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Thoughts on the Nature and Consequences of Ungoverned Spaces
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> Since the 1990s, ungoverned spaces have increasingly been seen as a source of serious instability and threat in the international system. Society regards ungoverned spaces as the absence of a state as the authoritative allocator of value, provider of collective goods, and as the holder of a monopoly of legitimate coercion. The obvious remedy, then, is state building. This apparently simple formulation obscures the complexity and variability of ungoverned spaces and the reason for their emergence. Moreover, this ignores the fact that ungoverned spaces may lack government but not governance. Ungoverned spaces can pose a security threat, but terrorist groups are rarely responsible for their creation; the reason for their emergence is poor governance that prompts the populations in these areas to render themselves ungovernable by the existing central state.

Introduction

Land and territory are so closely associated with the notion of the state they are seldom analyzed separately. This is surprising given that the planet, apart from a few areas such as the Arctic, overwhelmingly divides into sovereign national territories,[1] and that the state remains the world's preeminent political association. This ubiquity and visibility helps explain why the concept of ungoverned territory seems so worrisome. This paper seeks to frame the concept of ungoverned spaces at an overarching level through three parts: the first considers its definition; the second explores the relationship between sovereignty, territoriality, and statehood; and the third importantly asks: do ungoverned territories pose a serious security threat? This paper's central contention is that ungoverned spaces can pose a significant security threat but that terrorist groups (for example) are seldom, if ever, responsible for the creation of these spaces. At the heart of the problem lies poor governance that leads the populations of these spaces to render themselves ungovernable by the existing central state.

Definition

Studies of ungoverned territory have been—and remain—strongly influenced by the state failure literature that emerged in the 1990s.[2] The RAND Corporation's definition, for example, derives from—and constitutes a part of—this discourse: "Ungoverned territories can be failed or failing states; poorly controlled land or maritime borders or airspace; or areas within otherwise viable states where the central government's authority does not extend."[3] In this context, the concept of the ungoverned space is inherent in doctrines in counterinsurgency; counterterrorism; counternarcotics; stabilization and reconstruction; and peace building.[4] In turn, political scientists tend to invariably equate ungoverned areas with "security threat" and all that it implies. A more inclusive definition of ungoverned territory by the US Department of Defense—albeit one still influenced strongly by the state failure thesis—holds that an ungoverned space is,

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A place where the state or central government is unable or unwilling to extend control, effectively govern, or influence the local population, and where a provincial, local, tribal or autonomous government does not fully or effectively govern, due to inadequate governance capacity, insufficient political will, gaps in legitimacy, the presence of conflict, or restrictive norms of behavior. "Ungoverned areas" should be assumed to include under-governed, ill-governed, contested, and exploitable areas.[5]

From local to global, the concept of politics finds grounding in a territorial imperative, which holds that historically territorially grounded organizations—particularly the state—define rights over a territory. Territoriality is inherent in state sovereignty over a geographical domain. Thus, at its simplest construct, state sovereignty equates to control of territory. Both RAND's definition and the one cited above testify eloquently that the discussion of ungoverned areas frequently raises more questions than it answers. For example: who determines ownership? How is control defined and measured? What attributes render ownership viable? Is ownership ever unambiguous?

In a real sense, "ungoverned" is a misnomer. Political scientist Marina Ottaway describes state (re)construction as a transition from de jure to de facto statehood.[6] In a world where a state (or states) claims just about every piece of land, we remain concerned with the consequences created by a territory's lacking a single and sovereign central government. Here, then, ungoverned areas are "a concept not about threats that emerge from the absence of governance, but about certain potential threats that emerge from the way a place is governed."[7] Political philosopher David Miller, for example, posits a triangular relationship between a land, its residents, and a set of political institutions, whose usual configuration is the national sovereign state but which can generate configurations of land, people and institutions different from the consolidated national-territorial sovereign state.[8] Importantly for Miller, therefore, a territorial entity need not wield jurisdictional authority (in the sense of being recognised by other similar entities and its people as the legitimate authority) but still possess many of the appurtenances of statehood; it is also, moreover, a matter of debate whether jurisdictional authority lies with the state (state sovereignty) or the people (popular sovereignty).

