

WHAT THE PRINCIPLE OF SELF-DETERMINATION MEANS TODAY*

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I. INTRODUCTION

The right of all peoples to self-determination has been one of the most vigorously promoted and widely accepted contemporary norms of international law.¹ There is no clear consensus, however, as to what the meaning and content of that right is, and it has gained the distinction of "being one of the most confused expressions in the lexicon of international relations."² The meaning of the principle is as vague and imprecise today as it was when, after World War I, President Woodrow Wilson told a cheering session of Congress that "self-determination" is "an imperative principle of action."³ Lee Bucheit used the following analogy to describe the principle of self-determination:

As a descriptive phrase the title "Holy Roman Empire" was defective, Voltaire noted, inasmuch as it denoted an entity neither holy, nor Roman, nor an empire. As a legal term of art, "the right to self-determination" fails in much the same fashion. The expression itself gives no clue to the nature of the self that is to be determined; nor does it provide any enlightenment concerning the process of determination or the source and extent of the self's putative right to this process.⁴

This paper will explore the principle of self-determination by examining its development over time from Woodrow Wilson's Fourteen Points to its modern day meaning as expressed by the United Nation's 1970 Declaration on Friendly Relations. Once the principle has been explored, a modern interpretation of self-determination will be explained in the context of the recent break-up of Yugoslavia.

II. THE HISTORICAL DEVELOPMENT OF THE PRINCIPLE OF SELF-DETERMINATION DURING THE TWENTIETH CENTURY

The historical and current development of the right to self-determination shows that it has become one of the most important and dynamic concepts in contemporary

1. HURST HANNUM, *AUTONOMY, SOVEREIGNTY, AND SELF-DETERMINATION: THE ACCOMODATION OF CONFLICTING RIGHTS* 27 (1990).

2. W. OFUATEY-KODJOE, *THE PRINCIPLE OF SELF-DETERMINATION IN INTERNATIONAL LAW* vii (1977).

3. George F. Will, *Bedeviled by Ethnicity*, NEWSWEEK, Aug. 24, 1989, at 47; see also HANNUM, *supra* note 1, at 27.

4. LEE C. BUCHEIT, *SECESSION: THE LEGITIMACY OF SELF-DETERMINATION* 9 (1978).

international life and that it exercises a profound influence on the political, legal, economic, social and cultural planes, in the matter of fundamental human rights and on the life and fate of peoples and individuals.⁵

The historical development of self-determination during this century can be divided into two distinct periods: the post-World War I period of nationalism and the post-World War II period of decolonization.⁶

A. *Post-World War I*

The first World War is sometimes referred to as the “war of self-determination.”⁷ President Woodrow Wilson claimed that the Allies’ objective was to free the many small nationalities of Europe from the domination of the Germans and the Russians. Wilson identified the honorable aim of the war as the achievement of self-determination for these trapped nationalities.⁸ In an address to Congress in May of 1917, Wilson declared, “No peace can last or ought to last, which does not accept the principle that governments derive all their just powers from the consent of the governed, and that no right anywhere exists to hand peoples about from sovereignty to sovereignty as if they were property.”⁹

The realization of Wilson’s idealistic vision of self-determination and self-government for all peoples required a victory against the aggressors of Europe.¹⁰ He made this clear on January 8, 1918, when he announced the goals of World War I in his Fourteen Point Plan to a joint session of Congress. Although the term “self-determination” was never specifically mentioned in Wilson’s Fourteen Points, seven out of the fourteen points embodied the principle.¹¹ Wilson, however, would not see

5. Aureliu Cristescu, *The Study of the Historical and Current Development of the Right to Self-Determination* para. 679, U.N. Sales No. E.80.XIV.3 (1980). Mr. Cristescu was the special reporter of the U.N. Sub-Commission on the Prevention of Discrimination and Protection of Minorities. His report was authorized by the Economic and Social Council in 1974 (Res. 1865[LVI]).

