

THE RIGHT OF PEOPLES TO SELF-DETERMINATION

Sarah Garcia, Whittier College
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The framers of the United Nations' Charter recognized the rights of peoples to self-determination as one of the main objectives of the UN. The Charter expresses this principle or support for it in Articles 1, 2, 55, and 73. Article 1, paragraph 2 states the purpose of the UN is to "develop friendly relations among nations based on respect for the principle of "equal rights and self-determination of peoples." Article 2 states that all Member States possess sovereignty and should ensure its protection. Article 55 addresses solutions for international economic, social, political and health issues in consideration of human rights and fundamental freedoms, while Article 73 places responsibility on Member States for the protection of non-self-governing territories.²⁰

International Law

One of the best methods to uphold the rights of people to self-determination is the creation of international law. In addition to Articles in the Charter, the principle has been adopted in various international and regional bodies, including the "Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States adopted by the UN General Assembly in 1970; the Helsinki Final Act, adopted by the Conference on Security and Co-operation in Europe (CSCE) in 1975; the African Charter of Human and Peoples' Rights of 1981; the CSCE Charter of Paris for a New Europe adopted in 1990; and the Vienna Declaration and Programme of Action of 1993. It has been affirmed by the International Court of Justice in the Namibia case, the Western Sahara case, and the East Timor case in which its *erga omnes* character was confirmed."²¹ It is recognized by international law as a right belonging to peoples, not necessarily to states or governments.

²⁰ Cristescu, Aurelia. 1981 p. 23

²¹ UNPO, 2017

“As a fundamental principle of international law or—to use an expression frequently employed in judicial decisions – one of the ‘well-known and well-established principles’ of international law, the principle of equal rights and self-determination of peoples is one of the most important general rules of international law, whose binding nature stems from the fact that it is unanimously accepted and that it expresses some fundamental requirements for the life of the international community.”²² This principle is universally recognized under international law and is thus a legally binding principle. Since the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights classify self-determination as a right, it is a legal concept in conventional law.²³

The “Declaration on the Granting of Independence to Colonial Countries and Peoples” contained in Assembly resolution 1514 (XV) states in operative paragraph 2 that “All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” However, at a time when many former colonies were beginning to gain or assert their independence, operative paragraph 6 provided a qualifier which stated that “Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations. Similarly, the UN Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States per the Charter of the United Nations (A/ES/2625 (XXV)(1970) notes that a “...state’s right to territorial integrity prevails over the right of any of its peoples to self-determination, *provided that state conducts itself in accordance with the principles of equal rights and self-determination of peoples*” (emphasis added).²⁴ Thus, at least theoretically, movements for independence based on the right to self-determination were not to split apart existing states that conformed to UN principles.

²² Cristescu, Aureliu. 1981, pp. 22-23

²³ Cristescu, Aureliu, 1981, p. 22

²⁴ Brown (2020)

Nevertheless, support for self-determination was a major driver to promote decolonization as reflected in the two international covenants on human rights that were adopted in 1966 and went into force in 1976. The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights both begin with the same Article 1, paragraph 1: “All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development,” the same language included in the earlier Declaration, GA resolution 1514 (XV) adopted in 1960.

The General Assembly has continued to reaffirm the principle, most recently during its 76th session (2021) in resolution 76/152 (preambular paragraph 1):²⁵ “*Reaffirming* the importance, for the effective guarantee and observance of human rights, of the universal realization of the right of peoples to self-determination enshrined in the Charter of the United Nations and embodied in the International Covenants on Human Rights, as well as the Declaration on the Granting of Independence to Colonial countries and peoples contained in resolution 1514 (XV) of 14 December 1960.”

There were three waves of peoples seeking to exercise their right to self-determination during the 20th Century: the formation of several independent countries following the breakup of the Austro-Hungarian, Ottoman, and Russian empires after World War I; the decolonization that occurred through the 1950s, 60s, and 70s; and the breakup of the Soviet Union and the former Yugoslavia in the 1990s. And there have been individual situations that led to the independence of Eritrea (1993), the split of Czechoslovakia into the Czech Republic and Slovakia (1993), and the granting of independence to South Sudan (2011). Nevertheless, there are currently several other regions where the right to self-determination has been and continues to be a significant issue including, but not limited to several non-governing territories and specific locations such as Kosovo, Western Sahara, South Sudan, Palestine, and Ukraine.

²⁵ A/RES/76/152; see other paragraphs for complete statement on universal right to self-determination

Decolonization

The anti-colonial struggle is a longstanding issue. In 1945, 750 million people lived in non-governing territories and were completely dependent on colonial powers. Today, more than 80 colonies have gained independence. The charter places responsibility on member states of governing territories “to agree to promote social, economic, political, and educational purposes in the non-self-governing territories with due respect for the culture.”

