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# Petitioning the International: A 'Pre-history' of Self-determination

Arnulf Becker Lorca\*

## Abstract

*Conventionally, self-determination is understood to have evolved in a linear progression from a political principle during World War I into an international right after World War II. The history of the right to self-determination before 1945 is thus part of 'pre-history'. This article explores that 'pre-history' and finds the conventional linear narrative unconvincing. During the first three decades of the 20th century and in particular during the interwar period, non-Western lawyers, politicians, and activists articulated international law claims to support the demand for self-government. In this process, they appropriated and transformed the international law discourse. Removing the legal obstacles that prevented self-government beyond the West – that is, by eliminating the standard of civilization – interwar semi-peripherals made possible the emergence of a right to self-determination later, when the international political context changed after the second post-war reconstruction of international law.*

## 1 Introduction

Peoples struggling for self-government have always resorted to a mix of violent and non-violent means to achieve their goals. While the resort to collective violence has remained relatively constant, have ideals invoked and arguments made in support of political autonomy changed over time? Since decolonization, a claim to self-determination according to international law has been a central strategy for those fighting for independence. What ideas and principles were invoked by peoples demanding political autonomy before the emergence of a right to self-determination? Was international law of any use to those fighting against foreign rule before decolonization?

\* Visiting Faculty, International Relations Program, Brown University. Email: [Arnulf\\_becker@brown.edu](mailto:Arnulf_becker@brown.edu).

Answers to these questions will certainly depend on what we mean by self-determination – one of international law’s most riddled concepts. If peoples have a right to self-determination, how does international law define a people? And what rights should people enjoy under self-determination: a right to independence from foreign rule, a right to secession from existing states? While defining the nature and scope of this right is difficult, identifying the historical origins of self-determination seems much less controversial. Self-determination was born as a political ideal. After World War I it became a political principle to organize the post-war international order. Only after the second post-war period did it become a legal principle under the UN Charter. And then only in the 1960s, after the General Assembly resolutions on decolonization and the general human rights conventions, did self-determination finally emerge as a right.

In this linear progression, self-determination transitioned from politics to law. In this sense, the legal history of self-determination before 1945/1960 would be ‘pre-history’. This article explores that ‘pre-history’ and finds the conventional linear narrative unconvincing. For during the first three decades of the 20th century and in particular during the interwar period, lawyers, politicians, and activists from the semi-periphery articulated international law claims to support the demand for self-government. In this process, they appropriated and transformed the international law discourse. Removing the obstacles that classical international law had erected – namely the standard of civilization as the doctrine on the basis of which sovereignty was denied outside the West – semi-peripherals made possible the emergence of a right to self-determination.

At the Paris Peace Conference of 1919 this strategy failed. But this defeat was political. It came as a result of great powers ignoring semi-peripheral claims to self-determination. As a matter of law, in the sense of disciplinary debates in international law’s intellectual history, however, semi-peripherals succeeded in dissolving the standard of civilization. After political defeat, semi-peripheral lawyers dropped explicit references to self-determination and continued the struggle for self-government making use of the emerging doctrine of statehood. In part through requests for admission to the League – some polities like Ethiopia being admitted and many others like Armenia, Azerbaijan, and the Six Nations of the Iroquois being rejected – statehood evolved into a formal rather than substantive criterion to determine membership of the international community.

Rather than a linear progression, the brief story recounted here points at ebbs and flows. In the semi-peripheral petitions of 1919 self-determination was born as an international right. In 1919 it was also politically defeated. During the 1920s self-determination and statehood coexisted as argumentative avenues – the first more apt for polities fighting for independence without having secured territorial control; the second more appropriate for polities that had secured some level of territorial control. During the interwar period, the first remained mostly an argumentative strategy, while statehood became an accepted legal doctrine. Once statehood was conceptualized in formal terms, the way was paved for semi-peripheral polities to demand or obtain by force territorial control and thus acquire self-determination. Given these transformations in the

doctrinal structure of international law – from civilization to statehood – when political conditions changed, after the second post-war reconstruction of international law, self-determination could remerge as an international right. This was semi-peripherals' remarkable feat. Looking back at the interwar period we may learn about semi-peripheral uses of international law, about a professional style of resistance that seems to have been forgotten and might be fruitfully remembered today.

## 2 Petitioning for Self-determination. Paris, 1919

In New York, on 20 July 1922, the executive officers of the Universal Negro Improvement Association (UNIA), a black organization founded by Marcus Garvey (1887–1940), the famous Jamaican activist and intellectual, drafted a petition and decided to send a delegation to the Third Assembly of the League of Nations. On behalf of the 'four hundred million black people of Africa and the world', Garvey's organization requested the League to transfer to the black race the former German colonies of East Africa and Southwest Africa.<sup>1</sup>

This was not the first time black intellectuals had sought a broader constituency in the search for new strategies to improve the condition of black people and channel aspirations for self-government. Since the turn of the century, a Pan-African movement emerged under the leadership of W.E.B. Du Bois (1868–1963), the well-known American black scholar and co-founder of the National Association for the Advancement of Coloured People (NAACP). A first Pan-African congress was organized in 1900 in London, and then a second in Paris in 1919. Throughout the addresses and declarations adopted after each of these meetings, an elite group of the African diaspora united around a discourse of racial identity and solidarity.

The UNIA petition of 1922 was not an isolated attempt to reach out to the international world to channel aspirations for self-government. During the first decades of the century the black transnational intelligentsia turned decisively towards the international sphere to pursue their objectives. In 1919, at the end of World War I, W.E.B. Du Bois himself, as well as Eliézier Cadet (1897–?), a young Haitian envoy of Garvey's UNIA, arrived in Paris at the time leaders and activists from around the world were gathering to negotiate the terms of the peace settlement. Both Du Bois and Cadet were eager to defend the interests of the black race, hoping to be heard by the Great Powers as they were laying down the foundations of the post-war international order.

Eliézier Cadet had gained prominence within Garvey's circles after writing a letter to UNIA's newspaper, the *Negro World*, condemning the American intervention in Haiti. Cadet was thus enlisted to serve as an interpreter to the delegation to be sent to Paris. But in addition to speaking French, Cadet proved useful to the UNIA because of his Haitian nationality. When the American government denied passports

<sup>1</sup> Universal Negro Improvement Association (UNIA), 'Petition of the Universal Negro Improvement Association League to the League of Nations', in R. Hill (ed.), *The Marcus Garvey and Universal Negro Improvement Association Papers* (1983), iv, at 735–740.

to the envoys appointed by the UNIA, he became the only member who could travel to Paris. Cadet thus became the UNIA High Commissioner to the Peace Conference.<sup>2</sup> To Paris he brought the ‘nine point declaration’, a resolution by the UNIA that, in clear allusion to Wilson’s 14 points, demanded self-determination and equality for the black race: ‘1. The right of self-determination will be applied to Africans and to every European colony where the African race predominates. ... 9. The return to the natives of Germany’s African colonies, which will be governed by Negroes educated in the Eastern and Western countries.’<sup>3</sup>

Du Bois, on the other hand, believed that the natives of Africa should have the right to participate in government as fast as their development permitted. With Du Bois and other members of the Pan-African movement in Paris, a Pan-African Congress was organized in February 1919. The Congress passed a resolution demanding that ‘the natives of Africa and the Peoples of African descent’ be governed according to nine principles. Principle number 8 stated:

*Civilized Negroes:* Wherever persons of African descent are civilized and able to meet the tests of surrounding culture, they shall be accorded the same rights as their fellow citizens; they shall not be denied on account of race or color a voice in their own government, justice before the courts and economic and social equality according to ability and desert.<sup>4</sup>

The pleas by Cadet and Du Bois contained the central elements in every discussion about the admission of non-Western polities into the international community: self-determination and the standard of civilization. In 1918, Woodrow Wilson (1856–1924) had declared his ‘Fourteen Points’ proposal for ending the war. Wilson’s speech to Congress set out the basis for a peace treaty and the foundation of a permanent international organization. Although not explicitly mentioned in the speech, self-determination rose to become one of the principles guiding the post-war settlement.<sup>5</sup> As the principle of self-determination attained centrality, politicians and activists from non-Western polities subjected to formal or informal colonialism harnessed the principle to demand political independence for their nations. During the first decades of the 20th century, however, every international legal argument in favour of sovereignty for non-Western states had to confront the standard of civilization, the 19th century legal doctrine according to which the distinction between formal sovereignty and formal or informal colonial rule was justified.

The Allied Powers gathered in Paris with ambitious goals. Negotiating the terms of the peace settlement with Germany and creating a permanent League of Nations, they sought nothing less than to transform the pre-war international order and classical international law. The Allied Powers, however, had no plans to renounce the standard of civilization. The standard was not part of the classical international law that had to be reconstructed to secure peace. The future of the German colonies and the

<sup>2</sup> C. Grant, *Negro with a Hat. The Rise and Fall of Marcus Garvey* (2008), at 173, 175.

<sup>3</sup> Hill, *supra* note 1, xi, at 191.

<sup>4</sup> ‘Resolutions passed at the 1919 Pan-African Congress’; *ibid.*, ix, at 5.

