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Nation States

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A. Notion

1 There is no generally accepted definition of the term ‘nation state’. At its core lies the Latin term ‘nation’ (‘birth’). In the Middle Ages, it referred to the origin of individual persons, as opposed to their status (Roellecke 32). Over time, it came to refer to the origin of a people, to the place where a people, organized in a state, comes from. This term evokes, therefore, a series of further associations: the relation of a people to ancestors settling on the same territory since immemorial times, a strong cohesiveness of this group by blood and common destiny, a close relation of this people to a certain territory, and a clear delimitation of the settling area, at least in the sense that the main parts of a people is living within this state’s → *borders*.

2 The core of the definitional problem resides in the term ‘nation’, as the Parliamentary Assembly of the → *Council of Europe (COE)* sorted out in Recommendation No 1735 of 2006. The Parliamentary Assembly qualified this term as ‘untranslatable’ in the various languages spoken in European countries, not even finding an adequate translation between English and French—the two ‘authentic’ languages in which documents of the Council of Europe are drafted (para. 4). The → *nation* may have a ‘civic’ meaning in the sense of a legal relation between an individual and a state or indicating ‘an organic community speaking a certain language and characterized by a set of similar cultural and historic traditions’ (para. 5).

> In some member states both understandings are used simultaneously to indicate citizenship and national (ethno-cultural) origin respectively. To this end, the term ‘nation’ is sometimes used with a double meaning, and at other times two different words are used to express each of those meanings (Recommendation No 1735 of 2006, para. 5).

3 On the whole, the Parliamentary Assembly noted that:

> the general trend of the nation-state’s evolution is towards its transformation depending on the case, from a purely ethnic or ethnocentric state into a civic state and from a purely civic state into a multicultural state where specific rights are recognised with regard not only to physical persons but also to cultural or national communities (para. 7; see also Pentassuglia 447; → *ethnicity*).

4 As a consequence, a closer examination of this concept reveals numerous questions and its openness to many different subjective, path-dependent interpretations. Its meaning changed continuously over time, in dependence also from contingent historical developments. This concept has been subject to strong criticism and of a multitude of attempts to overcome it and to replace it by new ones. For the time being, however, it preserves its validity, especially when interpreted according to modern needs.

5 While the nation state has led to dangerous aberrations in the form of nationalistic tendencies, it is also considered to be a basic precondition for the establishment of democratic governance (Müllerson 701,725).

6 Modern national constitutions—but also constitutions of international institutions and organizations—have tried hard to render the idea of the nation state compatible with aspirations for → *democracy*, the protection of basic human rights and minorities as well as the rule of law. This happened *inter alia* through limitations of sovereignty, the adoption of an ‘open constitution’ explicitly fostering international or supranational cooperation, or the reference to international instruments and to the aforementioned values. Other states, like Ecuador or Bolivia, have adopted ‘comprehensive’ definitions of the nation state which expressly mention single peoples and communities as being part of the nation forming the

nation state (see Art. 3 of the Constitution of the Plurinational State of Bolivia: 7 February 2009 (Bol)) or by explicitly excluding any discrimination of persons belong to indigenous peoples (Art. 6 para. 2 of the Constitution of the Republic of Ecuador: 28 September 2008 (as Amended to 2021) (Ecuador)).

B. Development of the Concept—A First Outline

7 The nation state developed hand-in-hand with the modern state as such. It can be seen as the foremost expression of the early thinking in state categories. In fact, the immediate predecessor of the nation state was the feudal state and, to some extent, the city state, as it developed in particular on the Italian peninsula. The feudal state was based on dynastic relations and allegiances, accompanied with an anchoring of the power in a religious setting, whose importance and strength differed over the centuries.

