Self-Determination as a Process: The United Nations in South Sudan

https://www.e-ir.info/2020/03/10/self-determination-as-a-process-the-united-nations-in-south-sudan/

KERSTIN TOMIAK, MAR 10 2020

This is an excerpt from *The United Nations: Friend or Foe of Self-Determination?* Get your free copy here.

What is the United Nations' (UN) general stance on the principle of self-determination? This is a rather complicated question for several reasons. The principle itself is, as Summers (2013, 230) says, 'frustratingly ambiguous'. There can be many reasons why self-determination claims are either supported or rebuked without this hinting at a general stance of the UN, which is not a homogeneous organisation but a conglomerate of different actors and interests. Further, an examination of whether and under what conditions the organisation supported the claims alone would tell us little; just as important as the question of *if* the UN supported a self-determination claim would be the question of what happens *after* a peoples' decision, hence if the organisation values and supports a new state's independence and sovereignty. In this chapter, I argue that self-determination is not an endpoint that is reached once a people have been able to decide whether they want independence. Instead, I see self-determination as a process, which comes with the need to build a new state and state institutions. In this process of state-building, the UN quite often plays an important role. Understood in this way, insights into the organisation's stance towards self-determination that go beyond the question of whether the UN supported the original claim are achieved, as are insights about the importance of the organisation's composition. My argument is that while the UN might initially be supportive of a self-determination claim, events in a newly created state might force it to engage in behaviour that violates this state's sovereignty and shows the organisation as being unsupportive of self-determination.

In brief, I argue that (1) self-determination is a process that does not end with a declaration of independence and recognition of a new state, and (2) the stance of the UN in a self-determination case is context-dependent, with 'context' explicitly including the events in the newly created country but also the composition of the UN itself and the expectations and ideas of its individual staff. I base my argument on the case of South Sudan, where the UN was initially supportive of self-determination; nevertheless, the organisation's actions in the country following the declaration of independence showed a disregard of the new state's sovereignty. One might argue that the UN's actions were justified by the events in South Sudan with the new outbreak of violence and human suffering that came with it.

Whether or not the prevention or easing of human suffering justifies the violation of sovereignty is an important question; while a serious engagement with it is outside the scope of this chapter, it shows the dilemma the UN might be experiencing when it comes to self-determination processes. It also gives rise to possible arguments for shared sovereignty or trusteeship (Krasner 2004, 85). I am well aware that this is a slippery slope, especially in connection with self-determination claims.

Self-determination is closely linked to decolonisation (Barnsley and Bleiker 2008, 121; Del Mar 2013, 85), and a call for shared sovereignty can easily be understood as an attempt to keep a population under the thumb of either a foreign power or internal forces, and thus as re-colonisation. Further, there is a vast literature about the problems that arise when external actors engage in state-building (Bliesemann de Guevara 2008 and 2012; Bliesemann de Guevara and Kuehn 2013; Duffield 2001; Paris 2002). Nevertheless, South Sudan is but one example of self-

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determination that was followed by violent conflict; consequently, this has led to long-term engagements of foreign powers, which have subsequently hindered self-determination, as past elites have been exchanged for new ones. Shared sovereignty, new forms of trusteeship, predetermined timelines, previously agreed upon rights and duties of all parties involved, and a gradual transfer of power might be able to pave less rocky roads to self-determination. At least, clear terms and conditions seem more honest than the international community *de facto* running a newly independent state.

I will first give background on the principle of self-determination and South Sudan; I then turn to an examination of some of the UN's actions in the young state. I conclude by saying that while the UN supported the self-determination claim of the Southerners, it nevertheless violated the sovereignty of the young state following independence. My conclusions are based on observations and interviews during ten months of fieldwork in South Sudan in 2014 and 2015.

On the Principle of Self-Determination

Since the principle of self-determination is enshrined in the UN's Charter it would be reasonable to assume that the organisation is an advocate of the principle. Still, it does not engage in all such claims. In the past, self-determination has been linked to decolonisation and freedom from forceful, illegal occupation; this has limited the number of possible cases. The UN sometimes chooses not to engage as some cases are explicitly political, e.g. Tibet. Sometimes the organisation is blocked from engagement like in southern Yemen (Chang 1972, 37–38). Further, a conflict's history, the possibility of regional contagion and the characteristics of the dispute all play a role in the decision of whether to engage (White et al. 2018, 380). In general then, the UN, while not exactly a foe of self-determination, cannot be named a champion of the principle.