<sup>5</sup> E. Manela, *Wilsonian Moment: Self-determination and the International Origins of Anticolonial Nationalism* (2007), at 24, 25 ff.

territories of the Ottoman Empire that had fallen under the Allied Powers' control or influence was part of the negotiations in Paris. But the future of European colonialism was not part of the Paris agenda. In fact, the Peace Conference invoked the idea of a standard of civilization and the idea of a Western civilizing mission to establish the League's Mandate System.

Wilson's idealism did not reach outside the West. Although this was discouraging, leaders of the non-Western world were not discouraged. During the year between Wilson's 'Fourteen Points' speech and the inauguration of the Peace Conference, semi-peripherals' lawyers and politicians were formidably active. Demands for political independence framed in both the language of self-determination and the standard of civilization proliferated. In addition to black activists, diplomatic representatives from states subjected to informal colonial domination, that is, unequal treatment, like China, the Ottoman Empire, and Persia, as well as delegations from territories under colonial rule tried hard to have a say at the Peace Conference. Members of nationalist parties from Egypt to India and Korea, organizations of Chinese students abroad, all converged in Paris. Also citizens representing a wide variety of organizations from polities that did not make it to Paris, from Syria to Transjordan and Togoland, sent countless cables and letters to the authorities of the Allied Powers' meeting in Paris, specially to the President of the United States and to the French Prime Minister, Georges Clemenceau (1841–1929), as Secretariat of the Conference. How did these documents frame the claim for self-governance?

### A 'We have a Civilization' (Rather than: 'We have Met the Standard of Civilization')

In 1919, semi-peripheral lawyers and activists grafted the principle of self-determination into 19th century classical international law. Classical international law had the standard of civilization as the central doctrine determining membership of the international community. Like their predecessors, that is, like the first generation of semi-peripheral international lawyers who internalized the standard of civilization, Egyptian, Indian, and Korean as well as Pan-African activists supported the demand for sovereignty, showing that their peoples were civilized. The Korean petition to the Peace Conference, signed by the nationalist leader John Kiuisic S. Kimm (Kim Kyushik, 1881–1950) and sent to Clemenceau, for example, begins with the following sentence: '[t]he Korean people forms today a homogeneous nation, having their own civilization and culture, and having constituted one of the historical states in the Far East for more than four thousand and two hundred years. During those forty two centuries Korea has always enjoyed national independence.'<sup>6</sup>

An accompanying *mémoire* adds that the Korean people has a national language and civilization that was more developed than that of Japan before it left barbarism.<sup>7</sup> These documents, however, did not exactly articulate the idea of civilization in the

<sup>6</sup> Conférence de la paix, *Pétition présentée par la Délégation Coréenne* (Paris, 1919), at 1.

<sup>7</sup> *Ibid.*, *Mémoire présentée par la Délégation Coréenne*, at 1.

way 19th century semi-peripheral international lawyers internalized the standard. As I explore elsewhere, if 19th century semi-peripheral lawyers looked for the indicators of modern civilization to argue that these had been internalized, and that in consequence equality in the interaction with Western states should follow, demanding for instance the revision of unequal treaties, their modern successors invoked ancient civilizational roots to argue in favour of the recognition of sovereignty.<sup>8</sup>

The pamphlet entitled ‘Self-Determination for India’, published by the India Home Rule League of America, offers a good example. The drafter, Lala Lajpat Rai (1865–1928), a lawyer and renowned figure in the Indian independence movement, welcomes the formation of a League of Nations for maintaining peace and fostering the development of different nationalities based on the principle of self-determination.<sup>9</sup> The peoples of India constitute nationalities, for they share ‘the same blood, the same language, the same civilization, literature, customs, and traditions’.<sup>10</sup> They are thus entitled to self-determination. Lajpat Rai, like classical international lawyers, shows India as a civilized people. But, unlike the classical predecessors, Lajpat Rai neither constructs a Western standard to be internalized: ‘India is not an infant nation, not a primitive people, but the eldest brother in the family of man, noted for her philosophy and for being the home of religions that console half of mankind’; nor, in typical 19th century fashion, does he demonstrate that the standard has been met by distinguishing between a civilized and an uncivilized people. Thus, there is no attempt to show Indian civilization in comparison to other less civilized states or in relation to domestic barbarian populations to be civilized. Instead, Lajpat Rai considers also the demands of other non-Western peoples. Lajpat Rai argues in favour of self-determination and an international regional regime analogous to that of non-intervention established by the Monroe doctrine to obtain protection from European imperialism, a legal shelter from colonialism, not just for India, but also for Africa as well as Asia.<sup>11</sup>

This strategy was certainly fraught with problems. The standard of civilization, as the outcome of the Peace Conference showed, continued to be defined by Western powers and in Western terms. The problem was especially burdensome to those who could not invoke ancient roots, for those who in European eyes had no ancient civilization. This problem was particularly challenging for the Pan-African movement.

The ‘Address to the Nations of the World’ adopted by the first Pan-African Conference held in London in 1900 shows how intricate the balancing act was for black activists trying both to meet classical international law’s standard of civilization and to fulfil aspirations for self-government. The address, on the one hand, concedes that ‘the darker races are today the least advanced in culture according to European

<sup>8</sup> A. Becker Lorca, *Mestizo International Law: a Global Intellectual History 1842–1993* (forthcoming)

<sup>9</sup> India Home Rule League of America, *Self-determination for India* (1919), at 5. In 1917 Lajpat Rai established the ‘India Home Rule League of America’ in New York to support the Home Rule movement back home in India and started a monthly journal, *Young India*. Stepping up his campaign for mobilizing the support of progressive opinion in the US and Britain, Lajpat Rai wrote this pamphlet.

<sup>10</sup> *Ibid.*, at 8.

<sup>11</sup> *Ibid.*, at 7.

standards'.<sup>12</sup> On the other hand, it notes that 'this has not always been the case in the past'. If there was in the past a disparity of civilizations, the address famously observes that the problem of the new century 'is the problem of the colour-line, the question as to how far differences of race ... will hereafter be made the basis of denying to over half of the world the right of sharing ... the opportunities and privileges of modern civilization'. The answer is clear. The modern world is changing; peoples of different races are 'being brought so near together' that contact is inevitable. If opportunities for 'education and self-development' are given to dark men – the address affirms – beneficial effects and human progress will be felt by the world.<sup>13</sup>

Yet again, the address does not challenge but calls for an enlightened European colonialism: '[I]et the German Empire and the French Republic ... remember that the true worth of colonies lies in their prosperity and progress, and that justice, impartial alike to black and white, is the first element of prosperity'. However, if the future of black people is marred with exploitation because of prejudice and injustice, the address on the other hand cautions about fatal results: 'the high ideals of justice, freedom and culture', which years of 'Christian civilization have held before Europe', will be threatened. With this admonition, the address concludes by demanding that the Congo Free State 'become a great central Negro State of the world'.<sup>14</sup>

The Pan-African movement's ambivalent attitude towards African independence, European colonialism, and the West's civilizing mission might be explained, as Mekondjo Kaapanda suggests, through Du Bois' concept of 'double consciousness': that is, the difficulty that the Pan-African movement confronted when constructing a vision for African statehood through the European international law discourse.<sup>15</sup> Pan-African petitions and documents by other semi-peripherals show how non-Western lawyers and activists worked through the problem of 'double consciousness', producing a variety of strategies to achieve their goals. The content of petitions changed in relation to audience and possibilities of success. Moreover, it would have been impractical for the Pan-African 'Address to the Nations' of 1900 to circumvent the standard of civilization. In 1900, before most unequal treaties in the semi-periphery were abolished and before the declarations on self-determination by Wilson and Lenin were uttered, it would have been impractical to circumvent the standard of civilization. In fact only later did the Great War and its aftermath massively transform the attitudes of non-Western elites towards the West.<sup>16</sup>

For example, during the war Du Bois wrote about European imperialism as one of its causes. After the war and in preparation for the Peace Conference, Du Bois wrote in 1918 to Wilson and Clemenceau laying out his vision for black peoples in Africa and the black

<sup>12</sup> 'Address to the Nations of the World', in J.A. Langley, *Ideologies of Liberation in Black Africa, 1856–1970: Documents on Modern African Political Thought from Colonial Times to the Present* (1979), at 738–740.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> Kaapanda, 'Pan-African Movement', unpublished paper.

<sup>16</sup> See, e.g., Adas, 'Contested Hegemony: The Great War and the Afro-Asian Assault on the Civilizing Mission Ideology', 15 *J World History* (2004) 31.

diaspora. Unlike the 1900 Pan-African declaration, these letters as well as other documents drafted ahead of Paris reflected a much more ambiguous stance in relation to the standard of civilization and a stronger position regarding peoples' self-determination. In the 1918 letter to Wilson, Du Bois simply takes Wilson's word on self-determination: '[t]he ideals of the peace Congress have to do with the rights of distinctive peoples'.<sup>17</sup> Du Bois points out to Wilson that recognizing the principle of the consent of the governed to peoples around the world without resolving the question of the black people in America would not only be incoherent, but also expose America to embarrassment:

The international peace Congress that is to decide whether or not peoples shall have the right to dispose of themselves will find in its midst delegates from a nation which champions the principles of the 'consent of the governed' ... that nation ... includes in itself more than twelve million souls whose consent to be governed is never asked.<sup>18</sup>

In the letter to Clemenceau, Du Bois invites the French statesman to consider during the negotiations 'the establishing of a great Independent State in Africa, to be settled and governed by Negroes'. In this letter, it is not just the German colonies in Africa that should be given to the black race, but also an 'Independent Negro Central African State', including the Belgian Congo, Uganda, French Equatorial Africa and Portuguese Angola and Mozambique.<sup>19</sup>

### ***B Change of Circumstances: a New International Order After the Great War***

The shifting back and forth, including and excluding self-determination, in the petitions of the Pan-African movement illustrates the disadvantages of arguments based on civilization and the need to find alternative routes to justify self-government. Drafters of some of the petitions sent to Paris did not spend much ink showing that the standard of civilization had been met; rather they quickly assumed that the preconditions of sovereignty had been satisfied. They emphasized the high ideals on the basis of which the Allied Powers had fought and won the Great War. Then, they noticed the dissonance between these high ideals and the denial of sovereignty for those peoples who had been assured or implicitly promised self-government because of having joined the Allied Powers in the war effort and its sacrifices.

