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“Does the contemporary understanding of human rights require that international law should recognise a doctrine of micro sovereignty?”

Self Determination, Micro Sovereignty® and Human Rights in International Law:  
A trinity of categorical imperative norms through the creation of the  
doctrine of micro sovereignty®

### Introduction

I create a new peremptory norm in International law<sup>1</sup> of the highest order in the character of the doctrine<sup>2</sup> of micro sovereignty as a categorical imperative embedded alongside the right of self determination. The task had been epochal and exceptionally difficult, frustrated by the fact that micro sovereignty is a doctrine acquiescent (not mentioned in any publication, Convention, Treaty, Covenant or Declaration) in Public International Law.

This essay attempts to comprehensively define the *sui generis* nature of micro sovereignty, its philosophical genesis, operation and technical applications as a unique legal doctrine. Debates are centred on the defectiveness of *uti possidetis juris* to justify its demise to enable acquisition of land in common law jurisdictions through the power of micro sovereignty as a potent mechanism to trigger inter temporal law which is discussed in a superiority of peremptory norms narrative that overrides customary norms.

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<sup>1</sup> Vienna Convention on the Law of Treaties 1969, Article 64: “*if a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates*”.

<sup>2</sup> “*Whenever anyone expounds what he considers a new doctrine, he has first to elaborate it into an all-comprising system. He has to prove that both the first principles of logic and the fundamental laws of the universe had existed from all eternity for no other purpose than to ultimately lead to this newly discovered, crowning theory*”. Karl Marx and Frederick Engels, *Selected Works In One Volume*”, Published by Lawrence and Wishart, London (1968) Engels, Frederick *Socialism: Utopian and Scientific*, Special Introduction to the English Edition of 1892,

I explain the meaning of the word “all [peoples]” which qualifies the individual as a beneficiary of micro sovereignty and list human rights and self determination compatibilities within their contemporary understanding that compel international law to recognise micro sovereignty within the meaning of “all peoples sovereign rights” to be a category of right linked to self determination and ingrained into Human Rights legislation.

### **Micro Sovereignty: the Determination of the Self**

Micro sovereignty<sup>®</sup>, I argue, is a transcendent, separate, unique and extant category of fractalist legal thought unto itself of a *sui generis* nature premised on isolationism, neutrality and the equanimity of temporal sovereignty<sup>3</sup>. It is composed of seven elements. (i) Human Rights<sup>4</sup> (ii) Right to self determination, (iii) Sovereign rights (iiii) Territorial integrity of land on the earth’s surface acquired by devolution, secession, gift, long possession or preclusion, (v) equality (vi) jurisdiction (vii) international personality.

Micro sovereignty is a doctrine<sup>5</sup> for individuals and groups of individuals. Both rights of the human individual, (human rights) and the right to self determination are the two basic components necessary to construct micro sovereignty from the said 7 elements that establish micro sovereignty proper.

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<sup>3</sup> Official position of the Sovereign Autonomy of the State of New Island whose creator was recognized as a sovereign head of state by a judgment of the Regional Court in Krakow on 28<sup>th</sup> December 2010 under ref: Ko 451/10 in relation to the issue of List Zelazny (iron letter) letter of safe conduct. That judgment was upheld by the Court of Appeal in Krakow on 14<sup>th</sup> April 2011 under ref: II AKz/110/11 where it was maintained *in obiter* that the author is a head of State.

<sup>4</sup> Rights of the human individual

<sup>5</sup> Obiter of Lord Goff of Chieveley (House of Lords) in *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* of 22 May 1996 “***judges ... have always been ready to address new problems, and to create new doctrines, where justice so requires***”.

Human Rights<sup>6</sup> assert in express terms that everyone is equal<sup>7</sup> and GA Res 1514 (XV) sets out that all peoples possess sovereign rights<sup>8</sup>. The sovereignty of the individual and his micro state is an extant jurisdiction of dignity, territory and the private conscience of the one unique empirical person of his state to the exclusion of a plurality of persons. It is a political entity with a will of its own. To undermine this postulate one would first need to demolish the legitimacy of the State of the Vatican City which has no permanent population and no people are afforded with the right to self determination<sup>9</sup> albeit for the eleemosynary pontiff who is sovereign absolute possessing legislative, executive and judicial powers<sup>10</sup>. “The Vatican has not ratified the European Convention of Human Rights<sup>11</sup>”. It limits freedom of expression and imposes a monopoly on religion insofar as employees of the State of the Vatican City (not clergymen) must profess the Catholic faith and its

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<sup>6</sup> The Universal Declaration of Human Rights adopted and proclaimed by GA Res 217A (III) of 10 December 1948. Vienna Declaration and Programme of Action, World Conference on Human Rights 14-25 June 1993 (UN General Assembly) A/CONF.157/23 Art.2 “**All peoples have a right to self determination**”. Article, 1, 3 and 4 inclusive with Preamble of the United Nations Declaration on the Rights of Indigenous Peoples (UNGR) A/RES/ 61/295 2 October 2007 (applies to all people not just indigenous people on the basis that indigenous people are equal to all other people).

<sup>7</sup> Preamble of the Universal Declaration of Human Rights 1948 “*Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world*” Article 1 “*All human beings are born free and equal in dignity and rights*”.

<sup>8</sup> UNGA Res 1514 (XV) Declaration on the Granting of Independence to Colonial Countries and People “*respect for **the sovereign rights of all peoples and their territorial integrity.***”

<sup>9</sup> Duursma, Jorri – Fragmentation and the International Relations of Micro States, Self determination and Statehood, Cambridge University Press 1996 “The State of the Vatican City” pp 374 – 419 (However at p.374, Duursma says there are 508 residents in the Vatican City of whom 165 have Vatican citizenship).

<sup>10</sup> Czaja, Jan – Prawnomiędzynarodowy Status Watykanu, Published by Państwowe Wydawnictwo Nauk (PWN) Warszawa 1983 1<sup>st</sup> Ed (The Vatican’s Legal International Status)

Duursma, Jorri, – Fragmentation and the International Relations of Micro States p.377

<sup>11</sup> Fawcett, J.J – “The Impact of Article 6(1) of the ECHR on Private International Law” International and Comparative Law Quarterly, Vol. 56 Part 1, (January 2007) p.5 line 9

principles in their private life<sup>12</sup>. Notwithstanding limitations to Human Rights, the State of the Vatican City is nevertheless recognised as a state in international law for the purposes of facilitating the Holy See<sup>13</sup>.

Kant is the progenitor of individual autonomy<sup>14</sup> and post Kantian theoretical philosophy embraced 'self' orientation under the ambit of German idealism. The idea of 'self-determination' originates from the German term '*selbstbestimmungsrecht*'<sup>15</sup> which evolved throughout the mid nineteenth century<sup>16</sup>. The formulation was excavated from Hegel's 'Philosophy of Right'<sup>17</sup> where Hegel conjoined and merged together two subjects, namely (i) sovereignty as subjectivity, and (ii) sovereignty as the self determination manifested through "*the self direction of an individual will*" where "*the I determines itself*"<sup>18</sup> is inevitably Kant's influence on Hegel. Thus Hegel carved out one individual in his philosophy as an extant and distinct entity from the collective. This he

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<sup>12</sup> Arts 9 (1)(1) and 16(4) of Decree no. CCXXXI of the Pontifical Commission on the General Regulations for employees of the State of the Vatican City AAS Suppl. (1995) No. 3 (see Duursma pp 383 – 386 "Human Rights Situation" – Vatican City)

<sup>13</sup> Crawford, J. – The Creation of States in International Law, 2<sup>nd</sup> Edition, Oxford University Press 2006, The criteria for Statehood: Some Special cases p.225 Compare with EC conditions for recognition of statehood as *per* Badinter's Declaration inviting former Yugoslavian Republics to submit applications for EC recognition by 23 December 1991 of which point 3 of the criteria asserted: **"In an application for recognition, a republic had to clarify whether it agreed to accept obligations respecting human rights of national or ethnic minorities.** (As a condition to be recognized as a new sovereign state).

<sup>14</sup> Ameriks, Karl – Kant and the Fate of Autonomy, Problems in the Appropriation of the Critical Philosophy, Hegel's Critique of Kant's Theoretical Philosophy, Cambridge University Press (2000) p.268

<sup>15</sup> (i) Thurer, Daniel – *Das Selbstbestimmungsrecht der Volker*, Bern Stampfli, (1976) pp 256-262 (ii) Doering, Karl (Professor) 1974, -*Das Selbstbestimmungsrecht der Volker als Grundsatz des Volkerrechts, referat und diskussion der 13. Tagung der deutschen Gesellschaft fur Volkerrecht in Heidelberg am 22 und 23 Juni 1973.* (iii) Decker, Gunther (Dr.) *Das Selbstbestimmungsrecht der Nationen*, Verlag Otto Schwartz & Co. 1955 (iiii) Radek, Karl, -*Das Selbstbestimmungsrecht der Volker*, "*Lichtstrahlen*" (December 1915) pp 50-52,

<sup>16</sup> Murray, Gilbert – Self Determination of Nationalities, Journal of the British Institute of International Affairs, Vol.1, No.1 (Jan.,1922) pp 6-13 (Paper read on 6<sup>th</sup> December 1921)

<sup>17</sup> Hegel, G.W.F. The Philosophy of Right (Hegel was a German Philosopher who in the final years of his life became professor at Heidelberg University and Berlin University).

<sup>18</sup> Ibidem p.33

achieved partially through a separation of existence 'in itself' and existence 'for itself'<sup>19</sup>. At no time did Hegel call for the abolition of private property<sup>20</sup>. He regarded property as being a relationship between the individual and things<sup>21</sup> and without active use of property, the concept of possession was redundant – thus the separation of *usufructus* (use) from *proprietas* (title). Anything less would be to deny the destiny of the individual since property is the embodiment of personality and thus inviolable<sup>22</sup>. Hegel rightly defined the fiction of 'society' as *bellum omnium contra omnes* (a war of all against all) in the context of a battlefield where everyone's individual private interest conflicts with everyone else's<sup>23</sup>. As if by virtue of quantum metaphysical transubstantiation, this train of thought continued in the work of Karl Marx who postulated that man is an individual withdrawn into himself, into the confines of his private interests and private caprice<sup>24</sup>, separated from collectivity. The loose bonds holding together the apostrophe of societal *ficta* is the conjecture of conditional necessity, need and private interest that enable involuntary collectivism in the character of society to inveigle itself and contaminate the sovereignty and private dignity of

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<sup>19</sup> Hegel, G.W.F. The Philosophy of Right p.38 "*It is individuality, it is the self direction of the I*" and "*The I determines itself*" Excavated formulations that are arguably early constructs of micro sovereignty.

<sup>20</sup> Cullen, Bernard – Hegel's Social and Political Thought, An Introduction, Published by Gill & Macmillan Ltd 1979, p.45

<sup>21</sup> Donna.C. Kline, Dominion and Wealth - A Critical Analysis of Karl Marx's Theory of Commercial Law, Vol. 49, D.Reidel Publishing Company (Member of Kluwer) 1987, Chapter 2, Accuracy of Marx' Description of the Will Theory p.59-61

<sup>22</sup> Hegel, G.W.F. The Philosophy of Right Hegel, s.51

<sup>23</sup> Hegel, G.W.F. The Philosophy of Right Hegel, s.182, *a fortiori*, Hegel's Political Philosophy: Problems and Perspectives, A collection of Essays, Edited by Z.A. Pelczynski, "The Structure of Hegel's 'Philosophy of Right' Ilting, K.H, p.95

<sup>24</sup> Karl Marx, 'On the Jewish Question' in Karl Marx, Frederick Engels, Collected Works, Vol. 3, New York, International Publishers, 1976. P.164

the individual with its communal plurality by foisting that plurality under duress of circumstance upon the individual as an external framework to restrict the individual's original independence found in the pre existence of the natural state (*status naturalis*) namely, the original condition where man remained free in harmony with natural law without obligation or duty.

Just as Kant's philosophy became a critique of Hegel, Hegel's concept became a critique of Karl Marx<sup>25</sup> who posited that if Hegel sought to develop an idea where the state must have one individual as representative of its individual oneness, then he did not specifically establish the dynastically continued monarch as this individual<sup>26</sup>.