8 The foremost example was the → *Holy Roman Empire* of the German Nation, which lasted from the coronation of Charlemagne in 800 until the dissolution of this Empire by Francis II in 1806. Its designation evoked a historic tradition dating back to the Roman Empire, which continued to represent over the millennia the reference point par excellence for a highly evolved and enormously sophisticated organization of a society. At the same time, this society was premised on religion and its authority structure provided thereby additional (and decisive) → *legitimacy*. This relationship was never fully harmonious, as the Emperor had to regularly struggle with the religious authorities, first and foremost the Pope. Only gradually did this conflict lose relevance, owing to the distinction between the earthly and the transcendent empire ('two empires theory', ascribed to Martin Luther), the submission of the Church under the power of the king, and the severance of relations with the Pope (Anglicanism), as well as the growing → *secularism* in the era of Enlightenment. The diminution of the religious authority, while reducing the aforementioned struggle with the earthly power, undermined, at the same time, the authority of the latter. New sources of authority had to be found that should provide a sense of belonging to the people of a certain territory, justify power structures, and thereby provide stability to the respective regime. Through this process, the nation state came into being, although its development in Europe was gradual: feudal structures, rooted in religion and hereditary nobility, transcended national borders, and asserted themselves as a source of legitimacy throughout Europe and beyond. This persisted well into the nineteenth century. An illustration of this is seen in the outcome of the Congress of Vienna, where attempts were made to revert the rapid process of creation of nation states that followed the French Revolution 1789. This process was often under the patronage of France, as the dominant nation state on the continent. The legitimacy regime established with the Holy Alliance (1815–53) created, to a certain extent, a counterweight to the further upsurge of nation states. At the end, however, the triumph march of the nation state could not be definitely halted, but, if at all, somewhat delayed. This process reached a first apogee subsequent to World War I ('WWI') with the dissolution of the great multinational empires in Europe: the Austro-Hungarian Empire and the Ottoman Empire. The creation of new nation states in Europe was often associated with strident nationalist tendencies, directed internally against minorities (notwithstanding the creation of the → *League of Nations* minority protection system, see Hilpold 'The League of Nations') and externally against other nation states.

9 → *Decolonization* in the first years of the → *United Nations (UN)* era laid the ground for the second grand wave of creation of new nation states. However, this time, it occurred in an international law system more wary of the negative consequences of unbridled nationalism. In general, in the UN era, the nation state came to operate in a vastly changed international setting. Therein, the nation state had to accommodate a → *sovereignty* regime now under manifold pressure. Perhaps most exemplary is the case of the European Union ('EU'). Its supranationality regime, if not proposing an alternative to the nation state, is

contributing heavily to reclassifying the nation state in a way that makes it more compatible with a system of international relations based on intense cross-border exchange and a far-reaching—and still further developing—system of → *individual rights* protection.

C. What is a Nation? The Imaginary Side of the Nation State

1. The Feeling of Belonging as a Result of a Variety of Factors

10 The creation of nations is driven, to a considerable extent, by subjective and imaginary factors. In other words: the bond holding together a nation must necessarily be of an emotional and intellectual nature as it implies a sense of belonging to people, most of whom the individual will never know, not even by name (Anderson).

11 Nonetheless, the question arises in this regard as to the basis of this feeling. As nations, for the time being, constitute only a lesser or larger part of humankind as a whole, the question must be posed: why do people establish such an emotional bond with certain people and not with others? As will be seen, geographical proximity will considerably foster the creation of such a sense of belonging between people living on a territorially clearly delimitated area such as, for example, France, Spain, the United Kingdom, or Italy. One of the strongest factors able to create a sense of togetherness is common blood or ancestry, be it actual or putative, since, through it, feelings generally known from family, relationship, or clan are transposed to a larger context, to people with whom otherwise no major connection exists. Also, a common (or similar) language or culture are helpful in this regard (→ *culture*; → *cultural diversity*). On a practical level, these elements often intermingle; they reinforce each other, or they may even be mutually constitutive. For example, geographical proximity over time will most often strengthen blood relations. Living together on a territorially circumscribed area will also be conducive to the formation of a common language or at least of linguistic affinities between different languages or dialects. The perception of being bound by a common destiny may be the result of a common history, or at least of a common historical narrative, undergirded by common signs and symbols, regardless of their historical truth.