The Memorandum prepared by the Armenian delegation to the Peace Conference, for example, affirms that after the Great War and centuries of oppression, the Armenian Nation 'finds itself torn up and bleeding', but ready and determined to 'attain the realization of its national ideal through the victory of the Associated Powers, which have inscribed on their banners the principles of Right, Justice and of the rights of peoples to dispose their own destiny'.<sup>20</sup>

<sup>17</sup> Du Bois, 'Letter from W.E.B. Du Bois to President Woodrow Wilson, ca. November 1918', *W.E.B. Du Bois Papers* (MS 312). Special Collections and University Archives, University of Massachusetts Amherst Libraries, at 4.

<sup>18</sup> *Ibid.*, at 1–2.

<sup>19</sup> W.E.B. Du Bois, 'Letter from W. E. B. Du Bois to Premier of France (1918)', in *Du Bois Papers*, *supra* note 17.

<sup>20</sup> A. Aharonean and B. Nubar, *The Armenian Question before the Peace Conference* (1919), at 3.



The high ideals for which the war had been fought would be subverted if, after the war, allied forces refused independence to peoples living under colonial rule. The above-mentioned 1922 petition by Marcus Garvey's UNIA, for example, demanded 'racial political liberty' for the black race, because of the 'splendid service' it had delivered to the allied forces during World War I. The black race deserves a government of its own, the petition argues, recalling the promises given during the Great War: 'all peoples who contributed to the war would be considered at its conclusion'.<sup>21</sup> Similarly, the Armenian petition, where the human costs of the war had been enormous, invoked war sacrifice as a basis for a right to independence.

But more important than any promise, semi-peripherals believed that the Great War itself changed the international order in general as well as the circumstances under which pre-war international arrangements had been established, rendering the old order obsolete. On grounds that the war had introduced new international ideals, the 'Egyptian National Claims', the Memorandum signed by Saad Zaghloul (1858?–1927) and other nationalist leaders, for example, critiques the protectorate the English had established during the war. Saad Zaghloul was a lawyer who, with studies in Cairo and Paris, served as Minister of Education and leader of the opposition in the legislative assembly before the war. After the war, Zaghloul sought authorization from the British High Commissioner to travel to London in order to discuss Egypt's post-war status. After British refusal, Zaghloul organized a *wafd*, or delegation, to attend the Peace Conference, which later became the nationalist Wafd Party. When the British authorities denied the delegation permission to travel to Paris, Egyptian ministers in the protectorate resigned, riots broke out in Cairo and Zaghloul was arrested and interned in Malta.<sup>22</sup>

The Claim of the *wafd*, in a nod to the standard of civilization, like most petitions drafted to be presented at Paris, recalls Egypt's 'glorious history' and 'moral and material conditions'. But then the Claim turns to other types of arguments. It explains that the Egyptian requests made during the war to the English 'to recognise the independence of Egypt in return for her engagement to take part in the war on the side of Great Britain' were ignored. Egyptians – the Claim observes – were moreover shocked when Britain declared Egypt a protectorate under the excuse of the special circumstances brought by the war. Nevertheless Egyptians felt reassured, for they knew that the allied forces were 'only fighting for the triumph of Right and the defence of oppressed nations'. When the United States got involved in the war, 'no one in Egypt' doubted. American involvement responded to one sole aim: 'liberating the world'.<sup>23</sup>

Highlighting the values and ideals for which the war was fought allowed the drafters of the Egyptian Memorandum to consider the standard of civilization as an anachronistic doctrine. 'The right to life and to liberty' can no longer be 'confined to certain continents or to certain latitudes'.<sup>24</sup> Egyptians – the Memorandum warns – refuse

<sup>21</sup> UNIA, *supra* note 1, at 736, 738.

<sup>22</sup> A. Goldschmidt, *Biographical Dictionary of Modern Egypt* (2000), at 234.

<sup>23</sup> Egyptian Delegation, *The Egyptian National Claims a Memorandum Presented to the Peace Conference by the Egyptian Delegation Charged with the Defence of Egyptian Independence* (1919), at 3

<sup>24</sup> *Ibid.*

to serve the ‘appetites of Imperialists’. In a direct attack against the standard, the Memorandum affirms that the new order ‘cannot continue to distinguish between nations, some to be made free and others to be doomed to slavery, only because the Western mind has been pleased for long centuries to trace limits, both ethnic and geographic’. Doing so would be in ‘absolute contradiction to the new spirit which the result of the war has happily consecrated’.<sup>25</sup> The Memorandum insists, ‘all particular considerations of belief, of special customs, of mentality’ should not be considered when determining the rights and privileges governing the relations between nations. Because, in fact, the Memorandum concludes: ‘each country has its own civilization’.

Change of circumstances, in its technical legal meaning, was also present in some of the semi-peripheral petitions drafted for the Peace Conference. Change of circumstances, namely a doctrine allowing a treaty to become invalid after entering into force because of a fundamental modification of the conditions under which the treaty had been negotiated and concluded, was a distinctively modern doctrine. Classical international legal thought, emphasizing absolute sovereignty, based the binding force of treaties on state consent: more specifically on the principle of *pacta sunt servanda*, that recognizes consent as the main source of obligation. Change of circumstances, the principle of *rebus sic stantibus*, on the other hand, was among the doctrines modern legal scholars developed to attenuate the absolute character of classical sovereignty. In 1919, when semi-peripheral petitions began to make use of this doctrine, it was invoked by some peoples fighting for self-determination, but more frequently by peoples whose formal sovereignty was recognized but who were subjected to unequal treaties. Among the former, the Korean petition of 1919, for example, regarded the Japanese treaty of annexation of 1910 as null and void, or abrogated by the Peace Conference, ‘in virtue of the fundamental rules of international law and the *new justice* which is to redress the wrongs of nations’.<sup>26</sup>

Among the latter, the claims brought to the peace negotiations by the Chinese, Ottoman and Persian delegations relied on the doctrine of change of circumstances to justify the abrogation of unequal treaties.<sup>27</sup> The ‘Claims of Persia’, for example, requests the Peace Conference that treaties ‘in contravention of Persia’s independence be recognized null and void and that guarantees be given her to the future’.<sup>28</sup> Like other memoranda drafted in 1919, this document simply assumes the right of independence and integrity of Iran.<sup>29</sup> Then it exposes violations of Iran’s political, economic and juridical independence.<sup>30</sup> And it concludes with a call to put an end to these violations in the name of a ‘new Era of Justice and Equality which is drawing in every

<sup>25</sup> *Ibid.*, at 4.

<sup>26</sup> Conférence de la paix, *supra* note 6, at 6 (emphasis in the original).

<sup>27</sup> Chinese delegation to the Peace Conference, *The Claim of China: Submitting for Abrogation by the Peace Conference the Treaties and Notes Made and Exchanged by and Between China and Japan on May 25, 1915* (1919); M. ol-Memalek, *Claims of Persia before the Conference of the Preliminaries of Peace at Paris* (1919); Délégation Ottomane, *Observations présentées par la délégation Ottomane à la Conférence de la Paix* (1920).

<sup>28</sup> Memalek, *supra* note 27, at 1.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*, at 3–5.

country and which adumbrates the advent of the reign of Humanity and Justice and the aegis of the League of Nations'.<sup>31</sup>

### C Destabilizing the Civilized/Uncivilized Divide

When the Great War irreparably damaged European prestige, when the monopoly over civilization had slipped away from the West, semi-peripherals were ready to critique Western powers' rule over the non-Western world and destabilize the standard of civilization. After the war, the concept of civilization and civilized nations was no longer self-evident.<sup>32</sup> In 1919 semi-peripheral petitions and memoranda began to question and blur the difference between the civilized and the uncivilized, and its correspondence to Western and non-Western peoples. It was later on and in the context of European military violence waged against non-Western peoples fighting for independence that semi-peripherals explicitly discredited the standard by pointing out Western powers' savage behaviour.