I argue that Hegel's philosophy of right, standing alone, is insufficient to evoke the doctrine of micro sovereignty proper but taken together with Kant's autonomy and the works of Marx, it becomes the key that unlocks the formulation which establishes micro sovereignty within the platform of self determination. The doctrine becomes complete because Marx perfects Hegel's Philosophy of Right what ordinarily would remain incomplete and *vice versa*, the critique of Marx concerning the living human individual is incomplete without being read together with

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<sup>25</sup> Fine, Robert – Political Investigations, Hegel, Marx and Arendt (Routledge) 2001, The idea of Hegel's Philosophy of Right p27, p79, Karl Marx, Critique of Hegel's Philosophy of Right, 1843 *Karl Marx, Zur Kritik der Hegelschen Rechtsphilosophie. Kritik des Hegelschen Staatsrechts.* [www.mlwerke.de](http://www.mlwerke.de)

<sup>26</sup> [www.marxists.org/archive/marx/works/1843/critique-hpr/ch02.htm](http://www.marxists.org/archive/marx/works/1843/critique-hpr/ch02.htm)

Karl Marx, Critique of Hegel's Philosophy of Right, 1843

Kant and Hegel<sup>27</sup> leaving open contributions of other thinkers on the sovereign rights of the individual to incorporate.

I argue that hybridizing fundamental arguments of Kant, Hegel and Marx concerning the sovereignty of the individual is a process of enriching an ultimate postulate that is parallel to the fusion of two opposing 'isolable atoms'<sup>28</sup> that, once connected, ignite a metaphysical reaction. That reaction is the realization of the autonomous individual as master absolute of his own destiny possessing freedom to determine his self<sup>29</sup>. 'Self' determination is not the determination of a plurality of persons because there is nothing collective about the "self". It is not a plural resolve but a singular one. Therefore determination of the self belongs to one individual and the doctrine of micro sovereignty operates within the framework of self determination. The absence of express term 'micro sovereignty' is concealed in the term: '*human emancipation*'<sup>30</sup>. It was a blind spot that neither Kant (1724 – 1804), Hegel (1770 – 1831) nor Marx (1818 – 1883) realised at the time. The notion of the nation state with one sovereign individual subjugating many obedient citizens (perceived inferior to the sovereign) was profound at the time of Kant,

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<sup>27</sup> Mitas, Michael – Marx and the Human Individual, Studies in Soviet Thought, Vol. 12, No. 3 (Sep., 1972) Published by Springer, pp. 245 – 254.

<sup>28</sup> Berlin, Isaiah – Two Concepts of Liberty, Oxford University Press 1969 p.23.

<sup>29</sup> The Obelisk, a simple monument is micro sovereignty manifested in the point [representing the "I"]

<sup>30</sup> Bentley, Le Baron – Marx on Human Emancipation, Canadian Journal of Political Science, *Revue canadienne de science politique*, Vol. 4, No. 4 (Dec., 1971) Published by Canadian Political Science Association and the *Societe quebecoise de science politique*, pp. 559 – 570. The Oxford English Dictionary online edition ([www.oed.com](http://www.oed.com)), [March 2011] defines emancipation as: "*The action or process of setting free or delivering from slavery; and hence, generally, from restraints imposed by superior physical force or legal obligation; liberation*",

Chattopadhyay Paresh, A Manifesto of Emancipation: Marx's Marginal Notes', Economic & Political Weekly, Vol. 36, No. 13 (Mar.31 – Apr 6, 2001) Published by Economic and Political Weekly, pp.1134-1140.

Hegel and Marx and what is ordinarily obvious subjugation remained acquiescent because the estoppel to prevent an individual overpowering the state was treason and the mechanism of the faith system was heresy. The death penalty existed for treason in nation states across Europe and individuals did not conceive declaring themselves as living sovereign entities separate from the nation state through fear of death. Micro sovereignty was thus absent whereas nascent individuality and self determination was present.

The aim of Kant's *'Doctrine of Right'* was to engender peace by protecting individual rights. His metaphysical arguments included: *"I am the entirety universal ... I set an empirical content in the I, in order for a content to be able to enter into the one [das Eine], the simplicity of the I, itself must be made simple and infected by simplicity. A content in consciousness thus becomes one, becomes my content. I am I, am One"*.

Hegel's *'Philosophy of Right'* asserts: *"It is individuality, it is the self direction of the I" ... "the I determines itself,"* and Marx<sup>31</sup>, *"a being does not regard himself as independent unless he is his own master, and he is his own master when he owes his own existence to himself"* is in esse a series of postulates of several thinkers that develop the "self" and unlock the doctrine of micro sovereignty.

From a meta-legal standpoint, (Kant, Hegel & Marx) the trinity of German philosophical progenitors of *selbstbestimmungsrecht* are the

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<sup>31</sup> Marx, Karl - Economic and Philosophical Manuscripts, p.138,  
Mitas, Michael - Marx and the Human Individual, Studies in Soviet Thought Vol.12, No.3 (Sep.,1972) pp  
245 - 254, Published by Springer

messiahs of self determination for they collectively fulfil the parabolic prophecy of micro sovereignty by releasing the individual from the bondage of plurality.

I posit that the right of sovereignty is open to every individual by virtue of equality on the grounds that it is a person who makes the state and not the state that makes the person<sup>32</sup> because a person is considered as representing a State<sup>33</sup>. Therefore I argue it is only one individual who is personified sovereignty (*souveraineté persona*) as a man state (*homo statu*) of his own micro state in a way where other persons are excluded from amalgamation into this personality of sovereignty for they possess their own individual sovereignty. The oneness of a state is not the sole prerequisite of preserving order of this individuality. A state's determination in destiny and nature<sup>34</sup> is as Hegel defines: "*the natural moment of its oneness*"<sup>35</sup>, predicated on individuality at the exclusion of chaotic interference of co-adjuctivity found in the floodgate of collectivism. It is thus illogical for a thousand pilots, (as co-adjuctors) to fly one aircraft at the same time or a thousand Captains to stand at the helm of one ship<sup>36</sup>. The logical postulate is each to one's own.

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<sup>32</sup> "The State as a person of International Law ..." Article 1, Montevideo Convention on the Rights and Duties of States 1933

<sup>33</sup> Article 7 (1) of the Vienna Convention on the Law of Treaties 1969 "**A person is considered as representing a State** for the purposes of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty if (b) it appears from the practice of the States concerned or from other circumstances that their intention was to consider that person as representing the State for such purposes and to dispense with full powers."

<sup>34</sup> *Naturbestimmung* (State's determination as nature)

<sup>35</sup> [www.marxists.org/archive/marx/works/1843/critique-hpr/ch02.htm](http://www.marxists.org/archive/marx/works/1843/critique-hpr/ch02.htm)

<sup>36</sup> As per the idiomatic definition: "Too many cooks spoil the broth" in reference to where there are too many individuals trying to do something at the same time, it causes confusion and they make a mess of it.

Arguably Marx's vision of global emancipation was seized upon by Lenin who saw massive potential for himself and used it as a springboard for the mis-trajectory of a seismic doctrinal 'ism' travelling in the opposite direction, namely Communism. The original concept of self determination for the individual was replaced to fit the purpose of plurality which for simplicity I will call "the derogation of concept". Lenin realised it was impossible for an individual to topple a regime of collectivity in armed revolution alone nor could he challenge the white army obedient to the Tsar through recourse to force due to inequality of arms, outnumber and resources (namely manpower and weapons) as between himself as individual and the collective establishment. To succeed in revolution<sup>37</sup> Lenin needed the collectivism of the proletariat" and *in extremis* the despair of the lumpenproletariat<sup>38</sup> to spill blood in the name of his cause. The realisation of revolution depended on ideologically indoctrinating the masses in order to procure loyalty and the obedience of a very large number of men. Lenin possessed philosophical skills and a talent for political science. He was a persuasive speaker. Lenin's brand of self determination embraced Marx's concepts selectively<sup>39</sup>. Thus, I argue, he selected ideas that

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<sup>37</sup> Nayar - "Self determination beyond the colonial context: Biafra in Retrospect, 10 TEX Int'l L.J. 321, 342-43 (1975) "*Once the demand for self determination by a group within a state is left to be decided by a revolution, the claimed right of self determination gets recognition only if the revolution is successful*".

<sup>38</sup> Karl Marx and Frederick Engels, Selected Works in One Volume, Lawrence and Wishart, London (1968) Marx, Karl - The Eighteenth Brumaire of Louise Bonaparte, *Science of the lumpenproletariat*". p.133 " (Compare with the unemployable 'rabble' referred to as "Pobel" in Hegel's, Philosophy of Right).

<sup>39</sup> [www.claremont.org/publications/pubid.4/pub\\_detail.asp](http://www.claremont.org/publications/pubid.4/pub_detail.asp) The Claremont Institute (For the Study of Statesmanship and Political Philosophy) "*in this early work Marx sets forth the kernel of his revolutionary thesis*". Page, Stanley - Lenin and Self

worked in practice from those that didn't. Lenin discarded the quintessence of micro sovereignty through abandonment of the individual as an impractical and unutilitarian non starter opting instead for collectivism as the *zeitgeist* of self determination. It is debatable to what extent Lenin's inspirations of self determination originated from Karl Marx<sup>40</sup> just as it is debatable whether his aim was to: (i) liberate all peoples universally by way of self determination, (ii) enable people to emancipate themselves from capitalism so they could then be convoked into unity for the proletarian revolution, or (iii) whether it was a device aimed at liberating colonial peoples subjugated by Western Powers in Trust and Non Self Governing Territories to strategically undermine Western domination. Professor Bill Bowring is best equipped to arrive at a postulate here.

### The "Self": metaphysics and limitations

Insight into the unity of oneness is a study of the "self" and thereby transcendental into another level of understanding because the self in itself and of itself is volatile and comprised of a trinity of opposites, namely (i) a coincidence of opposites (*coincidentia oppositorum*) (ii) a complex of opposites (*complexxio oppositorum*) and (iii) the opposite of

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Determination, The Slavonic and East European Review, Vol. 28, No. 71 (April 1950) Published by Modern Humanities Research Association, pp 342 – 358      *"In essence, Lenin's ideas about Self Determination were Marxian (Wilson's were not)"*

<sup>40</sup> Professor Bowring is world expert on International Law from a Soviet and contemporary Russian perspective. His bibliography in *"the Degradation of the International Legal Order? The Rehabilitation of Law and the Possibility of Politics"* (Routledge Cavendish) 2008 lists works of Marx and Lenin as well as Marx's critique of Hegel. Professor Bowring will concur that a nexus however infinitesimal exists as between Marx and Lenin. *Hypothetically*, if Marx never existed on the earth's surface, on what balance of probability would Lenin remain as the progenitor of Self Determination? Lenin's brand was arguably external self determination whereas Woodrow Wilson's was internal self determination.

opposites (*oppositio oppositorum*) which integrate and separate on a fluid *sua sponte* basis. The elasticity enables these opposites to simultaneously divide and unite in conflict and harmony. Carl Jung concluded that the “self” is *coincidentia oppositorum* and that each individual possesses opposing tendencies (*anima*) which he must strive to integrate [into his unity of oneness within the jurisdiction of the self]. Jung writes: “the self is made manifest in the opposites and the conflicts between them”.<sup>41</sup> Scientifically the physical ‘self’ of the human person is not a fixed matter to justify remaining ‘of substance’ within the meaning of what something is ‘in itself’ in the spatiotemporal realm to qualify being “of substance” since the living human person is a naturally imperfect organic hydraulic fluid in constant state of flux, reformation, evolution, and rebirth. The Latin metaphor for this postulate is *substantia transsubstantiatio in statu nascendi*.

Individuals come forward as creators and beneficiaries of their own state *in statu nascendi* to establish a territorial demarcation separating themselves from the subjugation and close proxemics<sup>42</sup> of involuntary collectivism emanating from the majority state by virtue of ipse-dixitism and proclamatory *ipseity* in form of a declaration of selfhood to establish the “self” comparable to an affirmation, a Witness Statement or an Affidavit.

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<sup>41</sup> Jung, C.G – Psychology and Alchemy, the Collected Works of C.G. Jung, Vol. 12 R.F.C. Hull, trans, (Princeton University Press) 1968, originally published in 1944.

<sup>42</sup> Proxemics is the study of set measurable distances between people as they interact which was introduced by Edward Hall, a biological anthropologist in 1966.

Micro sovereignty is not ‘possessive individualism<sup>43</sup>’. It exists for an individual or a consenting group of individuals to enable them to have a status separate and distinct from the majority state. The concept is not a chaotic autocracy. On the contrary, *tranquillitas ordinis*<sup>44</sup> prevails as micro sovereignty is an internal legal order<sup>45</sup> of a landlocked micro state *in statu nascendi* which is disjoined from the majority state. It is not an international proletariat or a government in exile. It is not Buntist, consociationalist, experimentalist, subvertist, fundamentalist, socialist, fascist, terrorist, communist, sub state nationalist<sup>46</sup> libertarian or a radical anarchy. Nor is it satisfactory to ‘box’ micro sovereignism into an *ejusden generis* extension of anarchic, Marxist, exilarchic or libertarian thought. The doctrine of micro sovereignty<sup>47</sup> entails a comprehensive and unilateral separation from a [collective] state in reliance on the *jus cogens* right to self-determination. Since contemporary understanding of self determination revolves on cultural and political freedom, that

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<sup>43</sup> Ashcraft, Richard – Revolutionary Politics & Locke’s Two Treaties of Government, Princeton University Press 1986, p.150 “Possessive Individualism”

<sup>44</sup> *Tranquillitas ordinis* is the tranquillity of order - order being a sovereign ruler’s responsibility to impose an order for him to follow which embodies justice and thus produces peace.

