The Right to Self-Determination and International Law

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The concept of self-determination is virtually as old as the concept of statehood itself. Since its inception self-determination has undergone dramatic alterations in many aspects, from a concept initially conservatively applied to issues such as decolonisation, to a justification for the break-up of multi-ethnic states. The concept may now extend towards indicating a right of self-determination for indigenous people.

The purpose of this article is to identify the traditional approaches to self-determination, and to attempt to explain and analyse the changes this concept has undergone.

I: THE ISSUE OF SELF-DETERMINATION

Self-determination refers to "the right claimed by a 'people' to control their destiny."[1] This is despite the fact that such a people have not yet achieved "statehood" under international law. Traditionally, only statehood could confer international legal personality, and its accompanying rights and duties, upon any group. A group seeking self-determination is one which feels that it has been unjustifiably excluded from the community of states recognised by international law.

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1 Berman, "Sovereignty in Abeyance: Self-Determination and International Law" in Koskenniemi (ed), *International Law* (1992) 389, 390.

The United Nations General Assembly Resolution 1514 (1960) states that:

> All peoples have the right to self-determination; by virtue of that right they may freely determine their political status and freely pursue their economic, social and cultural development.

It becomes appropriate to consider the paradox involved in the notion of a legal right to self-determination: How can international law recognise a right owing to an entity which, by its own admission, lacks international legal existence?[2]

Such a paradox raises certain issues concerning statehood, its acquirement and recognition. The international community is composed of already constituted and commonly recognised states, however there is no universally accepted definition of statehood in international law.[3] The criteria for statehood given by the Convention on Rights and Duties of States requires:[4]

(i) a permanent population;
(ii) a defined territory;
(iii) government; and
(iv) the capacity to enter into relations with other states.

These criteria raise fundamental questions concerning the right to self-determination of various cultural, legal, and indigenous groups. In applying the traditional view, the claims of a legal right to self-determination by non-state groups require them to appear as a "state", before they can be put forward internationally.

An applicant for membership of the United Nations must, in general terms, be a "state". Those who present their credentials for membership in an international forum claim to represent states. These states, in turn, purport to represent a particular population and territory. Groups seeking self-determination assert that they have been excluded from the system.

Such claims of exclusion pose a challenge to the stability and integrity of the international legal community. The claims may be expressed as relating to the failures of representation, in asserting that, as a matter of fact, a given state does not represent a group. Alternatively, the claim may be that a given state is incapable of representing a group of people due to cultural or other differences.

The existence of a legal right to self-determination has been greatly disputed from logical, jurisprudential, and practical perspectives. However, since World War II there has been a strong basis for such rights, as seen in decisions of the International Court of Justice, resolutions of the United Nations General Assembly, state practice, and the writings of commentators.

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2 Ibid.

3 *Western Sahara* [1975] ICJ Rep 12, 43-44.

4 Convention on Rights and Duties of States, Dec 26, 1933, Art.1, 49 Stat 3097, TS No 881, 165LNTS.19

A general definition of the right of self-determination may be framed as follows:

(i) self-determination is a right of peoples who do not govern themselves;[5]
(ii) the identity and desires of such peoples may be ascertained through various means, such as international commissions of inquiry, and facts, such as the actual struggle of a people to assert its identity; and[6]
(iii) while self-determination may take various forms, including continued association with an existing state, a strong preference is placed on the bestowal of statehood on the people in question.[7]

II: THE HISTORICAL ORIGINS OF SELF-DETERMINATION

Self-determination, since its inception during the nineteenth century, has merged two potentially incompatible values: popular sovereignty and nationalist resentment.[8] National self-determination can therefore be viewed as a reconciliation of competing ideals: the rules of the people, and the rules of the virtuous.

The revolutionary period in Europe, as seen through the eyes of the people, transformed the "culturally flat state of the 18th century into a symbolically plausible nation of the 20th".[9] For example, regardless of the difference in genesis, the German and French entities eventually converged on the common goal of uniting a single cultural people within a single sovereign state.

Throughout the nineteenth century, national self-determination remained a foreign, radical principle, largely reflected by international law. In the wake of Napoleon, the Concert of Europe strove to restore the status quo ante in Europe, actively rejecting the authority of the people's will to determine borders, or the governments that ruled them. As a result, membership of the world of nations was both exclusive and discretionary. Consequently, nations had no status in international law until incorporated into a recognised state.

The principle of non-intervention emerged in terms of a state's treatment of foreigners. It was a matter of international concern only in so far as those

5 Examples may include the New Zealand Maori, the Australian Aborigines, and the East Timorese in Indonesia.

6 The International Court of Justice has recognised the validity of a flexible approach in determining the "freely expressed wishes of the territory's peoples", holding that an actual consultation with the population may not always be necessary: supra at note 3, at 33.

7 General Assembly Resolution 1541 provided for three legitimate methods of decolonisation consistent with the principle of self-determination: independence, free association, and integration with an existing state. GA Res 1541, 15 UN GAOR Supp (no 16) at 29, UN Doc A/4684 (1960). Practical recent examples, such as the break up of the USSR and Yugoslavia, suggest a preference for independence.

8 Binder, "The Case for Self-Determination" 29 Stan J Intl L 223, 226.

9 Lam, "Making Room for Peoples at the UN" 25 Cornell Int'l LJ 603, 613.

foreigners were the subjects of another recognised state. The late 1850s saw the emergence of exceptions to this overall pattern, with the principle preventing England from helping the Hungarians revolt against their Hapsburg masters, but not from conquering Africa. The principle of state autonomy paradoxically authorised imperialism. International intervention in the Balkan revolts further disrupted the pattern, leading to the breakup of the European Concert system, and the onset of World War I.

1. Early Twentieth Century – Wilsonian Self-Determination

The concept of self-determination is closely identified with the United States President Woodrow Wilson, who first used the term publicly in 1918. At the end of World War I, Wilson urged the principle of self-determination upon the remnants of the European Concert. The principle was purported to be the basis of the subsequent Versailles Peace Settlement of 1919.[10]

The foundations of the Wilsonian principle of self-determination, as indicated by Whelan,[11] lay in a number of ideas which evolved over the centuries to shape the modern world. First, the fundamental idea that the people are sovereign, and not subjects of the state, developed through the English, French, and American Revolutions. From this comes the concept that the legitimacy of rule is largely dependent upon the consent of the governed. Second, as kingdoms became consolidated, and feudal imperial claims were eroded, the sovereignty of the state in international affairs emerged. Third, ethnic nationalism threatened the great multinational empires of Europe in the nineteenth century and aided their collapse in the twentieth.

