiming self-determination, the underlying population they claim to represent, and the host state government in the first instance (or primary state interest). In Table 1 the determination of whether or not the attainment of such status was contentious is a subjective assessment of whether the situation involved opposing views and positions based on a simple review of the literature, official state websites and media coverage preceding (going as far back as online media archives allow) and following the acceptance of the state into the United Nations as a member, in addition to a review of literature. There is also no attempt being made to distinguish the degree of contention, but rather to indicate whether or not that condition existed in a binary manner. States established in the absence of an original host state that would conceivably represent the contending state power interest, and no or little debate in the General Assembly and Security Council are here determined to be non-contentious. Existence of a group making a self-determination claim that is met with opposition and ultimately results in a state is here determined to be contentious, and Table 1 indicates the name of the predominant self-determination group in that process, similarly derived from media coverage, official websites, United Nations debate and decisions, and review of literature.

It is interesting to note that since the fall of the Berlin Wall, all new states have been established with the intent to pursue liberal democratic governance. Some, such as Turkmenistan, Tajikistan, and other Central Asian republics, have since reverted to more
authoritarian governance, which would be a subject of research on the sustainability of such forms, but would unlikely impact the sustainability of its statehood *per se*. It is also possible that these states are suffering from ‘growing pains’ in the process of institutional development, which would require more time for final determination to be made, and would also be the subject of research on the process of state development post state formation. In any case, the fact that liberal democracy is the intended form of governance in the lead-up to state formation and the discourse surrounding the self-determination movement is the aspect of relevance to this research, as it speaks to the process of legitimation of the self-determination claim and how it is received by power interests and other stakeholders.

This may lend credence to the Kantian perception of a growing world community, a world society, of like-minded states. “[T]hrough a new-Kantian theory of jurisprudence, one might postulate that a non-democratic State loses key attributes of its sovereignty—loses, in other words, its right to be recognised fully as a State—which might, in turn, justify actions by other States in certain situations that would otherwise violate international law.” (Murphy 1999: 548) This suggests that in the tug between respect for the principle of sovereignty versus the principle of self-determination, liberal democratic governments may tend towards the latter once the self-determination claim has been validated. This also, by extension, would suggest that other non-liberal states may be less willing to support self-determination movements of peoples irrespective of whether or not they are emanating from within non-liberal and non-democratic states. Accordingly, this may explain why China and Russia are more reluctant to accept self-
determination claims as opposed to the United States, India, member states of the EU, or any of the 87 states considered liberal democracies.130

Such is an alternative hypothesis that is worth consideration. While it does have its appeal, this alternative does not completely withstand scrutiny. For example, Russia has been resisting the acceptance of Kosovo; while on the other hand, the United States has not been as forthcoming in its support of a sovereign Palestine established on liberal democratic principles, perhaps because of the fact that the state, Israel, from which it seeks independence, is itself considered a liberal democracy. Nevertheless, a pure consideration of the form of governance of the state from which the secessionist or self-determination movement seeks liberation is not sufficient to explain the posturing of the power interests. It may, however, be a powerful ‘selling point’ in the process of legitimation of the self-determination movement, and thereby would in fact support the hypotheses of this research. As noted, self-determination movements that have succeeded since 1989 did proclaim the intent to base eventual state governance on liberal democratic principles, even if a few did back-slide after achieving statehood. The practice of liberal democratic governance is a possible variable in the sustainability of states’ post successful self-determination, which would be a subject of separate research.

Table 1 also identifies primary state power interests defined as the host state, and regional or other states with a direct expressed or implied interest in either the host state from which the self-determination claim emanates or in the self-determination claimant. These states have the

130 See the Polity IV data set at http://www.systemicpeace.org/polity/polity4.htm and Freedom House at http://www.freedomhouse.org/ . In FREEDOM IN THE WORLD 2012 [accessed on 12/18/2012 at http://www.freedomhouse.org/sites/default/files/FIW%202012%20Booklet_0.pdf] as of 2011, 87 out of 195 states were considered to be free or liberal democracies defined as: “Freedom House’s term “electoral democracy” differs from “liberal democracy” in that the latter also implies the presence of a substantial array of civil liberties. In the survey, all Free countries qualify as both electoral and liberal democracies. By contrast, some Partly Free countries qualify as electoral, but not liberal, democracies.”
power to either impede or actively support the self-determination claim. Identification of such a status is made on a qualitative basis from a review of literature, public statements of rulers of states, statements and positions taken at the United Nations or in regional organizations, or implied from a determination of vested economic interests in light of trade relationships, resource dependencies, or geographic proximity and the perceived fear of either copycat or spill-over effects within its own borders. Clearly such a loose and subjective definition leaves broad scope for omission, compounded by the fact that, in the absence of an adequate in-depth case study analysis, it is difficult to completely assess all possible primary state interests, especially if they are not expressed in any of the forms suggested herein. However, the point here is that such state interests exist, whether or not all of them have been sufficiently identified. Hence those identified may suffer an error of omission, rather than inclusion, and thus are inconsequential to the underlying and fundamental point being made, which is that state power interests are at play and impact the process of legitimation of self-determination claims.

Such power interests are effectively what the self-determination group must contend with, either directly, as in the case of the state from which they are attempting to gain independence, or indirectly in that the primary power interested state can impact the outcome. One of the elements of the hypothesis to be tested is that the activity of self-determination groups is what triggers the process of legitimation, as an intervening variable, which in turn has an impact on how primary power interested states identify their interests. This discursive process is what the self-determination groups can act upon with either positive or negative responses by primary (and secondary as shall be discussed later) power interests. Using both statistical and case analysis, one of Fazal’s findings on the question of state resurrection, was that while nationalist resistance was not an effective means to avoid conquest, it was an effective means
against a conqueror. (2007: 168) In other words, self-determination movements can be successful, although the majority of them have failed. As this may be factually self-evident, the issue still remains how and why some and not others have succeeded.

Table 1: Positive/success cases - States admitted to the United Nations post-1989

<table>
<thead>
<tr>
<th>State</th>
<th>Year Admitted to UN</th>
<th>Self-determination movement</th>
<th>Power interests prior to statehood – primary stakeholders</th>
<th>State Formation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Lichtenstein</td>
<td>1990</td>
<td>No</td>
<td>Germany, Switzerland, Austria</td>
</tr>
<tr>
<td>2</td>
<td>Namibia, Republic of</td>
<td>1990</td>
<td>Yes, South West Africa People’s Organization</td>
<td>South Africa</td>
</tr>
<tr>
<td>3</td>
<td>Korea, Democratic People’s Republic of</td>
<td>1991</td>
<td>Yes</td>
<td>China, United States (USA), Russia</td>
</tr>
<tr>
<td>5</td>
<td>Latvia, Republic of</td>
<td>1991</td>
<td>Yes, Latvian Popular Front</td>
<td>Russia, EU</td>
</tr>
<tr>
<td>6</td>
<td>Lithuania, Republic of</td>
<td>1991</td>
<td>Yes, Sajudis</td>
<td>Russia, EU</td>
</tr>
</tbody>
</table>

131 Table 1 does not include Kosovo as it has not yet formally been accepted as a member state to the United Nations. However, as discussed, for purposes of this research, Kosovo is being considered a state due to the fact that it maintains de facto recognition as indicated by the number of international organizations, including the United Nations network, that it is a member of. Kosovo is thus considered a case of contentious state formation in which the self-determination movement was led primarily by the Democratic League of Kosovo and the Kosovo Liberation Army. Primary state interests include Serbia, the EU, the US and Russia.


134 It should be noted that a few of the countries, such as North and South Korea were considered separate sovereign states prior to formal membership into the United Nations and before this research demarcation line of 1989. Thus, while the creation of these 2 states was contentious, it falls outside the remit of this research.


<table>
<thead>
<tr>
<th>State</th>
<th>Year Admitted to UN</th>
<th>Self-determination movement</th>
<th>Power interests prior to statehood – primary stakeholders</th>
<th>State Formation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marshall Islands, Republic of the</td>
<td>1991</td>
<td>Yes, popular movement/plebiscite</td>
<td>USA, Russia, Australia</td>
<td>Contentious</td>
</tr>
<tr>
<td>Micronesia, Federated States of</td>
<td>1991</td>
<td>Yes, popular movement/plebiscite</td>
<td>USA, Australia, Russia</td>
<td>Contentious</td>
</tr>
<tr>
<td>Korea, Republic of</td>
<td>1991</td>
<td>Yes</td>
<td>China, USA, Russia</td>
<td>Contentious</td>
</tr>
<tr>
<td>Armenia, Republic of</td>
<td>1992</td>
<td>Yes, Armenian National Movement</td>
<td>EU, Russia, USA</td>
<td>Contentious</td>
</tr>
<tr>
<td>Azerbaijan, Republic of</td>
<td>1992</td>
<td>Yes, Popular Front of Azerbaijan</td>
<td>EU, Russia, USA</td>
<td>Contentious</td>
</tr>
<tr>
<td>Bosnia and Herzegovina, Federation of</td>
<td>1992</td>
<td>Yes, multiple ethnic nationalist groups</td>
<td>USA, EU, Russia, Yugoslavia (Serbia)</td>
<td>Contentious</td>
</tr>
<tr>
<td>Croatia, Republic of</td>
<td>1992</td>
<td>Yes, nationalist groups, Croatian Democratic Union</td>
<td>USA, EU, Yugoslavia (Serbia)</td>
<td>Contentious</td>
</tr>
<tr>
<td>Georgia</td>
<td>1992</td>
<td>Yes, nationalist groups incl. the Round Table/Free Georgia bloc</td>
<td>Russia, USA, EU</td>
<td>Contentious</td>
</tr>
</tbody>
</table>

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140 See footnote 25


<table>
<thead>
<tr>
<th>State</th>
<th>Year Admitted to UN</th>
<th>Self-determination movement</th>
<th>Power interests prior to statehood – primary stakeholders</th>
<th>State Formation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kazakhstan, Republic of[146]</td>
<td>1992</td>
<td>Yes, youth movements &amp; former communist party</td>
<td>Russia, USA, China</td>
<td>Contentious</td>
</tr>
<tr>
<td>Kyrgyz Republic[147]</td>
<td>1992</td>
<td>Yes, Kyrgyzstan Democratic Movement</td>
<td>Russia, USA, EU</td>
<td>Contentious</td>
</tr>
<tr>
<td>Republic of Moldova[148]</td>
<td>1992</td>
<td>Yes, Popular Front/Democratic Movement of Moldova</td>
<td>Russia, EU, USA</td>
<td>Contentious</td>
</tr>
<tr>
<td>San Marino, Republic of[149]</td>
<td>1992</td>
<td>No</td>
<td>Italy</td>
<td>Non-contentious</td>
</tr>
<tr>
<td>Slovenia, Republic of[150]</td>
<td>1992</td>
<td>Yes, DEMOS Coalition</td>
<td>Yugoslavia (Serbia), EU</td>
<td>Contentious</td>
</tr>
<tr>
<td>Tajikistan, Republic of[151]</td>
<td>1992</td>
<td>Yes, opposition incl. democratic, Islamic &amp; former communist</td>
<td>Russia, EU, USA</td>
<td>Contentious</td>
</tr>
<tr>
<td>Turkmenistan[152]</td>
<td>1992</td>
<td>Yes, Democratic Party of Turkmenistan</td>
<td>Russia, EU, USA</td>
<td>Contentious</td>
</tr>
<tr>
<td>Uzbekistan, Republic of[153]</td>
<td>1992</td>
<td>Yes, People’s Democratic Party of Uzbekistan</td>
<td>Russia, EU, USA</td>
<td>Contentious</td>
</tr>
<tr>
<td>Andorra[154]</td>
<td>1993</td>
<td>No</td>
<td>Spain, France</td>
<td>Non-contentious</td>
</tr>
</tbody>
</table>

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151 See official website of the President of Republic of Tajikistan at [http://www.prezident.tj/en](http://www.prezident.tj/en); United Nations mission at [http://www.un.int/wcm/content/site/tajikistan](http://www.un.int/wcm/content/site/tajikistan) and BBC at [http://www.bbc.co.uk/news/world-asia-16201032](http://www.bbc.co.uk/news/world-asia-16201032) [all last accessed on 12/10/2012]


154 See BBC at [http://www.bbc.co.uk/news/world-europe-17028050](http://www.bbc.co.uk/news/world-europe-17028050) [last accessed on 12/10/2012]
<table>
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<tr>
<th>State</th>
<th>Year Admitted to UN</th>
<th>Self-determination movement</th>
<th>Power interests prior to statehood – primary stakeholders</th>
<th>State Formation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Czech Republic(^{155})</td>
<td>1993</td>
<td>Yes, Civic Forum</td>
<td>Russia, EU, USA</td>
<td>Contentious</td>
</tr>
<tr>
<td>Eritrea, State of(^{156})</td>
<td>1993</td>
<td>Yes, Eritrean People’s Liberation Front (EPLF)</td>
<td>Ethiopia, Sudan</td>
<td>Contentious</td>
</tr>
<tr>
<td>Principality of(^{157})</td>
<td>1993</td>
<td>No</td>
<td></td>
<td>Non-contentious</td>
</tr>
<tr>
<td>Slovakia Republic(^{158})</td>
<td>1993</td>
<td>Yes, Movement for a Democratic Slovakia</td>
<td>Russia, EU, USA</td>
<td>Contentious</td>
</tr>
<tr>
<td>The former Yugoslav Republic of Macedonia(^{159})</td>
<td>1993</td>
<td>Yes, United Macedonian Organization and other nationalist groups</td>
<td>Yugoslavia (Serbia), EU, Greece, USA</td>
<td>Contentious</td>
</tr>
<tr>
<td>Palau, Republic of(^{160})</td>
<td>1995</td>
<td>Yes, Palau Political Status Commission/ plebiscite</td>
<td>USA, Australia, Indonesia</td>
<td>Contentious</td>
</tr>
<tr>
<td>Kiribati, Republic of(^{161})</td>
<td>1999</td>
<td>Yes, secessionist movement led by semi-autonomous house of representatives</td>
<td>United Kingdom (UK), USA, Australia, New Zealand</td>
<td>Contentious</td>
</tr>
<tr>
<td>Nauru, Republic of(^{162})</td>
<td>1999</td>
<td>Yes, secessionist movement led by semi-autonomous legislative council</td>
<td>UK, Australia, New Zealand</td>
<td>Contentious</td>
</tr>
</tbody>
</table>


\(^{161}\) See BBC at [http://www.bbc.co.uk/news/world-asia-pacific-16431122](http://www.bbc.co.uk/news/world-asia-pacific-16431122); and US State Department Background Notes at [http://dosfan.lib.uiuc.edu/ERC/bgnotes/eap/kiribati9506.html](http://dosfan.lib.uiuc.edu/ERC/bgnotes/eap/kiribati9506.html) [all last accessed at 12/11/2012] It is interesting to note that Kiribati may have the dubious distinction of becoming the first state to cease to exist due to geographic events, in this case climate change where the islands that make up Kiribati will be submerged by the Pacific Ocean, also making it the shortest lived state as well.

\(^{162}\) See official website of the Republic of Nauru at [http://www.naurugov.nr](http://www.naurugov.nr); and BBC at [http://www.bbc.co.uk/news/world-asia-pacific-15433616](http://www.bbc.co.uk/news/world-asia-pacific-15433616) [last assessed at 12/12/1012]
<table>
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<tr>
<th>State</th>
<th>Year Admitted to UN</th>
<th>Self-determination movement</th>
<th>Power interests prior to statehood – primary stakeholders</th>
<th>State Formation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tonga, Kingdom of[^163]</td>
<td>1999</td>
<td>Yes, Pro-Democracy Movement</td>
<td>UK, Australia</td>
<td>Contentious</td>
</tr>
<tr>
<td>Tuvalu[^165]</td>
<td>2000</td>
<td>Yes, Ellice Islanders secessionist movement</td>
<td>UK, USA, Australia, New Zealand</td>
<td>Contentious</td>
</tr>
<tr>
<td>Swiss Confederation[^166]</td>
<td>2002</td>
<td>No</td>
<td>EU</td>
<td>Non-contentious</td>
</tr>
<tr>
<td>Timor Leste, Democratic Republic of[^167]</td>
<td>2002</td>
<td>Yes, Revolutionary Front for Independent East Timor (FRETILIN)</td>
<td>Indonesia</td>
<td>Contentious</td>
</tr>
<tr>
<td>Montenegro[^168]</td>
<td>2006</td>
<td>Yes, Pro-Independence bloc including the Democratic Party of Socialists</td>
<td>Yugoslavia (Serbia), Russia, EU, USA</td>
<td>Contentious</td>
</tr>
<tr>
<td>South Sudan[^169]</td>
<td>2011</td>
<td>Yes, Sudan People’s Liberation Movement</td>
<td>Sudan, China, Arab League, USA</td>
<td>Contentious</td>
</tr>
</tbody>
</table>


[^164]: See Pavkovic and Radan (2007), official website of the Republic of Serbia at [http://www.srbija.gov.rs/?change_lang=en](http://www.srbija.gov.rs/?change_lang=en); United Nations mission at [http://www.un.int/serbia/](http://www.un.int/serbia/); and BBC at [http://www.bbc.co.uk/news/world-europe-17907947](http://www.bbc.co.uk/news/world-europe-17907947) [all last assessed at 12/12/2012]. The case of the Republic of Serbia is an anomaly here. Although it has been designated as a non-contentious case of state formation, the reality is that it came to a diminished size and sovereignty unwillingly with the secession of the various integral parts of the former Yugoslavia into separate states with Montenegro leaving the now defunct union in 2006. Thus, while there was clearly contention, it was not directed toward the establishment of the Republic of Serbia, but rather the dissolution of the union and diminished domain of the state it was a part of. In fact, Serbia informed the UN that it was the legal successor of the membership.


[^166]: See official website of the Swiss Confederation at [http://www.swissworld.org/](http://www.swissworld.org/); United Nations mission at [http://www.eda.admin.ch/missny](http://www.eda.admin.ch/missny); and BBC at [http://www.bbc.co.uk/news/world-europe-17980650](http://www.bbc.co.uk/news/world-europe-17980650) [all last assessed on 12/12/2012]. Switzerland is an anomaly in that it cannot be convincingly argued that statehood was only a reality in 2002 when it joined the United Nations. Switzerland’s neutrality position as a sovereign state is well documented and as such there was no process of state formation leading to membership in the United Nations in 2002.


“Since 1945, the Minorities at Risk data project\textsuperscript{170}… has identified at least 283 groups at political risk for discrimination and repression, many of which have engaged in militant activism in order to advance claims of self-determination.” (Toft, 2012: 582) Pavkovic and Radan have counted 61 recent secession movements including 21 that ended successfully, 23 ongoing ones, 14 that failed to secure international recognition and three that went to referenda and failed.\textsuperscript{171} These ongoing secession-self-determination claims range from Corsicans in France to the Kurds of Turkey, while some cases considered failed to date due to lack of international recognition include Somaliland in Somalia and South Ossetia in Georgia. Considering the number that have actually made it to statehood over the past 23 years suggest that self-determination movements are more likely to fail.

The assessment of the existence of political contention in the process of state formation is significant as it is an indicator of the fact that power interests and self-determination aspirations were at odds at some point. It is here suggested that it is only at the point where this conflict was dulled, or, in other words, where there was an alignment between those two positions, or perceived identities and interests, that state formation is possible. The case studies in this analysis will attempt to show how this alignment is made possible and what the role a legitimation process plays. Of the above 38 states, 33 entailed a path toward statehood that was to some degree contentious and in each case there were voices calling for self-determination, some more organized and vocal than others. In each case there were also discernible primary power interested states, either of a regional or international nature. On the other hand, there were

\textsuperscript{170} See Minorities at Risk data project at http://www.cidcm.umd.edu/mar/data.asp (accessed 12/31/2012)
\textsuperscript{171} See Appendix to Pavkovic and Radan (2007, 257-259). The actual numbers included in the 61 cases were 15 unrecognized which includes Kosovo and I recounted under the heading of successful, as well as South Sudan under still active that I also recounted under successful.
five cases of state formation that were non-contentious or uncontested. In each of these cases there was not a self-determination call, and the power interest(s) were generally mute, resulting in an uncontested ascension to state membership in the United Nations.

Of equal interest are those self-determination claims that face contentious state power interests that have failed and ended or which have failed to date to attain the legitimacy to be accorded the path to statehood, which represent negative observations in the sense that statehood is as yet elusive. “Self-determination kills. Self-determination conflicts are among the most persistent and destructive forms of warfare. Given the structural inequality between an armed self-determination movement and the opposing central government, the ‘national liberation movement’ will often resort to irregular methods of warfare, possibly including terrorist tactics. Governments tend to respond with disproportionate force to challenges of this kind. A spiral of violence may develop leading to profound destabilisation (sic) of societies placed at risk of disintegration, as seen in Sri Lanka or Sudan. And, due to the doctrine of non-intervention, international actors are traditionally hesitant to involve themselves in attempts to bring about a settlement of the conflict.” (Weller, 2008: 13) As noted above, since 1945, there have been 94 secessionist conflicts each resulting in deaths of at least 25 persons, which satisfies the definition of war employed by the Peace Research Institute Oslo (PRIO), in addition to 22 ongoing secessionist conflicts as of 2008.172 These data suggest that of the 94 wars concluded, 25 resulted in eventual statehood, with seven achieving statehood after 1989 (all included in the above Table 1 with the exception of Kosovo), and eight in partition. The eight cases of partition include a mixed bag at various stages of poise for eventual statehood including Cyprus and Northern Cyprus, China and Taiwan, Georgia and South Ossetia, Georgia and Abkhazia,

172 See Toft (2012) and PRIO http://www.prio.no/
Indonesia and Aceh, India and Bodos, Somalia and Somaliland, and Moldova and Transnistria. These cases would actually be interesting case studies to which to apply the hypothesis of this research. For example, Taiwan has not yet attained membership in the United Nations due to the veto of China. Is there a legitimation process that Taiwan could pursue discursively such that China would reassess its power interests and redefine its identity thus enabling an alignment between it and Taiwan’s aspiration for full statehood as defined by UN membership? Taiwan has continuously applied for membership which is subsequently vetoed by China. The case of Somaliland is of similar interest.

Of the remaining 61, an additional 11 resulted in increased autonomy but remained a part of the original state. In the remaining 50 cases of conflict, almost half, did not result in any form of increased independence in response to the underlying self-determination claim, with an additional one ongoing (Western Sahara). As of 2008, there are at least 25 additional cases of secessionist conflict, representing the third subset of the universe of observations of this research. The following Table 2 looks at 19 ongoing cases identified by Toft from the PRIO dataset, including Western Sahara and Chechnya, as a subset of the actual number of ongoing self-determination movements ranging from contentious to violent. Table 2 also identifies the main power interests including the state from which the self-determination claim emanates.

“Presentation of a petition, taking of a hostage, or mounting of a demonstration constitutes a performance linking at least two actors: a claimant and an object of claims…All forms of contention rest on performance, but performances range from direct assaults on others to theatricals staged for nearby or distant audiences.” (Tilly and Tarrow, 2007: 12) This is the process of communicative action in which the self-determination claimant caters to both primary

173 Weller places this number at 26 (2009, 19)
and secondary audiences, as will be discussed more fully in Chapter 6. Unlike Table 1 in which only contention was identified, in assessing the ongoing self-determination movements, a higher bar of violent conflict is being employed just as a means of limiting the universe of negative observations. Contentious, defined as a power interest opposing the self-determination claim (see earlier discussion), including violent, self-determination claims, involves an antagonist and a protagonist by definition; in fact, as noted, all self-determination claims are contentious by definition.

The objective of Table 2 is to illustrate that in this drama, whether or not the final scene involves a happy ending is a function of the interplay between the characters in the legitimation process. The added attribute of violence is not a characteristic of whether there is a self-determination claim, but rather of the form of speech acts the underlying claimants is employing and is thus worthy of being isolated for discussion to discern its impact. It is important to note here that ‘negative’ does not necessarily mean ‘failed’. It is important to note that the cases in this list are failed only in a static sense as a moment in time assessment to the extent that the self-determination claim and efforts to attain statehood are ongoing. The fact that in each of the cases in Table 2, the final outcome is not yet apparent is also a characteristic of self-determination movements in that they are not over until they are over; in other words, when either there is statehood or the self-determination claim and claimant are muted. Hence, the final status of failure or success can only be assessed within the context of a dynamic process of action and counter action, or communicative action. This distinction is relevant in the context of the case study on Palestine, as set forth in a subsequent chapter.

Also interesting to note is that, in addition to the groups claiming to represent underlying self-determination claims (some with website and media outlets of their own), civil society
groups for each case noted below have proliferated to support the self-determination claims of the underlying group, or attain peace and conciliation between the relevant parties. The role of these groups (many noted in the relevant footnotes to Table 2) in legitimation of the underlying claim or cause and garnering both primary and secondary support should be integrated into case study analysis to test the hypothesis being argued herein. As shall be suggested in the case studies in the following chapters, communicative action entails a broad range of speech acts, ranging from information dissemination, advocacy efforts, to violence, directly from the self-determination claimant to the secondary stakeholder groups who participate in, interact with, and are impacted by such acts. Identities of primary stakeholders, in turn, are impacted by this discourse as illustrated in the following chapter.

Table 2: Ongoing Violent Self-Determination Movements

<table>
<thead>
<tr>
<th>Date of Initial Conflict</th>
<th>Self-Determination Group/People</th>
<th>Self-Determination Claimant(s) (main actors)</th>
<th>Host State – Primary Power Interest</th>
<th>Additional Power Interest(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1948</td>
<td>Palestinian176</td>
<td>Palestinian National Authority (PA), PLO, Hamas</td>
<td>Israel</td>
<td>Arab League, USA, EU</td>
</tr>
</tbody>
</table>

174 The source of the data and information in this table is from Monica Duffy Toft (2012), the PRIO website found at http://www.prio.no/, the Heidleberg Institute found at http://hiik.de/en/conflikterbarometer/pdf/ConflictBarometer_2010.pdf, and review of literature, advocacy/movement group website, and select media citations for country-specific insights as indicated in the relevant footnotes.


176 See case study analysis in chapter 6.
<table>
<thead>
<tr>
<th>Year</th>
<th>Group</th>
<th>Description</th>
<th>Location</th>
<th>details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1949</td>
<td>Karen</td>
<td>Karen National Union, Karen National Liberation Army</td>
<td>Burma (Myanmar)</td>
<td>USA, China</td>
</tr>
<tr>
<td>1959</td>
<td>Shan</td>
<td>Shan Democratic Union, Restoration Council of Shan State (RCSS) - political arm of Shan State Army (SSA)</td>
<td>Burma (Myanmar)</td>
<td>USA, China</td>
</tr>
<tr>
<td>1970</td>
<td>Moro and Mindanao</td>
<td>Moro Islamic Liberation Front, Moro National Liberation Front, Bangsamoro Islamic Freedom Movement, Bangsamoro Islamic Freedom Fighters</td>
<td>Philippines</td>
<td>Malaysia, Indonesia. (non-state Al Qaeda network)</td>
</tr>
<tr>
<td>1974</td>
<td>Balochs</td>
<td>Baloch National Party, Baloch Republican Party, Balochistan Liberation Army, Balochistan Liberation Front, Baloch Republican Army</td>
<td>Pakistan</td>
<td>India, USA, Afghanistan</td>
</tr>
<tr>
<td>1975</td>
<td>Sahrawi - Western Sahara</td>
<td>Polisario Front, Sahrawi People’s Liberation Army (SPLA)</td>
<td>Morocco</td>
<td>Arab League, Algeria, Mauritania, EU</td>
</tr>
</tbody>
</table>


180 While Al Qaeda is not a state actor, it is noted here as a primary stakeholder, between parenthesis, in that its action and declared objectives involves explicit threats to both the legitimacy of particular states, as well as grounds upon which self-determination claimants base their actions and extract stakeholder support.


<table>
<thead>
<tr>
<th>Year</th>
<th>Region</th>
<th>Group/Grouping</th>
<th>Country 1</th>
<th>Country 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>1976</td>
<td>Ogaden</td>
<td>Ogaden National Liberation Front (ONLF), Western Somali Liberation Front (WSLF), Ogaden Republican Army</td>
<td>Ethiopia</td>
<td>Somalia</td>
</tr>
<tr>
<td>1982</td>
<td>Manipur</td>
<td>Manipur People’s Army, Revolutionary People’s Front of Manipur, Manipur People’s Liberation Front, United National Liberation Front (UNLF), People's Revolutionary Party of Kangleipak</td>
<td>India</td>
<td></td>
</tr>
<tr>
<td>1984</td>
<td>Kurds</td>
<td>Kurdistan Workers Party (PKK), Peace and Democracy Party (BDP)</td>
<td>Turkey</td>
<td>Iran, Iraq, Syria, EU, USA</td>
</tr>
<tr>
<td>1990</td>
<td>Assam</td>
<td>United Liberation Front of Asom (ULFA), Muslim United Liberation Tigers of Assam, National Democratic Front of Bodoland</td>
<td>India</td>
<td>Bangladesh, Pakistan</td>
</tr>
<tr>
<td>1990</td>
<td>Azawad</td>
<td>National Movement for the Liberation of Azawad (MNLA)</td>
<td>Mali</td>
<td>Algeria, Libya, Morocco, Niger, Mauritania, Burkina Faso, France</td>
</tr>
<tr>
<td>1990</td>
<td>Uighurs</td>
<td>The East Turkestan Islamic</td>
<td>China</td>
<td>Russia,</td>
</tr>
</tbody>
</table>

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183 See Ogaden page at the Unrepresented Nations and Peoples Organization (UNPO) found at [http://www.unpo.org/members/10714](http://www.unpo.org/members/10714), Ogaden Online found at [http://www.ogaden.com](http://www.ogaden.com), and Ogaden National Liberation Front found at [http://onlf.org](http://onlf.org) [all last accessed 2/16/2013]


187 Although there is a case for a historical state of Azawad, with recent military action led by France in the region, this could be a case of a failed and ended self-determination movement. The region is rife with vying militant factions, with differing and inconstant political objectives, such as Ansar Dine who were recently defeated by the French military action. See MNLA website found at [http://www.mnlamov.net/english.html](http://www.mnlamov.net/english.html), “Hundreds of rebels killed, France to leave Mali from March,” *SABC News*, February 6, 2013 found at [http://www.sabc.co.za/news/a/0a6e61004e73cd36bf73ff7da4cd6ad7/Hundreds-of-rebels-killed,-France-to-leave-Mali-from-March-20130602](http://www.sabc.co.za/news/a/0a6e61004e73cd36bf73ff7da4cd6ad7/Hundreds-of-rebels-killed,-France-to-leave-Mali-from-March-20130602), and list of relevant articles on *Al Jazeera* found at [http://www.aljazeera.com/category/organisation/tuareg-rebel-azawad-national-liberation-movement](http://www.aljazeera.com/category/organisation/tuareg-rebel-azawad-national-liberation-movement)
<table>
<thead>
<tr>
<th>Year</th>
<th>Region</th>
<th>Group/Conflict</th>
<th>Type</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>Chechens</td>
<td>Chechen National Congress, Ikherian Separatists, Special Purpose Islamic Regiment (SPIR), Riyadus-Salikhin Reconnaissance, Sabotage Battalion of Chechen Martyrs</td>
<td>Russia</td>
<td>(non-state Al Qaeda network)</td>
</tr>
<tr>
<td>2003</td>
<td>Darfur</td>
<td>Darfur Liberation Front, Sudan Liberation Movement, Justice and Equality Movement (JEM)</td>
<td>Sudan</td>
<td>Arab League, USA</td>
</tr>
<tr>
<td>2004</td>
<td>Northern</td>
<td>Boko Haram</td>
<td>Nigeria</td>
<td>(non-state Al Qaeda network)</td>
</tr>
<tr>
<td></td>
<td>Nigeria</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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The Chechencenter describes its mission as “an independent Chechen international Internet news agency... Internet Agency Chechencenter focuses on events in the World, the Caucasus and in Russia. One of the main tasks of Chechencenter is to report events in the Chechen Republic of Ichkeria in connection with the military aggression of Russia against the CRI” found at [http://www.chechencenter.info/about-us.html](http://www.chechencenter.info/about-us.html) [all last accessed Feb. 21, 2013]


<table>
<thead>
<tr>
<th>Year</th>
<th>Region</th>
<th>Group/Claim</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>Dimaraji</td>
<td>Bundu dia Kongo</td>
<td>India</td>
</tr>
</tbody>
</table>

“Self-determination conflicts are taking place all over the globe, and among the few that have escalated to war, some have rivaled or exceeded the destructiveness of many interstate wars.” (Toft, 2012: 594) Each of the 19 cases identified in Table 2 chose to make its self-determination claim heard though a violent discursive communication tactic at some point in its efforts and none of them has to date been successful in attaining statehood. On the other hand, not all of them are at the same level of legitimation. For example, Palestine, arguably, may appear to be closer to possible statehood than the Chechens of Russia or the Boko Haram of Northern Nigeria. One question to be posed is at what point did the tactics change, and did they

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oscillate between violent and non-violent contention, and how was this met by the relevant power interests, recalling the cases discussed earlier such as South Africa and Western Sahara? Reverting back to Table 1, as a matter of interest, of the 33 states that attained statehood, as noted earlier, seven of them employed violent tactics at some point in their legitimation process. Kosovo would make that number eight. The next question to be posed then is did the violence cease at some point in the legitimation path, did the discursive process employ other tactics, and can the process be traced to eventual successful statehood? To address these questions and test the hypothesis of this research would require a temporal tracing of events to determine what tactics were employed, at what time, by the self-determination claimant and how, if at all, these changes in tactics impacted the posture and assessment of interest by the power states of primary concern. Such is the basis for the case studies to be analyzed.

Self-determination is the starting point for sustainable sovereign statehood, and for the stickiness of statehood to develop; and legitimation of the self-determination claim is the road upon which this process must pass for its legitimacy to be established. Christian Reus-Smit argues that the swell of states post-1945 can be explained by an increase in “‘subject peoples’ struggles for the recognition of individual rights.” (2011: 208) He posits that this view has greater explanatory value than a realist, structuralist, or even liberal realist (English school) approach. I argue that he is in fact enriching the liberal realist view of the international system, itself part of the liberal realist triad as defined by Buzan, and goes to the heart of the Grotian notion of the relationship of the ruler with the ruled. His main argument is that the spawning of the Westphalian nation state post-1945 can be linked to the decline in various European-based empires directly linked to the lack of ‘legitimacy’ of rule in the eyes of the dominated peoples.
In other words, the struggle for freedom was an attempt to define legitimacy; it was a process of legitimation. Fazal would seem to agree noting that as more states are perceived as legitimate both in the eyes of the ruled as well as in the eyes of the international community of states, less states are likely to be challenged to the death. “The claim that more legitimate states are more likely to survive could be consistent with the argument that a norm against conquest has prevented violent state death after 1945. Particularly if the standards for international recognition of states have been more liberal in the post-1945 era, the general norm against conquest and the specific norm against conquest of legitimate states may have become congruent.” (Fazal, 2007: 4-5)

As suggested, legitimation of actorhood reaches fruition at the nexus of the three sources of power in international relations. In other words, states, especially those with power interest, come to purposely accept an actor’s claim to self-determination, through acceptance of the validity of the claim, through a determination of self-interest, and the balance of international society, through any of the three sources. Without this resolute acceptance by all parties, both primary (power interests) and secondary stakeholders, ultimate recognized sovereignty remains elusive. Moreover, the tension between the international law principles of sovereignty and that of self-determination tends to place the latter in a secondary status to the first. As argued by Allen Buchanan, “[i]nternational law should recognize a remedial right to secede but not a general right of self-determination that includes the right to secede for all persons or nations. From the standpoint of international law, the unilateral right to secede—the right to secede without consent or constitutional authorization — should be understood as a remedial right only, a last-resort response to serious injustices …”, so as to keep open the many other options prior to
statehood that may make host states more amenable to considering self-determination claims if they can allay their fears of state-breaking. (2004:331)

Weller suggests that “[c]lassical self-determination, narrowly conceived in the colonial context, cannot contribute to the resolution of the presently ongoing self-determination conflicts around the world…[I]f international law does not address the actual causes of armed contestation about the identity of states, it is likely to remain irrelevant in this area. As illustrated by the crisis involving Kosovo, groups struggling for statehood are unlikely to be impressed by the argument that their immediate concerns cannot be addressed by the international legal order, due to larger considerations of stability in the international system.” (Weller, 2008: 9) Yet, it is exactly because of cases such as Kosovo that the definition in positive international law of what constitutes legitimate cause for self-determination has shifted. To argue that the norm, as embedded in international law, remains restrictive of the definition of what constitutes a legitimate claim of self-determination, negates the events on the ground and emerging international practice would suggest otherwise.195 While Weller argues that the international view of what constitutes legitimate cause for self-determination is defined by the decolonization and salt-water approach of the post-1945 United Nations era, he concedes that new ways of attaining statehood through self-determination are emerging.