In 1919, for example, in a draft version of the Egyptian National Claims which, according to Erez Manela, circulated among diplomatic circles in Cairo, Zaghoul compared Egypt's ancient civilization with British rule in Egypt. British rule was 'at utter variance with justice, not to mention civilization'.<sup>33</sup> Similarly, Lajpat Rai questioned the capacity of the British Empire to be India's trustee.<sup>34</sup> Moreover, the Egypt Association in Great Britain drafted a letter that circulated among diplomatic circles in London, denouncing British atrocities by including photographs of detained Egyptian notables.<sup>35</sup>

The Egyptian National Claims Memorandum sent to Paris, on the other hand, destabilized the standard by contextualizing its application and showing that rather than a legal doctrine, it was a cover for self-interest. In 1881 – the Memorandum explains – Colonel Ahmed Orabi initiated an insurrection against the pro-Western Khedive, Tewfik Pasha. The governments of France and Britain did not recognize the new government. Moreover, Britain bombarded Alexandria to protect foreign residents and punish Egyptians for the killing of Western residents during the Orabi uprising. The bombardment was followed by permanent occupation. Since occupation – the Claim notes – the British government had been changing the justifications for its rule over Egypt. 'First of all it was the restoration of the Khedive's authority, then the menace of the Dervishes, later the retaking of Sudan, and finally when all these pretexts were exhausted, it became the well-known fiction of civilizing people insufficiently developed.'<sup>36</sup> Great Britain – the Memorandum concludes – is thus left with no other justification than its own 'desires and interests which are solely maintained by force'.<sup>37</sup>

<sup>31</sup> *Ibid.*, at 5.

<sup>32</sup> Obregon, 'The Civilized and the Uncivilized', in B. Fassbender *et al.* (eds), *The Oxford Handbook of the History of International Law* (2012), at 919, 928.

<sup>33</sup> E. Manela, *Wilsonian Moment: Self-determination and the International Origins of Anticolonial Nationalism* (2007), at 73.

<sup>34</sup> Lajpat Rai, among other arguments, affirmed that ancient Emperors of India were more liberal than modern Tsars and Kaisers: India Home Rule League, *supra* note 9, at 10.

<sup>35</sup> Letter sent to certain leaders of public opinion about the Egyptian Question by H.Y. Awad, 1 May 1919, USNA, RG 256, 883.00/159.

<sup>36</sup> Egyptian Delegation, *supra* note 23, at 13.

<sup>37</sup> *Ibid.*

This critique of the standard of civilization later became much stronger when semi-peripherals explicitly denounced the military tactics of Western forces combating non-Western insurgents fighting for independence as uncivilized. Syrian organizations, for example, protested the ‘barbarian outrages’ committed by the French in Damascus.<sup>38</sup> Moroccans condemned French bombardment of villages, the killing of women and children, and the use of poison gas.<sup>39</sup> Similarly, Koreans denounced not Western but Japanese forces for atrocities committed against civilians.<sup>40</sup>

Pointing to uncivilized behaviour to disgrace states repressing insurgents served to weaken colonial or mandatory powers’ claim to superior civilization, and thus arguably weakened the very same basis on which the mandates, colonies, or protectorates rested. Some of these documents strove for an additional objective. Denouncing outrages supported the call for greater involvement by the international community. For example, petitions from Syrian organizations denouncing French atrocities called for the Mandates Commission to appoint a special mission of enquiry. During the war of the Rif, rebels fighting Spanish and French forces called for the Red Cross to provide humanitarian protection to Rifians.

In June 1926, after the French bombardment of Damascus and after a special session of the Permanent Mandates Commission to discuss the Syrian uprising was held in Rome, the delegates of the Syro-Palestinian Congress in Geneva, Chekib Arslan (Shakib Arslan) (1869–1946) and Hsan el Djabri (Ihsan al-Jabiri) (1882–?), drafted a new report to the Commission.<sup>41</sup> Following the Commission’s advice, the report notes that Syrians have tried to reach an understanding with the French. But the French, the report complains, have ignored the Commission’s recommendations and have refused to consider Syrians aspirations. These aspirations, which are based on ‘the spirit of the Covenant of the League’, have been shattered by French ‘force and violence’.<sup>42</sup>

‘Under the eyes of the League of Nations’, the French have inflicted ‘a regime of terror’ upon Syrians. Recalling the ‘indescribable horrors’ suffered by the Syrian people, the report requests the Commission to send a special mission of inquiry. The French horrors are evoked by reference to both word and image: ‘[t]he son of the Cadi of Damascus Alhalabi and many others were executed without any sentence and under a simple accusation. ... A photograph is attached ... representing patriots decapitated and exposed on the street for seven days, after having suffered the most indescribable torture’.<sup>43</sup>

<sup>38</sup> Die Syrische Kolonie in Berlin. ‘Protest der Syrer Berlin, Heftiger Protest gegen die barbarischen Schandtaten der Franzosen in Syrien’, in 8 *Die Welt des Islams* (1926) 133.

<sup>39</sup> ‘To the International Court, by order of the Moroccan People’. 1925, LoN Archive, 11/41616/12861.

<sup>40</sup> Among the many documents sent by the Korean nationalist movement, recounting Japanese outrages, repression, and statements by prisoners see ‘Organizing Committee of the Independent Movement, The Grievances of the Korean People and the bad government of Japan’, 1920 LoN Archive 11/4515/302.

<sup>41</sup> ‘Communication datée de Genève le 7 juin 1926 et signée par L’Emir Chekib Arslan et Ihsan El Djarbi’, LoN C.P.M. 440.

<sup>42</sup> *Ibid.*, at 1.

<sup>43</sup> *Ibid.*, at 4.

During the war of the Rif (1921–1926), Riffian rebels resisted the Spanish protectorate by force, first fighting and defeating Spanish forces and then fighting and being defeated by both the Spanish and French military. In addition to waging guerrilla warfare, Rif rebels drafted documents which not only denounced an 'unjust war', but also accused Spain of 'barbarism'. In 1922, the leader of the Rif insurgent nation, Abd-el-Krim (1883–1963), issued an address, notably entitled 'To the Civilized Nations':

It is now high time that Europe, who, in this twentieth century claims that she stands to uphold the standard of civilization and to uplift humanity, should carry this noble principle from the domain of precept into that of practice ... The Spaniards believe that they have been entrusted by Europe with the work of reformation and civilization. But the Riffians ask: Does reformation consist in destruction of habitations by the use of forbidden weapons?<sup>44</sup>

Placing the Spaniards on the side of barbarism and the rebels on the side of humanity, the address affirms that the Rif 'is anxious to set up a system of government for herself'.<sup>45</sup> In fact, four years later, in 1926, Abd-el-Krim invokes the interest of humanity to request the intervention of the Red Cross to provide medical assistance.<sup>46</sup> Riffians never opposed 'European rights and reforms and civilization'. What Riffians oppose is rule by Spaniards, who – Abd-el-Krim affirms – 'simply because they go by the name of Europeans, . . . claim to be civilized, while as a matter of fact, far from being reformers or protectors, they are only blind conquerors'.<sup>47</sup>

### 3 After the Defeat of Self-determination, Statehood

The dissociation of the classical equation between civilization and sovereignty was an important step in the road towards the dissolution of the standard. The dissolution of the standard, in turn, was a crucial step towards the emergence of self-determination. But what was the meaning of Wilsonian self-determination? What was the scope of self-determination in 1919 when the standard of civilization had yet to be dissolved?

Self-determination, as conceived by Wilson, was neither the right peoples without sovereignty demanded in 1919, nor the continuation of the standard of civilization as the central doctrine on which inclusion in the international community depended. Erez Manela has convincingly argued that Wilson's position was much more complicated. There is 'little evidence', Manela suggests, that Wilson considered the impact of self-determination on colonial peoples. At the same time, Wilson 'did not exclude non-European peoples ... as a matter of principle'.<sup>48</sup> Unlike Lenin's direct challenge to imperialism, Wilson's ideal combined both a principle of self-government, as originally affirmed in relation to the European situation requiring consent of the governed, as well as a belief in the role Western states should have in assisting less developed peoples. Guiding

<sup>44</sup> Abd-el-Krim, 'To the Civilized Nations', 1922 LoN Archive, 11/23217/12861, at 2.

<sup>45</sup> *Ibid.*, at 3.

<sup>46</sup> D. Sasse, *Franzosen, Briten und Deutsche im Rifkrieg 1921–1926: Spekulanten und Sympathisanten, Deserteure und Hasardeure im Dienste Abdelkrims* (2006), at 82.

<sup>47</sup> Abd-el-Krim, *supra* note 44, at 2–3.

<sup>48</sup> Manela, *supra* note 33, at 25.

peoples, in a gradual and orderly manner, through the steps towards modernization, was in fact the principle adopted by the League's mandate system. Combining these two facets, the Wilsonian principle was ambiguous enough to allow for the appropriation of self-determination by non-European peoples fighting for independence. Thus, if there was ambiguity and room for interpretation in Wilson's principle, it is not surprising that peoples claiming self-government in 1919, as we have seen, included a range of arguments that sometimes contradicted each other. 1919 petitions included claims based on the deep historical roots of non-Western civilizations, claims based on war promises and on the subversion of the distinction between civilized and uncivilized, as well as claims based on the right to self-determination or political independence, pure and simple, that is, 'because independence is a natural infeasible right of nations'.<sup>49</sup>

However, there was a long road to travel for self-determination to become an autonomous right. In fact, self-determination has never become a right independent from other doctrinal considerations, such as the definition of a people, the prohibition of secession, and the actual enjoyment of political independence.<sup>50</sup> During the interwar years, this last consideration was determining. Self-determination would lose much of its rhetorical or strategic appeal if peoples which did not in fact enjoy independence could not effectively invoke self-determination against the power holding a colony, protectorate, or mandate. And this is what actually happened.

