

# ESSAY

## Cyber-Nations

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The cultural project of nationalism embraces modern technology—the ability to broadcast at a distance the resonant symbols of power and purpose, permitting governments to address citizens remote from the center and detached from the state’s administrative representatives. The creed of shared burden and ambitions, the exhortations of a charismatic leader, the iconography of flag and battle, the claim of danger and challenge—the central symbols of nationalism—are brought forward through technology.

But the new technology of the Internet allows a more whimsical speculation for the utopians among us. If a liberal constitutional state depends on shared commitment and a common political project, can this be negotiated through the Internet even among individuals who live apart? If there is telecommuting in our working lives, could there be telegovernment in our political lives? If the requirement of democracy is the determination of a general will, can’t this be done by Cyber-balloting? Can a state be virtual? Must it be located anywhere at all besides Cyberspace?

It may be feckless to discuss statehood in anything other than an exhaustive account of how national movements have come to subsume territorial space. But on the occasion of an annual meeting of international Cyber-lawyers, the danger is worth disregarding, at least for a moment.

In the mid-1990s, Professor Tom Farer argued that geography was an atavistic basis for organizing the international community.<sup>1</sup> Rather than have the United Nations work through regional caucuses of Latin American

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<sup>1</sup> See Tom Farer, *A Paradigm of Legitimate Intervention*, in ENFORCING RESTRAINT: COLLECTIVE INTERVENTION IN INTERNAL CONFLICTS 316-47 (Lori Fisler Damrosch ed., 1993).

states, or African states, or Western European and other states, why not organize a caucus based on common political principles? The example of the British Commonwealth served the point, and in the late 1990s, one might also note the emergence of a new group of “like-minded” states—a self-styled caucus that has supported a ban on anti-personnel land mines<sup>2</sup> and a permanent international criminal court,<sup>3</sup> also announcing a work program on children in combat, small weapons trafficking,<sup>4</sup> and other matters.

But if geography does not matter for “regional” groups, why worry about geography even for the state itself? After all, various states and entities have been noncontiguous. Examples of states with separated territory include East and West Pakistan in 1948, the eighteenth century claims of Connecticut in the Ohio Valley, and the current structure of Republika Srpska in Bosnia.<sup>5</sup>

Why must a state be territorial at all? To be sure, most people think of their communities as earth-bound. We are corporeal beings. Police, water, fire protection and defense are *terra firma* functions. Until everything becomes virtual, it is going to be difficult to have a completely virtual government.

Yet a Cyber-state could contract for services through territorial providers. Many local governments have already privatized municipal services, arranging with private companies to supply garbage removal, snow-plowing, even supplemental security services. What, after all, is the comparative advantage of a public bureaucracy in service billing or handling surge demand?

Scoffing at geography is not the inclination of most international lawyers, of course. The prerequisites for international legal personality were firmly settled in the twentieth century by the Montevideo Convention.<sup>6</sup> To gain recognition as a state, entities have needed a

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<sup>2</sup> See Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, Sept. 18, 1997, 36 I.L.M. 1507 (entered into force Mar. 1, 1999).

<sup>3</sup> See Rome Statute of the International Criminal Court, July 17, 1998, U.N. Doc. A/Conf.183/9\*.

<sup>4</sup> See Organization For Security and Cooperation in Europe: Seminar on the Spread of Small Arms and Light Weapons, Apr. 3-5, 2000, *OSCE Press Release* (visited May 12, 2000) <<http://www.osce.org/e/docs/presrel/2000-106-sg.htm>>.

<sup>5</sup> See *Republic of Srpska* (visited May 12, 2000) <<http://www.srpska.org/srpska>>.

<sup>6</sup> Montevideo Convention on Rights and Duties of States, Dec. 26, 1933, 49 Stat. 3097.

population, effective governance (sustained by common allegiance and habitual obedience), and the ability to conduct international relations. Equally central, in the traditional account of the state, is the requirement of a territory.<sup>7</sup> The cultural existence of a people or ethnicity—a collective sense of shared history and common fate—does not suffice for international recognition unless a group can also claim a territory. In the Balkans, the term “nationality,” or “narodski,” is reserved for people who have a homeland, even if they are living abroad.

