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Palestinian Statehood: A Secessionist Dialogue

Introduction

No one has previously invoked a secessionist dialogue apropos Palestine.[2] It is the prototypical geo-political hotspot, and the object of next year's presumptive Palestinian National Authority's announced declaration of de facto Statehood.[3] But given the long-term moniker "Occupied Territories," one must acknowledge the increasingly thin line between Israeli occupation and its *de facto* sovereignty.

One thing that Palestinians and Israelis have in common would be their belief that Israel is not a mother State. But Israel's resumption of West Bank and East Jerusalem Jewish settlement construction—in violation Geneva IV—exemplifies Israel's complete (de facto) sovereignty.

The 2008 secessions of South Ossetia and Abkhazia from Georgia, and Kosovo from Serbia, may spark yet another skirmish—in this instance, how the US could denounce Palestinian Statehood, while embracing Kosovo's secession as legitimate. Per the unwittingly allied Russian and American rhetoric, all three of these 2008 secessions were: (a) legitimate, (b) unique, and (c) not precedent for any other separatist claim to Statehood.[4] Nonetheless, I will demonstrate why the secessions of Kosovo, South Ossetia, and Abkhazia were not legitimate under Customary International Law.[5]

Palestine's presumptive 2011 unilateral declaration of Statehood, on the other hand, will present a comparatively more defensible claim to legitimacy. Of course, no one would predict that Israel will accept such a declaration of Statehood.[6] That is another topic for another day. Yet,

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[2] The scholarly collection in E. Playfair (ed.), *International Law and the Administration of Occupied Territories: Two Decades of Israeli Occupation of the West Bank and Gaza Strip* (Oxford, Eng: Clarendon Press, 1992) is perhaps the leading treatment of this subject, even today. Its many excellent analyses did not then (almost twenty years ago) consider the claim—made in this article—that one may apply a secessionist analysis to a location that has been effectively subject to almost complete Israeli sovereignty since the region's 1967 wars.

[3] D. Diker & P. Inbari, *Peace Process: Prime Minister Salam Fayyad's Two-Year Path to Palestinian Statehood: Implications for the Palestinian Authority and Israel*, MESI (Middle East Strategic Information Blog, Oct. 22, 2009), available online, at: <http://mesi.org.uk/ViewBlog.aspx?ArticleId=73>.

[4] *But see*: Mikulas Fabry, *Recognition of Kosovo, Abkhazia and South Ossetia: What are the Implications for Nagorno-Karabakh?*, available online at: <http://www.umich.edu/~iinet/asp/Docs/FabryMichiganpresentation.pdf> (Jan. 30, 2009) & The Kosovo Precedent—Directly Applicable to Abkhazia and South Ossetia, 3 *Caucasian Rev. Int'l Affairs* 108 (2009), available online at: <http://cria-online.org/6_11.html>.

[5] This argument appears in Legitimacy of the Kosovo, South Ossetia, and Abkhazia Secessions: Violations in Search of a Rule, 6 *Miskolc J. Int'l Law* 1 (Miskolc, Hungary: 2009), reprinted in 3 *Ukrainian Yearbook Int'l Law* ___ (Kiev: 2010).

[6] This is a likely impetus for the Obama Administration's launch of its August 2010 initiative, inviting Palestinian President Abbas and Israel's Prime Minister Netanyahu for face-to-face negotiations—with a predictable view toward avoiding the entrenchment which will be spawned by the continuing failure of external efforts to negotiate a

were the US or Russia to disavow the imminent Palestinian claim,[7] their prior commitment to the uniqueness of the 2008 secessions would be another example of Realpolitik trumping Customary International Law precedent.

My blueprint for linking the three 2008 secessions, the Palestinian quest for Statehood, and the applicability of a secessionist model, is marked by the following four corners:

1. Paths to Statehood under International Law and the related default rule against unilateral declarations of Statehood;
2. Customary International Law's test of legitimacy for unilateral declarations of Statehood;
3. US and Russian claims that the three 2008 unilateral secessions were unique; and
4. Assuming arguendo, that Russia and the US are correct regarding the legitimacy of the South Ossetian, Abkhazian, and Kosovar secessions, they cannot logically resist the planned unilateral announcement of Palestinian Statehood in 2011.

Paths to Statehood

The UN Charter did not contemplate secessionist conflicts. It was a visionary blueprint for a new world order.[8] Customary International Law acknowledges several conduits for an oppressed people to achieve its desired geopolitical status: succession, secession, and self-determination.

Succession refers to one State's taking over another.[9] Examples include Germany's 1939 annexation of Austria, as a prelude to World War II; and Iraq's 1991 takeover of Kuwait, the preface to the first Persian Gulf War. A valid succession, on the other hand, involves a smooth transition. Czechoslovakia presents the quintessential example. The Czech Republic and Slovakia both succeeded to a portion of Czechoslovakia in the so-called Velvet Revolution. *Secession* is the second of the three sub-terrains for contemporary paths to Statehood.[10] It is the centerpiece of this presentation. Numerous separatist movements actively are pursuing provincial breakaways from their mother States.[11]

Self-determination is a third potential corridor which can lead to Statehood. All people have at least a theoretical right to determine their geopolitical status.[12] The UN Charter's principle of self-determination—undefined as of 1945—did not reach its zenith until the 1960's. The

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solution to the two-year hiatus wrought by Israel's 2008 military operation in Gaza. From 2008 to 2010, the Palestinians had eschewed the Quartet's (US, UN, EU, and Russia) continuing quest for such talks.

[7] The US is likely to do so, because of its tenacious support of Israel (and Kosovo). Russia would be in a comparable pickle, because of its non-retractable support for South Ossetia and Abkhazia's independence from Georgia, while simultaneously eschewing the Chechen separatist movement. See Public Broadcasting System Online NewsHour, *Conflict in Chechnya* (presenting the various perspectives), available online at: <http://www.pbs.org/newshour/bb/europe/chechnya/movement.html>.

[8] See T. Hoopes & D. Brinkley, *FDR and the Creation of the U.N.* (New Haven, CT: Yale Univ. Press, 1997) & O. Schachter, The UN Legal Order: An Overview, Chap. 1, in C. Joyner (ed.), *The United Nations and International Law* 3 (Cambridge, Eng: Cambridge Univ. Press, 1997).

[9] See generally Hague Academy of International Law, P. Eisemann & M. Koskenniemi (ed.), *State Succession: Codification Tested Against the Facts* (Hague: Martinus Nijhoff, 2000).

[10] See generally A. Buchanan, *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec* (Boulder, CO: Westview Press, 1991) [hereinafter Secession].

