

J M W:mw 4/2/73

EMERSON, Rupert: "Self-Determination", Proceedings,
American Society of International Law,
Sixteenth Annual Meeting, 1966, p.138

"The ruling that the right of self-determination is to be exercised only once to secure liberation for a state and is then extinguished is contained unmistakably in Article 6 of the 1960 Declaration which condemns as incompatible with the Charter "Any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a country."

"The one circumstance in which the present ground rules allow the continued exercise of self-determination is when a dependent people, to the displeasure of the anti-colonialists, has opted for some status short of full independence. Where this occurs, the current doctrine seeks to insist that the right to opt out remains permanently in full force, to be invoked whenever the people concerned so desires."

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EMERSON, Rupert: "Self-Determination" Vol. 65 No.3, American Journal of International Law, July 1971.

p.459
para.1 "Any examination of self-determination runs promptly into the difficulty that while the concept lends itself to simple formulation in words which have a ring of universal applicability and perhaps of revolutionary slogans, when the time comes to put it into operation it turns out to be a complex matter hedged in by limitations and caveats."

p.459
para.2 "In the same fashion, the most obvious questions which must be asked about self-determination are usually familiar and straightforward but they all tend to suffer from the same common defect of lacking unambiguous answers which can be easily adapted to meet the pressures of political demands and counter-demands."

p. 460 "Rosalyn Higgins has established a useful frame of reference in insisting that the key issue is not the non-binding character of Assembly resolutions but the cumulative effect of such resolutions taken as an indication of the emergence of rules of general customary law."

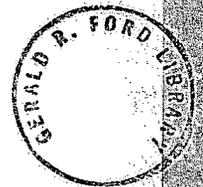
Applying her own criteria, Dr. Higgins finds inescapable the conclusion that self-determination has developed into an international legal right."

Leo Gross: "The Right of Self-Determination in International Law" in New States in the Modern World, edited by Martin Kilson (a forthcoming publication of the Harvard University Press.) Am. Journal Intl. Law footnote 6/.

p.461 "Assessing the situation differently, Leo Gross, a hard-liner on the question of the law-creating powers of the Assembly, finds that nowhere in the Charter has the right to self-determination in the legal sense been established, and contends that

'subsequent practice as an element of interpretation does not support the proposition that the principle of self-determination is to be interpreted as a right or that the human rights provisions have come to be interpreted as rights with corresponding obligations either generally or specifically with respect to the right to self-determination.'

"Working with substantially the same materials of recent history and United Nations practice, Dr. Higgins and Professor Gross come to opposed conclusions. Where she finds it inescapable that a right has come into being, he holds it to be an equally inescapable conclusion that the right to self-determination "is not or not yet one which can be characterized as based on customary international law."



p.462

"The general climate of opinion has certainly turned sharply against colonialism, and the administering Powers agree on the need for an orderly end of the colonial relationship^{10/} on their own terms; but that all dependent peoples have here and now the right to determine their own destinies is denied by the states which remain in charge of them. If, as proposed by Rosalyn Higgins and others, the expectation of the international community as to what constitutes lawful behavior is a key criterion in determining the existence of new rules of international law, it is obviously essential to know how the international community is composed and what major portions of that community may be excluded without impairing its status as a single and solidary body."

- 10/ Save Portugal, which clings to the contention that it has no colonies.

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"If the right to self-determination is to be made an operative one under international society, an essential condition is surely that the peoples or territories to which it applies are demarcated with at least reasonable clarity; 11/ but all commentators on self-determination have pointed out that neither "people" nor "nation" has any generally accepted meaning which can be applied to the diverse world of political and social reality."

- 11/ "The more strictly the people to whom it is to be applied are defined, the more possible it is to classify self-determination as a right which can be stated with reasonable precision and given institutional expression." Harold S. Johnson, Self-Determination within the Community of Nations 55 (Leiden, 1967).

"the Committee of 24, looking to speedy decolonization under Resolution 1514 (XV), has strongly tended to equate the proper exercise of the right of self-determination with a decision for independence. Particular exceptions have been approved as legitimate by the Committee and the Assembly itself; as in the case, for example, of the Cook Islands, whose desire for continued ties with New Zealand was accepted with surprised dismay, but the basic assumptions of the Committee and the Assembly are reflected in the standard bracketing together of self-determination and independence.