<sup>45</sup> 1541 (XV) (Annex) Principles which should guide members in determining whether or not an obligation exists to transmit information called for under Article 73e of the Charter 15 December 1960 Principle VII (b) “[the] territory should have the right to determine its internal constitution without outside interference”.

<sup>46</sup> Moltchanova, Anna – “National Self Determination and Justice in Multinational States” - Studies in Global Justice (Springer) 2009

<sup>47</sup> The fragmentalist nature of micro sovereignty and micro statehood can be captured in several Latin maxims: *stato in statu* (state within a state) *imperio in imperii* (an empire within an empire). *Imperator imperium* (the emperor is the empire) *Imperator in imperio suo* (the emperor in his empire) *Imperator in regno suo* (emperor in his own realm). *Maximus in minimis et e contra minimis in maximus* (The great inside [in] the small and *vice versa* the small inside the great), *Corpus corporatum in corpora naturali, et corpus naturale in corpore corporatio* (A body corporate in a body natural, and (*et e contra*) a body natural in a body corporate as a *Corpus in corpora* (A body in a body) Kantorowicz E, The King’s Two Bodies, A Study in Mediaeval Political Theology, Princeton University Press 1957.

freedom must inevitably include a right of disjunction, dissociation<sup>48</sup> and dis-association by oppressed persons from the majority state. In that sense, micro sovereignty can be equated to a brand of devolutionary Zionism for it requires the realization of an independent, sovereign homeland for individuals in the post human era<sup>49</sup>.

The imposition of a 'representative of the people' is a subjugatory manifestation of coercion, interference and a *typum gerens* category of forced assimilation on the grounds that 'represented' persons are said to incur individual liability for their own actions (*it is not the representative of the people who is held accountable for the actions of persons he is said to represent*) so the concept of a collective representative is a pervasive fiction because individuals through their own actions, liabilities and privileges represent themselves. It is in a sense a divorce from the heteronomy, monopoly, hegemony, monarchy, inequality and dominance of states in all its manifestations<sup>50</sup>. It can be deduced that

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<sup>48</sup> Gay McDougall, Director, Southern Africa Project, Lawyers Committee for Civil Rights, (Rights of Self determination of Peoples in established States: Southern Africa and the Middle East, Proceedings of the Annual Meeting [ASIL] Vol. 85 April 17-20, 1991) notes at p.548 that in 1989 the South African Law Commission recommended entrenching the **right of dissociation** into a new bill of rights Constitution for South Africa.

<sup>49</sup> <http://www.simonsellars.com/akhzivland>  
<http://rickontheater.blogspot.com/2010/12/akhzivland.html>  
<http://www.smh.com.au/travel/accommodation-reviews/the-despot-concierge-20090910-fiym.html>  
Akhzivland is a micro state in Northern Israel between Nahariya and 4km south of the Lebanese border on the Israeli coast. The state was founded by Eli Avivi in 1970. The micro nation is promoted by the Israeli Ministry of Tourism. From the narrative of tolerance for micro sovereignty, the State of Israel is worthy of considerable respect for facilitating concomitant autonomy and territorial integrity to the individual. Contra-distinguished by possessive displays of territoriality by states wanting to subjugate individuals seeking secession of a part of a territory so to squash claims to integrities in the state of another. (A category of territorial greed of what was left over from feudal overlordship).

<sup>50</sup> UNGA Res 1514 (XV) Declaration on the Granting of Independence to Colonial Countries and Peoples (1) "The subjugation of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the UN and is an impediment to the promotion of World peace and co-operation"

micro sovereignty is a component of sovereign right<sup>51</sup> referred to in Res 1514 (xv) designed to grant independence to all peoples.

### **The realization of Micro Sovereignty in its Mechanical Application**

Micro sovereignty facilitates self determination and human rights and *vice versa* human rights and self determination<sup>52</sup> facilitate micro sovereignty for the trinity of rights combined are catalysts to the creation of a new state<sup>53</sup> for the individual. It is the most fundamental postulate arising in the postmodern era since human rights (which I argue are first generation rights) are the precursor to sovereign rights (second generation rights) in the character of micro sovereignty *in forma sui generis corpus separatum* because by acknowledging that humans have rights, those rights also include the right to sovereignty. Some of the many natural rights arising from the creation of a new micro State is ownership of land, inviolability of territorial integrity, capacity to sign International Agreements<sup>54</sup> (*ius contrahendi* and *ius tractatum*) in areas of the entity's neutral jurisdiction, self-defence, right of resistance to

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<sup>51</sup> UNGA Res 1514 (XV) Declaration on the Granting of Independence to Colonial Countries and Peoples "The internal affairs of **all** peoples of all states and respect for **the sovereign rights of all peoples and their territorial integrity**"

<sup>52</sup> UNGA Resolution adopted by the General Assembly on the Report of the Third Committee (A/59/502) Universal Realization of the Right of Peoples to Self Determination A/RES/59/180 of 20<sup>th</sup> December 2004 [Welcomes] "the progressive exercise of the right to self determination by peoples under colonial, foreign or alien occupation **and their emergence into sovereign statehood and independence**" (also see Crawford "Principle of self determination is itself an aspect of human rights law" [Creation of States in International Law, Second Edition, Clarendon Press Oxford 2006 p.148])

<sup>53</sup> General Assembly, twenty fifth Session, Resolution 2625 (XXV) Declaration on the principles of International Law concerning Friendly Relations and Cooperation among states in accordance with the Charter of the United Nations 1970 "the establishment of a sovereign and independent state, and the free association or integration with an independent state or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self determination by that people.

<sup>54</sup> Vienna Convention on the Law of Treaties 1969 Article 6 "**Every State possesses capacity to conclude Treaties**"

oppression<sup>55</sup> and tax exemption by virtue of neutrality. The State is accorded with rights of receiving dignitaries in accordance with the law of hospitality and a right to establish legations in other territorial jurisdictions. By virtue of sovereignty, the state as person is entitled to waivers and immunities such as sovereign immunity (*Ratione supremitas*)<sup>56</sup> immunity from jurisdiction<sup>57</sup> (*Ratione materiae*) as incorporated into Article 39(1) of the Vienna Convention on Diplomatic Relations 1961, Personal Immunity (*Ratione personae*) by reason of privilege arising under a right of immunity (*Jus immunitatis*). The state has *locus standi* to initiate proceedings at the International Court of Justice. It acquires observer status at the United Nations in an informal capacity<sup>58</sup> where non member states can participate in the activities of the Assembly in a way that does not to compromise the neutrality of a micro state, and International (economic) Relations<sup>59</sup>. Embassies and

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<sup>55</sup> United Nations General Assembly, 'Use of Mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self determination' UN Doc A/Res/59/178, 74<sup>th</sup> plenary meeting, 20<sup>th</sup> December 2004 "condemning any state that permitted ... fighting against national liberation movements.

<sup>56</sup> The Sovereign Order of Mata, although not considered as a State, enjoys sovereign immunity. (see Crawford – The Creation of States in International Law (Oxford) 2006 p.232

<sup>57</sup> <http://www.un.org/law/jurisdictionalimmunities/index.html>  
<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/275/41/PDF/N0427541.pdf?OpenElement>

<sup>58</sup> The Palestinians were the first stateless nation to be granted observer status at the UN as a 'non-voting member' based on their unrealized right to self-determination. The acceptance of the PLO into the UN before possession of a territorial autonomy was ever established demonstrates hard evidence of an international personality prior to self-determination. UNGA, Resolution adopted by the General Assembly on the report of the Third Committee (A/59/502), "The Right of the Palestinian People to Self determination, Doc A/RES/59/179 fifty ninth Session, 74<sup>th</sup> plenary meeting 20<sup>th</sup> December 2004.

<sup>59</sup> 3281 (XXIX) Charter of Economic Rights and Duties of States, General Assembly – Twenty ninth Session Economic as well as political and other relations among States shall be governed, inter alia, by the following principles: (a) Sovereignty, territorial integrity and political independence of states; (b) Sovereign equality of all States; (c) Non-aggression; (d) Non-intervention; (e) Mutual and equitable benefit; (f) Peaceful coexistence; (g) Equal rights and self-determination of peoples; (h) Peaceful settlements of disputes; (i) Remedying of injustices which have been brought about by force and which deprive a nation of the natural means necessary for its normal development; (j) Fulfilment in good faith of international obligations; (k) Respect for human rights and fundamental freedoms; (l) No attempt to seek hegemony and spheres of influence; (m) Promotion of international social justice; (n) International co-

consulates located in capital cities of host states are the clearest and most profound physical manifestations that demonstrate by way of template, the concept of devolutionary micro sovereignty in both theory and practice. The property and grounds of an embassy of a foreign entity in the territorial jurisdiction of the state of another are inviolable<sup>60</sup> and considered as belonging to a foreign state which the mission represents. It is thus *strictu sensu* a state within a state.

Individual representatives of diplomatic missions are protected by the Vienna Convention on Diplomatic relations 1961 [“VCDR”] and Vienna Convention on Consular relations 1963 [“VCCR”]. States essentially cede an infinitesimal portion of their territory to facilitate the mission<sup>61</sup> thus the acquired territory of an embassy is technically a micro sovereignty<sup>62</sup> in the political sense of a sovereign island surrounded by the laws and customs of its host state yet the mission remains immune from them.

The Embassy is a manifestation of a foreign state and serves its purpose as an extra territorial extension of it. The framework found in the provisions of both the VCDR 1961 and VCCR 1963 show by way of

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operation for development; (o) Free access to and from the sea by land-locked countries within the framework of the above principles.

<sup>60</sup> Vienna Convention on Diplomatic Relations 1961 Article 22 (1), “The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission”. (2) The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity. Vienna Convention on Consular Relations 1963 Article 31 (1) “Consular premises shall be inviolable to the extent provided in this article”

<sup>61</sup> Vienna Convention on Diplomatic Relations 1961 Article 21 and Vienna Convention on Consular Relations 1963 Article 30 “The receiving state shall either facilitate on its territory, in accordance with its laws, by the sending state of premises necessary for its mission or assist the latter in obtaining accommodation in some other way suitable accommodation for their/its members.

<sup>62</sup> Vienna Convention on Diplomatic Relations 1961 Article 20 “The mission and its head shall have the right to use the flag and emblem of the sending state on the premises of the mission, including the residence of the head of the mission, and on his means of transport”.

example how the existence of a landlocked micro sovereign state inside the territory of the state of another is able to co-exist wholly surrounded by an extant jurisdiction. A sovereign entity within the host state is an external form of internal self determination. These conditions are perfect for micro sovereignty to exist in both theory and in practice.

### **Territoriality and *uti possidetis juris***

The ‘territorial integrity<sup>63</sup>’ of established states holding large portions of land on the earth’s surface (especially in common law jurisdictions) is an imperfect and fragile actuality where states as *despotes* are ‘still in possession’ of territory through willingness to use force to maintain this *status quo*<sup>64</sup>.

Territorial integrity is based on the doctrine of *uti possidetis juris*, a maxim deriving from Roman law “*whatever you possess is yours*”<sup>65</sup>.

Contemporary interpretation does not recognise the legitimacy of territories acquired through colonial conquest as the lawful possessions of imperialist nations<sup>66</sup>. Colonialism (its latter term imperialism), relates

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<sup>63</sup> Temple of Praeh Vilhear (Cambodia v Thailand), Merits, [1962] I.C.J. Rep 6 – “When two countries establish a frontier between them, one of the primary objects is to achieve stability and finality. Although territorial integrity and non-interference are the lynchpins of the present state system, they are not absolutes”. Territorial integrity was perceived as a pragmatic method of defining existing nations to ensure an ‘order’ a ‘stability’ and a ‘finality’ in relations between two states. (I argue this is a fiction when one looks at the practicality of a borderless European Union.

<sup>64</sup> A ‘state of fact’ is not law and law is not a ‘state of fact’ but a *status quo* (It is as it is).

<sup>65</sup> Radan, Peter – *The Breakup of Yugoslavia and International Law*, Published by Routledge (2002), “The Principle of *Uti Possidetis* in Latin America” pp 69-70 Objective of *Uti Possidetis* in Roman law was to preclude disturbing an existing state of possession of immovable property in a dispute over possession between two individuals. Whilst the maxim affirmed the right of the possessor to remain in possession, that right was only temporary and provisional and thus *uti possidetis* did not confer permanent rights to the occupier. Thereby comports the doctrine into International law also introduces non permanence.