When hopes for a future with political independence and equality were shattered by the Paris peace settlement, semi-peripheral lawyers and activists reassessed their strategies. Neither nationalist leaders nor Pan-African activists were allowed to attend the Peace Conference and present their demands. Eliézier Cadet, the envoy from the UNIA, could report on various adventures in Paris, but nothing beyond making some inroads into intellectual circles and meeting progressive journalists. Du Bois failed in his attempt to be received by Clemenceau and Wilson. The more renowned members of the nationalist movement in Egypt and India, Saad Zaghloul and Lala Lajpat Rai, were excluded from the delegations authorized by Britain to travel to Paris, while the Korean delegate, Kim Kyu-shik, although making it to Paris, was not admitted to the negotiations.<sup>51</sup>

Without representation from peoples without sovereignty, like delegates from the former colonies and territories of Germany and the Ottoman Empire, the disappointing outcome reached at the Paris Peace Conference was not surprising. The German colonies in Africa were given as mandates to Belgium, Britain, and South Africa. Moreover, Armenian independence was not recognized, as the former territories of the Ottoman Empire outside Turkey were also converted into mandates.<sup>52</sup>

<sup>49</sup> Egyptian Delegation, *supra* note 23, at 20.

<sup>50</sup> See, in general, J. Fisch, *Das Selbstbestimmungsrecht der Völker oder die Domestizierung einer Illusion: Eine Geschichte* (2010).

<sup>51</sup> Manela, *supra* note 33, at 207; H. Hu, *Le problème coréen* (1953).

<sup>52</sup> The creation of an Armenian mandate in the hands of the US also failed when the Treaty of Sèvres of 1920 was not ratified, and it finally came under Turkish rule in the Treaty of Lausanne 1923, after the Armenian–Turkish war.

In consequence, the combination of arguments in the petitions drafted for the Peace Conference changed after 1919. On the one hand, peoples that had obtained or enjoyed some level of independence, like Armenia, Azerbaijan, and Ethiopia, sought direct admission to the League. The new combination of arguments in the requests for admission had self-determination occupying a much more modest role. Instead, centre stage was given to the requirements of statehood. On the other hand, peoples that could not secure some level of factual independence continued petitioning the League of Nations. They continued combining a variety of arguments, but overall giving also more relevance to arguments based on statehood and admission to the League than to arguments based on self-determination. Some additionally sought armed resistance to obtain independence, making use of international legal arguments to make military resistance successful.

The interwar reassessment of semi-peripheral legal strategies marked a trend in the intellectual history of international law. The standards of civilization and self-determination were gradually substituted by statehood. Peoples without independence, although defeated at the Peace Conference, continued their struggle using international legal arguments. Garvey's UNIA continued drafting petitions to be carried by special delegations arriving, now that the League was inaugurated, in Geneva. The UNIA petition of 1922 mentioned above neither makes explicit reference to self-determination nor mentions the standard of civilization. Instead we see the formal steps a recognized state would have followed to be heard at the League of Nations. A copy of the petition by the UNIA was enclosed in a letter to Eric Drummond, Secretary General of the League. With a colourful stamp and solemn language, Marcus Garvey informs him that a delegation has been appointed to present the petition to the impending Assembly of the League.<sup>53</sup> The form of the petition changed, but not the answer given by the League. Drummond's laconic reply explained that rules of procedure did not provide for hearing delegations other than those officially representing states members of the League. Rather condescendingly, Drummond notes that meetings are held in public and that seats to hear the debates can be reserved on application to the Secretariat.<sup>54</sup>

Regardless of the disenchanting reply, a UNIA delegation arrived in Geneva in September. The delegation was led by George Osborne Marke (1867–1929), a Sierra Leonean who, after studying in England and working as a government clerk in Sierra Leone, moved to the US and became UNIA's supreme deputy potentate. Upon arrival Marke reserved seats and asked for an interview with Drummond. The Secretary General and Marke never met. Marke, however, managed to meet with the head of the Iranian delegation, Prince Mirza Reza Khan Arfa-ed Dowleh (1854–1838), who agreed to submit the UNIA petition to the Assembly of the League. At the request of the Iranian delegation, copies of the petition circulated and the petition was mentioned in the League's official journal.<sup>55</sup>

<sup>53</sup> LoN Archive, 1/22354/21159.

<sup>54</sup> *Ibid.*

<sup>55</sup> See Marke's request to submit UNIA's petition to the Assembly, LoN Archive 1/21159/21159. Rather than meeting with Drummond, Marke met with the League's director of the mandates section and the minorities section, William Rappard, who officially requested the petition to be included in the League's Journal: see *ibid.*

Similarly, during the 1920s, the Syro-Palestinian Congress and the Conseil Administratif du Liban sent countless petitions to the League of Nations mentioning neither the standard of civilization, nor self-determination.<sup>56</sup> The Lebanese petition affirms that Lebanon has become in fact a sovereign state after the abolition of the Turkish suzerainty. The Syro-Palestinian Congress, on the other hand, like the UNIA, behaved like a sovereign entity, appointing a permanent delegate, Shakib Arslan, to represent the Syrian cause in front of the League. In 1922, a petition by the Syro-Palestinian Congress demanded, among other things, ‘recognition of independence and sovereignty of Syria, Libya and Palestine; evacuation of foreign occupying armies; annulment of treaties against our rights; non-ratification of the Syrian Mandate and authorization to present a request for admission to the League’.<sup>57</sup>

### *A Membership of the League of Nations: the Argentinian Challenge*

The Syro-Palestinian petition of 1922 suggests that after the demands for self-determination were defeated in Paris admission to the League of Nations became an alternative strategy for demanding the recognition of sovereignty. This option became even more promising for semi-peripheral peoples that had acquired a modicum of political independence. Thus, during the early years of the League, semi-peripheral states that had not been invited to join the League, like Ethiopia and Hedjaz in addition to other polities formerly part of the Russian empire, such as Azerbaijan and the Ukraine, drafted documents seeking admission to the League of Nations. These documents as well as the procedure developed to deal with the requests for membership marked a clear departure from the standard of civilization. The trend initiated by the 1919 petitions, in which having civilization was combined with self-determination, gave way to requests for admission based on statehood and observance of international obligations.

According to Article 1 of the Covenant of the League of Nations, ‘any fully self-governing State, Dominion or Colony’ may become a member, ‘provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments’. The vague wording of Article 1, requiring but not defining self-government, reflected the complexities of the question of membership. These complexities have been well illustrated by Alison Duxbury, in her study on the participation of states in international organizations.<sup>58</sup> The definition of membership, Duxbury argues, had been one of the difficult issues to discuss as soon as the idea of establishing a permanent international organization was considered during the war. It was the same problem that had been previously

<sup>56</sup> See, e.g., ‘Les droits du Liban après la guerre avec la disparition de la suzeraineté turque’, 8 *Die Welt des Islams* (1926) 105; ‘Pétition du Comité exécutif du Congrès syro-palestinien’, LoN C.P.M. 368.

<sup>57</sup> Congrès Syrio-Palestinien (Genève 25 août–21 sept. 1921), *Appel adressé à la Assemblée générale de la Société des Nations* (Impr. Tribune de Genève, 1921).

<sup>58</sup> A. Duxbury, *The Participation of States in International Organisations: The Role of Human Rights and Democracy* (2011).



confronted at The Hague Conference of 1907. If universal membership were to be granted, Great Powers could be outnumbered by small states. Universal membership, even for activists in the peace movement, was out of the question. For example, the British League of Nations Society, as Duxbury shows, limited membership to 'any civilised State' desiring to join the League.<sup>59</sup> Among American groups, the private study group led by Theodore Marburg restricted membership to the Great Powers and some 'secondary powers'. While 'smaller states' could be admitted if they had 'settled conditions', 'backward nations including Balkan States and Turkey' should be absolutely kept out.<sup>60</sup>

The restrictive standard of membership supported by different study groups simply reflected the view most commonly held in the West regarding the limitation of self-determination to European peoples. When this idea came to fruition with the establishment of the Mandate system, the discussion about the rules of membership during the Paris Conference presupposed the exclusion of non-Western peoples who were not enjoying self-government. It is in the context of this prior exclusion that during the Paris negotiations the Commission of the League of Nations discussed several proposals that sought to define membership based on a principle of universality and according to criteria of self-government, democracy, or independence.<sup>61</sup> 'Self-governing State, Dominion or Colony', the formula adopted by the Commission and included in Article 1, was broad and ambiguous enough to embrace the conflicting positions of the Great Powers. It was also ambiguous enough to be appropriated by non-Western peoples, not just in support of their requests to enter the League, but also in the effort to define the general rules of statehood.

When the First Assembly of the League met at the end of 1920, 16 requests for admission had been sent to Geneva. The Fifth Committee, entrusted by the First Assembly to study the admission of new members, confronted the difficulty of giving practical meaning to the formula contained in Article 1. As in the Hague Conference, semi-peripheral states admitted to the League took advantage of the opportunity that an international forum offers to less powerful players. For example, the Chilean delegate Antonio Huneeus (1870–1951) became Chairman of the Fifth Committee, simply because it was thought practical to find someone without connections to the big powers to head the Committee.<sup>62</sup> The Argentinean delegate Honorio Pueyrredón (1876–1945), on the other hand, used the international stage to act as a big power, demanding universal membership, under the threat of withdrawing Argentina from the League. In general, delegates from other semi-peripheral states used every opportunity to defend the position of smaller states. Antonio Restrepo (1855–1933), from

<sup>59</sup> *Ibid.*, at 64–65.