Common territory thrusts people into contact with each other. Adjacency brings common needs, and may inspire the effort to form a government and work jointly. Yet the link between territory and political stability is hardly steadfast; the Balkans are proof that intermingled populations do not necessarily act cooperatively. The link between territory and politics can be pernicious, the incubus of conflict. If exclusive territory is needed for an international voice or vote, then rival groups must fight for territorial control—fueling secessionist movements and the bloody strife of civil war. If recognition as a national entity can only be gained by facts on the ground, then land will be fought over even if it is not otherwise a productive economic asset. The moral hazard of linking land and voice is only partly solved by the loose-jointed structures of confederation, since the control of the confederation’s international tongue is still at issue.

The positivist requirements of Montevideo have been supplemented in this decade by a more ambitious European proposal for normative criteria of legitimate state power. In 1992, confronting the dissolution of the former Soviet Union and the incipient conflict in the former Yugoslavia, the European Community decided that the recognition of new breakaway states should turn on their adoption of liberal political structures. The European Community suggested four new conditions for statehood: the rule of law, political democracy, civil liberties, and the guarantee of rights to ethnic minorities.<sup>8</sup> The attractiveness of this theory is not lessened by the European Community’s later disregard of the particular findings made by its own arbitral tribunal, chaired by Robert Badinter, the former President of the French Conseil d’Etat.<sup>9</sup>

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<sup>7</sup> *See id.* at art. 1 (“The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states.”).

<sup>8</sup> *See* Declaration on Yugoslavia and on the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union, Dec. 16, 1991 (European Community), 31 I.L.M. 1485.

<sup>9</sup> *See* Conference on Yugoslavia Arbitration Commission: Opinions on Questions Arising from the Dissolution of Yugoslavia, Opinions 1-10, Jan. 4, 1992, 31

But even with the ethical litmus of a “Badinter screening,” a futuristic statesman in a Cyber-connected world might challenge one of the Montevideo conditions for statehood—the requirement of a national territory.

The brilliant comedy of British actor Peter Sellers, in the 1959 film “The Mouse That Roared,”<sup>10</sup> may give us a hint of a Cyber-future. In the film based on Leonard Wibberley’s novel,<sup>11</sup> Sellers was cast as the self-styled leader of an imaginary microstate, the Duchy of Grand Fenwick. Armed with crossbows, the Duchy declares war on the United States, hoping to qualify for post-war economic assistance. To their dismay, the Duchy’s archers fail in their quest for defeat, successfully invading New York City.<sup>12</sup>

Peter Sellers’ imaginary Duchy was about the size of three Pacific island states admitted to the United Nations in 1999—the islands of Kiribati, Nauru, and Tonga in the South Pacific.<sup>13</sup> Grand Fenwick is closely akin to the European microstates of Liechtenstein and Monaco, admitted to the United Nations in 1990 and 1993 respectively.<sup>14</sup> Each of these countries is proof that a state does not need much territory to vote in the General Assembly.

But no territory at all? Is Grand Fenwick really comparable to Cyber-states whose territory is only virtual? While the Internet’s Cyber-nations have been a motley lot so far, the idea of Cyber-politics may remain attractive, and challenge our general account of nationalism and statehood.

One Cyber-country is the Republic of Lomar,<sup>15</sup> established by a California computer systems administrator, claiming 4100 citizens.<sup>16</sup> Lomar has cautiously organized as a non-profit foundation in the territorial state of Delaware, but Lomar’s motto is worthy of an Internet nation: “Empowering our citizens and partner States through knowledge, technology and development.”<sup>17</sup> Issuing passports and stamps, Lomar

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I.L.M. 1488.

<sup>10</sup> THE MOUSE THAT ROARED (Columbia-TriStar 1959).

<sup>11</sup> LEONARD WIBBERLEY, THE MOUSE THAT ROARED (1955).