6. Richard F. Iglar, *The Constitutional Crisis in Yugoslavia and the International Law of Self-Determination: Slovenia’s and Croatia’s Right to Secede*, 15 B.C. INT’L & COMP. L. REV. 213, 221 (1992).

7. UMOZURIKE OJI UMOZURIKE, *SELF-DETERMINATION IN INTERNATIONAL LAW* 11 (1972).

8. *Id.* at 13.

9. *Id.* at 14 (citing J.B. SCOTT, *OFFICIAL STATEMENTS OF WAR AND PEACE PROPOSALS* 52 (1921)).

10. UMOZURIKE, *supra* note 7, at 14.

11. *Id.* at 18.

his idealistic vision fulfilled by the Allies' World War I victory. The goal of the war—self-determination for all the oppressed nationalities—could not be fully achieved in the aftermath of the war.

At the peace conference following the Allied victory, President Wilson and the other world leaders redrew the boundaries of Europe and confirmed the independence of certain territories formerly dominated by their stronger neighbors.¹² Due to many agreements entered into after the war, however, they could not give all the individual nationalities the right to self-determination. Consequently, many of the newly created states contained groups of minorities who were now, for one reason or another, worse off than they had been before separation.¹³

In addition, Wilson and the other world leaders realized that they could not extend the right of self-determination beyond the confines of Europe without greatly disturbing the world order. Wilson realized that his idealistic goal of self-government for all peoples was over ambitious and that he had stretched the principle of self-determination too far. The Allies and the League of Nations subsequently denied the application of self-determination principles to colonial territories which were held by the Allies.¹⁴ Because of World War I, the principle of self-determination was pushed to the forefront of international politics.

B. Post-World War II

The second major historical period important to the development of the principle of self-determination is the post-World War II era. Since 1945 the principle of self-determination primarily has been used to provide a legal basis for the process of decolonization.¹⁵ The United Nations ("UN") has successfully used the principle to justify its unequivocal stand against colonialism, and has worked diligently to achieve the independence of peoples under colonial rule.¹⁶ The UN, however, has been far from clear regarding whether the right to self-determination should be extended

12. *Id.* at 22.

13. For example, the redrawing of a border often resulted in splitting up a minority group or placing a minority group within a larger majority, thereby giving that group an even smaller minority presence than they had previously. The world leaders may have assumed that they had the knowledge and the foresight to divide Europe properly; the divisions they made, however, are the cause of many of today's problems in central Europe. See Will, *supra* note 3, for a discussion of the carving up of Europe at the Versailles peace conference.

14. UMOZURIKE, *supra* note 7, at 22. President Woodrow Wilson said that "[i]t was not within the privilege of the conference of peace to act upon the right of peoples except those who had been included in the territories of the defeated empires." *Id.*

15. BUCHEIT, *supra* note 4, at 16.

16. *Id.* at 17.

beyond the colonial context and used as a basis for allowing the secession of oppressed minority groups within an independent state.¹⁷

The UN and other international governmental organizations (“IGOs”) are reluctant to recognize the right of secession as a part of the principle of self-determination because by doing so, they would be inviting or justifying “attacks on the unity and integrity of their own member states.”¹⁸ Colonial self-determination does not invite this political danger.¹⁹ The fact that the UN wholly embraces the right of colonial self-determination but not the right to secession highlights that the two concepts are not equivalent. The self-determination/secession distinction is at the heart of the majority of self-determination debates taking place today.²⁰

III. UNITED NATIONS AGREEMENTS CONCERNING THE RIGHT OF SELF-DETERMINATION — THE CONTEMPORARY VIEW

United Nations agreements form the core of the contemporary interpretation of the principle of self-determination. The United Nations has also been the primary arena in which the claims and counterclaims of self-determination have been advanced and debated.²¹

In the practice of the UN, the principle of self-determination has been recognized to mean that all peoples have the right to determine freely

17. *Id.* Applying the principle of self-determination in the colonial context appears to be a politically more salient alternative than applying it to the right of secession. *Id.* Whether or not a group is recognized as a colony under international law is a reflection of historical luck and political circumstances rather than a reflection of reality. See A GLOBAL AGENDA: ISSUES BEFORE THE 46TH GENERAL ASSEMBLY OF THE UNITED NATIONS 73 (John Tessitore & Susan Woolfson eds., 1991).