One reason for the rather wavering position is probably the composition of the organisation. Freeman (1999, 357) names it 'an association of elite states, whose primary purposes are to protect and promote the interests of their states and to maintain the existing state order. Commitments to the self-determination of *peoples* (…) are subordinate to these purposes' [italics in original]. The UN is not a homogeneous organisation; Weiss et al. (2018) distinguishes between a first, second, and third UN, thus adding to Claude's older distinction of two UNs (Claude Jr. 1996). The first UN is described as 'an institutional framework of member states' (Weiss et al. 2018, 2). The second is stated to be 'the system of decision- and policy-making by UN officials who are independent and not completely instructed by states' (Weiss et al. 2018, 4). Finally, the third is named a 'network of NGOs [non-governmental organisations], experts, corporate executives, media representatives, and academics who work closely with the first and second UN' (Weiss et al. 2018, 5). There are many actors and interests to consider before the UN can decide whether it will engage in a self-determination claim.

Further issues arise as the principle itself displays a certain degree of vagueness. It is not defined who possesses the right to self-determination (Freeman 1999, 356), and as the consequence of such a claim is often secession, the right to self-determination in principle threatens an existing state's territorial integrity (Barnsley and Bleiker 2008,125–8). Further, the threat is not only to the territorial integrity of a minority group's mother state, but to the community of states in general (Berndtsson and Johansson 2015); states' opinions on self-determination consequently differ (ibid.). Many states are home to minority groups that might want to ascend to independence and states rather avoid such claims (Koivura 2008). Therefore, consideration of a self-determination claim is not only based on the rights of the peoples but as much on the right of the state in question and the destabilisation effect the claim might have. Consequently, the right to self-determination has been named 'a variable right, [that is] depending on a combination of factors. The two most important of these seem to be the degree of destabilisation in any given claim (…), and the degree to which the responding government represents the people belonging to the territory' (Kirgis Jr. 1994, 310).

Further, ethnic groups and Indigenous peoples are rather excluded from being heard at the UN; to make their voices heard they need to borrow an identity. 'A native American would thus sit and speak as a delegate of the International Committee of Jurists or other NGO, and a Maori would relay his people's concerns in his role as a New Zealand trade unionist' (Clech Lam 1992, 617). It is the exception rather than a rule for a UN forum to permit 'concerned parties to speak in their true representative capacity' (ibid.). Henceforth, claiming the right to self-determination at the

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UN is rather problematic for ethnic or minority groups.

An Independent South Sudan

In the case of South Sudan these problems were overcome. The United States massively supported the Southerners' claim, based on the hope that a referendum and possible secession of the South would end the long and bloodthirsty war the country had suffered for decades. Public support, enhanced by the American film star George Clooney, also helped. In January 2011, the South held a referendum under the conditions of the 2005*Comprehensive Peace Agreement* (CPA) and overwhelmingly decided to secede; in July 2011 independence was declared. South Sudan joined the UN shortly thereafter and became the 193rd member state of the international community of states.

Violent conflict broke out in South Sudan in December 2013 and the UN Mission in South Sudan (UNMISS) was caught off guard by this (Nzabanita 2014). UNMISS was a small mission and the lack of numbers and resources shows that the potential for conflict in the new state was – surprisingly and incorrectly – underestimated. The South is home to roughly 60 different ethnic groups. The Southern movement that drove forward the self-determination claim, the Sudan People's Liberation Army / Sudan People Liberation Movement (SPLA/SPLM), was led by Salva Kiir Mayardit (a Dinka) and Dr. Riek Machar (a Nuer), who have a well-known history of strife and quarrels (Akol 2003; Arop 2006; Johnson 2011). Following a relatively brief period of celebration, the conflict restarted, and despite a number of mediation attempts and sanctions, it is still ongoing. As this situation continued to unfold, UNMISS and other international agencies engaged and intervened in decisions concerning the sovereign Government of South Sudan (GoSS). UNMISS was originally mandated to support the GoSS in areas such as good governance, security-sector reform and establishing the rule of law (S/RES/1996). Following the outbreak of violent conflict, the mandate changed to focus on the protection of civilians (S/RES/2406).