[11] See, e.g., C. Hewitt & T. Cheetham, *Encyclopedia of Modern Separatist Movements* (Santa Barbara, CA: ABC-CLIO, 2001) & M. Spencer (ed.), *Separatism: Democracy and Disintegration* (Lanham, MD: Rowman & Littlefield, 1998).

[12] See generally, A. Cassese, *Self-Determination of Peoples: A Legal Reappraisal* 174 (Cambridge, Eng: Cambridge Univ. Press, 1995).

principle of self-determination then became the battle hymn of the decolonization process.[13] Its most notable impact was in Africa, which now contains one-fourth of the independent nations of the world. But self-determination is not synonymous with Statehood.[14] Europe's gypsies for example, reside throughout much of Europe. Many have endured persistent discrimination wherever they have traveled or resided.[15] Yet gypsies do not covet their own nation-State.

Default Bias Against Secession

There is an undeniable default bias against unilateral declarations of Statehood. Given space limitations, I must skip over the Dark Ages when there were no States.[16] Near the close of World War II, 51 nations cultivated the United Nation's Sword-Two-Plowshare objective. The ensuing decolonization movement of the 1960s yielded a massive influx of State actors onto the international stage. The early 1990s produced yet another round of Statehood—a byproduct of the end of the Cold War. The Soviet Union peaceably separated into 15 truly independent republics.[17] The former Yugoslavia violently broke into a half-dozen different States.[18] Today, a number of even smaller entities are nestled in the wings, desiring to secede from their mother States.

The default legal approach to secession is as follows: International Law does not *permit* secession. Nor does International Law *prohibit* secession. Yet there is a clear bias against unilateral declarations of Statehood. That bias is usually articulated in terms of the preservation of territorial sovereignty of all existing nation-States. Even the UN Charter does not allow that organization to act in a way which would interfere with domestic interference of its member States.[19] Upon the demise of the Soviet Union, the European Community (EC) announced a like

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[13] The notion *Self-determination* was "primarily designed to foster the decolonization process." C. Tomuschat, Secession and Self-Determination, Ch. 1, in M. Kohen (ed.), *Secession: International Law Perspectives* 23 (Cambridge, Eng: Cambridge Univ. Press, 2006).

[14] See State Practice in the Field of Non-recognition of Claims to Statehood, Section 5, in D. Raic, *Statehood and the Law of Self-Determination* 116 (Hague: Kluwer Law Int'l, 2002).

[15] In July and August 2010, for example, France evacuated fifty gypsy camps. The expelled Roma were given 300 Euro each, and then flown to Romania. (Those that refused were detained in holding centers and expelled without any funds.) France's President Sarkozy linked them to various crimes, promising that each camp would be systematically evacuated. Julien Proult, France sends 93 Gypsies Back to Romania, *Washington Times* (Aug. 19, 2010), available online, at: <http://www.washingtontimes.com/news/2010/aug/19/france-sends-93-gypsies-back-romania>.

[16] See generally, W. Grewe, Ch. 3, The Subjects of the International Legal Community: The Polities of the Feudal Age, in *The Epochs of International Law* 61 (Berlin: de Gruyter, rev. 2d ed. 2000) (Byers translation).

[17] In the splintering of Statehood context, see The Peace of Westphalia, A. Khan, *The Extinction of Nation-States: A World Without Borders* 37 (Hague: Kluwer Law Int'l, 1996).

[18] See P. Radan, *The Break-up of Yugoslavia and International Law* (London: Routledge, 2002) & E. Hasani, *Self-Determination, Territorial Integrity and International Stability: The Case of Yugoslavia* (Vienna: Nat'l Defense Academy Inst. Peace Support and Conflict Management, 2003).

[19] Per article 2.7: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter…." But note that territorial administration had been exercised by international organizations, as opposed to a foreign State, on several occasions. These included the League of Nations' Free City of Danzig (1920-1939); the German Saar Basin (1920-1935)—and the UN's 1967 Council for Namibia, and its administrative functions in Cambodia (1991-1992), East Timor (1999), and Kosovo (1999-present, as Eurolex has yet to completely take over all UN functions). These protectorates are analyzed in R. Wilde, From Danzig to East Timor and Beyond: The Role of International Territorial Administration, 95 *Amer. J. Int'l L.* 586 (2001).

guideline for recognition of the new States in Eastern European and the former Soviet Union.[20] Per the EC objective: "[W]e adopt a common position on process of recognizing these new States, which requires respect for inviolability of all frontiers, which can only be changed by peaceful means and by common agreement."[21] Such limitations conform to the United Nations' bedrock principle: the territorial integrity of every State, large or small. Obviously, there was no "common agreement" in any of the three 2008 secessions.

The Legitimist School of International Law consists of theoreticians who would require a seceding unit to be released by its mother State.[22] The US and Russia similarly assert that unilateral declarations of Statehood are generally contrary to International Law. A focused search for the legitimacy of any secession would no doubt include UN Security Council Resolution 1785. It presented the following admonition, several months before Kosovo's unilateral declaration of independence, and nine months before the Georgia-Russia conflict.[23] The Security Council therein:

> reaffirms its commitment to a political settlement of the conflicts in the former Yugoslavia, [while] *preserving sovereignty and territorial integrity of all states* within their internationally recognized boundaries [italics added].

The irony of Resolution 1785's commitment is that UN Security Council Resolution 1244—the pre-secession constitution of Kosovo[24]—*expressly* preserved Serbia's territorial sovereignty over Kosovo.[25] The United Nations-NATO administration-occupation of Kosovo was—on its face—intended to only temporarily suspend Serbian sovereignty over Kosovo.[26] So the legal regime for the law of secession has not dovetailed political reality with modern secessions, particularly in the cases of Kosovo, South Ossetia and Abkhazia.[27] These newborns

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[20] Recognition of States—Annex 1: Declaration on the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union (16 December 1991), at: <http://207.57.19.226/journal/Vol4/No1/art6.html>.

[21] EC Declaration on the Guidelines on the Recognition of New States in Eastern European and the Former Soviet Union, C. Tomuschat, *Modern Law of Self-Determination* 324 (Dordrecht, Neth: Martinus Nijhoff, 1993).

[22] They "require a seceding unit to be released by the mother State if it wants to acquire independence." They also assert that "a unilateral declaration of independence is contrary to International Law." *Mother State release*: P. Hilpold, What Role for Academic Writers in Interpreting International Law?—A Rejoinder to Prakhelashvili, 8 *Chinese J. Int'l L.* 291, 292 (2009). *Contrary to law*: K. Chrysostomides, *The Republic of Cyprus: A Study in International Law* 237 (Hague: Martinus Nijhoff, 2000) (quote is chapter title). See also A. Orakhelashvili, The Kosovo UDI [Unilateral Declaration of Independence] Between Agreed Law and Subjective Perception: A Response to Hilpold, 8 *Chinese J. Int'l L.* 285, 288 (2009).