18. ALEXIS HERACLIDES, THE SELF-DETERMINATION OF MINORITIES IN INTERNATIONAL POLITICS 23 (1991).

19. BUCHEIT, *supra* note 4, at 7.

20. The problems concerning the self-determination/secession distinction are complex and far-reaching. For example, if every nationality that existed within a nation state had the right to secede, there would be a huge upset in the balance of power in the U.N. General Assembly. Consider the following excerpt by John Quigley:

Tanzania, though not a large state, includes 120 nationalities, each with its own territory, language culture, and traditions If Tanzania were to divide along nationality lines, these nation-states would outvote a combined Europe and North American constituency in the U.N. General Assembly. If the same development occurred elsewhere in Africa, the world community would have a majority of African states.

John Quigley, *Prospects for the International Rule of Law*, 5 EMORY INT’L L. REV. 311, 316 (1991).

21. OFUATEY-KODJOE, *supra* note 2, at 39.

their own sociopolitical and economic circumstance.²² Among the UN documents reflecting this position are the Universal Declaration of Human Rights,²³ the Declaration on the Granting of Independence to Colonial Countries and Peoples (the "1960 Declaration");²⁴ the two covenants on human rights—the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights;²⁵ the Definition of Aggression;²⁶ and the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations (the "1970 Declaration").²⁷

A. *The United Nations Charter*

The UN Charter expressly mentions the principle of self-determination in articles 1(2)²⁸ and 55.²⁹ The UN Charter also acknowledges the principle in Chapters XI, XII, and XIII by imposing upon the trustee states of Non Self-Governing and Trust Territories the obligation to help those territories achieve self-government.³⁰ Although the UN Charter embraces the notion of self-determination, it contains surprisingly little

22. CHRISTOPHER O. QUAYE, *LIBERATION STRUGGLES IN INTERNATIONAL LAW* 213 (1991).

23. G.A. Res. 217, U.N. Doc. A/810, at 71, 75 (1948).

24. G.A. Res. 1514, U.N. GAOR Comm., Sess. Supp. No. 21, at 166, U.N. Doc. A/4684 (1960) [hereinafter the 1960 Declaration].

25. Annex to G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16), at 52, U.N. Doc. A/6316 (1966).

26. G.A. Res. 3314, 29 U.N. GAOR Supp. (No. 31), at 142, U.N. Doc. A/9631 (1974).

27. G.A. Res. 2625, Annex, 25 U.N. GAOR Supp. (No. 17), at 66, U.N. Doc. A/5217 (1970) [hereinafter 1970 Declaration].

28. U.N. CHARTER art. 1, para 2. Article 1(2) states that one of the purposes of the United Nations is to "[to] develop friendly relations among nations based on respect for the principle of equal rights and self determination of peoples, and to take other appropriate measures to strengthen universal peace." *Id.*

29. U.N. CHARTER art. 55 states:

With a view to the creation of 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, the United Nations shall promote: . . . universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Id.

30. *See, e.g.*, U.N. CHARTER art. 73(b) (explaining that members assuming the responsibility for the administration of a territory must assist the people in the "progressive development of their free political institutions").

information about it.³¹ Therefore, an examination of other pertinent UN documents is necessary to understand the principle of self-determination and its contemporary interpretation.