The UN, the International Community, and the Dilemma of Self-Determination

It is not unusual for the UN to stay on after a self-determination claim and referendum. In Timor-Leste, which voted for secession from Indonesia in 1999 and became independent in 2002, the UN took over administration as the new state needed to be built from scratch following an outbreak of massive violence by pro-Indonesian militia and the Indonesian army (S/RES/1272). The mandate the UN Security Council gave to the UN Transitional Administration in East Timor (UNTAET) was broad, however, and 'left several key questions unanswered, including the roadmap leading to self-government, the relationship of the governance and public administration component to the future East Timorese government, and the mechanism for consultation with the East Timorese' (Martin and Mayer-Riek 2005, 133). Chesterman (2002, 63–4) argues that 'many of the expatriates working for UNTAET and the 70-odd international NGOs tend to treat the Timorese political system as a *tabula rasa*', an approach that effectively excluded the Timorese from their state-building project.

In South Sudan, where the UN's mandate was nowhere near as broad, a similar tendency could be observed. Autesserre (2014) has described that international expatriates, working for international organisations and NGOs, value technical expertise over local knowledge and reproduce the systems they are most familiar with. This might be a reason for the tendency of UN personnel to ask counterparts in host governments for certain behaviours – a tendency that is understood as dictating behaviours and policies in these host governments.

Furthermore, the relationship between the international community and a host government is asymmetrical, with one party providing, the other receiving funds. In South Sudan, this led to conflicting ideas of each party what the other was entitled to, which led to the deterioration of the relationship between the parties, as I will show in the next section.

The UN's Behaviour in South Sudan

The problems between the GoSS and the UN were probably most apparent in what can be named the 'Toby Lanzer incident'. In May 2015, the GoSS expelled the UN's resident relief coordinator Toby Lanzer. This was due to Lanzer's media activities; in particular, an interview given in Geneva, Switzerland in which Lanzer had critiqued the South Sudanese government harshly and described it as a failure. Supporting reasons were his critical tweets and

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statements on social media where Lanzer is said to have stated that South Sudan was on the brink of bankruptcy (Atem 2015). Ateny Wek Ateny, spokesperson of the GoSS, said in an interview with the newspaper *The Citizen*, 'These statements are irresponsible statements from the humanitarian coordinator, given the fact that they don't give hope to the people of South Sudan' (ibid.). Expelling Toby Lanzer generated turmoil in the international community. International actors saw their opinion of the South Sudanese government as ruthless and authoritarian confirmed. Then UN Secretary-General Ban Ki-moon condemned the decision, named Lanzer 'instrumental in addressing the increasing humanitarian needs of conflict-affected communities in the country' (United Nations 2015), called on the GoSS to reverse the decision immediately, and urged the government to 'cooperate fully with all United Nations entities present in South Sudan' (ibid.).

The South Sudanese government felt unfairly criticised by Lanzer and reacted by expelling him. This was certainly not a wise decision and probably an overreaction; nevertheless, the GoSS was within its rights to do so. The UN Secretary-General, however, requested the government of an independent sovereign country to revoke its decision and to cooperate with the UN, which was read by the government and by many South Sudanese as a call to obey the UN. This did not bode well with the government. The GoSS views the UN and the international donors and expat community as guests in the country; as such 'they do have to obey the rules of South Sudan and not make their own rules. They have to follow our rules'.[1] The international community on the other hand, viewed itself as supporting the country and as having a voice in how it is run. A civil servant from the European Union stated in an informal discussion that 'governments come and go. We assist the people of South Sudan'.[2] The same was, phrased in different ways, stated by employees of international nongovernmental organisations (iNGOs) in the country. The international community feels that because of the amount of money they are giving they have a say in the country's governance. Most prominently, this was phrased by an acquaintance working for an iNGO, who said: 'We have literally paid for everything in this country. This country is functioning only because of us'.[3]