<sup>66</sup> UNGA Second International Decade for the Eradication of Colonialism A/RES/55/146 8 December 2000

to the wholesale exploitation of weaker states, peoples and individuals by stronger states arising from conditions of inequality.

Nations relinquished territories in the decolonisation of Latin America. They also saw fit to unilaterally impose boundaries in those territories on terms advantageous to themselves wishing that borders be left intact as they were created, unchanged. The post colonial tenets of *uti possidetis* were imposed upon people in those territories by the same states who took those territories. Territorial boundaries are therefore of no *de jure* legal validity because territories were illicitly appropriated<sup>67</sup> *ab initio* during colonization. It is not for one nation to decide the destiny of another. Since international law does not recognise colonialism,<sup>68</sup> historical possession of usurped territories was (and is) defective, *vitiosa possessio* (faulty possession). Therefore the defectiveness of possession cannot be rendered valid by the passage of time in respect to an act void in its origin.<sup>69</sup> Hence the doctrine of *uti possidetis* is erroneous. I argue colonialism be declared a *jus cogens* crime of universal jurisdiction<sup>70</sup>.

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<sup>67</sup> Doctrine of unjust enrichment and unconscionability is relevant to apply to Colonialism

<sup>68</sup> 1514 (XV) Declaration of Independence to Colonial Countries and Peoples 947<sup>th</sup> plenary meeting, 14 December 1960. "Recognising that the peoples of the world ardently desire the end of colonialism in all its manifestations." "The necessity of bringing to a speedy and unconditional end [to] colonialism in all its forms and manifestations." "1. The subjugation of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights is contrary to the Charter of the UN"

<sup>69</sup> *Quod initio vitiosum est, non potest tractu temporis convalescere*

<sup>70</sup> Universal jurisdiction is the principle that certain crimes abhorrent are so heinous that every state is obliged to take legal proceedings without regard to where and when the crime was committed or the nationality of the perpetrators and victims. It applies to the most serious crimes under international law. Slavery is listed as one of several *jus cogens* crimes. It necessarily follows that colonialism which facilitated slavery demands to be put on par with Slavery and Piracy for it was *ipso facto* a method of state sponsored global robbery. Principle 2 of the Princeton Principles on Universal Jurisdiction (2001) lists 7 crimes of universal jurisdiction of which No. 4 is "crimes against peace" and principle 6 of the Princeton Principles being: "*there should be no Statute of Limitations on the prosecution of these crimes*". Crimes against Peace can be constructed to include Colonialism on the grounds that subjugation attracts resistance and domination is the nirvana of revolution.

The post 1945 era of equality and human rights had dismantled colonialism<sup>71</sup> which like the other erroneous doctrine of *terra nullius*<sup>72</sup> was declared null and void and reconstituted with the right of self-determination<sup>73</sup>. *Uti possidetis* is appropriate to apply to a dispute between two individuals. It is therefore inappropriate to be used by powerful states as a device to expropriate massive portions of land on the earth's surface when the genesis of *uti possidetis* was suitable only for individuals to mediate territorial disputes amongst themselves.

It follows that all *jus cogens* crimes perpetrated retrospectively such as genocide, torture, piracy, slavery, and colonialism are void of limitation. This makes possible a right of people to claim land by arguing territorial re-adjustment on grounds of restitution for ancient wrongs (since it is said that no time limit applies for *jus cogens* crimes<sup>74</sup>).

Contemporary International law recognises deprivations of indigenous Peoples' rights to territorial land through the United Nations enactment of a second generation declaration that 2005 – 2015 is the second decade on the Rights of Indigenous People<sup>75</sup>. The UN's working paper affirmed

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<sup>71</sup> Charter of the United Nations Chapter XI Declaration Regarding non self governing territories Article 73, 1514 (XV) Declaration on the granting of Independence to Colonial countries and Peoples December 1960, United Nations General Assembly Fifty fifth Session, **Second International Decade for the Eradication of Colonialism**, A/RES/55/146 83<sup>rd</sup> plenary meeting, 8<sup>th</sup> December 2000.

<sup>72</sup> Western Sahara Case (1970) *Mabo v Queensland (No.2)*[1992] HCA 23; (1992) CLR 1 (Brennan J)

<sup>73</sup> <http://www.un.org/Depts/dpi/decolonization/brochure/UN/page1.html>

<sup>74</sup> Kohn Irit Adv. "Universal Jurisdiction" Bar-Ilan University; Vice President of the International Association of Jewish Lawyers and Jurists and former Director of the International Department of the Israel Ministry of Justice (Israel at 60) "**it is accepted that no time limit applies**" P.47 [http://www.jcpa.org/text/Israel60\\_Kohn.pdf](http://www.jcpa.org/text/Israel60_Kohn.pdf)

<sup>75</sup> General Assembly Resolution A/RES/59/174 (2005) on the report of the Third Committee (A/59/500) of 20<sup>th</sup> December 2004 in reliance on the Vienna Declaration and Programme of Action A/CONF.157/24 (Part I), Chapter III from the 1993 World Conference on Human Rights. (Compare with General Assembly Resolution A/RES/48/163 (1994))

that a profound nexus exists as between people, land and territory<sup>76</sup>. Recognition of indigenous peoples' rights to land exists on the premise that colonization of indigenous territories has not 'extinguished' indigenous peoples' land rights<sup>77</sup>. Such rights have survived colonial conquests. Therefore common law recognises indigenous Peoples contemporary land rights based on historical arguments that pre date colonialism<sup>78</sup>. The doctrine of micro sovereignty has powers to trigger inter temporal rights in order to pave the way for devolution and secession. The placement of the individual as Lord, declaratory God and King of his own realm and destiny<sup>79</sup> supported by Human Rights and the right to self determination reinforced by *jus cogens* and obligations *erga omnes* has an impact so great that it decimates feudal origins of English land law, itself held upright by 4 statutes, namely the Statute of de donis 1285, Statute of *Quia Emptores Terrarum* of 1290, the Statute of Uses 1536 and the Statute of Wills 1540. Historically land and was held "off the Lord" by the crown, otherwise known as the 'Radical title' which placed the status of the feudal king as paramount lord in the

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<sup>76</sup> Indigenous Peoples and their relationship to land: Final Working Paper prepared by the Special Rapporteur, Erica - Irene A. Daes' UN Doc E/CN.4/SUB.2/2001/21

<sup>77</sup> *Amodu Tijani v The Secretary, Southern Nigeria [1921] a AC 399 (PC)*, Privy Council 11<sup>th</sup> July 1921 Viscount Haldane held that a change in sovereignty does not disturb the rights of private owners.

<sup>78</sup> Native Title to territory

<sup>79</sup> Spinoza, Benedict de – A Theologico – Political Treatise, The Chief Works of Benedict De Spinoza 200 (R. Elwes trans. 1887) "***It follows that every individual has sovereign right to do all that he can; in other words, the rights of an individual extend to the uttermost limits of his power***". Hegel, G.W.F. The Philosophy of Right '***The Self direction of the I***' and the '***I determines itself***'. Perfected by Karl Marx's Critique of Hegel's Philosophy of Right 1843 "***a being does not regard himself as independent unless he is his own master, and he is his own master when he owes his own existence to himself***" Karl Marx, *Zur Kritik der Hegelschen Rechtsphilosophie. Kritik des Hegelschen Staatsrechts*. [www.mlwerke.de](http://www.mlwerke.de) ("I did not consent to exist before I was born" (Kornhauser))

belief that after the Norman Conquest, the king (an individual) became owner absolute of all the land in England. The conquest itself was predatory and thereby – by its very nature, colonialist. Therefore “radical title” associated with “native title” facilitates “micro sovereignty” in its territorial manifestation<sup>80</sup>.

Transfer of territory from the predecessor to the successor<sup>81</sup> state takes place through the medium of a devolutionary *jus in rem* which common law jurisdictions<sup>82</sup> provide for individuals. This is consistent with preclusion, a process in International law by which one [new] state acquires sovereignty over an area simply by long possession adverse to the *de facto* sovereign<sup>83</sup>. These facts affect fundamental issues of importance in common law jurisdictions in respect to obligations *erga omnes* and Article 2(4) of the UN Charter that refrains states from using force to resist secessionist claims coupled with legal repercussions

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<sup>80</sup> (***Souveraineté territoriale***) Kohen, Marcelo. G – Possession contestée et souveraineté, Publications de L'Institut universitaire de hautes études internationales, Presses universitaires de France (1997)

<sup>81</sup> Article 15 Part II (Succession in Respect of Part of Part of territory) Vienna Convention on Succession of States in respect of Treaties 1978. (also see Art. 35 of the same) The Convention does not distinguish cases of separation, devolution, secession, outright gift of land, right to buy an Island, transfer of territory or dissolution. Devolution being ‘by agreement of’ as a form of consent whereas secession is contentious.

<sup>82</sup> The doctrine of Common law gives one rights in the land of another [*Jus in terra aliena*]. It is no different from a right in the property of another [*Jus in re aliena*] because long possession creates rights [*Longa possession parit jus*] and long possession produces the right of possession and takes away from the true owner his action [*Longa possession parit jus Possidendi, et tollit actionem vero domino*]. This is further reinforced by the notation of Johannes Faber, a French jurist in the early fourteenth century who noted in *Breviarium in Codicem C.I.1.1.No.2* that: “...**Whoever possessed a limited territory for a long time ('ab antiquo')** was established there by right and possessed the same powers as the emperor. This was set out in the following terms: “*Nec crederem imperatorem fundatum esse de jure communi extra metas suas, infra quas ei obeditur ...sed tu potes dicere, quod quilibet, qui habet territorium limitatum ab antique, sit fundatus de jure communi infra metas eiusdem ad exercendum, in qualibet parte jus, quod in toto universali exercet*”. The Development of the Medieval Idea of Sovereignty, Walter Ullmann, *The English Historical Review*, Vol. 64, No. 250 (Jan. 1949) pp 1-33, Oxford University Press. (Also see Crawford *Creation of States in International law* (Oxford) 2006 p.266 “it is true, the word ‘occupation’ was used in a non technical sense denoting simply acquisition of sovereignty’.

<sup>83</sup> Case concerning the *Temple of Preah Vihear: Cambodia v Thailand*, *Duke Law Journal* Vol. 1963, No.2 (Spring 1963) pp 307 – 309 (p.309)

concerning a state's own colonial past from which rights to Native title arise'<sup>84</sup>.

Common law recognises micro sovereignty by default, alongside native title and the existing claim of the crown because it is itself a native customary residue from feudal sovereignty and the courts are not at liberty to interpret indigenous rights and micro sovereign rights using contemporary standards alone because continued existence of universal indigeneity prevails.

### **What is “indigeneity” and who are “indigenous peoples”?**

The precise clarification of what is definitive by the term '*indigenous people*' is sufficiently difficult to define since use of this term carries wide implications which can be construed universally. One definition that acquired a measure of recognition was that proposed by Mr Jorge Martínez Cobo, Special Rapporteur of the Working Group on the Draft Declaration on the Rights of Indigenous Peoples for the Commission of Human Rights, who in his *Study of the Problem of Discrimination against Indigenous Populations*<sup>85</sup> defined indigenous peoples as:

*“Those which, having a historical continuity with pre-invasion and pre-colonial societies that develop on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to*

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<sup>84</sup> Gilbert, Jeremie – Historical Indigenous People's Land Claims: A Comparative and International Approach to the Common Law Doctrine on Indigenous Title, *International and Comparative Law Quarterly*, Vol. 56 Part.3 (July 2007) pp 583 - 611

<sup>85</sup> (EC/CN.4/Sub.2/1986/7 and Add. 1-4)

*preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural pattern, social institutions and legal systems”*

The Oxford English Dictionary<sup>86</sup> defines “**indigenous**” as: “*Born or produced naturally in a land or region; native or belonging naturally to (the soil, region, etc) (Used primarily of aboriginal inhabitants or natural products)”*.

Etymology: Late Latin: *Indigenus* (born in a country) Latin: *Indigen* (a native) “**Indigenity**” (*The quality of being indigenous; indigenousness*)

I do not recognise the validity of “society” [Latin]: *Societas* - denoting, ‘partnership’ since no such universal partnership exists *per se*. Entry into a ‘partnership’ is contractual in nature that requires consent, free will and the signature of an express term contract that sets out the nature of such a partnership and its terms. None to this day exist.

Therefore, I do not believe that a “society” exists. I replace the *ficta* of ‘society’ with a twofold definition of collectivity, namely (i) voluntary collectivism, and (ii) involuntary collectivism of which the latter I define as *bellum omnium contra omnes* (a war of all against all) made manifest by supremacy, competition and survival in the context of Hegel’s battlefield where everyone’s individual private interests are in collision with

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<sup>86</sup> <http://www.oed.com.ezproxy.lib.bbk.ac.uk/Entry/94474>; (accessed: 17<sup>th</sup> May 2011)

everyone else's<sup>87</sup>. In this sense I am not persuaded (in part) by Mr Jorge Martínez Cobo's definition of indiginity because one does not have to be in a partnership or part of a collective in order to be considered indigenous and instead I prefer the definition provided by the Oxford English Dictionary.