<sup>60</sup> T. Marburg, *Development of the League of Nations Idea* (1932), ii, at 725–726, and also Duxbury, *supra* note 58.

<sup>61</sup> See *ibid.*, at 66–71. Interestingly, neutral states, mostly Latin American states, supported an inclusive standard for membership: G. Schwarzenberger, *The League of Nations and World Order* (1936), at 44.

<sup>62</sup> '[T]here was considerable surprise ... and there seemed little reason for his election except that the country he represented was as far as possible to find one': O. Brett, R. Cecil, and W. Phillimore, *The First Assembly; A Study of the Proceedings of the First Assembly of the League of Nations* (1921), at 197.

Colombia and Emir Zoka-ed-Dowleh from Iran, for example, were described by British participants as ‘champions of the small states’.<sup>63</sup>

At its first meeting, the Fifth Committee adopted a general questionnaire and appointed three sub-committees to consider the different requests for admission. The questionnaire adopted by the Committee contained the requirements states should meet to join the League:

- (1) Was the application in order? (2) Was the Government applying for admission recognized ‘de jure’ or ‘de facto’ and by which states? (3) Was the applicant a nation with a stable government and settled frontiers? What was its size and population? (4) Was it fully self-governing? (5) What had been its conduct with regard to (i) its international obligations; (ii) the prescriptions of the League as to armaments?<sup>64</sup>

Some have interpreted the questionnaire as spelling out a ‘new standard of civilization’ foreshadowing the definition of statehood in the Montevideo Convention of 1933.<sup>65</sup> As a criterion for membership and statehood, the questionnaire certainly entailed new grounds for exclusion, like the requirement regarding settled frontiers, which was frequently invoked to deny membership to polities formerly part of the Russian empire.<sup>66</sup> But the requirements listed in the questionnaire were different, more concrete, and procedural, than the 19th century standard of civilization, which before its appropriation by semi-peripherals was infused with religious and cultural content.<sup>67</sup>

Semi-peripherals, however, were well aware that discussing new criteria for membership could reopen the debate about the universality of international law and renew the threat of new grounds emerging to justify the exclusion of smaller states. In 1920, Honorio Pueyrredón, the Argentinean minister of foreign relations and delegate to the First Assembly, took the stand to voice dissent. At the fifth plenary meeting, Pueyrredón recalled the central principles of international law Argentina had defended before the war, namely: sovereign equality, compulsory arbitration, respect for decisions by the court of arbitration, and the proscription of force to secure the payment of sovereign debts, which were the central elements of classical semi-peripheral thinking.<sup>68</sup> Pueyrredón, in fact, reiterated the major claim defended by semi-peripherals at the Second Hague Conference, namely respect for the principle of sovereign equality in international organizations. Pueyrredón thus demanded respect for sovereign equality, in terms both of admission and participation in the League. All

<sup>63</sup> *Ibid.*, at 207.

<sup>64</sup> LoN, *The Records of the First Assembly. Meetings of the Committees* (1920), at 159.

<sup>65</sup> G. Gong, *The Standard of ‘Civilization’ in International Society* (1984), at 26. However, the Montevideo definition is significantly different from the criterion reflected in the questionnaire. Montevideo does not include the requirement of full self-governance, an element crucial to exclude polities fighting for independence without securing actual control.

<sup>66</sup> E.g., the rapporteur appointed by the Fifth Committee to examine the applications by Azerbaijan and Ukraine did not favour their admission because their ‘frontiers did not appear either stable or clearly defined’: LoN, *The Records of the First Assembly. Meetings of the Committees* (1920), at 173–174.

<sup>67</sup> E.g., if the standard of civilization as interpreted by Western lawyers made reference to forms of punishment, the questionnaire talks about stable government.

<sup>68</sup> LoN, *Records of the First Assembly. Plenary Meetings* (1920), at 87–90 (fifth plenary meeting).

members of the Council should be 'voted by the Assembly in conformity with the principle of the equality of States'. Otherwise – Pueyrredón warned – the League would not be in harmony with the 'democratic regime'.<sup>69</sup> To respect the equality of all states, Pueyrredón moreover believed that the League should be open to universal membership: '[t]he strength of the League lies in the incorporation of the greatest number of Members; the fewer the states outside it, the more numerous will be those submitted to its discipline and ready to carry out the duties which it imposes upon them'.<sup>70</sup>

Universality was invoked by Pueyrredón in the context of the exclusion of the states defeated in the war: 'the non-admission of certain countries might be the cause of dangerous antagonisms ... The League would appear ... to be an alliance formed to conclude the late war, and not, as is it in reality, a powerful organization to maintain peace.'<sup>71</sup> Although these interventions were interpreted by some contemporaries as a defence of German interests, Pueyrredón defended a principled position of general application.<sup>72</sup> For instance, Pueyrredón formulated at the Fifth Committee a proposal specifically connected to 'nations ... not permitted to become members of the League of Nations because they are not recognized as sovereign States'. Pueyrredón proposed that 'with the permission of the Council', these nations could 'appoint representatives to sit in the Assembly, but without right to vote'. Had this proposal had support, it is worth remembering, the UNIA or Syrian delegation would have had the right to take sit in the Assembly, and Eric Drummond, the League's Secretary General, would not have been right telling it to seek seating among the general public.<sup>73</sup>

At the thirteenth plenary meeting, Pueyrredón presented a general motion to amend the Covenant's rules to recognize universal membership: '[t]hat all Sovereign States recognised by the community of Nations be admitted to join the League of Nations in such a manner that if they do not become Members of the League, this can only be the result of a voluntary decision on their part'.<sup>74</sup> The motion was not discussed, and Pueyrredón announced at the next plenary session that Argentina would be withdrawing from the League.<sup>75</sup>

## B Requesting Admission at the First Assembly

On 1 November 1920, Alimardan Topchubashev (1862–1934), head of the Azerbaijan Peace Delegation at Paris, now in Geneva, submitted a request for admission to Secretary General Drummond. The request recalls the memorandum presented the year before by the delegation in Paris. Like most documents brought to the Peace Conference in 1919, the Azerbaijani Memorandum appealed to 'great Wilsonian principles'. It demanded independence based on 'the rights of peoples to

<sup>69</sup> *Ibid.*, at 90.

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*

<sup>72</sup> See, e.g., Rappard, 'Germany at Geneva', 4 *Foreign Affairs* (1926) 535, at 537.

<sup>73</sup> LoN, *supra* note 66, at 211.

<sup>74</sup> LoN, *supra* note 68, at 261 (request at the Fifth Committee).

<sup>75</sup> *Ibid.*, at 276–278.

self-determination'. Moreover, 'wishing to place itself ... beneath the high protection of the League', the Memorandum also requested admission to the League.<sup>76</sup> The following year, in preparation for the First Assembly of the League of Nations, the Azerbaijani delegation followed up on the request for admission. The 1920 request, however, did not reiterate the appeal to the right to self-determination; instead it appealed to political independence based on statehood and recognition.

'Led by an ardent aspiration to independent life based on political, social and religious liberty', the request declares that the Azerbaijani people is 'anxious to become a Mohamedan State of Republican form, democratic in character from both the political and religious point of view, with equal universal suffrage for all elements of the population'.<sup>77</sup> The request declared repeatedly the Republic's adherence to democratic principles, including universal suffrage – 'the first time women have voted in a Mohamedan country' – and equality – 'with guarantees for the rights of minorities'.<sup>78</sup> The Azerbaijani Delegation, however, faced a serious obstacle. A few months before the presentation of the request, after the invasion by Soviet forces, the Republic had lost absolute control of its territory. Thus, on the one hand, the request recalls the Azerbaijani people's struggle for independence against 'Red terror', assuring that it will rid itself of 'Russian Bolsheviks'. On the other hand, the request reminds one that in 1919 the independence of Azerbaijan had already been *de facto* recognized by the Supreme Council of the Allied Powers.<sup>79</sup> This combination of statehood, struggle against oppression to secure actual territorial control, and *de facto* recognition was also at the centre of the requests for admission drafted by the other two Caucasian states recognized by the Council, Armenia and Georgia.<sup>80</sup>

But hopes that Azerbaijani, Armenian, or Georgian peoples could repel foreign forces remained just a distant aspiration. And probably intuitions about the fate of their peoples were behind the sombre tone adopted by the drafters. Compared to the optimism of the memorandum of 1919, the Azerbaijani request for admission concludes with a technical appeal to legal formality. If expressing commitment to restricting sovereign autonomy in the name of international obligations, including limitations on armaments, was the most demanding requisite asked of states intending to join the League, the Azerbaijani request eagerly proclaimed commitment, at a point at which it may have been clear that international obligations would never come to life.<sup>81</sup> One can only guess with difficulty whether the appeal to legal formality dressed a utopian faith in

<sup>76</sup> Paris Peace Conference, *Claims of the Peace Delegation of the Republic of Caucasian Azerbaidjan Presented to the Peace Conference in Paris* (1919) and LoN, 'Admission of the Azerbaidjan Republic to the League', Document de l'Assemblée 20/48/68.