However, the dominant perception and claim among political scientists remains that the state is indispensible, and that its absence conjures images of a Hobbesian anarchy.[9] "Ungoverned" brings with its train powerful overtones of threat, instability, and insecurity, as well as the sense that an ungoverned space is something the affected territory and international state system should avoid at virtually any cost. Yet, the absence of government does not necessarily imply the absence of governance. Contested and disputed territories will have governance. Admittedly, this governance may not be very attractive. In fact, since the mid-1990s, the international community has identified "hybrid political orders," "state-like entities," "proto-states," and "actually existing governance" as breeding grounds for security threats.[10] For example, in multiple national security strategy documents and speeches President Clinton noted the trend that grave, even existential, threats could and were emerging from ungoverned and poorly governed states. This diagnosis, although originally rejected by his successor, became a driver of United States and global foreign policy trends post-September 11, 2001.[11] Therefore, many perceive so-called ungoverned spaces as a significant global "other" about which something must be done.

Sovereignty, Territoriality, and Statehood

Max Weber argued a state's definition must consist of its unique features as a political association, namely its relationship with coercion and territory. Specifically, Weber defined the state as "a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory."[12] In contrast, Article 1 of the Montevideo Convention on the Rights and Duties of States (1933) defines the state "as a person in international law [possessing] ... (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other States." These two definitions immediately raise questions of territoriality, particularly what happens when a state's monopoly of legitimate force does not run throughout its territory. Weber's state is the sole claimant of legitimate authority in a territory, delineated from other states by mutually recognised borders. For Weber, therefore, an association claiming statehood must demonstrate—and not simply claim—that it maintains its borders and controls its territory. Loss of control over territory can result in secession or the formation of quasi-independent fiefdoms or statelets (entities with some of the attributes of a state, notably territorial control, created by the dissolution of a larger state) by those hostile to central government.[13] Recognized borders define states, but the degree of territorial control typically associated with the state is of relatively recent historical origin; "fuzzy" boundaries are the basis of ungoverned spaces.[14] "Fuzzy" territoriality and an inability to control territory draws us back to why ungoverned space is defined as a security threat.

The threat unattached territory poses to international stability has long been recognised in international law. Throughout history, the principle uti possidetis juris (as you possess under law), which means that prior internal administrative boundaries become international boundaries, has generally applied in international relations and international law, in part for the laudable aim of avoiding territory-motivated conflict. However, in practice many situations have arisen where established boundaries have little or no linguistic and ethnic relevance. Thus the right of self-determination creates potential for conflict based on territorially geographically concentrated disaffected minorities.[15] Robert Jackson, for example, has suggested that frozen borders are a major cause of conflict,

> Those inherited borders became sacrosanct and border changes correspondingly difficult. The right to territorial conquest was extinguished along with the right of colonization. The practice of territorial partition was almost universally regarded with misgivings…. Threats or acts of secession or irredentism were similarly treated with suspicion and were universally opposed.[16]

The changes outlined above meant that many of the states produced by the dissolution of formal empires retained jurisdictional and geographical existence in the absence of a dominant central government—and therefore the presence of ungoverned spaces. This tendency reflects an uneasy coexistence between competing types of sovereignty in a particular territorial area, namely international-legal sovereignty and the absence (or weakness) of domestic sovereignty.[17]

The globe formally divides into "peer polities," namely states that interact with one another according to shared principles and norms relating to domestic and international sovereignty and which focus on the inviolability of borders and freedom from external interference in a state's domestic affairs, and whose interactions are not determined by a single, dominant actor. However, despite formal equality across these polities, not all states within themselves are equal in either power or effectiveness.[18] This brings us to the question of statehood.

Central to thinking about the relationship between the state, territory, and control is that a state must deliver a minimal level of functions and collective goods, notably maintaining order and an effective government capable of retaining a claim to rule the contiguous territory. This is statehood, or consolidated statehood. It rests on the exercise of

internal and external sovereignty; the possession of legitimacy and authority; a monopoly of armed force; and, more debatably, on institutional and normative restraints on the exercise of government power.[19] The core assumption is that an ability to make, implement, and enforce authoritative decisions throughout a territory is fundamental, and the remedy for any political association failing to do so is state building. Historically and globally, consolidated statehood is of relatively recent emergence. Historically, limited statehood has been more common. Inherent in limited statehood is the feature of ungoverned spaces, where the government's writ does not extend.