<sup>12</sup> See THE MOUSE THAT ROARED, *supra* note 10.

<sup>13</sup> See *United Nations Member States* (visited May 12, 2000) <<http://www.un.org/Overview/unmember.html>>.

<sup>14</sup> See *id.*

<sup>15</sup> See *The Republic of Lomar—Official Website* (visited May 12, 2000) <<http://www.republic-of-lomar.org/>>.

<sup>16</sup> See *The Republic of Lomar Information Center* (visited May 12, 2000) <<http://www.republic-of-lomar.org/information/index.htm>>.

<sup>17</sup> *The Republic of Lomar—Official Website* (visited May 12, 2000) <<http://www.republic-of-lomar.org/>>.

argues that it can provide a nationality of last resort for worldwide citizens opposed to autocratic regimes.

Another Cyber-country is the Kingdom of Talossa,<sup>18</sup> organized in 1981, boasting fifty citizens. In a broader humor, Talossa claims a mythic connection to the Berbers of North Africa,<sup>19</sup> and a language that favors the letter X and the *umlaut*. Its foreign policy is to recognize other micronations and its leisure activity is politics, holding mock elections every eight months.

A third, more roguish example, is the Dominion of Melchizedek.<sup>20</sup> It claims territory on an uninhabited island in the Pacific and (against the dictates of international law) additional territory in Antarctica.<sup>21</sup> It has provoked other established sovereign states by offering the sale of invalid passports and permitting unauthorized banking transactions.<sup>22</sup> Melchizedek's founder is not cut from the same cloth as Madison and Washington: he was convicted of mail fraud and currency violations and founded Melchizedek upon his release from jail.<sup>23</sup> Yet its symbols of state power have been convincing enough to persuade at least one member of the U.N. to invite Melchizedek to open an embassy in its capital city.<sup>24</sup>

In a post-Columbian world, there is no unclaimed land. Founding new states has thus become a harder enterprise. Emigration has to be inward, rather than outward, and a dissentient group of pilgrims faces the fact that a claim to sovereignty over land is bound to conflict with an existing territorial state. The purport of Web nations is that this should not matter—a community can be organized in electronic space as easily as in geographic space. If a group of people wish to be bound together in their travails and choose to congregate electronically, why shouldn't the law catch up?

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<sup>18</sup> See *The Kingdom of Talossa* (visited May 9, 2000) <<http://www.execpc.com/~talossa/>>.

<sup>19</sup> See *Talossa FAQ: What is Talossa?* (visited May 9, 2000) <<http://www.talossa.com/RT-FAQ/tal1.htm>>.

<sup>20</sup> See *Government of the Dominion of Melchizedek* (visited May 9, 2000) <<http://www.melchizedek.com/>>.

<sup>21</sup> See *The Antarctic Treaty*, Dec. 1, 1959, art. 4(2), 12 U.S.T. 794 (entered into force June 23, 1961).

<sup>22</sup> See Sascha Segan, *Welcome to Lomar* (visited May 12, 2000) <[http://abcnews.com/sections/world/dailynews/microstates\\_991124.html](http://abcnews.com/sections/world/dailynews/microstates_991124.html)>.

<sup>23</sup> See *id.*

<sup>24</sup> See *Le President de la Republique* (visited May 9, 2000) <<http://www.melchizedek.com/images/centralafrican.jpg>>.

The full portfolio of Web nations is hard to catalog. A "micronation," says one Web site, is "a nation that, for whatever reason, has failed to achieve recognition by other 'major' nations of the world."<sup>25</sup> It may have no territorial claim at all, or may claim to "co-occupy territory claimed by [another] macronation."<sup>26</sup> Another Web master catalogs all "virtual entities" by phonic affiliation (with surprising numbers of entities operating in French, English or Italian). The virtual nations mix imagination and historical immanence: "Par 'entité virtuelle' nous entendons toute entité légendaire, fictive, imaginaire ou encore non territoriale, y compris celles pouvant éventuellement rassembler un nombre important de citoyens dans le cadre de structures dont la réalité et la permanence ne sauraient être mises en doute."<sup>27</sup>