The Declaration on Decolonization highlighted the significant role of the UN in promoting sovereignty and independence for Trust and Non-self-governing territories. It called for an end to colonialism in all its forms and defended all peoples’ right to self-determination. In 1961, resolution 164 (XVI) created the Special Committee on the Situation Regarding the implementation of the granting of independence of colonial countries and peoples or the Special Committee on Decolonization,²⁶ yet several non-self-governing territories remain. During the 2020 Special Committee, Secretary-General António Guterres urged decolonization as an utmost critical matter. Guterres mentioned the 17 non-self-governing territories and the urgency for independence.²⁷ Decolonization is a process that requires support at all levels. It cannot be done alone. With the support of the international community, these people can gain freedom and exercise their right to self-determination.

Kosovo

The Balkans have long suffered from ethnic conflicts and wars of succession, raising numerous issues relating to territorial integrity and self-determination. 1991 marked the beginning of the conflicts as Yugoslav troops arrived to de-escalate tensions in Slovenia, which had declared its independence from Yugoslavia. This eventually led to further secessions from Yugoslavia and a war in Bosnia & Herzegovina. Serbian forces followed a policy referred to as ethnic cleansing, but

²⁶ Decolonization, UN

²⁷ UN Special Committee, 2020.

considered by some as genocide, that caused widespread displacement and suffering among the Serb, Croatian, and Bosnian Muslim populations living in the region. While a settlement was reached (the Dayton Accords), sporadic violence continued and spilled over into Kosovo in 1997-1998 when the Albanian majority in what had been an autonomous republic of the former Yugoslavia (later Serbia) claimed independence. Serbian attacks on the Kosovan population led to a 78-day NATO air campaign against Serbia.

The Kosovo conflict brought international attention to the concept of self-determination. In 1991, the Arbitration Commission of the Peace Conference on Yugoslavia was established as an Arbitration Commission by the Council of Ministers of the European Economic Community (also known as the Badinter Commission) to determine the status and borders for the new states of the former Yugoslavia. As a result of its findings, Kosovo failed to be recognized as an independent republic. Nevertheless, the Albanian majority in Kosovo continued to claim independence. In 1992, the UN Human Rights Committee urged the former Yugoslavia to cease violence against the Albanian population of Kosovo and restore self-governance. A few years later, in 1997, the UN General Assembly called upon the former Yugoslavia to endorse the establishment of democratic institutions in Kosovo.²⁸ To ease tension, the United Nations Interim Administration Mission in Kosovo (UNMIK) was established in 1999 to promote peacekeeping. Its primary focus was on the promotion of security, stability, and respect for human rights in Kosovo and establishment of a set of independent Kosovan institutions, which began governing the territory in the early 2000s.

In July 2010, the International Court of Justice issued an advisory opinion holding that Kosovo's declaration of independence was not in violation either of general principles of international law, which do not prohibit unilateral declarations of independence, nor of specific international law – in particular UNSCR 1244 – which did not define the final status process nor reserve the outcome to a decision of the Security Council. Now, a decade later, over 100 countries have recognized Kosovo's

²⁸ Kumbo, 2002, pp.36-40.

independence, but Serbia still claims it as part of Serbia and the United Nations has not yet considered Kosovo for membership in the UN.

Western Sahara

Western Sahara remains one of the world's longest-running and unresolved disputes. Since the annexation of Western Sahara by Morocco in 1975, it has been the subject of a territorial dispute between Morocco and the indigenous Saharawi people, known as the Polisario Front. In 1976, the Front declared independence as the Sahrawi Arab Democratic Republic (SADR), better known as Western Sahara. Although the UN recognizes Western Sahara as a state, it has not officially reached statehood. In 1991, Security Council resolution 690 established the United Nations Mission for the Referendum in Western Sahara (MINURSO) in accordance with the Secretary-General's report S/22464, which laid out an implementation plan. The referendum was to determine the future of the territory. The International Court of Justice has rejected the claims that Western Sahara is a part of Morocco. Western Sahara still longs for independence, but Morocco has not allowed for the referendum to be held, in part due to disputes over the registration of thousands of people who have fled the region from Moroccan forces and are now refugees living in the Tindouf camps of Algeria. Morocco and Algeria continue to debate this issue every year in various fora of the United Nations, but little progress has been made in carrying out the referendum.²⁹

South Sudan

South Sudan's secession from Sudan, stemming from the desire for self-determination, occurred in 2011. During the early 2000s, Sudan was troubled with political instability and ravaged by civil war, especially in its southern regions. A Comprehensive Peace Agreement in 2005 called for a referendum in 2011 asking whether the southern region could exercise its right to self-determination

²⁹ Algeria and Morocco engaged in several rights of reply as late as 2 November 2022 in the GA's Third Committee; interview with M. McBride, Consultant to UNHCR, 3 November 2022

and become an independent state. After a successful vote on the referendum, South Sudan became an independent state and the 193rd member of the United Nations.