President Wilson proposed a post-war order informed by the notion that ethnically identifiable peoples of nations would govern themselves, this being consistent with the earlier slogan of "the defence of small nations". This idea was grudgingly accepted at Versailles, as being "a principle of statecraft, rather than justice."[12]

Given the nationalist rebellion in the Hapsburg and Ottoman territories in the latter stages of the war, the victors were virtually the victims of their own propaganda. The political separation of ethnic minorities was perceived by the allies as a convenient way of dissecting the European territories of the conquered.

President Wilson himself preferred the phrase "self-government" over self-determination, which thereby implied a right to select ones own democratic government. Wilson's concern for oppressed ethnic minorities led to three of the central elements of the post-war settlement:[13]

10 Whelan, "Wilsonian Self-Determination and the Versailles Settlement" 43 ICLQ 99.

11 Ibid.

12 Binder, supra at note 8, at 228.

13 Whelan, supra at note 10, at 100-101.

(i) a scheme whereby identifiable peoples were to be accorded Statehood;
(ii) the fate of disputed border areas was to be decided by plebiscite;[14] and
(iii) those ethnic groups too small or too dispersed to be eligible for either of the above courses of action were to benefit from the protection of special minorities regimes, supervised by the Council of the new League of Nations.

The implementation of these policies did not appear to involve the acceptance of self-determination as a legal obligation of general application, and did not appear in the League of Nations covenant. It was, however, calculated to save the problems entailed by ethnic communities or nationalities, distinguished by their language and culture, crossing the lines of existing political entities. During this process, the colonies of the defeated powers became Mandates of the League and entrusted into the Allies control. As noted by Lam, "the League of Nations, certainly, gave itself the ambitions after the war of rearranging the peoples and boundaries of Europe in such a way as to obtain a maximum fit between ethnicity and statehood."[15]

In fragmenting the Ottoman and Austro-Hungarian Empires into their ethnic divisions, and creating autonomous regimes for peoples enclosed within heterogeneous states, the League justified the principle of self-determination.[16] Although the League secured several autonomous regimes for ethnic minorities by negotiation and supervision, the peoples protected by such treaties played no formal role in either their construction or implementation. From this emerged the genesis for the ideal of the cultural unity of the modern state – "League Wardship". However, whether or not League Wardship could have delivered order and justice to state and ethnic minorities was never determined, due to the outbreak of World War II.

III: INTERNATIONAL INSTRUMENTS

1. The United Nations Charter

Following World War II, the United Nations, as successor to the League of Nations, developed the Wilsonian concept of self-determination. The United States had misgivings about resuscitating the self-determination idea into binding treaty form. However, the idea found its way into Articles 1 and 55 of the United Nations Charter ("the Charter"). Article 1 states that the purpose of the United Nations includes the development of "friendly relations among nations based on

14 The direct vote of all electors of state on important public questions.
15 Supra at note 9, at 614.
16 Thornberry, International Law and the Rights of Minorities (1991) 38-54.

respect for the principle of equal rights and self-determination of peoples", while Article 55 discusses "conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples".

It can be said that real obligations were created in the Charter. However, the drafters of the Charter did not define self-determination or identify who the "peoples" were. From its "constitutionalisation", therefore, the concept was plagued by difficulties as to scope and application.

Although traditionally more inspired by the principle of self-determination than its new Western allies, the Soviet Union agreed that self-determination was a principle of order rather than justice. For the often invaded Soviet Union, self-determination meant non-intervention; that is, respect for the very state sovereignty challenged by demands for decolonisation or secession.

The scheme established by the Charter for the "progressive development" of "self-government" in the colonies did not require immediate independence to legitimate their continued dependence. By characterising colonial rule as a necessary means of development for the colonies, the Charter obscured the fact that such rule was an impediment to self-government.

During decolonisation the United Nations sought to liberate indigenous people from colonial rule, and to implement mechanisms for them to determine their territorial status. As stated by Evans and Olidge:[17]

> Decolonisation was not merely an effort to secure more rights within the colonial framework; it was a desire for liberation from colonial rule and a rejection of political domination by a foreign society, especially of a different race.

Article 1 of the Charter, as outlined above, established the doctrine of self-determination as a prerequisite for developing "friendly relations among nations". Traditional human rights formulations prior to the United Nations Universal Declaration of Human Rights did not include the right to political participation. However, the efforts of the United Nations following World War II, and the Declaration, elevated self-determination as a fundamental human right that included a people's ability to express its political will.

Self-determination and the rights of minorities were linked in the legal arrangements accompanying nineteenth century examples of nations becoming states. The doctrine of the nation-state shaped these arrangements; that is, the ideal state is the state of single nationality.[18]

Despite the high level of interest in human rights, proposals for the protection of minorities were lacking. "The use of German minorities by Hitler to undermine

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17 Evans and Olidge, "What can the Past Teach the Future? Lessons from Internationally Supervised Self-Determination Elections 1920-1990" 24 NYUJ Intl L & Pol 1711, 1712-1713.

18 Thornberry, "Self-Determination, Minorities, Human Rights: A Review of International Instruments" 38 ICLQ 867, 869.

the stability of the host states and the whole Versailles settlement induced an anti-minorities climate in the immediate post-war years."[19] It is possible to argue that the protection of minorities is generally part of universal human rights, however this is far from acknowledging their right to self-determination.

The references to self-determination in Articles 1 and 55 of the United Nations Charter are accompanied by Chapters XI and XII, which deal with non-self-governing territories and the international trusteeship system. Article 76, concerning the international trusteeship system, refers to progressive development in the Trust Territories towards "self-government or independence". The attainment of both self-government and independence is contingent upon the individual situation. Chapter XI is a declaration on "non-self-governing territories". The territorial aspect is important, as the Chapter refers to "territories whose people have not attained a full measure of self-government", and the promotion of "the well-being of the inhabitants of these territories". A territorial concept of self-determination appears to rule out minorities without a specific territorial base. Further, in view of the reality of mixed and inextricable populations, languages, and religions, focusing on territory weighs heavily towards taking political demarcations as they now exist, making these the focal point of political change.

It has been an issue of contention whether or not minorities were intended to have a right of self-determination within the Charter. In the mid-1950s "The Belgian Thesis" was presented to the United Nations, indicating that the Charter does not single out "colonialism", but non-self-governing territories.

