SELF-DETERMINATION: AN AFFIRMATIVE RIGHT OR MERE RHETORIC?

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I. INTRODUCTION

Yves Beigbeder, an international scholar, once asked, "If self-determination is an internationally recognized principle, why does it not apply to the people of West Iran, East Timor, Tibet, Kashmir and other territories, as it has been applied to other colonial territories?" Today, there are an estimated 140 minority groups around the globe, asserting their right to self-determination. Yet despite powerful rhetoric on behalf

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2. The most noticeable of these groups are the Koreans, Vietnamese, Ibos, South Sudanese, Taiwanese, Somalis, Kurds, Armenians, Germans of Romania, Scots, Catalans, Basque, Bangalis, Northern Irish, French Canadians of Quebec, Welsh, Lebanese, Tibetans, Bretons, Lapps, Sicilians, Corsicans, Frisians, Walloons, German-speaking inhabitants of
of nation states, as well as the United Nations, in support of the right to self-determination, "no state has recognized a right to self-determination for a group within its own territory." This "paradox of self-determination" has lead internationalists to question the true meaning of self-determination in the post cold war era. The question often asserted is whether the principle of self-determination actually grants an affirmative right to minorities and indigenous people to determine their own destiny, or is it merely a case of "a noble word being abused?"

This paper will attempt to answer this question, placing special emphasis on current state practices in this area. The paper will be divided into two parts: 1) an overview that will focus on the development of the principle of self-determination in the area of international law, and 2) an analysis that will attempt to address the question posed, with particular focus on current state practices.

II. AN OVERVIEW OF SELF-DETERMINATION

Although the idea of self-determination is by no means new, scholars have yet to agree upon the actual source of its origin. President


5. For those indigenous people, the right of self-determination is said to include the right of internal sovereignty, as well as "the right and power of indigenous peoples to negotiate with States on an equal basis the standards and mechanisms that will govern relationships between them." U.N ESCOR, 45th Sess., Commission on Human Rights, U.N. Doc. E/CN.4/1989/22, at 10 (1989). On the other hand, minorities are defined as:

- a group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members being nationals of the State possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, of only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion, or language.

Francesco Capotorti, Study on the Rights of Persons Belonging To Ethnic, Religious and Linguistic Minorities, UN Doc. E/CONF.4/Sub.2/384/Rev.1, UN Sales No. E.78.XIV.1 (1979). Regarding those minorities, the right of self-determination is said to encompass the right to a representative government, or even the right to secede, if such group of minorities possesses certain criteria. See infra, Part II (B) (2). For the purpose of this paper, the words indigenous and minorities will be used interchangeably.


Woodrow Wilson was responsible for elevating the principle of self-determination to an international level when, in 1916, he included it in his fourteen points.8 Thereafter, while the League of Nations did not explicitly mention the principle of self-determination in its covenant,9 scholars agree that self-determination was “implicitly embodied in spirit in the mandate system of the League of Nations as a sacred trust of civilization . . . .”10 In 1945, self-determination gained strong support from various nation states who were under colonial rule, and it was eventually incorporated into the United Nations Charter.11 By the 1960s, the citing of the principle of self-determination had become common-place, appearing everywhere from the International Court of Justice advisory opinions,12 to the charters of


8. President Woodrow Wilson, address before the League to Enforce Peace (May 27, 1916), reprinted in 53 CONG. REC. 8854 (May 29, 1916). “We believe these fundamental things: First, that every people has a right to choose the sovereignty under which they shall live . . . .” Id.

9. The League of Nations covenant implicitly acknowledges the principle of self-determination when mandates are “able to stand by themselves under strenuous conditions of the modern world.” LEAGUE OF NATIONS COVENANT art. 22, para. 1.

Also, in the Aaland Island Case, a committee of jurists appointed by the League of Nations recognized the existence of the principle of self-determination. However, they found that such a principle does not include the right to secede and separate from the state. Gregory J. Ewald, The Kurd’s Right to Secede Under International Law: Self-Determination Prevails Over Political Manipulation, 22 DENV. J. INT’L L. & POL’Y 375, 378 (1994).