That same year, the United Nations established a peacekeeping mission for South Sudan – the United Nations Mission in South Sudan (UNMISS), which followed a previous mission established at the time of the Comprehensive Peace Agreement in 2005. However, violence broke out in 2013, challenging South Sudan’s ability to maintain its independence and successful exercise of its right to self-determination. The Security Council, in resolution 2132 of 24 December 2013, increased the number of peacekeeping troops from 7,000 to 12,500 and the number of police from 900 to 1,323. The mission has been focused on protecting South Sudan’s newly won sovereignty and resolving the conflict between opposition groups in South Sudan.³⁰ However, despite peace agreements in 2015, 2018, and 2020 between the government and rival groups, violence has continued, resulting in over 4 million people being displaced, with 1.8 million internally displaced and 2.5 million fleeing to neighboring countries. South Sudan’s long-term prospects as it pursues its goal of self-determination are uncertain at best.

Palestine

The most recent resolution on “The Right of the people of Palestine to self-determination” (A/RES/76/150) states the following in the first preambular paragraph: “Aware that the development of friendly relations among nations, based on respect for the principle of the equal rights and self-determination of peoples, is among the purposes and principles of the United Nations, as defined in the Charter.” The sixth and seventh paragraphs recall an advisory opinion of the International Court of Justice that the Palestinian people have a right to self-determination. And operative paragraph 1 “*Reaffirms* the right of the Palestinian people to self-determination, including the right to their independent Palestinian State.” The second (and last) operative paragraph “*Urges* all States and the specialized agencies and organizations of the United Nations system to continue

³⁰ Nzabanita, 2014

to support and assist the Palestinian people in the early realization of their right to their independent State of Palestine.”

This resolution and two others adopted during the 76th Session (A/RES/76/10 and A/RES/76/80) reaffirmed the Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights in 1993, and other Human Rights Conventions or Declarations. The Vienna Declaration called for states to implement each resolution regarding self-determination and independence from colonial forces and affirmed the legitimacy in the struggle for independence of the peoples of Africa and Palestine.

It is important to note that the votes on these resolutions were not unanimous,³¹ but the overwhelming majorities suggest that most of the international community favors self-determination, perhaps as part of a two-state solution, for the Palestinian people. Unfortunately, despite Palestine’s current status as an “Observer State” at the UN, little progress has been achieved over the years and the issue remains one of the more divisive topics in annual discussions at the United Nations.

Ukraine

Ukraine has been struggling for its independence for over 100 years. Its current resistance to Russia’s aggression stands as a true test for self-determination. Near the end of World War I, Ukraine declared its independence from Russia as the Ukrainian People’s Republic. However, following the Bolshevik revolution and reconquest of Ukraine during the Russian Civil War, Ukraine was incorporated into the newly formed Union of Soviet Socialist Republics (USSR) in 1922. It remained a significant republic in the Soviet Union until 1991 when it declared its independence as the Soviet Union collapsed at the end of the year. That independence and Ukraine’s right of self-determination have been threatened again by Russia’s invasion of Ukraine and its attempt to reintegrate parts (or

³¹ The vote on A/RES/76/150 was 168-5-10; for A/RES/76/10 it was 148-9-14; and for A/RES/76/80 it was 80-18-73.

perhaps all) of Ukraine into Russia,³² just eight years after earlier Russian incursions into Crimea and eastern regions of the country. This has put Ukraine at the forefront of the struggle for self-determination.³³ A battle which had been fought before has made it back to Ukraine. The UN and other humanitarian agencies collaborated on the 2022 Flash Appeal which prompted humanitarian aid to the people of Ukraine and refugees in neighboring countries. The desire for self-determination has given the state and its people the motivation to resist.³⁴

In response to a Russian veto of a UN resolution demanding the withdrawal of forces from Ukraine, U.S. Ambassador Linda Greenfield-Thomas declared publicly those sponsoring the resolution will share it with the GA where vetoes are nonexistent proving the international community is “on the side of sovereignty and protecting territorial integrity.”³⁵ Her statement helps remind us that sovereignty, territorial integrity, and self-determination must be safeguarded to ensure the security of future generations.