B. The 1960 Declaration

The 1960 Declaration proclaimed unconditionally that colonialism must end. It declared that “[a]ll 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.”³² This reaffirmation of the right of peoples to self-determination was extremely important because the principle of self-determination was to “constitute the driving force in the decolonization activities undertaken by the United Nations.”³³ In addition to reaffirming the principle of self-determination, the 1960 Declaration in combination with the International Covenants on Human Rights³⁴ provides the basis for the “unquestioned acceptance in international law” of the fact that the right to self-determination applies only to peoples under colonial and alien domination.³⁵ The concept of “peoples” encompasses “a specific type of human community sharing a common desire to establish an entity capable of functioning to ensure a common future.”³⁶ Under contemporary notions of international law, this concept of peoples has not been extended to include minorities;³⁷ thus minorities do not have the right to self-determination.³⁸

31. QUAYE, *supra* note 22, at 213.

32. 1960 Declaration, *supra* note 24, at pmbi., para. 2.

33. Cristescu, *supra* note 5, at para. 682.

34. *See supra* note 25.

35. Hector Gros Espiell, *The Right to Self-Determination: Implementation of United Nations Resolutions 11979 U.N. Sales No. E. 79 XIV 5* para. 56. Mr. Espiell was the special reporter for the U.N. Sub-Commission on the Prevention of Discrimination and Protection of Minorities. His report sets out the definition, scope, and legal nature of the right of peoples under colonial domination to self-determination, and the means by which the international community has monitored and promoted that right. *See* EDWARD LAWSON, *ENCYCLOPEDIA OF HUMAN RIGHTS* 1333 (1991).

36. Espiell, *supra* note 35, at para. 56.

37. *Id.*

38. *Id.*

C. *The 1970 Declaration*

1. Generally

The United Nations has established that the principle of self-determination is primarily, if not exclusively, a vehicle for decolonization, not a justification of secession.³⁹ "The right does not apply to peoples already organized in the form of a State which are not under alien domination."⁴⁰ The theoretical basis for this anti-secession position is that secession disrupts the borders and the political structures of independent states. Consequently, the principles of territorial and political integrity, embodied in the majority of UN documents addressing self-determination, are violated.

This pure and restrictive interpretation of the principle of self-determination was not shared unanimously by the members of the UN. Some members felt that a more liberal interpretation should be adopted that would allow the right of self-determination to extend beyond the colonial context. The UN attempted to clarify the meaning of self-determination and resolve the differences between its members in the 1970 Declaration.

The differing opinions of the UN members about the principle of self-determination were evident from the discussions and meetings which preceded the drafting of the 1970 Declaration.⁴¹ The majority of the members expressed their belief that secession should not be recognized as a legitimate form of self-determination.⁴² The 1970 Declaration is representative of this majority view; however, it also contains specific language which extends the right of self-determination beyond the realm of traditional colonial domination and recognizes that in some situations groups suffering oppression within an independent state may have the right to seek self-determination.⁴³

The 1970 Declaration advances the theory that if colonial and alien domination exists under a guise of national unity, then the group of peoples

39. *Id.* at para. 60; BUCHEIT, *supra* note 4, at 87.

40. Espiell, *supra* note 35, at para. 60.

41. See BUCHEIT, *supra* note 4, at 88-92. For example, the Polish government, as did the majority of Eastern Bloc countries, felt that the right to secession was inherent in the right to self-determination. *Id.* at 88-89. The United Kingdom, on the other hand, felt that self-determination was a political principle, not a legal right, and that the U.N. Charter was not meant to be a basis on which a province could claim a right to secede from an independent state. The United Kingdom feared that if the right to secession was incorporated into the principle of self-determination, then Wales could conceivably secede from England. *Id.* at 89.

42. *Id.* at 90.

43. See Espiell, *supra* note 35, at para. 60.

subject to this domination have the same right to self-determination as do traditionally defined colonial peoples.⁴⁴ The 1970 Declaration simultaneously protects the concept of territorial integrity for independent states and the right of self-determination for this special group of peoples. The Declaration protects both concepts by reaffirming the need to preserve the territorial integrity of sovereign and independent States, but imposing on States the requirement that they must be “possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.”⁴⁵

This interpretation of the 1970 Declaration appears to be crucial to an understanding of the modern concept of self-determination. The following is a detailed analysis of that portion of the 1970 Declaration which directly addresses the principle of self-determination of peoples.