The GoSS on the other hand, does not see a connection between receiving donor money and a right to decide. In informal talks, government officials said that they are happy to receive advice, but they do not feel an obligation to take it. In this regard, it was also quite often stated that foreign experts and UN workers, as well as iNGO employees, are rather clueless about realities in the country. An explanation for this might be the way the donors and expat workers live and work. What has been described as 'the expat bubble' makes for a tangible barrier between foreigners and the South Sudanese and has an effect on the perceptions of the other group (Autesserre 2014; Smirl 2015). There is a clear tendency of 'bunkerisation' (Fisher 2017), with foreigners living and working for security reasons in secure compounds with very limited connections to the outside world. The high levels of security for the compounds of foreigners, including the UN agencies, make for divisions; government officials repeatedly phrased a general feeling of mistrust when talking about their relationship with foreigners.

While this points to a more general problem in the relationship between the international community and a host government, a clearer violation of the GoSS's sovereignty was the interference of UNMISS in the government's media policy. In February 2015, the Minister for Information, Michael Makuei, threatened to close the UN's Radio Miraya. Miraya had aired an interview with an exiled politician, namely Rebecca Garang, who was placed under house arrest in December 2013, before she went into exile. Makuei named her a rebel and threatened to shut down the UN's radio station. The threat was retracted after the intervention of Ellen Margrethe Løj, the then head of UNMISS. Like the Toby Lanzer incident, the Miraya incident was interpreted in two different ways. While almost every international worker in South Sudan who I talked to understood it as an affront of the government against press freedom and the UN in general, South Sudanese acquaintances were taken aback by what they described as 'another UNMISS-arrogance'.[4] It was said that no government in the West would allow a radio station to air rebel views and that the UN needed to follow the laws in the country.[5]

The two occurrences had a similar pattern. A member or an institution of the international community states or broadcasts something the government of the host country understands as hostile; it reacts to this and is rebuffed by the international actor and made to reverse its decision. The concern here is not if the reaction of the GoSS in both cases was appropriate – this is certainly debatable. The concern is that the decision of a sovereign government was overrun by an actor that is supposed to support the self-determination of people. Instead, both incidents show the UN pushing for the GoSS to behave as they, the UN, saw fit.

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This struggle over predominance between the local elites and the international actors was further apparent in the international community's reaction to the GoSS's attempt to regulate iNGOs. In May 2015, the government issued a new bill that required them to register with the government: a tedious and costly process but not a new or unusual requirement. Furthermore, it ordered iNGOs to ensure that no more than a fifth of their staff were foreigners. This caused concern among the iNGOs working in South Sudan. It was claimed that this regulation would result in delays of projects because of a shortage of skilled South Sudanese workers. This was dismissed by nationals. 'We do not have a capacity problem', I was told, '…we have a capacity utilisation problem.'[6] Another statement was that 'the international community is doing capacity building here since ten years. How can there not be enough capacity? Did they do something wrong?'[7] The government and many well-educated South Sudanese have long been complaining that iNGOs give too many jobs to foreigners instead of to the local population. The NGO bill with its quota for foreigners was seen as reasonable and necessary by them and the argument of the internationals that there are not enough skilled people for employment in South Sudan was understood as an insult. In the end however, the GoSS partly retracted the bill in explaining that it concerned only certain professions and management levels and the quotas were not enforced.

The meddling of foreigners in internal affairs was also apparent when six US-based iNGOs, including Human Rights Watch, sent a letter to John Kerry, the then US Secretary of State, and asked for more sanctions against South Sudan to force the warring parties to strike a peace deal. Surely this was well meant, but it did not soften the GoSS's approach towards iNGOs or foreigners. According to the *New Nation*, a South Sudanese newspaper, it was seen as a 'blatant interference in the internal affairs of a sovereign nation'.[8] The government reacted by saying that the iNGOs should rather 'reflect on their current soft-gloves approach towards the rebels and start to exercise more pressure on the rebels to motivate them to return to the peace talks'.[9] This, to be sure, was not the UN or one of its agencies behaving in this way, but using the notion of the 'third UN', the network of iNGOs working with the UN (Weiss et al. 2018), the problem of the international community meddling in the internal affairs of a sovereign country is evident.