Proof of a broader definition of self-determination as embraced in international rules and norms is in the proverbial pudding of new state formations since 1989. The conclusion of the dialectic post-1945 and put in practice post-1989 around what constitutes the basis for a self-determination claim toward the end of statehood is indicated by the slew of states which have

attained this status, and can be summarized as those who want to shed the yoke of colonization, external domination or occupation, and, arguably, internal human rights abuses and group discrimination. Each of the cases of state formation post-1989 can be attributed to claims that rest on one of these three conditions (or combination thereof). Finally, as Buchanan notes, the legitimacy of a claim of self-determination toward statehood is different from “the right to be recognized as a legitimate state”. (2004: 334) The process of making the self-determination claim to it being recognized as legitimate and represented by a legitimate representative is but one part of the legitimation process toward statehood; gaining the space to effectuate that claim and gain recognition as a legitimate state is what closes the loop in the self-determination-sovereignty continuum. How then is acceptance of the legitimacy of the claim generated and how is it made effective so that its noise transcends the legal tranquility of sovereignty?
Chapter 5
From Noise to Voice: The Legitimation of Self-Determination

Whether legitimations are convincing, whether they are believed, depends naturally on empirical motives; but these motives are not formed independently of the (formally analyzable) justifactory force of the legitimations themselves. We can also say that they are not independent of the legitimation potential, of the *grounds or reasons*, that can be mobilized. What are accepted as reasons and have the power to produce consensus, and thereby to shape motives, depends on the *level of justification* required in a given situation.196


In 2002, Stephen M. Saideman observed that, “little systematic work has addressed why some ethnic groups get more help in their battles against their host states even though the level of external assistance influences whether ethnic groups, particularly separatist groups, are successful.” (2002: 27) A decade later, Toft concluded that little is yet known why. (2012: 591) Saideman tested various hypotheses to assess when and under what conditions separatist movements gain external support for their self-determination claims. The external support he assessed covered both states and external non-state actors. He looked at three main questions, namely, the challenge to the norm of respect of sovereign borders that such self-determination claims pose, the “relative power of the host state” and whether this influences external support to the group, and the role of ties on an ethnic basis that these groups have with external parties. (2007: 28) He concluded that “ethnic politics influence which groups receive support.” (2002: 46) Other of his findings were inconclusive, but he noted that realist explanations that power interests would determine how external states would act and react to self-determination claims in other states could not be rejected. (2002: 43) He also found that violence does tend to influence

196 Italics in original
the external support self-determination movements receive, but was inconclusive as to whether this support increased how violent the movement was. It also did not determine if external support was linked to the regime type of the state from which the self-determination group was attempting to separate. In other words, he did not conclude whether self-determination movements emanating from less liberal democratic states are likely to get more support, suggesting that the support may drop as the host state “develop new political structures.” (2002: 47) His most definitive finding was that states are inconsistent in their support of self-determination groups. (2002: 47) These findings provide a good starting point to assess how self-determination claims engage with external parties, both state and non-state, as well as with their own domestic support base.

As noted, self-determination groups or claimants are a form of social movement engendering political contention, which in turn, as defined by Tilly and Tarrow, involves “sustained campaigns of claim making, using repeated performances that advertise that claim, based on organizations, networks, traditions, and solidarities.” (Tilly and Tarrow, 2007: 202) As self-determination claimants engage in contentious politics, this process of communicative action is rarely confined to the borders of the disputed territory upon which statehood is being claimed. Because “transnational links have taken on a qualitatively new character,” the reach of the communicative action is global with increased transnational activism and coalition building, as well as diffusion of contention beyond borders. (Tilly and Tarrow, 2007: 171) Central to the question of legitimation of self-determination claims is how this claim is heard by the other, domestic and international. The ‘other’ here is being put into two distinct camps: firstly, the primary state power interest, which by definition includes the state from which the claim emanates, as well as both regional and international states with a direct interest in the outcome,
whether for political, economic, or strategic calculations from a realist and rationalist perspective, and who also have the capacity to effectively support or impede progress on the underlying self-determination claim. And the second camp is the audience that the self-determination group engages with, both domestically, in terms of the people it claims to represent, as well as the rest of the domestic population and all its internal institutions such as media, political coalitions and parties, unions, and other organized entities, and, further, globally, in terms of other states with peripheral impact on the primary state powers such as coalition partners, regional and international organizations, and international media, collectively termed ‘secondary stakeholders’. More fully, this secondary power interested group also covers the breadth of non-state actors and the gamut of international civil society, as defined widely to include non-governmental organizations (‘NGOs’), activist groups focused on a wide range of social and political issues including self-determination, independence and secession, as well as from the environment to child labor, to women’s rights, and multi-national corporations, or as collectively referred to as transnational actors (‘TNAs’). (Elkoby, 2003: 24) While two separate camps fall within the definition, it is important to note that neither group is homogenous in its calculations, level of engagement, reactions, or interests. The extent to which garnering support from secondary interest groups can impact the trajectory of the self-determination claim makes it an important element of the legitimation process.

How then are these calls for support from external (both domestic and global) groups made and in what context? Here, the analysis is informed by both liberal pluralist and social constructivist approaches197 whose focus is on the process by which transnational actors gain traction, legitimacy, efficacy, and ultimately results, on the one hand, and how this overall is

197 See the bibliography for Thomas Risse, Thomas Risse-Kappen, Martha Finnemore, Kathryn Sikkink, Jutta Joachim, Jens Steffek, Alexander Wendt and Bosire Maragia.
determinant of global governance, on the other hand. Since Alexander Wendt suggested that “anarchy is what states make of it”\(^{198}\) in the context of state identities and power interests, constructivism has been brought into the realm of international relations studies, and is thus relevant to how state and non-state actions are viewed from the perspective of global governance. As noted by Hurd, legitimation has an impact on the strategic behavior of states such that it “can simultaneously strengthen the rules by which strong states seek to govern while also putting constraints on the freedom of action of both the strong and the weak.” (2007: 173) Through this process “legitimacy in international relations cannot be adequately studied by approaches that adopt either the “logic of consequences” or the “logic of appropriateness” model. Instead, it supports an empirical research program that applies Wendt’s work on agent structure to the study of states and international norms.”\(^{199}\) (2007: 173) Such an approach “advances the debate between constructivist and rational choice by moving beyond the dichotomy suggested by the twin “logics” of appropriateness and consequences.” (Hurd, 2007: 179)

This approach suggests that what states consider to be in their interest is also a function of the structure within which those interests were found. Thus, “interests and socialization are both important in understanding state behavior, and neither is reducible to the other…[S]tates, by virtue of being corporate entities, have strong beliefs about their interests, and they pursue strategies to maximize them. But they are also corporate entities only by virtue of the social recognition of that identity by the community, and so their understandings of their interests are shaped by the expectations of the community.” (Hurd, 2007: 76) In other words, states will act rationally to maximize their perceived self-interest, including calculations of costs and pay-offs

\(^{198}\) Alexander Wendt (1992)

\(^{199}\) See March and Olsen (1998) for a discussion of the “logic of consequences” and the “logic of appropriateness”
from a particular course of action, and this extends to when and how they will consider a claim
to be legitimately within the bounds of the self-determination norm and when an actor is to be
accorded the recognition as a legitimate representative of that claim, that being the process of
legitimation. Moreover, this perception of self-interest is a function of being a state within a
defined international system in which they are sovereign. Yet, these calculations and perceptions
are not constant nor are they static; they are both changing and dynamic and can be acted upon
within the context of the society in which they are an actor resulting in a shift and a requirement
for a recalculation of costs and pay-offs and, ultimately, self-interest and identities

As a possible synthesizer, constructivism as a research approach is not necessarily
inconsistent with either major approaches to international relations; while being integrated into
the liberal realist epistemology, it offers a means to develop a fuller understanding and better
inform both liberalism and realism and their variants. Hence a brief consideration of these two
approaches is warranted. All major theories of international relations agree that states are the
main international actors, operate in an anarchic system, and are compelled by national security
interests. However, whereas realists build all their explanatory and predictive theory on these
elements, neoliberal institutionalism recognizes that not all international relations are conflictive
in nature and that states may benefit from creating institutions and regimes to address instances
where cooperation may be in the national interests. Accordingly, the approaches these views
take on the role of self-determination and its interplay with the sovereignty of states differ, even
if in the end, both views would conclude that self-determination is a feature of international
relations.

A realist view of the sovereignty of the state is that it is supreme above all other
considerations, and that a power interested state would view self-determination from a self-
interested perspective. Such is the approach recently put forth by Sterio (2013) where she argues that great power politics is the sole basis for the success of self-determination claims. In other words, if the great powers view it to be within their interests to support the claim, statehood is likely to result. In the absence of such support, statehood is elusive. Her argument suggests that all other variables and factors are secondary noting that “all successful peoples (East Timor, Kosovo, and South Sudan) have enjoyed support from the majority of the great powers… Great powers have exercised determining roles in ensuring that some people attain statehood. Such peoples have “earned” sovereignty because of the great powers’ support. Conversely, all peoples that have not earned their sovereignty because of willingness to engage in warfare and at times human rights abuses at the expense of the mother state or other regional ethnic groups, have been denied support by the majority of the great powers.” (Sterio, 2013: 177) Such a conclusion may suffer from over-simplification in that it does not take into account the historical incidents of, where despite resorting to violence, statehood has resulted, such as in the case of all three states she refers to as examples to support her argument. This is likely because her assessment is based on the state of affairs of the self-determination movement at the last stages of its legitimation process and pre-statehood; it is a static assessment that ignores the dynamics of the path to statehood and how that path can take different turns, as shall be discussed below, in an almost organic fashion due to the particulars of the relationships of the stakeholders involved and their reaction to each other’s actions. Along this path, state power interests may always be the guide for its actions, however those interests are themselves not static.

“Realism signifies that states are human agencies which interact not in respect to international law or other norms but solely or at least primarily out of regard for their national interests – reason of state.” (R. H. Jackson, 1990: 8) In other words, supporting a self-
determination claim would be nothing more than an expression of perceived national interest. Both realists and neorealists consider that at the systemic level, the main actor is the state as a unitary actor whose main ‘moral’ objective is survival, and that survival is only guaranteed through the maximization of power, which in turn is primarily an aggregate of the state’s capabilities. (Kenneth N. Waltz, 1993: 50) In the process of pursuing its objective of maximizing relative power, a state will balance its power within the system. Hence, neoclassical and structural realists would see self-determination as a tool of power to be wielded in the interests of the balancing of power.

Waltz takes this a step further by arguing that not only are states, as “like units” in terms of their function, the sole actors in an anarchic system (characterized by no super-authority structure above states), but that the most powerful states are the main actors and the international system is defined by them. Waltz does not deny the existence or role of other actors or influences in the system, such as international organizations and international law (which he refers to as “informal rules”). He simply dismisses them as ultimately having no impact on the major states, which define the system and thus define those other elements by “set[ting] the terms of the intercourse”. (Waltz, 1979: 94). Waltz argues that major states tolerate these other elements as long as it is in their interest to do so in the prevailing winds of power politics. Should that be maintained as a reasonable view of state behavior, it does not presuppose that such determination of interest does not change over time and cannot be made to change over time. The possibility that the perceptions of self-interest are variable and constitutive with the actions and reactions of other state and non-state actors, is what goes to the heart of the possibility of influencing such self-interest assessments through the process of legitimation of self-
determination claims. In other words, communicative action can play a role in the reformulation of self-interest. Realists view international law and the norms it may embrace, such as self-determination, at worst, as epiphenomenal, or, at best, useful as a tool for fulfilling national security interests. Neoliberal institutionalists, or rationalists, recognize that states form institutions and regimes to enhance cooperation possibilities, and international law is, on the whole, one of those regimes. Andrew Moravcsik argues that each approach is valid only through a multicausal liberal approach where realism and institutionalism have a place at the analytical table only after liberalism has first had its go.200 His basic premise is that state behavior is a function of underlying preferences, and not state capabilities (realism) or informational feedback (institutionalism). His argument that state behavior can only be understood as an expression of these underlying societal preferences as reflected in the leadership of the state would be acceptable if it didn’t contain so many unknowns. Moravcsik’s concept of liberalism fails to explain how these preferences are universally expressed, and by attempting to address each and every possible state behavioral pattern, his theory may be overextending itself. Liberal theory attempts to explain economic, social and political behavior under one single rubric distilling all behavior to a matter of the preferences of the underlying actors, with the assumption of rational behavior. The theory also assumes symmetrical modalities of measuring and assessing preferences. Moravcsik claims that the only preference that matters is that of the dictator (and his elite entourage), and that this is enough to explain state behavior and choices. Moreover, the approach does not discuss how preferences are expressed and measured. A view that claims society consists of a wide range of actors such as interest groups, trade unions, political parties,

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200 See Andrew Moravcsik (1997).
bureaucracy, and so on, and that all these actors’ preferences matter, cannot then rely on these preferences merely being expressed in an electorate vote.

Constructivism, building on most of the basic assumptions of neoliberal institutionalism, recognizes that international law is a distinctive, and perhaps, defining element of the international system; it offers both weak and strong states a basis to achieve particular outcomes (very similar to R. H. Jackson’s view of negative and positive sovereignty); it tends to cast a longer ‘shadow of the future’ offering more cooperative outcomes, institutes a framework for states to interact with one another, and, in fact, reflects back on the development of states’ identities. This approach offers the means to understand how state interests can be redefined and what the relevance of international law and norms is in this process, including the relevance of issues of sovereignty and self-determination and how they pull at either end of the continuum. Constructivism recognizes that the international system is a social structure affected by individual actors in their relations with one another, and embraces the iterative and dynamic nature of social interaction as a constitutive component of international relations.

Alexander Wendt suggests that rather than a total focus on the anarchic nature of the system as driving state interests, consideration should be given to how interests are generated. His causal argument is that interests are driven by identities and identities are a function of intersubjective meanings.201 According to Wendt, both neorealist and neoliberalism share commitment to rational choice where identities and interests are given, or are exogenous. Anarchy is seen as a state of nature, and states behave within it. He goes on to argue that liberalism does go a step further than realism but lacks a systemic theory of how changes to identity and interests occur, and thus must revert to realist insights about structure as a means to

201 See Wendt (1992) and Wendt (1999).
advance their own arguments about process. Constructivism attempts to bridge that divide by arguing that anarchy is an institution constructed from social interaction from which identities and interests are determined. The main principle of constructivism is that actors behave towards objects based on the meaning to them of the object. Thus, changes can occur when meanings change. The meanings in turn arise out of interaction. Perhaps the most controversial element of Wendt’s argument is his normative approach that statism and states can be historically progressive.

Other constructivists have advanced Wendt’s arguments by looking at particular areas where ideas are seen as forging identities, which in turn define interests. Peter Katzenstein, Martha Finnemore, Thomas Risse, and Kathryn Sikkink have all looked at particular questions where ideational considerations were seen as causal factors to outcomes. Peter Katzenstein, in his edited volume, *The Culture of National Security*, explains that norms shape national interests, including by extension that of self-determination. (1996: 1-30) A norm of shared security concerns shapes national policy and commitments towards security communities; hence, a state’s reaction to a self-determination claim would depend on how it is perceived vis-à-vis the relationship of the state whose sovereignty may be threatened. Martha Finnemore argues that norms over what constitutes legitimate intervention (or involvement), in such instances of perceived threat, shape state attitudes toward humanitarian intervention, for example. She posits that while changes in norms do not completely explain state behavior, they do tend to create the conditions for allowing changes to political behavior, which would entail interventions or posturing towards claims for self-determination. (Katzenstein, 1996: 153-161) Thomas Risse-Kappen builds on this base to make a convincing argument that changes to identities can be forged by gradual changes to ideas. He argues that while states may initially base their views on
human rights considerations on pure internal political calculations, interaction with liberal states catalyzed by transnational advocacy groups can generate changes to ideas which in turn change perceived national identities. Hence, these positive norms can be generated to bring about positive changes to state behavior. (Katzenstein, 1996: 357-399)

Ultimately, where constructivism is most vulnerable is in its use as a normative tool for social change, rather than as a tool to understand how ideational factors generate outcomes. Thus, while the majority of constructivist inquiry has focused on areas of positive norms, how they are generated and internalized at both a domestic and international level, such as human rights, additional areas of constructivist inquiry may focus on areas where negative ideational factors have generated outcomes such as war and terrorism; or, indeed, how international norms of sovereignty versus self-identification can play out against each other and the alter-identities that each entails. In this way, the research agenda would be broadened to areas where norms failed to change as a result of interaction among states, such as in the case of Turkey’s decades long interaction with Europe in its attempt to join the European Union, or, more relevant here, as in the example of the many instances where self-determination struggles have failed to extract positive state intervention or support.

Thomas Risse (1999) provides a basis for considering the dynamics of the domestic internalization of international norms. At an abstract level, Risse’s analysis is useful in describing the significance of extra-state action such as international social movements, or even domestic movements, that manage to transcend state borders by way of transnational advocacy groups (“TNANs”). In this way, Risse (as well as Keck and Sikkink) have borrowed analytical approaches from both Jürgen Habermas with regards to communications theory, as well as
Charles Tilly and Sidney Tarrow on social movements and political contention. Yet, Risse starts with this framework and attempts to take it further. He has applied their analytical framework in the area of human rights where a wide array of actors, including norm-violating governments, Western governments, domestic opposition groups and TNANs represent independent variables. Norm-internalization, in his analysis, is the dependent outcome where communicative action and speech acts are the intervening variables. Accordingly, Risse’s approach has a greater ambition than the mere description of communicative theory in action. His aim seems to be the filling of a lacuna left by neo-utilitarian theories or rational choice models at the international systemic level.

Risse uses the definition of TNANs identified by Keck and Sikkink, namely “those relevant actors working internationally on an issue who are bound together by shared human rights values, a common discourse, and dense exchanges of information and services.” (1999: 537) Such a definition is useful in that it clearly identifies a network of groups and individuals who are bound together toward a “common cause”, but its shortcoming is that it does not exclude a whole host of “networks” whose normative affinity and object ends may be quite different. For example, within the parameters of that definition, TNANs may typify those working towards eradication of violence against women, but it may also describe a diffuse non-state violent movement. The lack of an exclusionary and unique definition weakens the argument because it suggests that the analysis may be apt to describe a process of (positive) change but not a kind of (normative) change.

However, Risse’s epistemology also offers another reason for pause. He defines his actors in terms of two types of governments: norm-violating governments and Western

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governments. Assuming that the two groups are exclusive; does this analysis assume that Western governments are never norm-violators? In other words, since “Western governments” clearly implies the United States, as the uni-polar leader, as well as Europe, this analysis has not distinguished itself from neo-utilitarian theories of international relations, especially those grounded in realism. A realist could easily argue that TNANs are not independent actors, but tools of power politics, and that to the extent that they achieve results, it is because it is in the interests of Western governments for them to do so. In fact, in all of the 11 empirical cases offered by Risse, the US and Western government interests could easily be seen to lie with the adoption by those countries of the norm being subjected to communicative action at the instigation of the TNANs.

Conversely, if Risse’s analysis assumes that an overlap between the two government actor groups is possible, the realist argument is even stronger. Such an argument could well be supported by counterfactuals such as the failure of the international landmine ban, the failure of the Kyoto protocols, or the ineffectiveness of the International Criminal Court - all due to US reservations and unwillingness to accept or internalize the growing international norms, precisely because the US claims it is not in its interest to do so. Each of these three international examples involved TNANs, and all three have yet to effectuate any change on the part of the US. The international anti-globalization movement is another case in point. Despite international outreach, it is clearly not achieving its aim. Again, it could be argued that this is due to the fact that the Western governments are resisting, perhaps for good reason, because of interests considerations. Finally, while highlighting the case of South Africa as a success story for TNANs in the face of domestic abrogation of the rights of a whole people, he ignores many other cases where despite international outcries and TNAN activity, no redress to human rights
concerns have occurred, such as the case of Israel and its perceived abrogation of Palestinian human rights. Again, a realist could argue that this is due to the lack of will on the part of the world’s uni-polar power, rendering TNANs useful or useless according to power interests. By juxtaposing Western governments against norm-violating governments and highlighting the role of supposedly normatively-superior TNANs, Risse’s analysis may indeed be cited as further evidence of power politics. Furthermore, by elevating TNANs to a normative high-ground when seen to be acting against norm-violating governments, it can be argued that TNANs lose the right to this moral high ground when they act to effectuate change in Western governments. If this is not the case, then the entire analysis embodies a clear intellectual contradiction and normative double-standard.

Where Risse’s analysis is valuable in the context of the legitimation of self-determination claims is in the framework it provides for understanding the role of TNANs in the process of changing identities and norm internalization. As he notes, global governance is often a catchall phrase incorporating a wide range of meanings from “creating and maintaining a political order and providing common goods for a given political community at whatever level” to “creating political order in the absence of a state with a legitimate monopoly over the use of force and the capacity to authoritatively enforce the law and other rules…. To the extent that the international system contains rule structures and institutional settings, it constitutes ‘governance without government’ by definition.” (Risse, 2004: 2). The primacy of states and the existence of a global order based on anarchy goes to the essence of the distinction between the realist, on the one hand, and the pluralist and social constructivists, on the other. “World politics is no longer about states interacting alone in a state of anarchy, but a complex web of relations between a multitude of actors, both state and non-state.” (Maragia, 2002: 301-302) This line of argumentation goes
directly to the heart of the core assumptions maintained by realists, namely that any such
international community of actors is not of systemic relevance or that this community, along
with states, operates within the framework of global governance. However, “the presence of
legitimate institutions calls into question the notion of the system as an anarchy. To the extent
that a state accepts some international rule or body as legitimate, that rule or body becomes an
“authority”; and the characterization of the international system as an anarchy is
unsustainable…”(Hurd, 1999: 381) In his later work, Hurd discusses the concept of sovereignty
in a post-anarchic international community of sovereign states such that [s]overeignty,
understood as the exercise of legitimate authority in international relations, is not located
exclusively in states. Sovereignty exists wherever processes of legitimation create powerful
institutions of authority in world politics.” (2007, 185)

While the locus of this approach is on non-state actors, it seems to not be appreciated that
the means and ends of such actorhood tend to be qualitatively different from those of self-
determination actors whose end is statehood. As shown above, statehood is a historical
contingency maintained through the institution of sovereignty, itself a manifestation of the social
reality of legitimacy in international relations. It follows that “[t]here is nothing unique about the
organization of authority into a territorial government. Authority can exist (and coexist) in many
institutional arrangements, of which the legitimate institution is one and the territorial states
another.” (Hurd, 2003: 404) In arguing that non-state actors matter, the proponents tend to
engage with realists whose position tends to be that while they agree that non-state actors exist,
their impact on international politics is limited, or rendered epiphenomenal, by state interests.
As argued by Krasner, “[t]here is no evidence that globalization has systematically undermined
state control or led to the homogenization of policies and structures.” (1999: 223)
Yet, both camps tend to fall into this debate based on the conflation of means and ends; the proliferation of non-state actors may, in fact, be seen as being responsive to a void, a situation of supply meeting a growing demand, to borrow from the language of economics. In other words, the ends of a state respond to particular needs, while those of multi-national corporations (MNCs), for example, meet other needs. Whether or not MNCs flourish because of the existence of national boundaries, or in spite of them, is debatable. The fact that transnational illegitimate economic activity is pervasive may suggest the latter. Irrespective, the question that is often not asked in this debate is, if one is willing to entertain that states are not naturally occurring phenomena, why do states exist? Viewed from this perspective, the state is seen as a means rather than an end. Do those same reasons apply to other, non-state actors? If states respond to the political needs of a social group, whether socially heterogeneous or homogenous, to live within defined boundaries free of direct domination by another social group, to what need does, say, Amnesty International respond? If the answer is different, then the analysis of their impact and relevance upon international relations must also consider these different ends. Arguing that the emergence of new non-state entities has little impact at the systemic level limits the scope of vision into the nature of politico-socio life. In other words, not only is the ontology of international relations study expanding, but so must the epistemology grow to recognize the multitude of ends required by the human condition and how the international system is organized to meet them. To the degree that self-determination movements aspire to an independent and holistic expression of a national identity, the vehicle of the state within the construct of the international system must be seen as the vehicle of choice to respond to those needs as a means to that end.
In the context of states and their interaction with rules, norms and legitimacy of non-state actors, Hurd concludes, “...we have reason to suspect that legitimation and internalization of a rule or institution have taken place in states when we observe: (1) that states treat the rule in question as a necessary part of the strategic landscape for decision making; (2) that they cease making cost-benefit calculations about the effects of breaking the rule as they consider future behaviors; and (3) that they use as resources the symbols that derive from the rule or institution.” (2007, 79) Hurd notes the importance of legitimacy as a symbol of discourse in the interaction of states, one that is very relevant to the discourse involved in either supporting or disclaiming self-determination calls. “The payoffs sought by actors through strategic behavior might be material or symbolic, and in either case they depend significantly on sociological processes related to legitimation. A Symbol is a good—one it makes sense to attempt to acquire—by virtue of the process of legitimation that surrounds it. Strategic actor will spend energy and money to acquire symbolic goods. Unpacking this activity requires us to use tools from both the rational-choice and constructivist toolboxes.” (Hurd, 2007: 70-71) Thus, it is necessary for a self-determination movement to attain that level of legitimacy and for the application of the norm of self-determination to be seen to encompass that particular claim. The question of the legitimation of other types of non-state actors serves to inform the discussion on how legitimacy of self-determination actor groups is attained.

The analysis benefits from the degree to which the constructivist norm creation research agenda travels. In other words, is the process by which NGOs and other transnational actors attain legitimacy in international relations akin to that of a self-determination movement, and, if so, what mechanisms can be identified as portable? How do these actors organize their noise so that it becomes a voice heard by others? It is interesting to note that those engaged in
transnational actor research agenda often look to the process by which statehood is attained to glean operational mechanisms. However their inquiry tends to start after the point of legitimation and prior to actual sovereign statehood.\footnote{See Philip Alston (2005), editor, \textit{Non-State Actors and Human Right}, as well as Maragia (2002).} Both transnational actors and self-determination political groups go through processes of legitimation so as to be able to gain ‘a seat at the table’ of international affairs, becoming a voice listened to rather than noise heard, and ultimately to attain their objectives. The activities of the Unrepresented Nations and Peoples Organization (UNPO), referred to earlier, is interesting here. This organization was formed in 1991 to give peoples claiming self-determination such a seat at the table. In fact, as the footnotes to Table 2 above will illustrate, many of the cases of ongoing self-determination movements are members of this organization. In 2011, as a civil society organization, UNPO has participated in the “Fifth Forum on Minority Issues” and at the “19\textsuperscript{th} Session UN Human Rights Council”, as well and issued targeted reports, as indicated by its website, with the expressed aim of sensitizing the international community of states of the plights of the underlying nations and peoples of its membership.\footnote{See Unrepresented Nations and Peoples Organization (UNPO) at the UN found here \url{http://www.unpo.org/activities/1} (accessed 01/02/2013)}

“Legitimacy changes the actor’s perception of both its interests and the payoff of the available options…. All talk of ‘interests’ becomes more complicated in the presence of legitimacy, since legitimacy works by affecting one’s definition of interests.” (Hurd, 2007, 45)

As suggested above, two parameters impact the process of what shall be termed legitimation discourse – state-power interests and legitimacy. Bringing both to a meeting point and attaining symbiosis entails the challenge of statehood. From the transnational actor literature, the intervening variable in garnering such support is communicative action, the essence of
legitimation discourse. The “logic of arguing” involving the “processes of argumentation, deliberation, and persuasion” (Risse, 2000: 1) can lead to identity shifts and thus changing courses of action by actors as determination of interests shift accordingly. 205 While Risse frames this logic as the third element in the tripartite forces of social action, along with the logics of appropriateness and logics of consequences, it is perhaps more useful to view it as a locomotive between the latter two – or a “switching mechanism” (Goddard, 2006). How stakeholders come to perceive the validity claim of the self-determination actor is partly shaped by the logics of arguing it employs. Hence, this communicative action has the ability to switch “the structural landscape of bargaining, strengthening some ties, severing others, and even creating entirely new coalitions.”(Goddard, 2006: 45) Communicative action becomes the primary tool available to self-determination actors as they strive to achieve legitimation by “yoking”206 audiences into new identities, thus facilitating the acceptance of the validity claim.

One of the main contributions of this research agenda is that it revived the notion of rules and norms from the relentless attack suffered with the increasingly dominant role of realism, and rationalism in general, in the international relations canon during the Cold War period. “Although the move to rational choice in no way required a move to a material ontology, its proponents showed little interest in ideational or social phenomena, and study of these issues languished during this period.”(Finnemore and Sikkink, 1998: 890) Norms are the basis for much of legitimation in that they determine what stakeholders perceive as valid given their terms of reference, that is, their identity. Legitimation can either build on existing norms or usher in new norms through social discourse, as noted by Habermas (1979). As actors embrace new

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205 As noted earlier, social constructivism informs this analysis but does not engage with it. What is offered here are some operational mechanisms well established in the literature that may be applicable to self-determination political actors. For more in this area, see Wendt (1994) and (1999), and Risse (2000).

206 Stacie Goddard (2006) building upon the work of both Charles Tilly (2003) and Jackson and Nexon (1999), uses this concept as one of three switching mechanisms that she focuses on. She defines it as “actor creation.” (48)
arguments, shifting their identities, ‘norms cascade’\textsuperscript{207} encompassing more and more actors until a new norm regime presides. It is at this point that legitimation has occurred.

These are the mechanisms that self-determination actor groups, such as the UNPO as well as individual self-determination claimant representatives, embrace as they ‘market’ their cause to both primary and secondary stakeholders and engage in various ‘speech acts’ to establish the validity of their claims, and to instil conditions for new conditions of legitimacy to attain ‘stickiness’. Claim validation here refers to the acceptance by the stakeholder of the message either through coercion, self-interest, or belief in its legitimacy. The language of business theory is instructive in that it offers the ideational tools to capture how an organization presents itself to the marketplace, in this case to its stakeholders or consumers, or, in other words, marketing, which usually comes in the form of messages, advertising, or speech acts. The objective is to develop ‘consumer loyalty’ in the ‘product’ – the claim to legitimacy of cause and purpose. As noted by Pavkovic and Radan:

“secessionist political leaders need to convince a sufficient number of their followers that for them the benefits gained by secession outweigh the losses such as those arising from the loss of access to the host state’s markets and services, and from the contention and conflict over the secession. Secessionist leaders... presented secession to the secessionist population as a matter of necessity which has no alternatives...[and]... claimed that secession is unavoidable either because the host states allegedly threatened freedom, security or prosperity of the secessionist group and/or because an independent state was the principal historical goal of the secessionist national group.” (2007: 249)

This process is encapsulated in Sidney Tarrow’s analysis of social movements where he observed that there is a cycle of contention such that ‘early riser’ actors initially engage in mobilization of their base “when their claims resonate with those of significant others.” (1998: 144) This triggers a process of putting the object of the political contention, such as the host state, on alert, and signals to the base that it is time for action.

\textsuperscript{207} See Finnemore and Sikkink (1998) for a fuller discussion.
The cycle proceeds to conflict employing various “repertoires” of tactics and “frames” of interaction, or what is called here, speech acts, which leads to escalation between the contending parties and a broadening of the political space. This can encourage a proliferation of actors to come forward with competing or alternative claims, and a loss of singular focus on the part of the base. The political contention also levies costs on the base as the target of the social movement reacts and this can lead to a period of “demoralization” and “exhaustion”. (Tarrow, 1998: 145-147) At this point, a movement can face the possibility of splintering or diffusion, as shall be seen in the case of Palestine, unless the actor engages in coalition building, as seen in the case of East Timor. The cycle can go through new loops with a change of strategy, as indicated in the case of Kosovo, whereby the actor needs to engage in new ‘marketing’ strategies to regain its market loyalty.

In a similar application of business theory, in 1970, Albert O. Hirschman put forth a theoretical construct in his *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States*. In the face of declining businesses, organizations, or states, consumers, members, or citizens, respectively had one of two options when dissatisfied; they could vote with their feet and ‘exit’ or they could ‘voice’ their displeasure, such as through individual or collective action such as withdrawal of demand, quit or emigration (exit), or complaint or protest (voice). He noted that both ‘exit’ and ‘voice’ could be tempered by any latent loyalty the consumer, member, or citizen had to the product, organization, or state respectively. He also noted that such entities that failed to read such feedback properly, consistently and actively, as evidenced by changes in behavior, for example, could jeopardize their continuity. Hirschman applied his theory to several contexts, including, as shall be discussed below, to the case of the demise of East Germany. There is much resonance of
Hirschman’s approach with the one being proposed in this research. Such acts, whether exit, voice or even loyalty, can be seen to all be forms ‘speech acts’ in response to ‘speech acts’ by the entities they are reacting to.

A speech act\textsuperscript{208} as expounded by Austin and Searle entails discussions of linguistics and both spoken and implied utterances in communication. Yet, language, as these philosophers noted, extends beyond direct and indirect utterances within the context of shared linguistic code. Speech acts extend to social interaction and indeed to the construction of social reality, another form of shared code; it gives meaning to the social facts we take for granted such as rules and norms that arbitrate our every interaction from using paper we call money denominated at agreed values to acquire food for sustenance to crossing a border that is nothing other than a line on a map we imbue with meaning with a document we define as a passport that allows entry. (Searle, 1995) A billboard with the face of a crying child outside a slum structure with words “please give” next to it is a speech act within the context of shared understanding of the human condition. It is also a marketing campaign that speaks to and evokes our basic human instincts of protecting the weak and vulnerable. It is a locution that comes with an illocutionary request and has the perlocutionary impact of invoking compassion. Self-determination claimants have nothing other than the tools of speech acts to construct a social reality that would imbue their identity with a recognized legitimacy. As noted by Habermas, a “legitimation crisis… is directly an identity crisis.” (1975: 46)

A speech act in a political context is the utilization of any of a wide range of tactics including domestic and international coalition building to nonviolent civil disobedience to

\textsuperscript{208} For an early discussion of the theory of speech acts from language to social interaction see J. L. Austin (1962, 1975) and John R. Searle (1969, 1979, 1995) and for its relation to communicative action see Jurgen Habermas (1975, 1979, 1984a, 1984b)
violent acts. Figure 2 illustrates the process of marketing by way of speech acts in which self-determination actor groups engage to both consolidate their stakeholder/consumer base, as well as to redefine the interests of their opponents and their supporters. Such speech acts can be violent, as in the case of the Irgun and Stern Gang during the creation of the state of Israel,209 the ANC in shaking off the shackles of apartheid in South Africa, the Boko Haram in deriding the infidelity of the Nigerian state, or the PLO and all its disparate factions during its attacks locally and internationally against Israelis. Again, as observed by Pavkovic and Radan, “secessionist leaders sometimes attempted to provoke the host state authorities to respond to their demands in a hostile was… A hostile response by the host state is, in turn, given as evidence of the necessity of secession.” (2007: 249) These tactics are indeed speech acts and part of the ‘marketing campaign’ aimed at the range of stakeholders from the host state to the group claiming self-determination, to the wider community of actors and observers as defined earlier. Where was the tipping point in the struggle of the ANC against apartheid South Africa? Was it a culmination of violent acts, seen as resistance, and a lengthy imprisonment of the movement’s symbolic leader, Nelson Mandela, or was it in the “turning the other cheek” persona he projected from within the confines of his cell? Or, was it a cumulative impact of all of the above?

Consideration should be given to the fact that these were all a series of speech acts that entailed illocutionary messaging which induced perlocutionary reactions. A similar series of speech acts can be traced in the case of East Timorese FRETILIN, as discussed below, as it apparently shifted tactics away from violence against Indonesian forces to extending an invitation to the Pope to visit their homeland and thereby ‘yoking” international public opinion causing a cascading impact whereby international society came to view their cause as legitimate

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209 See Poland (2005).
in its struggle against Indonesia. This was in turn the tipping point toward ultimate statehood. Analyzing the speech acts of self-determination movements reveals that they are conducted in a manner similar to marketing campaigns in which some acts/advertisements fall flat and others prove more effective; in those cases that find the path to success, a tendency toward tactical self-correcting measures can invariably be traced. Yet, to suggest that self-determination movements can ‘learn’ from the successful campaigns and mimic their paths is to suggest that legitimation of self-determination is the sole causal variable in the process of successful state formation. Such a conclusion would negate, or mute, the role of power state interests. Quite the contrary, the process of legitimation involves interacting with the power interests not by overriding them but by creating the contexts in which they are redefined. Each self-determination movement entails a relationship between opposing and multiple parties; a relationship entails a unique symbiosis, beyond the sum of its individual participants, in which actions and reactions create an unique organic being. Hence, legitimation entails the adoption and distribution of new identities, regardless of the ultimate outcomes whether positive or negative for the underlying self-determination claim, by all parties of the discursive relationship.

In studying eight self-determination and secessionist movements, Pavkovic and Radan consistently “identified four collective actors: the host state authorities, secessionist leaders/parties demanding outright secession, a group of less confrontational secessionist leaders/parties, and the secessionist or ‘target’ population,” and he concluded that “for any secession to succeed, it seems causally necessary that the secessionist cause should find sufficient support among the target or secessionist population… the interaction of the political leaders of the secessionist movement, their target population and the host state authorities or political parties appears to be the most important aspect of the secession process.” (2007: 250-
Here the application of speech acts theory offers insights. As shown in Figure 2, the violent organization communicates with its violent acts. The speech act is intended to cause a direct result, the locution, the act of saying something, where there is an act of violence. The illocution, the communicative effect of the speech act, is directed at the target group, or opponent, with its message that there is more to come until such time as its “mission” is no longer valid/necessary. As noted by Searle, an illocutionary act “is fairly formal and well articulated; like a mountainous terrain, it exhibits its geographical features starkly.” (1969: 54) Finally, there is a perlocution, an act aimed at causing a certain reaction by the listener such as persuasion or fright, intended for the wider social movement it is either trying to engender or maintain the support of.

**Figure 2: Self-Determination Political Actors - ‘Speech Acts’**

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210 This theoretical framework was initially developed by Phillip Karber, adjunct professor, Georgetown University, and is informed by the work of J. L. Austin (1962, 1975) and John R. Searle (1969, 1979). Also see Jurgen Habermas (1984a and b).
The communicative action comes into play in terms of the response the organization receives from its speech act. Such a recursive communication loop results in either a continuation upon its path of action, adjustments to its message, or a failure to attain legitimation and ‘goes out of business’ having failed at its ‘marketing campaign’, much as predicted by Hirschman (1970). Responses here can take the form of increased support from its base that communicates to the organization that its modus operandi configuration is valid. Responses can also take the form of retaliatory action by the target that may result in organizational adjustments. Finally, the organization may lose its market if its product is no longer acceptable to the marketplace. The form of speech act may be violent or nonviolent such as in the case of civil disobedience, coalition-building with other groups domestically and/or internationally, or diplomatic maneuvering. Invariably, the speech acts involve a combination of many forms. Hence, speech acts can have both negative and positive impacts, beyond normative assessments, and either succeed or fail to persuade. Netting the impacts, aiming for a positive ledger, is what transfers the noise into voice.
Chapter 6  
Bridging Legitimacy and Power Gaps

The communicative model of speech acts in the context of self-determination claimant group, as outlined in the previous chapter focuses on two main audience groups: the first group to receive the locution is the host state(s) in opposition to the self-determination actor group, as well as other primary power states, collectively referred to as the “primary power states”. The message they convey is the illocution, and the response these speech acts illicit is the perlocution. The same message loop involves a second group consisting of the population on whose behalf the actor group claims to act, as well as the wider international society, collectively referred to as the “secondary stakeholder group”; this second group also receives the illocution and reacts with perlocutions. These audiences fall into one of the two stakeholder groups from which the self-determination actor seeks legitimation. The speech acts by the claimant group, the subsequent feedback by the audiences, and the adjustment to consequent speech acts by the claimant is the process of communicative action and collectively chart the legitimation process.