11. The United Nations Charter provides that one of the purposes of the United Nations is “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples . . . .” U.N. CHARTER art. 1, para. 2. Article 55 tracks the language of article 1 in requiring member nations to promote higher standards of living, international and cultural cooperation, and universal respect for human rights and fundamental freedoms. U.N. CHARTER art. 55. Implicit reference to the principles of equal rights and self-determination can also be found in article 73 requiring member nations to assume responsibilities for administering territories whose people have not yet attained a full measure of self-government, and to recognize that the interests of the inhabitants of such territories are paramount. U.N. CHARTER art. 73. Finally, article 76 (b) embraces the idea of self-determination in trusteeship systems. “One of the basic objectives of the trusteeship system is to promote the progressive development of the inhabitants of the trust territories towards self-government or independence, taking into account the freely expressed wishes of the peoples concerned.” U.N. CHARTER art. 76 (b).

12. Namibia, 1971 I.C.J. 16 (June 21); Western Sahara, 1975 I.C.J. 12 (Oct. 16); Portugal v. Australia, 1995 I.C.J 90 (June 30). The Portugal v. Australia case, also known as the East Timor Case, marks the first post colonial case that dealt with the issue of self-determination outside the colonial context. Although the International Court of Justice found that it had no jurisdiction in this case, the court acknowledged that self-determination is a binding principle of international law, a principle which the court described as irreproachable.
regional organizations, to a significant number of major international conventions.

Today, the right to self-determination is considered jus cogens, and a part of customary international law that imposes binding obligations on all nation states. It is considered not simply a principle of international law, but rather an affirmative right of all peoples. It is seen as a prerequisite to any genuine enjoyment of any of the human rights. But despite notable recognition of the right to self-determination, there is still a great deal of disagreement among states, and among international scholars, as to the scope and parameters of the right to self-determination, as well as who, exactly, is entitled to such a right.

For some, the right to self-determination is limited strictly to those individuals who are under colonial rule or foreign occupation. This is known as external self-determination, and it gives those under the

13. For example, the preamble of the Organization of African Unity States "convinced that it is the inalienable right of all people to control their destiny . . . ." Charter of the Organization of African Unity, May 25, 1963, African States 479 U.N.T.S. 39.


aforementioned circumstances the right to conduct their own affairs without any foreign interference. Yet for others, the right to self-determination is not limited to those under colonial rule or foreign occupation, but rather, it is given to all peoples, including minorities and indigenous people who live within the boundaries of an existing nation state. This is known as internal self-determination, which gives minorities and indigenous people the right to determine their own destiny. However, there is disagreement as to the scope of the right to internal self-determination given to minorities and the indigenous. Some argue that the right to internal self-determination encompasses the right to secede. Others assert that the right to internal self-determination is merely the right of minorities and indigenous peoples to have a representative democratic government chosen through a legitimate political process. For the purpose of this paper, we will examine both the right to secede and the right to internal sovereignty in our analysis of internal self-determination.

III. ANALYSIS

A. External Self-Determination

External self-determination is the right of the people to be independent and free from outside interference. This right stems from the United Nations Charter, which forbids nation states from interfering with the territorial integrity of other nation states.

22. Iorns, supra note 16, at 273; The idea of interpreting internal self-determination to mean a representative Democratic government came from the United Nations Declaration on Friendly Relations, which declares, in part, that 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 . . . and thus possessed of a government representing the whole people belonging to the territory without distinction to race, creed or colour.
This right was further embellished by the United Nations Declaration on the Granting of Independence to Colonial Countries and People, stating that "the subjection of peoples to alien subjugation, domination, and exploitation constitutes a denial of fundamental human rights; it is contrary to the United Nations Charter, and is an impediment to the promotion of world peace and cooperation." The same notion was affirmed in various other United Nations resolutions. The right to external self-determination is applicable to both the traditional colonial context and to any foreign domination of one state over another. This paper will explore both applications.