2. The Self-Determination Section of the 1970 Declaration

The 1970 Declaration contains a separate section on the principle of self-determination entitled: “The principle of equal rights and self-determination of peoples” (the “Self-Determination Section”).⁴⁶ The Self-Determination Section is an attempt to codify the principle of self-determination and reconcile the divergent opinions that were expressed by the members during the drafting phase of the 1970 Declaration.⁴⁷ The following paragraphs describe the content of various parts of the Self-Determination Section.

Paragraph one of the Self-Determination Section emphasizes that self-determination is a right and not a mere political concept.⁴⁸ Paragraph two imposes the duty on every state to promote equal rights and self-determination of peoples. In addition, paragraph two differentiates between the denial of human rights and the denial of the right to self-determination by stating that “subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle [of equal rights and self-determination], as well as a denial of fundamental human rights.”⁴⁹ Paragraph three reiterates the principle that every state is to promote respect for human rights and fundamental freedoms.

44. *Id.*

45. *Id.* (quoting The Self-Determination Section of the 1970 Declaration, para. 7).

46. 1970 Declaration, *supra* note 27. [For the convenience of the reader, the text of the Self-Determination Section has been reproduced in the Appendix.]

47. BUCHEIT, *supra* note 4, at 90-91. See 1970 Declaration, *supra* note 27.

48. BUCHEIT, *supra* note 4, at 91.

49. 1970 Declaration, *supra* note 27, at para. 2.

Paragraph four sets out the four modes by which people may assert their right to self-determination: (1) the establishment of a sovereign or independent state, (2) the free association with an independent state, (3) the integration with an independent state, or (4) the emergence into any other political status freely determined by a people.⁵⁰ It is important to note that this implementation provision is addressed to the people themselves rather than to states or nations, thereby implying that there is a right to self-implementation by a "people."⁵¹

Paragraph five imposes a duty on states to refrain from using force to deprive peoples of their right to self-determination and entitles people that are subject to such forcible action on the part of a state to receive support in their endeavor to resist that force. Paragraph six gives a colony or other non-self-governing territory a distinct and separate status from the state that is administering it.

Finally, and most importantly, paragraph seven appears to recognize that secession may be a legitimate option under certain circumstances.⁵² The paragraph is divided into three parts. The first part reaffirms the principle of territorial integrity expressed in the 1960 Declaration.⁵³ It warns that nothing in the preceding paragraphs should be construed as authorizing or encouraging the dismemberment or impairment of the territorial or political unity of sovereign and independent states. A similar admonishment is made in paragraph eight which directs states to refrain from actions which are aimed at the partial or total disruption of the national unity and territorial integrity of any other state or country.⁵⁴ Paragraph seven implies, however, that only those states "conducting themselves in compliance with the principle of equal rights and self-determination of peoples described above" will enjoy this "guarantee" of sanctity for its borders and political unity.⁵⁵ The final phrase of paragraph seven implies that a state will be in "compliance" and therefore protected against violations of its territorial integrity and political unity if its

50. *Id.* at para. 4.

51. BUCHEIT, *supra* note 4, at 92. "However, when the People and the Nation are one and the same, and when a people has established itself as a State, clearly that Nation and that State are, as forms or manifestations of the same People, implicitly entitled to the right of self-determination." Espiell, *supra* note 35, at para. 56.