[23] Like Palestine's ineffective 1988 declaration of Statehood, Kosovo's Assembly declared its independence from Serbia in 1990. The latter came on the heels of Serbia's 1989 change to the Constitution of the Republic of Serbia, whereby Kosovo's status of Autonomous Province was revoked.

[24] See C. Stahn, Constitution Without a State? Kosovo under the United Nations Constitutional Framework for Self-Government, 14 *Leiden J. Int'l L.* 531 (2001).

[25] R. Muharremi, *Kosovo's* Declaration of Independence: Self-Determination and Sovereignty Revisited, 33 *Review Central & East European L.* 401, 406 (2008).

[26] The related debate focused on the Resolution 1244's reference to Yugoslavia's (now Serbia) "territorial integrity:" (a) as mentioned in both a preambular paragraph and an Annex *versus* (b) those who claimed that preambles and annexes cannot create any binding obligations—because they were applicable only to Kosovo's *interim* status, not its *final* status. See generally A. Tancredi, Neither Authorized nor Prohibited: Secession and International Law after Kosovo, South Ossetia and Abkhazia, 18 *Italian Yearbook of International Law* 37 (2008) & C. Tomuschat, *Kosovo and the International Community—A Legal Assessment* (Hague: Kluwer, 2002).

[27] See Defining the Boundaries of Legality: Unlawfulness of Territorial Situations, ch. 4, in E. Milano, *Unlawful Territorial Situations in International Law: Reconciling Effectiveness, Legality and Legitimacy* 101 (Leiden, Neth: Martinus Nijhoff, 2006).

violated both the letter and the spirit of Resolution 1785, especially its stated "internationally recognized boundaries" objective.

Claims of Non-precedential Uniqueness

The third corner of my blueprint for building the case in favor of the legitimacy of Palestinian secession from Israel flows from Russian and US claims that the secessions of Kosovo, South Ossetia, and Abkhazia were all "uniquely" legitimate under International Law. As US Secretary of State Condoleezza Rice claimed: "I do not want to try to judge motive, but we have been very clear. Kosovo is *sui generis*, because of the special circumstances out of which the breakup of Yugoslavia came."[28] Her Russian counterpart, Sergei Lavrov, chimed in—presumably with Chechnya in mind, when he said: "recognition by Russia of Georgia's Abkhazia and South Ossetia, as independent States, did not set a precedent for other post-Soviet break-away regions. There can be no parallel's here."[29]

Disagreement about the legitimacy of Kosovo's status resonated in many other forums. For example, as the prominent scholar, Bing Bing JIA, Distinguished Professor of International Law at Tsinghua University Law School contends: "The conformity or not with International Law of a unilateral act always depends on the legality of both the root for its initiation and the original rationale. From this perspective, the independence of Kosovo is indeed a unique case of secession."[30] Per the Russian Duma, however: "The right of nations to self-determination cannot justify recognition of Kosovo's independence along with the simultaneous refusal to discuss similar acts by other self-proclaimed States, which have obtained de facto independence exclusively by themselves."[31]

One must consider the relevant history of these three former provinces. The Soviet Union gave South Ossetia autonomous status within Georgia in the 1920's. In 1931, Stalin allowed the Georgian Soviet Socialist Republic to formally annex the Abkhazian Soviet Socialist Republic. The Soviet Union ultimately ceded both provinces to its Georgian Soviet Socialist Republic. As the Soviet Union neared collapse, Georgia revoked their autonomous status, thereby stoking simmering separatist conflicts, which boiled over in the August 2008 Georgia-Russia conflict.

Regarding Kosovo, the 1999 NATO occupation and UN administration of Kosovo established a unique status quo. These international organizations cooked up an incredibly symbiotic blend of three ingredients. The first was the international administration of Kosovo by the UN, an organization never designed to act as a sovereign nation. Second, the *de facto* independence of Kosovo was initially set in motion by the *immediate* development of parallel State-like governmental institutions favoring the Albanian majority.[32] Third, the UN Security Council gave simultaneous lip service to *de jure* Serbian sovereignty over Kosovo—which was

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[28]Guy Faulconbridge, *Georgia rebel region seeks recognition after Kosovo*, REUTERS (Mar. 5, 2008), at: <http://www.alertnet.org/thenews/newsdesk/L05581876.htm>.

[29] Abkhazia, S. *Ossetia no Precedent for other Rebel Regions—Lavrov*, RIA Novosti (Sept. 18, 2008), reprinted in R. Müllerson, Precedents in the Mountains: On the Parallels and Uniqueness of the Cases of Kosovo, South Ossetia and Abkhazia, 8 *Chinese J. Int'l L.* 2, at 4 (2009).

[30] The Independence of Kosovo: A Unique Case of Secession? 8 *Chinese J. Int'l L.* 27 (2009).

[31] N. Kulish & C. Chivers, Kosovo Is Recognized but Rebuked by Others, *New York Times* (Feb. 19, 2008), at: <http://www.nytimes.com/2008/02/19/world/europe/19kosovo.html?pagewanted=2&hp>. See also M. Weller, Peace Lost: The Failure of Conflict Prevention in Kosovo (Leiden: Martinus Nijhoff, 2008).

[32] The Kosovo (legislative) Assembly, for example, would consist of 120 seats: 100 for Albanians, 10 for Serbs, and 10 for other minorities such as Kosovo's Roma.

supposedly only suspended by Resolution 1244.[33] The *penultimate* result of Kosovo's secession from Serbia was the absence of a bargained-for territorial exchange. Serbia lost everything. It gained nothing, notwithstanding available land swap options. The *ultimate* result was that the legitimacy of Kosovo's independence is still far from resolved.[34]

As the US did with Kosovo, Russia took steps to conjure the viability of the secession of South Ossetia and Abkhazia. One month after the August 2008 conflict with Georgia, Russia rushed into treaties with the two provinces. Moscow therein committed itself to their defense from Georgian attack. The US Department of State responded that Russia should be honoring its previous commitments to Georgia's territorial integrity, rather than entering into treaties with Georgia's political subdivisions. The Russian retort would be that the US and its NATO allies lacked clean hands,[35] given their selective amnesia regarding the constitutive UN resolution which expressly reserved Serbian sovereignty over Kosovo.