2. The ‘Birth’ of Nations

12 As the term ‘nation’, as has been demonstrated, refers to the concept of ‘birth’, it seems to imply a commonality of persons having the same origin, possibly being connected by the same line of blood. This sensation might find practical corroboration by the idea that people living together on a delimitated territory might well be interrelated, have a common ancestry, and might have developed on this basis a sense of reciprocal belonging. Often, this sense is further strengthened by common historical traditions, myths, cultures, usages, signs, and emblems. While such narratives, symbols, and externalities might provide the impression of a structured genealogy of a people, care must be taken not to misinterpret causalities that follow all too credulously a construed tale. What existed before: the common bond or the nation? No easy answer can be given to this question. The following, often-cited remark by the Italian politician Massimo Taparelli d’Azeglio of 1861, is related to the Italian nation-building process but it expresses a truth that can be generalized: ‘We have created Italy. Now all we have to do is to create Italians’.

13 The expression of the ‘imagined communities’ (Anderson) or ‘invented nations’ (Gellner 169) has become widely known and accepted as mirroring the essence of this relationship: while, especially in the past, nations have often been portrayed as communities essentially based on common blood and ancestry, in reality they are nothing other than a social construct. For Anderson the modern nation had come into being in the eighteenth century, first of all by the combined forces of Enlightenment and Revolution which destroyed the legitimacy of the divinely ordained, hierarchical dynasties (Anderson 6). New means of

communication, and in particular the availability of newspapers to the broader masses, created a new sense of belonging, of a common togetherness between people who most probably would never meet in real life but who increasingly gained the sensation of interacting (ibid). All this coincided with a new vision of time according to which this anonymous interaction between the members of a nation happened in a common time frame, again uniting the nation over the course of history.

14 Ideas of such a kind can be found already much earlier in the writings by Karl W Deutsch, who qualified the people as an ‘extensive all-round communication network of individuals’, as a ‘conglomeration of individuals who communicate fast and effectively on most variegated topics and issues over great distances’. For Deutsch a common basis for effective communication—be it language or culture—is paramount and the existence of a common culture is essential. He interprets this term in an extensive sense and again in view of its potential to permit and foster interaction. For Deutsch there is a continuum between the concepts of ‘people’, ‘nationalism’, and ‘nation’: once individuals share common expectations and sensations, at present and probably also for the next future, they become a people. Once a consistent part of this people aims at political power we speak of ‘nationalism’, and once political power has been obtained a ‘nation’ is given (Deutsch 204).

15 The feeling of belonging of the members of a nation may find its roots in the most variegated elements. Among them (perceived) relations of blood and ancestry are of great relevance, but they are not the only possible forces on which nation building may be premised. There is also a ‘civic’ nation building based on values and rules as they are regularly contained in modern constitutions. In Germany, the distinction was made between the *Willensnation*—the nation based on the formal will of the people forming it—and the *Abstammungsnation*—a nation formed through blood and ancestry. For the former concept, France should be an example, for the latter Germany. This distinction hardly withstands any empirical test but nonetheless epitomizes different images of the self-perception of nations, which may be dominant in different regions. This way, it acquires practical relevance. This self-perception of a nation may also be indicative for the way it relates, and it competes with other nations (von Bredow 22).