52. BUCHEIT, *supra* note 4, at 92.

53. *Id.*

54. *Id.*

55. *Id.* at 92-93.

government is representative of "the whole people belonging to the territory without distinction as to race, creed, or color."⁵⁶

The notion expressed in this final clause of paragraph seven derives from the beliefs of Woodrow Wilson that government gains its legitimacy from the consent of the governed, and that consent cannot be forthcoming unless it is given by all segments of the population.⁵⁷ This consent-of-the-governed concept has been interpreted to mean that if a government is not representative of the whole people it is illegitimate and in violation of the principle of self-determination. This illegitimate character of the government serves in turn to legitimize "action which would dismember or impair, totally or in part, the territorial integrity or political unity" of the state which is violating the principle.⁵⁸ In other words, the fact that a government is unrepresentative may provide an oppressed group within a state with the justification for their secession from that state. An unrepresentative or abusive government will be viewed as if it were a colonial power; therefore, the people under its "colonial" rule will have the right to self-determination. The Self-Determination Section of the 1970 Declaration appears to establish that a denial of political freedom and/or human rights is the *sine qua non* for a valid separatist claim by an oppressed group within an independent state.⁵⁹

IV. THE RECOGNITION OF THE BREAK-UP OF THE FORMER YUGOSLAVIA: A MODERN APPLICATION OF THE SELF-DETERMINATION SECTION OF THE 1970 DECLARATION

The recent recognition of the secession of Croatia, Slovenia, and Bosnia-Herzegovina (the "Provinces") from Yugoslavia by the UN⁶⁰ can be explained in terms of the "pseudo-colonial" theory which was expressed in the Self-Determination Section.

A. Background

Yugoslavia originated in 1918 as a State of three peoples (Serbs, Croats, and Slovenes) and emerged after World War II as a federation of six

56. *Id.* at 93.

57. BUCHEIT, *supra* note 4, at 93; *see also* text accompanying note 9.

58. BUCHEIT, *supra* note 4, at 93.

59. *Id.* at 94.

60. *See* Josh Friedman, *U.N. Admits Ex-Yugoslavs*, NEWSDAY, May 23, 1992, at 8.

republics and two autonomous provinces.⁶¹ Eight of the major ethnic populations live in areas that roughly correspond to the political boundaries of each federation. The names of the republics generally correspond with the ethnic groups that occupy them.⁶² For example, Serbia is named for its Serbian majority.

Not all of the minorities, however, live in federations that bear their name.⁶³ One province, Bosnia-Herzegovina, is populated by three major ethnic groups--Serbs, Croats, and Muslims. The current crisis in Yugoslavia is the result of differences in ethnicity, religion, and wealth among the warring parties and each sides' claims to self-determination.⁶⁴

B. Croatia, Slovenia, and Bosnia-Herzegovina Claim Independence

In mid-1991 Croatia, Serbia and Bosnia-Herzegovina declared their independence from Yugoslavia. All three provinces held plebiscites, or referendums of independence, that resulted in a majority of the population voting for independence. The Serbian minorities in both Croatia and Bosnia, however, did not vote for independence and have rebelled against their province's majority in order to oppose secession from Yugoslavia.⁶⁵ Because of this uprising, the federal government of Yugoslavia, which has a Serbian majority, sent federal troops into the seceding republics to restore order, but apparently the federal government has actually been supporting the Serbian Guerillas.⁶⁶ All out civil war followed, and stories of atrocities committed by Serbian forces against Croats, Slovenes, and Bosnians were heavily publicized in the world media.⁶⁷

61. Iglar, *supra* note 6, at 215. The republics of Yugoslavia are Serbia, Croatia, Slovenia, Bosnia-Herzegovina, Montenegro, and Macedonia. Serbia possesses two autonomous provinces: the province of Vojvodina and the province of Kosovo. *Id.* at n.21.

62. *Id.* at 215.

63. For example, the Krajina Region in the Republic of Croatia is considered a major Serbian enclave. See John Darton, *Croatia's Chief Vows 'Liberation' of More Land in Serbian Enclave*, N.Y. TIMES, Feb. 1, 1993, at 3, for a discussion of the dispute over the Krajina Region and the problems associated with the different ethnic groups trying to live within the same boundaries as each other.

64. Whereas the civil war in the former Yugoslavia generates many different issues and questions concerning the principle of self-determination, this paper will only concentrate on the initial claims of independence (secession) of Croatia, Slovenia, and Bosnia-Herzegovina from Yugoslavia and the U.N.'s subsequent recognition of their independence.