The confusion over Kosovo's legal status was only exacerbated by the International Court of Justice majority, in its July 2010 *Kosovo Independence* case.[36] Perhaps first among the Court's self-imposed limitations is its obscure caveat:

> [56] The Court is not required … to take a position on whether international law conferred a positive entitlement on Kosovo unilaterally to declare its independence or …whether international law generally confers an entitlement on entities situated within a State unilaterally to break away from it.
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> …
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> 83. …The General Assembly has requested the Court's opinion only on whether or not the [Kosovo] declaration of independence is in accordance with international law. Debates regarding the extent of the right of self-determination and the existence of any right of "remedial secession," however, concern the right to separate from a State. As the Court has already noted …, that issue is beyond the scope of the question posed by the General Assembly. … [T]he Court need only determine whether the declaration of independence violated either general international law or the *lex specialis* [special UN law] created by Security Council resolution 1244 (1999).
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> 84. For the reasons already given, the Court considers that general international law contains no applicable prohibition of declarations of independence. Accordingly, it

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[33] See note 25 supra.

[34] See, e.g., the analysis of two US professors and former government lawyers, Robert Delahunty and Antonio Perez, in The Kosovo Crisis: A Dostoievskian Dialogue on International Law, Statecraft, and Soulcraft, 42 *Vanderbilt J. Transnat'l L.* 15, at 90 (2009).

> the Western powers are attempting to sustain Kosovo by diplomatic means. … [] And those efforts constitute yet another international wrong. No one could plausibly claim that, by recognizing Kosovo, the Western powers were merely acknowledging the existence of an accomplished reality—as happened, for example, when the United States recognized the Soviet Union in 1933 or the People's Republic of China in 1978. No, the Western powers were plainly attempting to conjure the secessionist state of Kosovo into existence

[35] "[A] rule of law that a person coming to court with a lawsuit or petition for a court order must be free from unfair conduct (have "clean hands" or not have done anything wrong) in regard to the subject matter of his/her claim." Farlex, *Clean Hands Doctrine*, at: <http://legal-dictionary.thefreedictionary.com/clean+hands+doctrine>.

[36] Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, available online, at: <http://www.icj-cij.org/docket/files/141/15987.pdf> [hereinafter *Kosovo Independence* case]. This author's 25-page edited version (first half = majority opinion and second half = the multiple dissents and concurring opinions) of the Court's 178-page case is available online, at: <http://www.tjsl.edu/slomansonb/Kosovo_ICJ.pdf>.

concludes that the declaration of independence of 17 February 2008 did not violate general international law.

The ICJ thus failed to seize upon the opportunity to accept, reject, or illuminate the leading national decision regarding remedial secession—the Canadian Supreme Court's 1998 decision in *Re Secession of Quebec*.[37]

Re Secession of Quebec **Model**

Under the Customary International Law of Secession,[38] there must be extraordinary circumstances—referred to in the above ICJ's *Kosovo Independence* case as "remedial secession"—to trigger the international community's recognition of the legitimacy of a province's unilateral secession from its mother State. This exception is rooted in three commonly accepted elements. There must be: (a) a distinct people;[39] (b) gross human rights violations; and (c) no alternative but secession.[40]

As space limitations dictate oversimplification, I must now succinctly address the "people" and "gross human rights" elements of the three requirements for a *Re Secession of Quebec*-qualified unilateral declaration of secession. Early in the 1990s, Russia began to issue its passport to ethnic Russians, inhabitants of the Georgian provinces of South Ossetia and Abkhazia. South Ossetians had fled to (Russia's) North Ossetia in 1992 (and again in 2004), when Georgia military actions were launched. These provinces ultimately became ethnically non-Georgian enclaves. In Abkhazia, population cleansing numbers ranged from 200,000 to 250,000 ethnic Georgians being displaced.[41]

In October 2003, Russia announced its right to militarily intervene into all former Soviet States, wherever ethnic-Russian human rights were allegedly violated. International Law of course

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[37] 2 S.C.R. 217 (1998), available online, at: <http://scc.lexum.umontreal.ca/en/1998/1998rcs2-217/1998rcs2-217.html> [hereinafter *Secession of Quebec*].

[38] While long overdue, there is no multilateral treaty on secessions. As acknowledged in the first book-length treatment of this increasingly crucial topic in 1991, there is:

> an urgent need—a practical necessity—for an adequate *theory* of secession. Or rather, for two theories, on positive or explanatory, the other normative or action-guiding. And, clearly, the two must fit together. The normative theory's guidance for action must be informed by a sound understanding of the real-world phenomenon of secession.

Secession, note 9 supra.

[39] But as stated by Justice Trindade in ¶238 of his Separate Opinion in the ICJ's *Kosovo Independence* case: "There is in fact no terminological precision as to what constitutes a 'people' in international law, despite the large experience on the matter." For an argument that the Kosovar Albanians do qualify, see M. Sterio, The Kosovar Declaration of Independence: 'Botching the Balkans' or Respecting International Law?, 37 *Georgia J. Int'l & Comp. L.* 267, 287 (2009).

[40] Perhaps the best articulation of this exception is available in *Re Secession of Quebec*, commencing at ¶123, note 36 supra.

[41] See G. Khutsishvili & A. Schnabel, *The Kosovo Conflict: The Balkans and the Southern Caucasus*, Chap. 5, in A. Schnabel & R. Thakur, Kosovo and the Challenge of Humanitarian Intervention: Selective Indignation, Collective Action, and International Citizenship 64 (Tokyo: UN Univ. Press, 2000).

frowns upon unilateral invasions in the name of humanitarian intervention.[42] But according to Russian President Dmitry Medvedev's statement, issued shortly after the August 2008 war:

> A decision needs to be taken based on the situation on the ground. Considering the freely expressed will of the Ossetian and Abkhaz peoples and being guided by the provisions of the UN Charter, the 1970 Declaration on the Principles of International Law Governing Friendly Relations Between States, the CSCE Helsinki Final Act of 1975 and other fundamental international instruments, I signed Decrees on the recognition by the Russian Federation of South Ossetia's and Abkhazia' independence. Russia calls on other States to follow its example. This is not an easy choice to make, but it represents the only possibility to save human lives.[43]

By contrast, the April 2008 UN Security Council Resolution 1808 on the Russian Georgian conflict reaffirmed:

> the commitment of all Member States to the sovereignty, independence and territorial integrity of Georgia within its internationally recognised borders and supports all efforts by the United Nations … which are guided by their determination to promote a settlement of the Georgian-Abkhaz conflict only by peaceful means and within the framework of the Security Council resolutions.[44]

But Georgian separatists were simultaneously benefitting from Russia's clandestine support. Rumors were naturally spawned by the quantity and quality of government-seized military weapons which were not available from Georgian military sources.