Each of these two audiences retains a capacity to impact the legitimation process and the ultimate path of the self-determination claim. Since the primary stakeholder group states are those with the direct capacity to create the circumstance to directly impede or support the actor group passage toward statehood, it is this group that is endowed with the ‘enabling power’, and is the first of the two independent variables that can be tracked throughout the legitimation process. Usually this group is the state from within which the self-determination claim is being made, or the host state. This primary group can also include main allies of this state, as well as regional and/or global power states. It is for this reason that they constitute the primary stakeholder group. The primary group may consist of states with conflicting views. Here the
speech acts employed can often lead to a deepening of the fracture lines, and hence a longer process of legitimation, which was the case in East Germany, and still is the case for Kosovo. Likewise, speech acts strategically deployed, can serve intentionally to put a rift between member states in the primary group, leading one faction to support the secondary group which seeks statehood, which was the case in Indonesia. Should such a group be homogenous in its views, which would likely mean robust opposition to the self-determination claims, then the speech acts are singular in focus with the aim of engaging in acts that lead to identity shifts, and thus changes in interests. On the other hand, to the extent that the group consists of opposing views, the process of marketing becomes more complicated as it requires multiple message coordination. This process of yoking and norm cascading also involves strategic interaction effects with the secondary stakeholder group.

While the case studies of East Timor, Kosovo and Palestine below are meant to test the hypothesis (as well as the case of East Germany which tests a variant) of this research (namely that state formation is unlikely to occur in the absence of an alignment between both state power interests and legitimacy of the self-determination claim, both impacted by the process of legitimation of the underlying claim and claimant to self-determination), the many other cases of ongoing, failed, and successful state formation are also potentially illuminating and grounds for testing this hypotheses further. Tables 1 and 2 above provide a time bound subset of possible cases for further analysis. For example, the cases of South Africa and the African National Congress, a success case, in contrast to the case of the Polisario in the Western Sahara, a thus-far failed case, are both potentially illustrative. Likewise the case of the Kurdish minority in Turkey, whose self-determination claim is partially led by the Kurdistan Workers Party, a.k.a. the PKK, is also informative.
On January 10, 2013, three PKK members were shot in Paris in what the French authorities noted appeared to be a political assassination. This can be seen to be the locution, the political speech act, directed to either Turkish authorities or to the PKK base, depending on which theory of the crime is subscribed to, as per the syntax of the communicative action dynamic illustrated above. The way this message was received by both the antagonists and the protagonists in the Kurdish claim to self-determination is the illocution, and how this message is reacted to by them, as well as by broader audiences, domestic and international, is the perlocution.

One of the three victims, Sakine Cansiz, was a founding member of the PKK and close to the group’s leader, Abdullah Ocalan, who has been in a Turkish prison since 1999, serving a life sentence for terrorism.211 The day after the murders, alternative theories behind the killings began to spread in the media. At the time of the murders, the PKK and Turkey appeared to be close to resuming their peace negotiations. Hence, these murders could be viewed as an attempt to forestall or dislodge those talks. The PKK saw the murders as a breach of their tacit agreement with Turkish authorities to not assassinate its leaders, after a spree of such assassinations in the 1980s and 1990s. As noted in one media analysis, the man ultimately arrested for the murders worked as a driver for the PKK office and the murdered women in Paris, yet his background would suggest he was a plant rather than a supporter of Kurdish self-determination aspirations.212

On the other hand, the day after the murder, it was reported that Turkish Prime Minister


“Erdogan said evidence suggested the deaths may have been intended to sabotage efforts towards peace talks…. [T]he incident could be a "provocation" from sections of the PKK opposed to talks between the state and the group's imprisoned leader, Abdullah Ocalan, aimed at persuading the PKK to disarm.”  

Alternatively, the Turkish PM’s statements could also be interpreted as an effort at delegitimation of the PKK as an actor or representative of the underlying Kurdish self-determination claims, which as noted earlier is a strategy employed by host states to impede self-determination efforts by clawing back gains in the legitimation process. With both sides putting forward alternative claims to the locution intending to broadcast different illocutionary messages to their political opponents, the ultimate perlocution received by the various stakeholders will depend on how successful each side is at their communication campaigns. Why does this matter? Legitimacy of the action and how it is perceived can mean increased support, or lack thereof, to the PKK as the self-appointed representative of the self-determination claims of the Kurdish people, and hence impact the ability of the latter to realize its aspiration for statehood.

What is interesting to note is that on March 21, 2013, Ocalan issued a statement from his jail cell that indicated a shift in strategy employing one of negotiation rather than armed struggle. As reported by the BBC: “The jailed leader of Kurdish rebels fighting Turkey, Abdullah Ocalan, has called for a truce after years of war. Ocalan also urged the fighters of his PKK organisation to withdraw from Turkey, in a message read out to cheers during Kurdish New Year celebrations in the city of Diyarbakir. Turkish Prime Minister Recep Tayyip Erdogan cautiously welcomed the call.”

The reporting suggests that the PKK is retreating to northern Iraq’s Kurdish autonomous region and is welcoming a new process of dialogue with the Turkish authorities.

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Ocalan’s statement is quoted as saying: "We have now reached a point where 'weapons should be silent and ideas and politics should speak'. The modernist paradigm that ignores, denies and excludes has been shattered. Now a new period begins, [where] politics, not weapons, come to the fore. It is now the phase for our armed units to move across the border… Peoples of the Middle East and of Central Asia are now awakening... They are saying 'stop' to provocative and undermining wars and clashes. This is not an end, but a new beginning. This is not to give up the struggle, but to start a different struggle." Such a shift may be an adjustment in locution in reaction to the perceived message feedback after the murder of his fellow PKK members; the perlocution the PKK received could be that they are no longer in a position of strength and that it is time to retreat to regroup or try a different approach. Turkey also welcomed the move while expressing skepticism that the PKK would actually change its ways, itself a continuation of its delegitimation discourse. As these events are unfolding, any analysis is premature, but what can be noted is that these events are likely linked and impacting one another as a form of communicative action in an ongoing self-determination legitimation process.

Yet, the enabling power it is held here is necessary but not sufficient to achieve newly found statehood or the stickiness of stable statehood, at least when such a state does not yet exist. It is the wider international society of other states and transnational actors, as well as the direct population on whose behalf self-determination is claimed – the secondary stakeholder group – whose position on the validity claim endows it with the ‘enabling legitimacy’, and is the second of the two independent variables that can be tracked throughout the legitimation process. This secondary group, consisting of what in domestic politics would be deemed ‘public opinion,’ and the directly affected population, which wield the ‘moral authority’ in that it is they who generate

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the public appeals, the media coverage, and the civil activity that in totality informs the public discourse on the issue. This group’s authority is also vested in the fact that absent their support, the actor group is unlikely going to be able to sustain a self-determination claim toward sustainable statehood, such as in the case of East Germany (see Figure 3 below) or in the build-up for support for self-determination in East Timor (See Figure 4 below). In fact, the rationale of self-determination assumes that the secondary group, at least as far as the affected population is concerned, maintains a belief in the validity claim *ab initio*.

As the speech acts target the secondary stakeholder group, and the validity claim becomes more widely embraced, the marketing campaign succeeds, which in turn causes the secondary stakeholder group to impact the primary stakeholder group through strategic interaction. On the other hand, if the speech acts cause a loss in support from the secondary stakeholder group, such as in perceived unjustified or excessive violence against civilians, the legitimation process may suffer and in fact never proceed further, requiring a strategic change of locution by the actor group seeking legitimation. Furthermore, while the various member types are included as one group, they nevertheless may (as alluded to above) harbor divergent views not only from one member type to the next, but also within the same member type, including amongst the primary population for whom the self-determination claims are made. For example, as noted, the type of speech acts employed may alienate some within the member type or between member types. There is evidence of this in many of the self-determination claims and movements found in Table 2 above, such as among the Chechens in Russia, the Jammu and Kashmir in India, the Moro of the Philippines, and the Balochs of Pakistan. Often, host states employ delegitimation tactics by suggesting discord, confusion, and incoherence of the self-determination claimants, which is given weight when, in fact, there are various groups claiming
to represent underlying self-determination claims, as in these examples. Such outcomes result in a dulled or even discordant voice being heard by both the primary and secondary stakeholder group that only serves to embolden those states inclined to resist the validity claim.

It is only when these two enablers, both legitimacy and power, meet that legitimation is complete; this is the legitimacy-power gap model of self-determination legitimation. When the primary stakeholder group is in favor of the claim yet the secondary stakeholder group is not, there exists a legitimacy gap. Similarly, when the secondary stakeholder group views the claims as valid, perhaps after having been persuaded by the speech acts, yet the states with direct power do not, there remains a power gap. The model developed here is illustrated in Figures 3 through 6 below. The figures serve more as a heuristic device for visualizing the concept of the legitimacy gap and the power gap that may exist between primary and secondary stakeholder groups, or between the states with power interests and the remaining elements of international society including the underlying people directly impacted by the possible call for state formation. The figures illustrate various elements of a legitimation process tracing the impact of speech acts over time measured in terms of units of support (on a scale of 1 to 10), itself another heuristic device, and the degree of convergence or divergence between the two stakeholder groups.

Figure 3 illustrates a case where state interests are greater than the support of the secondary stakeholder group, where the legitimacy gap even if closed by coercion or short term self-interest calculations will result in a short-lived legitimation leading to eventual dissolution of the newly created state. As discussed in Chapter 2, this is a condition that is held together

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216 It may be possible to measure units of support as a qualitative assessment based on the tracking of the two variables of state power interests and legitimacy self-determination claim through the history of the case study. The underlying metrics and method of data collection would need to be constructed to enable a robust quantitative measurement, however. Such may suggest a possible empirical extension to this analysis, one that may lead to its testability.
through the coercive feature of power and not its features of legitimacy, or even independent self-interest, hence its sustainability is limited. The secondary stakeholder group, both the affected population and the wider international society, does not possess the identity indicative of the interest being coerced, nor has it undergone an identity shift in line with those interests, and hence no real acceptance was achieved of the validity claim posed by the power state. This legitimacy-power gap type is exemplified by the case of the German Democratic Republic (East Germany), the historical trajectory of which, and how it tracks with Figure 3, is perhaps self-evident and is elaborated on below.

**The negative success case of East Germany**

While the Federal Republic of Germany is not one of the 38 states which were formed as of 1990, since it was actually established in 1949, 1990 did mark the reunification of its hitherto disparate parts, and perhaps a case of reverse, or negative, successful self-determination involving two host states—West Germany and East Germany. In fact, East Germany is a case of state death, a subset of this research. The period leading to the demise of the German Democratic Republic (East Germany) and the fall of the Berlin Wall is the demarcation point for much of the post-Cold War cases of state formation; it also marks the universe of observations, successes and failures, of this research, and, hence, is worthy of a brief analysis. The reunification of Germany is in itself illustrative of the fact that the underlying ‘people’, as an element of the secondary stakeholder group, are considered to have lost their statehood, with its division into two states, illegitimately, hence the effort to regain/reconstitute it; this case also

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217 See website of the German Bundestag (parliament) for official presentation of political events post World War II at [http://www.bundestag.de/htdocs_e/index.html](http://www.bundestag.de/htdocs_e/index.html) [last accessed Feb. 27, 2013]

illustrates the role of ‘stickiness’ of statehood in that state power interests may be a necessary, but are not a sufficient, condition for it to endure. There are possible policy implications to such observations, as shall be noted.

Figure 3: Legitimacy Gaps in Legitimation of Forced Statehood: Example of German Democratic Republic

Crawford places the dissolution of Germany and the subsequent formation of two states under the category of “divided States”\(^{219}\) that he notes is a narrow category in the context of an international legal view of state formation worthy of consideration, in that they exist “despite legal and political impediments.” (2006: 451) Yet, the legitimacy of state formation in such cases is not of an independent norm category. He notes that “[t]he mistake is to treat the ‘divided State’ as a special juridical category, the subject of legal rules different in kind from those applying to States in general.” (2006: 451) Legitimacy of the state formation of either of

the two Germanys is clearly contestable on legal grounds. “[B]oth the Federal Republic and the German Democratic Republic represented political forms imposed by occupying powers. Moreover, they represented not a whole, sovereign nation-state, not a cultural and historical unity, but rather provisionally separated parts of a divided and totally defeated country that had lost its easternmost territories and regained neither sovereignty nor armed forces...” (Fulbrook, 1987: 225) From the outset, the state formation imposed to create two Germanys flaunted international norms and rules regarding self-determination. This illegitimacy plays a role in the instability of the sovereignty of these states, as two separate Germanys, as the subsequent history suggests.

Yet, the legitimacy issues extended beyond the act of state formation to how legitimacy was to be used as a tool in primary power balancing. Germany was divided into zones in 1945 by the Allied governments under the Treaty of Yalta according to section “III. The Dismemberment of Germany” which amended the original Surrender Agreement ending World War II by noting that: "The United Kingdom, the United States of America and the Union of Soviet Socialist Republics shall possess supreme authority with respect to Germany. In the exercise of such authority they will take such steps, including the complete dismemberment of Germany as they deem requisite for future peace and security.”220 What this meant in the implementation was that Germany was split into four zones, three controlled by the Western allies and the fourth by the Soviet Union. Such action was indeed not considered unlawful.221 At this point Germany as a sovereign state ceased to exist; it can be said that it was put into a state

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220 Find the “Yalta Conference”, The Avalon Project, Yale Law School found here http://avalon.law.yale.edu/wwii/yalta.asp
221 Crawford (2006: 454 ) quotes Alain Coret (Le Condominium, 1966) to note that “[i]n the circumstances unilateral creation of such subordinate entities was not unlawful: each occupying Power was ‘de jure entitled to exercise governing authority in respect of [its] zone of occupation in Germany and might therefore establish subordinate organizations to act on its behalf’.”
of vanquished demise. During this period, Germans were effectively stateless, although the four Allies did note that they were governing the state of “Germany as a whole” by “commission” on behalf of the “German people” (Crawford, 2006: 453); hence, the legitimacy of a distinct people within a single state was not being challenged at this stage.

It was not until 1949 that the new states of the German Democratic Republic (East Germany) and the Federal Republic of Germany (West Germany) were created out of the previously held zones by each of the Western and Soviet Allies, respectively.222 In the case of West Germany, the Western allies announced that they viewed that state to be the sole representative of the German people as a whole; while in the case of East Germany, the Soviet Union was declaring a similar position. (Crawford, 2006: 454-458) Although the validity of the dual legal positions put forward is not the point of this analysis, the fact that both were attempting to make that case is insightful. Moreover, the recognition that the German people were a distinct people indicates that in any case neither party was making a case for the legality of splitting them between two states. In other words, the legitimacy of two Germanys was contested by the primary state. At this point, the formation of the new states was a product of primary power interests, namely those of the great powers to the exclusion of the host state, having just been vanquished during war, the other party to primary stakeholder status. However, even though the states had been created, they were not sovereign. “The occupying powers were reluctant to accord legitimacy to the new states in terms of delegation of authority by three of the Big Four on the one hand, and one on the other: for on this argument, if separate delegation of authority were legitimate for one side, it would by implication also be legitimate for the other; and neither side wished to accord legitimacy to the other regime.” (Fulbright, 1987: 225) Hence,

the primary stakeholder group was fractured, in this case along the lines of non-host and host primary power states.

West Germany was not declared fully sovereign until 1955 with its membership into the North Atlantic Treaty Organization (NATO)\textsuperscript{223} and the relinquishing by the three Western Allies (United States, France and the United Kingdom) of their joint commission. The Soviet Union soon thereafter declared East Germany to be sovereign as well. Immediately, West Germany declared itself to be the legitimate representative of the German people as it was the product of a democratic electoral process; conversely, it viewed East Germany to be an illegitimately constituted entity.\textsuperscript{224} Indeed, national unity became the expressed objective of subsequent West German governments during much of the 1950s and 1960s; however, the 1970s saw an apparent resignation to the realities on the ground. The East German government, ruled by communist groups who had coalesced prior to and subsequent to 1945, were, at least publicly, defending East Germany as a sovereign state, a point to be returned to below. This shift suggests scope for a brief alignment of primary state interests in that West Germany, one of the host states, was beginning to accept the reality of an East Germany, while East Germany was defending the legitimacy of its statehood, and both were in alignment with the state interests of their main sponsors, the United States and the Soviet Union, respectively.\textsuperscript{225} This is the point of unstable legitimation where sovereignty of East Germany becomes more established as indicated in Figure 3.

\textsuperscript{223} See BBC at \url{http://news.bbc.co.uk/onthisday/hi/dates/stories/may/9/newsid_2519000/2519979.stm} (accessed Dec. 16, 2012)
\textsuperscript{224} Albert (1970)
\textsuperscript{225} The history in this analysis is informed by Albert (1970), Larres and Panayi (1996) and O’Dochartaigh (2004).
It was not until 1973 that both the German Democratic Republic and the Federal Republic of Germany joined the United Nations.\textsuperscript{226} The reason for this delayed membership is related to the nature of the contested statehood of the former, East Germany. Until the 1970s, West Germany held that it would not have diplomatic relations with any state that recognized East Germany (other than the Soviet Union); this policy was known as the Hallstein Doctrine.\textsuperscript{227} This policy was relaxed by Chancellor Willy Brandt who spearheaded a series of treaties and agreements aimed at normalizing relations with East Germany, known as “new Ostpolitik”.\textsuperscript{228} As noted by Albert, “the Hallstein doctrine, which flows from the claim to sole representation, seems to be dead. Introduced after the establishment of diplomatic relations between Bonn and Moscow in 1955, it proved for many years an effective deterrent against the recognition of the GDR by non-Communist countries by threatening that the establishment of diplomatic relations with East Berlin would be regarded as an 'unfriendly act'. Gradually, however, the doctrine became a blunt weapon. It is also difficult to reconcile with the Federal Government's desire to establish diplomatic relations with all members of the Warsaw Pact, except the GDR.” (1970: 296) It is during this period of ‘normalization’ that both states joined the United Nations, as though to signal to the international community that statehood of the two Germanys was now complete, and the legitimation process of the statehood of both was now recognized by the international community, albeit perhaps grudgingly. For example, the United States State Department describes this period as follows: “In response to the improvement of relations between the two German governments, representatives of the United States and GDR negotiated arrangements for U.S. recognition of the GDR and the establishment of diplomatic relations,

\textsuperscript{227} The Doctrine is named for Walter Hallstein, a German diplomat who also served as the first president of the European Commission.
\textsuperscript{228} Albert (1970).
which occurred on September 4, 1974, when the United States and East Germany released a joint
communiqué to that effect. Despite this step taken to deal with the reality of the German
situation, the United States continued until German reunification in 1990 to view the FRG as the
sole legitimate successor government of the historical German state and a future reunified
Germany.229 This suggests that the primary power states had come to terms with the sovereignty
of East Germany but that they still questioned its legitimacy, in other words, the legitimation
process was incomplete leading to instability of statehood.

How committed to this acceptance was both the government of West Germany and the
‘people’ of both states of this sovereignty point for East Germany; how stable was this
sovereignty point? As noted once again by Albert, “Herr Brandt's Government Declaration230
does not use the term 'reunification' but talks of the East Germans' right to 'self-determination'
which amounts to the same thing, although for purposes of presentation self-determination is a
better term because reunification could convey the impression of the bigger Federal Republic
wanting to take over the smaller GDR.” (1970: 297) While the syntax associated with self-
determination was being used in the context of a ‘people’ who ostensibly were part of a
sovereign state already, the claim in this instance was not for the creation of a state, but rather for
its dissolution.

1990 brought the eventual reunification of Germany with the dissolution and demise of
East Germany as a state and the integration of its territory in 1990 into the Federal Republic of

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229 See US State Department website here [http://history.state.gov/countries/german-democratic-republic](http://history.state.gov/countries/german-democratic-republic)
230 Referring to the Brandt doctrine espoused in October 1969, Albert (1970: 293) described it as: “a courageous attempt to face certain political realities which many intelligent Germans were no longer willing to ignore. The Brandt Doctrine about the existence of 'two states in Germany' is a new departure, though the change is greater in style than in substance. Since the GDR has been able to act as a state at least in some international spheres, it was good sense to stop jibbing at the word. Nevertheless, some important reservations were, and had to be, made. The Declaration emphasised [sic] that it was impossible for the Federal Republic of Germany to recognise [sic] the GDR in international law—it could not be regarded as a foreign country, the relationship between 'the two states in Germany' was 'of a special nature'.”
Germany. The role of the secondary stakeholders is instructive here. The secondary stakeholder group encompassing the underlying domestic ‘people’ as well as the broader international community of other state and non-state actors were also divided. With both primary and secondary stakeholder groups fractured, the resulting statehood was not ‘sticky’ and did not hold. With the alignment of primary and secondary stakeholders after the fall of the Berlin wall, a reunited Germany was (re)formed; self-determination succeeded. In this way, the demise of the German Democratic Republic and the reunification of Germany are mirror images that exemplify the mechanisms of legitimacy and power gaps in action.

The path to realization of the aspirations of the secondary stakeholder group in the case of East Germany passed through the demise of the state and incorporation into another rather than merely the formation of one. Hence, it can be seen as a case of negative self-determination in that the aspiration was the death of a state, and it can be seen as successful because that aim was indeed attained. That is the most obvious unique characteristic of this case. Another unique characteristic is that unlike most self-determination movements in which speech acts during the course of the struggle tend to be led by a self-proclaimed representative, in the case of East Germany, it was predominantly led by the ‘street’ in that the speech acts were either individual, in the form of out-migration or sole acts of criticism (by individuals who were then usually expelled or encouraged to migrate), or they were spontaneous locutions involving crowds gathering in open protests in what became a popular movement, as defined by Tilly.

A brief review of the political contention that led to the legitimacy gap in the case of the demise of East Germany illustrates that the rejection if its statehood by the secondary stakeholder group was instrumental. Hirschman (1993) provided an illuminating analysis of the period 1945-

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1990 during which East Germany was created and dissolved to address the question of how, through what speech acts, East Germans expressed their rejection of statehood. He applied his construct of ‘exit-voice-loyalty’ to the actions of East Germans during this period, which was further built on by Thomson (1996) to illuminate why East Germans ultimately rejected the legitimacy of the state. To Hirschman, the events that led to the fall of the Berlin Wall served to support his theory that “deterioration generates the pressure of discontent, which will be channeled into voice or exit; the more pressure escapes through exit, the less is available to foment voice.” (1993: 176) In this way, exit provides a release valve to the need to voice, while voice offers an alternative to exit. However, as he concluded, in the case of East Germany ‘exit’ and ‘voice’ worked in tandem, mutually supportive, such that ultimately the act of exiting was seen as an expression of and (at times only) a way to voice; both served to undermine the legitimacy of East Germany and ultimately its demise.

After the creation of East Germany in 1949, migration to West Germany was one of the most evident forms of speech act expressive of the German discontent with the new state in which they found themselves. It is estimated that after World War II and prior to the construction of the Berlin wall in 1961, one-fourth of the population of East Germany had migrated to West Germany. Based on migration numbers provided by Hirschman from demographic statistics available at the time, between 1949 and 1961, the average annual migration exceeded 210,000 peaking in 1953 at over 330,000. (1993: 179) In relation to a population size averaging between 17-18 million at the time such levels of migration are significant. Thereafter, the average dropped to about 19,000 through 1983 followed by an increase to an average of 30,000 from 1984-1988 with a final surge exceeding 340,000 in 1989.
ahead of the demise of the state. With a total population in East Germany of 18.5 million in 1949, by 1990 it had dropped to near 16 million. These numbers tell a story.

Migration from East Germany tracks the evolution of East German ‘exit-voice’ speech acts and the perlocutionary response from the East German government. After the Soviet Union mirrored the decision by the Western Allies to found the Federal Republic of Germany, the Soviet Union followed suit with the declaration of the state of the German Democratic Republic. This act caused already sizable migration from east to west under the Allies military occupation to continue at high rates. As noted by both Hirschman and Thompson, this seemed to occur with the tacit acceptance of the East German government under a policy of allowing potential rabble-rousers to leave. “But soon such complacency would give way to concern and then to alarm: it became clear that in this instance mass emigration was not a "safety valve," a metaphor that had often been rather aptly used to describe earlier emigration experiences. Rather, as it continued, the exodus of East Germans to the West—among them many highly skilled members of the labor force—came to be likened to a life-threatening "hemorrhage" that had to be stopped. The building of the Berlin Wall in 1961 was intended to achieve this objective.” (Hirschman, 1996: 180-181)

Beyond migration from East Germany, speech acts were low intensity due most observers agree to the tight control the communists with their Stasi secret police kept over

232 The Berlin Institute notes the East-West German migration situation as follows: “The political system of the GDR intensely restricted migration movements. This affected both the emigration of GDR citizens and the immigration of foreigners, who represented a strikingly small part – only one per cent – of the total population in 1989. Nevertheless, the GDR had a negative migration balance during the entire time of its existence. The construction of the wall in 1961 constrained emigration to the Federal Republic but it could not completely hinder it. With the fall of the wall, a downright refugee movement took place from the regions of the former GDR. In 1989 and 1990 the number of East-West migrants reached, with almost 400.000 people each year, a dramatic level.” See Berlin Institute at http://www.berlin-institut.org/online-handbookdemography/east-germany.html

233 See official website of the Federal Statistical Office of Germany (Das Statistische Bundesamt) at https://www.destatis.de/EN/FactsFigures/Indicators/LongTermSeries/Population/lrbev03.html#Footnote2a (accessed on Feb. 28, 2013)
As noted by Hirschman (1993), outspoken dissident voices such as writers, actors, musicians and others were outright expelled, which had the impact of restraining the potential for effective opposition within East Germany to emerge. Moreover, those opposition voices within East Germany that were vocal tended to follow the ‘loyalty’ construct of Hirschman in that they tended to question the strain of socialism being pursued by the government, many of them having risen in the ranks of the communist movement prior to the formation of East Germany and during World War II. It has been noted that the defense of East Germany by its government and even leading dissidents in East Germany was not made on the basis of nationalism or historical realities, but rather in support of socialist principles which they held to be superior both to the capitalism of their West German brethren, and, especially, in stark contrast to their fascist recent history. In other words, not even the government was arguing the legitimacy and the legality of its existence, but rather the virtue of it, as though statehood could be justified on the basis of a political experiment.

This position may explain why the East German communist government failed to take more decisive repressive action in the face of the rising tide of opposition in the weeks leading up to the fall of the Berlin Wall in November 1989, in contrast to the decisive and violent response of the government of communist China during the contemporaneous Tiananmen Square episode. There was a tacit acceptance of East Germany by the 'people', other than those who ‘exited’ to West Germany. This suggests that the temporary alignment between primary state interest (power enabler) and secondary stakeholders (legitimacy enabler) may in fact be a function of historical circumstances such as social reaction to recent historical trauma, rather than an actual acceptance of the legitimacy of East German statehood; as Hirschman suggested, it was akin to an atonement. (1993: 183) As observed by Thompson,

\[^{234}\text{Fulbrook (1998).}\]
Not only does the lack of national identity explain the hardline nature of the regime, it also illuminates the "revisionism" of the opposition. It is only an apparent paradox that in a "state without legitimacy" the loyalty among the GDR intelligentsia was particularly intense. The same matter-of-fact nationalism that made many East Germans feel a part of the Federal Republic (of which they were, by nature of the West German Grundgesetz, "virtual" citizens), tied artists, writers, and oppositionists alike to the ideal of the "better German state." They felt that the evils of German nationalism could best be preempted by socialism, which offered a clear anti-fascist position and justified the continued existence of the GDR. (1996: 288)

In Berlin on June 17, 1953, which was the year in which migration peaked ahead of its highs in 1989, East Germany witnessed one of its few overt violent acts of political contention in its forty-year history. The US Central Intelligence Agency described the event as follows:

It began with an orderly march in protest of newly increased work quotas involving an estimated 5,000 workers at noon on the sixteenth. This ended about three hours later, but protests resumed early the next day with some 17,000 people in the streets, a figure that may eventually have risen to anywhere from 30,000 to 50,000 to several hundred thousand by noon. Traffic came to a halt and the demonstration turned violent; thousands of people swarmed through the Potsdamer Platz to the Lustgarten Platz, tearing down Communist flags and overturning kiosks. But East German and Soviet troops with tanks and armored cars had quietly moved into East Berlin the previous night. Early on the afternoon of the seventeenth they drove into the crowds, firing automatic weapons and small arms. At 2:20 PM the East German government declared a state of emergency; the revolt was quickly crushed. Like after-shocks following a major earthquake, strikes, demonstrations and isolated "incidents" continued to occur throughout the DDR [East Germany] over the next few weeks, but with the crackdown on the seventeenth the Communist regime demonstrated that, even if it had little popular support, it was nevertheless firmly in control.”

The harsh crackdown was a perlocutionary response by the government to this spontaneous illocutionary speech act by protestors. The reaction of the government was in effect the feedback heard by these protestors, and it triggered a national correction in locution thereafter; this crackdown had the impact of sending opposition underground. “[T]he notion that ‘there would

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be another June 17’ was a constant refrain in collective political culture in subsequent decades, passed on by those who were directly involved to those who had never participated in the events. The implications were various: the hinted threat of another popular uprising was often more than counterbalanced by deep resignation of its ready suppression by force and the lack of support from the West. ‘The June 17’ thus took on a political force beyond the historical realities of the events of June 1953 themselves.’’ (Fulbrook, 1998: 178)

Migration in 1953 saw its highest surge prior to 1989 as East Germans crossed over to West Germany, and in the years after that the pace of migration remained high spiking again in 1956, the year of the Hungarian uprising and subsequent violent crackdown in Budapest. This pattern continued until the East German authorities decided to send one of its most symbolic and effective feedbacks to the low-key locutionary speech act of migration—the erection of the Berlin Wall in 1961. Thereafter, migration fell to at less than a tenth its previous averages. “[T]he direct obstacles to voice, that is, to any political movements of resistance or dissidence, were enormous.” (Hirschman. 1993: 183) Yet, as surmised by Hirschman, the fact that out-migration continued despite all obstacles in and of itself speaks to the rejection of East Germans of the government and state of East Germany. Nevertheless, the closing of the possibility, except for the diehard, of leaving East Germany had the impact of removing that ‘release valve’ as an option for the dispossessed and disenchanted. The years after 1961 leading to the 1980s were characterized by individual acts of dissident activity and the slow trickle of escape migration. This muted secondary stakeholder locution can be juxtaposed against the political convergence between primary states, including the government of West Germany, as discussed earlier, that led to an acceptance of the status quo and movement toward normalization of bi-lateral and
international relations against the backdrop of the Cold War. At this point, both legitimacy and power gaps are converging, albeit due to the containment of voice and the timidity of power.

The five years prior to 1989 witnessed an increase in opposition activity not only in East Germany, but across the countries behind the iron curtain of Soviet dominance. Charles Tilly (2004) categorizes the events leading to the demise of East Germany and the end of Soviet domination in Eastern Europe as a series of social movements replete with speech acts emerging from collective action and political contention. This is the time of Gorbachev’s move toward a more liberal approach to governance, which observers have noted signaled to political activists and the general body politic across these countries that change was possible. “The arrival of reformer Gorbachev… touched off an enormous expansion of claim making in the social movement style: not just mass demonstrations, but also special-purpose associations, strikes press campaigns, and appeals for international support.” (Tilly, 2004: 76) Emboldened by the shifting political winds, migration once again picked up from East Germany. In fact, migration was one of the direct elements that snowballed into the events that contributed to the fall of the Berlin wall in November 1989.

Although opposition events were occurring across East Germany, events in Leipzig in 1989 have been pointed to as particularly significant. During the 1980s, political meetings had been taking place every Monday in a Lutheran church in Leipzig, ostensibly as prayer gatherings.236 These meetings developed into rallying points, and soon spread to other cities across East Germany in increasing numbers in 1988 and 1989. For its part, the East German government, especially after the June 1989 Tiananmen Square incident in China, declared that they would not relent in the face of these speech acts, a threat they did not act on. The official website of the City of Leipzig in Germany describes the events of that day, which came on the

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heels of celebrations marking the 40-year anniversary of the creation of East Germany, as follows:

“The decisive event of the peaceful revolution was the large Monday demonstration on the 9th of October, 1989 in Leipzig. 70,000 demonstrators overcame their fears and faced the armed security forces with their chant “We are the people”. The peaceful revolution could no longer be held back. With their courage, the people of Leipzig contributed greatly to the fall of the GDR regime.”

The rallying cry in those four words, as explained by Hirschman, “We are the people” voiced that they are a ‘people’ that transcends the existence of East Germany. The cry “denies the basic tenet of the communist state structure and ideology: that there is a complete identity of views and interests between the ruling Communist Party and the population. This arresting slogan also seems to echo Bertolt Brecht's poem on the insurrection of June 17, 1953, with its final caustic suggestion that the government may wish to dissolve the people and elect another.” (1993: 190)

The locution was unmistaken and the illocution was self-evident; the people had spoken and they had demanded their state back. The events from that point to the fall of the Berlin Wall one month later on November 9, 1989 are basically a series of demonstrations, a spontaneous and emboldened popular movement, across East Germany followed by a declaration that migration to West Germany was now open to all, triggering a mass exodus that continued into 1990.

Despite the declarations and threats by the Honecker government at the time, on the day of the largest event, October 9, 1989 in Liepzig, government basically stood aside, suggesting that it too had come to terms with its own mortality. Had the government reaction been more aggressive, similar to earlier crackdowns such as that of 1953 or even similar to the contemporaneous events in China, the outcome may well have been different, or, at least, not as sudden. This of course is a counterfactual assumption that is only made possible by similar events, such as, for example, the experiments currently ongoing in the Arab world. The inaction

of the East German government in the face of the rising tide of popular collective action can only be a variable that assisted in, or at the very least did not impede, the ultimate outcome. “For all the tension of the situation on that Monday afternoon, the police do not intervene, no blood is shed—and the authority of the GDR is shattered forever.” (Hirschman, 1993: 193)

At this point, the identity of the host state, East Germany, had both ideationally and practically shifted. The signaling provided by Gorbachev and the Soviet Union was heard by more than the secondary stakeholders who were emboldened to adjust their speech acts to be more forceful; it was also heard by the primary power states. The events of 1989 and 1990, in turn, had an impact on the calculations of the other primary states involved, namely the Soviet Union, West Germany, and the United States. A combination of the realities unfolding on the streets of East Germany by the series of speech acts of the popular movement, and the signaling by the primary state actors, the Soviet Union and a dying East German state, served to trigger a recalculation of interests on the part of both primary and secondary states leading to a shift in identifies. The outpouring of political support coming from all capitals in Europe and North America is indicative of how quickly they each reversed course on the legitimacy of the state of East Germany. Moreover, “[t]he political shifts of 1989 made possible a return to joint action by the Four Powers and to the final exercise of their rights and responsibilities [post World War II]… That these retained some practical meaning was demonstrated in 1990 in the process leading to reunification.” (Crawford, 2006: 465)

**What can we learn from the self-determination legitimation process for the death of East Germany?**

Elections held in 1990 to join the Federal Republic of Germany resulted in a decisive vote for unification. A norm of self-determination is that the will of the people should be
expressed through the ballot box: that norm was now fulfilled in the case of the German people. East Germany was no more, signaling the successful end of a case of negative self-determination. The case of the German ‘people’ in East Germany is here being considered to be a case of remedial self-determination, in the typology discussed in Chapter 3 above, in that the underlying people were subjected to a condition not of their choosing during which they suffered repression-culturally, politically and economically.

Tracing the variables of legitimacy and power in the demise of East Germany and the incorporation of its territory into the Federal Republic of Germany illustrates the impact of how these variables, when aligned can result in legitimated statehood. They also illustrate how these variables can repel or even collide to tear statehood apart. These outcomes have possible policy implications.

1. State formation is not durable in the absence of a legitimated self-determination claim, or put differently, legitimation of self-determination is needed for statehood to be sticky. This case illustrates that self-determination can also involve the demise of a state as the claim is that the state in which the ‘people’ find themselves is illegitimate; the self-determination is for inclusion in another state. In the case of the Germanys, even though primary state interests eventually aligned to tacitly accept the reality of East Germany, the secondary stakeholders did not. This ultimately led to speech acts by the secondary stakeholders in their claim for self-determination. In this case the claim was for the demise of one state and the incorporation into another.

The policy relevance of this finding is applicable to many of the self-determination claims included in Table 2 such as those heard from African groups who claim that borders drawn by primary state interests are not aligned with their identities. The case of the reunification
of Germany could provide basis for the voice of self-determination of the Kong Kingdom in western Africa which finds itself in the Central Republic of the Congo which it rejects and makes the case that it is illegitimate, for example. The claim of the *Federation of Free States of Africa*[^238] is that many of the borders of Africa, along with the states that were created by them during the post-colonial period, should be dissolved because they divided ‘peoples’ and forced others together in illegitimate state constructs. Perhaps the ‘divided States’ category defined by Crawford and others, can be applied in these instances on the basis of the case made for the reunification of Germans in a singular state.

2. Tacit acceptance of legitimacy on the basis of political calculations of self-interest by primary actors is not adequate alone to maintain statehood. As noted in the case of East Germany, the illocution of the speech acts of the secondary stakeholder had the perlocutionary impact of ultimately shifting primary state identities and hence their perceived interests. They came to actively and expressly reject (even if they were already passively doing so) the legitimacy of East Germany and the legitimacy of the self-determination claim of the Germans to unify. What is interesting here is that the primary states on all opposing sides of the interest fracture lines shifted and aligned.

3. Speech acts pursued by the self-determination claimants, in this case disparate dissidents and spontaneous collective action that coalesced into a popular movement, can ultimately contribute to the demise of a state, but is not necessarily a sufficient condition. Government reaction, in this case inaction, was also conducive to the outcome.

[^238]: Federation of Free States of Africa found at [http://www.africafederation.net/](http://www.africafederation.net/)
4. Finally, the collective result of these findings suggests that durable statehood is the product of a steady alignment between both primary state interests and legitimacy of the self-determination claim.