> The thesis radicalises self-determination by insisting that it can apply to indigenous groups and minorities. The thesis did not prevail. Latin American States and their allies did not agree that their situation could be assimilated to that of the colonies.[20]

This provides an indication of the lack of understanding of, and consistency in, the international system at the time.

In response to the Belgian thesis, the United Nations built a consensus on self-determination to bring order to the inevitable historical movement of decolonisation. The effect was that colonial boundaries function as the boundaries of the emerging states. The logic of the resolution is relatively simple: people hold the right of self-determination, a people is the whole people of a territory, and a people exercise its right through the achievement of independence.[21]

2. Beyond the United Nations Charter

The right of self-determination does not appear explicitly in the 1948 Universal Declaration of Human Rights, but the Declaration does infer that the "will of the

19 Ibid, 872 n28.
20 Supra at note 18, at 873.
21 Ibid.

people" shall be the basis for the authority of the government. This will should be expressed through "chosen representatives" elected by "universal and equal suffrage."[22]

The right of self-determination did however become the centrepiece of the General Assembly's 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples.[23] The cursory references in the Charter to self-determination provided the basis for this radical approach, leading to Resolution 1514 and also 1541 (XV). The latter defined the United Nation's role in respect of non-self-governing territories as applying in particular to colonies; and in the former, the role was expanded into a call for the speedy grant of independence to such territories, and for state abstention from the use of force against groups campaigning for such independence.

The restrictive view of the non-applicability of self-determination to minority groups is strengthened by Resolutions 1514 and 1541. The holder of the right of self-determination is declared to be the "people", the meaning of which is conditioned by repeated references to colonialism. Paragraph Six of Resolution 1541 states:

> 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.

The effect is that colonial boundaries function as the boundaries of the emerging states.[24]

Both of the 1966 United Nations Covenants on Human Rights commence with the phrase "all peoples have the right of self determination".[25] The International Covenant on Civil and Political Rights extends the right of self-determination to citizens of independent states. Article 1 established self-determination as a participatory right, and Article 25 further defines the method of political participation required. Violation of these standards would enable a people to assert denial of their right to self-determination, for only through political participation can "economic, social and cultural" institutions develop.

Pressure from the West to expand the concept beyond anti-colonialism resulted in the Declaration on Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations,[26] as adopted by the General Assembly in 1970. This document attempts to encompass all issues relating to self-determination, and requires that this principle be considered universally. The General Assembly acknowledged that emergence into any political status, freely

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22 G A Res 217A, UN Doc A/810 (1948).

23 Supra at note 7.

24 Supra at note 18, at 874.

25 International Covenant on Economic, Social and Cultural Rights, Dec 16, 1966, 993 UNTS 3; International Covenant on Civil and Political Rights, Dec 16, 1966, 999 UNTS 171.

26 G A Res 2625, UN GAOR, 25th Sess, Supp No 28, UN Doc A/5217 (1970).

determined by a people, constituted a mode of implementing the right of self-determination. The dichotomy of self-determination as internal and external was recognised as a participatory right.

The Declaration on Friendly Relations represented the first time in the history of the United Nations that the conditions and parameters of self-determination were extended.[27] Internal self-determination was held to be realised when the state had a government representing the whole people belonging to the territory without distinction as to race, creed, or colour. External self-determination has been recognised only for peoples living in colonies or under racist regimes that lack representative governments.[28] The Declaration disclaimed any intent to authorise or encourage the dismemberment of states, but its disclaimer was tied solely to the concept of internal self-determination.[29]

The self-determination principle in the United Nations era has a great many interpretations. It is now virtually agreed that it includes freedom from colonial domination, at least when that domination is of people of one colour in their homeland by other racial groups.[30] The International Court of Justice endorsed this principle in this form in its 1971 Advisory Opinion on Namibia[31] and in its 1975 Advisory Opinion on the Western Sahara,[32] where it outlined the principle as "the need to pay regard to the freely expressed will of peoples".[33]

3. Regional Documents

Through adopting the concepts expressed by the United Nations, regional organisations have used their own charters and documents to espouse self-determination as a participatory right.

The Charter of the Organisation of American States ("the OAS") established representative democracy as a prerequisite condition in the quest for stability, peace, and development. Implicit in this was the establishment of self-determination as reliant upon a person's ability to express their will.[34] To ensure the right of each individual to participate in elections, the OAS is committed to intervene where people are prohibited from free participation in government.[35] However, according to the OAS Charter this enforcement is limited when it threatens national sovereignty.

27 Supra at note 17, at 1717.
28 Ibid.
29 Kirgis, "The Degrees of Self-Determination in the United Nations Era" 88 Am J Int'l L 304.
30 Ibid.
31 [1971] ICJ Rep 16.
32 Supra at note 3.
33 Ibid, 33.
34 ZIUST 607; OEA Res XXX, OEA Doc OEA/Ser.L/VI.4/Rev (1965).
35 Supra at note 17, at 1718.

The African Charter on Human People's Rights was adopted by the Organisation of African Unity ("the OAU") in 1981. It specifically refers to self-determination as a political, economic, and social right.[36] The "peoples" of the African Charter are not defined, but do have important rights. The Charter lays great stress on its "African" character throughout, with the preamble making specific references to the OAU. This includes the African views on self-determination which stress the integrity of the state, with little suggestion that "peoples" are other than the "whole peoples" of the state, not ethnic or other groups.[37]

Following the approach of its regional counterparts, the Conference on Security and Cooperation in Europe ("the CSCE") adopted the Copenhagen Document on 29 June 1990. The document states that self-determination is achieved through the expression of the people's will.[38] The Copenhagen Document highlights the mutually exclusive nature of Articles 2(2) and 2(7) of the United Nations Charter, by recognising self-determination as an international norm that falls outside the plethora of domestic matters, and allowing international intervention (in terms of election observation) over what would otherwise be considered a domestic issue.

The Charter of Paris for a New Europe was adopted on 21 November 1990 by thirty-four leaders of the CSCE.[39] This Charter defines self-determination as including human rights, military security, and economic, environmental, and scientific co-operation. It pledges to "build, consolidate and strengthen democracy as the only system of government" and the only mechanism for ensuring self-determination.[40] The document is revolutionary in its attempt to protect individual rights.

4. The European Community Arbitration Commission

The European Community ("the EC") Arbitration Commission was established in 1991, and attached to the EC Peace Conference on Yugoslavia in order to attempt to manage and end the crisis in the former Yugoslavia. To date the EC Commission has given ten opinions and one interlocutory decision.[41] Its pronouncements may be divided into three categories: issues of jurisdiction, general international law, and specifically the recognition of the individual former Yugoslav states.