Friend or Foe?

Where does all this leave us with the question of whether the UN is a friend or foe of self-determination? This question can be answered from two different angles. One can examine if and for what reasons the organisation gets involved in self-determination claims. This perspective sees self-determination as a result. Self-determination can, however, also be seen as a process. In this view, it is not achieved by just a popular vote and a (possible) declaration of independence. Instead, self-determination would be achieved when there is a functioning state in place, a state that is grounded in its peoples' decisions and whose acts are respected by the international community. Such a state cannot be declared, instead, it needs to be built. How the UN engages in this process provides a different answer to the question of whether it is a friend or a foe of self-determination. Thinking about self-determination as a result, South Sudan would count as a rather successful case; independence was declared following a popular vote. If seen as a process, South Sudan is not a successful case as its declaration of independence was followed by a power struggle, outbreak of violent conflict, and human suffering; it can certainly not be declared that the peoples of South Sudan have achieved self-determination. Questions about the UN's stance towards South Sudan's sovereignty also arise. The UN, mandated at first with supporting the GoSS and later with the protection of civilians, butted heads with the government about how certain aspects of governance should be managed, giving room to the accusation that the organisation might be supportive only of a certain kind of state. In Timor-Leste, the organisation that enjoyed a much broader mandate was also accused of not engaging and consulting enough with the local people but running the country as it saw fit (Chesterman 2002, 64–68).

Sticking to the notion of the first, the second, and the third UN is helpful here. As introduced by Weiss et al. (2018, 2), these include the member states, the system of UN-officials and the network of NGOs, consultants and journalists working for the UN. In the case of South Sudan, the first UN was positively engaged in the self-determination of the South. After the declaration of independence and the recognition of South Sudan as a sovereign state, the second and the third UN engaged in practices that can be understood as a violation of sovereignty. This was due to events in the country. With this, it can be said that parts of the UN were a friend while others were a foe. The stance of the UN towards self-determination is not necessarily homogenous.

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Stephen Krasner (2004, 85) states that the rules of what he calls 'conventional sovereignty', including the principle of non-interference in the internal affairs of a sovereign state, are frequently violated in practice. In the case of South Sudan, the interference of the international community can be seen as justified by the dire situation in the country. Personally, I do not doubt that the UN-personnel in South Sudan genuinely acted with the best interests of the South Sudanese people at heart. Still, it seems unclear how interference in the media and in the government's decision to regulate iNGOs working in the country would be able to end the conflict or ease human suffering. Instead, these interferences worsened the relationship between the government and the international community and contributed to growing mistrust between the parties. With these practices, the UN acted more like a foe to the process of self-determination.

It is not a rare occurrence that self-determination is followed by violent conflict and this begs the question of if there is a way to cope with self-determination to solve or prevent such situations. Shared sovereignty or trusteeships have been proposed (Krasner 2004). With reference to a people who want to decide their fate, this seems unreasonable; still, in cases of potentially weak, new states in conflict or in danger thereof, there might be a point in question. In South Sudan, self-determination was guaranteed only to have it violated by external powers. These interferences did not help overcome the conflict; instead, they caused ongoing mistrust and problems between the actors involved. Further research might clarify if agreements about shared sovereignty or a trusteeship with mutually agreed clear guidelines on such points as the partners' responsibilities, complaint mechanisms, and length of the agreement might be better policy tools to overcome or prevent violent conflict and help new states on their way to self-determination.

Notes

[1] Interview with a South Sudanese government official in the Ministry of Information and Broadcast, conducted in Juba, 30 June 2015.

[2] Field notes, 16 April 2015.

[3] Field notes, 23 February 2015.

[4] Interview with a South Sudanese media consultant and advisor, conducted in Juba, 20 June 2015.

[5] Ibid.

[6] Interview with a South Sudanese project manager, conducted in Juba, 18 April 2015.

[7] Interview with a South Sudanese advisor, conducted in Juba, 12 August 2015.

[8] New Nation newspaper, 17 June 2015.

[9] Ibid.

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