3. Competition Among Nations for Their Prospective Future

(a) Nations Trying to Assert Their Place Looking Back and Looking Forward

16 For nations in general and for nation states in particular, not only are memories of a common history or, respectively, the belief in such a common history, of an existential relevance, but also, and in the same way, the belief in a common future. Common memories provide reassurance and self-consciousness. The prospect of a common future is a source of strength in nation-building and in the ensuing competition among nations for standing, resources, and territory. It is the tale of the common future that provides relevance to the historical recollection. In this sense, historical memories have primarily a subservient role. As important as historical memories might be to justify a nation-building process, it is always the vision of a common future that provides the ultimate motivation to engage in this process (see also Luhmann). The historical memory undergirding the nation-building process must not necessarily pertain exclusively or even prevailingly to the nation embarking on a nation-building process. An example in kind may be Greece, whose nation-building process in the first decades of the nineteenth century was inspired, on the one hand, by the national idea sweeping over the entire European continent and, on the other hand, by the image of an idealized ancient Greece that should be revived. These images and memories were much at home in the erudite classes of Western European capitals and consequently decisive support for this process came from these European powers. The struggle for independence was, however, primarily directed at solving problems of that time, in particular mounting oppression by the dysfunctional Ottoman Empire. Once Greece

had obtained its independence in 1830 the memories of ancient Greece continued to provide identity, but the nation-building process had to address widely different challenges.

17 As nations and nation states define their identity in terms of comparison and delimitation, a competitive element is regularly present when nations strive to become nation states and nation states try to further assert themselves in the endless struggle for power and resources. If a nation fights for its own state, this fight, which will regularly be a war of → *secession*, will most often be carried out with the utmost violence. For such conflicts, international law has little to offer in regulative standards (see *Advisory Opinion on the Unilateral Declaration of Independence of Kosovo* (2010) (ICJ); see also Hilpold 'The ICJ's Advisory Opinion on Kosovo'). Only as to the conduct of the struggle itself does a detailed set of rules of international law apply—the rules of international humanitarian law (→ *Humanitarian Law, International*).

18 Once a nation manages to establish itself as a nation state, the question on how to delimit and to defend its borders against territorial claims by other nation states or by other nations attempting to secede from this state might arise (→ *territorial claims in constitutions*). With the exclusion of attempts to secession, such struggles are in the meantime densely regulated by international law, which sets a series of rules applicable to border conflicts such as the → *uti possidetis doctrine* and the prohibition to recognize the acquisition of territory by force as set out in the Stimson doctrine of 1932 and as confirmed in the meantime by Article 41 of the International Law Commission ('ILC') Draft Articles on Responsibility of States for Internationally Wrongful Acts (→ *State Responsibility*).

19 A future-oriented perspective, strongly relying on a subjective vision of history which sets the own nation at the centre of the historical cosmos, must continuously build up forces demanding change. These changes can take place in a somewhat coordinated manner. In other cases, however, the demands for change can prove to be vigorous and poised to bring about radical modifications. There are many elements influencing the intensity of these struggles. Among them the sensation of injustice suffered in the past, the belief in a specific mission or—often closely associated with the previous element—the feeling of—cultural, economic, religious, ethical, or even racial—eminence, or even outright superiority rank high.

(b) Nation-Building on the Basis of Blood Relations and Ancestry

20 As important as confidence and belief in the future of one's own nation might be, it may become problematic and even disruptive, both nationally and in the international relations, if exaggerated and if competition is replaced by a struggle aimed at absolute dominance, subjugation, or even annihilation. The upcoming of the modern national idea in several cases led to nationalism and chauvinism. A glaring example is that of the Ottoman Empire. While cohabitation between the various ethnic and religious groups living within this empire was never friction-free, the Millet system provided for some autonomy in religious matters thereby fostering the formation of specific group identities and providing at the same time also some protection by the Sultan against the exchange of higher → *taxes*. Muslims being the dominant religious group throughout the history of this empire, only the upcoming nationalism, imported in the nineteenth century from Western European states, raised the question whether such a system, based on a mixture of hierarchy between groups, institutionalized, partial → *discrimination* on the one hand and limited protection and elements of → *tolerance* on the other, was compatible at all with the nation concept which in its utmost exaggeration was devoid of all tolerance. Already in the period between 1893 and 1897 first systematic massacres with over 100,000 victims were committed by the Turks on the Armenians. International obligations were of no help: the Ottoman Empire ignored its → *responsibility to protect* towards the Armenians set out in Article 61 of the Berlin Treaty of 13 July 1878 (Hilpold (2014) 101). The destructive power of exaggerated

nationalism came fully to bear in the next Turkish → *genocide* against Armenians (1915–1918).