*The success case of East Timor*

**Figure 4: Power Gaps in Legitimation of Self-Determination: Example of East Timor**

If legitimation is successful, the hypothesis here is that the process results in eventual state creation and sovereignty. The self-determination movement for a sovereign state of the Democratic Republic of Timor-Leste (East Timor) succeeded, with its membership into the United Nations in 2002 after a self-determination claim and legitimations process of at least 25 years. The case of East Timor is one in which an identity was forged over centuries of colonial rule, in this case that of Portugal, of a unique people who shared a common history, language, and culture, and ultimately a common desire to be rid of ‘foreign’ domination once and for all. That desire for self-determination became stronger when, with the loosening of colonial control,
a regional state power, Indonesia, moved in to replace it, albeit one that purported to be the larger part of its whole.

Figure 4 illustrates the case of East Timor’s self-determination legitimation process where the international society increasingly embraces the legitimacy claim but at a much greater level than the primary stakeholder group—the states with direct power interests—creating a power gap, unlike the predominant gap in the case of East Germany, which tended to be one of legitimacy. In this case, the supposed and self-claimed host state of Indonesia and the main regional and global powers with an interest, namely the US and Australia, and to a lesser extent, Portugal are the primary power states maintaining that power gap. Eventually the two views converge, it is suggested here, as a result of speech acts, norms cascading, and the strategic interaction that developed between the two groups as a consequence drawing them to similar positions. The case of East Timor,\footnote{See Stephan (2006) for fuller discussion.} is simultaneously considered a case of both post-colonial and remedial self-determination in the typology discussed in Chapter 3.

East Timor fell under Portuguese colonial rule when King Joao III of Portugal expanded his domain throughout the region, ostensibly to spread Christianity.\footnote{For brief historical background on East Timor, see Ballard (2008), Glassman (2003), Gunn (2011), Kingsbury (2009), Stephan (2006), and Sterio (2013). Much of the chronology of events here is derived from these sources.} Dominican Friars established a settlement around 1560, the initial roots of the strong and enduring Roman Catholic influence on the island, while a trade post settlement took hold in 1633 around trade in slaves, horses, and sandalwood. The strength of the Roman Catholic Church in East Timor grew throughout this period, and was to play an important role in the eventual legitimation process of the East Timorese claim to self-determination with the visit of Pope John Paul II in 1989.\footnote{“East Timor mourns 'catalyst' Pope”, BBC, April 5, 2005, found at http://news.bbc.co.uk/2/hi/asia-pacific/4410917.stm [accessed March 13, 2013] East Timor is half of the island of Timor which lies at the southern-most tip of the Indonesian
archipelago, 400 miles northwest of Australia. The Portuguese had intermittent contention over control of the island with the Dutch, who ultimately took control of the western half, and with the Muslim Indonesian population on the main islands. It has been noted that throughout most of Portugal’s control of East Timor, it failed to invest in either social or physical infrastructure, and the economy was weak with few prospects for the indigenous population, which deepened century-old resentment of the colonial ruler. (Ballard 2008 and Sterio 2013) Portugal had possession of East Timor until World War II when it was occupied by Japan after an extensive wresting of control from a joint military Dutch-Australian force, and Portugal resumed its colonial control after the war until 1975 when East Timor unilaterally declared independence setting off over 25 years of a self-determination movement with Indonesia.

One of the earliest expressions of a desire to shed the yoke of colonial rule came as early as 1910 when East Timorese reacted against a head tax imposed by the Portuguese, followed shortly by a tax on consumables such as salt and alcohol, as well as on game from hunting. These actions, along with a requirement of Portuguese language only in schools, caused an outright revolt that was only put down when Portugal brought in troops from another of its colonies at the time, Mozambique. This military action resulted in thousands dead and wounded in East Timor, and a lasting memory of colonial suffering. The political contention spilt over to the Dutch controlled side of the island prompting international consideration of the situation by the Hague Court which “intervened to clearly establish the border between East and West Timor” (Ballard, 2008: 5), thus establishing a territorial boundary for East Timor as now accepted by the international community. There were continual acts of resistance over the following decades, including in 1959, during which several hundred were killed by Portuguese forces during a revolt, which was then followed by a period of troop fortification and high levels of expenditure
on building up such defenses, rather than infrastructure or economic development for East Timor. (Ballard, 2008: 7) This period saw the birth of the struggle that came of age in the 1970s through to East Timorese sovereignty in 2002. As noted by Ballard, “the Timorese adopted an attitude of ongoing struggle (*funu* in Tetum) toward their governors [the Portuguese]. This attitude would grow in power and legend through the twentieth century.” (2008: 5)

In 1974, there was a coup in Portugal that brought with it the decision to end colonial rule in all of its six remaining territories, including East Timor. This was a change in perceived interests on the part of Portugal, which had to this point resisted moves by the UN, including several General Assembly resolutions, calling upon it to report to the UN on its plans, under Chapter XI of the UN Charter and General Assembly Resolutions (GA Res) 1541 and 1542 of 1960, to administer a path-way for self-determination of peoples under colonial rule.242 During this period, calls for self-determination in East Timor were becoming louder with several groups which emerged, claiming to represent them. Among these groups was the Revolutionary Front for Independent East Timor (FRETILIN) and its military wing, the FALINTIL, and the Timorese Democratic Party (UDT), who later joined a coalition under the banner of FRETILIN. There was also a third major group, although with the least following of the three, called the Timorese Popular Democratic Association (APODETI) that had a more pro-Indonesian stance, and was generally believed to be “a product of the Indonesian Intelligence service (BAKIN), which certainly funneled funds to the organization.” (Ballard, 2008: 6)

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In 1975, Portugal began to engage with the various factions in East Timor to agree to a process of self-determination toward eventual independence. These talks were not highly effective and the FRETILIN established its own administrative framework effectively negating the role of the Portuguese. With a diminishing Portuguese desire to maintain control and effective administration having been seized by the FRETILIN, in October of 1975, FRETILIN declared East Timor, which had been a Portuguese colony since the sixteenth century, an independent state. A few weeks later, Indonesian forces attacked and invaded East Timor, ordered by President Suharto of Indonesia, resulting in the death of close to 60,000 civilians over the course of two months. (Stephan, 2006: 60) Thus, the stage for the legitimation process was set with all its various actors: FRETILIN formed the self-determination claimant, the primary power states were Indonesia, along with its primary international and regional backers at the time, the US and Australia, and Portugal, as the former colonial ruler. Indonesia was already staking counter-claims and making perlocutionary responses both directly, in the form of occupation and military force, as well as indirectly by attempting to delegitimize with the efforts of APODETI and other groups to destabilize and fracture East Timorese popular and international support for East Timor self-determination.

Indonesia rested its legal claim to East Timor on the basis of it being within the territorial boundaries of the Indonesian archipelago, effectively making it part of that state were it not for the interruption of colonialism over five hundred years. In fact, West Timor, along with the rest of Indonesia emerged as a sovereign state and member of the United Nations in 1949 after gaining independence from the Dutch under the rubric of UN Chapter XI, itself perhaps something of an irony. Yet, within that context lies the legal basis under international law for the rejection of the Indonesian claim, in that East Timor was never a part of the Dutch colony, but
rather was a Portuguese colony for hundreds of years, and as such had developed through a unique and independent legal, cultural, linguistic, religious and historical trajectory. In fact, the international community, as established as early as 1910 by the Hague Court, perceived East Timor as never having been within the territorial boundaries of Indonesia; in other words, the principle of *uti possidetis*, (literally, as you possess) rule within international law, unlike in, arguably, the case of Kosovo, did not apply since Indonesia never ‘possessed’ East Timor in a legally adequate sense. This was reaffirmed by the subsequent UN Security Council and General Assembly resolutions, and by the ICJ, as shall be discussed.

The ‘people’ of East Timor expressed little, if any, affinity or self-identity with the rest of Indonesia, and, in fact, viewed Indonesia as an occupier and neo-colonialist. (Sterio, 2013: 103) On the other hand, Indonesia itself consists of at least 17,508 islands and is a mosaic of languages and arguably different ‘peoples’, and their argument was that this rich tapestry was constituent of its national identity, to the extent that such a diverse population could have one. Indonesia was also keen to quell any similar arguments from within Indonesia for either internal autonomy or external self-determination. “The view from within Indonesia was that if East Timor were successful in separating from Indonesia, it would set a separatist example for other reluctance provinces…” (Kingsbury, 2009: 19) That fear was perhaps credible in that there exists

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243 The *uti possidetis* rule came into play in the post-colonial period as a means of maintaining borders as established during colonial times upon independence. It was first invoked by the ICJ in the frontier dispute between Burkina Faso and Mali in a 1986 Opinion (see ICJ website here [http://www.icj-cij.org/docket/index.php?p1=3&p2=3&code=hvm&case=69&k=b3&p3=0]). This rule came to be applied in the context of secessionist movements to protect “existing states within their borders” by raising the bar of what would entail a legitimate claim to external self-determination. (Summers, 2011: 12) Conversely, the rule can also be applied to seceding territories to “do so within previously established... boundaries.” (Weller, 2009: 18)


today several nationalist movements within Indonesia such as the Acehnese, Papuans, and the South Moluccas.246

International reaction to the Indonesian action of 1975 was swift, if not very effective, with the United Nations Security Council passing two resolutions, one in 1975 and a second in 1976,247 calling upon Indonesia to end the invasion and withdraw from the territory and respect the territorial integrity of East Timor and the right of the East Timorese to self-determination within the context of both Chapter XI and the GA Res 1541. The UN General Assembly also passed eight resolutions between 1975 and 1982 demanding an end to the Indonesian occupation and affirming the self-determination rights of the East Timorese.248 Hence, the international community was recognizing the rights of the East Timorese under the norm of post-colonial self-determination, and confirmed the role of Portugal as the official administrator of East Timor within the context of Chapter XI of the UN Charter. Moreover, the actions of Indonesia were opening the way to also add remedial self-determination to the legitimacy of the claim. “In East Timor, the legal rules pointed toward a favorable outcome for the East Timorese.” (Sterio, 2013: 126)

These international actions were ignored by Indonesia, which proceeded over the course of the next 15 years to keep East Timor closed off from the rest of the world, and even encouraged resettlement of tens of thousands of non-ethnic Timorese from Indonesia. In 1976, Indonesia installed a legislative assembly in East Timor which then proceeded to declare East

Timor part of Indonesia. In what amounted to an effective annexation, Indonesia declared its sovereignty over East Timor, pronouncing it to be its 27th Province. (Sterio, 2013: 105) During this period, FRETILIN, which was perceived to have communist leanings, led the self-determination movement, and, through FALINTIL, waged a guerilla war of resistance focused solely against Indonesian troops stationed in East Timor, consciously avoiding any attacks on civilians. It is this perception of its communist leanings that has been argued to have been the reason for the main primary power states, the US and Australia, to have resisted putting pressure on Indonesia to cease its assaults and effective occupation of East Timor. “East Timor’s right to self-determination was sacrificed to Cold War politics.” (Sterio, 2013: 105)

Hence, the posture of the main primary states at this stage were aligned in tacit support of Indonesia due to perceptions of interests, both political and economic, while the international community provided tepid support to the East Timorese self-determination claim. Jose Ramos-Horta, who later won a Nobel Peace Prize and eventually became President of East Timor, described the posture of the primary power states as follows:

Indonesia's allies include the United States, which has been reluctant to pressure Indonesian withdrawal as it seeks to maintain stability in Southeast Asia and easy access to Indonesia's abundant natural resources, cheap labor costs, and market of 200 million people. The United Kingdom, whose business interests are the same as those of the United States, and whose special interests lie in the sale of British fighter planes and other arms to Indonesia, has demonstrated similar restraint. Australia, principally concerned with easy access to Timor Gap oil and with business interests similar to those of the United States and United Kingdom, has also shown a reluctance to punish Indonesian actions, as have other Western nations, including Canada, France, Germany, and Japan. (1997: 32)

It was left to the claimant and its representative, FRETILIN, to engage in communicative action to shift the identity, and thus its perceived interests, toward their positions, while also engaging the international community to raise their level of active support. In fact, it was not until 1999
that the UN took any further actions in support of the movement. The interim saw a series of speech acts led by FRETILIN which they engineered toward eventual successful state formation.

Initially, the FRETILIN-led resistance was largely quashed by the Indonesian army along with the killing of at least 100,000 ethnic East Timorese; some estimates put the death toll at 200,000 or one-third of East Timor’s population. (Ballard, 2008: 9) Looking back on these events, Jose Ramos-Horta had this to say of what unfolded in 1975-1976:

While the world powers officially lamented this to the United Nations, they did not evict Indonesia as they evicted the Iraqis from Kuwait, nor did they impose sanctions. The East Timorese resisted the Indonesian invasion despite all the odds, suffering great casualties. The Indonesians killed 30 percent of the East Timorese population with napalm bombing and starvation. The remainder were herded into huge camps with no food supply, then resettled in new villages easily controlled by the Indonesian military. East Timorese resistance continued, militarily in the mountains, clandestinely in the towns. (1997: 32)

In 1978 a further offensive destroyed the FALINTIL headquarters in the Matabeen Mountains and the insurgency’s group leader, Nicolau Lobato, was killed. (Gunn, 2011:xxv) Such a massive perlocution sent the FALINTIL and its FRETILIN umbrella into a period of disarray.

After a period of inactivity, FRETILIN joined forces with other domestic self-determination actor groups. By 1980-81, the FRETINIL, noting that a diversity of voices was being heard more as noise, as the retreating international attention attested, changed tactics and engaged in coalition building with all other groups calling for independence, which “led to the creation of the National Council of Maubere Resistance (CNRM), made up of three pillars: an Armed Front, a Diplomatic Front, and a Clandestine Front.”(Stephan, 2006: 61) Yet, the FRETILIN remained the most prominent, and the FATINIL took charge of leading a guerilla offensive under the leadership of a rising leader, Jose Xanana Gusmao, who later became the first President of East Timor. (Gunn, 2011: xxv)
Such a strategy of coalition building and role playing to direct coherent and orchestrated speech acts, and thus illocutionary messaging, is similar to what other self-determination movements have engaged in, such as the Palestinians as shall be discussed later. In the case of the self-determination actors in East Timor, the orchestration was successful. The popularity of the movement was fueling both direct financial and moral support from its support base among the East Timorese within the territory and in the diaspora. This three-prong approach produced a division of labor such that a multi-tactical strategy could be followed. Jose-Ramos Horta, installed by FRETILIN as the spokesperson of the East Timorese self-determination movement, led the diplomatic portfolio and engaged in persistent interactions at the United Nations and in major capitals attempting to garner the support of the international community. The movement was augmented by RENETIL, a youth group, which engaged in a media campaign exposing the atrocities suffered by the East Timorese, which led the International Committee of the Red Cross (ICRC) to send a team to East Timor in 1979 in the face of news of mounting famine. The UN General Assembly issued another call for self-determination for the East Timorese.249

Indonesia took notice of this shift in the tides in favor of the FRETILIN and FATINIL and the uptake in the locutionary acts by them, and in 1982 “adopted a “hearts and minds” strategy, attempting to win over the population with large-scale economic and social development,” as Ballard quotes a British observer. (2008: 12) Part of this campaign included greater tolerance for East Timorese culture, including its Roman Catholic religion, which stood in contrast to the predominant Muslim religion of the vast majority of Indonesians. With greater scope to operate freely and under the leadership of Bishop Carlos Filipe Ximenes Belo, who

shared the 1996 Nobel Peace Prize with Jose Ramos-Horta, the Roman Catholic Church gained more traction among East Timorese and provided another refuge from the repression of Indonesian rule. Bishop Belo used his position within the Church to reach out to the international community, writing letters directly to the Pope, the UN Secretary General, and even the government of Portugal on behalf of the East Timorese and the conditions they were suffering. These actions “served to cohere the East Timorese around a Catholic identity” (Kingsbury, 2009: 16), and served to strengthen the resolve of the popular base in support of the self-determination movement. Accordingly, the new perlocutionary measures taken by Indonesia were not having any impact as the feedback to the FRETILIIN was that their popular support was not waning, although the effectiveness of their international support was still wanting.

During this period, the seemingly ambivalent position of Australia towards Indonesia’s actions in East Timor was becoming more apparent, and the reasons for this were perhaps more obvious with the 1991 ICJ ruling that was aimed at adjudicating what was essentially a commercial dispute between Australia and Portugal over the access to and use of East Timorese resources. In 1982, Australia’s Prime Minister, Gough Whitlam, visited East Timor at the invitation of President Suharto of Indonesia and organized by Jakarta’s Center for Strategic & International Studies (CSIS), and declared after his tour that he had seen progress under Indonesia’s new policies in East Timor.²⁵⁰ CSIS, a supposedly civilian think tank consisting of former military leaders, had been active since 1974 in opposing East Timorese calls for self-determination. (Kingsbury, 2009: 48-49) Thus, the Indonesians were employing a strategy of

delegitimization of the self-determination claim of the East Timorese, in general, and of the actor group FRETILIN, in particular. Whitlam had already been on record expressing his opposition “to small states on the grounds that he did not believe they were viable.” (Kingsbury, 2009:48) His visit was contemporaneous, in what was unlikely to have been coincidental, with an inquiry by the Australian Senate into the conditions and events of East Timor, instigated by a public outreach campaign waged by FRETILIN-supported groups and the Australian aid agency. Public opinion in Australia was divided with the government apparently in full support of Indonesia. In 1985, Australia’s government recognized the *de jure* Indonesian sovereignty over East Timor. (Gunn, 2011: xxvi) It was also announced that year that Australia and Indonesia had entered into a treaty to jointly exploit petroleum reserves in the Timor Gap.

This action led Portugal to take a complaint to the ICJ that Australia had unlawfully entered into an agreement with Indonesia concerning East Timor when, in fact, the UN had recognized Portugal’s administration and sovereignty over the territory, and that any agreement for use of East Timorese resources should be made with Portugal and the East Timorese. This argument put forward by Portugal embraced the right of East Timor to colonial self-determination. Australia, on the other hand, took the position that East Timor was a territory falling under the sovereignty of Indonesia by virtue of its de facto control of the island. Ultimately, the ICJ side-stepped the issue at hand on the basis that Indonesia was not a party to the case as it had not accepted the jurisdiction of the ICJ in this instance. In this way, the “Court refused to accept Portugal’s claim of sovereignty over East Timor, but it also refused to rule on the validity of Indonesia’s status vis-à-vis East Timor.” (Sterio, 2013: 76) However, the ICJ did maintain that East Timor was a non-self-governing territory and that it had the right to self-determination.
Yet, even while appearing to project an image of moderation of its rule in East Timor, Indonesia continued its campaign of repression “with continued sadistic brutality against the civilian population; gang rape, mutilation, and torture were common currency for the Indonesian military.” (Kingsbury, 2009: 56). By 1985, the main voices calling for inquiry into Indonesia’s rule in East Timor were the United Nations High Commissioner for Human Rights (UNHCR), which denounced Indonesian human rights violations in East Timor and called for self-determination for the East Timorese, as well as the ICRC, which had continued to be active in East Timor as of 1979. While domestic support was solid, FRETILIN began to divert their attention to focusing the international community on East Timor in the hopes of impacting the positions of the primary power states. In 1986, Bishop Belo requested from the United Nations in a letter to the Secretary General that a referendum be conducted in East Timor so that the people could exercise their right to self-determination. He, along with Jose Ramos-Horta, had also started a campaign to bring Pope John Paul II to visit East Timor in the hopes of highlighting East Timorese suffering. In 1988 the European Parliament affirmed its support for East Timorese self-determination and called upon Indonesia to remove its troops from the territory. (Gunn, 2011: xxvi) Faced with mounting international pressure and in an attempt to maintain the image of supporting economic and social development in East Timor, Indonesia declared East Timor as a tourism destination and opened it up to the world in 1989. Not to be outdone, he also formally invited the Pope to make the visit to predominately Roman Catholic East Timor. The visit was a virtual media show with numerous outbursts of East Timorese holding banners and shouting a call for their freedom in the Pope’s presence.251

The visit of the Pope seemed to breathe new energy into the popular movement led by the FRETILIN, while the reaction of Indonesia to this international embarrassment was a continuation of its repressive internal policies. It soon resorted once again to outright violent perlocution with a major massacre of East Timorese in 1991 after a rally during a funeral of a popular resistance figure. The Dili massacre (also known as the Santa Cruz massacre after the name of the cemetery) is often seen as the turning point for the movement in terms of international sentiment. Gusmao, reaching out to the international community, its secondary stakeholder, in the aftermath of the Dili massacre, waged a major international media campaign, and for his efforts, the Indonesians responded by arresting him in 1992. The event also gave Ramos-Horta an entree to convince the Portuguese delegation at the United Nations to reach out to the Indonesian counterpart to start discussions on the future of East Timor, with initial discussions taking place in 1992. Thereafter, Portugal switched to being a vocal supporter of the East Timorese cause of self-determination. The international community was now taking notice.

Indonesia was still not showing any signs of softening its positions, at least not publically, and in 1993 it found Gusmao guilty of treason and sentenced him to life in prison, which it later commuted to 20 years—all of which only had the impact of increasing his popularity both domestically and internationally as he became a symbol for the struggle of the East Timorese.\textsuperscript{252} This situation is reminiscent of the trials and tribulations of South Africa’s Nelson Mandela. In fact, Mandela, now President of South Africa, at the request of Secretary General Kofi Anan spoke on Gusmao’s behalf, reaching out to President Suharto in 1997 to release him but to no avail. (Ballard, 2008: 14) As an aside, the similarities between Gusmao

and Mandela are significant, as each was labeled both as terrorist and freedom fighter, each was jamied and each became president of their respective countries after release from jail.

With these events and against the backdrop of a fallen Berlin Wall and an end to the Cold War, new states declaring themselves in Eastern Europe, events in Balkans with both Bosnia and Kosovo, there was evidence that the US, under President Bill Clinton, was also beginning to shift its position towards Indonesia and East Timor. In 1993, President Clinton publically criticized Indonesian actions in East Timor and raised the subject of its self-determination in a meeting with President Suharto in Japan. (Gunn, 2011: xxvi). In trying to make the case to the US to change it posture, Ramos-Horta argued as follows:

It is standard US policy in international negotiations, such as those involving Indonesia, Portugal, and East Timor, to support the process without prejudging the outcome. In this conflict, however, the United States has acted in defiance of its own policy. For 20 years the United States has prejudged the issue by recognizing the de facto incorporation of East Timor into Indonesia without a valid act of self-determination. The United States has thereby tacitly judged Indonesia to be the unopposed administering power in East Timor. This is not an opinion shared by other nations as the East Timorese have not had a chance to formally voice their opinion.

The one-sidedness of the US position has had two negative effects. First, it has undermined the efforts of the UN Secretary-General to find a solution, as he was charged to do in 1983. US opposition to a solution that jeopardized Indonesia's de facto occupation of East Timor has prevented the emergence of a solution acceptable to the East Timorese. Second, the position of the United States has convinced the Indonesians to downgrade the need to negotiate with the Portuguese in good faith, leading to Jakarta's inflexibility at the negotiating table and preventing progress. The inactivity of the United Nations, therefore, and the failure of its Portuguese-Indonesian negotiations since 1992, are the direct result of the United States' one-sided policy on the Indonesian occupation of East Timor.

The United States can facilitate the resolution of the East Timor crisis in two ways. First, it behooves the United States to return to its policy of supporting the negotiating process without prejudging the outcome. This means that the United States would need to adopt a policy of positive neutrality between annexation and independence, between Indonesia and Portugal/East Timor. A US policy statement could read as follows:
"Consistent with its support for the efforts of the United Nations Secretary-General in finding a just, comprehensive and internationally acceptable solution to the conflict in East Timor, the United States no longer views the 1976 incorporation of East Timor into Indonesia as irreversible."

The use of this double-negative would leave US policy genuinely neutral between the official opposing positions of Indonesia and Portugal, a long-standing US and NATO ally. The United States, in view of this policy of positive neutrality, would also be in a position to support a UN sponsored referendum on self-determination. Second, it would make sense for the US President, in view of the modest policy change suggested above, to appoint a special envoy for East Timor, as he has for Angola, Bosnia, Northern Ireland, and Rwanda Burundi. In this way the United States could give substance to the United Nation's mandate to find a solution to the East Timor issue.  

The fact that the US position on East Timor at that point was effectively what Ramos-Horta suggested it should be suggests the impact of this major speech act. Perhaps, in the face of such internationally reoccurring calls for self-determination and the international costs they were incurring, the US had begun to redefine its identity now that the Cold War was a thing of the past, and hence the need to reassess its interests. In 1993, the US Senate had passed a measure to ban arms sales to Indonesia on improvements in its human rights record, and President Clinton publicly denounced Indonesia’s actions. (Gunn, 2011: xxvi) In 1996, the US State Department issued a report on human rights in Indonesia in which it resoundingly criticized Indonesia for its record, in general, and in East Timor in particular.  

In 1996, Ramos-Horta along with the leader of the East Timorese Catholic Church, Bishop Carlos Ximenes Belo, was awarded the Nobel Peace Prize. According to Ramos-Horta, “[t]he East Timorese struggle against the 1976 Indonesian annexation of their land and their subsequent brutal repression were brought to the world's attention in December 1996, when

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Bishop Carlos Ximenes Belo and I were awarded the Nobel Peace Prize. This important sign of international recognition comes at what we hope will be the last stage of a historic struggle for self-determination in East Timor.” (1997: 32) Thus, events instigated by the orchestrated speech acts of the self-determination actor on behalf of East Timor, along with events such as the Nobel Peace Prize, were coalescing in their favor with the international community becoming more aware and sympathetic to the East Timorese cause. The legitimacy of the cause was being embraced by all the secondary stakeholders, both domestic and international, as well as the primary power states of the US, Australia and Portugal. The legitimacy gap which had been closing much earlier was now beginning to meet a tightening power gap.

In 1997, newly appointed Secretary General Kofi Anan became a vocal supporter of self-determination in East Timor. The previous year the UN Commission on Human Rights had assessed the situation in East Timor and its report raised concerns over the human rights situation there.255 Anan appointed a special representative for East Timor, Ambassador Jamsheed Marker from Pakistan, who opened dialogue with the Indonesian government, while keeping ongoing contact with Ramos-Horta and even visited Gusmao in prison in Jakarta in 1997. (Ballard, 2008: 31) By 1998, Indonesia was still trying to repress the independence movement in East Timor through its local governor who issued a decree requiring all pro-independence employees of the local administrative infrastructure to come forward and resign, which sparked a series of protests across East Timor.

The perlocutionary response of the Indonesians was to send in troops to conduct raids on villages and reinforce local militias already funded by Indonesia, which triggered a strong rebuke by Secretary General Anan making it clear “in the UN that the Indonesian military was a part of

the problem, and not the solution, of conflict in East Timor.” (Ballard, 2008: 35) President Suharto, facing domestic pressures to step down after the Asian financial crisis and loss of international support, called for a referendum in East Timor on independence, perhaps in the hopes of boosting his international stature. However, Suharto did not remain in power long and stepped down that year. He was succeeded by Bacharuddin Jusuf Habibie, whose position on East Timor was not as steadfast in the face of the overwhelming problems Indonesia was facing with the Asian financial crisis and his need to consolidate his position on power in Indonesia. Ahead of negotiations with the International Monetary Fund (IMF) in the wake of Indonesia’s financial crisis, Habibie began to suggest that he was open to negotiating, and sent his foreign minister to the UN with an offer for a “special status to East Timor, with wide-ranging autonomy.” (Ballard, 2008: 33) Indonesia was yielding and shifting its position under the weight of international pressure and its own domestic realities.

Sensing that the tide was turning in its favor, the FRETILIN maintained its multi-prong campaign. With the aid of the affiliated youth organization, RENETIL, a major student demonstration in Dili took place in 1998 demanding the release of Gusmao from his Jakarta prison, during which four students were killed. (Gunn, 2011: xxviii) This was followed by clashes across East Timor and outbreaks of demonstrations demanding independence. Indonesia attempted a proxy conflict through internecine fighting “provid[ing] arms and other forms of support to motivate antiautonomy militias in Timor...” (Ballard, 2008: 34) These actions were perceived by the international community and condemned. In 1998 and 1999 both houses of the US Congress acted once again on behalf of East Timor condemning the violence and calling for a referendum so that its people can express their will.256

Moreover, from his prison cell, Gusmao rejected the Indonesian offer of autonomy, and this energized the calls for independence both domestically and internationally. (Ballard, 2008: 34 and Gunn, 2011: xxviii ) Australia began to take action to realign its interests and met with Gusmao in his prison cell along with representative of oil companies. Perhaps reassured by a private speech act from Gusmao, Australia completely switched its position when Australian Prime Minister John Howard reversed its recognition of Indonesian autonomy over East Timor and formally proposed to Indonesian President Habibie a multi-step process to toward a referendum and self-determination. (Gunn, 2011: xxix) Habibie finally relented under the pressure of the primary power states and the mounting international rejection of its position, and accepted a referendum in East Timor in 1999. He also ordered the release of Gusmao, perhaps the final act indicating that Indonesia had fully relented in its position toward East Timor, or perhaps it was made in the hopes that it would be perceived by East Timorese as a gesture of goodwill ahead of the referendum, which was to be posed as a question on whether or not East Timor should remain an autonomous province of Indonesia. In East Timor, Bishop Belo led a process that brought about a peace accord between all the factions, and “commits the separatists and the militias supporting the Indonesian Government to ‘stop violence, killing, intimidation and terror.’” 257 With secondary stakeholders now fully accepting the legitimacy of the self-determination claim, and the primary power states, including Indonesia shifting their individual positions towards that acceptance as well, the legitimation process toward East Timor state formation was almost complete.

Concurrent with these events, negotiations were proceeding within the UN under the leadership of Secretary General Anan and his special representative Ambassador Marker with Indonesia, Portugal, still recognized by the UN as the official administrator of East Timor, and East Timor’s representative, Jose Ramos-Horta, who at that point had consolidated the legitimated position of the FRETILIN as the representative of the East Timorese self-determination movement. In May 1999, the various parties agreed at the UN on the referendum process to be administered by the UN. This was then affirmed by the UN Security Council in Resolution 1236, which affirmed the UN’s administration of the referendum, as well as put in place a peace-keeping presence, as follows:

Welcomes further the intention of the Secretary-General to establish as soon as practicable a United Nations presence in East Timor, with a view to assisting in the implementation of these Agreements in particular through:

(a) Conducting a popular consultation of the East Timorese people on the acceptance or rejection of a constitutional framework for an autonomy for East Timor, scheduled for 8 August 1999, in accordance with the General Agreement;

(b) Making available a number of civilian police officers to act as advisers to the Indonesian Police in the discharge of their duties in East Timor and, at the time of the consultation, to supervise the escort of ballot papers and boxes to and from the polling sites.

Under UN auspices, a referendum was held in August 1999 and the result was a resounding rejection of autonomy under the sovereignty of Indonesia with a No vote of 78.5% and a turnout of 99%. (Gunn, 2011: xxiv) East Timor had now fulfilled a basic element of the legitimation process for self-determination, namely, expression of the ‘people’s will’ with this referendum. The self-determination movement had achieved international legitimation. In 2000, the United Nations Security Council voted to send an Australian-led international force to

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maintain the peace in East Timor, in addition to UN representatives as a transitional administration. That same year, East Timor received many international figures and heads of state including Portugal’s President, Jorge Sampaio, and UN Secretary General Kofi Anan. In 2001, the military wing of FRETILIN, the FALINTIL, was dissolved and replaced by the East Timorese Defense Forces, a move that is similar to what later occurred in the case of the demobilizing of the Kosovar military wing of its self-determination movement. Elections were held for parliament and executive branches with the FRETILIN winning majorities, and José Alexandre Gusmão was elected the first President of the Democratic Republic of Timor-Leste.

In May 2002, East Timor declared its independence in a ceremony attended by US President Clinton and then Indonesian President Megawati Sukarnoputri, daughter of Suharto. That same month, East Timor became a full member state of the United Nations, a sovereign state, at last. The legitimation process was complete and state formation was realized with the meeting of both power and legitimacy enablers.

What do we learn from the self-determination legitimation process for a sovereign East Timor?

These East Timor events illustrate the discussion developed in this analysis as depicted in Figure 4. In 1975, a self-determination actor group, the FRETILIN, was born. The primary stakeholder group in this instance is the Indonesian government, the party with the most direct power interest and power control over the validity claims being posed by the FRETILIN, and which posed itself as the host state, although its legal claim to that status at that stage was rejected by the international community. Indonesia along with the US, Australia, and, to lesser degree, Portugal form the primary states, and the basis for the power gap the process began from, which go through a process of alignment, fracture, and then realignment with identities of all
states shifting throughout the process. The secondary stakeholder group in this case consists of
the East Timorese and the balance of international society including international organizations
such as the United Nations.

The first major speech act was to declare independence in 1975, followed by a series of
locutionary speech acts in the form of violent resistance aimed at the occupying Indonesian
army, coupled with nonviolent appeal to both its base within East Timor and the international
community. The perlocutionary response on the part of the East Timorese was a growing
support for the actor group, yet the perlocutionary response on the part of the Indonesian
government was strong and swift. At the same time the balance of international society was
increasing its support for the movement, but had not yet reached the point of norm cascading,
since the impact of this support was limited. Receiving this feedback, FRETILIN adjusted their
tactics and formed coalitions with other groups; they also diversified the type of speech acts they
employed by incorporating diplomatic and clandestine locutions.

The feedback this time was more in line with their objective as more yoking occurred in
the form of limitations on the options available to the Indonesian government and greater support
internationally. Ultimately, the primary power state of Indonesia, seeing that its identity as a
repressive regime was no longer tenable, recognized that its interests had shifted, and accepted
that its control over East Timor was no longer maintainable. At this point, the view of the ‘host’
power state came into line with those the other primary power states and of the secondary
stakeholder group, and with the alignment of power and legitimacy enablers, legitimation was
complete. As the legitimation occurred as a result of clear support by both stakeholder groups, it
was sustainable and thus led to eventual sovereignty.
Thus, the success of the claim in East Timor is both a case of post-colonial and remedial self-determination. The primary question to be considered is would East Timor have attained statehood in the absence of the efforts of the FRETILIN and its multi-prong strategy? In other words, would the will of the primary states have sufficed to either impede or bring about eventual statehood for East Timor? On the other hand, would the efforts of the FRETILIN and others have achieved the aimed result of eventual statehood in the absence of the alignment of all the primary power states? The implication of the above case study analysis is that the final outcome would not have been possible without the actions of both groups, in tandem and mutually constitutively. This is the process of legitimation, itself a function of communicative action, that acts as an intervening variable between the two independent variables, the primary power states and the secondary stakeholders, such that state formation is possible.

In assessing the dynamics of the two variables of power and legitimacy in the legitimation process in East Timor’s self-determination movement, mechanisms that contributed to successful state formation can be discerned. There mechanisms possibly entail some implications for other such self-determination movements.

1. Self-determination claimants can be successful if they offer a singular voice. The FRETILIN in East Timor offered a disenfranchised people a means to self-identify and coalesce around; they provided a rallying cry for the voice of nationalism that was singularly purposeful, and when it became a cacophony of voices, the main claimant representative was able to engage in coalition building so that the voice was neither disjointed nor contradictory. Ultimately, the FRETILIN were able, through strategic use of speech acts, to attain a position of legitimated representation. They turned the East Timorese noise into a voice for legitimate self-determination. “The resistance to the Indonesian occupation was extensive and well-
coordinated, consolidating a sense of national identity and producing a strong alternative source of legitimacy…” (Kingsbury, 2009: 22)

2. Related to the first point, FRETILIN was able to embrace a multi-prong strategy that allowed it to be nimble and responsive to feedback from its audiences; it was attuned to the feedback from their audiences, and adjusted its strategy accordingly. This strategy embraced a diplomatic front appealing to the international community, a domestic political front to shore up base support and engage with international political actors, and a military front to engage with the Indonesians and exhibit to its base that repression could be faced. Moreover, it was able to read the perlocutions from its audiences and pivot in response to all these elements accordingly.

3. Lastly, the self-determinant claimant’s strategy was successful in triangulating all audiences against the intransigence of the ‘host’ primary power state, in this case Indonesia. The case suggests that through its speech acts and multi-prong approach, FRETILIN was able to orchestrate, with the collaboration of other international actors and non-government groups, including media, the UN, and civil society, an appeal to the primary power states, other than Indonesia, to reassess their identities vis-à-vis the case of East Timor. The events suggest that both the US and Australia adjusted their positions, after shoring up their self-interests, so that their interests moved in favor of supporting the East Timorese call for self-determination. This in turn caused them to pressure the Indonesians.

The quasi-success case of Kosovo

The self-determination movement for a sovereign state of Kosovo is not yet complete, but is close, or far, depending on how one sees the likelihood of a shift in primary power interests, namely, that of both Serbia and Russia. Yet, a case can be made that it has succeeded in attaining
quasi-statehood, noting that full statehood, as defined, is with membership in the United Nations, presently being threatened by a veto from Russia in the Security Council.

**Figure 5: Legitimation of Self-Determination: Example of Kosovo**

An apt starting point to chart the modern quest for self-determination in Kosovo is perhaps 1968 when there was a demand for it to become a ‘republic’, coming on the heels of student riots calling for stronger ties with Albania. This was followed by a partial acquiesce on the part of the Socialist Federal Republic of Yugoslav (SFY) by designating Kosovo as an autonomous region in the 1974 constitution under President Josip Broz Tito. Such a move may be perceived to nominally satisfy the condition of internal self-determination as discussed in Chapter 3. As argued by Sterio, Kosovo, prior to the loss of this status in the events after 1990, when Kosovo made its first declaration of independence and submitted it for recognition to the

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EU Badinter Commission (which was refused as discussed below), under the Serbian President Slobodan Milosevic, did in fact enjoy autonomy amounting to internal self-determination in the context of relevant international law. (2013: 120) Kosovo declared independence again in 2008 in a move that has stirred much political debate and academic work with respect to its validity within the context of international law, including an Opinion from the International Court of Justice (ICJ) in 2010.261

It is not the objective here to debate the legality of Kosovo’s actions. Rather the objective is to highlight the central role that arguments grounded in international law and norms have been used during the legitimation process for the self-determination claim of the Albanian Kosovars, the predominant ‘people’ within the recognized territory of the Republic of Kosovo, and have been central to many of the speech acts the Albanian Kosovar self-determination movement has invoked. This discourse, within the context of the communicative action of the self-determination claimant as it interacts with both primary state interests and secondary stakeholders, has resulted in a power-legitimacy gap interplay that is illustrated in Figure 5.