There is no objective criterion for defining what is or what is not indigenous or who is or is not indigenous; rather it is a matter of ascription by oneself. Therefore contemporary indiginity, I argue, is the self redefinition of one's cultural 'self' identity which is comprised of two core components: (i) indiginity by virtue of birthright in a particular territory on the earth's surface (*jus soli*) and (ii) indiginity by virtue of ancestral heritage (*jus sanguinis*). A child born in England; for example to foreign parents who settled in England having immigrated or sought refuge/asylum in England is not ancestral indiginity in terms of having any historical nexus to the British Isles but the child is indigenous to the British Isles unto itself by virtue of birthright. It is the choice of an individual to ascribe his perception of indiginity unto himself. William the conqueror certainly was not English by birthright. Nor was his birthright considered "legitimate" by medieval standards<sup>88</sup>. He imposed himself on the British Isles through conquest and like

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<sup>87</sup> Hegel, G.W.F. The Philosophy of Right Hegel, s.182, *a fortiori*, Hegel's Political Philosophy: Problems and Perspectives, A collection of Essays, Edited by Z.A. Pelczynski, "The Structure of Hegel's 'Philosophy of Right' Ilting, K.H, p.95

<sup>88</sup> Paul. K. Davies, Encyclopaedia of Invasions and Conquests – from Ancient times to the Present. Grey House Publishing, Millerton, NY, (2006) P.60, The Dark and Middle Ages, William the Conqueror was otherwise known as "William the Bastard" since he was the bastard son of Robert I, the Duke of Normandy.

Charlemagne, crowned himself king<sup>89</sup>. He thus exercised his right to self determination and established sovereignty. My argument is that every living person is indigenous because the Declaration on the Rights of Indigenous Peoples of 2007 asserts that “*indigenous peoples are equal to all other peoples*”<sup>90</sup>. It really applies to everyone for it doesn’t matter who the peoples are because they are all said to be equal.

Universal indigeneity enables, I argue, all individuals and groups of consenting individuals<sup>91</sup> to establish micro states inside common law jurisdiction states because under the doctrine of acquired rights, a change in sovereignty does not affect the acquired property rights of people<sup>92</sup>. It merely creates pockets of particular laws (*ius oparticulare*) inside a common law jurisdiction which particular law only applies in the territory of the new micro sovereign state landlocked inside the majority state and does not extend to the remainder of the territory where common law in its generality continues to exist. Therefore *uti possidetis* as a boundary solution for established states is not the correct maxim to apply to territorial borders but rather fragmentation of territorial sovereignty where states cede territory to individuals and

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<sup>89</sup> Appointing oneself as king is consistent with the doctrine *Cura te ipsum* “take care of your own self”. The proverb was allegedly quoted by Jesus as recorded in the Gospel of Luke, chapter 4:23

<sup>90</sup> United Nations Declaration on the Rights of Indigenous Peoples A/RES/61/295 [2007] (not “more equal to”, “less” equal to [or] “than all” but “equal [within the definition of equivalent] to all other peoples”).

<sup>91</sup> Article 27 International Covenant on Civil & Political Rights

<sup>92</sup> Gilbert, Jeremie – Historical Indigenous Peoples’ Land Claims: A Comparative and International Approach to the Common Law Doctrine on Indigenous Title, *International and Comparative Law Quarterly*, Vol. 56 Part 3 (July 2007) p.590

consenting groups of people<sup>93</sup> under a redistributive framework as reparation for interference (past and present) by governments of the majority state with the destiny of individuals.

Individuals desirous of establishing territorial micro sovereignty in the territory of a common law state, import their own unwritten internal law which the common law must honour. These facts are material to the creation of several or more jurisdictions of laws in the same territory<sup>94</sup> because common law facilitates both micro sovereignty and indigenous law simultaneously. England<sup>95</sup>, Australia<sup>96</sup>, South Africa<sup>97</sup> Malaysia<sup>98</sup>, Canada and the US<sup>99</sup> are, *inter alia*, legal systems based on English common law.

The realization of this process will enable individuals to govern the affairs of their own micro states without hindrance. Restitution for

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<sup>93</sup> Article 27 International Covenant on Civil and Political Rights (ICCPR)

<sup>94</sup> *Island of Palmas Arbitration 2R International Arbitration Awards 831 (1928)* Judge Huber: "As regards the question which of different legal systems prevailing at successive periods is to be applied in a particular case (the so called intertemporal law), a distinction must be made between the (i) creation of rights and (ii) the existence of rights. The same principle which subjects the act creative of a right to the law in force at the time the right arises, demands of the right, in other words its continued manifestation, shall follow the conditions required by the evolution of law".

<sup>95</sup> "The United Kingdom has accepted legal obligations it has under Article 1 of the ICCPR to protect the right of Self determination, both in its dependent territories **and within its own borders**". Robert McCorquodale, the Right of Self Determination in David Harris and Sarah Joseph (Ed) *The International Covenant on Civil and Political Rights and United Kingdom law*, Clarendon Press, Oxford 1995 pp 91-119

<sup>96</sup> *Mabo v Queensland (No.2) [1992] HCA 23 (1992) CLR 1* (J. Brennan)

<sup>97</sup> *Richtersveld Community v Alexkor Limited and the Government of the Republic of South Africa, Case No. 488/2001, Supreme Court of Appeal of South Africa (24<sup>th</sup> March 2003)*  
*Alexkor Limited and Another v Richtersveld Community & Others [CCT19/03] [2003] ZACC 18; 2004 (5) SA 460 (CC); 2003 (12) BCLR 1301 (CC) (14 October 2003)*

<sup>98</sup> In *Adong bin Kuwau v Kerajaan Negeri Johor [1997] 1 MLJ 418, [1998] 2 MLJ 158* the High Court of Malaysia recognised that indigenous peoples have specific rights to their land and affirmed that 'native title' is the right of the natives to live on their land.

<sup>99</sup> *United States v Percheman*, 32 U.S. (7 Pet) 51 (1832) Don Juan Percheman claimed 2'000 acres of land in the Territory of Florida by virtue of a grant from the Spanish governor made in 1815. The court agreed and held that when there is a change in sovereignty, the property rights of people on the land remain the same, undisturbed. This is, I argue, because the land is the micro sovereignty of the people who occupy it by virtue of long possession and the people are micro sovereign as their rights remain unaffected despite external change.

historical human rights violations from past colonial wrongs remains a deliberately embryonic and nascent aspect of International law and legal discourse remains primitive when it comes to redressing ancient and contemporary wrongs<sup>100</sup>.

Another reason why territorial integrity is erroneous is the allegation that a unity of the population exists by embracement of all individuals within the territory of a state without the consent of all individuals encapsulated within that territory including emasculated individuals trapped inside the established state yearning autonomy who want no involvement with the established state. Certainly this is not genuine integrity at all<sup>101</sup>.

History had shown (and continues to show) that governments as organised consortiums abuse people and not *vice versa*. Governments therefore present themselves as the greatest threat to global order and world peace known to mankind and territorial borders have historically been drawn with the blood<sup>102</sup> of people obedient to them.

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<sup>100</sup> Barkan, E – *The Guilt of Nations, Restitution and Negotiating Historical Injustices* (John Hopkins University Press, Baltimore, 2000)

<sup>101</sup> Buchheit, Lee – *Secession, The Legitimacy of Self Determination*, Yale University Press (1978) “The Search for a right to secede” pp. 43-137 President Woodrow Wilson’s 14 point concept of internal self determination postulated that a people should not have to be subjugated under a sovereignty under which they do not want to live. In his original proposed draft to the Covenant, Wilson stipulated under Article 3 for the provision of ‘territorial adjustments’ to be made as may in the future become necessary by reasons of changes in present social conditions and aspirations pursuant to the principles of self determination.

<sup>102</sup> Neocleous, Mark – “Off the Map – On Violence and Cartography” *European Journal of Social Theory* 6 (4): pp 409 – 425, Brunel University, Uxbridge. Sage Publications, London 2003

Governments as regimes of power *de jure* or *de facto* apply the instrument of Law and Order as rhetorical and promiscuous euphemisms to usurp submission because the norms of “law and order” enjoin a *desideratum* for obedience to the authority of the regime, irrespective whether the regime is just or not or whether it had been convoked by democratic process in the strict sense of the word ‘democratic’ or whether it had determined itself *sua sponte*. The concept of ‘*de facto*’ is a fallacy unto itself for it is plagued with semantic encumbrances and made unduly complicated by the inconsistent use of the term *de facto* applied indiscriminately to cover governments, transitional administrations, regimes and military occupations as *de facto* authorities which arise in connection with its use as an adjective to legitimise the government as a temporal regime possessing a monopoly on violence.

It is my argument that if the universal diaspora of mankind transcended, in tandem, the authority of nation States (*Civitas Gentium Maxima*) at the time when Lenin and Woodrow Wilson developed their respective doctrines of Self-determination in the 20 year time frame between 1919 – 1939 in a manner similar to that of the revolt of Sobibor concentration camp where individuals liberated themselves from the tyranny of the unequal relationship of the majority state in order to become free to reassert themselves as micro sovereign entities unto themselves, Mussolini (1922), Stalin (1924) Hitler (1933) Franco (1936) would have had considerable difficulties coming to power (as representatives for the

whole of the people) because there would be no people to govern. Notwithstanding the Great Depression of 1929, if a proper fragmentation of nation states took place in defiance of *uti possidetis*<sup>103</sup> there may have been an interim period of chaos with the odd revolution here or there but the atrocities of the Second World War would not have existed and the *circa* 60 million people would not have died in vain. In that sense, civilization would have circumvented barbarism and thereby succeeded it (*Civilitas successit barbarum*). The framework certainly had the propensity to be in place within those two decades.

Territorial possessiveness resorting to the use of force as between pre-historic Neanderthal and man in the post human era remains fairly much the same. Only methods of violence have changed. Yet it is for people to determine the destiny of territory<sup>104</sup>. There are valid legal grounds for separating a part of a territory from a state in order to re-distribute it to sovereign individuals. The aftermath of the first and Second World War, the break-up of former Yugoslavia<sup>105</sup> and Russia's recent intervention in Georgia<sup>106</sup> gave considerable impetus to the

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<sup>103</sup><sup>103</sup> *Uti possidetis* is [sub]ject principle of Customary International law (*jus dispositivum*) Unilateral Declaration of Independence of Kosovo

<sup>104</sup> Western Sahara 1975 (Judge Dillard, Separate Opinion) "the cardinal restraint which the legal right of self determination imposes. That restraint may be captured in a single sentence. It is for the people to determine the destiny of the territory and not the territory the destiny of the people"

<sup>105</sup> Radan, Peter - The Break-up of Yugoslavia and International Law, Published by Routledge (2002) pp 135 - 203

<sup>106</sup> The wishes of South Ossetia were to break off (territorially) from Georgia in order to create its own small state that borders with Georgia characterized by external self determination. It effectively dismembered the myth of *uti possidetis*. Had the Russian Federation not come to the aid of Ossetia by militarily attacking Georgia in 2008, it is reasonably foreseeable that Abkhazia and certainly South Ossetia would not have survived the aggressive, nefarious and irredentist severity of the Georgian armed onslaught against South Ossetia to wrestle it back into Georgian territorial domination "*in conditions of what is often the most savage form of warfare – domestic armed conflict within the borders of a state*". Baxter, Richard – *Ius in Bello Interno: The Present and Future Law*, in J. Moore (Ed), *Law and Civil War in the Modern World* (Johns Hopkins University Press, Baltimore, 1974), p.536. Although it is worth noting

realization of Self determination in a relatively short space to time *postbellum*.

Czechoslovakia declared its independence in October 1918 before the end of the First World War following the demise of the Habsburg Empire as did Poland which became a sovereign state in 1919, shortly after the end of the said First War. European borders were again re aligned at the Yalta Conference and implemented after the Second World War in 1945 and Israel was created as a new State in 1948, (3 years after 1945) as did the entire process of decolonisation from 1960 onwards. Several new states<sup>107</sup> were created in the territory of former Socialist Federal Republic of Yugoslavia (SFRY) in the fragmented aftermath of SFRY's collapse and the subsequent spate of several bloody internal wars (*bello interno*) that followed successively by domino effect. Territorial greed and want of absolute domination over territory and peoples in former SFRY was the ultimate cause of loss to life throughout the Balkans. Had the new States agreed to separate and go their own way peacefully there would be no Yugoslavian conflict.