This implies a causal chain underpinning a claim to statehood. First, the right to make rules flows from effective control of territory. Who holds the right to govern a territory is frequently the outcome of violent political competition. Second, the linking of a state's right to govern a territory free from external intervention leads to a status quo bias which means that when a state has demonstrated control, it is legitimate for the state to resist challenges and for it to call other states to support it in its efforts. These are, of course, key features of the Charter of the United Nations. It is irrelevant that alternative groups within a territory challenging the state might be better at governing that territory and its people. Thus, challenges to territorial control should be resisted and only if the state is utterly incompetent (i.e., failed or collapsed) do other considerations, such as how to respond, become operative. However, determining when a state is incompetent, failed, or collapsed is difficult to determine, as has been demonstrated with respect to the supposed Responsibility to Protect whose overall effect seems to have been to reinforce, not reduce, national state sovereignty.[20] This leads to two conclusions: (1) if a state is not effective, and this is liable to lead to areas of a set territory coming under the control of non-state actors, the state's territorial right comes into question; and (2) any group able to impose order or demonstrate effectiveness could gain territorial right in a given area, which raises the possibility of a "might is right" argument that is contrary to international law.[21]

Addressing the problem of ungoverned space is neither easy nor straightforward. Conflicts such those in Afghanistan, Iraq, Libya, Syria and Yemen invariably were characterised by, facilitated, or were even caused by, external intervention and have served to emphasise the scale of the challenge posed by ungoverned spaces. Rebuilding central state capacity is seldom an adequate answer, as central government (and its actions) is usually a major reason why these areas became ungovernable and external intervention or involvement is likely to provoke a powerful counter response from within the affected state. Western states and their public opinions (who whilst demanding security have become increasingly sceptical about state building) have shown that they neither have the resources or political will to sustain long-term state building, and that their actions tend to exacerbate already adverse conditions. Moreover, existing unofficial forms of government in these spaces may be in better positions to achieve order and more effective at addressing the local population's needs than the "official" government.

Sheer political complexity nullifies simple solutions that exclude the existing state. The Department of Defense report on ungoverned areas noted, "For diplomatic, legal, and practical reasons, the local state cannot be ignored or bypassed, but nor should it be permitted to impede progress against safe havens when other entities are positioned to help."[22] Thus, "Legitimacy without capacity is unproductive. Capacity without legitimacy is counterproductive... with respect to illicit actors: Efforts to reduce their capacity to operate are more effective when bolstered by efforts to reduce their legitimacy in the eyes of key populations."[23] Moreover, the concept "ungoverned" is relative, rather than absolute. To further complicate the matter, there are degrees of "ungoverned-ness," including: exploitable areas, contested areas, misgoverned areas, under-governed areas and, the most extreme case, ungoverned areas. The ungoverned areas report captured the problem,

A weak, failed, or collapsed state performs none of its governance functions effectively in a given area, freeing illicit actors to pursue threatening activities ... All ungoverned areas have the potential to become comprehensive safe havens, but not all them do; those ungoverned areas that do become safe havens, many are exploited not by transnational illicit actors but by groups whose activities and interests remain strictly local.[24]

The diagnosis above points directly to the potential security issues raised by ungoverned spaces and prompts the question: do ungoverned areas constitute an external security threat?

Ungoverned Areas: So What?

Many governments perceive ungoverned territories as a security threat because the borders of weak, or failing, states can produce spillover effects, with turmoil spreading like an ink-blot. As state capacities are challenged, withdrawn, or ejected, porosity created by these conditions tends to promulgate further turmoil and ungovernability. This occurred in West Africa during the 1990s when the Liberian conflict metastasised, undermining Côte d'Ivoire, Guinea, and Sierra Leone. "Bad neighborhoods," areas characterised by an absence of order and stability, can encourage failure in vulnerable states. More specifically, shared borders can transmit unrest from a singular ungoverned space to neighboring states whereby affiliations that challenge the state create transborder territorial networks based on ethnicity, political affinity, or economic self-interest. In some cases, the resulting multinational networks resemble proto-states.