36 African Charter on Human Peoples' Rights, June 27, 1981. OAU Doc CAB/LEG/67/3/Rev.5 (1981)

37 Such an approach is indicated by Thornberry, supra at note 18.

38 Document of the Copenhagen Meeting of the Conference on the Human Dimension, 29 June 1990, 29 ILM, 1305. This has been considered to be one of the more recent instruments generated by the Helsinki Final Act signed on 1 August 1975, by thirty-three European countries as well as the United States and Canada. Special reference is made in the Helsinki Final Act to the International Covenants; Schabas, *International Human Rights Law and the Canadian Charter* (1990).

39 30 ILM 190.

40 Ibid, 193.

41 31 ILM 1421, 1422.

The pronouncements of the EC in terms of general international law have focused primarily on the issues of self-determination, secession, and statehood. In its first opinion, the EC Commission confirmed the traditional criteria for statehood and the dominant theory of recognition, holding recognition to be declaratory rather than constitutive. In its second opinion, the Commission applied a fairly restrictive view in determining what kind of entities are entitled to exercise the right to self-determination and secede. As noted by Weller:[42]

> While the Commission implied that such a right may be exercised by federal units which have already proved their ability to exist independently through autonomous administration and full participation in the central organs of the federation, minorities and groups within such units were held to enjoy the right to self-determination on a different level.

IV: THE CHALLENGE OF SELF-DETERMINATION

Self-determination as expressed thus far is a combination of various principles of international law including human rights, territorial sovereignty, the acquisition of sovereignty over territory, recognition, and the law that determines statehood. The extent to which these principles are applied sets the parameters of the right to self-determination. In this process of determining and defining self-determination, various issues concerning international stability arise. Disagreement and controversy stems from the fact there is no clear definition of what is meant by "peoples" or even what is meant by self-determination itself.

1. Decolonisation

During the era of decolonisation, the United Nations defined self-determination as the right to be free from colonial domination. This right has been expressed primarily through an external determination of a state's territorial boundaries with the international community, with the popular will of the state ascertained through neutral democratic proceedings such as referenda. The authority invoked in cases involving colonised non-self-governing territories is Article 73 of the United Nations Charter. Article 73 requires that:

> [M]embers ... which have or assume responsibility for the administration of territories whose peoples have not yet attained ... self-government recognise ... that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust ... to develop self-government and to take due account of the political aspirations of the peoples.

42 Weller, "International Law and Chaos" (1993) 52 CLJ 6, 7-8.

Decolonisation gained momentum when the international community determined that colonialism impeded the enjoyment of human rights, by, for example, preventing representative government emerging through the free election of officials.[43]

Through Article 73 of the United Nations Charter and General Assembly Resolution 1541,[44] the United Nations has helped non-self-governing territories attain at least one of three basic objectives: emergence as a sovereign independent state; entrance into free association with an independent state; or convergence with an independent state.[45] This has been achieved largely via the Special Committee on Decolonisation, the main United Nations body concerned with the progress of all peoples under colonial rule towards self-determination and independence.[46]

In 1989, the Special Committee was concerned with the Falkland Islands, New Caledonia, Tokelau, East Timor, Western Sahara, and Namibia.[47] While the United Nations has considered independence to be the usual result of the exercise of self-determination, in most cases it has accepted the inhabitants' decision to associate or integrate, if expressed through fair methods.

Niue entered into free association with New Zealand through the use of a United Nations referendum, to ensure that the people of Niue exercised their right of self-determination freely, and under circumstances which guaranteed the secrecy of the ballot. In 1976, the referendum held in the Comoro Archipelagos Island of Mayotte provides an example of a population's decision to converge with another territory rather than seek independence.

South West Africa is an example of a territory that achieved independence, when it became Namibia in 1990.[48] South Africa had controlled South West Africa since 1920, when it succeeded the League of Nations as South West Africa's supervisory power. Convinced that South Africa's supervision was being conducted in a manner contrary to its mandate, the United Nations emphasised the territory's right to be free of foreign occupation and to decide its own political future.

In July 1993 the Special Committee requested Argentina and the United Kingdom to resume talks to resolve the sovereignty dispute of the Falkland Islands (Malvinas).[49] The Committee reiterated that the way to put an end to the "special colonial situation" in the Falkland Islands was a peaceful and negotiated settle-

43 Supra at note 17, at 1731.

44 Supra at note 7.

45 There are arguments that other options exist, however only the primary three are listed.

46 The full title of the special committee is "The Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples". It was established in 1961, following the adoption in 1960 of the Declaration on the Granting of Independence to Colonial Countries and Peoples.

47 Special Committee on Decolonisation – information paper DPI/912 – May 1989 – 5M Rev.1.

48 Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples and the Acting President of the UN Council for Namibia, UN GAOR 32nd sess. pt 2, Agenda item 24, at 17, UN Doc A/32/109 (1977).

49 GA/COL/2897, 14 July 1993.

ment to the dispute between the governments of Argentina and the United Kingdom. It was submitted on behalf of the Falkland Islands inhabitants that they were not permitted to participate in any decision-making, and thus were denied their right to self-determination. It was acknowledged by several committee members at the time that the draft resolution concerning the Falkland Islands did not make any specific reference to the principle of self-determination. The issue of decolonisation of the Falkland Islands remains to be determined by the Special Committee.

An example of the decolonisation policy in operation closer to home is the situation of Tokelau, currently undergoing the process of decolonisation, which is ultimately an act of self-determination.[50] There is a call for the United Nations to consider in isolation each claim for self-determination, based on its own circumstances, challenges and parameters. As stated by the Administrator of Tokelau:[51]

> Whereas in the past decisions that contained prescriptions for independence and self-determination, with broad application, were appropriate, the need, nowadays, is for the United Nations to more carefully calibrate decisions that reflect reality on the ground in individual cases. Tokelau is one such individual case.

