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978-0-521-63752-7 - Self-Determination of Peoples: A Legal Reappraisal

Antonio Cassese

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The self-determination of peoples is a major issue in the modern world community. Both radical and potentially subversive, it serves to grant statehood to oppressed peoples, but also to disrupt existing state structures. This book, the first comprehensive legal account of self-determination, sets out to trace how this political ideal has turned into an international legal standard. Scrutinizing state practice through national digests and UN proceedings, the author analyzes the extent to which the political postulate has exercised its influence within the body of international law, and assesses the nature of its impact on existing legal norms.

Although primarily a legal inquiry, this book examines law within its historical and political context. It offers an important contribution to the study of the interplay of law, history and politics in international relations.

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ANTONIO CASSESE

A GROTIUS PUBLICATION



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Preface

My first inquiry into the international legal status of the principle of self-determination dates back to 1957, the year I began working towards my LL. M at Pisa University. In those days, I was intrigued by the potential far-reaching ramifications of the principle, as well as by the problems and challenges posed by its inherent ambiguities. Since that time, I have been wrestling with this topic, although admittedly in fits and starts, and indeed have returned to it on many occasions, tracing the gradual process by which the principle has gained a foothold in the body of international legal rules. Like all inquiries into areas straddling the border between politics and law, discussing self-determination's maturation from a political concept to an international legal norm has proved extremely difficult. Thus, after thirty-odd years of thinking about the matter, I decided I ought to take stock of my prior work in the area and rethink problems previously examined. My hope was to develop an over-arching perspective on the principle. I have thus reached a number of conclusions that are markedly different from those expressed in my earlier writings. Although I have changed my mind on many points, I have of course drawn upon my previous research and made use of it in the course of the present reappraisal. This should account for the frequent references to my past writings: they are simply intended to indicate where I have dwelt more extensively on the matter at hand, and should not be seen as a manifestation of that narcissistic bent that all too often befalls aging scholars, making them so prone to self-citation.

I am aware, of course, that this book cannot exhaust the topic, which is indeed immense. I hope, however, that it offers a fairly readable survey of the subject, thereby contributing to a better understanding of the interplay of politics and law in the world community.

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Preface

As time goes by, I have become more and more persuaded that even we international lawyers should write short essays or small books consisting of brief chapters: the international reality has become so complicated, multi-faceted and evasive that the bent for 'esprit de système' should give way to quick scholarly forays into small fragments of reality; after all, 'the devil is in the detail'. Why do we not take as a model the short, pithy and profound stories or essays of J.L. Borges? Alas, in writing this ponderous book, once again I have been unable to live up to my own design. My frustration will probably be passed over to the reader, to whom I therefore owe an apology; however, to make up partially for my failings, I have drafted a final chapter, where he or she can at least find a thumb-nail sketch of my long analysis.

I would not have set about both rethinking the whole range of questions relating to self-determination and undertaking the extensive research work that was needed without the powerful incentive given by the invitation to deliver the H. Lauterpacht Memorial Lectures in Cambridge. I am most grateful to E. Lauterpacht both for the honour of kindly including me among the Cambridge lecturers and for the great forbearance he showed in waiting for my typescript.

I am also greatly indebted to a number of colleagues and friends who were generous enough to read the last draft but one and make helpful comments. In addition to E. Lauterpacht, I should mention R. Barsotti (Florence University), L. Condorelli (Geneva University), R. Higgins (London School of Economics), S. Marks (Cambridge University), M. Shaw (Leicester University). In particular, I owe my friend J. H. H. Weiler (Harvard Law School) a great deal for his many insightful comments and generous input. It goes without saying that I alone bear full responsibility for any misapprehensions or gaps that might still exist in spite of the many critical and constructive suggestions from which I have benefited.

I am also beholden to Melanie Stein who, with great competence, helped me prepare a first draft and to Cyril Adjei, who adroitly polished up the last three drafts and compiled the indexes. Evie Zaccardelli, as usual, showed great care and consideration in preparing the final typescript; Julia Valerio skilfully attended to proof-reading and Jean Field undertook the copy-editing with admirable competence. To all of them I would like to express my deep appreciation.

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AEL	Collected Courses of the Academy of European Law
AF	<i>Annuaire Français de Droit International</i>
AFDI	<i>Annuaire Français de Droit International</i>
AJICL	<i>African Journal of International and Comparative Law</i>
AJIL	<i>American Journal of International Law</i>
ASDI	<i>Annuaire Suisse de Droit International</i>
AVR	<i>Archiv des Völkerrechts</i>
AYIL	<i>Australian Yearbook of International Law</i>
BYIL	<i>British Yearbook of International Law</i>
Case WRJIL	<i>Case Western Reserve Journal of International Law</i>
CSCE	Conference on Security and Cooperation in Europe
CYIL	<i>Canadian Yearbook of International Law</i>
<i>Dept. St. Bul.</i>	<i>Department of State Bulletin</i>
EC	European Community
EG	<i>Enciclopedia Giuridica</i>
EJIL	<i>European Journal of International Law</i>
<i>Encyclopedia</i>	R. Bernhard (ed.), <i>Encyclopedia of Public International Law</i>
<i>EPC Bul.</i>	<i>European Political Cooperation Bulletin</i>
FA	Foreign Affairs
<i>Fest.</i>	<i>Festschrift</i>
GA	General Assembly
GAOR	General Assembly Official Records
GYIL	<i>German Yearbook of International Law</i>
HILJ	<i>Harvard International Law Journal</i>
HR	<i>Hague Recueil</i>
ICJ	International Court of Justice
ICLQ	<i>International and Comparative Law Quarterly</i>

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List of abbreviations

IJIL	<i>Indian Journal of International Law</i>
ILC	International Law Commission
ILM	International Legal Materials
ILR	International Law Reports
Israel L.Rev.	<i>Israel Law Review</i>
IYHR	<i>Israel Yearbook of Human Rights</i>
<i>Keesing's</i>	<i>Keesing's Contemporary Archives</i> , later <i>Keesing's Record of World Events</i>
NILR	<i>Netherlands International Law Review</i>
NTIR	<i>Nordisk Tidsskrift for International Ret (Acta Scandinavia Juris Gentium)</i>
NYIL	<i>Netherlands Yearbook of International Law</i>
NYUJILP	<i>New York University Journal of International Law and Politics</i>
OAS	Organisation of American States
OAU	Organisation of African Unity
Proceedings ASIL	<i>Proceedings of the American Society of International Law</i>
PYIL	<i>Palestinian Yearbook of International Law</i>
RBDI	<i>Revue Belge de Droit International</i>
RDI	<i>Rivista di Diritto Internazionale</i>
RDILC	<i>Revue de droit international et de législation comparé</i>
RDP	<i>Revue de droit public</i>
Repertório	A. A. Cançado Trindade (ed.), <i>Repertório da prática brasileira do direito internacional público, Período 1941–1960</i> (Brasília 1984), <i>Período 1961–1981</i> (Brasília 1984)
Res.	Resolution
RGDIP	<i>Revue Générale de Droit International Public</i>
SAJIL	<i>South African Journal of International Law</i>
SC	Security Council
SCOR	Security Council Official Records
Stanford JIL	<i>Stanford Journal of International Law</i>
UN	United Nations
UNCIO	United Nations Conference on International Organisation
UNTS	United Nations Treaty Series
UN Ybk	<i>Yearbook of the United Nations</i>
US Digest	<i>Digest of US Practice in International Law</i>
VJIL	<i>Virginia Journal of International Law</i>
Zeit.	<i>Zeitschrift für ausländisches öffentliches Recht und Völkerrecht</i>