Placing Kosovo within the typology of self-determination in international law and norms, as it has emerged in the post-colonial period through the fall of the Berlin Wall and is still evolving, centers around whether or not it is to be considered part and parcel of the now reduced state of the Republic of Serbia,262 or if its call for independence as a separate ‘people’ in a defined territory is to be accepted. In either case, the starting point for valid self-determination claims revolves around whether or not there is a distinct ‘people’ as determined by a common

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262 As indicated in Table 1 and the relevant footnote, the Republic of Serbia is the successor state to the Federal Republic of Yugoslavia, itself the successor state to the Socialist Federal republic of Yugoslavia. See United Nations Member States at http://www.un.org/en/members/index.shtml#s [last accessed March 1, 2013]
language, religion, history, or culture in a defined territory at some historical juncture, the
definition adopted here. Without recalling the history of the Albanian Kosovar population in
Kosovo, there is little debate that such criteria apply, and indeed this has been affirmed by
various international bodies, states, and by both the primary states and secondary stakeholders in
this context.

The second criterion would be to test whether or not internal or external self-
determination applies. Here is where the discourse over the past two decades has evolved.
Should it be internal self-determination, then secession is not sanctioned in the context of
Kosovo’s self-determination efforts, but rather consideration would go to the many offers for
autonomous self-rule preserving the territorial integrity and sovereignty of the Republic of
Serbia, invoking the so-called *uti possidetis* rule of international law. In the case of the latter,
then the test of whether or not self-determination in the form of secession and ultimate statehood
becomes a matter of whether or not Albanian Kosovars have a legitimate case for remedial self-
determination. Alternatively, and as was variously argued during the discourse of the past two
decades by the Kosovar self-determination movement and its primary state supporters, Kosovo
was never a part of the Republic of Serbia (or of its predecessor forms), but had in fact lost its
independence to it. The history of events tells a story of how these various criteria and arguments
played out.

As advanced by Buchanan and others, “under international law, a people accrues the
right to exercise external self-determination if its rights to internal self-determination are not
respected by its mother state. In other words, international law may recognize an exceptional
case of remedial self-determination in the non-colonial context only when the mother state
engages in such oppressive behavior that the minority people no longer can coexist within the
larger society of the mother state.” (Sterio, 2013: 122) Under the 1974 constitution, Kosovo, arguably, enjoyed a measure of internal self-determination, but with the declaration of independence in 1990, and the subsequent Milosevic crack-down, a strong case for external self-determination could have been made. Sterio argues that this in fact was the moment in time when the Kosovar case for secession was the strongest. She argues that in 2008 the case was weaker because Milosevic was no longer in power and the posture of Serbia was more leaning towards the EU, as it was seeking potential membership. Hence, it would have been more amenable to an Albanian Kosovar internal international self-determination quest as long as the territorial integrity of Serbia was preserved in the process. In fact and as shall be discussed, Serbia during the Rambouillet and the subsequent Ahtisaari process of negotiations had offered Kosovo greater autonomy and self-rule. However, and as presented by Ahtisaari to the Security Council, the situation on the ground had dramatically changed after eight years of separation from Serbia under direct UN administration, making it unworkable under the evolving new institutional environment, if not impossible without aggravating ethnic tensions, to place Kosovo back under Serbian control.

The Albanian Kosovar self-determination movement’s self-identified representatives during the 90s and until recently have been two distinct groups: the first is the Democratic League of Kosovo (LDK), which later became the ruling political party under the Provisional Administration before and after Kosovo declared independence in 2008, and the second is the Kosovo Liberation Army (KLA) and its political arm, the Democratic Party of Kosovo (PDK), the current ruling party; both of these claimants actually presented alternative approaches in their speech acts, as shall be discussed, and at times appeared to work in tandem. The primary power

states are the Republic of Serbia (and its predecessor forms starting with the Socialist Federal Republic of Yugoslavia (SFRY), as the host state, the Soviet Union and later Russia, the United States, and the European Union. Secondary stakeholders include both the Albanian Kosovar ‘people’, the Serbian minority in Kosovo, other states including Albania, and the international society more broadly. The story of Kosovo’s statehood is one of fractures across and within all actor groups.

In 1974, the Socialist Federal Republic of Yugoslavia (SFRY) promulgated its fourth and last constitution prior to its collapse and reconstitution first as the Federal Republic of Yugoslavia (in 2000), then to Serbia and Montenegro (in 2003), and currently, as of 2006, the Republic of Serbia.265 This constitution adopted one clear change: it enshrined the right to self-determination and secession in favor of its federal republics (although there is debate on whether the right was extended to the republics or to ‘peoples’). At the time, there were republics, provinces, as well as recognized “people”. The six republics were Bosnia-Herzegovina, Croatia, Macedonia, Montenegro, Slovenia, and Serbia, and the six recognized people, or nations, were (respectively) the Muslim Bosnians, Croats, Macedonians, Montenegrins, Serbs and Slovenes. The new constitution also gave the two provinces, Kosovo and Vojvodina, considerable autonomy, which, while short of that extended to the republics, allowed them nevertheless, to exercise provincial self-rule as well as the ability to veto any edicts of the Serbian parliament. According to this constitution, neither Kosovo nor the Vojvodina were eligible for secession. Moreover, neither the Albanian majority group in Kosovo, nor the Hungarians of Vojvodina were recognized as ‘peoples’ or ‘nations’; rather they were considered ‘nationalities’.

“’Nationalities’ did not have the right to self-determination or their own republics… The theory

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behind the nation/nationality distinction was that Albanians and Hungarians had their own state outside of Yugoslavia.” (Summers, 2011: 7) This distinction was rejected by Albanian Kosovars who felt that they were being discriminated against especially as their numbers were greater than “some South Slav ‘nations’ which had their own republics such as the Montenegrins and Macedonians.” (Summers, 2011: 7)

In 1946 there had been a mass uprising of Albanians in Kosovo and elsewhere in the SFRY, which were met with a major police crackdown, and the subsequent effective control of the province by the SFRY secret police and the targeting of outspoken critics. (Pavkovic, 2000: 81) The sentiment of discrimination had been building up for decades including a major protest in 1968 by Albanian Kosovar students that set off protests across the province. Kosovo was also the poorest of the regions in SFRY with the lowest per capita incomes, highest unemployment rates, especially amongst youth, and relatively fewer graduates with university education. This came on top of decades of a policy of ‘encouraging’ Moslems and Albanians to ‘emigrate’, which set off occasional episodes of popular fury throughout the 1970s with cries for independence and greater association with Albania being the dominant demand. (Pavkovic, 2000: 80-81) In March and April 1981, wide spread protests erupted across Kosovo triggered by another student riot at Pristina University protesting economic conditions. The protestors’ outward demand was for a Republic of Kosovo and greater ties with Albania. The SFRY army came in to quell the protests resulting in the deaths of Albanian Kosovars.266 These were the first of the speech acts in the legitimation process of the Albanian Kosovar quest for self-determination with the aim for an independent and sovereign Kosovo.

266 According to Pavkovic (2000: 81) the number killed ranges from the official figure of 9 to as many as one thousand. Summers (2011: 9) places the number dead in the “hundreds”.
Along with unrest in other parts of SFRY, including Vojvodina and Montenegro, the situation in Kosovo experienced a purging of the Communist Party by the central government in Belgrade and reconstituting the provincial police in Kosovo in 1987. However, this had the impact of further fomenting anger and calls for independence. In 1989, Serbia, under the leadership of Slobodan Milosevic, orchestrated the Kosovar parliament to effectively derogate its autonomy status placing Kosovo under direct legislative and security control of Serbia. Similar repressive measures were taken across SFRY, which were the lead-in to the demands for independence that the SFRY saw from across its republics (with the exception of Montenegro) and the province of Kosovo. These events unfolded contemporaneous with events involving demands for independence which were taking place in Eastern Europe and the Soviet Union. The calls for self-determination through secession were being heard across southern and eastern Europe.

In 1990 the Yugoslav Communist Party fell and nationalists in Croatia and Slovenia took over power and demanded secession. Other republics, such as Bosnia and Macedonia were still supporting the federation, albeit with demands for maintenance of their autonomy, which was being degraded with the actions of the Milosevic regime over the recent past. At this point, the next major speech act was made in the Kosovar quest for statehood. In the summer of 1990, Serbia adopted a new constitution that basically declared the existence of a Serbian country that encompassed some national minorities, including the Albanian Kosovars. Thus, whatever limited autonomy Kosovo enjoyed was gone. (Weller, 2009: 38) In Kosovo the locutions were progressively a call for elevation to the status of a republic, or internal self-determination, followed by a call for an independent Kosovo, or external self-determination. In fact, Albanian Kosovar “members of Kosovo’s Assembly declared Kosovo a republic outside of Serbia.”
The perlocutionary response of Serbia was swift; it dissolved both the executive authorities and the Assembly.

The following year, 1991, saw declarations of independence by Slovenia, Croatia, Bosnia, and Macedonia. Albanian Kosovars “also made a declaration of independence on 21 September, following an unofficial referendum in which independence was endorsed by voters by 99.87% on an 87.01% turnout.” (Summers, 2011:10) Albania was the only state to recognize the newly announced Republic of Kosovo. Yet, the locutionary speech acts of declaring independence and the overwhelming vote in support were loud and clear, and the illocution to Serbia was that Albanian Kosovars were effectively united in their desire and would not be left behind the independence movement. This time, however, the perlocutionary response from Serbia was not immediate, apparently because its attention was directed elsewhere, namely to its seceding republics, and violent responses directed at Bosnia.

In the face of the number of republics of SFRY declaring independence and requesting recognition, in 1991 the European Commission (EC) held a Peace Conference on Yugoslavia. It then established a commission to provide advisory opinions on the status of the republics of Yugoslavia, which in turn was to be informed by the Declaration of Guidelines on the Recognition of New States in Eastern Europe and the Soviet Union also produced by the EC on the heels of the dissolution of the Soviet Union to guide how the EU and other governments came to recognize the newly formed states of that region (see Table 1).267 Robert Badinter, “was appointed by the Council [sic] of Ministers of the European Community as a member of the Arbitration Commission of the peace conference on the former Yugoslavia. He was elected as President of the Commission by the four other members, all Presidents of Constitutional Courts

in the E.C.”268 The Badinter Arbitration Commission was tasked with delivering opinions on whether or not, and under what conditions self-determination claimants from the SFRY would be recognized as states. All of the “republics were invited to submit requests for recognition which Slovenia, Croatia, Bosnia-Herzegovina and Macedonia did….. On 22 December the Kosovo leader Ibrahim Rugova wrote to the Chairman of the peace conference to request recognition for Kosovo as an independent state but this was refused.”269 (Summers, 2011: 11) Accordingly, another speech act involving an application within the context of a body convened to assess claims in light of prevailing international legal rules and norms was invoked; this locution did not result in the perlocution desired and the feedback to the claimant was that other speech acts were needed.

By this time, the first organized, self-proclaimed representative of the Kosovar self-determination movement had emerged, namely, the LDK under the leadership of Ibrahim Rugova. The unofficial referendum held in 1991 that determined the will of Albanian Kosovars to seek statehood had been organized by the LDK, which held new elections in 1992 to determine leadership for the new ‘Republic of Kosovo’, which was another determined speech act. Ibrahim Rugova was elected president and a parallel government was formed by the LDK in Kosovo that “also operated in exile, from Germany [and called] on very extensive financial support from the ethnic Albanian diaspora, especially in Germany, Switzerland and Sweden.” (Weller, 2009: 39) These resources were predominantly derived by instituting a voluntary contribution, or tax, of 3% from Albanian Kosovars and Albanian diaspora. These resources allowed the LDK to run its political operations, as well as “parallel institutions, providing for

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268 Background on Robert Badinter provided by the UN here [http://www.un.org/News/dh/hlpanel/badinter-bio.htm](http://www.un.org/News/dh/hlpanel/badinter-bio.htm)

health, education, and media…intended to advance Kosovo independence, but also were a response to discriminatory policies by the Serbian government. Most Albanians in any form of state employment had been dismissed, including doctors and other health workers and school teachers. Albanians had restrictions on property and were subject to arbitrary arrest.” (Summers, 2011: 14-15) Moreover, a policy of ‘Serbianization’ was implemented with the objective of restricting, if not eliminating, Albanian culture, language and education. These policies had the impact of rolling back much of the elements of internal self-determination that Sterio argues made the case for Albanian Kosovar external self-determination at this stage due to the abrogation of their internal self-determination rights with these actions.

This communicative action of the LDK was directed at its base, Albanian Kosovars, and more broadly at Albanians in the diaspora and across the border. The illocution was that LDK represented the aspirations for Kosovar statehood and offered a solid and peaceful alternative that could help avoid the violence being exacted in other areas of the former republics by the Serbs; the secondary stakeholders heard the messages and their perlocutionary response was to support the movement not only in sentiment but with financial resources. This stakeholder group also included international society, who was growing enamored with the strategy and approach of Rugova that projected a moderate image. The strategy of the LDK under Rugova was to simultaneously subdue the Serbs from directing their violent perlocutions towards Kosovo, while also delegitimizing Serb rule in Kosovo by declaring a policy of non-participation with Serbian authorities and administration, which its alternative administration to Albanian Kosovars enabled.

For a while the strategy seemed to be working and audiences, both domestic and international, were being ‘yoked’ into accepting that the call from Kosovo was indeed legitimate
in light of the actions of the Serbs elsewhere. The headlines in the media at the time attested to that.\textsuperscript{270} *The Economist* described this period as follows: “During the 1990s Mr Rugova urged peaceful resistance to Serbian rule. For this he was regarded as the “Gandhi of the Balkans”, especially when its other leaders seemed bent on war…When the Croats fought the Serbs in the early 1990s they tried to lure Mr Rugova into starting an uprising, a second front, which the Croats thought would weaken the Serbs. It might well have done, but Mr Rugova was having none of it. He did not want to give Mr Milosevic an excuse to drive out Kosovo's Albanians.”\textsuperscript{271}

Indeed, the Serbs were tolerating the approach of Rugova, perhaps because they were busy elsewhere, but perhaps also because through the parallel institutions, Rugova was actually catering to the needs of the Albanian Kosovars and in the process keeping them from openly and actively revolting themselves. Hence, while meant to be directed to the Serbs only, the unintended illocution of the LDK received by the international community, as well, was the message that “things are quiet in Kosovo”.

As the carnage that unfolded in Bosnia and elsewhere came to an end with the Dayton Accords that brought an end to the hostilities in Bosnia, Albanian Kosovars began to perceive a different message. While Kosovo under the LDK and Rugova were getting international praise for their peaceful approach, the unintended consequence was that nothing had changed politically on the ground for them. The Serbs were still in control in Kosovo, while the


international community had been consumed by what was happening in Bosnia. What they saw was that the suffering of the Bosnians garnered, not only the goodwill of the international community, as was the case in Kosovo, but more effectively, their direct military action. This was its own kind of speech act perceived by the secondary stakeholder in Kosovo, and the apparent illocution was that the international community will act if there is gross suffering. The growing disillusionment by the Albanian Kosovars gave way to the rise, in the early 1990s, of another claimant to the mantle of representative of their self-determination movement, namely the Kosovo Liberation Army (KLA), whose message to their base and the primary power states, namely Serbia, was that violence would be the new strategy followed. *The Guardian* had this to say of this period:

As head of the Democratic League of Kosovo (LDK), the first political party in Kosovo to challenge the communist regime head-on, Rugova responded to the subsequent Serbian crackdown by launching a parallel, underground system of education, health and local government for the ethnic Albanian population in Kosovo, paid for by the Albanian diaspora in the west. A "government-in-exile" was also set up and shuttled between European capitals. Rugova, meanwhile, remained in Pristina, where he regularly spoke to any western reporters who made the trek down to Kosovo to visit him at his tiny offices. Serbian secret police were well aware of these meetings and it was suspected that the Serbian authorities tacitly tolerated Rugova as the devil they knew.

His parallel system of government won widespread support among the ethnic Albanians until disillusion set in during the mid-1990s, when Kosovo's status was ignored in the Dayton peace agreement drawn up between Milosevic and western leaders to mark the end of the Bosnian conflict in November 1995.

By early 1998, the Kosovo Liberation Army (KLA) had become the dominant resistance organisation [sic] in Kosovo, espousing war instead of pacifist tactics. Many people began to write off Rugova.272

A journalist reporting for the BBC expounded: “Hard core Kosovo Liberation Army activists say they have been battling the Serbs for a century or more - I met volunteers whose

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fathers and grandfathers joined rebellions against Belgrade - but the current phase of the struggle gained momentum at the signing of the Dayton peace agreement.” 273  The objective of the KLA was to provoke violent Serbian response, building on the supposed lessons of Bosnia and Dayton. 274  The KLA, “carried out its first armed attack in May 1993, killing two Serb police officers.” (Summers, 2011: 16)  There was a huge sense of disappointment among the Kosovo Albanians that their aspirations had not been addressed in the peace accord and that fed the desire of some for an armed struggle. The KLA were slow to garner popular support from the secondary stakeholder with this initial locution, however, they persisted in their strategy throughout the mid-1990s of attacking Serbian police and army targets, and whoever they suspected of being Serbian collaborators. 275

By 1998, much of Kosovo had come under KLA control, and Albanian Kosovars were supporting them having joined in a popular uprising that year in the face of increasing Serbian discriminatory and repressive actions. 276  Observers at the time noted that the Serb actions that year, perhaps provoked by the KLA led actions, served to catalyze popular support; in other words the locutions were having the desired perlocutionary responses with the secondary stakeholders. The same BBC reporter observed: “Serb security forces in February 1998, seeking…gunmen, attacked the villages of Likosha n and Cirez. They met no armed resistance but in one place 12 members of a single extended family were killed. Another family lost four of five sons, and one family saw their seven-months-pregnant daughter-in-law shot in the head. In the wake of these massacres, thousands of ethnic Albanian villagers rushed to join the KLA and the movement was transformed overnight. I have met many KLA officers who say that the

275  Sterio (2013) and Perritt (2008)
276  Weller (2009: 55-75) discusses a number of the human rights violations in Kosovo during the 1990s.
Likoshan and Cirez massacres had been for them the personal spur to join up.” After this attack, the Serbs response was unrelenting, moving Serb forces across Kosovo and largely pushing the KLA out of the areas they had previously controlled. More deaths ensued including one in a village called Racak that left dozens dead.277 “In 1997/8, the crisis in Kosovo evolved from a human rights problem into a humanitarian crisis.” (Weller, 2009: 66) It is estimated by the US State Department that at least 1.5 million Albanian Kosovars, or 90% of the population, had been forced to flee in the period 1998/99,278 which set off the course of events that eventually led to the NATO bombings of Serbia and its forces in Kosovo.

The international community took notice, and the position towards Kosovo changed measurably. Faced with the possibility of another humanitarian catastrophe on the heels of the Bosnia crisis, it was clear that neither the US nor Europe was prepared to watch as another unfolded. Leaders from those capitals said as much. In March 1998, US Secretary of State, Madeleine Albright, said, "We are not going to stand by and watch the Serbian authorities do in Kosovo what they can no longer get away with doing in Bosnia."279 And she went on to say, “it is important that there be a peaceful pursuit of the legitimate political rights of the people of Kosovo.”280 Italy’s Foreign Minister, Lamberto Dini, said, “We expect Belgrade to take initiatives to move towards giving this province its own autonomy.”281 Thus, while these same primary power states were prepared to ignore the calls for self-determination in Kosovo in 1990,

280 Ibid.
with the prospect of more political and military strife on their doorstep looming, they revisited in
light of how they saw themselves in this context and subsequently how they defined their
interests. As the atrocities continued, one headline in the Washington Post read, “Slaughter in
Racak Changed Kosovo Policy,” referring to the US and European posture on the issue.
Arguably, the KLA speech acts had a hand in catalyzing events that led to this change.

Initially, the international community resorted to the discourse of international law and
norms. A series of UN Security Council resolutions both condemned the actions of Serbia as
well as those of the KLA as a terrorist organization; the Contact Group (see below) also
condemned the violence and the actions of the KLA, and the US and others placed the KLA on
their terrorist lists. Under UN SC Res 1160, which invoked Chapter VII of the UN Charter
related to threats and breaches to the peace acts and of aggression, the Security Council placed
an arms embargo on the FRY, including Kosovo, and noted that it was: “Condemning the use of
excessive force by Serbian police forces against civilians and peaceful demonstrators in Kosovo,
as well as all acts of terrorism by the Kosovo Liberation Army or any other group or individual
and all external support for terrorist activity in Kosovo, including finance, arms and training.”
The two subsequent resolutions were more broad noting that the Security Council was:
“Condemning all acts of violence by any party, as well as terrorism in pursuit of political goals
by any group or individual, and all external support for such activities in Kosovo, including the

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283 “Chapter VII: Action With Respect To Threats To The Peace, Breaches Of The Peace, And Acts Of Aggression”,
284 UN Security Council Resolution (SC Res) 1160, 31 March 1998, found here
supply of arms and training for terrorist activities in Kosovo and expressing concern at the reports of continuing violations of the prohibitions imposed by resolution 1160 (1998).”

According to Weller, the LDK, as also demanded by the Security Council resolutions, was resisting providing any financial support to the KLA, which contributed to a rift between the two groups. Yet, the KLA had managed to establish “its own fundraising structure in Europe and the United States.” (2009: 74) It is interesting to note that the UN was not endorsing any external support to, or the actions of, the KLA, unlike its position to some of the similar militant groups fighting for self-determination in Africa such as SWAPO or the ANC, as discussed in Chapter 3. On the other hand, the Security Council resolutions were making reference to the ‘Kosovar Albanian leadership’ which was a clear reference to the LDK and Rugova, who was still acting as the ‘elected’ President of Kosovo; in other words, there was a recognition by the international community that the LDK was a legitimate representative of the Albanian Kosovar people. In fact, it was representatives of the LDK that engaged with the Contact Group on behalf of the Albanian Kosovar people during this period underscoring their *de facto* position and accepted legitimacy. Perhaps because it had an option, the international community was rejecting the legitimacy of the violent claimant, the KLA, and accepting that of the nonviolent claimant, the LDK. Nevertheless, even if not orchestrated, the two claimants had fulfilled separate but effective roles in the legitimization process of Kosovo’s self-determination thus far.

Despite the condemnations, the KLA strategy appeared to have worked. The international community had begun to act in the face of the violence that the secondary stakeholders suffered

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286 UN SC Res 1160: “Calls also upon the Kosovar Albanian leadership to condemn all terrorist action, and emphasizes that all elements in the Kosovar Albanian community should pursue their goals by peaceful means only.” See Note 284.
as a result of pursuing their call for self-determination. Parallel to the responses of the Security Council, the Contact Group that had been formed in the early 1990s in response to the events of Bosnia and which consisted of the relevant major primary power states of the US, UK, Russia, France, Germany and Italy, issued two statements on 9 and 25 March, 1998, ahead of the Security Council resolutions.\textsuperscript{287} While noting the need to protect the territorial integrity of the FRY, the first statement called for a solution that would: “take into account the rights of the Kosovo Albanians and all those who live in Kosovo. We support an enhanced status for Kosovo within the Federal Republic of Yugoslavia which a substantially greater degree of autonomy would bring and recognize that this must include meaningful self-administration.”\textsuperscript{288} The UN Security Council resolutions expressly opened the door, at least, for internal self-determination for Kosovo by making reference to the work of the Contact Group and calling on the FRY to implement its recommendations, and thus, another step forward in the legitimation process was achieved.

With these results, the feedback to the KLA and their base popular support was that the strategy was paying off. “In many respects, the development of the KLA followed the pattern of other insurgencies around the world. It flourished only when it had broad popular support, while its activities helped to build that support…Crucial to the success of the KLA was its prowess in presenting its case to the outside world.” (Perritt, 2008: 2) The communicative action of the KLA, just as that of the LDK at its time, was successful in propelling the case for self-determination in Kosovo; it addressed its various audiences with locutions that carried multiple illocutions and achieved the desired perlocutions.


\textsuperscript{288} Ibid.
Against the backdrop of the violence and the humanitarian crisis in Kosovo, the Contact Group, the primary state interest involved in this political contention, had been continuing its diplomatic efforts and called for a new round of direct and intense negotiations between the parties in Rambouillet in France. The Contact Group was in fact itself split between two primary state camps. Russia was emerging as the champion for what it perceived to be Serbia’s interests, its historical and former communist ally. The US and European members of the Contact Group appeared to be pushing for greater autonomy for Kosovo, but kept the language within the context of internal self-determination protecting the territorial integrity of the FRY for fear of provoking Russia’s resistance. There was a fracture among the ranks of the primary power states; once again, UN Security Council veto politics and those of the Cold War era as in the context of West versus East Germany appeared to be at play. As quoted by Weller, the US and Russian Foreign Ministers “issued a Joint Statement, declaring that ‘the sides in Kosovo must work harder to achieve an interim political settlement providing substantial autonomy for Kosovo and should engage in meaningful intensive negotiations for that purpose’. ” (2009: 109) The Rambouillet Conference resulted in a draft agreement that called for a UN peace force under NATO command, autonomy for Kosovo, respect for the territorial integrity of FRY, and an agreement to meet after three years of its signing “to determine the mechanism for a final settlement.”\(^{289}\) In other words, Kosovo’s case continued to be advanced and accepted by all the primary power states, albeit within the confines of an FRY sovereignty, to remain within the acceptable aims of Russia. Nevertheless, the call for a discussion on final settlement after three years was a clear opening for an outcome beyond simple internal self-determination. The Kosovar side, represented by the LDK, signed the agreement. The Serb side came back with

alternative elements, including autonomy for Kosovo, and ultimately did not sign. This reluctance was viewed as further evidence of Serbian intransigence.

Without Security Council authorization, although Chapter VII had been invoked in the resolutions on Kosovo thus far, NATO began a campaign of aerial bombings in March 1999 of strategic targets in Serbia and across Kosovo. The campaign lasted a total of 78 days and ended with an agreement on June 3, 1999. The NATO action was widely criticized at the time as being outside the bounds of international law, a debate which continues to rage in academic works and political discussions, with the impact of those actions on future interventions being debated and perhaps evidenced in subsequent actions, such as the recent action in Libya. It is not the objective here to weigh those arguments, but rather to point out that the primary states, other than Russia, were willing to take such action, which they justified on humanitarian grounds. After acting within their perceived identities during the course of the atrocities in Bosnia, the NATO governments had gone through an identity shift, and this led the way for a new perception of interests, and hence new actions.

The debates in the Security Council after the NATO actions reflected the overwhelming sympathy of the international community for those actions, and the collective desire to arrive at a solution for Kosovo. That discourse reflects the fact that the secondary power states were also now being more vocal of their support to the Kosovar cause, already exhibited in their support for the UN resolutions, both in the Security Council and the General Assembly in the 1998-1999 period. With the cessation of bombing by NATO, the Security Council passed Res 1244 which passed with a 14-0 vote with China abstaining, which authorized a UN peace keeping force, KFOR, under NATO command with the exception of the Russian contingent. The resolution

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290 UN SC Res. 1244, 10 June 1999, found at http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/kos%20SRES%201244.pdf [accessed February 28, 2013]
also demanded withdrawal of the Serbian forces, both military and police (paragraph 3), the
unarming of all Albanian groups such as the KLA (paragraph 15), and perhaps most impactful,
the installation of UN-led administrative structure that effectively had the mandate of state-
building in Kosovo, known as UNMIK, (paragraphs 10 and 11).

Perhaps most interesting to note was that while the resolution respected the territorial
integrity of the FRY, it effectively removed Kosovo from Serbian control through the
administration of UNMIK and the protection of KFOR. Resolution 1244 practically, if not
explicitly, created a UN trusteeship, in accordance with UN Charter, Article 77 (1)(c),291
reminiscent of the same in the post-colonial period, the ultimate objective of which was self-rule
and hence self-determination; however, Crawford has questioned the lack of explicit invocation
of that Article. (Crawford, 2006: 559) Ultimately, Kosovo was set on a separate path from that of
the FRY, and this had a direct link to the Kosovar declaration of independence in 2008 and a
dependent relationship to the ultimate outcome of its statehood, albeit quasi at this point.

While the KLA was an obvious actor on behalf of the Kosovar claim for self-
determination, the LDK continued to play an active role as well throughout this period, perhaps
having more scope to do so in comparison to the alternative, as noted. Not only was the LDK the
main representative of the Albanian Kosovars at the negotiating table with the Contact Group,
but Rugova and other members of the LDK were busy with speech acts of lobbying Western
capitals for support. The Public Broadcasting Service (PBS) in the US chronicles that “Rugova

291 Chapter XII, Article 77, of the UN Charter states: “The trusteeship system shall apply to such territories in the
following categories as may be placed thereunder by means of trusteeship agreements:
   a. territories now held under mandate;
   b. territories which may be detached from enemy states as a result of the Second World War; and
   c. territories voluntarily placed under the system by states responsible for their administration.
   It will be a matter for subsequent agreement as to which territories in the foregoing categories will be brought
under the trusteeship system and upon what terms.” Found at
and other Kosovar Albanian officials arrive[d] in Washington to meet with Clinton, Gore, Albright and advisors. In 29 May [1998] meeting in Oval Office, Rugova seeks Clinton's support for the Kosovar Albanians' cause.”²⁹² After the NATO bombings, the allure of the KLA had begun to wane now that the political option was showing more traction and results on the ground.

This is an important observation coming out of the events in Kosovo, namely, when the primary power states create the space for results to be affected politically by creating the space and the authorizing environment for it, self-determination claimants tend not to seek violent speech acts in their communicative action; it becomes counter-productive. In the case of Kosovo, with UNMIK and KFOR on the ground, there was a rise once again of LDK and Rugova’s more political, as opposed to the KLA’s violent, approach. Once again, The Economist noted: “After the war he [Rugova] was slow to return; he seemed to be yesterday's man. Gradually, however, he realised [sic] his own strength … he found his stock soaring once more.”²⁹³ In November 2001, under UNMIK, elections were held for the Kosovo Assembly,²⁹⁴ and the LDK party won a majority of the seats followed by a good showing by the Democratic Party of Kosovo (PDK), which, since its members had put down their arms, was the newly emerging political arm of the KLA. The few years that ensued were ones of political consolidation between these two parties, on the one hand, and deeper institutional development under UNMIK, on the other.

While UNMIK’s mandate was to guide Kosovo toward final status negotiations, this increasingly became a second order objective to be addressed once Kosovo had succeeded in building its institutional framework such that it met European-level standards and benchmarks,

²⁹³ See Note 271.
especially in the eight areas mandated by the UN to fall under its period of administration in Kosovo. The benchmarks set were in eight areas: rule of law, democratic institutions, minority and displaced persons rights, freedom of movement, basis for market economy, dialogue with Serbia, property rights, and transformation of the Kosovo Protection Corps. \(^{295}\) (The Kosovo Protection Corps, which was “an unarmed civilian emergency corps”, \(^{296}\) was put together after 1999 to absorb some of the KLA fighters.) This emerged as the ‘standards before status’ principle, which quickly came to be regarded as an undue constraint to Kosovar self-determination as it stood in the way of the status negotiations. As noted by Weller, although the primary power states may have been trying to delay the status talks in the hopes that ethnic tensions may recede, in addition to the possible implications on other secessionist efforts in Chechnya, Abkhazia, and South Ossetia, which would make Russia more unwilling to engage on the question of Kosovo, these concerns, “were of little relevance to the population of Kosovo.” (Weller, 2009: 185)

Rejecting the perceived inaction toward independence, in March 2004, riots spread across Kosovo. These riots, according to an investigative report by the Organization for Security and Co-operation in Europe (OSCE)\(^{297}\) mandated by the UN to administer one of the pillars under UNMIK, namely that of institution building, concluded that the riots had been sparked by what was perceived to be a Serbian ethnic attack when “Albanian boys drowned in the Ibar River, near Çabrë/Çabra, Zubin Potok municipality. The media reported that a fourth boy, who had been

\(^{296}\) Summers (2011: 29).
\(^{297}\) The OSCE, with a membership of “57 States from Europe, Central Asia and North America, ... is the world’s largest regional security organization. It offers a forum for political negotiations and decision-making in the fields of early warning, conflict prevention, crisis management and post-conflict rehabilitation, and puts the political will of its participating States into practice through its unique network of field missions...The OSCE traces its origins to the Cold War détente of the early 1970s, when the Conference on Security and Co-operation in Europe (CSCE) was created to serve as a multilateral forum for dialogue and negotiation between East and West.” OSCE, found at http://www.osce.org/who [accessed February 27, 2013]
with them but survived, claimed that the four boys had been chased into the river by Serbs from a nearby village and a dog."298 This incident quickly spread across Kosovo as a broader expression of discontent, and it was reported that a senior UN official believed that Albanian Kosovar extremists had “orchestrated” the events that ensued over the course of three days leaving many dead and hundreds injured.299

Further acts of violence ensued in 2005 including an assassination attempt on President Rugova, as well as simultaneous bomb explosions at the UN, OSCE, and Kosovo assembly.300 The Albanian Kosovars were expressing directly that “they might not be willing to remain subject to the standards before status policy forever and could easily opt for more direct action.” (Weller, 2009: 187) As observed by The Economist: “Right now the ethnic-Albanian hot-heads seem to have the upper hand.”301 Once again, as results on the ground were not apparently leading to Kosovar independence, violence became the speech act tactic to which they resorted.

Once again, the illocution was heard by the primary power states. The perlocution came in the form of a UN report based on the recommendation of Ambassador Kai Eide, who was Norway’s envoy to NATO and was tapped by the UN secretary General to review the situation in Kosovo. The Eide report, which was endorsed by the Secretary General and presented to the other primary power states, concluded that the situation in Kosovo was serious and could get worse if the policy of standards before status was not revised. In a subsequent report, he

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300 “Timeline: Kosovo”, BBC, found at http://news.bbc.co.uk/2/hi/europe/country_profiles/3550401.stm [accessed March 9, 2013]
recommended that the time had come for the status negotiations, as was agreed by all parties, and launched them in October 2005.

This led to the appointment of “Martti Ahtisaari, the former President of Finland, who had helped negotiate the end of the NATO air campaign against Yugoslavia, as his Special Envoy for the Future Status Process for Kosovo.” (Weller, 2009: 189) Once again, the Contact Group, including Russia, issued a declaration setting the parameters in the form of guidelines for the settlement of the status of Kosovo. This set off a process of negotiations between representatives of the Republic of Serbia and Kosovo represented predominately by the LDK. During this process Rugova, succumbing to cancer, died and was succeeded by Fatmir Sejdiu, also from the LDK, as President of Kosovo and who led the Kosovar delegation during the Ahtisaari negotiation process; he was the first President of Kosovo after its 2006 Declaration of Independence. (Weller, 2009: 197)

What emerged from this year-long negotiation process was what is termed the ‘Ahtisaari Comprehensive Proposal’, \(^{302}\) issued on February 2, 2007, which set out the basic elements toward a settlement that included all but mention of eventual statehood for Kosovo, and made no mention of preserving the territorial integrity of the Republic of Serbia. While it was silent on the issue of independence, “it gave Kosovo attributes normally associated with statehood, such as the ability to conclude international agreement and join international organizations.” (Summers, 2011: 38-39). The Kosovar leadership and Assembly were quick to endorse the proposals, while Serbia formally rejected it and put forth a similar set of proposals with the key exception that it entailed autonomy for Kosovo while preserving it within the Republic of Serbia. What was initially encouraging was that Russia had remained a party to the Contact Group negotiation

process; however, Russia registered its rejection of the proposals as presented and called for further negotiations. The primary power states were divided. This led Ahtisaari to conduct further discussions which led to no breakthroughs; on March 26, 2007, he submitted a recommendation to the Secretary General of the UN, Kofi Anan, noting that the time had come for Kosovo to attain independence, which Anan submitted to the Security Council with his complete endorsement. Ahtisaari’s ultimate recommendation was justified as follows:

I have held intensive negotiations with the leadership of Serbia and Kosovo over the course of the past year... But after more than one year of direct talks, bilateral negotiations and expert consultations, it has become clear to me that the parties are not able to reach an agreement on Kosovo’s future status....

Throughout the process and on numerous occasions, both parties have reaffirmed their categorical, diametrically opposed positions: Belgrade demands Kosovo’s autonomy within Serbia, while Pristina will accept nothing short of independence...

The time has come to resolve Kosovo’s status. Upon careful consideration of Kosovo’s recent history, the realities of Kosovo today and taking into account the negotiations with the parties, I have come to the conclusion that the only viable option for Kosovo is independence, to be supervised for an initial period by the international community...

For the past eight years, Kosovo and Serbia have been governed in complete separation. The establishment of the United Nations Mission in Kosovo (UNMIK) pursuant to resolution 1244 (1999), and its assumption of all legislative, executive and judicial authority throughout Kosovo, has created a situation in which Serbia has not exercised any governing authority over Kosovo… A return of Serbian rule over Kosovo would not be acceptable to the overwhelming majority of the people of Kosovo. Belgrade could not regain its authority without provoking violent opposition. Autonomy of Kosovo within the borders of Serbia — however notional such autonomy may be — is simply not tenable. 303

Ahtisaari’s memo to the Secretary General contains within it the prime justification for Kosovar independence as embraced by all the primary power states, save Russia, namely that Kosovo had gone too far to go back now; basically, the argument was that the facts on the ground had changed, a similar argument that has been used to indicate an opposite outcome for self-

determination in Palestine, as shall be discussed. The possible repercussions and costs were too high, both in terms of possible ethnic strife and a return to the events of 1999 which led to NATO intervention, and the fact that both Serbia and Kosovo had been on separate paths for too long to make possible reintegration tenable. Less than one year later, ethnic Albanian members of Kosovo’s Assembly, led by the LDK in its crowning speech act, declared the independence of the Republic of Kosovo on February 17, 2008.304

Within days, the Republic of Kosovo had been recognized by all the members of the Contact Group except Russia. For its part, Serbia, recognizing that its only course at this stage was to operate within the bounds of international rules and norms, submitted an application to the United Nations for an advisory opinion from the ICJ, which the General Assembly, with 77 member states voting in favor, approved on October 8, 2008.305 The ICJ considered the case and came back with its Opinion,306 on July 22, 2010, that applied a narrow interpretation of the question put to it, which was: "Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?"307 The ICJ majority Opinion found that the Declaration did not violate international law insofar as there is nothing in the body of international law that would prohibit such a group from making such a statement. The Court referred to previous declarations of independence by other secessionist movements, such as that of the United States that were often opposed by the host state, and

307 See Note 305.
determined that there was no prohibition against it.\textsuperscript{308} In other words, the absence of a prohibition made it lawful, applying what has been called the ‘Lotus principle’. (Summers, 2011: 43) The Court did not see the need to consider whether or not the declaration should be recognized, or if Kosovo had exercised its right to self-determination lawfully; the Court simply viewed those matters to be outside of the scope of what it had been requested to opine on. Although seeming to sidestep the issue, the ICJ, ironically at the request of the host state which had hoped for a different result, put the legitimation process of the self-determination movement of Kosovo a major step closer to its fulfillment.

