CHAPTER THREE

NATIONAL TIES, LEGAL PRINCIPLES AND IDENTIFYING PEOPLES

Outline

The central idea in the interaction between nationalism, liberalism and international law and the right of self-determination that mediates it is the people. Peoples are undefined both in international law and as sociological entities. This is not for a lack of imagination. Charles Tilly called the nation “one of the most puzzling and tendentious items in the political lexicon” and there are formidable barriers to any definition of a people or a nation. Peoples are groups which are typically composed of millions of individuals, and these individuals may associate with each other a multitude of ways. A national identity may be only one of several identities: social, occupational, religious, political, regional, gender etc., and their value, content and consequences may vary according with the circumstances in which people find themselves. The extreme example is a civil war in which people are prepared to kill each other, but are still considered one nation.

Moreover, a national identity itself is not fixed. Various ties, like language, religion, politics, history or race, can be used to identify a nation, but different people within that same nation may have their own views on which of these are important in defining it. Is the essence of a nation in its culture and customs or in its institutions and values? Is it traditional or modern, religious or secular, uni- or multicultural? Each position would emphasise different ties and people may have very different perspectives on what it means to be part of a nation. The importance of these ties may also vary situationally. For example, language might not seem important to a person surrounded by other people with the same speech


but put that person together with individuals speaking a different tongue and it may suddenly become more relevant. On top of all this, individuals may have more than one national or ethnic identity: hyphenated Americans, Swedish Finns, Swiss Germans etc. The concepts of peoples and nations are extremely complex and do not lend themselves to easy formulation.

Nonetheless, this chapter will look at the elements that might be involved in the construction of a people. In particular it will focus on the role of national ties and legal principles as different mechanisms for identifying those groups and it is the relationship between the two that effectively defines the law of self-determination. National ties that characterise a nation (e.g. language, religion, race, history, territory, politics and identity) are fundamental to nationalist politics. Self-determination assumes that the basis for legitimate political authority is a nation or a people and, in doing so, the nation or people is used as a model for that authority. Correspondingly, how a people is defined, in particular which ties are used, also defines the claims that can be made in its name. International law, in turn, is composed of legal principles and how those principles fit together determines the its content. This has been especially the case in the law of self-determination, which has invariably been defined as a series of balances between different legal principles: self-determination and territorial integrity, state sovereignty, inviolability of frontiers etc.

Thus, the interpretation of national ties shapes self-determination and the reading of legal principles defines international law. The law of self-determination is, in turn, is moulded by both. However, national ties and legal principles are not mutually exclusive. Some national ties and legal principles have a clear affinity with each other. Self-determination fits closely with subjective ties, territorial integrity with territory, state sovereignty with political ties. Indeed, national ties can relate in different ways to all the legal principles involved in the law of self-determination. Correspondingly, a particular balance of principles, and the interpretation and weight given to them, may be no more than an extension of the national ties used in nationalism.

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