21 The → *population* exchange between Greece and Turkey after WWI, sealed by the Treaty of Lausanne of 1923, transformed the two contracting countries, previously two territories of a rich religious and ethnic variety, into widely homogenous nation states.

22 The most egregious example for a perverted nationalism aiming at the exaltation of a nation state's position in the world to the detriment of all other nations was Nazi Germany's policy between 1933 and 1945, leading to World War II and the Holocaust. A combination of factors was conducive to this as of then unknown excess of nationalism: a lost war combined with a strongly diminished international role for Germany, an extremely burdensome peace treaty, the affirmation of theories of racial superiority, and of social Darwinism, as well as the pursuit of territorial expansion towards the East (*Lebensraum im Osten)* justified by historical arguments of nebulous credentials. Again, these developments demonstrated—in the utmost negative manner—the relevance of the imaginary in the evolution of the concepts of nation and nationalism. The dissolution of Yugoslavia, followed by the intent to create on its soil, new nation states, evidenced the destructive force of nationalism also in modern times, associated as it was with mass-expulsions and even genocide (Srebrenica 1994; → *Yugoslavia, Dissolution of*). In this process, historic images—for example the battle of Kosovo of 1389 to justify the claim for Kosovo made by → *Serbia*—had an extraordinary importance.

(c) The 'Civic' Nation State: Its Basis, Its Development, Its Attitude Towards Other Nations

23 As has been set out above, decisive elements for the creation of a nation state are the coming into being of a common bond of belonging between people living on a circumscribed territory, having a common project for the management of their future. The image of a common ancestry usually creates a strong basis for a nation building process and for the cohesiveness of a nation once it has come into being as this element is often overshadowing all the other elements characterizing a nation-building process. Such a process can, however, be based also on different elements and succeed in default of the awareness of a common history based on blood. This alternative model propagates the 'civic' nation state based on a common constitution providing for rights and duties of a specific state. It is this the 'modern' nation state as it has been created in France after the French Revolution of 1789 and as it has become the dominant model on a worldwide scale. In comparison to the blood-based nation state it has the advantage of guaranteeing mostly a far-reaching coincidence between the territory of the state and the delimitation of the nation as this nation comprises, in principle, all people with the same → *citizenship*. Of course, there might be citizens living abroad but it goes without saying that thereby neither the nation state nor its delimitation are put into question.

24 According to the often-cited dictum by Ernst Renan (1823–92) a nation state requires a daily → *plebiscite* by its citizens. He portrays the state as a solidarity union, where people are living together in a future-oriented perspective but drawing inspiration from the past and defending and cultivating the heritage of this past (Renan 1882).

25 It is obvious that this definition of the nation best fits with the example of France, that Renan had apparently in mind. While there are also other ways and methods to keep a nation state together—also dictatorial, authoritarian regimes can evidence considerable resilience and persist over long periods (→ *authoritarianism*)—Renan's civic nation state based on a sincerely felt commitment by its citizens for a constitutional legal order guaranteeing basic liberties and freedoms, as well as the → *rule of law*, has preserved appeal up to this day. Such a system is best suited to implement Rousseau's idea of a

society based on a social contract at least in the eventual result. Nation states of such a kind no longer need to legitimize their existence by reference to highly subjective and divisive elements such as blood, race, and group membership. Rather, they offer the protection and the advantages of a legal order based solely on citizenship, while delegating to individual citizens the task to defend this order through a daily commitment to the resulting tasks and obligations. In the blood-based nation state, history can become a source of continuous conflict depending on the epoch the alleged coming into being of a nation and also in relation to the subjective interpretation of historical events. In the civic nation state, to the contrary, the period of the foundation of this state by a constitutional act becomes the decisive historical event from which the nation state draws inspiration. Usually, the civic constitutional state can therefore distil far more cohesiveness from historical arguments than its blood-based counterpart.