What can we learn from the self-determination legitimation process for a sovereign Kosovo?

Subsequent to the ICJ Opinion, the number of states recognizing Kosovo continues to increase. To date, 98 member states of the United Nations have recognized a sovereign Republic of Kosovo including three of the five permanent members of the Security Council;\textsuperscript{309} final and complete statehood remains close, yet far, as China and Russia show no indications of recognition, and attempting to secure formal membership will likely be blocked by either, and likely Russia’s, veto. Nevertheless, as noted in Chapter 3, Kosovo has proceeded to join international organizations including both the World Bank and the IMF in 2009, organs within the United Nations network, where 90 member states voted to accept it, including, interestingly, member states that still do not formally recognize it.

\textsuperscript{308} Paragraph 79 of the 2010 ICJ Opinion on Kosovo states: “During the eighteenth, nineteenth and early twentieth centuries, there were numerous instances of declarations of independence, often strenuously opposed by the State from which independence was being declared. Sometimes a declaration resulted in the creation of a new State, at others it did not. In no case, however, does the practice of States as a whole suggest that the act of promulgating the declaration was regarded as contrary to international law. On the contrary, State practice during this period points clearly to the conclusion that international law contained no prohibition of declarations of independence.” See Note 287.

\textsuperscript{309} See Kosovo Thanks You website found at \url{http://www.kosovothanksyou.com/?order=a#recognitions} [last accessed March 5, 2013]
Statehood for Kosovo is not complete, yet its trajectory (see Figure 7) is such that it will likely attain that status, hence, it is considered here as a partial success case entailing quasi-statehood. Similar to the multi-prong approach of the FRETILIN in East Timor, Kosovo’s self-determination claimants, both the LDK and KLA, played direct roles, some positive and others negative, yet in both cases having an impact on the ultimate conclusion. In this process, they both led and reacted to their audiences, both primary power states and secondary stakeholders, with sequential locutions that were adjusted based on the perlocutionary feedback they received. This legitimation process saw the primary power states, except both the host state Serbia and its main ally Russia, adjust their positions towards an independent Kosovo over the period of 1990-2008.

It is for this reason alone that Kosovo’s success remains partial. The course of the legitimation process, as charted in Figure 5, went through a major phase of not only avoiding a legitimacy gap, but also narrowing the power gap. Yet, the process is still not complete and the claimant’s job, therefore, is still not either. However, important conclusions and implications from the legitimation process of the quest for Kosovar self-determination can be drawn.

1. As seen in the case of East Timor, self-determination movements will present themselves in several guises, ranging from moderate to violent, depending on the status of the legitimation process at each stage.

2. Conversely, when given an option, the primary power states will choose to engage with the party offering a more moderate profile. As noted, perhaps because it had an option, the international community rejected the legitimacy of the violent claimant, the KLA, and accepted that of the nonviolent claimant, the LDK. Nevertheless, even if not orchestrated, the two claimants had fulfilled complementary, separate but effective roles in the legitimation
process of Kosovo’s self-determination thus far, suggesting a second finding. Even if the international community will opt to deal with moderate claimants, violence can be successful in bringing international attention to the self-determination claim especially if it provokes the ‘host’ state into acting indiscriminately. As indicated in all the case of the KLA and Kosovo, and in the case of East Timor, violence does galvanize the attention of both primary power states and the secondary stakeholders. The success cases of both East Timor and Kosovo tended to also be able to strategically employ other faces as suggested in the preceding, and to restrict their violent locutions to symbols of power of the ‘host’ state, as opposed to indiscriminate targeting of civilians or of non-affiliated parties. Thus, audiences perceived an indiscriminate ‘host’ state violence juxtaposed against, even if politically branded as terrorist, the perception of discriminate ‘freedom’ fighters.

3. The base of any self-determination claim is the underlying ‘people’ that forms the core of the secondary stakeholder group, which as noted before also includes the balance of the international community that is not part of the primary power states. A successful claimant requires the support of this core group in the first degree, and that of the broader group, in the second degree, in order to maintain the legitimacy of its representation and secure resources.

4. When primary power states accord the space for self-determination voices to be heard through political discourse, thereby creating the authorizing environment for it, self-determination claimants tend not to seek violent speech acts in their communicative action, as was indicated by the drop in the activity of the KLA after 2008 once self-determination took a turn toward realization of statehood for Kosovo.

5. Conversely, when peaceful communicative action by the self-determination claimant is perceived to not bring about tangible results, self-determination movements will pursue
violent speech acts in order, based on message feedback loops from both primary and secondary stakeholders, to engender perlocutions congruent with their ends, as was indicated by the rise in popularity of the KLA in the wake of the Dayton Accords and the perception that the LDA was not bringing about concrete results toward Kosovar state. This conclusion has significant implications for the course of political contention at a global level given the number of flaring hotspots, as per Table 2, and the impact these struggles have on international relations and conflict. Such a conclusion is also evident from the quantitative analysis undertaken by others as noted in earlier chapters.310

310 For some data see Peace Research Institute Oslo (PRIO) for data sets on armed conflict including secessionist movements since 1946 to present at http://www.prio.no/Data/Armed-Conflict/. Monica Duffy Toft also summarizes the PRIO findings in the online version of the appendix to her 2012 paper “Self-Determination, Secession, and Civil War” Terrorism and Political Violence, 24 (4). Also see the Heidleberg Institute for International Conflict Research (http://hiik.de/en/konfliktbarometer/index.html) and the Conflict Barometer 2010 report found at http://hiik.de/en/konfliktbarometer/pdf/ConflictBarometer_2010.pdf [online resources all last accessed December 15, 2012]
Chapter 7
The Case of the Elusive State of Palestine

[Israelis] don’t feel an urgent need to help birth a Palestinian state. With terrorism from the West Bank way down, and the militant group Hamas in power in Gaza, Israeli Jews have turned inward. In January’s [2013] election, the relationship between secular and religious Jews dwarfed discussion of the relations between Jews and Palestinians. Given this relative apathy, there’s little political incentive for an Israeli prime minister to risk his career, and perhaps his life, trying to hand over the West Bank.  

Figure 6: Legitimation of Self-Determination: Example of Palestine

The General Assembly of the United Nations, recalling the 1970 Friendly Relations Resolution 2625 (see Chapter 3), the International Covenant on Human Rights, the Universal Declaration of Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples, as well as other international instruments, passed a resolution in November 2012 affirming “the right of the Palestinian people to self-determination, including

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the right to their independent State of Palestine.”312 Last year, the General Assembly also admitted Palestine as a non-voting member of the UN. Such seemingly strong international support for a Palestinian state aside, that outcome may be further from realization than it was in 1947 when the UN first voted to establish it. The self-determination movement for a sovereign state of Palestine has not succeeded, and is likely to remain elusive in light of the positions of the primary state interests, namely Israel and the United States; these primary state interests are perhaps partially a function of the conduct of the self-determination movement itself in that it has failed to lead to identity shifts, or, in fact, identities shifted over time from a position of tacitly supporting Palestinian self-determination to one of resisting it. Palestine presents a case of failed legitimation of external self-determination, or conversely, a case of successful delegitimization of external self-determination.

In March 2013, US President Barack Obama went to Israel, and low among his checklist of discussion points was the appearance of an attempt at dusting off a pathway toward a Palestinian state to exist alongside that of Israel. The paradigm shift that is occurring in the context of Palestinian external self-determination is that the discourse is essentially threatening to become academic as ‘the facts on the ground’ are leading toward either a single state for both ‘peoples’, or, more likely, one in which Palestinian populated pockets enjoy a form of autonomy (limited internal self-determination), and in either case a diminishing possibility of a viable two-state solution.313 The shift is marked in Figure 6 where recent events illustrate that secondary

stakeholders, both the underlying ‘people’ and the balance of international community, are no longer finding legitimation of Palestinian self-determination as viable.

As observed by *The Economist*, “Palestinians, for their part, talk more and more of “a one-state reality”—while most caution that it is not a “solution”. They argue that the notion of a viable, contiguous, sovereign Palestinian state sitting peacefully alongside Israel is no longer feasible.” This, coupled with the primary host state of Israel’s reluctance, in light of its own domestic politics, to shift its position, is perversely resulting in a narrowing between both power and legitimacy gaps as both move away from the legitimation point that would enable a Palestinian state. As noted by Tarrow (1998), movements can hit stages of demoralization resulting in a change in attitude to the realm of possible options on the part of the base; this appears to be where the secondary stakeholders in Palestinian self-determination find themselves. Ironically, this movement may in fact attain alignment, achieving equilibrium, at a lower legitimation point perhaps enabling limited autonomy under internal self-determination for Palestinians.

The case of Palestine, like that of East Timor, rests on a claim grounded in both post-colonial, in light of its designation as such by the UN, and remedial self-determination, in light of the occupation under which the Palestinian people live and which was also recognized by the UN. The history of Palestinian self-determination, and the legitimation process of the Palestine Liberation Organization (PLO) claim to representing it, offers an interesting

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314 Ibid.
315 There is a relative paucity of academic work, in comparison to other self-determination movements of the post Cold War period such as both East Timor and Kosovo, on the issue of Palestinian self-determination within the context of international law despite the relative greater body of international legal activity at the UN, for example, on the issue. As observed by Pearlman (2011: 3), “the literature specifically on this case tends to fall in the realms of journalism, history, and policy analysis more than in that of the social sciences.” Much of the academic journal published work is found in the Journal of Palestine Studies, published by the University of California Press. See [http://www.palestine-studies.org/journals.aspx?href=current&jid=1](http://www.palestine-studies.org/journals.aspx?href=current&jid=1).
opportunity for an application of the legitimacy-power gap legitimation model developed here. While it lacks the lucidity of the model as applied in the case of East Germany, East Timor, or even Kosovo, for example, it nonetheless tends to substantiate the underlying contention made, that legitimation requires the support of both the relevant power states as well as the secondary stakeholders consisting of the balance of international society and the underlying ‘people’ of the self-determination claim, the latter group being a proxy for legitimacy. Such dual-track support, if not stemming from committed identities either from an initial positive posture or through identity shifts in the process of yoking and norm cascading, will lead to short-lived interests, hence unsustainable legitimation and elusive state sovereignty.

Full statehood is marked with voting membership in the United Nations of sovereign states. A vote for membership of Palestine would have to pass the Security Council with no vetoes by a permanent member, and the United States has promised it would do so in any such vote. In fact, as of July 2012 the US has exercised its veto 41 times on matters related to either Israel or Palestine out of a total of 82 vetoes it has cast in the Security Council of the UN. The last US veto was on February 18, 2011 on a draft resolution inter alia reaffirming Palestinian self-determination rights, calling on Israel to cease settlement activity, and calling on both parties to act within international law. Notwithstanding, in November 2012, Palestine was granted observer state status by the General Assembly, bypassing the Security Council, with a vote of 138 in favor to 9 against, with 41 abstentions. Now short of full statehood, the likelihood of

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318 See Note 8.
voting membership is not apparent given current primary state interests and the widening power
and legitimacy gaps.

The legitimation process that the Palestinian quest for statehood has thus far undergone is
illustrated in Figure 6, which highlights elements of both power and legitimacy gaps along the
way. In the context of negative-positive sovereignty, and how other than former colonies, self-
determination claims are often not heard, R. H. Jackson in 1990 noted that “Palestinians are
among the very few dispossessed nationalities that have achieved an anomalous quasi-
sovereignty in the current international regime mainly because the state which presently controls
their homeland is itself of uncertain legitimacy internationally. Israelis of necessity play the old
positive sovereignty game in defiance of the new rules.” (R. H. Jackson, 1990: 42) This
sentiment that questions the legitimacy of the creation of the state of Israel was captured in 1944
by Arab governments with the Alexandria Protocol, which essentially rejects the justification of
the creation of one state on behalf of a people at the expense of another. The signatory states to
the Alexandria Protocol “declare[d] that it is second to none in regretting the woes that have been
inflicted upon the Jews of Europe by European dictatorial states. But the question of these Jews
should not be confused with Zionism, for there can be no greater injustice and aggression than
solving one problem of the Jews of Europe by another injustice, that is, by inflicting injustice on
the Palestine Arabs of various religions and denominations.” (Harms and Ferry, 2008: 83)

Whether or not this was the actual impetus to the creation of the state of Israel is
irrelevant to the question of how the Arab and Palestinian street perceived it, and how this in turn
fed into how they reacted and ultimately rejected the various actions of the international
community as expressed by the UN since 1947 to the present day. As noted by Tessler: “In what
was to become a familiar Arab charge, they insisted that the Western world was seeking to salve
its conscience for the atrocities of the war [World War II] and was paying for its own debt to the Jewish people with someone else’s landed.” (2009: 259) The perception remains, and Palestinian leadership, especially the claimants to representing the cause—both the PLO and more recently Hamas—has maintained the discourse of illegitimacy and injustice which in turn enables it to reject, and perhaps miss opportunities for compromise, the solutions offered in 1947 and at various junctures to the present. In response to such observations, these representatives have noted that the Israelis have pursued a strategy of moving the goalpost and enforced continual changes to the status quo. In other words, Israel reinforces its legal fact with empirical fact, against which Palestinians must contend with a quasi-legal status in the absence of an empirical one.

This is also compounded by the inability of the Palestinian self-determination movement to speak as one voice throughout most of its efforts, with a possible exception at the early stages of the formation of the PLO and again leading into the process of Oslo. As noted in the case of East Timor, singular voice is a key element of success. That has been mostly absent in the case of Palestinian self-determination, which faces “two basic challenges: overcoming multiple sources of internal division in order to mobilize collective action and choosing among available strategies for challenging a status quo.” (Pearlman, 2011: 3) The process of legitimation of Palestinian self-determination has been compounded in that not only must the claim be legitimated through strategic communicative action, but there is also competition between contending claimants to the designation of legitimate representative, further complicating and confusing the discursive process. This internal and external challenge to legitimation has ultimately been detrimental to the overall process.
Prior to the British occupation starting in 1917, Palestine had been an undivided component of the Ottoman Empire in which predominantly Palestinian Arabs, both Christian and Moslem, and Jews, had lived for centuries. The mix of population in Palestine prior to “World War I was 657,000 Muslims (including 55,000 nomads); 81,000 Christians; 60,000 Jews (including 21,000 non-Ottoman citizens), totaling 798,000.” (Harms and Ferry, 2008: 64) As Zionism took hold in Europe and elsewhere in the early 20th Century, there was growth in Jewish immigration. This was perceived by the Arab population in Palestine initially with little apparent concern, in light of the cultural diversity already in Palestine. After World War I, Turkey lost most of its Middle East domain to either Britain or France. It was agreed by these two powers that Britain would take control of the areas including Palestine and modern-day Jordan and Iraq. With this shift in power, the Zionist movement immediately began its efforts at lobbying the British for support of a Jewish homeland in Palestine as the fulfillment of an aspiration to return to a land from whence they originally came. The British were sympathetic to these efforts, for reasons ranging from religious identity to economic and geo-political interests, which are beyond the scope of this analysis.

As early as 1915, there were indications that the Arabs, who were fighting alongside the British to end Ottoman domain, were growing concerned that in the post-Ottoman Middle East they were envisioning that Palestine would become a recognized state. This was discussed with the British within the context of what was also being envisioned for what at the time was Transjordan, Syria and Iraq. This jockeying led to a range of decisions, often lacking cohesion and even contradictory, on the part of the British. For example, Farsoun and Aruri (2006) draw

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319 Much of the history of the establishment of Israel and the Palestinian self-determination movement in this analysis is informed by Farsoun and Aruri (2006), Harms and Ferry (2008), Khalidi (2006), Pearlman (2011), and Tessler (2009). Further works can be found in the Journal of Palestine Studies, the main academic reference on Palestinian self-determination (see Note 315). Original documents can be found in Laqueur and Rubin (2001). Also see the bibliography for more references.
attention to an agreement entered into between the British and Sharif Hussein of Mecca who had fought with the British against the Ottomans. In this agreement, Sir Henry McMahon, British High Commissioner stationed in Cairo, exchanged letters\textsuperscript{320} with Sharif Hussein promising British consent for the establishment of Arab states throughout the former Ottoman areas of the Middle East including Palestine and excluding areas in northern Syria not considered “fully Arab”. However, even this agreement left scope for interpretation because, as Harms and Ferry note, in this “correspondence Palestine is never mentioned by name.” (2008: 68) Further scope for mixed interpretations was introduced when, in 1917, the foreign ministers of Britain and France exchanged notes, which became known as the Sykes-Picot Agreement,\textsuperscript{321} declaring that the general region of Palestine would constitute an independent Arab state. (Crawford, 2006:422)

An account of these events is found in the memoires of Ali Jawdat, who was to become prime minister of Iraq three times during its monarchy, and at the time of these events was a member of the Free Arab Officers fighting for liberation from the Ottomans with Sharif Hussein and his son Feisal, who later became the first King of Iraq:

The commencement of World War 1 in 1914 brought with it growing suppression of the Free Arab movement by the Unionists within the Ottoman Empire. With evidence of endless acts of persecution, Sherif Hussein of Mecca became increasingly concerned of the condition of the Arab community, and through his son Feisal, he was able to establish contact with members of the Free Arab movement in Damascus. Becoming more familiar with their views, he decided that the time had come to take positive action.

Before long Sherif Hussein offered his cooperation in the war effort to the British authorities on condition that they guarantee the independence of the Arab countries in the event of a favorable outcome of the war. The idea was one that the British had been considering on their own for some time, and they welcomed his suggestion. Letters exchanged between Sherif Hussein and Sir Henry McMahon were considered the basis for a formal agreement.


The letter from McMahon to Sherif Hussein dated July 1915 contained the following statement: “The Sherif promises to provide the British government with military support in return for a promise of independence for the Arab countries including the areas of Marseen and Adana in the north, extending from the 37th parallel to the Iranian borders. As for the eastern boundaries, they would start at the Iranian borders and end at Basra; the Indian Ocean except Aden would be its southern border. The Mediterranean up to Marseen [southern coast of Turkey] would be the western boundary of the kingdom.

But at the same time as the British Government was authorizing McMahon, their representative in Egypt, to sign the letter agreement with the Sherif of Mecca, the British Foreign Ministry had entered entirely contradictory negotiations with the governments of France Italy and Russia. Behind the backs of their presumed Arab partners, and without their knowledge and in blatant breach of faith, the British government thus went on record in planning to betray their promises of Arab independence.322

These agreements were superseded in the same year by the issuing of a letter by Lord Balfour, who at the time was Britain’s foreign minister, declaring the right of the Jewish people to a homeland in Palestine while at the same time not prejudicing the right of the Arab population to the same. The Balfour Declaration323 was worded in such a way as to appeal to the interpretation for either party to the emerging political contention, both Zionists and Palestinians. For example, the Declaration called for “the establishment in Palestine of a national home for the Jewish people, and [the British] will use their best endeavors to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine…” (Harms and Ferry, 2008: 69) Palestinians to this day point out the fact that the Balfour Declaration refers to Palestine and not Israel, and suggests that people should live together, perhaps in a federal system, within Palestine. However, it was the Zionist successful strategy of embedding its interpretation that won the day. As noted by Chaim Weizman, who later became the first President of Israel, the

Declaration “would mean exactly what we would make it mean – neither more nor less.”
(Harms and Ferry, 2008: 71)

Shortly thereafter, the League of Nations in 1919 established Palestine as a British Mandate and authorized Britain to manage it including authority to divide the territory. To determine the efficacy and method of implementing such a mandate, US President Wilson, with reluctant British consent, sent a delegation to assess the situation and recommend “which of the Western nations should act as the mandatory power for Palestine.” (Laqueur and Rubin, 2008: 23). This became known as the King-Crane Commission of 1919, which noted “with a deep sense of sorrow for the Jewish cause, the Commissioners feel bound to recommend that only a greatly reduced Zionist program be attempted… This would have t[om]ean [sic] that Jewish immigration should be definitely limited, and that the project for making Palestine distinctly a Jewish commonwealth should be given up.”324 (Laqueur and Rubin, 2008: 25) The US position at this point was in support of a Jewish homeland, but within the borders of a broader “united Syrian State” which could also include Palestine. (Laqueur and Rubin, 2008: 25) This was also the initial British position, which was a power state in this context. Under Winston Churchill, the White Paper, issued in 1922, reiterated the language of the Balfour Declaration, calling for a Jewish homeland in Palestine, again maintaining wide scope for interpretation.

During this period, contention between Jews and Palestinians, especially in Jerusalem, was beginning to erupt. To attempt to address the situation, the British launched a series of commissions to come up with recommendation on how to deescalate and resolve the smoldering political situation in Palestine. These reports, starting with the Shaw Report of 1929, Hope-Simpson Commission of 1930, and Passfield White Paper of 1930, all concluded that Jewish

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immigration should be limited. (Harms and Ferry, 2008: 77-79) At this point, Palestinian sentiments flared into open revolt, as discussed below. However, as a perlocutionary response to the first phase of the Arab revolt of 1936, the British, under the Peel Commission,\textsuperscript{325} issued yet another report in 1937, which essentially was the first to establish that partition into two states was necessary, and recommended allocating about 20\% of Palestine to a Jewish state; it was quickly accepted by the Zionist movement at the time. Ironically, the Arab Revolt rather than protecting Palestine from division actually achieved just that; Palestinians rejected this outcome and the second stage of the Arab Revolt in 1937, more violent than the first, was unleashed.

A series of early speech acts on the part of Palestinians came in 1936-1937 when a rebellion took shape against the British moves toward recognizing the aspirations of Jewish Zionists for an exclusive Jewish homeland in the fear of losing their own homeland. Wendy Pearlman describes this period as follows: “The “Great Revolt” begins with a broad-based participation in unarmed activities such as a general strike, popular demonstrations, and boycotts. Sporadic armed attacks become more frequent as rural bands carry out sniping and sabotage. The rebellion enters a hiatus and then becomes more dramatically and exclusively violent what it resumes in the fall of 1937. Rebel bands battle with British troops, and thousands die before the rebellion collapses into internecine fighting.” (2011: 1) These initial locutions were unorganized and employed both peaceful tactics, mostly in 1936 as the first phase of the revolt, followed by a second phase of violent modes of resistance in 1937 after the Peel Commission report. True to form, the British response was additional papers. In 1938, partly to appease and quell the revolt, the Woodhead Commission re-evaluated the Peel Commission report and concluded that partition was “impracticable”. (Harms and Ferry, 2008: 80) This was followed by yet another

White Paper in 1939\textsuperscript{326} that attempted to clarify the meaning of the Balfour Declaration as not intending for the creation of an independent state of Israel. The 1939 White Paper also “envisaged a Jewish national home in Palestine with controlled immigration for five years, and the implementation of Arab-Jewish self-governing institutions” in a form of federalism. (Harms and Ferry, 2008: 80-81) This plan was rejected by both parties.

The main point of enumerating all the various reports issued by the British on the question of Zionism and Palestinians is to highlight the nature of the mixed perlocutions that the Palestinians were receiving, which were confusing and had the impact of a hardening of positions. At this stage, two contending self-determination movements were in competition. One essentially rested on immigration and succeeded with the creation of the state of Israel,\textsuperscript{327} and the second, the subject of this case study, was a people who inhabited the territory yet failed thus far to achieve a state for Palestinians. The power states at the time were sympathetic to the causes of both groups. It was left to each claimant to either shift the positions of the power states in its direction, or to accept their mostly neutral stance, that may have, as a counterfactual, resulted in two states. History is clear about the outcome.

The main power states were otherwise engaged in the period before and during World War II. This was a period of continuous political contention between the competing claimants in the mandate of Palestine in which Zionists continued active lobbying locutions and speech acts of their own in the US and Britain, and both sides employed violence through armed militant groups vis-a-vis each other. In 1947, as it rid itself of its colonial burden in the wake of the economic and social devastation of World War II, Britain announced that it was handing over the


\textsuperscript{327} Although beyond the scope of this research, Israel provides a possible case for application of the theory being examined here.
responsibility of the Palestine mandate to the newly created United Nations declaring that it would withdraw from the area in 1948. The UN describes this period as follows: “During the Mandate, from 1922 to 1947, large-scale Jewish immigration, mainly from Eastern Europe took place, the numbers swelling in the 1930s with the Nazi persecution. Arab demands for independence and resistance to immigration led to a rebellion in 1937, followed by continuing terrorism and violence from both sides. UK considered various formulas to bring independence to a land ravaged by violence. In 1947, the UK turned the Palestine problem over to the UN.”

The UN immediately set up its own fact-finding commission called the United Nations Special Committee on Palestine (UNSCOP) representing eleven countries including Iran, India, Yugoslavia, Canada and Australia—many of which were power state allies and surrogates at that time; it is interesting to note that the name of the Committee referred to Palestine suggesting that the international community regarded the territory in that term. UNSCOP issued a report consisting of a majority view that recommended partition into two states with Jerusalem designated as an international entity, and a minority view that suggested a binational federal state incorporating autonomous areas for both parties. (Tessler, 2009: 258-9)

It was the majority view expressed in the UNSCOP report that prevailed. Incorporating the basic language of the Balfour Declaration, the United Nations General Assembly passed in November of 1947 Resolution 181 on the Future Government of Palestine “incorporating a plan for the partition of Palestine into two States (Arab and Jewish), economic union between them and the internationalization of Jerusalem.” (Crawford, 2006: 424) This resolution was supported by both the United States and the Soviet Union, with abstentions from Britain and

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China. The UN partition plan was accepted by the Zionist League and in 1948, immediately upon the withdrawal of the British, the independent state of Israel was declared. A few minutes later, the United States recognized the state of Israel, followed shortly thereafter by the Soviet Union. At this point, the claim to self-determination by the Palestinians was grounded in the post-colonial norm as envisioned by Chapter XI of the UN Charter and had been affirmed by the UN Security Council in Resolution 181. The primary power states were also in general acceptance, and, hence, the power enabler was in operation.

At the same time, the Palestinians and the Arab states rejected the plan on the basis that it allocated only 45 percent of the land area to the Palestinians while also leaving a Palestinian minority of 45 percent in the Jewish areas. (Farsoun and Aruri, 2006: 95) Conversely, the Jewish population of 30% was being allocated 55% of the land. Thus, from a position of no land, the Jewish quest for statehood resulted in the allocation of 55% of the territory in contention—a net gain; while from a Palestinian perspective, the outcome was a net loss going from 100% to 45%. Accordingly, the Palestinian people were not accepting where their self-determination claim was leaving them and hence there was an emerging legitimacy gap.

During this period, “between a quarter of a million and 350,000 Palestinians” were expelled or fled the areas claimed by Israel. (Khalidi, 2006: 131) In 1948, four Arab states (Egypt, Syria, Iraq and Transjordan) launched an attack on Israel following a period of heavy fighting between Jewish and Palestinian militants. As noted by Harms and Ferry, unlike the David and Goliath allegory often invoked, this was more a deadly form of lip service on the part of the Arabs who were appeasing their own streets, rather than an actual attempt at vanquishing a perceived enemy. (2008: 93) “In reality the invading countries—Egypt, Jordan, Iraq, Syria, and a handful of soldiers from Saudi Arabia and Lebanon—sent approximately 23,000 troops into
Palestine, and were met by 30,000-40,000 IDF troops...In summary, all the Arab Middle East invade Israel, and was not only outnumbered, but roundly defeated as well.” (Harms and Ferry, 2008: 95-96) Not only was the attack repelled, but Israel emerged with 78 percent of the land area, as opposed to the 55 percent originally included in the UN partition plan of UN GA Res. 181. (Khalidi, 2006: 137)

As a result of the 1948 war, the Arab streets across the region were seething, especially as an additional 700,000 Palestinians were expelled or forced to flee the newly captured areas. (Poland, 2005: 87) The space between the emotion of the people and the positions of their leadership began to expand. Relegated to a territorial space no longer contiguous and amounting to 22% of the land they had called theirs in its entirety prior to 1947, a new diaspora was born. Moreover, the remaining Palestinian areas in the West Bank and East Jerusalem were annexed by Jordan, and Gaza came under Egyptian control. These numbers provide insight into the experience of what was unfolding for the Palestinian people as they lost land and home in a few short years.

However, rather than being seized by the predicament of the Palestinians, Arab leadership were more concerned with their own state-building as most of them had just gained independence or statehood themselves. This was also the height of the Cold War and the bi-polar world in which Arab states were jockeying for sponsorship between the two superpowers, with the Soviet Union winning over major players such as Egypt and Syria. Playing a similar game, Israel was strengthening ties not only with the US, its main patron from the outset, but also Britain and France. In 1956, Israel, propped by Britain and France, attacked Egypt, which only served to inflame emotions there further. Although this war was more a product of economic and geo-political interests on the part of those power states than anything to do with
the Palestinians, nevertheless, for Israel, this only served to strengthen those ties and its position
in the region. As the Arab states maneuvered to retaliate and regain a measure advantage, Israel
made the first move. In 1967, Israel undertook another preemptive attack and after the Six Day
war with Egypt and Syria, Israel occupied the remaining Palestinian areas under Egyptian and
Jordanian control, as well. Left without a homeland and both a domestic and regional outcry for
action, the Palestinian self-determination claims were soon to find a representative.

Between 1948 and the 1967 war, the Palestinian issue received little international
attention outside the Middle East.330 From an initial point of support from the power states for
the establishment of a Palestinian state (namely the United States and Soviet Union, with initial
tacit support by Israel), the road to sovereignty was blocked due to the lack of support by the
relevant member type within the secondary stakeholder group, namely the Palestinian people. In
other words, as the Palestinians increasingly disapproved of what was being suggested by the
primary power states as a solution for them, a legitimacy gap grew; the power states advocated a
situation that was not acceptable to the secondary stakeholder group. However, this gap was
soon to flip as a result of a reversal in positions between the two stakeholder groups; what then
developed was a power gap as illustrated in Figure 6.331

This reversal emerged with the solidification of the Israeli state and a strengthening of its
ties with its main allies, such that supporting a concurrent and conterminous Palestinian state was
no longer pressing, nor politically in line with developing Israeli identity. Israel had emerged as
the primary power state in control after 1948 and the subsequent military events of 1956 and

330 See Note 319.
331 Again, the figure is offered to capture the effects of differing positions between the two stakeholder groups and
how this impacts the process of legitimation. While an attempt has been made to track the support of the primary
and secondary stakeholders, as a heuristic device, it is not an empirical measurement of actual units of support by
both groups. While the levels assumed here qualitatively track what can be derived from public discourse,
reasonable observers may disagree with the exact levels of support illustrated between the two groups, however
there is unlikely to be disagreement on the existence of gaps within the periods as depicted.
1967, from which Palestinian validity claims required support for full legitimation. Concurrently, the Palestinians’ desire was rising for a sovereign state along the lines they considered legitimate. The result was a reversal whereby the power states (primarily Israel and its main allies at the time, the United States, and to a lesser degree Britain and France) no longer found it in their interest to actively support a Palestinian state.

Until the late 1960s, Palestinians were largely disparate in their representation at talks over their fate, including in 1947 during the United Nations deliberations prior to Resolution 181, a characteristic of the self-determination movement that tended to reoccur during the late 1990s until present. “This was an era characterized by an even more divided leadership with diminished standing, much of it in exile and physically separated from its people, without the ability to provide a centralized national framework to confront the challenges to come.”(Khalidi, 2006: 123) From the outset, the self-determination movement for Palestine was wrought with contending representation claimants. In 1964, the Arab League formed the Palestine Liberation Organization (PLO), itself an umbrella organization encompassing various self-determination claimant groups, with the objective of giving the Palestinian people a united forum.

Soon after the 1967 Arab defeat, the PLO came to be dominated by a group called Fateh, consisting of young Palestinians educated primarily in Egypt and led by Yasser Arafat, himself educated in Cairo. Fateh was formed in 1958, and by 1964 had begun to infiltrate Israel to set off bombs. Initially inspired by the tactics employed by the Algerians against the French, Fateh employed violent locutions as a strategy to rally the disparate factions around a singular cause, buy itself a place at the negotiating table, and make space for diplomacy. (Harms and Ferry, 2008: 108) As observed by Pearlman, “Fateh’s founders were deeply concerned about fragmentation in the national struggle and envisioned their group as a vehicle for overcoming it”
He goes on to say: “Eschewing partianism, they presented Fateh as a revolution that transcended Left and Right, distanced itself from inter-Arab disputes, and welcomed financial support from any regime… The lynchpin of Fateh’s strategy for achieving both unity and national liberation was armed struggle…as well as a mechanism for linking vanguard leaders to the masses.” (2011: 64) In other words, Fateh was a unifying force for the movement and a means of rallying base support.

Moreover, unlike the other groups emerging at the time that tended to place the Palestinian struggle within the framework of a broader Arab identity, Fateh saw that the Arabs were not going to fight their battle. “What distinguished Fateh from the start was that its ideology went against the grain of the pan-Arabism of the times. The group believed that the cause of Palestine would be advanced and won only by Palestinians, not by the Arab states; thus it reversed the conventional view of pan-Arabism ….” held by other Palestinian groups and Arab states. (Farsoun and Aruri, 2006: 178-179) Fateh soon dominated other groups that emerged to challenge its leadership of the PLO such as the Popular Front for the Liberation of Palestine (PFLP), led by George Habash, and formed various coalitions with other groups to maintain its leadership. In 1968, Yasser Arafat became Chairman of the PLO Executive Committee and remained so until he was elected President of the Palestine Authority in 1996, a position he held until his death under mysterious circumstances at the age of seventy-five in 2004. Nevertheless, unlike the later East Timorese, the Palestinians, despite the efforts of Fateh, suffered from a lack of internal cohesion and unity.

From the outset, the international community has been engaged in the cause of Palestinian self-determination and has taken action within the context of international law. Since 1948, the United Nations, both General Assembly and Security Council, as well as other UN
agencies, has passed dozens of resolutions concerning Israeli actions and the Palestinian people.\(^{332}\) These actions by the international community, including the primary power states, saw a spurt of activity in the 1940s with periodic activity around the time of the various wars and hostilities in the region, namely marked by the wars of 1967 and 1973.

The period before 1967 was particularly inactive. While the Palestinian self-determination claim reverberated among its base support, internationally the noise was not being heard. Wanting to charge its base support and also quell internal dissent, the PLO, itself an umbrella of groups such as Fateh, the PFLP, and the Popular Democratic Front for the Liberation of Palestine (PDFLP), began to employ a tactic of violence with the expressed objective of sending illocutions to Israel and galvanizing international attention to the cause, while also instilling loyalty among its base—all tactics typical of self-development movements in their initial stages as was also seen in the cases of East Timor and Kosovo.

One perlocution provoked by a PLO locution involving the blowing up of an Israeli bus was especially powerful in galvanizing the PLO base, and particularly that of Fateh and Yasser Arafat. In March 1968, Israel attacked a Palestinian refugee camp in Jordan named Karameh (Arabic for honor), which was also the headquarters of Fateh at the time. The attack resulted in a battle between Israeli military forces and Fateh militants with both sides sustaining casualties, which for Israel also entailed loss of equipment and thus was especially symbolic. Tessler notes that the battle was between 300 Fateh guerillas and 1,500 Israeli soldiers in which the “Fateh defenders fought bravely and well and inflicted relatively large number of causalities on the invading Israelis…in a battle that ranged all day and into the evening.” (2009: 425) The Fateh strategy of targeting Israel to provoke situations that would garner base support and perhaps

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international recognition was beginning to show signs of success. “The battle of Karameh became an instant legend among Arabs, and thousands of young Arab nationalists flocked to Fatah and the resistance movement, wanting to join the ranks of the commandos, or *fedayeen* (‘those who sacrifice themselves’). Fatah and the PLO began to grow, and with growth came increased independence.” (Harms and Ferry, 2008: 118) Provoking an Israeli perlocution, this Palestinian locution had achieved its illocutionary purpose, namely galvanizing the base and putting the power state on notice.

Soon after Karameh, the governing body of the PLO, the Palestinian National Council, met in Cairo to amend its Charter, itself a speech act with an intended illocution, namely that “[a]rmed struggle is the only way to liberate Palestine.”333 The Charter also declared that Palestine was defined by the boundaries of the territory under the British Mandate, thus rejecting the legitimacy of Israel, and that Jews living in Palestine at the time of the Mandate are Palestinian citizens, thus rejecting Zionism and the immigration that it brought. Tessler has noted that the Charter envisioned a “the creation in Palestine of a democratic and secular state, where Arabs and Jews would live together on the basis of equality.” (2009: 438) That is not how the Israelis interpreted it. Negotiating changes to this Charter was to play an important role during the Oslo Process and beyond.

The late 1960s, 1970s, and early 1980s were characterized by various violent locutions by the PLO in Israel and internationally. Importantly, the PLO acts never involved targeting of Palestinians. Fateh tended to focus its violent locutions on Israel. The violent speech acts that involved international targets tended to be conducted by elements of the PLO other than Fateh, such as by the PFLP. Perhaps the event receiving the most media coverage was the massacre of

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Israelis at the 1972 Munich Olympic Games at the hands of a Palestinian splinter group calling itself the Black September Organization, in reference to the death of scores of Palestinians in 1970 in Jordan. Other acts included hijackings, such as that of a Pan Am flight in Rome resulting in over 30 deaths, kidnappings, targeting of political figures, and raids into Israel.

Unlike other self-determination representative groups such as that of East Timor and Kosovo, which tended to direct their violent attacks against symbols of authority and power of the ‘host’ state such as military or police, the PLO, itself not encompassing all the groups acting in representation of Palestinian self-determination, was diverse with conflicting elements embodied within the movement, and speech acts were often directed at a broader set of targets.