Ungoverned spaces pose different degrees of threat. Those that harbour terrorism associated with global jihadism; provide bases for non-jihadi terrorism and criminal networks; and which are areas of humanitarian crisis prove to be the most threatening. It is also the case that a humanitarian crisis could precipitate a process that moves beyond a population criticizing the ineffectiveness of the present state to one that seeks to supplant the present state leadership. The 2007 RAND study "Ungoverned Territories" contains case studies of eight regions with seeming potential to become terrorist sanctions: the Pakistan-Afghanistan Border, the Arabian Peninsula, the Sulawesi-Mindanao Arc, the East African Corridor, West Africa, the North Caucasus, the Colombia-Venezuela Border, and the Guatemala-Chiapas Border. In the report, RAND explores ungoverned territories through two dimensions: ungovernability and conduciveness to terrorism.

The piece measures governability using four indicators: the level of state penetration into society, the extent to which the state retains a monopoly of force, the extent to which the state can control its borders, and whether the area is vulnerable to external intervention. It measures ungovernability by the malfunctioning or non-functioning of state institutions, which indicates: potential vacuums for other forces to fill; the degree of local compliance with national law; the degree of collaboration with the state by potentially disaffected groups; and the extent of local acceptance of state legitimacy. Common to all these dimensions is authority. Social and cultural resistance to the central state—a preference for institutions that accord with local conditions—and the organization of alternative instruments of coercion indicate a rejection of state authority and the possibility of a "shadow state," possibly with the support and encouragement of outside actors.[25] None of this means an ungoverned territory will become a security threat. Whether or not a territory becomes a security threat depends on its attractiveness and viability as a base for terrorist groups.

In addition, RAND's "Ungoverned Territories" identifies four variables that influence whether an area is "conducive" to terrorist exploitation. They are: adequacy of infrastructure and operational access (for instance: communications, official or unofficial banking, or

transport); sources of income (from, for instance: drugs, human trafficking, diamonds, or piracy), favourable demographic and social characteristics (success depends on some popular support or acquiescence often reinforced by a history of conflict with the center); and invisibility (pertaining to being physically inhospitable and geographically remote). These areas may display complex governance, as when the criminal networks and terrorist or insurgent networks render them indistinguishable and the former provide support and revenue in return for security and protection. The development of non-state governance shows why ungoverned territories can be used to explore processes of state formation, which can be captured by the shift from Mancur Olson's "mobile" to "stationary" bandits.[26] Terrorists and insurgents can be defeated only if found. The difficulties of so doing are amplified if these individuals are capable of "disappearing" into ungoverned (often trans-border) regions.[27] This leaves open the question of whether terrorist and insurgent groups are a cause or a symptom of ungoverned spaces.

The "Ungoverned Territories" case studies support a typology of outcomes, each of which implies different responses. First, "contested governance" is where a group rejects the legitimacy of a government's rule and pledges loyalty to another political association, such as an insurgent movement or clan. Second is "incomplete governance," where a state aspires to assert its authority, but lacks the resources to produce necessary collective goods. Third is "abdicated governance," which is where central government abdicates its role as provider of collective goods, deeming that attempting to maintain an effective presence is neither cost-effective nor politically desirable.[28] The dividing lines between these are indistinct, but nevertheless the categories are reasonable and implicate the difficulty of formulating an effective response to weaknesses of territoriality. The obvious response is state building, but that response raises as many questions as it answers.

Ungoverned territories score high on the presence of local armed groups and having a relative absence of state institutions; they show a lack of border control, a key factor in explaining their existence and nature. This is hardly unexpected. Supportive social norms are particularly important in stimulating and sustaining the resilience of alternative political structures in areas of contested governance. The analysis of ungoverned spaces often attempts to distinguish between cases where ungovernability derives less from local resistance than from central state neglect or incompetence, with the latter being easier to address than the former. However, the two tend to go hand in hand. Ungoverned territories can be governed by a "shadow-state" that displays the appurtenances of a state except juridical sovereignty. Thus, tension between de facto and de jure sovereignty poses a major conundrum when developing responses to ungoverned spaces. Should external actors support the legal but ineffective central quasi-state or the effective but illegal quasi-state?