Serbian President Slobodan Milosevic's repressive measures against Kosovar Albanians was well documented during the course of his three-year trial by the International Criminal Tribunal (Yugoslavia).[45] During roughly the same period, Serbia migration out of Kosovo facilitated the Albanian extremist organization, the Kosovo Liberation Army, to engage in ethnic cleansing. According to Amnesty International:

> The KLA was responsible for serious abuses… including abductions and murders of Serbs and ethnic Albanians considered collaborators with the State. Elements of the KLA are also responsible for post-conflict attacks on Serbs, Roma, and other non-Albanians, as well as ethnic Albanian political rivals... widespread and systematic burning and looting of homes belonging to Serbs, Roma, and other minorities and the destruction of Orthodox churches and monasteries... combined with harassment and intimidation designed to force people from their homes and communities... elements of the KLA are clearly responsible for many of these crimes.[46]

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[42] *Id.* See also The Legal Case for Russian Intervention in Georgia, 32 *Fordham Int'l L.J.* 1524, 1524–1525 (2009). The numbers in South Ossetia are not as concrete. But Georgia's ethnic Russian population grew significantly in both provinces, if for no other reason than remaining relatively constant during the flight of their ethnic-Georgians.

[43] *Statement by President of Russia Dmitry Medvedev*, August 26, 2008, available online, at: <http://eng.kremlin.ru/speeches/2008/08/26/1543_type82912_205752.shtml>. Saving lives was, of course, also the rationale for NATO's (first) war in Kosovo.

[44] UNSC DOC. S/RES/1808, available online, at: <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Georgia%20SRES1808.pdf>.

[45] Bard College, *Milosevic Trial Public Archive*, available online, at: <http://hague.bard.edu>.

[46] Executive Summary, *Under Orders: War Crimes in Kosovo* (2001), available online, at: <http://www.hrw.org/reports/2001/kosovo/undword.htm>.

The Serbs, as well, engaged in ethnic cleansing when they sought to rid Kosovo of its Albanian population, especially during the 1999 bombing of Kosovo and Serbia.[47] The international community disavowed then Yugoslavian President Slobodan Milosevic's harsh military and ethnic cleansing tactics against Kosovo's Albanian population, perpetrated on the basis that he was protecting the Serbian population of Kosovo. For these and related reasons, Slobodan Milosevic was the first national leader to be indicted by an international tribunal for war crimes and human rights violations.

One must acknowledge, however, that the "People" and "Gross Human Rights Violations" elements were technically not applicable at the time of Kosovo's 2008 secession. For almost nine years, Kosovar Albanians had been protected by NATO troops and the UN's CivPol (Civil Police). These, in turn, trained Kosovo's military in waiting ("TMK" Fire Brigade) and "KPS" (Kosovo civil police)—almost from the outset of the occupation of Kosovo. Parallel Kosovar governmental institutions were also established near the outset of this period. It is unlikely—were all foreign military troops to suddenly withdraw from Kosovo on the day before its unilateral declaration of independence—that Serbia or Macedonia (notwithstanding the 2004 Civil War occurred between Macedonians and Albanians) would have responded by attacking Kosovo. Each government is officially and politically dedicated to merger into the various European institutions. Belgrade, for example, sent its former President (Slobodon Milosevic) to the UN's Hague Tribunal for trial in 2001.

Palestinians in the West Bank, Gaza, and East Jerusalem are undoubtedly a distinct people. The plight of Gaza's Palestinians is likewise dire—as illustrated by the Turkish-supported attempt to break the Israeli naval blockade of Gaza in 2010. In the West Bank, the Palestinian Wall (as opposed to those portions that are merely fenced) graphically depicts the clash between Palestinian self-determination and Israeli national security.[48] Clearing Palestinian homes in East Jerusalem—notwithstanding the UN Security Council's prohibition—adds clarity to Palestinian human rights claims, as well as this author's claim that it defies logic to characterize Israel's control as relating only to "occupied territories."[49]

Unfortunately, space limitations do not permit an exploration of why the frequently used term *genocide* is an inapplicable label for Kosovo, the former Georgian provinces, or Palestine. A number of pro-Palestinian advocates have claimed otherwise, especially in the Gazan context, where Israel's claimed "genocidal" policies have been perpetrated with US support.[50] This too is another topic for another day. However, the United Nations 2009 Goldstone Report references extensive examples of gross human rights violations in the context of the 2008 Gaza conflict.[51] Former US President Jimmy Carter previously contributed to this dialogue by publishing his *Palestine: Peace Not Apartheid*.[52]

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[47] Ethnic Conflict in the Balkans 1992–1999: A Case Study, Chap. 5, in J. Janzekovic, *The Use of Force in Humanitarian Intervention: Morality and Practicalities* 159 (Aldershot, Eng: Ashgate, 2006).

[48] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, International Court of Justice, 9 July General List No. 131 (2004) [hereinafter *Palestinian Wall* case]. This author's edited version is available online, at: <http://www.tjsl.edu/slomansonb/PalestWall.pdf>.

[49] See the Council's quoted Resolution 298 below, resolved as a result of Israel's annexation of East Jerusalem.

[50] See, e.g., F. Boyle (US professor), *Tackling America's Toughest Questions: Alternative Media Interviews* (Atlanta, GA: Clarity Press, 2009).

[51] United Nations Fact Finding Mission on the Gaza Conflict*, available online, at: <http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/factfindingmission.htm>. These violations were therein attributed to both Israel and the Palestinians.*

[52] NYC: Simon & Schuster, 2006.

The plight of the Palestinians under Israeli occupation is well documented.[53] With the September 2010 expiration of Israel's moratorium, its new residential developments in the West Bank and East Jerusalem stand in stark contrast to the 1949 Geneva Convention prohibition on an occupying power from establishing its civilian population in occupied territories.[54] As depicted in Palestine's submission in relation to the International Court of Justice's Palestinian Wall case:[55]

> With the exception of East Jerusalem [1980], Israel never formally annexed the Palestinian territory that it occupied in 1967. This does not mean that Israel preserved the legal status of the Occupied Palestinian Territory. Successive Israeli Governments have been pursuing since 1968 the illegal policy of colonizing [it] …, through the transfer of parts of Israel's own civilian population to the territory. Carrying this out has entailed a host of physical, legal and administrative changes … which have resulted in the seizure of over 41.9 per cent of this territory by Israel.[56]

The final feature of the three *Re Secession of Quebec* elements of legitimate secession is that there must be no alternative *but* secession. Unlike South Ossetia and Abkhazia, where there were no ongoing negotiations regarding their geo-political status, there were multiple attempts to resolve Kosovo's final status during the UN's administration of Kosovo.[57]

From *Re Secession of Quebec*, one can readily discern the court's high bar for satisfying the elements required for establishing the validity of a unilateral secession. It cannot be valid in the absence of a bargained-for agreement. The human rights violations must be "gross." There can objectively be "no alternative" to secession. This approach of course complies with the default bias against secession.