65. See Iglar, *supra* note 6, at 216-21.

66. *Id.* at 216, n.29.

67. See, e.g., *New 'Nuremberg' Urged for Balkans Holocaust*, U.N. OBSERVER, Sept. 1992, at 1; *Memory of Life in a 'Death Camp' Haunts a Freed Bosnian Refugee*, U.N. OBSERVER, Sept. 1992, at 9.

C. The Recognition of Slovenia, Croatia, and Bosnia-Herzegovina and the Self-Determination Section of the 1970 Declaration

At first the world community denounced Slovenia's, Croatia's, and Bosnia's attempts at self-determination through secession as being in violation of the principle of territorial integrity. Yet, after the federal government of Yugoslavia began to use force against the peoples seeking self-determination and news reports emerged of the human rights violations committed by Serbs in the Federal Government, the UN and the world community changed its mind. In May of 1992, the UN formally recognized the republics of Slovenia, Croatia, and Bosnia-Herzegovina and the republics become official members of the world organization.⁶⁸

UN recognition of the Provinces can be explained in terms of the Self-Determination Section of the 1970 Declaration. Prior to their unilateral claim of independence, the Provinces were part of an existing state which as a member of the UN. Because they were neither under colonial rule nor alien domination, the Provinces were not entitled to claim the right of self-determination and unilaterally secede from the Federal Republic of Yugoslavia according to the principle of territorial and political integrity.

The Self-Determination Section of the 1970 Declaration provides that in certain circumstances the right to self-determination will be applied to groups which do not fall in the traditional colonial category. When a government is not representative of its people and operates under the guise of national, the oppressed groups within that state will be treated as if they were under colonial or alien domination (a "pseudo-colony") and will have the right to self-determination. The provinces arguably meet these conditions and should be viewed as having been colonies of or dominated by the Serbian government of Yugoslavia. Thus, the Provinces have the right to self-determination by means of secession from Yugoslavia under the principles expressed in the Self-Determination Section of the 1970 Declaration.

There is no bright line rule that can be used to determine when this "pseudo-colony" theory will be applied to grant the right of self-determination and hence the right to secession to groups within sovereign states. It appears that this theory is applied by the world body when it is politically popular to do so: In the case of the Provinces, the media reports of aggressive tactics of the Serbian-dominated Yugoslav Army coupled with the reports of human rights violations committed against the seceding peoples have made the secession of the Provinces politically acceptable.

68. Friedman, *supra* note 60.

V. CONCLUSION

The principle of self-determination has under gone many stages of development since Woodrow Wilson concluded that his idealistic goal of self-determination for all peoples could not be realized in the aftermath of World War I. Unfortunately, if Wilson were alive today he would find that his idealistic vision has not yet been achieved. Today, right to self-determination is still a limited one and is not something to which all peoples are entitled. Furthermore, it remains a right which depends upon the current political climate; the politicians only seem to support and sanction claims of self-determination when situations escalate into crises. Hopefully, in the future, the right of self-determination will be more clearly defined so that conflicts like the one in the former Yugoslavia can be avoided.

VI. APPENDIX

THE DECLARATION ON PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS

The principle of equal rights and self-determination of peoples

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every state has the duty to respect this right in accordance with the provisions of the Charter.

Every state has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order

- (a) To promote friendly relations and co-operation among states; and
- (b) To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned;

and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter.

Every state has the duty to promote through joint and separate action universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter.

The establishment of a sovereign and independent state, the free association or integration with an independent state or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.

Every state has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible

action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and receive support in accordance with the purposes and principles of the Charter.

The territory of a colony or other non-self-governing territory has, under the Charter, a status separate and distinct from the territory of the state administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or non-self-governing territory have exercised their right to self-determination in accordance with the Charter, and particularly its purposes and principles.

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed, or colour.

Every state shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other state or country.