Seeing decolonisation as an integrative, rather than a disintegrative process, helps us understand the simultaneous emergence of a legal right of self-determination of peoples and the dwindling of its nationalist component. The legal stature of the principle of self-determination of peoples grew with the representation of post-colonial states in the United Nations General Assembly. Universal support for the right to self-determination in the early 1960s was achieved by restriction of the right to decolonisation. Consequently, the right to self-determination was included in the United Nations Declaration on Friendly Relations.[52] "The process of decolonization itself enabled this simultaneous enactment and attenuation of the right of self-determination."[53]

The "people" in the United Nations Declaration on Friendly Relations were non-self-governing territories, treated as separate territorial units, whose residents would have a full-fledged "right of self-determination". Thus the United Nations Declaration recognised a right of secession not for "peoples" at all, but for those territories that happened to be recognised by the United Nations as colonies. Such an interpretation of the right to self-determination was subsequently confirmed by the International Court of Justice decisions in the *Namibia* and *Western Sahara* cases.[54]

50 Pacific Regional Seminar: UN Decolonisation Committee: Statement by the Administrator of Tokelau, 10 June 1993.

51 Ibid, 5.

52 Supra at note 26.

53 Supra at note 8, at 236.

54 Supra at notes 33 and 3 respectively. See also Ruda, "Some Contributions of the International Court of Justice to the Development of International Law" (1991) 24 NYUJ Intl L & Pol 35, 46-48.

Outside the non-self-governing territories therefore, self-determination is recognised as a principle as opposed to a right. Beyond the decolonisation context the nationalist component of self-determination is completely absorbed into the sovereignty of existing states. By reducing the principle of self-determination of peoples to the political and civil rights of individuals, the inference is made that even decolonisation was a right only in so far as it was instrumental in securing individual political and civil rights. If decolonisation is interpreted as a means of enforcing universal human rights rather than local self-rule, the nationalist component of self-determination diminishes to nothing.

2. Beyond Decolonisation – The Role of International Law

The right to dissolve a state peacefully and form new states upon the territory of the former one has been considered a form of self-determination, as in the cases of the former Soviet Union and Czechoslovakia. It is, however, extremely rare for this to occur without conflict, as in the case of Czechoslovakia. While all of the new states of the former Soviet Union have been recognised, the process could not be described as peaceful, particularly for Armenia and Azerbaijan who continue the struggle for Ngorno-Karabakh.

Despite the importance of these recent struggles in Eastern Europe and the former Soviet Union for world peace and stability, international law has played a remarkably insignificant role in the resolution of independence claims. The reasons for this stem from weaknesses within the international law of self-determination,[55] which have rendered the law inadequate to judge secessionist claims, and have hampered the peaceful implementation of the right to self-determination.

Tension between the competing principles of territorial integrity and self-determination create conflict within the law. The principle of territorial integrity demands respect for the established boundaries of pre-existing states. In contrast, the principle of self-determination calls for the division of existing states and the creation of new ones according to the wishes of the population. In decolonisation, self-determination is restricted to mean independence from "European" colonial rule, without having any meaning so far as the internal organisation of the colonial territory is concerned.

Throughout the 1950s, 1960s, and 1970s, the decolonial movement successfully struggled for independence. The international law of self-determination responded to these struggles by evolving as a prohibition against "racial" colonialism. This led to the subordination, to the political agenda of decolonialism, of the legal right of self-determination. The international law of self-determination remains an ideological weapon of the decolonial struggle against western imperialism. However, "in the non-colonial or non-Third World context, the right of self-

55 Eisner, "A Procedural Model for the Resolution of Secessionist Disputes" (1992) 33 Harvard Intl LJ 407.

determination failed to achieve a similar efficacy of significance".[56]

A problem with the approach outlined above is that it fails to provide a workable framework by which to judge struggles for independence which do not derive from racial colonialism. When secessionists and the central authority are of the same race, the question remains whether the secessionist movement constitutes a "colonial" struggle for the purposes of determining a right to self-determination. In decolonisation struggles, self-determination outweighs territorial integrity, giving rise to a legal right of secession. In non-colonial struggles, territorial integrity overrides self-determination. To date international law has not provided any clear answers or guidelines to this question.

The dissolution of the Soviet Union provides a clear example of the limitations of the self-determination doctrine in contemporary non-colonial, non-racial contexts. In the face of nationalist movements, in what has been termed the "world's last empire",[57] little guidance was provided by international law as to the legal rights of either the secessionists or Moscow. As a result, international law failed to have any influence over the progress of events.

The struggle of the Soviet republics against rule from Moscow could easily have been characterised as a decolonial movement. However, as the struggle could not be defined as racial decolonialism, which usually involves a Western "imperial" presence, the struggle was outside the context of prevailing international legal norms. The result of this was that the United Nations and the world itself remained cautious observers, without directly intervening, and delayed recognition until it became a foregone conclusion.

Analogous to the events in the former Soviet Union, the United Nations has not addressed itself to secessionist claims within Iraq or India, where non-European groups have claimed independence from non-European central authorities. Despite widespread human rights abuses against the Kurds in Iraq, the United Nations has spent little, if any, time on their struggle for self-determination. Prior to the Gulf War, few even knew of their existence. It may be argued that as the Kurdish situation is not perceived as "colonial", the United Nations and its member nations have ignored Kurdish appeals for protection and greater autonomy under the international law of self-determination.

The selective, inconsistent, and manipulative manner by which the powerful nations have proclaimed the right of self-determination has weakened the efficacy and integrity of this element of international law. As indicated, international legitimacy of struggles for independence has depended more on the political circumstances and superpower interests, than on the legal strength of secessionist claims.

Articles 39, 41, and 42 of the United Nations Charter provide mechanisms for enforcing the right of self-determination. Article 39 provides the power to take measures to "maintain or restore international peace and security". Articles 41 and

56 Ibid, 411.
57 Ibid, 412.

42 authorise sanctions that may be implemented. Unfortunately, the veto power held by each permanent member of the United Nations Security Council has effectively prevented the United Nations from enforcing any of these mechanisms to settle secessionist claims.

In summary, weaknesses within international law have clouded the right of self-determination and hampered its consistent implementation. While the world has been undergoing profound change as a result of secessionist claims and the consequent struggles for independence, international law has largely remained on the sidelines, a casualty of its own internal inconsistency, ambiguity, and vulnerability to political manipulation. However, the role for international law is not on the sidelines. With the potential for instability and violence arising out of secessionist claims, especially in nuclear states, international law has the potential to play a critical role in promoting the peaceful resolution of independence claims. Its current and future role in secessionist claims shall be considered in three diverse situations – former Yugoslavia, Hong Kong, and Tibet.

V: A RIGHT TO SECEDE?

