

January 1989

International Law and the Use of Force by National Liberation Movements

Ranee Khooshie Lal Panjabi

Follow this and additional works at: <https://digitalcommons.du.edu/djilp>

Recommended Citation

Ranee Khooshie Lal Panjabi, International Law and the Use of Force by National Liberation Movements, 18 Denv. J. Int'l L. & Pol'y 141 (1989)(book review.)

This Book Review is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Denver Journal of International Law & Policy by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, digitalcommons@du.edu.

International Law and the Use of Force by National Liberation Movements

Keywords

United Nations, International Law: History, Self-Determination

BOOK REVIEW

International Law and the Use of Force by National Liberation Movements

*Reviewed by Dr. Ranee Khooshie Lal Panjabi**

WILSON, HEATHER A., *INTERNATIONAL LAW AND THE USE OF FORCE BY NATIONAL LIBERATION MOVEMENTS*, Clarendon Press, Oxford, England (1988); ISBN 0-10-825570-5, 209 pp.

This very readable and interesting book is a revised version of the author's doctoral thesis submitted to Oxford University in 1985. The research is thorough with a judicious blend of primary and secondary sources. The subject is explored from a variety of perspectives with emphasis on the changing perceptions concerning the legitimacy of force as an instrument in securing self-determination. The role of the United Nations forms a vital part of the thesis and there is detailed discussion of the 1977 Protocols Additional to the 1949 Geneva Conventions. This book would be useful for university students in international law, international relations, history and political science.

Wilson makes the reader aware of the progressive development of international law and international practice in the subject of national liberation movements. The rapid decolonization process which occurred after the Second World War brought a new set of 'actors' onto the 'international stage.' Newly-independent countries eager to play a significant role in international politics could, by force of numbers at the United Nations General Assembly, influence the passage of resolutions granting approval to wars of national liberation. Overriding the Western approach which preferred to think of war in its traditional sense as an inter-State exercise, the new nations of Asia and Africa pushed for the recognition of national liberation movements in those areas still ruled by colonial powers. They dismissed the colonial argument that such movements were internal rebellions and purely domestic problems, insisted on internationalizing anti-imperialist conflicts and even granted premature recognition to some revolutionary groups in order to enhance the latter's status and global prestige.

* Associate Professor, Memorial University of Newfoundland.

While the Charter of the United Nations does not condone the use of force to acquire political sovereignty, in practice, the United Nations has affirmed its recognition of the legitimacy of populations struggling to be free of colonial and alien domination. Such people have, according to the General Assembly, the right to self-determination and independence and can, presumably, utilize all necessary means at their disposal in the attempt to exercise that right. This would, in the perception of most Afro-Asian countries, legitimize the various national liberation movements.

The passage in December 1960 of General Assembly Resolution 1514(XV), The Declaration on the Granting of Independence to Colonial Countries and Peoples, proved to be a significant milestone. This encouragement to the principle of self-determination and condemnation of alien domination heralded a new approach in international thought leading to a recognition of an existing reality, in that independent Afro-Asian States were actively pursuing the mission of helping to free their less fortunate neighbors. In that sense, the General Assembly was merely echoing existing thought in a significant area of the world.

The rapid pace of change in political approaches caught Western states somewhat off guard. Traditional ideas of international war as an exercise confined to States possessing the usual criteria for statehood — land, population, sovereignty — have been challenged by the commitment of independent Afro-Asian nations to using the international forum at the United Nations to confer legitimacy, recognition and even prestige on certain liberation movements. Most important of all has been the dismissal of the idea that international war has to be fought only between States. The concept of international war as applying to peoples fighting against an alien ruler has also gained acceptance. While resolutions of the General Assembly may not have binding force on Member States, these declarations are a significant indication of world public opinion. To that extent they play a role in formulating and reflecting changing international perceptions.

The blurred distinctions between internal and international conflicts have been amply explored by Wilson who points out that the reason why national liberation movements seek international status is largely to free themselves from the constraints of municipal law and to acquire belligerent status for their armed personnel, which would give them rights in international law.

For third party States, the developments of the past four and a half decades have been momentous. Traditionally, assistance to insurgent, rebellious movements by outside Governments was deemed to contravene the principles of international law. A number of authors still support this view. However, the practice of States, including Western nations, indicates that occasionally assistance can even be given to indigenous rebellious groups fighting against their own national governments. The United States government's assistance to the Contra movement in Nicaragua is a case in point. The American Government's justification of its actions as being in support of a legitimate liberation movement proves that even

Western States have been influenced by the new perceptions brought to the international scene, largely by Third World nations. While generally denying the validity of these novel ideas in the United Nations, countries like the United States have not hesitated to use the new rhetoric where their own interests are thought to be directly affected.

Hence, one might argue that the legitimacy of liberation movements, their international status and their right to justify the use of force in ousting a colonial or alien or dictatorial government are already accepted as custom in international practice. The extent of third party intervention in such conflicts is now so routine that traditional concepts of international law may well need revision.

Wilson has conducted a detailed study of the humanitarian implications of these new perceptions of the right to use force by national liberation movements. However controversial the idea that rebellious groups have some inherent right to resort to violence to oust their governments, it is now widely recognized that international law must seek to protect the innocent victims on both sides by extending and expanding the perimeters of international conventions currently in force and by applying them rigorously in any conflict. The conferring of prisoner of war status to captured armed personnel is only one possibility. Cooperation by all parties with Red Cross efforts to alleviate the plight of the wounded and of civilian populations in the fighting zones is another. The 1977 Protocols Additional to the 1949 Geneva Conventions have attempted to expand the boundaries of international humanitarian law. The reluctance of governments under fire from liberation movements has delayed the universal acceptance of these obligations. Ironically, as Wilson points out, national liberation movements have generally been more willing to cooperate in enforcing international legal principles and obligations largely because this assists their attempt to gain acceptance as legitimate movements.

In seeking to prove her point by example, the author has referred briefly to a number of revolutionary movements. One can only wish that she had spent more time on some of these examples. A more in-depth study of the Palestinian uprising and a more detailed analysis of the South African situation would have enhanced the book. Hopefully, she will continue her research in this topical field of international law and apply her conclusions to specific national liberation movements in future monographs.

Wilson's conclusions are basically sound: that 'peoples' can possess status and even personality in international law and society; that the current definition of 'people' is not exclusively ethnic but more territorial in scope; that national liberation movements have successfully challenged the exclusive right of the state to use force; that wars of national liberation are now largely deemed to be international wars and international law must apply in such cases. The precepts of international law are generally slow to catch up with the realities of international politics. This has been the case in the topic under discussion as indeed in other areas of

international law.

Finally, the period since the Second World War has witnessed the emergence of a new group of nations whose actions and ideas have brought about rapid change in attitudes and policies, particularly in the United Nations, which replaced the smaller League of Nations. No longer is international law created by the consensus and compromise of a handful of powerful States, mainly in the West. Each day, the traditional norms are being chipped away by the challenges posed by the new players in the game. While their participation makes the entire process uncertain and full of risks, it also makes the process dramatic, daring and more in line with public opinion as represented by the majority of the world's population. For the West, this implies both promise and peril. Too rigid an adherence to outmoded norms will put the North American-European world out of touch with its global neighbors. Too eager an acceptance of dynamic definitions of self-determination and national freedom can only be made at the sacrifice of traditional long-held ideas. A flexible, pragmatic approach would benefit both the West and the Third World. The next few decades will determine whether we in the Western world are up to the challenges posed by our Afro-Asian neighbors and whether we can adjust our patterns of thought to fit the new realities of international practice.