A Fortiori **Legitimacy for Palestine**

The international community (and the ICJ, as to Kosovo) has effectively tolerated US and Russian claims that the 2008 secessions of Kosovo, South Ossetia, and Abkhazia were all legitimate secessions. While recognition is not the legal yardstick for measuring the legitimacy of a unilateral secession, as of the July 2010 date of the ICJ's *Kosovo Independence* case,[58] Kosovo had been recognized by sixty-eight countries.[59] Other than mutual recognitions, only Russia and three

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[53] See, e.g., *A Future for the Palestinians?,* Ch. 9, in Cheryl A. Rubenberg, The Palestinians: In Search of a Just Peace 373 (London: Lynne Rienner, 2003).

[54] "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies." (Geneva) Convention IV Relative to the Protection of Civilian Persons in Time of War, Art. 49 ¶6 (1949), available online, at:
<http://www.icrc.org/ihl.nsf/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5>.

[55] *Palestinian Wall* case, note 47 supra.

[56] Written Statement Submitted by Palestine, reprinted and analyzed in J. Allain (Univ. Belfast), Special Dossier, 13 *Palestinian Yearbook Int'l Law* 109, at 159 ¶121 (Leiden, Neth: Martinus Nijhoff, 2005).

[57] See, e.g., H. Perritt, *The Road to Independence for Kosovo: A Chronicle of the Ahtisaari Plan* (Cambridge, Eng: Cambridge Univ. Press, 2010) & J. Ker-Lindsay, *Kosovo: The Path to Contested Statehood in the Balkans* (London: I.B. Tauris, 2009).

[58] *Kosovo Independence* case, note 35 supra.

[59] Current listing available at:
<http://www.kosovothanksyou.com>.

other countries had recognized Abkhazia and South Ossetia as nation-States.[60] But there has never been the slightest hint that any nation will forcefully contest Russia's annexations.

The Palestine of antiquity is the region bounded on the east by the Mediterranean Sea, the west by the Jordan River, and by various adjoining lands to its north and south.[61] It then included what we now describe as Israel, the Israeli-occupied Palestinian territories, part of Jordan, and portions of both Lebanon and Syria. The smaller Kingdom of Jerusalem was a Christian monarchy established in 1099 as a result of the First Crusade. Jews had fought alongside Muslims in their unsuccessful effort to defeat the European Christians. This Kingdom lasted nearly two hundred years, until the Ottoman takeover in 1291.

Just prior to the end of World War I, as Britain's 1917 Balfour Declaration declared:

> His Majesty's government view with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavours to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country.[62]

As World War I ended, so did the Ottoman Empire. The two new territories of Palestine and Transjordan were established under auspices of the League of Nations. It entrusted the Palestinian territory to Great Britain. As the League's Mandate then provided:

> certain communities, formerly belonging to the Turkish Empire, have reached a stage of development where their existence as independent nations can be provisionally recognized...until such time as they are able to stand alone.[63]

In 1947, the UN General Assembly adopted Resolution 181 on the future governance of Palestine. The Assembly therein:

> *Recommends* to the United Kingdom, as the mandatory Power for Palestine, and to all other Members of the United Nations the adoption and implementation, with regard to the future government of Palestine, of the Plan of Partition with Economic Union set out below;
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> …
>
> *Requests that*… The Security Council take the necessary measures as provided for in the plan for its implementation;
>
> …
>
> *Calls upon* the inhabitants of Palestine to take such steps as may be

[60] Nauru, Nicaragua, and Venezuela. *Nauru*—Pacific island recognizes Georgian rebel region, Reuters India (Dec. 15, 2009), available online, at: <http://in.reuters.com/article/worldNews/idINIndia-44730620091215>; *Nicaragua*—Abkhazia, Decreto No. 47-2008, Gobierno de Reconciliation y Unidad Nacional Unida Nicaragua Triunfa (2008), available online at: <http://www.cancilleria.gob.ni/publicaciones/r_abjasia.pdf> & South Ossetia, Decreto No. 46-2008, Gobierno de Reconciliation y Unidad Nacional Unida Nicaragua Triunfa (2008), available online at: <http://www.cancilleria.gob.ni/publicaciones/r_osetia_s.pdf>; Venezuela—Venezuela recognizes S.Ossetia, Abkhazia, Ria Novosty (Apr. 25, 2010), available online, at: <http://en.rian.ru/world/20090910/156084433.html>.

[61] See Google Earth.

[62] M. Yapp, *The Making Of The Modern Near East* 1792-1923, at 290 (Harlow, Eng: Longman, 1987).

[63] See history provided in N. Bentwich (then Attorney General of Palestine), *The Mandates System* (London: Longmans, 1930) & Q. Wright, *Mandates Under the League of Nations* (Chicago: Univ. Chicago Press (1930).

> necessary on their part to put this plan into effect;
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> …
>
> *Appeals* to all Governments and all peoples to refrain from taking action which might hamper or delay the carrying out of these recommendations, and
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> …
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> 3. Independent Arab and Jewish States and the Special International Regime for the City of Jerusalem, set forth in part III of this plan, shall come into existence in Palestine two months after the evacuation of the armed forces of the mandatory Power has been completed but in any case not later than 1 October 1948. The boundaries of the Arab State, the Jewish State, and the City of Jerusalem shall beas described in parts II and III below.[64]

But the Arab population of Palestine and the surrounding Arab States rejected U.N. partition. Because of the armed conflict between Israel and a number of its Arab neighbors, the Palestinian portion of the U.N. partisan plan was never implemented.

After the 1967 armed conflict, Israeli forces occupied the territories which had constituted Palestine under the British mandate, and all of the West Bank. The UN Security Council then *unanimously* adopted Security Counsel Resolution 242. It emphasized the illegality of acquisition of territory by war. It also called for the withdrawal of Israeli armed forces from territories occupied as a result of the 1967 Arab-Israeli conflict. We all know how well Resolution 242 worked in practice.

In 1971, UN Security Council Resolution 298 confirmed, in the clearest possible terms:

> all ... actions taken by Israel to change the status of Jerusalem, including expropriation of land and properties, transfers of population, and ... incorporation of the occupied section, are totally invalid and cannot change its status.[65]

In 1980, Israel's Basic Law announced that Jerusalem had suddenly become the "complete and united" capital of Israel. UN Security Council Resolution 478 responded that this Israeli law constituted a violation of International Law in the following unequivocal terms:

> all action ... taken by Israel, the occupying power, which have altered or purport to alter the character and status of the Holy City of Jerusalem ... are null and void.[66]

In the aftermath of the 1993 thawing of relations between Israel and the PLO, Israel and Jordan signed a 1994 peace treaty. It fixed the boundary between the two States with reference to essentially the same boundaries as defined under the League of Nations Mandate process—but

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[64] *Future Government of Palestine*, available online, at: <http://domino.un.org/unispal.nsf/0/7f0af2bd897689b785256c330061d253> (remainder omitted).