1. The Events in Former Yugoslavia

On 25 June 1991 when Slovenia and Croatia declared their independence, the international community reacted negatively to their secessionist actions. Many members of the international community insisted that Yugoslavia remain intact in accordance with the international legal principle of territorial integrity which prohibits the changing of borders. This underlying reluctance to recognise the new states may have been based upon a fear of violence in Europe, and the precedent that independence would establish for the multitude of separatist ethnic groups in Eastern Europe. Following the military offensive by the Yugoslav army, and possibly because they realised that their policies may have provoked the violence, the United States and the European Union began to voice their support for the republics. In doing so, the United States and the European Union cited such fundamental values as freedom and the right to self-determination.[58]

The principle of self-determination can grant autonomy ranging from simple participation in government to full self-government. Whether the principle of self-determination includes a right to secede from an existing state, however, has been widely disputed. The former Yugoslav republics have maintained that they have a constitutional right to self-determination, including a right to secede.

58 Iglar, "The Constitutional Crisis in Yugoslavia and the International Law of Self-Determination: Slovenia's and Croatia's Right to Secede" (1992) 15 Boston Col Int Comp L Rev 213.

A consolidated state of Yugoslavia seemed essential to the nation's survival after World War II. Thus, early on, political leaders in Yugoslavia were hostile to any thought of possible diminishment of the Yugoslav Federation. However, these leaders were compelled to entertain, at least in theory, the idea of secession. The Yugoslav Federal State arose out of the Soviet mould, where the possible diminishment of the federation through secession of a member-republic endured as an explicitly recognised principle.[59] Yugoslavia, following the Soviet lead, added the principles of self determination and secession to the Yugoslav Constitution of 1946.

The Yugoslav Presidency conceded that nations have a right to self-determination and secession, and that all nations in Yugoslavia are sovereign.[60] Further, it has stated that no solutions can or will be imposed upon any nation if they are not in accordance with the nation's freely expressed will and interests. This is hardly a surprising reaction as Croatia and Slovenia's declarations were among the first overt actions pre-empting the break-up of the Federation.

An Arbitration Commission was established as part of the European Community Peace Conference on Yugoslavia to resolve the conflict.[61] Opinion Two of the Commission considered the kind of entities which are entitled to exercise their right to self-determination and secession.[62] The Arbitration Commission confirmed that:[63]

> [T]he right to self-determination must not involve changes to existing frontiers at the time of independence .... Where there are one or more groups within a state constituting one or more ethnic, religious or language communities, they have the right to recognition of their identity under international law ... the principle of the right to self-determination serves to safeguard human rights.

A fairly restrictive view was therefore applied. Thus, in the view of the Commission, Serb populations inhabiting defined territories within Croatia and Bosnia-Hercegovina can only rely on self-determination as a basis for human and minority rights. The Commission also held generally, that the dissolution of a federation has taken place when a majority of federal entities, embracing the greater part of the territory and population, constitute themselves as sovereign states, with the result that the federal authority may no longer be effectively exercised.

In the case of the dissolution or secession of states, the question of the boundaries between a new state and either its predecessor or another breakaway state arises, a problem closely related to state succession. The rule that governs

59 Bagwell, "Yugoslavian Constitutional Questions: Self-Determination and Secession of Member Republics" (1991) 21 Georgia J Int Comp Law 489, 500.

60 Supra note 58, at 219.

61 See text, supra at Part IV.

62 31 ILM 1497.

63 Ibid, 1498.

this issue is the *uti possidetis* principle – "have what you have had". Two confronting principles are raised. While *uti possidetis* requires that boundaries be left as they were at the moment independence was restored, the need to remedy the results of illegal occupation and annexation means that those frontiers that existed before the loss of independence should be restored.[64]

The above conflict of principles is apparent in the former Yugoslavia, especially with the present situation in Bosnia-Hercegovina. Opinion 9 of the Arbitration Commission concluded that the newly proclaimed "Federal Republic of Yugoslavia"[65] would not automatically be the successor state of the former Socialist Federal Republic. Instead, all the emerging entities were to be regarded as new states who should settle issues of succession by agreement on the basis of equality and equity, taking account of the Vienna Conventions on Succession of States and of general international law.[66]

A people with a right to self-determination have a right to determine their political, economic, social, and cultural status. Based upon such criteria, the republics of Slovenia, Croatia, and Bosnia-Hercegovina have been recognised by the international community. The republic of Macedonia remains controversial due to a veto by Greece, which has its own area with the same name, thereby stifling European Union debate on the issue. The issue of territory and autonomy remains a concern in Bosnia, especially with the recent refusal of Bosnian Serbs to attend peace talks or to negotiate. The approach, albeit arbitrary, towards the break-up of the former Yugoslavia appears to indicate a right to secede providing certain criteria are met. Such criteria may include an objective standard, requiring a group to possess certain common characteristics. Iglar notes that:[67]

> These characteristics may include bonds which are racial, historic, geographic, ethnic, economic, linguistic or religious in nature. The objective standard derives from the Wilson era view of self-determination as a right of nationality and the decolonisation period view of self-determination as a fundamental human right.

Such an objective standard would recognise the basic human need of groups of individuals with common backgrounds to freely associate. Defining groups by common characteristics is desirable because such characteristics are usually indicative of group cohesion, and the subjective claim to exist as a unit.

International law as previously indicated, has not generally recognised secession as part of the right to self-determination except in the context of decolonisation. Secession disturbs the world order. It disrupts the stability of the

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64 Mullerson, "The Continuity and Succession of States, by Reference to the Former USSR and Yugoslavia" (1993) 42 ICLQ 473, 487.

65 Now only consisting of Serbia and Montenegro.

66 This opinion of the Arbitration Commission has been criticised by Weller, supra note 42, as it invokes the Vienna Conventions which have been largely ignored by states and are unlikely to ever come into force.

67 Supra at note 58, at 225-226.

parent state by depriving it of its power base: people, territory, and resources. The reluctance of parent states to accept such losses may lead them to violate the basic principles of international law prohibiting violence and intervention. This may be seen in the context of Yugoslav army units moving towards Slovenia and Croatia after their respective declarations, and the unwillingness of Serbia to abandon the claims of the Bosnian Serbs.

Such breaches may also occur if a parent state suppresses an uprising, if separatists use force to achieve their goal, or if either group retaliates against the other. Secession can also lead to intervention by neighbouring states that sympathise with one side, or by states seeking to prevent the conflict from spreading. The role of the European Union in former Yugoslavia comes into force here.

