CHAPTER 1 NATIONALISM AND THE RIGHT OF SELF-DETERMINATION

Introduction

This chapter might be called the conceptual one. Its basic aim is to outline a number of concepts which are essential for a study of self-determination in international law. First there will be a brief explanation of the terms “people”, “nation”, “population”, “minority”, “indigenous people” and “country”. This will be followed by an examination of the doctrines of nationalism and national self-determination and their impact on international law. Finally, the chapter will consider the hand in glove relationship between the national ties used to identify a nation and many legal principles. Together this will provide the reader with both the vocabulary and the underlying philosophy behind the interaction between nationalism and international law.


The law of self-determination has developed its own vocabulary. As is often the case with law, certain words have been coded with particular meanings which may be quite different from their ordinary use. A number of words make up the language of self-determination in international law and it is worth having a brief look at them.

A. “People”

The concept of a people is famously undefined in international law. However, it is well-established that peoples are the basic unit that the exercise of the legal right of self-determination. It can also be noted that peoples exercise this right collectively as a single group. More broadly peoples tend to be seen as national groups,
possessing certain national characteristics. This is both in the colloquial use of the term and in international law. What those national characteristics are is left open. However, a significant feature of the “people” as a legal concept is that it can be different, for example, significantly narrower, than conventional uses of the term. This does not pose a problem, as such, for international law, but it may create difficulties in terms of the law’s legitimacy.

B. “NATION”

The concept of a nation is similar to a people as a national group, and in colloquial usage the two are treated synonymously. In legal usage too there is little to separate them. Legal studies have been unable to draw a clear distinction between the two. Both peoples and nations have been considered to have a right of self-determination, as well as other common rights. The most significant difference is

1 “nation ... a large community of people of mainly common descent, language, history etc., usually inhabiting a particular territory and under one government.” “people ... the persons composing a community, tribe, race or nation”. The Oxford Paperback Dictionary (H. Liebeck and E. Pollard eds.), (Fourth Edition), (Oxford University Press, Oxford, 1994).

2 See Cristescu: “‘Nations’ — entities to which the Charter refers at several points — are also holders of equal rights and the right of self-determination. Although they are not expressly mentioned in the formulation of this principle in the International Covenants on Human Rights, they are implied, being covered by the term ‘peoples’.” A. Cristescu, The Right to Self-Determination, UN Doc. E/CN.4/Sub.2/404, vol. I, p. 143, para. 280.

3 E.g. “[T]he right of peoples and nations to self-determination is a prerequisite to the full enjoyment of all fundamental human rights.” GA Res. 617(VII), 7 GAOR (1952) Supplement No. 20, (A/2361) p. 26; “The right of peoples and nations to permanent sovereignty over their natural resources”. GA Res. 1803(XVII), 17 GAOR (1962) Supplement No. 17, (A/5217) p. 15; “All States shall respect the right of self-determination and independence of peoples and nations, to be freely exercised without any form of foreign pressure”. GA Res. 2131(XX), 20 GAOR (1965) Supplement No. 14, (A/6014) p. 12. Saudi Arabia: “[T]he right of nations to self-determination” 5 GAOR (1950) 3rd Cmte., 309th mtg., (A/C.3/SR.309) para. 54; France: “[I]t was clear from its very name that ‘the right of nations to self-determination’ was not even a collective human right, but a right of nations as such.” Ibid. para. 62; USSR: “[T]he right of peoples and nations to national self-determination” 6 GAOR (1951) 3rd Cmte., 359th mtg., (A/C.3/SR.359) para. 8; Byelorussian SSR: “[S]uch rights as that of peoples and nations to self-determination” Ibid. para. 21; Ecuador: “[T]he right of peoples and nations to self-determination proclaimed in Articles 1 and 73 of the Charter”. Ibid. 366th mtg., (A/C.3/SR.366) para. 52; US: “... [T]he principle of the self-determination of peoples and nations stated in the Charter”. Ibid. 367th mtg., (A/C.3/SR.367) para. 46; Afghanistan: “The question of a distinction between a people and a nation might be raised. With regard to self-determination the terms were identical.” Ibid. 396th mtg., (A/C.3/396) para. 58; Syria: “With regard to the word ‘people’ ... in its context the word clearly meant the multiplicity of human beings