Global Concerns

The situations described above provide various examples of the desire of peoples to exercise or maintain their right to self-determination. Other examples regarding separatist movements have arisen in countries such as the United Kingdom (Scotland, Northern Ireland), Canada (Quebec), or Spain (Basques). In fact, a list on a Wikipedia site for separatist or self-determination movements identifies 28 countries where such movement are on-going and meet the following three conditions:³⁶

1. They are active movements with living, active members.
2. They are seeking greater autonomy or self-determination for a geographic region (as opposed to personal autonomy).

³² As of this writing Russia has claimed annexation of four regions of Ukraine.

³³ Aandahl, 2022

³⁴ UN News, 2022

³⁵ Lederer, 2022

³⁶ https://en.wikipedia.org/wiki/List_of_active_separatist_movements_in_Africa; accessed 9 November 2022.

3. They are the citizen/inhabitants of the conflict area and do not come from another country.

The large number of these situations raises several questions that the General Assembly could or perhaps should consider, including: Should the right to self-determination be redefined, extended, or narrowed? What is the threshold that must be achieved before self-determination can be granted? Should the UN play an active role in promoting (or limiting) efforts to achieve self-determination, especially if doing so involves establishing new territorial boundaries? Who decides whether a threshold has been met for granting the right? Should there be any compensation for countries whose territorial boundaries are reconfigured? Can the principle of Responsibility to Protect be applied to any cases where people are pushing for self-determination?

Conclusion

The principle of self-determination is far from perfect. In a rapidly changing world, the concept is open to various interpretations. An evolving definition leaves room for questions about state failure, secession, or territorial integrity. The Declaration on Social Progress and Development promotes the right to pursue one's destiny through economic progress and social unity. If people can thrive economically, they can thrive socially. The UN recognizes the connection between social well-being and international peace, decolonization, and the need for self-governance. The Declaration of the Principles of International Cultural Co-operation affirms for people the right to develop their culture according to UN principles. It embraces the value of every culture and promotes a harmonious balance of cultures through technical and moral progress.³⁷ Each aspect of the principle entitles people to the freedom to determine their path politically, economically, socially, and culturally. In doing so, sovereignty remains protected and international peace safeguarded.

Throughout history, the principle of self-determination has been employed to guarantee rights to all. It was adopted by US President Woodrow Wilson during the reconstruction of Europe following WWI. It was further incorporated in the 1941 Atlantic Charter and the Dumbarton Oaks

³⁷ Cristescu, Aureliu, 1981 pp. 46-104)

proposals, which developed into the UN Charter. It is recognized as a right of all peoples in the first article common to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which both entered into force in 1976. Thus, the right to self-determination lies at the heart of international law.

The very existence of self-determination depends on its protection. Without the protection of these rights, people will suffer. Most recently, the rights of Iranian women are being abused. In this most recent tragedy, 22-year-old Masha Amini died in the custody of Iran's "morality police." This bloodshed led to Iranians flooding the streets in protest causing the government to retaliate with force. Secretary-General Antonio Guterres reminded Iranian President Raisi of the need to respect human rights, including freedom of expression, peaceful assembly, and association.³⁸ The struggle in Iran cannot be fought alone. The international community must uphold the rights written in its Charters. Every human being has the right to self-determination. The uprising in Iran and the war in Ukraine might seem like two separate conflicts. However, the principle remains the same. It is people fighting for their right to freedom and self-determination. It takes a courageous act to stand against one's oppressors – but they are not standing alone. The international community must align itself with principles of equality and self-determination.

Achieving self-determination is a continuing struggle. It is a concept that has endured for centuries. As Wolfgang Danspeckgruber put it: "No other concept is as powerful, visceral, emotional, unruly, or as steep in creating aspirations and hopes as self-determination."³⁹ If it does not evoke an emotional response in member states then they simply do not understand it. Real-world examples such as the Israeli-Palestinian conflict, South Sudan, Ukraine, Iran and so many more hold these truths of self-determination to be evident. The fight for this fundamental right is far from over. Through unity and strength, all peoples should be able to embrace the right to self-determination.

³⁸ Iran, UN News 2022

³⁹ UNOP, 2017

Questions to Consider

1. If self-determination is more of an ideal than a rule--why is there legal legislation supporting it? Therefore, should the rights of self-determination be established first and set into law second?
2. Is the right of people to self-determination a justification for secession? Is there a fundamental difference between the two principles?
3. How can the U.N. continue to promote the principle of self-determination in the current state of the international community?
4. Since self-determination is a fundamental but evolving principle, what measures are formulated to improve it?
5. Does your country have internal movements seeking self-determination? If so, what has been your government's response?

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