An additional source of fragmentation within the movement came at the very top where Fateh and the Palestine Liberation Army (PLA) were increasingly at loggerheads. Initially, the PLA had been formed as the military wing of the PLO, and was receiving both training and financial support from Arab government building it up into a quasi-conventional army. On the other hand, Fateh, in the wake of Karamah, had developed its own band of militants who were executing incursions into Israel, prompting Israeli violent perlocutions.

The PLA saw the Fateh fighters as destabilizing their interests with their Arab patrons due to the Israeli reprisals on their soil. “These tensions drove competition, which produced organizational inefficiencies and contradictions.” (Pearlman, 2011: 71) This lack of agreement on strategy among the representatives of the Palestinian self-determination movement, which

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336 Tessler (2009: 431) includes a table of “Major Palestinian Groups on 1970”.

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ultimately had the impact of diluting the illocution from one of giving notice to Israelis regarding the injustice they were suffering to one that Palestinians were indiscriminately violent and disorganized. This loss of clarity began to create space for the international community to question the legitimacy of the cause. Perhaps later self-determination movements were able to read the perlocutionary messages directed to the PLO and the subsequent loss of secondary stakeholder support among the international community during this period and avoided such pitfalls.

Nevertheless, through its rise and subsequent locutionary speech acts, the PLO brought the legitimacy claim of the Palestinians once again to the attention of the international community, similar to the immediate impact of the actions of the KLA in Kosovo and SWAPO in Namibia. In 1967 following the Six Day War, the UN Security Council unanimously passed the oft-noted, disregarded, and widely interpreted Resolution 242337 which called upon Israel to withdraw to its pre-1967 borders and a respect for the territorial integrity of all states in the region, including Israel. While it made no mention of Palestinian self-determination, it did reject any attempts by Israel to claim any of the occupied territories including Egyptian, Syrian and Lebanese lands, as well as the Palestinian pre-1967 territories; it also established the principle of land for peace that is still the basis of any settlement discussion, including the still operative Camp David Accords between Egypt and Israel.

In a similar vein, a series of General Assembly and Security Council resolutions called upon Israel to cease any activities that would change the status of any of the lands occupied in

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1967 including East Jerusalem. This body of international legal acts and the related body of international law on which they rest, such as the 1970 Friendly Relations Resolution and the Declaration on the Granting of Independence to Colonial Countries and Peoples, provides the basis for the legal validity of Palestinian self-determination, not only on the basis of the post-colonial norm, but also, as Buchanan refers to it, on the basis of a remedial norm in light of the insistence of Israel on disregarding these international calls, and the condition of occupation under which the Palestinians live, including the practice of creating Israeli settlements, itself a violation of both the Geneva Convention Relative to the Protection of Civilian Persons in Time of War and the Hague Convention IV of 1907. (Harms and Ferry, 2008: 128)

For example, in 1977 there were 5,000 Israeli settlers in the West Bank, not including East Jerusalem, which within three years had trebled under the expansionist policies of the Likud government under Menachim Begin in Israel at the time, who perhaps paradoxically also signed the Camp David Accord with Anwar Sadat of Egypt. (Tessler, 2009: 520) Today the number of Israeli settlers on the West Bank exceeds 350,000, with the growth in numbers in 2012 exceeding that of the previous 10 years combined, again under the policies of a Likud government. “At the start of 2012, the Israeli advocacy group Peace Now, which seeks a two-state solution, warned that the government of Prime Minister Benjamin Netanyahu was building

Jewish settlements on the West Bank at a pace that, if allowed to continue, would carve up the land to a point that would doom the possibility of a viable Palestinian state.”343 Not only have these settlements caused the uprooting of Palestinians from homes and property, but they have also separated whole communities, and made travel between not only towns, but neighborhoods within towns, impossible.344 This was further compounded when in 2000 Israel began erecting a wall, effectively imposing a territorial boundary and further displaced Palestinians from homes and property, for what it declared was needed to protect Israelis, including settlers, from Palestinian terrorism. The ICJ opined in the 2004 Wall Case that this barrier stood in contravention to international law and impeded the Palestinian right of self-determination, which the Court noted Israel had an obligation to respect.345 (Sterio, 2013: 93-95)

The perlocutions from Israel that the PLO activities extracted led to serious tactical setbacks internally within the PLO, and internationally in terms of erosion of secondary stakeholder support, as well as a hardening of the positions of the power states, both Israel and the US who continually derided and deplored the acts of violence. While the fragmented factions within the PLO continued to see violence as a means of keeping international attention focused on the Palestinian question, the target of that violence was both erratic and indiscriminate and went beyond the primary opposing belligerent, Israel. “The strategic rationality of transnational attacks was debatable. They not only cost the Palestinian movement

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world sympathy, but also directly contributed to its expulsion from Jordan, where it had enjoyed freedom of maneuver along the longest border with Israel.” (Pearlman, 2011: 78)

Initially, the PLO leadership operated largely outside occupied Palestine from neighboring Jordan in the late 1960s. While Egypt under Gamal Abdel Nasser was very friendly to the PLO, providing safe haven to Yasser Arafat and the PLO on several occasions, the base of PLO operations was in Jordan. However, King Hussein of Jordan expelled the PLO leadership in 1970 forcing the entire PLO apparatus and leadership to set up operations in Beirut after the persistent attacks of the PLO into Israel provoked violent Israeli perlocutions. The final straw for Jordan came after the PFLP hijacked three airplanes and forced them to an old British airstrip known as Dawson’s Field near Amman where, after releasing the passengers, they proceeded to blow up the planes with an international audience watching on television. (A fourth was hijacked and flew to Cairo and also blown up after the passengers were removed). This unleashed a 12-day assault on PLO positions in Jordan and “resulted in more than three thousand casualties and became known as “Black September”.” (Pearlman, 2011: 75) With the PLO now headquartered in Lebanon, Israel soon turned its attention and perlocutions there, as shall be discussed.

This period also saw the lead up to the 1973 war in which Egypt, in alliance with Syria, attacked Israel and in the process regained the political, if not the military, upper hand. This shift in political winds was the strategic objective of Anwar Sadat who, pursuing the interests of Egypt, saw that the path to peace could only be through a war that would restore a

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347 The 1973 war is referred to in Israel as the Yom Kippur War, and in the Arab world as the 10th of Ramadan War, in relation to the religious dates it fell on in both cases, respectively. Egypt now retains the name 6 of October War which is the actual Gregorian calendar date of the start of hostilities and the day that Egypt managed to surprise the Israelis and take positions across the Suez Canal in Sinai. See Tessler (2009: 475-481), and Harms and Ferry (2008: 122-126).
semblance of Arab honor while also inducing Israel and its main patron the US to come to the negotiating table. To bring the 1973 hostilities to an end, the UN General Assembly unanimously passed Resolution 338, which called on all parties to ease hostilities, called upon all parties to implement “resolution 242 (1967) in all its parts,” and start a process of negotiation toward “a just and durable peace in the Middle East.”

Again, as in resolution 242, no mention was made of Palestine, however each party chose to interpret it to its benefit with the Arabs noting that no lasting peace could be achieved without settlement of the question of Palestine. Both resolutions 242 and 338 continue to be the reference points for negotiations and subsequent UN action to this day. Ultimately, Sadat’s gamble paid off.

The 1978 Camp David Accords signed between Egyptian President Anwar Sadat and Israeli Prime Minister Menachim Begin brokered by US President Jimmy Carter, in which Egypt regained the Sinai from Israel, was a critical turning point for the Palestinians. With the unlikely partnership of Begin and his right Likud party, who were also encouraging the largest level of settlement activity in the occupied territories of Palestine since the creation of Israel, the US under President Carter was aiming for a two-part accord. The first aimed at negotiating a complete solution to the Palestinian question but made no mention of the PLO nor set any meaningful parameters for negotiations, while the second would bring peace between Egypt and Israel. Ultimately, it was only the second that was achieved.

The Palestinians and the balance of Arab states saw the Egyptian action as a betrayal of the cause of Palestinian self-determination. However, as later events suggested, while the US at the time was a willing interlocutor and Israel had agreed in principle to participate, the Palestinians may have lost an opportunity to engage in a process of negotiation with the ultimate

outcome never to be known. Nevertheless, there was still gain for the PLO in this rejection of
negotiations as it was viewed by its base as a principled position to take in the face of being
strong-armed by its occupier, Israel, and its patron, the US.

As the Cold War raged, the Soviet Union, a power state, began to make overtures to the
Arab states. In 1974, Soviet Minister Gromyko declared while on a visit to Cairo that the PLO
was the sole representative of the Palestinian people. On October 29, 1974, the Arab League
affirmed the PLO as “the sole legitimate representative of the Palestinian people.”349 In short,
what was occurring was a narrowing of the power gap due to the support of some power states
including the Soviet Union, but not a full closing of the gap due to the lack of support by the
other members of the primary stakeholder group, namely Israel, itself a relatively newly
established state going through its own process of legitimation and which was largely able
through its own series of speech acts and communicative action to retain, at best, the
ambivalence of the United States towards the prospect of a Palestinian state, and, at worse, its
complete rejection of such if it were perceived to impinge upon Israeli interests as defined by
Israel.

The PLO, still growing in stature among Palestinians and now with support from the
international community, saw that perhaps the original Fateh strategy of pursuing violence to
make space for diplomacy may have had a positive effect. Yasser Arafat requested to address
the UN General Assembly in New York, but was denied a visa by the US asserting that the PLO
was a terrorist organization. Nevertheless, the international community decided to convene the
UN General Assembly in Geneva so that Arafat could address it. This was the first opportunity

349 The website of the Arab League does not go back to 1974, however, the communiqué of the 1974 Arab League
Summit in Rabat in which the determination to recognize the PLO as the ‘sole representative of the Palestinian
people’ was made can be found at the UN webpage “On the Question of Palestine” found here
that the international community had to hear the case of the Palestinians first hand, and Arafat made use of the moment to lay out the history of grievances of the Palestinian people, but also put forth his vision for peace. He also made his often-quoted double-edged promise, during which he extended an olive branch in one hand and with his other hand on an empty gun holster said: “Today I have come bearing an olive branch and a freedom-fighter’s gun. Do not let the olive branch fall from my hand.”

This speech also referred to a vision he had of a single state of Palestine in which Jews, Christians and Moslems could live in peace and equality.

Such was a speech act that had the perlocutionary outcome of a series of UN General Assembly resolutions in its support. After the speech, the UN General Assembly passed Resolution 3236, which recalled all previous resolutions pertaining to Palestinian self-determination and stated, in part:

1. Reaffirms the inalienable rights of the Palestinian people in Palestine, including:
   (a) The right to self-determination without external interference;
   (b) The right to national independence and sovereignty;
2. Reaffirms also the inalienable right of the Palestinians to return to their homes and property from which they have been displaced and uprooted, and calls for their return;

This was followed on the same day by a vote in the UN General Assembly admitting the PLO as a member with no voting rights, or what was termed “Observer” status, allowing it to participate in all UN organization meetings, the first such non-state actor to be granted such a status.

These resolutions, in addition to the body of previous UN resolutions, encompassed the legal basis for the Palestinian right to external self-determination claim, and also served as the blue-

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350 See original document: “PLO Chairman Yasir Arafat: Address to the UN General Assembly (November 13, 1974)”, Laqueur and Rubin (2009: 171) Although the speech, which is translated from the Arabic original, is complete otherwise, Laqueur and Rubin do not include that quote which came at the end of the speech. A link to the complete text including that quote can be found at the website of the Council on Foreign Relations at http://www.cfr.org/palestinian-authority/arafts-speech-un-general-assembly/p13823 [accessed March 20, 2013]


print for future negotiations which included such issues as land for peace, compensation, and the right of Palestinians expelled or displaced to return. The international community made further exclamations of its support to the Palestinian rights to self-determination with the passing by the UN General Assembly of a resolution inviting the PLO to represent the Palestinian people in peace efforts and a further one “establishing a Committee on the Exercise of the Inalienable Rights of the Palestinian People.” (Tessler, 2009: 489) The PLO had achieved legitimacy as the representative of the Palestinian self-determination claim, and had also fully established the legitimacy of the underlying self-determination claim. This point is denoted as “partial legitimation” in Figure 6, with full legitimation not possible due to the positions of the primary power states of Israel and the US.

The period following the embrace of the PLO and the Palestinian self-determination claim saw the PLO employ diplomacy and strengthen its relationships with Arab capitals. This was also the period in which the Camp David Accords left the PLO in a stronger position vis-à-vis its base due to its rejection of the process being suggested by the US which did not make mention of the PLO. Israel also took note of the growing strength of the PLO, which was at the time based in Beirut, Lebanon. In 1982, Israel with Ariel Sharon as Defense Minister led an invasion of Lebanon, with the tactical objective of uprooting the PLO. After the Israeli invasion of Lebanon which resulted in the massacre of scores of civilians in Palestinian refugee camps, namely in Sabra and Shatila, the PLO was provided safe passage, once again under the protection of a UN resolution, from Beirut on board ships which took the PLO leadership to a

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new base of operations in Tunis. Thus while Israel did succeed in removing the PLO from proximity to its borders, the aftermath of the death of civilians, including hundreds of women and children, in the Palestinian refugee camps, served to only heighten international support for the Palestinians and further fan the anger among the Palestinians. Nevertheless, the removal of the PLO even further from its base and the main target of its locutions had a number of repercussions. Firstly, it provided the space for other representative claimants to emerge, such as Hamas in the late 1980s, which positioned itself more closely to the ‘people’. Secondly, by removing the self-determination movement leadership from its base of support—the Palestinian people—motivation and belief in their actions began to wane. It was not until after the Oslo Process and the Madrid Declaration in 1994 that Yasser Arafat returned to the West Bank.

As the PLO went through a period in which it enjoyed the support of its secondary stakeholder base, the Palestinian people and the balance of the international community, the position of the primary power states, Israel and the United States, had been moving further away. Its speech acts were not drawing the power gap narrower. After its partial legitimation in 1974, the PLO began to rely more and more on activities within occupied Palestine. Following the peace accord at Camp David between Egypt and Israel in 1979, there developed within occupied Palestine the first Intifadeh (Arabic term for ‘to shake off’), or popular uprising, that grew slowly from the early 1980s until its height in 1987-1988. At that time, the PLO was headquartered in Tunis and any involvement with the uprising was indirect at best; however, as noted by Harms and Ferry, although “Palestinians still supported the PLO as the symbol of national unity, West Bankers and Gazans alike began to see the necessity of taking matters into their own hands…” (2008: 142) The uprising primarily involved demonstrations, rock-throwing youth attacks on the occupying Israeli soldiers, and road blocks to impede the movement of Israeli settlers and
soldiers. (Stephan, 2006: 66) This development occurred largely spontaneously and the PLO acted quickly to take leadership through surrogates within the occupied lands, such as in the case of the United National Leadership of the Uprising (UNLU), which quickly grew in acceptance and support by the Palestinian people. Emerging concurrently were two other Palestinian groups: Islamic Jihad and the Islamic Resistance Movement (Hamas). Hamas staked out a position that was less compromising than that of the PLO and was decidedly grounded in an interpretation of Islam inspired by Egypt’s Muslim Brotherhood. Its Charter of 1988 declared that “[t]here is no solution for the Palestinian questions except through Jihad.” (Harms and Ferry, 2008: 146) Nevertheless, these groups agreed to coordinate with the UNLU during the period of the Intifadeh. Thus, what was sparked independently, as in later cases such as Kosovo and East Timor, was quickly managed by the PLO even from afar in Tunis.

All these factions had agreed that the Intifadeh would not involve the use of firearms with the aim that such a tactic of speech acts would provoke severe Israeli perlocutions, which they did. Israel stepped up its activities to counter the uprising in February 1988, as many media outlets showed images of Israeli soldiers breaking the limbs of rock-throwing Palestinian youth. This further raised the level of international community outcry and support for the validity claim of the self-determination movement attributed to PLO leadership. In November 1988, the UN General Assembly passed Resolution (43/21) with only the US and Israel voting against it, which noted the international sympathy that the Intifadeh had evoked, and its concern with Israel’s “persistent policies and practices against the Palestinian people”, and condemned Israel for those practices.355

In a speech act later also employed by both the Kosovars and East Timorese when they sensed they were at a tipping point in their favor, the PLO read this feedback and in a meeting in Algiers issued a Declaration of Independence of the State of Palestine, renounced the use of violence against civilians, and declared Arafat to be the President of Palestine.\textsuperscript{356} Over 100 states recognized Palestine after it declared independence, more than recognized Kosovo almost two decades later in a similar move. (Harms and Ferry, 2008: 148) This was endorsed by the Arab league, and the United Nations General Assembly passed Resolution 43/177 reaffirming earlier UN resolutions including 181 of 1947 and renamed the observer seat from that of the PLO to Palestine, to still be filled by the PLO. This was followed by a further resolution in December 1988 in which the UN General Assembly passed a resolution, \textit{inter alia}, deploring Israeli actions and designated them as war crimes in contravention of the Geneva Conventions, noted that Israeli settlements were a breach of international law, and deplored Israeli practices of “pillaging”, “confiscation”, “annexation”, “eviction”, “deportation”, “illegal…levying of taxes and dues”, “torture”, “interference with the system of education”, “use of toxic gas”, and more.\textsuperscript{357}

In short, the UN General Assembly had made and accepted the case for remedial self-determination for Palestinians, in addition to its already recognized post-colonial right. Again, the PLO was only at a point of partial legitimation as secondary stakeholder support was increasing. Yet, this was beginning to have an impact on the position of the primary power states, as well, perhaps in recognition of the need to shift identities in the face of the largely

\textsuperscript{356} See original document: “Palestine National Council: Declaration of Independence (November 15, 1988)”, Laqueur and Rubin (2009: 354). Also see Francis A. Boyle (2003) who advised in the drafting of the Declaration and was an advisor to the PLO.

\textsuperscript{357} UN General Assembly Res. 43/58: “A/RES/43/58(A-G), 6 December 1988” found at http://unispal.un.org/unispal.NSF/a06f2943c226015c85256c40005d359c/e183dcbc7d1418a7852560d600460394?OpenDocument [accessed March 20, 2013]
nonviolent *Intifadeh* popular uprising, and the international outcry at the perlocution it triggered from the Israelis. It was the prelude to the closest the Palestinian self-determination movement got to legitimation and it came in the wake of largely nonviolent locution.

The events of the *Intifadeh* were the height of coordination and unity among Palestinian self-determination movements and their representatives. It was also the period that was the closest that legitimation reached to attainment. The subsequent criticism faced by Israel led the Israeli government, with the brokering of the United States, to agree to deal with the PLO. In September 1993, Israel and the PLO signed the Oslo peace accords. With the stroke of a pen and a handshake on the White House lawn between Israeli Prime Minister Yitzhak Rabin and Arafat, on behalf of the Palestinian people, under the gaze of US President Clinton, the PLO’s legitimacy was recognized and with it the legitimation of Palestinian self-determination was almost complete.\(^{358}\) The following year, Arafat returned to Gaza and two years later in 1996 he was elected in a democratic process as the president of the Palestinian Authority.

Seemingly now on the road to eventual sovereignty, the PLO not only attained legitimacy, but it had also morphed into the government of a future independent Palestine in the form of the Palestine Authority. One outcome from this period, which further added to the PLO/PA’s stature was the Gaza-Jericho Agreement signed in Cairo in 1994.\(^{359}\) That year Israel withdrew military and security forces from the Jericho area and from Gaza, but left settlements there intact along with security forces. That same year, Yitzhak Rabin, Shimon Peres and Yasser Arafat shared a Nobel Peace Prize *"for their efforts to create peace in the Middle East."*\(^{360}\)

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\(^{358}\) "Bill Clinton presides over the signing of the Mid-East peace agreement", C-Span, video clip found at [http://whitehouse.c-span.org/Video/ByPresident/Bill-Clinton-With-Arafat-And-Rabin.aspx](http://whitehouse.c-span.org/Video/ByPresident/Bill-Clinton-With-Arafat-And-Rabin.aspx) [accessed March 20, 2013]


similar peace prize a couple of years later for key self-determination actors in East Timor was a power tool in its legitimation process, as was this for Arafat.

As the initial energy the 1993 Oslo Accord had generated started to temper, there was an attempt on the part of the Egyptians to re-energize it in 1995 with a second round of talks, called Oslo II or Taba Accord, as they were held in the Sinai town of Taba, itself symbolic as it was the last part of Sinai to be returned by the Israel to Egypt. The agreement which emerged from that meeting was again signed a few days later by Clinton, Rabin, and Arafat, providing evidence of the US’ continued focus on the Palestinian self-determination efforts as well as continuing the on the momentum of Oslo. This was a period in which the US was defining its identity and global role in a uni-polar environment, and had its attention on the Balkans and the self-determination movements transpiring there, as well as with the self-determination movement and legitimation process unfolding in East Timor. For Israel, the movement toward accepting self-determination for Palestine had directly led to the assassination of Prime Minister Rabin at the hands of an Israeli ultra-conservative Jewish settler in 1995, reminiscent of the assassination of Anwar Sadat in 1981 at the hands of extremist Islamists (and Hamas supporters) following Camp David. Nevertheless, President Clinton continued to drive a peace process.

In 1997 the Hebron Agreement was signed between the Israelis and Palestinians in which Israel withdrew from the majority Palestinian areas there. Additional discussions took place in 1998 with the Wye River Accord, and in 2000 with another round of negotiations at Camp David as Clinton was about to leave office. Going in to the negotiations, Arafat had expressed that the ground work had not been laid properly for productive talks and that the process had been rushed, and as a result the Palestinians had not had time to prepare. (Tessler, 2009: 800-801)

Ultimately, this too did not reach a break-through as the PA under Arafat expressed that what was being proposed was simply not acceptable as it entailed additional land concessions on the part of the Palestinians beyond the 1967 borders that provided for 22% of the territory of the Palestinian mandate, already in their view a concession beyond the 1948 borders which provided for 45%. While hailed as a principled position on the part of his base in Palestine, the international community began to increasingly see this as unwillingness to compromise to attain peace. From that point, no serious negotiations have been entertained between the parties. With the departure of Clinton and the entry of Sharon as Prime Minister in Israel and George W. Bush as US President, the power state dynamic was shifting with less interest in engaging over Palestinian self-determination. It had been close for Palestine.

The impetus to remain on the diplomatic track was derailed by the rising validity claims by other Palestinian groups developing over the same period. As these groups, primarily Hamas, stepped up their claims and their speech acts in the form of indiscriminate violence against Israel, the new-found legitimacy of the PLO/PA was threatened, and the power gap once again developed, putting off the possibility of statehood. This process reached a crescendo with the rise of a second Intifadeh in the early 2000s, more violent in nature and involving attacks on Israeli civilians, and violent Israeli perlocutions against Palestinians, militants and civilians alike. But instead of engendering international condemnation of Israel and support for the Palestinians, the international community was less forthcoming this time around with Intifadeh II. As a result, the Israelis no longer considered the Palestinian Authority (PA) to be the domain of the PLO and withdrew their acceptance of the validity claim. “The turn to terrorism during the Oslo period, a tactic consciously avoided by the East Timorese, cost the Palestinian self-determination struggle both lives and legitimacy.”(Stephan, 2006: 65-66) The violence also served to lessen
international societal support. Israel seized the momentum and announced plans to erect the barrier wall in 2000, which was the subject of the ICJ Opinion referred to earlier.

For its part, the Arab states, wanting to reinvigorate the peace process, and perhaps tiring of the domestic costs of failure in terms of criticisms of inaction from its own populations, extended what is known as the Arab Peace Initiative in 2002 emanating from a meeting of the Arab League in Beirut that year.362 Under this plan, exhibiting an identity shift leading to new definitions of interests, the Arab states collectively offered peace to Israel, normalization of diplomatic relations, and recognition of its territorial integrity, in return for a two-state solution with Israel within its 1967 borders. At one fell-swoop, Israel would have been at peace with all its Arab neighbors in return for Palestinian statehood. Israel ignored it; the ‘host’ state was not reassessing its identity nor realigning its interests.

Despite this response, the Arab states have reiterated their offer of peace in subsequent Arab League sessions. As noted in a recent article in The Atlantic: “It was far from perfect; Israelis expressed legitimate concerns about its demands on borders, Jerusalem, and refugees. But the offer certainly provided an opening for unprecedented relations between Israel and its neighbors, and Israel's refusal to engage with it was a tremendous missed opportunity.”363 Marwan Muasher, who was Minister of Foreign Affairs of Jordan at the time of the original Arab offer, criticized the Bush Administration for offering only lip-service and wrote of these events: “Arab states are often blamed for not properly marketing the offer directly to the Israeli public. This argument, while not without merit, still ignores the responsibilities of the United States and Israel. As the main sponsor of the peace process, the United States has the duty to make use of

rare opportunities when they present themselves. And Israel brushed the proposal aside without presenting any ideas of its own.” 364 A direct implication of this frustration as expressed by Muasher is that the primary power states were either not convinced by the validity of the offer, which perhaps should have been tested by accepting to engage with it, or, more likely, their interests were not in alignment with it.

Israel’s paradoxical reaction to the Arab overture was perhaps understandable within the context of the reduced standing of the Palestinian leadership, especially in the wake of the Al-Qaeda (another Arabic term for ‘the base’) 365 attack on the US in 2001. At the time Israeli Prime Minister Sharon was able to employ communicative action that equated the Palestinian self-determination movement with terrorism, and hence akin to Al-Qaeda, and worthy of the same violent perlocutions as the US was to employ against its enemies. The logic Israel enforced gave it the space to take action against Arafat and it proceeded to reverse some of the territorial gains of the Oslo process and eventually lay siege to Arafat and the PA leadership in Ramallah on the West Bank.

President Bush underscored the rejection of the present Palestinian leadership when in 2002 he made a major speech on the Israeli-Palestinian peace process in which he basically called for a change in Palestinian leadership, and expressed a need for “all parties [to] fight terror”, while also breaking new ground by declaring that the US position supported a two-state solution with Israel and Palestine “living side by side in peace and security.” 366 The tide was shifting and the Palestinian self-determination movement suffered a subtle paradigm shift from

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365 See Note 5.

one of a people suffering under occupation to one of resisting annexation while endorsing and perpetrating terrorism. (Roy, 2012) As Arafat lost more and more of his control over the actor group, with the murder of many of his major lieutenants and the rising popularity of Hamas among the increasingly frustrated Palestinian people, in 2004 he died under questionable circumstances having found himself effectively incapacitated as a leader. The final Israeli perlocution against the PLO resulted in the death of their decades-old nemesis, and onto the stage to head the PA came Mahmoud Abbas, an Arafat comrade who bore a more moderate gait. The change in the position of the PA was complete when in 2006 Hamas was swept into power in Gaza in an open election by the Palestinian people. The Palestinian people and movement were now split in leadership and geography.

With Palestinian leadership shifting toward Hamas, Gaza soon became the central theater of political contention between Israel and the Palestinians. Even before being elected in 2006, and perhaps because of it, Hamas began a campaign of violent locutions aimed at Israeli settlements and communities near its borders. Once again, the Palestinians, albeit under divided leadership, were employing violence as a means of engendering base support and commanding international attention. This was also a period in which the US and its allies, mainly the UK, were preparing for an invasion of Iraq. Cognizant of the impact this would have on emotions in Arab and Moslem states, British Prime Minister Tony Blair led a movement towards a Road Map in 2003 for peace between Israel and Palestinians as a way to relieve these potential emotions. (Harms and Ferry, 2008: 180)

This proposal came after of the Arab Peace Initiative of a few months earlier, and there emerged a sense that the peace process may be back on track. The Road Map envisioned a three-phase process starting with an initial phase of a cessation of attacks by either side, a cessation of
settlement activity, and a dismantling of ‘outpost’ Israeli settlements erected since 2001. The Road Map was to proceed towards negotiations, which floundered from the outset. Sharon, expressing impatience with the process, announced in late 2003 a unilateral Gaza ‘Disengagement Plan’ entailing a dismantling of all Israeli settlements in Gaza, which he explained as necessary to relieve an over-stretched Israeli army from the need to provide security to remote settler outposts and to reduce friction with Gazans; Hamas hailed it as proof that their violent locutions were paying off and as a result received further popular support in both Gaza and the West Bank.367 The evacuation was executed in August 2005 in a multi-week stand-off between the Israeli military and Israeli settlers, which received much media attention.368

The period since 2006 has been one of political stagnation, if not regression, with respect to the prospects of Palestinian external self-determination. In 2007, then new UN Secretary General, Ban Ki-moon, observed that the “Palestinian people still yearn for the freedom and dignity denied them for decades. The Israeli people yearn for long-term security. Neither can achieve their legitimate demands without a settlement of the conflict. Today, we are at a critical juncture in efforts to move beyond crisis management and renew efforts toward genuine conflict resolution.”369 That observation is both self-evident, but also encompassing of a subtle paradigm shift in that the debate had turned from one of achieving self-determination for the Palestinian people to one of alleviating suffering and conflict; it was now perceived as a situation of conflict resolution between parties rather than an issue of state formation, a point also made by Roy (2012). As observed by Tessler, “2006 and 2007 did not see movement

toward an accommodation or even the renewal of negotiations. Rather, movement was in the opposite direction, and it was accompanied by internal political tensions both in Israel and among the Palestinians.” (2009: 842)

The Palestinian Authority, now under Mahmoud Abbas, was supposed to move in to take control in Gaza. However, it was Hamas which eventually took control with the democratic elections of 2006. While the primary power states had just led a series of perlocutions aimed at delegitimizing the PLO-PA under Arafat, they may have just been too successful and thereby created the circumstances for competing claimants to come to the fore, namely Hamas. While the PLO-PA still retained a semblance of legitimacy as viewed by of the primary power states and the international community, Hamas was now in a position in which it needed to engender a legitimacy claim of representation among its base and beyond. The PLO/PA had been providing the more moderate face since Arafat had made the switch in strategy in the 1970s, but, so weakened, it was perhaps no longer an effective interlocutor.

Not accepting to engage with Hamas as it perceived it as a terrorist organization, much as it had the PLO in the early 1970s, the US and Israel continued to attempt to engage with the PLO-PA (as is the case to this day). As in other self-determination movements such as in Kosovo, when given an option the international community and power states will revert to dealing with the more moderate of the competing claimants, however, in this case, the more moderate option had been disempowered. The path to Hamas legitimacy was defined by the US and the EU in its demand that it renounce violence and recognize the legitimacy of the state of Israel; both rejected by Hamas, which reverted to its expressed strategy of violent resistance grounded in its interpretation of Islam and in its desire to reignite its base passions for the cause, tactics common to self-determination movements at the initial stages of legitimation. (Tarrow,
However, the perlocutions that the power states were to employ in response would only further erode what vestiges of authority the PA retained and further prop the base support for Hamas, as indicated by public opinion polls taken at the time by the Palestinian Center for Policy and Survey Research (PCPSR).370

In an effort to curtail Hamas and pressure the PA into action, the US and the EU employed perlocutions such as the imposition financial sanctions, including the freezing of all aid, on the PA. (Tessler, 2009: 843) This was further exacerbated by Israel when it started a policy of denying the PA tax revenues collected from Palestinians and thus limited its ability to maintain basic social services for Palestinians in both the West Bank and Gaza. The strain was especially felt in Gaza where emotions were flaring and compounded by the lack of viability of its economy with little access to employment outside the Gaza strip or to basic goods and services. The UN General Assembly continued to pass numerous resolutions deploiring the conditions of the Palestinians, calling on aid agencies to resume their relief efforts, to no avail371 and, as reported by the World Bank the economic suffering in Gaza began to rise.372

President Bush in the last months of his administration, perhaps in response to rising criticism in the region of his posture toward the Palestinian question and especially in the wake of the Iraq War, made an effort in 2007 to bring the parties together for negotiations, but only opened them to the PLO/PA on behalf of the Palestinians, excluding Hamas. Meeting in Annapolis, Maryland, he announced that the parties had agreed to engage in negotiations and

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committed “to immediately implement their respective obligations under the performance-based road map to a permanent two-state solution…” While on the face of it, the US appeared to still embrace the legitimacy claim of Palestinian self-determination, Israeli action on the ground continued to be interpreted by the Palestinian people and translated by Hamas as anything but. Perhaps most indicative of the fact that this may have been the case is that despite the fact that the PLO/PA were increasingly the wrong, or at least an insufficient, party for those calls and commitments to be made with, the primary power states still insisted to deal only with them. The legitimation of the PLO/PA was suffering a legitimacy gap, while the base began to transfer part of its support elsewhere, as suggested by the various opinion polls undertaken; in other words, the bifurcation of the base was resulting in a floundering of the movement and entry point for the power states to effect delegitimization.

Hamas read these messages as an opportunity to step up pressure with further violent locutions. In apparent coordination with the Hizbollah Islamist group in southern Lebanon, rocket fire and incursions from both ends of Israel ensued. Israel reacted with violent perlocutions. On the heels of an Israeli invasion of Lebanon in 2006, resulting in as many as 1,100 Lebanese civilian deaths, Israeli Prime Minister Olmert ordered an invasion of Gaza in December 2008 in a month of sea, aerial, and ground bombardment that left, according to the United Nations Refugee Agency (UNHCR), over 1,300 dead, mostly civilians, and thousands wounded and homeless, and which played out on television screen in the region primarily

374 See Palestinian Center for Policy and Survey Research (PCPSR) found at http://www.pcpsr.org/survey/index.html#head2 [accessed March 24, 2013]
376 UNHCR describes the events as follows: “In 2008 Israeli forces launched the 'Cast Lead' air strike causing the highest level of Palestinian fatalities and casualties of Israeli occupation of the West Bank and the Gaza Strip. It said
through the efforts of Al-Jazeera further igniting passions among the base and secondary stakeholders. This prompted a UN Security Council resolution in January 2009 calling for an immediate cessation of hostilities and immediate withdrawal of Israeli forces, with only the US abstaining from the vote. Similar to the aftermath of actions by the Serbs in Kosovo or the Indonesians in East Timor, both military actions were perceived by the Palestinians people as successes despite the massive losses in life and property, and only served to add to Hamas popularity in Gaza and among Palestinians. PCPSR carried out a poll in 2012 and found that “[i]n the aftermath of the Gaza War: Hamas’ way is preferred by the majority over Abbas’ way as the most effective in ending occupation and building a Palestinian state”. Although low intensity military action and attacks between Israel under Prime Minister Netanyahu and Hamas have persisted since 2008, in November 2012, Israel reignited its actions against Gaza and “destroyed buildings and facilities at the Karni crossing, further diminishing if not destroying any possibility of Gaza’s economic recovery and by extension, Palestine’s.” (Roy, 2012: 86) This continued with renewed military strikes across the Gaza strip, as once again the region watched.

Both Israel and the US saw new leadership in 2009 with Benjamin Netanyahu, of the Likud party, becoming prime minister in Israel, and Barack Obama assuming the US presidency.

its aim was to stop Hamas militants firing rockets into the Jewish state after Hamas unilaterally called off a six-month truce in December 2008. According to media reports, in one of the deadliest offensives in the Gaza Strip launched on 27 December 2008, 1300 Palestinians died and thousands were left wounded and homeless.” Found at http://www.unhcr.org/refworld/publisher,MRGI,,PSE,4954ce4d23,0.html [accessed March 26, 2013]

377 “Israel launches missile attacks on Gaza – 27 Dec 08”, AlJazeera, video clip found at http://www.youtube.com/watch?v=gZaG96pnnEQ [accessed March 26, 2013]


The election of Barack Obama as US President in 2008 brought with it a renewed aspiration on the part of the Palestinian and Arab people alike that the Palestinian question would receive more attention and support, leading to a doubling in US favorable ratings, as indicated by polls undertaken by Zogby International. Obama launched his foreign affairs agenda from Cairo where he gave a speech that allocated significant time to addressing the Palestinian question. Obama noted in his Cairo speech: “the only resolution is for the aspirations of both sides to be met through two states, where Israelis and Palestinians each live in peace and security. That is in Israel's interest, Palestine's interest, America's interest, and the world's interest. That is why I intend to personally pursue this outcome with all the patience that the task requires. The obligations that the parties have agreed to under the Road Map are clear.” Those words were heard in the region, on both sides of the contention. Polls have indicated that “the two years since his famous “Cairo speech,” ratings for both the U.S. and the President have spiraled downwards.” These falling numbers track events in Palestinian self-determination during that period. From the outset, Obama addressed the Israeli-Palestinian conundrum, as he indicated in the Cairo speech, by reiterating the last calls made by his predecessor, President Bush, calling on the parties to negotiate a two-state solution on the basis of 1967 borders, a cessation of violence, and a halt to settlement activity.

It is this last call that Israel rejected out of hand and then set out upon the most aggressive settlement expansion in the history of the state of Israel, perhaps irretrievably, and purposefully,

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383 See Note 380.
changing the parameters of any peace equation. While technically Obama had merely restated US policy, effectively it was perceived by Israel, and to a degree by the Palestinians, as a signaling of a reorientation of US identity, especially as the announcement was made during a meeting with PLO/PA leader Mahmoud Abbas at the White House. Israel reacted swiftly by employing its own speech acts to detract from that possibility both by reaching out to opposing political forces within the US, and by proceeding with exactly what Obama had called against—an expansion of settlements. Recent events, including his March 2013 visit to Israel, suggest that Obama has retreated from his original sanguine and forward-leaning posture regarding the Palestinian question to one that is more disengaged, a fact not lost on the Palestinians, as reflected in various polls conducted in the region. Perhaps summarizing the sentiment in the region, Al-Jazeera ran an opinion piece with the following headlines: “Obama's Israel visit is an insult to the Palestinians - Obama's visit to Israel endorsed their narrative and was a slap in the face to Palestinians.”