The events in the former Yugoslavia reveal a core of legally relevant practices on the substance of the right to secession.[68] Peoples are not legally precluded from secession, even outside the colonial context. In this situation, however, the right to secede, although based on the right to self-determination, was not applied generally to reorganise peoples (individuals sharing common and distinctive ethnic, linguistic, and cultural characteristics) into political units matching their geographic distribution. It was applied only to those inhabiting a region whose territorial rights had been defined by federal states. Self-determination was not deemed applicable to territorially defined enclaves within former federal entities where a minority formed a local majority, such as Kosovo, Krajina, and in parts of Bosnia-Hercegovina.

The absence of consent by the central authorities against which the secession is directed is not fatal to a claim to self-determination. The requirement of consent is displaced when an entity entitled to exercise the right to self-determination has conducted a fair, free, and if possible, internationally supervised referendum, and when it has exhausted all reasonable paths toward negotiating the secession.

Once negotiations have been exhausted, and a referendum has confirmed the popular desire for independence, the seceding entity enjoys elements of international personality derived from the right to self-determination. In particular, the former central authorities are no longer permitted to forcibly assert authority within the seceding entity.

If the seceding entity achieves effective governmental and administrative control over its population and territory, it fulfils the criteria for statehood; although in the absence of diplomatic recognition, it may be unable to fully vindicate these fundamental rights. If the seceding entity is precluded by force from asserting control, and is subjected to threats or force from the former central authorities, the international community may react in two ways: either it may decide not to assist the central government in its attempt to assert authority; or, it may decide not to recognise the results of the use of force against the entity and thus be entitled to take collective measures, in accordance with the confines of the

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68 Weller, "The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia" (1992) 86 Am J Int'l L 569.

various chapters of the United Nations Charter, to restrain the central authorities from using force.

A more controversial aspect may be the measures which individual states are entitled to exercise to support the struggle for self-determination of entities outside the colonial context. Little, if any, guidance is provided on this aspect. In adopting a mandatory arms embargo against all sides, the United Nations Security Council further added to the presumption that military assistance might be impermissible.[69]

In deciding whether or not to establish diplomatic relations with the seceding entity, the international community appears to be increasingly guided by international public policy considerations. The voluntary act of recognition can be withheld, and is likely to be withheld if the seceding entity has not committed itself to protect human and minority rights, renounce territorial claims, resort to peaceful settlement of disputes, and accept pre-existing treaty obligations, along with general principles concerning the maintenance of international peace and security.

2. The Question of Hong Kong

In 1997 Hong Kong, presently a British Crown Colony, will be transferred to the People's Republic of China ("the PRC"). An argument exists that the citizens of Hong Kong ought to be given the option of freely choosing their future.[70]

It is not, however, in the political culture or tradition of any Chinese regime to allow any citizens the right to secede. Given the present large scale migration from Hong Kong, Chinese leaders must recognise that western ideas concerning the proper relationship between the individual and the state cannot be easily suppressed in a population which has been exposed to such ideas for over a century.

The territory of Hong Kong is comprised of land made up of the island of Hong Kong, the Lan Tau Islands, the Kowloon Peninsula, and the New Territories. In 1842 the island of Hong Kong was ceded to Britain via the Treaty of Nanking. Kowloon was leased in perpetuity by the Treaty of Peking in 1860, and the New Territories were leased in 1898 for ninety-nine years. Until 1986, Britain maintained that these treaties were valid and legitimate, while successive Chinese regimes have regarded them as "unequal", and therefore invalid.

In 1982 Margaret Thatcher raised the issue of Hong Kong during a visit to Beijing. The lease of the New Territories gave the PRC the right to demand their return rather than sign a new lease. Naively, the British saw themselves in a superior bargaining position, but the PRC shocked Britain by steadfastly maintaining the illegitimacy of all treaties, and demanding the return of Hong Kong by 1997.[71]

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69 Such restrictions may not apply to humanitarian assistance.

70 McGee and Lam, "Hong Kong's Option to Secede" (1992) 33 Harvard Int LJ 427.

71 Ibid, 428-429.

The PRC's sole concession was to formulate a "Special Economic Zone" in Hong Kong. This was incorporated into a "Joint Declaration" by Britain and the PRC, which agreed that Hong Kong would be allowed to maintain its capitalist economic system for fifty years. Throughout this process, there was no indication that the population had been consulted, and no plebiscite was ever held on the issue. "If the transfer of Hong Kong is unacceptable to its citizens, it raises the question of whether the citizens ought to be given an opportunity to consider the option of secession."[72]

The existing arrangements for the transfer of Hong Kong to the PRC will extinguish many of the rights Hong Kong citizens have taken for granted under British rule. Under current United Nations policies, this cannot be considered legitimate without a plebiscite. Within the realms of present international politics, the people of Hong Kong cannot prevent Britain and the PRC from taking their decided course. However, it may be argued that a sullen population, incorporated into the PRC against their will, can only serve to accelerate and exacerbate the existing tensions in the PRC.[73]

It appears relatively simple to apply the unique situation of Hong Kong to the requirements of a right to self-determination. The recognition of such a right would be to give the people of Hong Kong the opportunity to determine their own future, by an United Nations observed plebiscite. The results of such an option would have to be accepted as the wishes of the population, and in accordance with their rights under international law.

3. The Permanent Tribunal of Peoples and Tibet

The Permanent Tribunal of Peoples is a non-governmental body which receives complaints of derogations from the rights of peoples under international law. In 1992 the Tribunal determined a complaint against the PRC, brought on behalf of the people of Tibet. The accusations were as follows:[74]

(i) Entry of Chinese military forces into Tibet in 1949-1950 was an invasion of an independent state, contrary to international law, as was their presence thereafter.

(ii) In breach of international law the PRC was continuing to deprive the people of Tibet of their fundamental right to self-determination. The PRC was also transferring populations of non-Tibetan people into Tibet, which altered the conditions for the legitimate exercise of self-determination.

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72 Ibid, 429.

73 Ibid, 438.

74 Kirby, "Decision of the Permanent Tribunal in its Session on Tibet, Strasbourg, France, November 1992" (1994) 68 ALJ 135.

(iii) Complaints of serious and repeated fundamental breaches of human rights.

The Tribunal concluded that the Tibetan people were a "people" in terms of the right to self-determination guaranteed by international law.[75] It then concluded that the Tibetan people were being denied the right to self-determination by the PRC's government in Tibet. The "Tibetan people" included those people living in what the PRC calls the "Tibet Autonomous Region", and those Tibetans residing in parts of historic Tibet, now purportedly incorporated into neighbouring Chinese Provinces.