To the pleasure of the United States and its associates, the 1970 Declaration of the Special Committee on Friendly Relations held in the section dealing with the equal rights and self-determination of peoples that it accounted as a legitimate outcome of self-determination not only independence but also association or integration with an independent state or the emergence into any other political status freely accepted by a people. 24/ By now a number of alternative relationships between independent states and small peoples and territories have been worked out which provide self-government and at the same time on a freely agreed basis secure the benefits of association with a larger state and presumably representation by it in the world at large. Despite the advantages which such co-operative arrangements can bring with them, it has been the inclination of a number of members of the

24/ A number of Assembly resolutions make substantially the same point. Res 1541 (XV) '60, for example, states that self-gov. can be attained through emergence as an independent state, or through free association or integration with an



(contd)
p.470

Committee of 24 to ask that any act of self-determination which calls for less than independence should be subject to reversal by a later and definitive act of self-determination which would record the people's demand for independence. As they see it, self-determination is an inalienable right to which access must remain available until the ultimate option of independence has been exercised."

p.471

"A political issue of the first order of importance concerns the provision of defense and security for small states and territories. By no stretch of the imagination can they be assumed to have the resources which would enable them to defend themselves against any serious attack."

p.472

"The essence of the proposals made by Professor Fisher is a plea for flexibility which would make possible a wide array of fluid arrangements to meet the varying needs of small peoples and territories. Thus he called for recognition that

'independence and political freedom are too important to be confined by sharp categories. Self-determination is not a single choice to be made in a single day. It is the right of a group to adapt their political position in a complicated world to reflect changing capabilities and changing opportunities.^{29/}

^{29/} Roger Fisher, "The Participation of Microstates in International Affairs," 1968 Proceedings, American Society of International Law 166 (Washington, D. C., 1968).

Turning away from the traditional rigid alternatives, he urged a deliberate blurring of the distinction between independence and dependence in the hope both of lessening the demand for full sovereignty and of opening to small places access to the advice, facilities, and services which they are unable to furnish for themselves. In explicit contrast to the Committee of 24 with its bias in favor of independence, his proposed Office of Small States and Territories in the United Nations would seek the practical solution of problems on their merits and accept from the outset the assumption that small states will normally want to have a close relationship with some large state, perhaps the former colonial Power, and also have direct access to the United Nations."

p.474

"Self-determination has from time to time been referred to as the right of the winner in a Darwinian conflict for survival."

EMERSON, Rupert: "Self-Determination Revisited in the Era of Decolonization"
Center for International Affairs, Harvard (1964).

p.37 Regarding minority problems left over as colonial revolution approaches its end -- there is "a limit beyond which the application of the principle of self-determination becomes simply absurd". - Robert Stephens "They Too Have Rights", Observer (London) Dec. 30, 1962.

p.63 "In its immediately present incarnation, the loudly proclaimed right of all peoples to self-determination must actually be read to mean that all overseas colonial peoples have a right to be liberated from the overlordship of their alien white masters. Once each non-self-governing territory has won its independence, its national unity and territorial integrity are not supposed any longer to be subject to attack by any within or without who might assert a claim to continued access to a right of self-determination for themselves. Now, as at earlier times, the right has been interpreted in such fashion as to suit the interest of those who seek to manipulate it for their own purposes."

p.64 "What emerges beyond dispute is that all peoples do not have the right of self-determination: they have never had it, and they never will have it. The changing content of natural law in the era of decolonization has brought no change in this basic proposition."



RIVLIN, Benjamin: "Self-Determination and Dependent Areas", International Conciliation, Carnegie Endowment for International Peace. No. 501, January 1955.

p. 267 "In this shrunken world of today, a stubborn adherence to the right of self-determination is hardly compatible with the dictates of collective security and economic interdependence. As the former United States Assistant to the Secretary of State, Henry A. Byroade, has said:

"There is a paradox in the fact that the upsurge for national self-determination among the dependent peoples comes at this stage of human history. We know that Western nations, which have long possessed sovereign independence, are coming to recognize that self-sufficiency is a myth. We are moving steadily toward increasing association and interdependence among ourselves." 97/

97/ U.S. Department of State Press Release No. 605, 30 October 1953.

U.S. Conference on International Organization
U.N. Vol. VI, New York 1945.

p.296 "it was strongly emphasized on the one side that...[The principle of self-determination]... corresponded closely to the will and desires of peoples everywhere and should be clearly emanated in this Charter; on the other side it was stated that the principle conformed to the purposes of the Charter only insofar as it implied the right of self-government of peoples and not the right of secession."

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Factors to help in deciding whether a non-self-governing territory has achieved the goals of Chapter XI of the United National Charter (official records of the GA, Eighth Session, Resolution 742 (VIII)).

[Chapter XI applies to all non-self-governing territories, whether or not they are placed under the International Trusteeship System.]