Mahmoud Abbas, despite periodic threats to resign, remains at the helm in the West Bank but also remains ineffective in repositioning the PLO/PA toward achieving Palestinian self-determination. Hamas, on the other hand, remains in control in Gaza and has reinvigorated its positioning with the coming to power in the aftermath of the Arab revolutions of 2010-2011 of like-minded political Islamist factions in Egypt, in particular, with the Moslem Brotherhood, and Tunisia. The recent attack on Gaza by Israel was negotiated to a truce with the intervention and

386 “Barack Obama's Israel trip: Hope not yet lost, but close”, The Economist, February 15, 2013, found at http://www.economist.com/blogs/democracyinamerica/2013/02/barack-obamas-israel-trip, and
388 “Obama’s Israel visit is an insult to the Palestinians”, AlJazeera, March 24, 2013, found at http://www.aljazeera.com/indepth/opinion/2013/03/201332463332849952.html [accessed March 26, 2013]
good offices of the newly elected Moslem Brotherhood President of Egypt, Mohamed Morsy, who engaged with his colleagues and allies in Hamas, to the relief of the US and Israel. There are indications that both the Palestinian people and their dual-track leadership in Gaza and the West Bank have become more aware of the cost to Palestinian self-determination of their fragmentation. In perhaps a last attempt to redirect events, there are indications that the two claimants may be attempting closer coordination and coalition-building, reminiscent of such a successful strategy in the early days of the PLO and by other self-determination movements. What may come of these attempts at developing a united front is too early to surmise, however, what is clear is that the options available are quickly becoming limited.

Where has the self-determination legitimation process for a sovereign Palestine led?

Palestinians still proclaim an aim for a state; that is their expressed political and national aspiration—it is the right to self-determination that international law and norms affords them, yet the political realities do not, and their proclaimed representatives have failed thus far to enable. As noted, 2012 saw the greatest level of Israeli settlement activity on Palestinian territory since the founding of Israel in 1948; “the facts on the ground”, as observers on both sides have come to term them, are such that the status quo ante 1967 is no longer a viable option. In the meantime, economic conditions have continued to deteriorate for Gazans and West Bank

Palestinians alike, as reported by the World Bank.\textsuperscript{391} The period since the death of Arafat has been the least violent in the West Bank, and the most violent in Gaza, for this fragmented and divided people. Yet, neither locutionary strategy appears to be achieving any movement towards an alignment between either primary power states or secondary stakeholders; statehood remains remote.

Such is the current state of political contention, conflict, and strife in the context of the elusive quest for Palestinian self-determination. This case, perhaps more poignantly than others, illustrates the international costs of failing to give space to the self-determination aspirations of a people to be heard and acted upon. These events and the interactions of locutions and perlocutions between the Palestinian self-determination actor groups and the primary power states of Israel and the US, have led, 65 years after first being presented with the opportunity of a Palestinian state on 45\% of the homeland known to them, to the present condition in which the Palestinians face the possible reality of losing all of it. Under such a reality, the likelihood of a peaceful end to the political contention is unlikely, leaving the Palestinians in a continued state of discontent and strife.

In short, with the weight of international law, norms and rules on the side of Palestinian self-determination, the power gap has withstood the pressure of the legitimacy enabler, which in turn has impeded the pathway to statehood for Palestine. Just as in successful state formation, the failure here results from legitimation not aligning both primary power states and secondary stakeholders, where the latter is a proxy for legitimacy and is a function of the support of the underlying ‘people’ and the balance of the international community. With the unwillingness of the primary power state, Israel, to shift its position, and, in fact, employ perlocutionary

delegitimation tactics that prevailed over the ability of the underlying Palestinian people to support its self-determination representative, the movement floundered. The failure is in the inability of the self-determination group to shift the identities of the power states, primarily Israel, perhaps because unlike other ‘host’ states, Israel itself is in a state of long-term self-determination legitimation, as noted earlier.

After a century of struggle to retain their homeland, Palestinians are poised to become a demographic majority within Israel. As the realities of Israeli settlement policies over the past 20 years and emerging political trends within Israel between the political parties dominated by right of center parties, the options available to Palestinians have undergone a paradigm shift from one of external self-determination based on post-colonial, and arguably remedial, norms to one of internal self-determination due to a virtual annexation by Israel of large swaths of the West Bank rendering a contiguous Palestinian state an academic prospect.

One emerging option discussed by various analysts and scholars is what has been termed the ‘one-state solution’ in which Palestinians would be considered equal citizens with Jewish compatriots. However, the more likely scenario in light of the desire of Israelis to maintain their majority Jewish identity, would be one in which pockets of Palestinian populations would be allowed to enjoy limited autonomy status within the territorial sovereignty of Israel, a form of internal self-determination in which *uti possidetis* takes hold by virtue of territorial annexation being the *de facto* reality. Such an outcome would be analogous to the situation in East Timor after Indonesia annexed the territory and offered it autonomy in an attempt to effectively negate the East Timorese right to post-colonial self-determination. A similar position was attempted by Serbia vis-à-vis the Albanian Kosovars. However, unlike those two cases, the Palestinians have not succeeded in effectively persisting with their external self-determination claim.
The Economist described one emerging political position as aiming for “Israel to annex the 61% of the West Bank known as “Area C”, in essence the territory’s central and eastern slab, going down to the Jordan valley. The Palestinians—at least 50,000—who live there would become Israeli citizens, should they stay. The other 2.6m or so Palestinians on the West Bank would have to be content with “full-blown autonomy” in their towns and villages. This, in essence, would mean municipal rights... Jewish settlers would stay put.”

The article goes on to explain in light of recent Knesset elections why domestic politics in Israel are such that the right of center conservative position on Palestinian rights appears to be defining Israel’s identity and hence its perceived interests. “The only mainly Jewish parties that treat negotiations towards a two-state solution as a priority are Tzipi Livni’s group (which won a paltry six seats in the recent election), Meretz (which also got six) and the rump of Ariel Sharon’s Kadima party (just two). Three Arab-Israeli parties, all two-staters, got 11 seats between them. The Labour Party, long Israel’s leading proponent of a two-state solution, got 15 seats. But its campaign concentrated almost exclusively on domestic issues. Indeed, the degree to which the election and its coalition-cobbling aftermath ignored negotiations with the Palestinians to any end at all was telling... Within Israel, the Palestinian question simply does not seem urgent. Even the settlers do not seem to feel threatened.”

Moreover, as this failure unfolds, the legitimated representative of the Palestinian people continues to lose its base; and in so doing, loses its legitimacy. This loss is a function of the diffusion of what was once an appealing voice and the emergence of disjointed noise making the claims of representation, coupled with the contradictory and unstructured tactics they pursued, which ultimately cost them their base and gave way to the host state to succeed in its

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392 See Note 313.
393 Ibid.
delegitimation. The locutions pursued by the PLO (and later as the PA) went through a pattern of coalition and base building, followed by a strategy of base solidification and attention seeking through violence (often indiscriminate), followed by efforts of legitimation through diplomacy and quasi-state building. At the same time, its main representative competitor, Hamas, was focused more on contentious and violent (mostly indiscriminate) locutions to rally the base. The audiences thus saw discord and confusion; the base was bifurcated and increasingly apathetic and disbelieving, while the international community, the balance of the secondary stakeholder group, was demotivated in its support.

Addressing a different question, Pearlman (2011) argues that self-determination movements will resort to violence if they are disorganized and discordant, and she concludes that this is the reason that the Palestinian movement often resorted to violence. While that conclusion is not substantiated in the cases of both East Timor and Kosovo analyzed here, nor in most of the cases of post-colonial and post-Cold War state formation, including that of Israel itself, she nonetheless does make a valid point in the Palestinian context; the Palestinian movement suffers from confusion, discordance and lack of cohesive leadership. With the emerging trend of both enablers moving away from legitimation of Palestinian external self-determination, a sovereign state of Palestine is quickly becoming a case study for how to avoid failure. Conversely, it is also potentially a case study of successful ‘host’ state delegitimation towards, at best, limited internal self-determination for the Palestinian people—outcomes that other host states such as Russia and India have also succeeded in imposing in response to calls by ‘people’ within their borders for self-determination such as the Chechens or Manipur, respectively.

The case study of the failure of Palestinian external self-determination efforts is also distinguished by the fact that in essence, it entails a competition between two legitimation
processes, that of the Israelis as well as their own. Soon after the establishment of Israel in 1948, and with their self-determination aims now successful, Israel shifted its posture from one of willingness to accept compromise, as evidenced by their acceptance of most proposals put to their representatives prior to 1948, to one of not needing to accept compromise, as evidenced by its unwillingness to accept most proposals since 1948; Israel since 1948 has employed a zero-sum policy and posture with respect to the Palestinians.\footnote{Observers and scholars have often made this point. For example, see Harms and Ferry (2008), Roy (2012),} This position has been further enabled by the primary power states Israel engaged with at various junctures, namely Britain and the US; what proposals Israel was willing to entertain during the Oslo process were linked to the identity and interests the US was embracing at the time—further illustrating the impact of identity shifts during a legitimation process. Palestinians, on the other hand, have often been rejectionist and uncompromising from the outset; and with each rejection, the subsequent proposals became even less appealing adding to their disillusionment and frustration. Breaking out of this cycle has been one of the major failures of their self-determination representatives. This failure has been further compounded by the relationships Palestinians have had with regional primary power states, namely those of the Arab League, despite the recent efforts with the Arab Peace Initiative—its own illustration of identity shifts on the part of Arab states. Against all this, a state of Palestine will remain a remote possibility as long as state power interests and legitimacy of the self-determination claim remain non-aligned, and, in fact, collide.
Chapter 8
State Formation: Toward a Theory of Self-Determination Trajectory

The issue of what determines the success of a self-determination claim has been under theorized and analyzed in international relations. The question of how a self-determination movement achieves its aims sits at the nexus of both international relations and international law; it is a study of how the two variables of state power and legitimacy align or collide so that self-determination claims attain the desired end within the range of possible options from internal autonomy to sovereign statehood, a process that comes about through legitimation. Moreover, a better understanding of the mechanisms that enable legitimation can be informed by accessing external disciplines such as economics, business, communications, and marketing, all areas that have been introduced into the analysis here.

As the large number of raging hotspots across the globe persist, the failure of self-determination movements to achieve their objectives is a common source of international crises and state contention. Their noise becomes a source of conflict and suffering. As actors claim to represent the self-determination aspirations of groups of people drawn together in a common purpose or identity within a territorial space, the inherent conflict with other sovereign states often impedes their objectives. This tension continues to cause conflicting state interest calculations bearing international costs in the form of security threats, humanitarian suffering, and instability. Yet, some claims are accorded the space for discourse and are able to navigate the conflict between their self-determination aspirations and the reified positions of the community of sovereign states. When this succeeds, the noise caused by their claims becomes the voice of legitimacy.
The drivers for claims to self-determination have been wide and varying. The dissolution of the Soviet Union and Yugoslavia, the demarcation point for the universe of 38 cases of successful state formation, as well as the two cases of state death, of this analysis, gave impetus to a renewed recognition that self-rule in the form of statehood embodies a means to claim and establish a group identity. It is this popular will which lies at the heart of self-determination claims. To the extent that legitimation becomes the path through which these claims are heard, then it is an issue which has bearing on international relations. Moreover, the universe of approximately 25 ongoing self-determination movements provides the backdrop to illustrate the nature of the political contention between the self-determination claimants and the relevant power states. To these cases the model being developed here can be applied.

Statehood is the social construction that fulfills the political aspirations of social groups within the context of the prevailing global order.\textsuperscript{395} Self-determination is the path upon which a group of people, self-identified as a group within a defined territory with common history, to make its own decision of its political being, including as a sovereign state free of internal or external impediments travel toward that end. Yet, this path is rarely either clear or lonely; it is filled with impediments and political contention, and can only be navigated through legitimation of the self-determination claim. Legitimation is the product of the support of primary power states, those with the enabling power, and the domestic and international community, that with the enabling legitimacy; both operate together and, in a dynamic interactive process, and either reinforce each other or collide. These interactions are triggered through speech acts, with a net positive impact, within the broader rubric of communicative action, reinforcing, repelling, and/or shifting identities, and, thus, defining or redefining interests.

\textsuperscript{395} For example, see Hurd (2007), Krasner (1999), Katzenstein (1996), and Wendt (1992).
Legitimacy is the end of the process of legitimation and has become a well-established precept of international law and politics.\(^{396}\) Legitimacy is seen as constitutive of the interaction of states and in the study of that interaction within the context of international relations. It is the nature of the principle in relation to sovereignty and self-determination principles, which continues to evolve. Concurrently, legitimacy in this way is seen as the barometer through which to assess state actions and maintain respect for state sovereignty. Extending this line of thinking to self-determination would entail a support of peoples within states yearning for a form of government that would respect their identity and rights, and maintain them by liberal democratic means, and conversely, the state derives its legitimacy from the acceptance of the people perceiving it as such.

Appealing to the acceptance of the legitimacy of a self-determination claim is forged on the basis of the international norms that are perceived by the stakeholders to be applicable to it, as well as to an acceptance of the appeal garnered through communicative action as noted. International law, rules and norms play a vital role in this legitimation process. For example, the ICJ has provided opinions involving Kosovo, East Timor and Palestine, and in each case, support to the underlying self-determination claim was either explicit or implicit. This serves to reinforce the legitimacy of the underlying claim as perceived by the secondary stakeholders, if not also the power states. Likewise, during the post-colonial period of state formation, as in the case of the Western Sahara, a norm emerged that placed emphasis on the expression of the “people’s will” through referendum or plebiscite.\(^{397}\) Each of the cases analyzed here entailed such expressions at some point in the legitimation process, which served to underscore the acceptance by secondary stakeholders of the legitimacy claims.

\(^{396}\) See Chapter 2 and 3.
\(^{397}\) See Chapter 3 and Note 90 on ICJ Western Sahara Advisory Opinion.
Self-determination both aims to achieve and must contend with the repellant forces of state sovereignty. As sovereignty became a universal principle it drove self-determination to be embraced as a universal one as well. Two main points are apparent from such a view of the evolution of the self-determination norm. First, the evolution of self-determination is a story of the struggle of people against the sovereignty-imbued, reified global system. Over the course of the 1960s and 1970s, there was resistance to the broadening application of the concept of self-determination beyond former colonies. Since 1989, the bar for claiming self-determination became an assessment of the legitimacy of claim in relation to the treatment of the claimant by the host state. If those rights could be maintained through means short of statehood such as in autonomous self-rule within the state, then internal self-determination applied. In other words, it became an assessment of whether or not a redress was warranted; should internal self-determination not be applicable due to conditions imposed in particular on that minority group, then the remedial norm of external self-determination could apply. Each of the cases assessed in this research rises to the level of the applicability of external self-determination.

A second observation concerning the evolution of the self-determination norm is that sovereignty and self-determination can be viewed as two sides of the same coin. As is often noted, inherent in these dual principles is a potential conflict of purpose. By maintaining the principles of equality of nations and sanctity of the sovereign state from external interference, while at the same time establishing the right of self-determination, the United Nations has set up a theoretical conflict. Thus, while self-determination is not an absolute right, it does become one of the limited challenges to this sovereignty status, while at the same time also being the way this status is solidified. The making of a self-determination claim is simultaneously the greatest challenge to sovereignty and the only route through which its durability is attained. Sovereignty
is thus a manifestation of legitimacy in that it is recognized as a binding condition, and self-determination is the road to get there. It is this one fact, perhaps most poignantly, which ultimately nullifies arguments of the epiphenomenal nature of legitimacy in international relations.

Ultimately, the effectiveness of the sovereignty principle is manifest in the recognition of this status by other states, as embodied within the norm of constitutive statehood. In the context of how states interact with one another in their international relations, the principle undergirding constitutive statehood, is what eventually results in membership in the United Nations. This is the definition of ultimate and complete statehood employed in this research. The benefits of such recognition range from the ability to enter into treaties, join and partake in membership in international organizations, and effectively retain a seat at the table of international affairs. Moreover, recognition accords a state the status of sovereignty and the protection of that status by the international society of both state and non-state actors; it is the ultimate preservation afforded within the context of the existing international system. These attributes of statehood partially undergird why self-determination claims seek. In the post-1945 global order, to the extent that this recognition is unanimous, or at least not expressly objected to in the form of a Security Council veto from one of the five veto members, acceptance into the United Nations is the ideal-type expression of sovereignty, the *ne plus ultra* of statehood.

The number of states admitted into the United Nations since 1989 is 38, including South Sudan added in 2011. One more, Kosovo, would be added if it passes a UN Security Council vote (assuming alignment between all primary state interests, in this case Russia). This is the universe of observations of success cases of this research. Those states that died as of 1989,  

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398 See Chapter 3.
defined as loss of UN membership, are an additional subset of the universe of observations of this research, and include both East Germany and South Yemen.

Of this list of new states, many attained such a status after a period of political contention around self-determination claims including claims for a return of independence or sovereignty, especially those of the former Soviet Union and Yugoslavia, as well as some who were able to rest their claims on remnants of decolonization, as in the case of most of the Pacific Island states; others attained such a status in a non-contentious manner due to the pre-alignment of both power interests and legitimacy claim. Whether or not the contention turns violent is an outcome of the interaction of the various parties to the self-determination claim and sovereignty challenge continuum. However, contention is by definition a characteristic of all self-determination movements; if there were no contention, there would be no movement and statehood would proceed unimpeded and mechanically as an expression of the will of the underlying people.

State power interests impact the process of legitimation of self-determination claims. Such power interests are effectively what the self-determination group must contend with, either directly, as in the case of the state from which they are attempting to gain independence, or indirectly in that the primary power interested state can impact the outcome. One of the elements of the hypothesis tested in this research is that the activity of self-determination groups is what triggers the process of legitimation, as an intervening variable, which in turn has an impact on how primary power interested states identify their interests. This discursive process is what the self-determination groups can act upon with either positive or negative responses by primary power interests (and secondary stakeholders). Self-determination is the starting point for sustainable sovereign statehood, and for the stickiness of statehood to develop; and

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399 See Table 1 in Chapter 4.
legitimation of the self-determination claim is the road upon which this process must pass for its legitimacy to be established.

The assessment of the existence of political contention in the process of state formation is significant as it is an indicator of the fact that power interests and self-determination aspirations are at odds at some point. It is only at the point where this conflict is dulled, or, in other words, where there is an alignment between those two positions, or perceived identities and interests, that state formation is possible. The case studies in this analysis showed how this alignment is made possible and what role a legitimation process plays. Of the 38 states formed since the fall of the Berlin Wall, 33 entailed a path toward statehood that was to some degree contentious and in each case there were voices calling for self-determination, some more organized and vocal than others. In each case there were also discernible primary power interested states, either of a regional or international nature. On the other hand, there were five cases of state formation that were non-contentious or uncontested. In each of these cases there was not a self-determination call, and the power interest(s) were generally mute, resulting in an uncontested ascension to state membership in the United Nations.

Of equal interest are those self-determination claims that face contentious state power interests that have failed and ended or which have failed to date to attain the legitimacy to be accorded the path to statehood, which represent negative observations in the sense that statehood is as yet elusive. As of 2008, there are at least 25 cases of secessionist conflict, representing the second subset of the universe of observations of this research. All of these cases chose to make their self-determination claims heard though a violent discursive communication tactic at some point, and none of them has to date been successful in attaining statehood. Of the 33 states that attained statehood since 1989, seven of them employed violent tactics at some point in their

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400 See Table 2 in Chapter 4 for 19 of these 25 cases.
legitimation process. Kosovo would make that number eight. The case studies of East Germany, East Timor, Kosovo and Palestine looked at such shifts in tactics to discern why they were employed and at juncture they shifted. The point is that self-determination movements are often violent, and the costs of failure likely entail more violence.

The process of making the self-determination claim recognized as legitimate and represented by a legitimate representative is but one part of the legitimation process toward statehood; gaining the space to effectuate that claim and gain recognition as a legitimate state is what closes the loop in the self-determination-sovereignty continuum. How then is acceptance of the legitimacy of the claim generated and how is it made effective so that its noise transcends the legal tranquility of sovereignty?

Self-determination groups or claimants are a form of social movement engendering political contention. As self-determination claimants engage in contentious politics, the process of communicative action is rarely confined to the borders of the disputed territory upon which statehood is being claimed. Central to the question of legitimation of self-determination claims is how the claim is heard by the other, domestic and international. The ‘other’ here is in two distinct camps: firstly, the primary state power interest, which by definition includes the state from which the claim emanates, as well as both regional and international states with a direct interest in the outcome, whether for political or economic, or strategic calculations from a realist and rationalist perspective, who also have the capacity to effectively support or impede progress on the underlying self-determination claim. The second camp is the audience that the self-determination group engages with, both domestically, in terms of the people it claims to represent, as well as the rest of the domestic population and all its internal institutions such as media, political coalitions and parties, unions, and other organized entities,
and, further, globally, in terms of other states with peripheral impact on the primary state powers such as coalition partners, regional and international organizations, and international media, collectively termed ‘secondary stakeholders’. The extent to which garnering support from secondary interest groups can impact the trajectory of the self-determination claim makes it an important element of the legitimation process.

The process of legitimation involves interacting with the power interests not by overriding them but by creating the contexts in which they are redefined by employing strategic and tactical speech acts. Each self-determination movement entails a relationship between opposing and multiple parties; a relationship entails a unique symbiosis, beyond the sum of its individual participants, in which actions and reactions create an unique organic being. Hence, legitimation entails the adoption and distribution of new identities, regardless of the ultimate outcomes whether positive or negative for the underlying self-determination claim, by all parties of the discursive relationship.

The communicative action comes into play in terms of the response the organization receives from its speech act. Such a recursive communication loop results in either a continuation upon its path of action, adjustments to its message, or a failure to attain legitimation. The form of speech act may be violent or nonviolent such as in the case of civil disobedience, coalition-building with other groups domestically and/or internationally, or diplomatic maneuvering. Invariably, the speech acts involve a combination of many forms. Hence, speech acts can have both negative and positive impacts, beyond normative assessments, and either succeed or fail to persuade. Netting the impacts, aiming for a positive ledger, is what transfers the noise into voice.
The communicative model of speech acts in the context of self-determination claimant group focuses on two main audience groups: the first group to receive the locution is the host state(s) in opposition to the self-determination actor group, as well as other primary power states, collectively referred to as the “primary power states”. The message they convey is the illocution, and the response these speech acts illicit is the perlocution. The same message loop involves a second group consisting of the population on whose behalf the actor group claims to act, as well as the wider international society, collectively referred to as the “secondary stakeholder group”; this second group also receives the illocution and reacts with perlocutions, such as increased support. These audiences fall into one of the two stakeholder groups from which the self-determination actor seeks legitimation. The speech acts by the claimant group, the subsequent feedback by the audiences, and the adjustment to consequent speech acts by the claimant is the process of communicative action and collectively chart the legitimation process.

Each of these two audiences retains a capacity to impact the legitimation process and the ultimate path of the self-determination claim. Since the primary stakeholder group states are those with the direct capacity to create the circumstances to directly impede or support the actor group’s passage toward statehood, it is this group that is endowed with the ‘enabling power’, and is the first of the two independent variables that can be tracked throughout the legitimation process. Usually this group is the state from within which the self-determination claim is being made, or the host state. This primary group can also include main allies of this state, as well as regional and/or global power states or groupings of states, such as the European Union (EU) or the Arab League. It is for this reason that they constitute the primary stakeholder group.

The primary group may consist of states with conflicting views. Here the speech acts employed can often lead to a deepening of the fracture lines, and hence a longer process of
legitimation, which was the case in East Germany, and still is the case for Kosovo. Likewise, speech acts strategically deployed, can serve intentionally to put a rift between member states in the primary group, leading one faction to support the secondary group which seeks statehood, which was the case in Indonesia. Should such a group be homogenous in its views, which would likely mean robust opposition to the self-determination claims, then the speech acts are singular in focus with the aim of engaging in acts that lead to identity shifts, and thus changes in interests. On the other hand, to the extent that the group consists of opposing views, the process of marketing becomes more complicated as it requires multiple message coordination. This process of yoking and norm cascading also involves strategic interaction effects with the secondary stakeholder group.

Yet, the enabling power is necessary but not sufficient to achieve newly found statehood, or the stickiness necessary for stable statehood, at least when such a state does not yet exist. It is the wider international community of other states and transnational actors, as well as the direct population on whose behalf self-determination is claimed – the secondary stakeholder group – whose position on the validity claim endows it with the ‘enabling legitimacy’, and is the second of the two independent variables that can be tracked throughout the legitimation process. This secondary group, consisting of what in domestic politics would be deemed ‘public opinion,’ and the directly affected population, which wields the ‘moral authority’ in that it is they who generate the public appeals, the media coverage, the social unrest, and the civil activity that in totality informs and directs the public discourse on the issue.

The secondary stakeholder group’s authority is also vested in the fact that absent their support, the actor group is unlikely going to be able to sustain a self-determination claim toward sustainable statehood, such as in each of the cases studies including East Germany, or in the
build-up for support for self-determination in East Timor and Kosovo, and which threatens the movement in Palestine now. In fact, the rationale of self-determination assumes that the secondary group, at least as far as the affected population is concerned, maintains a belief in the validity claim \textit{ab initio}. The ability of these two enablers to align is what results in legitimation; when they fail to do so there exists either a legitimacy gap or a power gap, or even both. This is being called the legitimacy-power gap model of self-determination legitimation.

**What can be learned from mapping the trajectory of self-determination?**

In light of the number, and possible future increase, of political contention due to self-determination claims, often violent entailing loss of life, community, and property, as well as a source of international conflict, a better understanding of the causes of success or failure is of bearing to the study of international relations. The case studies of East Germany, East Timor, Kosovo and Palestine test the hypothesis, of this research, namely that state formation (or duration) is unlikely to occur in the absence of an alignment between both state power interests and legitimacy of the self-determination claim, both impacted by the process of legitimation of the underlying claim and claimant to self-determination. All these case studies substantiated the underlying hypotheses of this research. In short, both variables are necessary conditions for state formation and neither alone is sufficient to achieve or maintain statehood.

Tracking these variables over the course of the self-determination movement history enable a clearer understanding of the trajectory they followed and how both variables interacted toward an eventual outcome, or point-in-time condition. The utility of the hypothesis, and the legitimacy-power gap model of self-determination developed to test it, is that it enables the isolation of factors that impact success or failure of state formation. This, in turn, enables the identification of a framework of implications that shed light on the possible outcomes of ongoing
or future self-determination movements. Through a qualitative assessment of the legitimacy and
power enablers fit to a 10-point scale,⁴₀¹ the trajectory of both power and legitimacy enablers
were mapped over time, as shown in Figures 3 through 6. Tracking the two variables side-by-
side enables a fuller understanding of the points of alignment, collision, or disparity from which
emerge gaps between state power interests and legitimacy of the self-determination claim.
Likewise, it is possible to plot the coordinates of these two trend lines to project the trajectory of
the two variables in relation to each other that impact the self-determination legitimation process
of each case over time as shown in Figure 7.

The trajectory of each case tells a story as suggested by the paths mapped in Figure 7. East Germany’s negative self-determination ended successfully as a case of remedial self-
determination in that the underlying people were subjected to a condition not of their choosing,
namely a condition of forced statehood; it is a success case of state demise fulfilling the will of the people. This will was expressed with finality by the soon-to-be-longer East Germans in 1990 with a vote to dissolve the state and join another. The trajectory of its self-determination process illustrates an interesting path from no accepted legitimacy by the secondary stakeholders, and a medium level of state power interests, resulting in an overall legitimacy gap. As illustrated by the case study, both enablers eventually met at a higher level of support by the two stakeholder groups, only to double back over the course of the lifetime of this unstable legitimation point, as support from the secondary stakeholder group declined triggering erosion in the power state positions, as well. The eventual result was state death.

⁴₀¹ The scale (see Note 216) is based on a qualitative tracking of the two variables of state power interests and legitimacy self-determination claim through the history of the case study. The underlying metrics and method of data collection would need to be constructed to enable a robust quantitative measurement, however. Such may suggest a possible empirical extension to this analysis, one that may lead to its further testability.
On the other hand, East Timor is a successful case both of post-colonial (due to the colonial rule of Portugal) and remedial self-determination (due to the conditions following annexation by Indonesia) resulting in full statehood. In 2002, East Timor became a member state of the United Nations, following a referendum of the East Timorese in 1999 overwhelmingly rejecting Indonesian sovereignty over it even if that entailed autonomous self-rule; they wanted full statehood. The trajectory of the legitimation process illustrates a more linear progression from low perceptions of legitimacy of the self-determination claim by the secondary stakeholders and low power state support (both host state and regional and global

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402 This framework is inspired by the approach of Arend (1999) in analyzing relationship between concepts of Authority and Control in the framework of international rules, and is further informed by the work of “New Haven School” scholars Lasswell and McDougal (1992).
powers) to increasing higher levels of both as the legitimation process triggered identity shifts on
the part of the power states, and hence their perceptions of their interests.

The case of Kosovo is one of remedial self-determination, in light of conditions under
Serbian control, where its partial legitimation has resulted in quasi-statehood. The near linear
trajectory is such that it will likely attain full statehood once Serbia acts on its interests, which
are defined by its desire to join the EU, and indicates its willingness to accept Kosovar
independence. Current events are in fact trending in that direction with preliminary agreements
to settle one outstanding issue of contention, namely greater autonomy for Serbs residing within
the borders of Kosovo, being signed between both parties. An acceptance of Kosovar
independence by Serbia would likely, in turn, trigger Russia’s positive (or, at least, abstention)
vote at the UN Security Council concerning Kosovo membership. The trajectory of the self-
determination movement in Kosovo illustrates a similar case of initial low power state interests
and perceptions of legitimacy of the self-determination claim followed by a steady ascent of both
variables. This rise can be linked to the speech acts employed by the self-determination
claimants during this period, with a notable kink, or regression in power state position,
coinciding with a perlocutionary rejection, or drop in support, in the aftermath of high levels of
violent locutions. The trajectory corrects toward legitimation when the self-determination actor
locutions are changed to accommodate such a feedback transmittal and proceeds toward
statehood with a closing of the power gap and a steady rise of support. Today, Kosovo stands at
the doorstep of UN membership and full statehood.

The case of Palestine, like that of East Timor, rests on a claim grounded in both post-
colonial (after British colonial rule) and remedial self-determination (with conditions under

403 “Serbia and Kosovo Reach Agreement on Power-Sharing”, The New York Times, April 19, 2013, found at
Israeli control), but that has failed thus far to attain full legitimation due to overriding power
gaps, along with emerging legitimacy gaps. The trajectory of the self-determination process
illustrates a zigzagging path of legitimacy gaps giving way to power gaps, a period of positive
linear progression, and ultimately doubling back with a widening of both types of gaps. From an
initial starting point of high power state interests and low stakeholder perceptions of legitimacy,
the path toward self-determination in Palestine is now at a near opposite current point of low
power state and high secondary stakeholder support of legitimacy of claim. However, even that
does not tell the full story, and suggests the importance of tracking trends and trajectories over
time. While it is true that the secondary stakeholder support is higher today than it was in 1947, it
is nonetheless lower than it was a few years ago, which can be correlated to the opposing impact
of delegitimation efforts by Israel. The trajectory of the legitimation process of self-
determination in Palestine tells a story of stagnation and even devolution making eventual
statehood that much more unlikely.

By providing a basis to discern self-determination legitimation paths, the four case
studies highlight distinct trajectories perhaps indicating common mechanisms in operation. The
trajectories of the cases analyzed here entail a number of implications and lessons for a historical
assessment of how they succeeded or hitherto failed. They are also insightful in terms of what
they may imply for ongoing or future self-determination claims as they attempt to move from
noise to voice toward outcomes that fulfill their national aspirations, that express their desires as
a ‘people’ within the construct of sovereignty and a community of state actors. By juxtaposing
the trajectories and combining the findings across cases, several hypotheses were identified, each
ripe for further testing against the universe of observations, namely cases of state death,
successful state formation, and cases of ongoing self-determination claims.
1. State formation is not durable in the absence of a legitimated self-determination claim, or put differently, legitimation of self-determination is needed for statehood to be sticky. The case of East Germany illustrates that self-determination can also involve the demise of a state if the claim is that the state in which the ‘people’ find themselves is illegitimate; the self-determination is for inclusion in, or creation of, another state. Corollaries to this are that the speech acts pursued by the self-determination claimants can ultimately contribute to the demise of a state, and durable statehood is the product of a steady alignment between both primary state interests and legitimacy of the self-determination claim. The policy relevance of these findings is applicable to many of the self-determination claims in the world such as those heard from African groups which claim that borders drawn by primary state interests are not aligned with their identities or national aspirations, and which are actively pursuing movements to achieve a change in their “forced” statehood status. North Korea provides another theater for the application of this finding. Ultimately, the stickiness of statehood requires buy-in from the underlying ‘people’.

2. The flip-side of the first, tacit acceptance of legitimacy on the basis of political calculations of self-interest by primary actors can result in statehood lacking in stickiness. As noted in the case of East Germany, the illocution of the speech acts of the secondary stakeholder had the perlocutionary impact of ultimately shifting primary state identities and hence their perceived interests. The primary states on all opposing sides of the interest facture lines can shift and eventually align in a different position. This finding suggests that the sands of identity-interests of primary power states can shift, which has implications for states from which self-determination movements reside, aspiring to a different alignment of territorial borders. A case in point is that of the Kurds of Turkey, Iraq and Syria whose ultimate end is a state that
would not only require multiple secessions, or irredentism, but also require a realignment of primary power interests. As this is not forthcoming, conditions of strife and contention are likely to go on.

3. Self-determination claimants can be successful if they offer a singular voice; the successful claimants in the case studies of East Timor and Kosovo offered a disenfranchised people a means to self-identify and coalesce around. In the case of both the FREILIN in East Timor, and the LDK and KLA in Kosovo, the voices provided a rallying cry for nationalism that was singularly purposeful, and when it became a cacophony of voices, the main claimant representative was able to engage in coalition building so that the voice was neither disjointed nor contradictory. In the case of Palestine, the self-determination movement tended to splinter and contradict, adding to the frustration and sense of disenfranchisement of the underlying ‘people’.

4. Related to the third, self-determination movements and claimants are more successful if they are able to embrace an organized multi-prong strategy that allows it to be nimble and responsive to feedback from its audiences. For example, both the self-determination movements in East Timor and Kosovo were able to embrace a diplomatic front appealing to the international community, a domestic political front to shore up base support and engage with international political actors, and a military front to engage with the ‘host’ state. Moreover, they tended to be more adept at reading the perlocutions from their audiences and pivoting their locutions accordingly, shifting between various strategies as needed. These tactics were indicated in both the cases of East Timor and Kosovo, while in Palestine the claimant failed at such a strategy due to the fact that its claimants were more internally focused on group dynamics and incapable of coming together to identify an outward
approach; each time that they were successful in this, as in the early 1970s and during the first *Intifadeh* of the late 1980s, they found the path towards legitimation, and lost that path when their actions became disjointed and incoherent.

5. As seen in the case of East Timor, self-determination movements may present themselves in several guises, ranging from moderate to violent. However, when given an option, the primary power states will choose to engage with the party offering a more moderate profile. Unlike in the case of East Timor where the claimant embodied several faces simultaneously, in the case of Kosovo perhaps because it had an option, the international community rejected the legitimacy of the violent claimant, the KLA, and accepted that of the nonviolent claimant, the LDK. Yet because the moderate interlocutor retained legitimacy of representation, the fact that there was a choice furthered the potential for success. In the case of Palestine, the splintering of the movement and the lack of apparent coherence in strategy resulted in a failure to convincingly present a non-violent face, when perlocutionary feedback messaging so demanded, either to primary power states or secondary stakeholders. Moreover, even when the PLO/PA presented the more moderate face in comparison to Hamas, its loss of legitimacy made it an ineffective interlocutor or actor on behalf of the underlying self-determination claim.

6. Even if the international community will opt to deal with moderate claimants, violence can be successful in bringing international attention to the self-determination claim, which is required in the legitimation process. As indicated in all the case studies, violence does galvanize the attention of both primary power states and the secondary stakeholders. The success cases, including Kosovo, tended to also be able to strategically employ other faces as suggested above, and to restrict their violent locutions to symbols of power, such as military
or police target, of the ‘host’ state, as opposed to indiscriminate targeting of civilians or of non-affiliated parties. When these locutions provoke violent perlocutions, audiences perceive an indiscriminate ‘host’ state violence juxtaposed against, even if politically branded as terrorist, the perception of discriminate ‘freedom’ fighters. The strategy employed by the Palestinians, whether in the initial stages of the PLO or lately with Hamas, it could be argued, fails to achieve such a distinction in the perception of both primary power states, and to a lesser degree with secondary stakeholders other than their domestic base. This ultimately enables the ‘host’ state of Israel to harness that perception in its successful process of delegitimation of a Palestinian right to external self-determination.

7. Self-determinant claimants can be successful if they are able to triangulate all audiences against the perceived intransigence of the ‘host’ primary power state, as was the case with the East Germans, the East Timorese and Indonesia, and to a somewhat lesser degree in the case of the Kosovars and Serbia, due to its backing by Russia, hence its quasi-successful outcome. Palestinians have failed to do so in the case of Israel. The points at which Palestinian self-determination attained partial legitimation coincided with its ability to more effectively triangulate the posture and identities of audiences in the face of Israeli action, such as in the first Intifadeh which opened the way for the Oslo process. That moment of opportunity was lost with the rise of Hamas and a perception of indiscriminate actions now emanating from the self-determination movement, which, in turn, provided Israel with its opportunity to triangulate in its delegitimation efforts.

8. The base of any self-determination claimant is the underlying ‘people’ that forms the core of the secondary stakeholder group, which also includes the balance of the international community not part of the primary power states. A successful claimant requires the support
of this core group in the first degree, and that of the broader group, in the second degree, in order to maintain the legitimacy of its representation and secure needed resources to maintain an effective movement. As was apparent in the cases of East Timor and Kosovo, and even Palestine, the initial stage of a self-determination claimant is focused on garnering this base support.

9. Finally, when primary power states accord the space for self-determination voices to be heard through political discourse, thus creating the authorizing environment for it, self-determination claimants tend not to employ violent speech acts in their communicative action. This was evident in each of the case studies. Conversely, when peaceful communicative action by the self-determination claimant is perceived to not bring about tangible results, self-determination movements will pursue violent speech acts in order, based on message feedback loops from both primary and secondary stakeholders, to engender perlocutions congruent with their ends. This too was evident in each of the case studies. This conclusion has significant implications for the course of political contention at a global level given the number of flaring hotspots, and the impact these struggles have on international relations and issues of peace versus conflict. Ultimately, a people who aspire to self-determination within the construct of international law and norms require the space to be heard and engaged. That, along with the preservation of sovereignty, is the basis of the organization of the international community of states. Without it, that community is perpetually at risk.
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