The need for the Badinter conditions, even in the imagination, is seen in the Web catalog's uncritical inclusion of at least one racially invidious enterprise.<sup>28</sup> More respected ambitions may be seen in the Web site for the "Government of Tibet in Exile."<sup>29</sup>

The Web presence is not always pacific. At least one of the Cyberstates is engaged in a terrestrial civil war. The Republic of Abkhazia was an independent entity for a brief period in the twentieth century, claiming territory in what is now the Republic of Georgia in the former Soviet Union. Most Abkhaz were expelled to Turkey in the nineteenth century by the czar of Russia. But the remaining 90,000 Abkhaz people claim the right to independence, and have fought against Tbilisi since 1991 for that purpose, destabilizing the regime of Georgian President Edward Shevardnadze. There is a U.N. mediator in the region, as well as U.N. military observers, but this has not succeeded in resolving the dispute.<sup>30</sup> The self-proclaimed Republic of Abkhazia is not recognized by any other member of the U.N., but claims on the Web to have a "Permanent

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<sup>25</sup> *Sovereign Republic of Malveale: Micronations* (visited May 11, 2000) <<http://www.geocities.com/CapitolHill/3517/micro.html>>.

<sup>26</sup> *Id.*

<sup>27</sup> *Microstates & Micronations List of the Institut Français de Micropatologie* (visited May 9, 2000) <<http://www.geocities.com/CapitolHill/5829/LIST.html>>.

<sup>28</sup> *See id.* (listing the micronation of "Aryan Nations").

<sup>29</sup> *The Government of Tibet in Exile* (visited May 9, 2000) <<http://www.tibet.com/>>.

<sup>30</sup> *See* Ruth Wedgwood, *The Promise of and Obstacles to Effective Peacekeeping by the CIS: The Abkhaz-Georgian Conflict*, in *CONTEMPORARY INTERNATIONAL LAW ISSUES: NEW FORMS, NEW APPLICATIONS* 67 (T.M.C. Asser Instituut, 1998); Ruth Wedgwood, *A Conflict Worth Settling*, *CHRISTIAN SCIENCE MONITOR*, July 24, 1997.

Representative to the United Nations.” Its Web presence has announced “policy” statements, including at one point a veiled threat against Russia’s oil pipelines.<sup>31</sup>

The Web nations pose the constructivist puzzle of how nations gain recognition in the international arena. Recognition is often a political act, not simply a description of objective conditions. It is impolitic to recognize a Web nation that claims territory belonging to an existing member of the U.N. The territorial integrity of all U.N. member states is guaranteed by the U.N. Charter.<sup>32</sup> But what if the new nation is contented to be virtual? The willingness to deal with a self-announced collection of people is, ultimately, a political choice. As David Korem, Dominion of Melchizedek founder and Web entrepreneur put it, “The more they talk about us, the more they write about us, the more real we become in the eyes of the world.”<sup>33</sup>

The gap between self-consciousness and international recognition is not, after all, unique to the Web. Since 1991, a terrestrial group called the Unrepresented Nations and Peoples Organisation (“UNPO”) has operated in the Hague and Geneva, and at U.N. conferences, claiming to represent fifty-two ethnic “nation[s] or people[s]” that lack independent states or a direct international voice and vote.<sup>34</sup> Five UNPO members have achieved independence during the decade—Armenia, Estonia, Georgia, Latvia, and Palau.<sup>35</sup> UNPO asks that members “advance their interests . . . through non-violent means, including diplomacy, use of the United Nations and other international procedures for the protection of human rights, developing public opinion and other action oriented strategies, and exploring legal options to defend their rights.”<sup>36</sup> The organization has questioned “the exclusion of nations, peoples and minorities which do not constitute independent states from access to international fora and organizations.”<sup>37</sup> An inter-governmental organization such as the U.N. only seats the

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<sup>31</sup> See generally *The Republic of Abkhazia* (visited May 11, 2000) <[http://www.abkhazia.org/home\\_def.html](http://www.abkhazia.org/home_def.html)>.