<sup>77</sup> *Ibid.*, at 3.

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*, at 4. 'All classes rejoiced and blessed this first step towards entry into the great family of States': *ibid.* See also Republic of Azerbaidjan, Letter from the President of the Peace Delegation of the Republic of Azerbaidjan, Document de l'Assemblée 206, Dec. 1920.

<sup>80</sup> See LoN, 'Request from Armenia for Admission to the LoN', Document de l'Assemblée 20/48/33.

<sup>81</sup> 'The Delegation regards its duty to accept all obligations imposed by the Covenant ... as well as all obligations of an international character': LoN, *supra* note 76, at 4.

international law, or whether it concealed a sense of resignation. But we know that dying in Parisian exile, Alimardan Topchubashev never returned to Baku.<sup>82</sup>

Both the Committee and the First Assembly rejected the Azerbaijani, Armenian, and Georgian requests.<sup>83</sup> Notwithstanding the Committee's rejection, Huneecus advised that it should not prevent the taking of future applications into consideration. Moreover, he proposed to give new states that were not admitted 'the best welcome that we can, let us show them our sympathy, and give them access to the Technical Organizations, above all that of Labour'.<sup>84</sup> Similarly, the Iranian delegate, Emir Zoka-ed-Dowleh, supporting universal membership, regretted that 'Armenia, Azerbadjan, the Caucasus and the Ukraine' did not fulfil the requirements for admission and hoped that they would be admitted in the future. With this purpose, Zoka-ed-Dowleh demanded that all 'requests for admission of all Sates possessing defined frontiers and stable Governments, and inspired by democratic ideas, should be accepted'.<sup>85</sup>

When the Assembly discussed the requests by the Baltic States and Georgia, in relation to which the Committee had also suggested rejecting admission, granting instead participation in technical organizations, the Colombian delegate Restrepo expressed loud opposition to the report and proposed immediate admission.<sup>86</sup> Restrepo informed the Assembly that he was 'forced regretfully' to vote against Armenia, because under occupation it did not satisfy the requirements of statehood. Restrepo, however, contended that there was no legal reason to deny admission to the Baltic States and Georgia.<sup>87</sup> The Portuguese delegate refuted Restrepo's argument, maintaining that only states recognized *de jure* could be admitted, since the independent existence of states that have not been recognized is not protected. Otherwise, the League would have to protect the integrity of non-recognized states, which is an obligation that 'the League could not assume'.<sup>88</sup> This exchange foreshadowed the controversy between Western and semi-peripheral states regarding the nature of recognition. In fact, Restrepo protested that requiring recognition amounts to creating a new requirement for membership.<sup>89</sup>

Regardless of Restrepo's best efforts the requests from the Baltic States, from Estonia, Latvia, and Lithuania, as well as from the Ukraine and Georgia were all rejected. The rejection of all Baltic and Caucasian States as well as Georgia and Ukraine was no success for the semi-periphery. However, throughout the discussions about admission, the rules governing membership were redrawn to require a formal standard including stable government, set boundaries, and commitment to obligations imposed by the League. Rather than making reference to the form of government, to the functioning

<sup>82</sup> Akhundov, 'Democratic Republic of Azerbaijan Leaders (1918–1920), Alimardan Topchubashev – Minister of Foreign Affairs (1862–1934)', 6 *Azerbaijan Int'l* (1998) 31, at 31.

<sup>83</sup> LoN, *supra* note 68, at 664. The Assembly rejected admission: *ibid.*, at 625.

<sup>84</sup> *Ibid.*, at 561–562.

<sup>85</sup> *Ibid.*, at 567.

<sup>86</sup> *Ibid.*, at 616–617.

<sup>87</sup> *Ibid.*, at 616.

<sup>88</sup> *Ibid.*, at 618.

<sup>89</sup> *Ibid.*, at 629.

of courts, and the protection of foreign residents, or to other cultural and religious practices, delegates from Western sovereigns invoked the inability to defend small states with unsecured boundaries. That considerations related to statehood displaced those which would previously have been required as part of the standard of civilization could be regarded as a remarkable victory. But we can already suspect, after all the examples we have encountered so far, that this victory was neither absolute nor available for every semi-peripheral polity. Though China and Ethiopia were members of the League at the time of the Japanese and Italian aggression, the League failed to make the collective security system work. Membership of polities that could not fit into the emerging standard of statehood, on the other hand, continued to be rejected. Let us briefly consider the requests for membership by Ethiopia and the Six Nations, which illustrate a definitive turn in the direction of statehood; at the same time it reminds us about the shortcomings of the semi-peripheral appropriations of modern international law.

### *C Requesting Admission after the First Assembly: Ethiopia*

After the First Assembly, the question of admission of new members was again discussed not only in relation to the German request, but also in relation to other semi-peripheral polities like Egypt and Iraq, and in 1923 Ethiopia and the Six Nations, a confederation of Haudenosaunee (or Iroquois) nations of North America. These applications confirm the trend from civilization to statehood that we saw in the 1919 petitions and the 1920 requests for admission. These requests, however, also reveal the limitations that a standard of statehood requiring actual independence imposed on semi-peripheral polities.

On 1 August 1923, the Crown Prince of Ethiopia, Ras Tafari Mekonnen (1892–1975), the future Emperor Haile Selassie, sent a telegram from Addis Ababa to Geneva. The telegram solicited the impending Assembly to consider Ethiopia's admission to the League. Containing the basic formal requirements, the short request was technically impeccable: '[i]n conformity with Article I of the Covenant ... I have the honour to solicit admission of the Empire of Ethiopia as a Member of the League of Nations ... Ethiopia ... is prepared to accept conditions contained in Article I of the Covenant, and to carry out all the obligations incumbent on Members'.<sup>90</sup> On 4 September, the Secretariat received a longer note confirming the telegram.<sup>91</sup>

This note was not only longer, but also a much more complex document. In addition to the familiar elements we have seen so far in the other requests for admission, the note contained rather unconventional allusions to Ethiopian peculiarities. Ethiopian statehood, on the one hand, was supported in a conventional manner by reference to the establishment of international relations regulated by law: 'we endeavoured to establish bonds of friendship: we built a railway, we adhered to the Brussels Convention, we joined the Universal Postal Union, and we signed treaties, which we

<sup>90</sup> LoN Doc. A.25.1923.VII.

<sup>91</sup> LoN Doc. A.55.1923.VII. Original copies in Amharic and French are at LoN Archive 28/30357/29888.

have always observed, with the Powers which cooperated to found the League of Nations'.<sup>92</sup> The note also contained unconventional passages: '[t]he Holy Scriptures bear witness that, since the year 1500 after Solomon we have been contending with the heathen ... for the true faith and the laws of God ... With God's help we have baptized thousand of heathen, who have become our brothers, and only in the time of our Emperor Menelek II have we had peace.'<sup>93</sup>

It would be tempting to understand this second statement in the note as an anachronistic reference to a classical standard of civilization dependent on Christianity. Rose Parfitt, however, has highlighted the hybrid nature, both Ethiopian and European, of this document and generally of Ethiopian engagements with international law.<sup>94</sup> Thus, like the telegram, the note appropriated European international legal concepts. For example, in addition to the way in which Ethiopian statehood was affirmed, the note recalls the central advantages Ethiopia should gain from membership: '[w]e know that the League of Nation guarantees the independence and territorial integrity of all nations in the world'.<sup>95</sup> In the same vein, the reference to Christianity served to point out that Ethiopia had settled boundaries.<sup>96</sup>

Tafari succeeded. The proceedings of the Seventh Plenary Meeting of the Fourth Assembly record the President announcing, 'As the Assembly has voted unanimously in favour of the admission of Abyssinia, I declare Abyssinia admitted to the League of Nations. (*Unanimous and prolonged applause*)'.<sup>97</sup> Before the vote was taken at the League's Assembly, the rapporteur of the Sub-Committee appointed to study the request explained that the Sixth Committee had drafted a declaration in relation to Ethiopia's international obligations regarding slavery and traffic in arms, which the Government of Abyssinia should sign in order to be admitted to the League. The Sixth Committee had devised a special and intricate formula to deal with the Ethiopian request. The Report by the Sub-Committee on the Abyssinian Request, although recommending admission, cautioned about the real extent of Abyssinian territorial control over its provinces as well as about its past fulfilment of international obligations. In light of this conclusion, the Report proposed, before recommending admission, that Abyssinia be required to sign a special declaration on the fulfilment of its international obligations in relation to slavery and the importation of arms and ammunition. The Report was met with a strong protest by the Abyssinian delegation.<sup>98</sup>

Delegates had a clear idea about the problem underlying the admission of Ethiopia. In the words of the French delegate Henry de Jouvenel (1876–1935), a renowned journalist who would later become High Commissioner of the Syrian mandate, the point was 'to know whether the Abyssinian Government intended to cooperate with

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*

<sup>94</sup> Parfitt, 'Empire des Nègres Blancs: The Hybridity of International Personality and the Abyssinia Crisis of 1935–36', 24 *Leiden J Int'l L* (2011) 849.

<sup>95</sup> LoN Archive 28/30357/29888.