Ungoverned spaces—perceived as anarchic zones outside formal state control that constituted a security threat—was a well-established narrative by 2000, but received an additional infusion of focus with the occurrence of September 11, 2001. The "9/11 Commission Report" reflected this, noting that:

> To find sanctuary, terrorist organizations have fled to some of the least governed, most lawless places in the world... areas ones that combine rugged terrain, weak government, room to hide or receive supplies, and low population density with a town or city near enough to allow necessary interaction with the outside world.[29]

In response to this emerging consensus, scholar Stewart M. Patrick made three key observations about the security implications of ungoverned spaces. First, a focus on geographical remoteness ignores the significance of large, teeming cities with poor governance for anonymity, as well as the necessity of infrastructural access for terrorist recruitment, organisation, propaganda, and funding. Second, truly anarchic environments pose serious obstacles to terrorist groups, and these significantly increased the costs of

operating in these environments. Third, ungoverned spaces are not voids that terrorists could simply fill; they are political spaces that require such groups engage with to win the support—or at least acquiescence—of local power-holders. Certainly, terrorists can take advantage of alternative political orders, creating local and tactical alliances to secure these locations but "fixing" these groups territorially necessarily opens them to easier attack and they become vulnerable to shifting loyalties and alliances.[30] It cannot be denied that poorly governed or ungoverned spaces can, and do, host terrorist threats. However, these threats alone are not the creating source of spaces lacking governance. Rather, governance issues are the result of specific historical, cultural and geopolitical factors and these spaces exist "because the inhabitants make themselves ungovernable from the capital."[31] The most pertinent question for analysts, therefore, is not the degree or quality of governance, but more aptly "the manner of governance: Who is, and who is not, governing an area, and what are the consequences of the particular way they govern?"[32] Not all ungoverned areas constitute a security threat. When they do, those most directly affected are those who live there, something that governments often forget.

Conclusions

Linkage between territorial integrity and sovereignty—both internal and external—becomes significant because of the problems posed by political and territorial fragmentation in a world of states. Territories are complex, and a major component of statecraft is about containing the inevitable centrifugal tendencies of statehood. Ungoverned space is, at least in part, space where centrifugal are greater than centripetal forces. Maintaining cohesion too often degenerates into coercion, thereby accelerating fragmentation and frequently ultimately to dissolution of existing governance. This tendency of ungoverned spaces is characteristic of a significant subset of national states. It cannot be ignored.

However, state death is a rarity.[33] Indeed, we have been living through a major period of state creation. Whatever the scale of their internal problems, states as bounded territories are seldom absorbed by their neighbors. They are far more likely to split and form new states. However, most usually the states continue in existence. This is the product of Westphalian sovereignty and the peremptory norms of international law, developments powerfully reinforced by decolonization and the UN system. Yet states within this system are not equally powerful or effective, leading to the emergence of quasi-states, several of which have been characterized as failed states, from which spring the threat of ungoverned spaces. States displaying the trappings of external sovereignty, but whose internal sovereignty has fragmented, are perceived as a threat to international order. Events in the 1990s such as the break-up of Yugoslavia, the collapse in Somalia, and the Rwandan genocide, led to attempts to render sovereignty more conditional; broadened responses such that humanitarian intervention morphed into state building; and new doctrines to deal with the problems and consequences, real and perceived, of the ungoverned space. The legal efforts of the Badinter Committee with respect to Yugoslavia aimed at avoiding the creation of ungoverned space.[34]

The purpose of sovereign power is the management of centrifugal tendencies; all polities have internal divisions, but these do not always lead to ungoverned space. What characterizes the failed state is territorial fragmentation to a degree that impairs its ability to act domestically and internationally. The failed state and ungoverned space forms a subset of states—jurisdictionally sovereign but internally fragmented—that constitute a perceived threat to international order that poses serious problems for those addressing ungoverned spaces.

[1] See Derek Hall, Land (Cambridge: Polity Press, 2006) and Margaret Moore, A Political Theory of Territory (Oxford: Oxford University Press, 2015).

[2] Andrew Taylor, State Failure (Houndmills: Palgrave 2013).

[3] Angel Rebasa et al., Ungoverned Territories. Understanding and Reducing Terrorism Risks (Santa Monica, CA: RAND Project Air Force, 2007).

[4] Anne L. Clunan and Harold A. Trinkunas, eds., Ungoverned Spaces: Alternatives to State Authority in an Era of Softened Sovereignty (Stanford, CA: Stanford University Press, 2010). Note that this provides an excellent survey.