<sup>32</sup> See U.N. CHARTER art. 2, para. 4.

<sup>33</sup> Segan, *supra* note 22 (quoting David Korem).

<sup>34</sup> See *UNPO Members* (visited May 12, 2000) <<http://www.unpo.org/member/#current>>.

<sup>35</sup> See *id.*

<sup>36</sup> *Editor’s Preface*, UNREPRESENTED NATIONS AND PEOPLES ORGANISATION: YEARBOOK 1995, at xv (Mary Kate Simmons ed., 1996).

<sup>37</sup> Michael van Walt van Praag, General Secretary, *A Brief History of UNPO*, in UNREPRESENTED NATIONS AND PEOPLES ORGANISATION: YEARBOOK 1995 (Mary Kate Simmons ed., 1996).

representatives of states, even if there is a new concern about the claims of indigenous peoples and other dissentient minorities and nationalities.

UNPO membership is available to any unrepresented "Nation" or "People."<sup>38</sup> These categories might seem broad, and indeed are defined to include any "group of human beings which possesses the will to be identified . . . and to determine its common destiny as a nation or people."<sup>39</sup> But then with a backward glance that may disappoint postmodernists, membership is further limited to the groups that are "bound to a common heritage which can be historical, racial, ethnic, linguistic, cultural, religious or territorial."<sup>40</sup>

UNPO membership has not been sought by any newborn Cyber-communities. The travails of ethnic minority communities in the real world are a clear distinction. But a common heritage can develop over time, among people who choose to affiliate. While UNPO members may prefer territorial independence, an alternative way of meeting their concerns is to assure international voice and weight even without territory.

Decoupling territory and personality can also claim paternity in the suggestion of Professor Gidon Gottlieb of the University of Chicago some years ago. Professor Gottlieb argued that secession might seem unnecessary if national groupings were permitted some of the marks of international dignity currently enjoyed by states—such as the use of a flag or international sports participation, and a direct voice in international institutions.<sup>41</sup> The predicate of sovereignty, Gottlieb argued, should be personal, not territorial.

Nationalism is a cultural project. The successful construction of modern nation-states has often proceeded by enlisting people to meet a common danger, by myth-making and social invention, even by diluting cultural differences, reaching beyond politics to the most intimate account that people hold of their origin and fate. Writers such as Benedict Anderson have sketched how power and geography often do not coincide in a nation-

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<sup>38</sup> See Covenant of the Unrepresented Nations and Peoples Organisation, Feb. 11, 1991, title II, art. 5, available at *The UNPO Covenant* (visited May 11, 2000) <<http://www.unpo.org/maindocs/0710cove.htm>>.

<sup>39</sup> *Id.* at title II, art. 6. Compare ELIAS CANETTI, *THE AGONY OF FLIES: NOTES AND NOTATIONS* 192 (H.R. Broch de Rothermann trans., 1994): "Der Konsequente, der für jede Nation ist, auch für solche die nur zwei Sprecher zählen."/"The consistent person who speaks out in favor of all nations, even though whose language is spoken only by two people."

<sup>40</sup> *Id.*

<sup>41</sup> See GIDON GOTTLIEB, *NATION AGAINST STATE* 35-40 (1993).

state—for territorial boundaries may extend beyond the limits of a community's self-conception.<sup>42</sup> The working loyalties and overhanging identity of local communities and social groups are far more complicated than the 188-space sovereignty system of Westphalia and the United Nations. The real circumstances of warring ethnic groups, winner-take-all governments, and unstable boundaries of colonial origin suggest that a common geography is not always enough ground for political coherence. In thinking about the audacious claims of Cyber-nations (those virtual enterprises that lack a new found land), we may wonder at the failure of so many terrestrial states—which have a capital, a flag on First Avenue, but no common political enterprise.

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<sup>42</sup> See BENEDICT ANDERSON, *IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM* (2d ed. 1991).