26 Citizenship of the nation state is not open to all, and the nation state enjoys far-reaching, though not unlimited, autonomy when granting it. Once awarded, citizenship provides a legal status with clearly defined rights and duties. The corresponding obligations provide stability also to the nation state.

27 In principle, a civic nation should also be peace-oriented in relation to other states, as the coincidence of the territory on which its citizens live with the territory of the nation state as a whole should make these states refrain from territorial claims towards other states.

28 Difficulties may arise, however, if state borders are redrawn, for example subsequent to a war with the consequence of a more consistent number of citizens ending up beyond the re-drawn state borders. This was a frequent case following the → *peace treaties* concluded after WWI (→ *peace treaties and their influence on constitutions*). By imposing automatically the citizenship of the new sovereign with the loss of the original one, a rule somewhat softened by the option to regain the original citizenship and to leave the country (see, *inter alia*, Art. 91 of the Peace Treaty of Versailles of 28 June 1919 or Arts 70–82 of the Treaty of Saint Germain of 10 September 1919), the resulting loyalty conflicts should be overcome. The question of state unity should become, if at all, a question of minority protection. The right to opt for the citizenship of the former sovereign was generally associated with an obligation to leave the country within a certain timeframe. In reality, this rule caused considerable hardship and consequently, a tendency in modern international law on citizenship, at least in Europe, has come about to no longer prioritize unity of the nation over full individual choice of loyalty. Thus, Article 20(1)(a) of the European Convention on Nationality 1997 (ETS 166) rules out an obligation to emigrate for persons not having opted for the nationality of the successor state. A similar position was taken by the European Commission for Democracy through Law (→ *Venice Commission*) in Article 16 of its Declaration on the Consequences of State Succession for the Nationality of Natural Persons of 1996. While the ILC Draft Articles on Nationality of Natural Persons in relation to the Succession of States of 1999 remain silent on this issue in Article 20, international practice seems to move in the direction as indicated on the European level (see → *Option of Nationality*).

29 A more recent challenge to the concept of the civic nation state comprising (next to) all of its citizens came through the ‘passportization policy’ pursued in particular by → *Russia* and Hungary and consisting in the mass conferral of citizenship to people in neighbouring territories to which historic ties exist (see Art. 14 of the Russian Citizenship Act (as amended in 2002) (Russia) and the Hungarian Status Law of 2002 (Hun); → *passport*). The Hungarian Status Law, intended at allowing easy access to Hungarian citizenship to 2.5 million ethnic Hungarian abroad was widely modified after massive protest by neighbouring countries and criticism by international institutions (Hilpold and Perathoner). The Russian

passportization policy, instead, continued to gain momentum over the last two decades and became a pivotal pretext for a territorial expansion policy, based in a decisive manner on ethno-national arguments and culminating in the → *aggression* against Ukraine in February 2022.

30 This policy resulted from a conception of the nation state based both on arguments of blood relation and civic allegiances derived from the former common citizenship of the Soviet Union. Paradoxically, the Russian aggression against Ukraine did not lead to a strengthening of Russia but rather to a consolidation of the Ukraine nation state (Hilpold (2023)). The existential threat to which the Ukrainian people were exposed by this attack has strengthened in them the belief to pertain to a 'community of destiny' and created a new sense of belonging, essential for the formation of a nation state. Outside pressure re-enforces internal cohesion, the sense of being 'we, the nation' (Roellecke 34). The nation state becomes the idealized peace resort as an alternative to and a prevention of conflict.