[5] OUSDP(P), Ungoverned Areas and Threats from Safe Havens (Washington, DC.: US Department of Defense, 2007), 15.

[6] Marina Ottaway, "Rebuilding State Institutions in Collapsed States," in Jennifer Milliken, ed., State Failure, Collapse and Reconstruction (Oxford: Blackwells, 2003), 245-266.

[7] OUSDP(P),Ungoverned Areas and Threats from Safe Havens, 4. Original emphasis.

[8] David Miller, "Territorial Rights: Concept and Justification," Political Studies 60 (2012): 252-68.

[9] A foundational example of this narrative is Robert D. Kaplan, "The Coming Anarchy: How Security, Crime, Overpopulation, Tribalism and Disease are Rapidly Destroying the Social Fabric of Our Planet," The Atlantic Monthly, February 2012, 1-22.

[10] Richard Mallet, "Beyond Failed States and Ungoverned Spaces: Hybrid Political Orders in the Post-Conflict Landscape" eSharp 15 (2010): 65-91.

[11] Taylor, State Failure, 12-15.

[12] Max Weber, "Politics as a Vocation," in Hans H. Gerth and C. Wright Mills, eds., From Max Weber: Essays in Sociology (London: Routledge & Kegan Paul, 1970), 97. Original emphasis.

[13] Mikulas Fabry, "Secession and State Recognition in International Relations," in Aleksandar Pavković and Peter Radan, eds., On The Way to Statehood. Secession and Globalisation (Aldershot: Ashgate, 2008), 51-66.

[14] Alexander Wendt, Social Theory of International Politics (Cambridge: Cambridge University Press, 1999), 212.

[15] Anna Simons and David Tucker, "The Misleading Problem of Failed States: A Socio-Geography of Terrorism in the Post 9/11 Era," Third World Quarterly, 28 (2007): 400.

[16] Robert Jackson, Sovereignty. Evolution of an Idea (Cambridge: Polity Press, 2007), 107.

[17] Stephen D. Krasner, Sovereignty: Organised Hypocrisy (Princeton, NJ: Princeton University Press, 1999), 3-4.

[18] Robert Jackson, Quasi-states: Sovereignty, International Relations and the Third World (Cambridge: Cambridge University Press, 1900): for the growth of jurisdictionally sovereign but ineffective states.

[19] Thomas Risse, "Governance in Areas of Limited Statehood. Introduction and Overview," in Thomas Risse, ed., Governance without a State? Policies and Politics in Areas of Limited Statehood (New York: Columbia University Press, 2011), 1-35: for a discussion of statehood.

[20] http://www.un.org/en/preventgenocide/adviser/responsibility.shtml and Alex J. Bellamy, Global Politics and the Responsibility to Protect: From Words to Deeds. (Lobndon: Routledge, 2011).

[21] Moore, "A Political Theory of Territory," 95.

[22] OUSD(P), Ungoverned Areas and Threats from Safe Havens, 5.

[23] Ibid.

[24] Ibid., 19.

[25] Rebasa et al., Ungoverned Territories, 8-13.

[26] Mancur Olson, Power and Prosperity: Outgrowing Communist and Capitalist Dictatorships (New York: Basic Books, 2000), 6-13.

[27] Rabasa et al, Ungoverned Territories, 15-21.

[28] Ibid., 30-31.

[29] 9/11 Commission, Final Report of the National Commission on Terrorist Attacks on the United States (Washington, DC: Government Printing Office, 2014), 366.

[30] Stewart M. Patrick, "Are 'Ungoverned Spaces' a Threat?" (New York: Council on Foreign Relations, 2010); Stewart M. Patrick, Weak Links: Fragile States, Global Threats and International Security (New York: Oxford University Press, 2011), 79-83.

[31] Stewart, Weak Links, 80.

[32] OUSDP(P), Ungoverned Areas and Threats from Safe Havens, 20. Original emphasis.

[33] Norman Davies, Vanished Kingdoms: The History of Half-Forgotten Europe (London: Allen Lane/Penguin Press, 2011), 729-739.

[34] Alain Pellet, "The Opinions of the Badinter Arbitration Committee: A Second Breath for the Self-Determination of Peoples," European Journal of International Law 3 (1992): 178-185.