<sup>96</sup> *Ibid.*

<sup>97</sup> LoN, *Official Journal*, Special Supplement, 13 (1923), at 125.

<sup>98</sup> LoN, *Official Journal*, Special Supplement, 19 (1923), at 17.

the League in the abolition of slavery'.<sup>99</sup> Once again semi-peripherals defended a strict reading of the rules governing membership that excluded references to a substantive criterion. Delegates from China and Venezuela supported Abyssinian admission, affirming that all conditions contained in Article 1 of the Covenant and the questionnaire formulated by the Committee to deal with admissions – recognition, self-governance, frontiers, and fulfilment of international obligations – were satisfied and that admission should not depend on any additional requirement.<sup>100</sup> Moreover, they argued that demanding that Abyssinia sign a special declaration was superfluous, for all members should fulfil their international obligations.<sup>101</sup>

Delegates representing Western states, on the other hand, were ready to foreground the abolition of slavery as a condition for admission. The question, however, was to determine whether this requirement would be understood only as spelling out one of the elements of the questionnaire, namely meeting international obligations, as semi-peripherals argued, or if slavery constituted a practice that, in contradiction to the standard of civilization, would condition or preclude admission to the League.

The latter position was defended by Joseph Cook (1860–1947) and E.F.L. Wood (1881–1959), the Australian and British delegates. In addition to requesting an inquiry into the capacity of the Abyssinian government to enforce its rule, Cook, a former Australian Prime Minister, argued that although the League 'recognized different degrees of civilization', admitting Abyssinia might 'create an anomaly, as that country might ... examine and criticise countries whose civilization was more advanced than her own'.<sup>102</sup> Likewise, Wood, a conservative politician, called attention to the conflicting motives delegates appealed to when deciding on the Abyssinian question. On the one hand, membership would 'help Abyssinia to raise herself in the scale of civilisation ... more effectively'. On the other hand, Wood invited the Committee to consider 'very carefully' whether 'Abyssinia was in a position to make a worthy contribution to the League', for 'the wellbeing of the League depended on the level of public opinion in each of the Member States'.<sup>103</sup>

Other Western delegates opposed the statements by Cook and Wood. Octave Louwers (1878–1959), the Belgian representative, invoked his country's 'natural tendency to defend the cause of the small States' in support of the semi-peripheral position. Criticizing Cook's appeal to the 'state of civilization', Louwers, a lawyer, an expert on the Belgian Congo and member of the Colonial Council of the Belgian Ministry of Foreign Affairs, pointed out that civilization was required neither by the Covenant nor by the Committee. Since civilization was not a requisite to granting admission, Louwers believed that there was no reason to require Ethiopia to sign a special declaration. But if the declaration simply spelled out Ethiopia's international obligations, 'the

<sup>99</sup> *Ibid.*, at 14.

<sup>100</sup> *Ibid.* The Venezuelan delegate, at 14, and the Chinese delegate, Tcheu-Wei ('the League is an association of Nations ... should include all mankind'), at 15.

<sup>101</sup> *Ibid.*, at 14.

<sup>102</sup> *Ibid.*, at 15.

<sup>103</sup> *Ibid.*



prestige of the ancient African Empire could not therefore be affected by the signature of the proposed undertakings'. On the contrary, 'countries with advanced civilisation' had also been asked to accept a 'declaration of special undertakings'.<sup>104</sup>

The remarks by the Belgian representative did not dispel the chauvinistic and racist assumptions behind the idea of more and less civilized nations. Louwers, however, did deprive the distinction of legal meaning when invoked with the purpose of determining admission to the League. In this respect there was a marked difference in opinions between the Australian and Belgian delegates. Cook defended the legal meaning of the standard. For instance, the French delegate de Jouvenel reproached Cook for retrieving the classical standard, arguing that 'it might be unwise and dangerous to make classifications which might re-open the way to prejudices of race, caste, colour and nationality'.<sup>105</sup> Cook answered maintaining that his was not a reference to creed or race, but that 'admission to the League of peoples in a backward state of civilisation was rather anomalous when similar admission was refused, and with good reasons, to mandated territories'.<sup>106</sup> Cook was right when he defended his position based on the 'clear distinction between different degrees of civilisation' instituted by the 'Covenant and indeed the Peace Treaty'. But the Australian delegate was only partially right, for 1923 was not 1919. In 1923, no other delegate was ready to defend the standard of civilization as a requirement of membership. Cook's words died in the air without echo. After Cook's intervention, Paul Hymans (1865–1941), Minister of Foreign Affairs and Belgian Chairman, closed the discussion and the Committee decided to recommend admission to the League if the Abyssinian delegation possessing full powers signed the declaration.<sup>107</sup>

In terms of how the rules governing membership were formed, the admission of Ethiopia was a victory for the semi-periphery. But the argument here is not that the idealism of international law prevailed over sovereign interests. The argument is rather that when interests of great powers conflicted, so that Ethiopia's admission was politically feasible, semi-peripheral delegates seized the opportunity to shape the rules of membership to their advantage. From the Ethiopian perspective, however, it was a victory that soon showed fundamental shortcomings. Although formally sovereign, although now admitted to the League of Nations, Ethiopia was not free from foreign intervention. The League's collective security mechanism failed to defend Ethiopia from Italian aggression. That modern international law did not narrow the bases for lawful interventions in the semi-periphery was a lesson painfully realized from China to Latin America.

## 4 Conclusion: The Six Nations

However, the rules governing membership that emerged between 1919 and 1923 were beneficial to the semi-periphery because the shift from civilization to statehood introduced requirements that were more formal and thus easier for semi-peripheral

<sup>104</sup> *Ibid.*, at 16.

<sup>105</sup> *Ibid.*, at 20.

<sup>106</sup> *Ibid.*, at 21.

<sup>107</sup> *Ibid.*

polities to meet. Arguably, the requirements of statehood were easier to fulfil than the more substantive and thus vaguer and easier to manipulate standard of civilization. But this advantage was not true for all semi-peripheral polities. Statehood as the emerging standard according to which membership, and more importantly sovereignty, would be recognized, imposed important limitations on polities seeking independence without having secured territorial control. On the one hand, let us remember that statehood not only came to replace the standard of civilization, but also came as an alternative strategy after the failure of self-determination. Without a right to self-determination, polities struggling against foreign rule were left with few options other than resisting by force to regain territorial control. International law, in this case, was called into play by semi-peripherals, for example in the case of Syria and the Rif, only to afford better rules to those resorting to armed force.

On the other hand, the problem brought by statehood to peoples fighting for self-government that could only with difficulty gain territorial control intensified by the very same steps adopted by states, mandate power, or metropole in order to exercise territorial control and thus meet the definition of statehood. This second shortcoming was especially serious for indigenous peoples. The struggle for autonomy by the Haudenosaunee Confederacy, also known as the Iroquois Six Nations of the Grand River, nowadays in Ontario, Canada, offers a good example.

In September 1923, the Chief of the Six Nations, Deskaheh (1872–1925) arrived in Geneva with the intention of involving the League in the resolution of the conflict between the Six Nations and the Canadian dominion. After British refusal to mediate, Deskaheh had sought the good offices of the Government of the Netherlands. The Dutch authorities agreed to forward to the League a petition drafted by Deskaheh and his lawyer, George Decker.<sup>108</sup> In August 1923, the letter by the Government of the Netherlands to the Council, the Six Nations' petition, and the Canadian reply were all distributed to the members of Council of the League. The petition reads as an accurate articulation of the central elements required in order to be admitted to the League of Nations. It begins with a simple statement about the Six Nations: '[w]e are an organized and self-governing people'.<sup>109</sup>

Deskaheh's diplomatic offensive failed. But again, the defeat was political and not deep enough to stop the transformation of international law's doctrinal structure. Canada and Britain had to resort to behind the scenes machinations to forestall League intervention, rather than opting for what would earlier have been the most obvious strategy, namely invoking a standard of civilization against indigenous tribes. In 1923, this standard seemed no longer part of modern international law.

Some have interpreted statehood as a new standard of civilization.<sup>110</sup> This interpretation stresses the continuities between two modes of regulating exclusion and inequality. True, every standard of membership and inclusion will effect the exclusion

<sup>108</sup> Petition to the League of Nations from the Six Nations of the Grand River, Communicated by the Government of the Netherlands, LoN Doc. C.500.1923.VII.

<sup>109</sup> *Ibid.*, at 2.

<sup>110</sup> E.g., Gong, *supra* note 65, at 26.

of those polities not satisfying the set requirements. Notwithstanding the new grounds for exclusion, statehood was a semi-peripheral conquest in relation to the dissolution of the standard of civilization. This was a victory, though with considerable costs, as the defeat of Deskaheh shows. Statehood both accelerated a policy of assimilation of indigenous tribes by Canada and harmed any prospect of indigenous sovereignty in the absence of territorial control. Acquiring control by force thus became a factual condition for acquiring sovereignty. But at the level of ideas, with the emergence of a standard of statehood, the path to sovereignty became clear. In this process, the standard of civilization disappeared. Then, foreign – colonial, mandate, or protectorate – rule lost its justification and self-determination could re-emerge as the right of polities fighting for territorial control. This finally occurred later, with a change in international politics, during decolonization, but the intellectual seed had been sown before, during the interwar.