The conflict was futile because it failed its objective to re-create another big Yugoslavia "united" under one central government and fragmentation prevailed (*albeit for the pointless loss of life*). Abkhazia and South Ossetia were ordained as new States in 2008. The ICJ affirmed in

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that Poland under Kaczynski is partially responsible for the escalation of the Russian/Georgian conflict through the supply of MANPADS GROM E surface to air missiles to the Georgian army which the Georgians successfully used to shoot down several Russian aircraft which loss [of aircraft] and the televisation of dead Russian pilots forced the Kremlin's hand into an all out assault against Georgia proper.

<sup>107</sup> Croatia, Slovenia, Bosnia Herzegovina, Macedonia, Montenegro, Serbia and Kosovo

2010 that a Unilateral Declaration of Independence is permissible under International law as in the case of Kosovo. It is a cynical indication that violent upheaval through *rapport du force* is a catalyst that forces the delivering up of the physical realization of self determination and the creation of new states rather than hopes, aspirations and empty paper declarations<sup>108</sup>. If people (*irrespective whether individuals or groups that comprise of the word 'people'*) are to be denied the right of self-determination guaranteed by Article 1 (2) of the UN Charter and all subsequent Declarations that flow from it, decide to take up arms in order to secure independence by themselves (and for themselves) they as *de facto* belligerents<sup>109</sup> gain political freedom, independence and sovereignty as if they already were a separate state by entitlement<sup>110</sup>.

The argument that an individual of international personality cannot be the subject of rights in international law due to being weak, unarmed, passive and defenceless and as a consequence of such pre imposed powerlessness an individual is merely an object of international law and

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<sup>108</sup> Professor Crawford eloquently described this as “a legally neutral act where only one hand is clapping”  
<sup>109</sup> Dinstein, Yoram - The International Law of Belligerent Occupation, Cambridge University Press (2009). At the Sir Ian Brownlie CBE QC Memorial Seminar on 19<sup>th</sup> November 2010 (BIICL/Blackstone Chambers) Crawford used the phrase “***even no bodies can become some bodies when they are carrying a gun***” during his talk on territorial integrity and remedial secession. (also see) Crawford,- Reflections on the ICJ's Kosovo Opinion [2010], p.4, The appearance of Libyan rebels *ad hoc* brandishing Kalashnikovs and RPGs differ little from that of Iraqi insurgents during the US occupation of Iraq. The difference is that the cause of Libyan rebels is recognized, legitimized and portrayed in the West as “just” since the objective is to oust the regime of Col. Gaddafi from power whereas Iraqi insurgents were stigmatized by perception since they resisted and inflicted casualties amongst troops which participated in the occupation of Iraq which ousted the regime of Saddam Hussein from power.

<sup>110</sup> Yasser Arafat's transnational insurgency beyond the territorial borders of Israel during 1960s, 70's and 80's brought gradual dividends to the PLO in the form of a new state. Palestine: recognizing the state <http://english.aljazeera.net/indepth/opinion/2010/12/20101228131929322199.html>  
Respect for Human Rights in Armed Conflicts; [Second] Report of the Secretary General 66-67, UN Doc, A/8052 (1970), Baxter, R.R. - *Jus in Bello interno: the Present and Future Law*, in J. Moore (Ed), Law and Civil War in the Modern World (Johns Hopkins University Press, Baltimore, 1974),

not its subject - entitled to conditional protection through the medium of a militarily strong *alias statu* (another state) is a myth.

Individuals have potential to be heavily armed and capable of possessing large arsenals of weapons<sup>111</sup> with the aim of using them in self-defence to enforce their right to exist<sup>112</sup> and simultaneously be recognised as prisoners of war under the Geneva Convention<sup>113</sup>.

Notwithstanding Article 2(4) of the UN Charter that requires states to refrain from the threat [to use force] or [actual] use of force against the territorial integrity of a small state, or one about to be created, if a subject of right in international law is a person who must have capacity to wage war in self-defence, it necessarily follows that every individual and group of individuals who declare micro sovereignty under the peremptory *jus cogens* right to self-determination are *ex hypothesis* entitled to a prescription from the UN for arms and ammunition<sup>114</sup> because it is lawful to repel force with force (*vim vi repellere licet* [Cicero]) with the force and arms (*vi et armis*) since “the laws permit the taking up

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<sup>111</sup> Armed neutrality (the case of Switzerland) (also see US Constitution “Right to bear arms”)

<sup>112</sup> Art 1(4) of Protocol Additional to the Geneva Convention of 12<sup>th</sup> August 1949 relating to the Protection of victims of International Armed Conflicts (protocol 1) 8 June 1977.

<sup>113</sup> Article 4.1 of the Geneva Convention (III) 12 August 1949 prisoners of war are “..members of the armed forces of a party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces captured by one of the belligerents (International Humanitarian Law – Treaties & Documents) [www.icrc.org/ihl.nsf](http://www.icrc.org/ihl.nsf)

<sup>114</sup> The French government shipped arms to Biafra on the conviction that the Biafrans had ‘demonstrated their will to assert themselves as a people’ on the basis of a right of peoples to dispose of themselves” Heather Wilson, p.87, (Self-determination) International Law and the Use of Force by National Liberation Movements, Clarendon

of arms against the armed” (*Arma in armatoes sumere jura sinunt*). See Libyan rebels brandishing rockets & Kalashnikovs<sup>115</sup>.

The AK family of assault rifle is the iconic and legendary post modern redeemer of nations (*redemptor gentium*) used by almost all liberation movements across the world in struggles for independence for it is the equitable device that enforces the realisation of self determination by virtue of resistance to oppression<sup>116</sup>.



<sup>115</sup> <http://www.telegraph.co.uk/news/picturegalleries/worldnews/8443136/Faces-of-the-revolution-30-pictures-of-Libyan-rebels.html> Faces of the Revolution (Accessed 12 April 2011)

<sup>116</sup> The flag of Mozambique depicts the AK 47 Assault rifle in its coat of arms. The 2000 Rial banknote of the Islamic Republic of Iran depicts Iranian Revolutionaries waving the AK 47. The pictures inset depict happy South Ossetians brandishing the AK 47 and its variants.



The survival and existence of the State of Israel is governed by the power of the gun and the Palestinian autonomy is entitled to new

assault rifles and second hand Egyptian Kalashnikovs captured by the IDF. The Vatican benefits from the Swiss Guard and has access to modern firearms. Clearly there is a right of armament for autonomies, new and small states necessary to ensure some minimum self defence. In most cases established states command the loyalty of the army who are militarily strong, well organised and on permanent standby with the intention to wage war (*animus belligerendi*)<sup>117</sup> offensively and defensively - capable of professional genocide. Individuals and groups of individuals on the other hand living under a manifestation of subjugation are weak due to inequality of arms and suffer from insufficiency of training, coordination, logistics and resources necessary to take on the army of the oppressing state on an equal footing<sup>118</sup>. It is difficult to foresee an oppressed minority of persons capable of organising a successful necessitous uprising without external support in order to achieve certainty in destiny by armed revolution<sup>119</sup> to enforce their right to create a state in the territory of another afforded by secession due to a lack of access to military weapons necessary to decimate their oppressor in a conventional civil war<sup>120</sup>. The doctrine of

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<sup>117</sup> Dinstein, Yoram - War, Aggression and Self Defence, Third Edition, Cambridge University Press 1988

<sup>118</sup> Follow developments on the contagious nature of the spate of 2011 North African popular revolutions. Tunisia, Egypt, Libya, Algeria, Morocco with the aim of deposing despotes.

<sup>119</sup> Art 1(4) of Additional Protocol to the Geneva Conventions of 12<sup>th</sup> August 1949 relating to the Protection of Victims of International Armed Conflicts (Protocol I) 8 June 1977 stipulates that the Protocol shall not apply to 'armed conflicts' in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right to self determination.

<sup>120</sup> 2625 (XXV) Declaration on Principles of International Law concerning Friendly Relations GA Twenty Fifth Session p. 124 "Every State has a duty to refrain from any forcible action which deprives peoples ... in the elaboration of the present principle of their right to self determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise to, such forcible action in pursuit of the exercise of their right to self determination, such peoples are entitled to seek and to receive support (can be construed as military aid or a form of

*temperamenta belli* moderates conventional wars by placing restrictions on the conduct of warfare and applies to belligerents resorting to war for a just cause<sup>121</sup>.

A reason to explain the inordinate delay of some 160 years through the deliberate incalcitrance of states to fully implement the physical realization of self determination to all people can arguably be constructed in the manifestation of an unspoken agenda defined as a hidden intention (*anima absconditus*) to explain why governments refuse to grant peoples servient to them their right of sovereignty and self determination. The benefits and dividends of governments refusing to grant all peoples the right to determine themselves is obvious and threefold.

Firstly, the retention of a sizable population of a sovereign state is so to generate residual revenue for a government through the creation of an army of tax payers to pay revenue to the government which that population is imposed upon to pay and has no effective method of enforcing or holding the government to account as to how that revenue is spent<sup>122</sup>. Secondly the possession of territory by governments is so to control the utilization and disposition of land in order to profit from it and thirdly it is founded on a yearning for power as the remaining primitive human instinct from Neanderthal man to dominate, subjugate

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humanitarian intervention). The declaration of the Rights of Man of 1789 promulgated the right to liberty, property and resistance to oppression.

<sup>121</sup> *Temperamenta belli* is a term used by the Dutch jurist, Hugo (Grotius) in his work *De jure belli ac pacis* 1625 concerning the laws of war.

<sup>122</sup> The investigation concerning the abuse of Parliamentary expenses by British MPs in 2010 that caused widespread scandals.

and control by inequality. In all three cases the objective of governments is to control the destiny of others for the purposes of utilitarian exploitation and usurpation. Once removed, the causes of conflict also cease to exist.

From the nineteenth century onwards when self determination begun to evolve - up to present, individuals have from the outset been forcibly disarmed by states through the enactment of laws prohibiting or limiting individuals from possessing weapons so they be made vulnerable and toothless so not to pose a threat to the established state whereas the same state develops weapons and regularly upgrades them in order to keep up with the times so to remain militarily competitive with the overriding objective of remaining powerful.

Individuals are thus pinned down and strategically held hostage to involuntary collectivism by the coercive device of statecraft within the majority territorial state. This is not integrity, I argue but the cowardice of a state's self assurance that they are collectively and organisationally superior to individuals under the guise of military superiority that by its very nature causes disproportionality, great prejudice and inequality of arms, itself a manifestation of subjugation. As Professor Max Huber decisively pointed out, "Small states are '*Nichtgrosstaaten*'<sup>123</sup>".

They are '*Nichtgrosstaaten*' because of their relative weakness". This weakness is reassurance to a small state's more powerful neighbour that

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<sup>123</sup> Max Huber "Die Gleichheit der Staaten", in *Rechtswissenschaftliche Beiträge*, Josef Kohlers Festgabe, Stuttgart, [1909]. Max Huber was Professor of International, Constitutional and Cannon law at the University of Zurich, Switzerland and Judge at the Permanent Court of International Justice (PCIJ)

because a small state's weakness is material, it is interpreted as a comfortable postulate (by the powerful state) that the small state is in no position to pose any threat to it and is thus considered insignificant by virtue of the irrelevance placed by the majority state on a small state which [small state] is incapable to pose a threat<sup>124</sup>. Such are the obvious and familiar facts found in the cynicism of history. Therefore the allegation that the creation of a separate state within an existing state sets a dangerous precedent is misconceived and without foundation<sup>125</sup>.

The difference between territorial claims of majority states and territorial rights of encapsulated individuals who wish to create their own state in the territory of the majority state is that the right to create a state in reliance on self determination is protected by *jus cogens* whereas the territorial integrity of established states as mentioned is not even a right at all but a *status quo*. Legislatively, territorial integrity over an established state's borders is the last mechanism to prevent secession and annexation of a part of an established state's territory<sup>126</sup> by persons or people who live (or come to live) on that land. It is known as the 'safeguard clause'<sup>127</sup>. The principle of self determination is more clearly

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<sup>124</sup> The little man running about on his land with a chicken in his left hand and a Kalashnikov in his right hand is wholly irrelevant but an important necessity to underline his right to self determination.

<sup>125</sup> Dissenting Opinion of Judge Koroma, ICJ Advisory Opinion in the matter of the legality of the Unilateral Declaration of Independence of Kosovo [2010]

<sup>126</sup> In UN Res 1514 (XV) it is set out on the one hand that all peoples have a right to self determination whereas, on the other hand, it is stated in express terms at para 6 of the same that: "*any attempt aimed at the partial or total disruption of a national unity and the territorial integrity of a country is incompatible with the purpose and principles of the Charter of the United Nations*". This is a contradiction in terms because it renders the creation of new micro states impossible so as to achieve maximum exercise of the right of self determination.