[65] UN DOC. S/RES/298, available online, at: <http://unispal.un.org/UNISPAL.NSF/0/441329A958089EAA852560C4004EE74D>.

[66] Available online, at: <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/399/71/IMG/NR039971.pdf?OpenElement>.

without prejudice to the status of any territories that came under Israeli military government control in 1967.

A number of agreements since 1993, between Israel and the Palestine Liberation Organization, have imposed various obligations on each party. Those agreements required Israel to transfer to Palestinian authorities certain powers and responsibilities exercised in the Occupied Palestinian Territory by its military authorities and civil administration. Some of the intended transfers occurred. But as a result of subsequent events, they remained partial and limited. So one might thus question the central thesis of this article—making the novel claim that Israel's *de facto* sovereignty yields a basis for a secessionist dialogue. As concluded by the prominent Italian professor Enrico Milano:

> in the case of Palestine, the illegality of a prospective Palestinian state may derive from the lack of factual independence and the lack of effective jurisdiction, as a result of the Israeli military coercion, over basic state functions, such as custom and border controls, air traffic regulations, roads and coastline controls, [and] defence policy.
>
> … The two criteria of illegality, the prohibition of forcible territorial change, and the principle of self-determination, should have reinforced each other and promoted the case of Palestinian statehood. … However, the[y] … have only determined the unlawfulness of the territorial situation, without attaching to it full-scale legal consequences ... but they have not ousted it in the more general question of Palestine's statehood.[67]

On the other hand, as argued by Turkey's professor Scott Peg regarding Palestine's evolution into some alternative status other than statehood:

> Though not (or not yet) a sovereign state, the PA [Palestinian Authority] does have recognized powers in certain [subject] areas that are guaranteed under international treaties. … [T]he PA's status compares favorably to groups whose autonomy is only protected by domestic laws or constitutions. This model may potentially have a greater impact on future transformations of the de facto state than any the others considered here [e.g., Kurds, Tamils, Turkish Cypriots, and Somalilanders].[68]

The fourth corner of my blueprint—arguing in favor of the legitimacy of Palestinian secession from Israel's *de facto* sovereignty—is the lessons learned from the three 2008 secessions of Kosovo, South Ossetia, and Abkhazia. Palestine would be the undisputed poster child for a comparison of the legitimacy of unilateral secessions. This year, Israel has introduced new construction in the West Bank and East Jerusalem, after the ten-month moratorium on such building expired in September 2010. This is a stark reminder of the increasingly thin line between long-term Israeli occupation—a term which I believe Israel fully embraces, so as to mask its *de facto* sovereignty over this territory. After nearly a century since the 1917 Balfour Declaration,[69] one can only ask: How could there be any reasonable alternative for the Palestinians, *other than* succession from a mother State that has undeniably integrated the so-called Occupied Territories into its homeland? The current peace talks are, after all, only talks.

The traditional bright-line distinction between *de jure* and *de facto* sovereignty is not as evident as history teaches. As debated by several US Supreme Court justices, regarding the availability of the writ of habeas corpus for alien detainees at the US military base in Cuba:

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[67] *Unlawful Territorial Situations in International Law: Reconciling Effectiveness, Legality and Legitimacy* §6.2 Palestine 159, at 164 (Leiden, Neth: Martinus Nijhoff, 2006).

[68] Ch. 8.4, *International Society and the De Facto State* 211, at 213 (Aldershot, Eng: Ashgate, 1998).

[69] Quoted in the text accompanying note 61 supra.

> Guantanamo Bay is in every practical respect a United States territory, and it is one far removed from any hostilities. … In a formal sense, the United States leases the Bay…. At the same time, this lease is no ordinary lease. Its term is indefinite and at the discretion of the United States. What matters is the unchallenged and indefinite control that the United States has long exercised over Guantanamo Bay. From a practical perspective, the indefinite lease of Guantanamo Bay has produced a place that belongs to the United States, extending the "implied protection" of the United States to it. [Kennedy, concurring with majority opinion, in Rasul v. Bush, 542 U.S. 466, 487 (2004).]
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> . . .
>
> And given the unique status of Guantanamo Bay and the particular dangers of terrorism in the modern age, the common-law courts simply may not have confronted cases with close parallels to this one. We decline, therefore, to infer too much, one way or the other, from the lack of historical evidence on point. [Majority opinion, Boumediene v. Bush, 553 US 723, 752 (2008)].
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> . . .
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> We therefore do not question the Government's position that Cuba, not the United States, maintains sovereignty, in the legal and technical sense of the term, over Guantanamo Bay. But this does not end the analysis. Our cases do not hold it is improper for us to inquire into the objective degree of control the Nation asserts over foreign territory. … When we have stated that sovereignty is a political question, we have referred not to sovereignty in the general, colloquial sense, meaning the exercise of dominion or power, but sovereignty in the narrow, legal sense of the term, meaning a claim of right, see 1 Restatement (Third) of Foreign Relations, *supra,* § 206, Comment *b,* at 94 (noting that sovereignty "implies a state's lawful control over its territory generally to the exclusion of other states, authority to govern in that territory, and authority to apply law there"). Indeed, it is not altogether uncommon for a territory to be under the *de jure* sovereignty of one nation, while under the plenary control, or practical sovereignty, of another. This condition can occur when the territory is seized during war, as Guantanamo was during the Spanish-American War [p.752].
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> . . .
>
> [T]he Court comes up with the notion that " *de jure* sovereignty" is simply an additional factor that can be added to (presumably) " *de facto* sovereignty" (*i.e.,* practical control) to determine the availability of habeas for aliens, but that it is not a necessary factor, whereas *de facto* sovereignty is. [Scalia dissent, p.835, n.3]
>
> Formal sovereignty, says the Court, is merely one consideration "that bears upon which constitutional guarantees apply" in a given location. [Scalia dissent, p.836]

There is thus a degree of tension regarding the distinction between *de jure* and *de facto* sovereignty—in the distinct context of the availability of US habeas corpus at Guantanamo Bay, Cuba. Israel has unchallenged and indefinite control over the Occupied Territories, other than UN resolutions and the unenforceable Geneva IV prohibition on introducing Jewish settlements into the West Bank and East Jerusalem. As stated by *Boumediene* majority, given the endless War on Terror "in the modern age, the common-law courts simply may not have confronted cases with close parallels to this one." Note that this court, like Russia and the US, have invoked the "unique" territory argument to justify their conclusions. Palestine has a history whereby creeping sovereign control—with Israel advancing one settlement house at a time. Thus, as articulated above in *Boumediene*, sovereignty "implies a state's lawful control over its territory generally to the

exclusion of other states, authority to govern in that territory, and authority to apply law there." What part of this formula has Israel *not* exhibited in its so-called "Occupied Territories?"