31 A very particular example of a 'civic nation state' can be seen in the state of Singapore. There, recourse was taken to rational, technocratic governance that should extoll civic virtues such as meritocracy and a high working ethos in a religious-like manner. Thereby it was possible to create a strong nation of citizens in a state which is otherwise characterized by a pronounced ethnic and religious heterogeneity, potentially capable to make this state prone to internal controversy and strife (Thio (2019)).

4. The 'Supranational' and the 'Subnational' Context: The Nation State in the EU and Regions and Minorities within Nation States

32 The traditional nation state as it has formed out in particular after the French Revolution in more recent days has entered into competition, with regard to the exercise of sovereign competences, both with the international or supranational level as with the subnational one, in particular with reference to regions.

33 With regard to the international level already socialist internationalism tried to overcome the nation state but eventually failed in this attempt (Isensee 137). As to the supranational level the EU is a paradigmatic case on how states can integrate into structures that come to resemble new nation states. As of yet however, the EU is not a state but rather, according to the words of the → *Federal Constitutional Court of Germany (Bundesverfassungsgericht)*, an 'association of states' *(Staatenverbund*, see *Maastricht judgement* (1993) (Ger)). The Maastricht Treaty introduced a 'Union citizenship', which however is neither a substitute nor an alternative to the national citizenship. It is rather an additional status dependent from the citizenship of a Member State (Hilpold (2020); Hilpold (2022)).

34 The 'United Nations' are nowhere close to a new nation state either. The designation itself is, at first sight, misleading as the members of this international organization are states, not nations. This designation was, however, chosen in part with reference to the Declaration by United Nations, a treaty of 1942 uniting the Allied Powers and in part due to the strong emotional and aspirational power residing in the conception of 'nations' which goes, as shown, far beyond that of the 'state'.

35 The nation state is challenged, as mentioned, also from the sub-state level by national movements usually concentrated on a specific territory of a nation, which may or may not be constitutionally recognized as a region. Up to this moment, however, international law does not offer any basis to sub-state national movements to challenge the sovereign prerogatives of nation states. There is no right to secession for national minorities. Although the UN Declaration on the Rights of Indigenous Peoples grants in Article 3 a right to → *self-determination* to these peoples, Article 46(1) of this Declaration again attributes

absolute priority to the territorial integrity of states (Hilpold (2018) 48; → *rights of indigenous communities*).

36 By measures of minority protection international law addresses directly the sub-state level but again without putting at peril territorial integrity as these rights have been conceived as individual rights. This becomes clear already by Article 27 of the → *International Covenant on Civil and Political Rights (1966)* ('ICCPR') and also by the Declaration on Rights of Persons Belong to National, Ethnic, Religious or Linguistic Minorities of 1992 (→ *protection of linguistic minorities*). These documents take notice of the fact that the protected individuals are part of groups and that this group belonging is also constitutive of the individuals' identities. The immediate addressee of the protection is, however, the individual.

37 Within the European Council, regularly reference is made to 'national minorities' (see, most prominently, the only binding multilateral treaty devoted directly and exclusively to minority protection, the European Framework Convention on the Protection of National Minorities). Several attempts have been made to attribute a specific meaning to this choice of terminology, but no convincing outcome of these attempts can be discerned. On the whole, it can be assumed that the use of this terminology is designed to refer to the fact that the minorities protected by the relevant instruments are always to be seen as part of a specific national context.

38 The two UN human rights pacts of 1966 (the ICCPR and the → *International Covenant on Economic, Social and Cultural Rights (1966)*) mention self-determination in their common Article 1. National → *self-determination*—intended as freedom from colonial rule and foreign military dominance—is, however, not a human right but rather a precondition for the enjoyment of human rights. At the same time, the exercise of national self-determination is to be governed by the respect of human rights.

5. The Nation State in the Post-Colonial Reality

39 As set out above, the nation state is a typical European concept that, however, has been adopted, in the meantime, on a world-wide scale. One of the most important vectors for the diffusion of this concept has been, without doubt, colonialism, even though, since long, the basic elements of the nation state have become 'constitutional transplants' adopted outside any immediate colonial context (→ *colonization*; → *borrowing and migration of constitutions*).