<sup>127</sup> The 'safeguard clause' set out in the Friendly Relations Declaration, GA 2625 (XXV), Annex, 24<sup>th</sup> October 1970, principle 5 para 7 stipulates: "Nothing in the foregoing paragraphs shall be construed as

recognised in international law (**more certain**) whereas the principle of '*territorial integrity*' is less certain.

It is therefore argued that on the balance of both, where one principle being '**more certain**' and the other being '**less certain**' is that the 'more certain' principle is of greater prevalence than the 'less certain' principle.

A distinction is made to demarcate between two separate and conflicting doctrines and their sub doctrines, namely '*uti possidetis*' governed by *jus dispositivum* whereas, the right of self-determination is governed by the peremptory norms of *jus cogens*. There is no equal comparison between *jus cogens* and *jus dispositivum* because *jus cogens* is a peremptory norm of the international legal order whereas *jus dispositivum* as a customary norm is not. A peremptory norm is a superior norm to a customary norm. It transcends boundaries and national borders whereas *jus dispositivum* does not. *Jus cogens* is hierarchically dominant and of greater value than *jus dispositivum*. Therefore *jus dispositivum* is an inferior norm in the international order when compared to *jus cogens*. Furthermore, customary norms do not invoke obligations *erga omnes* whereas peremptory norms do<sup>128</sup>. *Jus cogens* prevails as the peremptory norm by virtue of superiority and survives by smashing down the norm of *jus dispositivum* (and with it the doctrine of *uti possidetis*) from its path to make way for all people to exercise the right of self-determination which consists of, *inter alia*, micro sovereignty, self-governance, self direction,

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authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states..

<sup>128</sup> The ICJ implied the existence of *jus cogens* when it referred to obligations *erga omnes* in the Barcelona Traction case judgment of 5<sup>th</sup> February 1970.

self transformation, self emancipation, secession and a right to development<sup>129</sup> under the ambit of *jus cogens*. The right to self-determination as *jus cogens* is the norm of norms, the law of laws and the right of rights because the ICJ Namibia advisory opinion connected the ultimate objective of the sacred trust of civilization<sup>130</sup> with the right of all peoples to self-determination.

Dr. Anton Schutz, senior lecturer at Birkbeck School of law translates the maxim: *Confligere cum iure cogente est regia nullitatis* (“Going against a compelling legal rule is the queen of reasons for voidness”). It is a condition within the meaning of a conflict of laws and norms as between that of peremptory norms of the international legal order (higher law) and *jus dispositivum* (customary law). In the context of *jus cogens* a direct confrontation exists with customary norms. That renders any agreement, pact, covenant, convention or declaration (that runs contrary to *jus cogens*) legally invalid<sup>131</sup> and void. In other words, special law derogates general law (*lex specialis derogat lex generali*). It is by its very existence uncircumventable, unconditional and on demand because it creates obligations *erga omnes* on all states by default. On this point, Dr. Schutz advances a valid question. *“How can a chance be found to solve the political problem that accompanies the legal one from which the legal problem cannot be separated in praxis? In other words which power on*

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<sup>129</sup> Bedjaoui, Mohammed – Some Unorthodox Reflections on the “Right to Development”, International Law of Development, Abingdon, Professional Books, Snyder & Slinn (Eds) 1987 pp 87 - 116

<sup>130</sup> Article 22 of the Covenant of the League of Nations

<sup>131</sup> Sandorski, Jan, Niewaznosc Umów Międzynarodowych (Uniwersytet Im. Adama Mickiewicza w Poznaniu) Poznan University Press 1978., p.174

*earth is [more] powerful– or perhaps in legal terms ‘cogent’ – enough to impose “jus cogens”?*

Can *jus cogens* prevail as a right<sup>132</sup> asserted by one individual in front of another brandishing a machine gun under threat of death? A situation arises where one is subjected to inferiority of subordination to the superiority of dominance of another through the medium of the gun. Which right has the last say in *ultima ratio*? Is use of force qualified to grant or quash rights in the face of an outright prohibition by International law of offensive aggression? Is the overriding objective to secure one’s own best interests in order to cause detriment to the interests of another justified by the availability of means? Does the practice of asserting one’s superiority through coercion over the inferiority of another as in the case of the United States pervading its will extraterritorially on a global level beyond its territorial borders have *locus standi*? If the answer to these questions postulates an affirmation that might is right, then there is no doubt that supremacy and inferiority are absolute determinates that must be highlighted at the apex of humanity to clearly inform all peoples that they must strive towards superiority in order to prevent being consumed by a more powerful state in consequence to inferiority. I am not equipped to answer these questions in this essay and leave room for future debate.

In a claim for autonomy and secession, it is my argument that the invocation of a trinity of extant *jus cogens* norms by an individual/s,

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<sup>132</sup> Article 53, Vienna Convention on the Law of Treaties 1969 [VCLT]

namely: (i) self determination, (ii) micro sovereignty and (iii) Human Rights applied together in simultaneous trinity, impose *erga omnes* obligations of a x3 intensity upon states to cede territory on the grounds that all three heads of rights are *jus cogens* each which invoke supremacy of peremptory obligations (*erga omnes*). Established states have more responsibilities than rights<sup>133</sup>. Persons in the employ of states are referred to as public servants (not public masters).

The accumulation of power behind the treble *jus cogens* impact of uncondition creates the x3 intensity of *erga omnes* obligations upon states. Therefore a material change in circumstance of categorical necessity engages the doctrine of *rebus sic stantibus*<sup>134</sup> obliging states to apply secession as a seismic and fundamental shift which compels international law to recognise a doctrine of micro sovereignty ingrained into the right of self determination. The right of self determination is comprehensive in scope. Not only is International law indifferent to the creation of sovereign and independent states, it directs for their

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<sup>133</sup> I.L.C. Draft Articles on State Responsibility, 1979 II Year Book, International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts (and omissions), with commentaries (2001), The ILC did envisage the possibility of a 'serious breach of an obligation arising under a peremptory norm of general international law. Article 44 of the Draft Articles on Responsibility of International Organizations, ILC, Report of the fifty ninth Session (2007), UN Doc A/62/10, 199. Records of the General Assembly, fifty-third Session, Supplement No 10 (A/56/10 Chp.IV.E.1) Fifth Report on State Responsibility by Mr. Gaetano Arangio-Ruiz, Special Rapporteur, Extract from Yearbook of the International Law Commission, Document A/CN.4/453 and Add 1-3 [http://untreaty.un.org/ilc/documentation/english/a\\_cn4\\_453.pdf](http://untreaty.un.org/ilc/documentation/english/a_cn4_453.pdf)

<sup>134</sup> *Rebus sic stantibus* – A doctrine to define a tacit condition said to attach to all treaties that they shall cease to be obligatory as soon as the state of facts or conditions upon which they were founded substantially change. Governed by a change of circumstances. The doctrine that agreements hold good as long as the fundamental conditions that existed at the time of their creation hold. (Contrast with *pacta sunt servanda*). As Artur Cohen [deceased] from Haifa Beit Galim, Israel defined *rebus sic stantibus* in Polish; *zgodnie z istniejącymi okolicznościami*

creation<sup>135</sup> and prevents established states from attempting to subjugate them<sup>136</sup>.

*'All peoples shall have the right of self-determination'* is set out in express terms in continued succession<sup>137</sup>. The word "all" is determinate to mean the whole quantity or amount of. The entire totality. *In toto*, Every one<sup>138</sup>. Quite simply, "All" means "all". Not some, not most, not a minority, not a majority not nearly all – but "all". Clearly these conventions do not say that "all peoples (at the exclusion of some) or that one person (at the exclusion of all [peoples]) has a right to self-determination. The logical postulate of this formulation or the better view is that (i) individuals, (ii) groups of individuals, and (iii) established states have the right to self-determination.

The term 'Peoples' and 'all Peoples' I argue, were carefully formulated by draftspersons responsible for the drafting of successive legal instruments where the term 'all Peoples' explicitly (and by implication) absorb all individuals within the meaning of "peoples" with an equal

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<sup>135</sup> UN General Assembly Resolution 2625 (XXV), Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations 1883<sup>rd</sup> plenary meeting 24<sup>th</sup> October 1970 ***"The establishment of a sovereign and independent state, the free association or integration with an independent state or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self determination by that people"***. (GA Twenty fifth Session p.124)

<sup>136</sup> UNGA Res 3201 (XXIX) UN Year Book, 1974, 402: "No state may use or encourage the use of economic, political or any other type of measures to coerce another state in order to obtain from it the subordination of the exercise of its sovereign rights".

<sup>137</sup> Arts 1(2) and 55 of the UN Charter, UNGA Resolution 545 (VI) of 5<sup>th</sup> February 1952, UNGA 1514 (XV) Declaration on the granting of Independence to Colonial Countries and Peoples 1960, Art.1 of the International Covenant on Civil and Political Rights (ICCPR) 1966, Art.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, UNGA Res 2625 (XXV) Declaration on the Principles of International Law concerning Friendly Relations 1970. (see Bill Bowring, the Right to Self Determination, Socialist Lawyer, October 2009 (Haldane Society of Socialist Lawyers)

<sup>138</sup> P.39 Collins English Dictionary (Third Edition), (ii) Oxford English Dictionary *"The Definitive record of the English Language"*: **"The Entire or unabated amount or quantity of; the whole extent, substance, or compass of; the whole"**. [www.oed.com](http://www.oed.com)

and absolute right to self-determination. Notwithstanding the universal meaning of 'all peoples' Public international law has a 'tradition of misunderstanding'<sup>139</sup> and the express term "all" had been erroneously misconstrued and misunderstood to exclude individuals from creating micro states as persons on the semantic pretext that "individual" [singular] are not peoples [plural] within the technicality of the wording "peoples" whereas the wording of Articles 1 in both the ICCPR and ICESCR is "all peoples" (have a right to self-determination)<sup>140</sup>. It was not the draftspersons' intention to exclude individuals<sup>141</sup>. No internationally acceptable definition of 'peoples' has yet been agreed<sup>142</sup>". The drafters of all of the said documents do not identify who exactly the "peoples" referred to – are, nor do they exclude individuals from claiming the right to self determination. If that were so it would be set out *expressis verbis*. A person as an individual is included within the meaning of "all peoples" in a way where he is not excluded from the said meaning because an individual, having rights, can in my view opt out and create his own state because it is not compulsory for an individual to live in close proximity to a group of people if he does not want to. He as a

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<sup>139</sup> Bowring, Bill "This tradition of misunderstanding has continued until the present day" p.2 *The Degradation of the International Legal Order? The Rehabilitation of law and the Possibility of Politics* (Abingdon: Routledge Cavendish 2008)

<sup>140</sup> Professor McCorquodale presents the view that the *travaux preparatoires* asserts that 'peoples' (a plural word) was included because it was considered to be the more comprehensive term than 'nations'. McCorquodale, Robert – *The Right of Self Determination in David Harris and Sarah Joseph (Ed) The International Covenant on Civil and Political Rights and the UK Law*, Clarendon Press Oxford 1995 pp 91-119

<sup>141</sup> Tomuschat, Christian Professor emeritus Humboldt University – *International Covenant on Civil and Political Rights, United Nations Audiovisual Library of International Law* "After the horrors of WW II, a broad consensus emerged at the worldwide level demanding that the **individual** human being be placed under the protection of the International Community". [http://untreaty.un.org/cod/avl/pdf/ha/iccpr\\_e.pdf](http://untreaty.un.org/cod/avl/pdf/ha/iccpr_e.pdf)

<sup>142</sup> McCorquodale, Robert – *Right to Self Determination, in David Harris and Sarah Joseph (Ed) ICCPR & UK Law* (Clarendon Press Oxford 1995) p97

person also becomes the bearer of the right to self-determination. Throughout the 1970's, the right to self-determination was decisively established in ICJ advisory opinions, namely "Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)<sup>143</sup>", the Namibia Advisory Opinion of 1971 and the Western Sahara Advisory Opinion of 1975 and it was further reinforced as a legal rule in 1977 as *per* Article 1(4) of the Protocol Additional to the [four] Geneva Conventions of 12<sup>th</sup> August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977<sup>144</sup> [Geneva Additional Protocol] a multilateral treaty<sup>145</sup> - thus shifting self determination from a negative to a positive right. The ICJ is not a Court of Appeal and has no competence to review decisions with a predisposition to strike down earlier judgments rendered to the condition of a *status quo ante* which would have the effect of stagnating the development of self-determination in International law. What if an individual in an established state is abused by that state and despite efforts to secure a remedy through judicial recourse finds he cannot obtain (or is obstructed from obtaining) just satisfaction in pursuit of a remedy for that abuse?<sup>146</sup> Is he expected to suck his wounds, sit quietly

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<sup>143</sup> I.C.J. Advisory Opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) International Legal Materials, Vol. 10, No. 4 (July 1971) pp 677 - 722 Published by AJIL

<sup>144</sup> [www.icrc.org/ihl.nsf/full/470?opendocument](http://www.icrc.org/ihl.nsf/full/470?opendocument)

<sup>145</sup> Art 1 (4) of Additional Protocol to the Geneva Conventions of 12<sup>th</sup> August 1949 relating to the Protection of Victims of International Armed Conflicts (Protocol I) 8 June 1977.