Palestinian Statehood has been simmering for nearly a century. By 1976, two years after the UN granted the Palestine Liberation Organization its Observer Status at the UN, 114 States had either recognized Palestinian Statehood, or accorded special diplomatic status.[70] In December 2009, EU ministers announced in a draft paper that the EU would recognize the Palestinian State, with East Jerusalem as capital.[71]

Palestine's moribund declaration of Statehood, announced in 1988,[72] was of course far more political than practical—given the aging barrier of Israel's long-term Israel occupation, notwithstanding the frequently expressed UN Security Council opinions that this Middle Eastern fact of life violates the Geneva Convention on the laws of war regarding occupied territories.[73]

Under traditional secession analysis, one might ask: From *what* mother State could Palestine secede? It has been continually referred to as "occupied territory" under Israeli control. But its uniqueness is exemplified by the Israeli and Egyptian walls (bordering Gaza) which were built to dramatically establish geo-political borders. Unlike East Jerusalem, which the Palestinians simultaneously claim as their capitol (with strong UN support), the West Bank and Gaza portions of Palestine now resemble a nation-State. They have distinct governmental entities (Hamas and the Palestinian Authority). Israel's 1980 Basic Law of course claims *all* of Jerusalem as its territory. As noted previously, that claim was expressly disavowed by the UN Security Council Resolution 478. Space limitations do not permit further exploration of the various questions related to the status of Palestine. My chosen task has been, instead, to address the arguments associated with how a formal Palestinian declaration of Statehood would fare, given the 2008 secessions of Abkhazia, Kosovo, and South Ossetia.

In September 2008, departing Prime Minister Ehud Olmart said that Israel must withdraw from nearly all of West Bank and East Jerusalem. In June 2009, Israel Prime Minister Benjamin Netanyahu officially endorsed a two-State solution. His concession was premised upon various conditions, including a demilitarized Palestinian State and that it must cede control of its airspace to Israel.

It was not surprising that in August 2009, the Palestinian prime minister declared an intent "to establish a *de facto* State apparatus within the next two years." This ambitious announcement calls for a new international airport in Jordan; rail links to neighboring States; and changes to the Palestinian economy, that would free Palestine from its reliance on Israel.

Echoing Russia and US claims that South Ossetia, Abkhazia, and Kosovo did not establish any precedent for a unilateral declarations of Statehood, the highest level Israeli government official to respond to the potential Palestinian unilateral declaration of Statehood responded, ironically: "There is no place for *unilateralism*."[74]

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[70] "Google" can confirm the current state of affairs. For a succinct overview, see William R. Slomanson, *Fundamental Perspectives on International Law* 108 (Problem 2.A) (6th ed. Boston: Wadsworth, 2010).

[71] Council of the European Union, *Council Conclusions on the Middle East Peace Process*, available online, at: < http://www.se2009.eu/polopoly_fs/1.27026!menu/standard/file/111829.pdf>.

[72] In 1999, as Israel's then (and current) Prime Minister announced: "We have prevented a unilateral declaration of a Palestinian state." A. Benn, Netanyahu Seeks to Foil Palestinian Declaration of Statehood, Again: A Decade after Arafat's Attempt, PM Engaged in Another Bid to Thwart a Unilateral Palestinian Declaration, *Haaretz.com* (Nov. 16, 2009 blog), available online, at: <http://www.haaretz.com/print-edition/news/netanyahu-seeks-to-foil-palestinian-declaration-of-statehood-again-1.4103>.

[73] See note 53 supra.

[74] I. Kershner, Palestinian Leader Maps Plan for Separate State, *New York Times* (Aug. 25, 2009).

Conclusion

The United States and Russia have officially chosen to cling to the default norm: "Thou shall not secede." They simultaneously claim is that the secessions of Kosovo, South Ossetia, and Abkhazia were all unique. But that ignores Customary International Laws' extraordinary circumstances requirement for remedial secession—perhaps best expressed in the *Re Quebec Secession* case—as is required for legitimizing unilateral secessions from a mother State.

The legitimacy issue with the three 2008 secessions has been forcefully shelved—in Kosovo, by 16,000 NATO troops and 5,000 US troops; and in the former Georgian provinces—by "thousands" of Russian "peacekeepers."[75] Were all of these military forces to pull out tomorrow, the legitimacy of each province's secession would be put to the test.

Assuming arguendo, however, US and Russian claims about the three 2008 secessions being legitimate, one should ask: How could the presumptive Palestinian unilateral declaration of Statehood really differ, in terms of the legitimacy of *its* secession? In my view, the key protagonists might instead acknowledge that the three 2008 secessions were violations of Customary International Law, in search of a revised legal regime regarding State secession. That there should be a multilateral treaty on secession is also another topic for another day.

For now, Russia's recognition of the independence of South Ossetia and Abkhazia, and the US recognition of Kosovo, have lit a secessionist match, which will remain burning at the time of the presumptive Palestinian unilateral declaration of Statehood in 2011. The International Court of Justice fanned that flame, by dodging the opportunity to clarify the International Law of Secession in its 2010 *Kosovo Independence* case.

Assuming the September 2010 umpteenth round of US-brokered peace talks fails, the US will likely denounce the ensuing unilateral Palestinian declaration of *de facto* Statehood. Israel will continue to not-so-clandestinely continue to acquiesce in the misleading label "occupied territories." That characterization masks the reality that Israel has effectively assumed complete *de facto* sovereignty.

Applying a secessionist analysis would not solve the Palestinian problem. It would provide a legal tool for assessing the legitimacy of Palestine's presumptive 2011 declaration of de facto statehood.

One can only hope that at least academicians, and one day State decision-makers, perceive a secessionist dialogue as a useful methodology for establishing a tell-it-like-it-is approach to analyzing the Israeli-Palestinian conflict. The current mainstream assessments have only shoehorned all of these geo-political squares into a circular dialogue.

[75] Jim Nichol, *Armenia, Azerbaijan, and Georgia: Political Developments and Implications for U.S. Interests*, Congressional Research Service Doc. No. 7-5700 (April, 2009), available online, at: <http://italy.usembassy.gov/pdf/other/RL33453.pdf>.