40 There can be no doubt that colonialism has given a specific mintage to the concept of the nation state as this notion came to the colonies as the equivalent of a forceful subjugation by foreign states which proved to be economically and militarily more potent.

41 After the end of colonialism, however, the inherent stabilizing strength of this concept made it an attractive tool also for the newly independent states. In this context, however, the idea of the nation state was often adapted to the cultural particularities of the relevant region.

42 As described above, Singapore, whose population exhibited significant diversity in both religious and cultural aspects, formulated a specific concept of a 'civic nation' grounded in common civic values and virtues.

43 Generally, in many former European colonies, religion plays a far more important role than in Europe. The nation state has to accommodate, as far as possible, with this fact. The granting of some degree of religious tolerance has become an important tool for managing religious and ethnic diversity in several Southeast-Asian countries, where the celebration of 'unity in diversity' has become a distinguishing feature of the respective nation states (Thio (2010); → *ethnicity*).

44 In several African countries, characterized by a pronounced ethnic and tribal diversity, in the attempt to preserve the nation state, recourse was made to federalism, another instrument of European origin but adapted to the specific needs of the respective countries. In countries like Nigeria or Ethiopia, it was thereby possible to manage a potentially highly divisive ethnopluralist setting by adopting a federal state structure. This instrument was able to fulfil its immediate aim, but it was largely devoid of the elements of liberal constitutionalism—associated with ideas of democratic values and human rights—characterizing elsewhere the modern idea of → *federalism* (Gebeye).

D. Conclusions

45 The meaning of the concept of the 'nation state' has been subject to continuous change. Attempts to define this concept in an 'objective' sense have proved to be futile if not outright dangerous, in particular if substance was sought in ethno-based elements. Such approaches have proved to be divisive and conducive to exclusive, intolerant societies. Starting with the French Revolution a new concept of nation state, the 'civic nation state' has developed. It was not free from extreme nationalist backlashes as the genocide against the Armenians and the holocaust by the Nazi regime has revealed. The nation state following an etatist philosophy, convinced that only the conquest of further territory would guarantee the survival and prosperity of 'dominant nation', has led, in the 20th century to catastrophes, based as it was on economic misperceptions (von Mises) and total disrespect of human dignity and individual rights.

46 Step by step, important safeguards have been created making sure that the nation state, as an 'imagined community' is steered, in its further development, by reciprocal respect between these communities and by ideals that correspond to those of a 'humanized international law' (Meron). An important achievement in this regard has already been the Stimson doctrine of 1932. In the UN era, the prohibition of the use of force and the creation of a comprehensive set of rules on the protection of human rights followed. In this sense, the nation state is not to be seen as static but rather as a process (Isensee), governed by norms based on the rule of law and the respect of human rights, so to avoid nationalist excesses, having tainted the concept of the nation state in the past. As mentioned in the introductory part and as sorted out by the Parliamentary Assembly of the Council of Europe in 2006, there is a trend of the nation-state's evolution from an ethnocentric state into a civic state and from a purely civic state into a multicultural state. The terminology has remained firm, but the understanding of this concept has profoundly changed as a result of historic experiences and political insights laid down in new internationally agreed regulatory frameworks.

47 There is no guarantee that the excesses of the past cannot reappear. However, the ever-growing set of international rules governing the open, evolutionary process (Roellecke 41), as described, for example, by the Parliamentary Assembly in 2006, as well the existence of a plurality of nation states being in a situation of competition between each other for the achievement of democratic, civil and multicultural states (in this sense, a "super-state" composed of one nation state would be a detrimental development, Isensee 357) justify optimism. The foremost challenges of our time, such as climate change, migration and security issues, may exceed by far the purview and the capabilities of the individual nation

state. Nonetheless, the nation state remains the cornerstone of an international building, construed step by step with the intent to tackle exactly these challenges (Rhinow).

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