<sup>146</sup> May, Larry - Crimes against Humanity, A Normative Account, Cambridge University Press (2005) p.81 "When the security of a person has been jeopardized, especially by that person's own State, then it is permissible for sovereignty to be abridged so as to render the individual secure".

and acquiesce to that abuse? Leave one state and enter another as a refugee? Or is he expected to disappear into some dark hole somewhere in the territory of the majority state where the State sees less of him? What if the individual does not want a government in power he did not vote for in that state? What if he wants no involvement in the affairs of that state and wishes to create his own new, separate state in order to practice external self-determination under an internal framework? What is his recourse to exercise that right<sup>147</sup>?

As unsatisfactory as remedial secession is, it only affirms oppressed peoples with a basic right of revolution<sup>148</sup>. UN documents are sympathetic to the [armed] resistance of Liberation movements fighting oppression<sup>149</sup>. So are national laws of individual states<sup>150</sup>. In pursuit of the right to self determination, (namely the creation of a new state), *“peoples are entitled to seek and receive support in accordance with the*

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<sup>147</sup> **“Recognising that the desire for independence is the rightful aspiration of peoples under colonial subjugation** and that the denial of their right to self determination constitutes a threat to the well being of humanity and to international peace” General Assembly fifteenth Session 1542 (XV) Transmission of Information under Article 73e of the Charter 948<sup>th</sup> Plenary meeting 15<sup>th</sup> December 1960 Professor McCorquodale noted: “[A] **restriction on the definition of ‘peoples’ to include only all the inhabitants in a State would tend to legitimate an oppressive government operating within unjust state boundaries and create disruption and conflict in the international community. This approach also upholds the perpetual power of a State at the expense of the rights of the inhabitants, which is contrary to the clear development of the right to self determination..”** *McCorquodale, R, Self Determination: “A Human Rights Approach”, International and Comparative Law Quarterly, 1994, vol. 43, No. 4 p 868*

<sup>148</sup> Buchheit, Lee – Secession, The Legitimacy of Self Determination, Yale University Press 1978 p.223

<sup>149</sup> United Nations General Assembly, ‘Use of Mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self determination’ UN Doc A/Res/59/178, 74<sup>th</sup> plenary meeting, 20<sup>th</sup> December 2004 “condemning any state that permitted ...recruitment, financing, training, assembly, transit and the use of mercenaries with the objective of ... fighting against national liberation movements 2625 (XXV) Declaration on Principles of international Law concerning Friendly Relations & Co-operation Among States GA 25<sup>th</sup> Session, p.124 **“and resistance to”**

<sup>150</sup> *“Danish law explicitly recognized the right to self determination and legitimate resistance against oppressive regimes under international law”* p.54, Gavin Sullivan and Ben Hayes; Blacklisted: targeted Sanctions, preemptive Security and Fundamental Rights ECCHR, Published by European Centre for Constitutional and Human Rights e. V. (ECCHR), General Secretary Wolfgang Kaleck ([www.echr.eu](http://www.echr.eu))

*purposes and principles of the Charter*”<sup>151</sup> (and both the UNGA 1514 (XV) and the Declaration on Friendly Relations 1970 are essentially promulgatory extensions of the Charter.) International law does not contain any guarantee against the dissolution of States from within. “No minimum limit has been set in international law for the size or population of a State<sup>152</sup>”. The British are the greatest supporters of maintaining that the right to self determination has no limit on who is entitled to it<sup>153</sup>. “Little bits of States can be enclaved within other states<sup>154</sup>. Sovereignty comes in all shapes and sizes. It can be peculiar in nature (Sovereign Order of Malta). A new State may exist despite claims to its territory<sup>155</sup>. Infinitesimal smallness has never been seen as a reason to deny self determination<sup>156</sup>. Lack of money or resources is not a bar to micro statehood<sup>157</sup>. All states engage in import and export without compromising their autonomy because no one state possesses all of the world’s natural resources, technology and know-how solely within its jurisdiction and no state can claim to be fully “independent” *per se*, thereby no state is immune from the Laws of interdependence and from inter determination. An entity does not have to be independent to be a

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<sup>151</sup> UNGA Res 2625 (XXV) 24<sup>th</sup> October 1970 Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States 1883<sup>rd</sup> plenary meeting 24<sup>th</sup> October 1970

<sup>152</sup> Crawford, James – Islands as Sovereign Nations, *The International and Comparative Law Quarterly*, Vol. 38, No. 2 (April, 1989) pp 277-298, (also see) *The Creation of States in International Law*, Second Edition Oxford (2006) p.52

<sup>153</sup> Falkland Islands, Gibraltar St. Helena Island, Pitcairn Island, South Atlantic Island.

<sup>154</sup> Crawford, James – *The Creation of States in International Law*, Second Edition Oxford (2006) p.47

<sup>155</sup> Crawford, James - *The Creation of States in International Law*, p.48 pp.231-233

<sup>156</sup> Franck, Thomas M., and Paul Hoffman – *The Right to Self Determination in very small Places*, 8 N.Y.U. *Journal of International Law and Politics*. 331 (1975-1976) P. 383

<sup>157</sup> 1514 (XV) Declaration on the Granting of Independence to colonial countries and Peoples Para 3 ***“Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence”***. (read as *‘inadequacy of economic preparedness’*)

State<sup>158</sup>. There is no agreement on the line of demarcation that separates the definition as what constitutes a small state and what constitutes a micro state. There is no consensus on what constitutes a small state<sup>159</sup>. International law encourages unilateral declaration of independence<sup>160</sup>. Any person or entity whether inside the territory of an established state or not can issue such a Declaration. Public International law neither encourages nor forbids instigations of independence and revolutions but it still presupposes established sovereign states as the sole exclusive subjects of its jurisdiction and thus with the exception of heads of State and persons possessing international personality excludes individuals who are, (in large measure) regarded as objects<sup>161</sup> rather than as its subjects because the doctrine of International Personality in International law is still nascent. This is derogatory to the dignity of the individual person<sup>162</sup>.

Professor Lauterpacht noted: *“I have often wished that the individual might be the object of international law to a much larger extent than at present. The measure of protection which existing international law*

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<sup>158</sup> (see) Autonomous areas and regions, Associated States, Dependant States, Protectorates, Protected States, protected territories and special Treaty cases.

<sup>159</sup> Peterson, J.E - Qatar and the World: Branding for a Micro-State, The Middle East Journal, Vol.60, No.4 (Autumn 2006), Published by Middle East Institute, pp 732-748

<sup>160</sup> ICJ Kosovo (ICJ Press Release) No: 2010/25 22 July 2010 **“Accordance with international law of the unilateral declaration of independence in respect of Kosovo, as per the Advisory Opinion, the Court finds that the declaration of independence of Kosovo adopted on 17<sup>th</sup> February 2008 did not violate international law”**.

<sup>161</sup> Lauterpacht, H, Whewell Professor of International Law, The Law of Nations and the Individual Cambridge University Press 1944. p.67, **“It is not satisfactory to degrade the individual to the status of a mere object”**.

<sup>162</sup>ICJ, **How the court works** “Only states (*States members of the UN and other states which have become parties to the Statute of the Court or which have accepted its jurisdiction under certain conditions*) maybe parties to contentious cases. (i.e. individuals are excluded from the world court and have no *locus standi* before it) and cannot request financial assistance GA A/47/444 7 October 1992 Secretary General’s Trust Fund was established to assist States in the Settlement of disputes through the ICJ. The Fund is open to all States (excludes individuals)

*grants to the individual is still rudimentary*<sup>163</sup>. It follows that individuals, groups of individuals and organisations, when not incorporated under the law of any state are considered *personae juridicae* of international law<sup>164</sup>.

Professor Evgeny Korovin, a Russian jurist opined a concept where “two kinds of juridical persons gradually obtain the status of subject of international law: (i) the man as an individual, and (ii) international unions of labourers<sup>165</sup> (an association consisting of a group of individuals). Professor Crawford says: “*In an era of human rights ... everyone is at some level ‘the bearer of rights and duties’ under international law*”<sup>166</sup>.

### Conclusion

The right of all peoples to self-determination<sup>167</sup> was concealed into equity by stealth which, I argue was deliberately hidden (*jus absconditus*) behind an allegory clothed inside the euphemism: “*a sacred trust of civilization*” mentioned in article 22 of the Covenant of the League of Nations. The term was an express term trust which could not be ignored as Article 22 imposed a primary interest in seeing the trust executed and performed because equity alone could not perfect an otherwise imperfect gift. There was something extraordinarily comprehensive and

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<sup>163</sup> Lauterpacht, H, *The Law of Nations and the Individual* Cambridge University Press 1944

<sup>164</sup> The Hague Peace Conference of 1907 adopted a Convention for the establishment of an international Prize Court which made provisions for individuals having direct access to the court with the recognition of *personnalite juridique*.

<sup>165</sup> Korovin E.A. (Ed), *Mezhdunarodnoye Pravo* (1926) *Contemporary International law*, p.26 (In Russian)

<sup>166</sup> Crawford, J – *The Creation of States in International Law*, 2<sup>nd</sup> Ed Clarendon Press Oxford (2006) p.28

<sup>167</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia* ICJ Rep (1971)

substantial hidden behind this trust since it implied that the trust belongs to civilization in its entirety. I respectfully submit that micro sovereignty is the *corpus in corpora* of the 'sacred trust of civilization' and self determination is the means to realize it.

The contemporary understandings of Human Rights have sufficiently matured to enable the doctrine of micro sovereignty to be recognised by international law because a living system of law must accept new concepts and emerging empirical evidence of reality in order to incorporate them with existing theories and practices. This is re-affirmed by the following statements: "*Human Rights Council is based on a partnership between [indigenous] peoples and states*"<sup>168</sup>. "*There is a relationship, not a gap, between human rights law and the principle of equal rights and self-determination*"<sup>169</sup>". Former delegate to the 1975 UN Human Rights Committee, the late Italian Professor Giuseppe Sperduti noted that: "*The right of peoples to self determination was not just one of the fundamental principles of the new world order. It could also be classified in a new category of international legal rules...*"<sup>170</sup>

An examination of peoples' (*singular and plural*) yearning for autonomy, micro sovereignty, unilateral declarations of independence, requests for

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<sup>168</sup> Gilbert, Jeremie – Historical Indigenous People's Land Claims: A Comparative and International Approach to the Common Law Doctrine on Indigenous Title, *International & Comparative Law Quarterly*, Vol. 56 Part III (July 2007) P.607

<sup>169</sup> Butcher, Goler Teal, Henry. J. Richardson III, Gay McDougall, John Quigley, Jordan J. Paust, *Rights of Self Determination of Peoples in Established States: Southern Africa and the Middle East*, Proceedings of the Annual Meeting (ASIL), Published by American Society of International Law Vol. 85 (April 17-20, 1991), pp 541-561

<sup>170</sup> Cassese, Antonio – *Self-Determination of Peoples, A Legal Reappraisal*, Hersch Lauterpacht Memorial Lectures, ASIL Certificate of Merit, A Grotius Publication, Cambridge University Press 1995, footnote at p. 137

grants of land and devolution, claims to secession, rights of dissociation from established states and internal and external rights to self determination ought be looked at in the context postulated in this essay because *inter alia* the United Kingdom had 'accepted legal obligations it has under Article 1 of the ICCPR to protect the right of self-determination both in its dependent territories and within its own borders'<sup>171</sup>. International law is obliged to recognize micro sovereignty as a new peremptory rule for individuals who refuse to be subjugated by states because by giving humans rights, those rights also extend to the right of self autonomy, self government<sup>172</sup> which by its virtue is what I define as micro sovereignty flowing from UNGA Res 1514 (XV) “.. respect for ***the sovereign rights of ALL peoples and their territorial integrity***. I have learnt a universal principle that no nothing stands still, nothing is perfect, nothing is ideal, nothing is static, nothing is eternally 'watertight' and nothing is permanent. Everything including public International law evolves. For the avoidance of doubt, I seek to clarify that Human Rights and the right to self determination are two different, separate and extant rights which operate in harmony not to be confused as an amalgamated one right. There are three rights. The doctrine of micro sovereignty is the ameliorated 3<sup>rd</sup> right which I can qualify as micro sovereignty *in statu nascendi*.

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<sup>172</sup> Duursma, Jorri – Fragmentation and the International Relations of Micro States, Cambridge University Press 1996, p.16 Charter of the United Nations Article 73 (b) “development of self government” and 76 (b) “...*progressive development towards self government or independence*”.

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