The Tribunal had difficulty in determining the alleged violations of human rights, as China was not a party to the International Covenant on Civil and Political Rights. However, given that such universal human rights principles are now part of customary international law, China had obviously violated the fundamental rights of the Tibetan people. The Tribunal also found it difficult to decide on the international status of Tibet, as western concepts of nationhood were inappropriate. It seems, however, that even in such complex situations, a people should not be absorbed into another state without their consent.

The people of Tibet have also been deprived of their right to debate the enjoyment of the right to self-determination. It is for the Tibetan people to determine whether they would rather live in some form of association with the PRC, or in an entirely separate Tibetan nation state. Claims for United Nations observers and delegates to enter Tibet to determine the current situation have fallen on deaf ears. The international community remains powerless so long as the PRC refuses to allow entry to Tibet.

VI: THE RIGHT TO SELF-DETERMINATION OF INDIGENOUS PEOPLES

An issue of self-determination, which raises many of the same concerns of the right in relation to minorities, is the right of indigenous peoples to self-determination. The Working Group on Indigenous Populations ("WGIP") was formally established in 1982, following a proposal by the sub-commission on Prevention of Discrimination and Protection of Minorities.

The role of the WGIP is to review developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous peoples.[76] It is within this context that the WGIP has begun to draft the Universal Declaration of the Rights of Indigenous Peoples. A particularly contentious issue included in the draft is that of the right of indigenous peoples to self-determination.[77]

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75 Ibid, 139.

76 E/CN.4/Sub.2/1981/2.

77 E/CN.4/Sub.2/1993/26.

Cultural self-determination may already be accepted to a degree. However, the grave threat which political self-determination of native minorities presents to the integrity of representative states, and to the international legal system, will deter states from acquiescing to the natives' claims. It is due to these concerns, and the enormous number of indigenous people and nation states that may potentially be affected, that the WGIP has found drafting the declaration to be such a sensitive and time-consuming process.

The draft declaration, while advancing the intermediate indigenous goal of holding states accountable to international standards of respect and protection for indigenous peoples, and their land, resources, and cultures, has not addressed the question of self-determination to the same degree. As noted by Lam:[78]

> The Working Group on Indigenous Populations is doing on a small scale for indigenous and tribal peoples what the General Assembly once did for the Third World: which is to provide a forum for the worlds powerless to voice their vision of identity and destiny in a setting of formal equality with others materially far more powerful than they.

An Australian representative of the WGIP emphasised that self-determination ought not to mean that each people has the option of forming an independent state. Instead, states ought to engage "seriously and sensitively" with their indigenous peoples on giving effect to the concept of self-determination as part of their internal political processes.[79] The statement of the United States Government was not dissimilar.[80]

In the 1993 WGIP report, where the issue of self-determination is addressed, various nations encountered difficulties with aspects of its inclusion in the draft. In the New Zealand context, Moana Jackson stated that "[i]ndigenous peoples claimed for themselves a right to a subjective definition of the right to self-determination."[81]

Perhaps not surprisingly, the WGIP's 1993 report does not solve the issue of the right to self-determination of indigenous people. However, given the progress made in defining the right of self-determination, there is hope of an eventual resolution. The indigenous populations will continue their fight for what they believe is their entitlement. Eventually international institutions and systems will change, although only in the face of necessity, and certainly not overnight.

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78 Supra at note 9, at 619. See also Turpel, "Indigenous Peoples' Rights of Political Participation and Self-Determination: Recent International Legal Developments and the Continuing Struggle for Recognition" (1992) 25 Cornell Int'l LJ, 579, and Lumb, "Native Title to Land in Australia: Recent High Court Decisions" (1993) 42 ICLQ 84.

79 Working Group on Indigenous Populations 10th session, Statement on Self-Determination by Mr Colin Meyer on behalf of the Australian Delegation, 24 July 1992.

80 Comments of the United States Government on the Draft Declaration on the Right of Indigenous Peoples - WGIP 1992.

81 WGIP - E/CN.4/Sub.2/1993/29, 17-18.

VII: CONCLUSION

From the first appearance of self-determination as a principle, the concept has been through political upheaval. Decolonisation in the immediate post-World War II era limited the application of the right to such a degree, that the right of self-determination could no longer be considered absolute in the face of a plethora of exceptions. However, Third World and Soviet influence had previously ensured that the concept appeared in Article 1 of the United Nations Charter. Various international covenants and Charters have since included the general right to self-determination, and it is these which lie at the basis of arguments in favour of a broad interpretation of the right.

The stability and integrity of the international system is based upon certainty of definition and clear application of various legal principles. The fear of representative states in permitting a broad right to self-determination is based on the threats raised to the territorial and political integrity of that state. Although self-determination does not automatically result in secession and independence, the threat remains that initial claims for autonomy or self-government will eventually develop into such requirements.

The WGIP was established in order to provide a forum for people to express their fears, and it provided international standards to ensure their rights would be respected. Such a forum plays an important part in the process of ensuring that both state and non-state groups have the opportunity to speak and listen to each other, in order to peacefully resolve differences and reach solutions. Claims are now being raised as to the rights of minority groups to self-determination, which perhaps rest on less-established grounds than those of indigenous people.

The issues of territoriality, secession, and often annexation, emerge as challenges to the right to self-determination as a general principle. The international system must develop in order to deal more effectively with the problems and conflicts which occur. An initial step in the process may consist of acknowledging and accepting that self-determination may occur in a variety of forms. The next step may consist of positioning claims in accordance with the degree of self-determination required. This may be balanced against the ability of the desired self-government to be effective. The international system must develop a procedural model for dealing with claims and disputes.

It also seems apparent that the right to self-determination is, or ought to be, universal. The fears of nation states and superpowers of threats to stability raised by a universal right to self-determination must be remedied by the international system itself, in order to create certainty. A procedural model may be the answer in terms of clearly stating the factors required to be present, and the issues to be addressed before any analysis may begin. By developing a process, as an effective mechanism for dealing with claims, the international system would be creating an atmosphere of stability. Although stability does not mean that things will remain

as they are, it means that peoples and nation states alike will have a much clearer indication of where they are going. It is from such certainty that the international system will have greater confidence in acknowledging a universal right to self-determination.

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* * * *

An appropriate form of bequest would be:

'I give and bequeath the sum of $............................ to the Northern Region of New Zealand Red Cross to be paid for the general purposes of the Northern Region to the Regional Director for the time being of such Region, whose receipt shall be good and valid discharge for same.'

It is important to ensure that the words 'Northern Region' appear in the form of bequest if it is the testator's wish that the funds be used for the benefit of people in the North.