1. Traditional Colonial Context

While the external right to self-determination was extremely popular during the 1960s and 1970s (in Asia, Africa, and Latin America), today, claims of a right to external self-determination in the colonial context are virtually nonexistent. This is due not only to the formal termination of colonization as we know it, but also to the fact that today, "virtually all territories on earth [are] within the jurisdiction of some sovereign state." Another contributing factor to the current decline in the number of claims of a right to external self-determination in the colonial context is the notion that most of the former colonies have accepted the boundaries as their own legitimate boundaries, despite being drawn arbitrarily by their former colonial masters. This notion was expressed by the Prime Minister of Ethiopia at the Addis Ababa Summit Conference of 1963, where the Organization of African Unity was established, when he said, "It is in the interest of all Africans today to respect the frontiers drawn on the maps, even though they were drawn by the former colonizers." Today, claims of a right to external self-determination in reaction to the effects of the traditional form of colonization are virtually nonexistent. However, when we take into consideration the factors of foreign domination, as well as interference by one state over another, suddenly the number of these claims begins to escalate.

28. Fox, supra note 18, at 752.
2. Foreign Domination

Today, unlike claims of external self-determination in a traditional colonial context, there is a rise in external self-determination claims originating from foreign domination of one state over another. However, the definition of foreign domination has been expanded to include nontraditional forms of domination. Today, foreign domination can be seen militarily (such as when troops of one country are stationed in another country), economically (when one country or group of countries economically dominates another), and culturally (a concept known to social scientists as cultural imperialism), where one country's culture is imposed on another.

On the militaristic front, claims of a right to external self-determination were recently made by various countries, including: Lebanon, which resents the presence of Syrian and Israeli troops on its soil; Panama, which rejected the presence of American troops there; and the inhabitants of the Japanese island of Okinawa, who demanded the American troops stationed there to leave, following the rape of a twelve-year-old Japanese girl.

On the economic front today, various third world countries are beginning to voice concern over their lack of external self-determination due to the economic domination by the developed countries. This sentiment was, perhaps, most eloquently expressed by Gert Rosenthal,

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31. Both Syria and Israel maintain troops in Lebanon. See Mark Matthew, Lebanon is Trade-off for Peace; A Country's Freedom Becomes Non-Issue in Israeli-Syrian Talks, BALT. SUN, Jan. 4, 1996, at 1A.

32. Since the capture of General Manuel Noriega in December 1989, the United States has maintained troops in Panama. Today, there are an estimated 8000 American troops stationed there. The United States has maintained those troops there for the stability of Panama and the protection of the Panama Canal. See Guy Kovner, Guard Reports for Panama Duty: Local Unit Builds Schools and Roads, PRESS-DEMOCRATIC, Feb. 28, 1996, at P1; Staff Writer, World Dated Lines: Plan Would Keep U.S. Troops in Panama, S.F. EXAMINER, Mar. 7, 1996, at C24.

33. There are an estimated 29,000 to 47,000 American troops stationed on the island of Okinawa where the United States has been operating a military base since the end of World War II. See Cameron W. Barr, Battle of Okinawa; '96: Easing U.S. Presence: Major Base Closure Unlikely, CHRISTIAN SCI. MONITOR, Mar. 8, 1996, at 1; Michael A. Lev, 3 GI's Convicted in Okinawa Rape: Japanese Court Sentences Each To At Least 6 1/2 Years, CHI. TRIB., Mar. 7, 1996, at 8. For many Okinawans, the presence of American troops on their island is a form of occupation, and the governor of Okinawa, Masahide Ota, stated that the American bases in Okinawa "hamper its economic development and are one of the main reasons it remains Japan's poorest region." See Associated Press, Okinawa Governor Balks, But Bases To Stay, Anyway, HOUS. CHRON., Mar. 27, 1996, at 19; Staff Writer, The Okinawa Rapists Got Off Easy, But They Raised Hard Questions About U.S. Presence, BUFF. NEWS, Mar. 8, 1996, at B2.
General Secretary of the United Nations Economic Commission for Latin America, when he stated:

I think that in any relationship between weak and strong, strong have assets on their side; this occurs at the national level in distributive matters and it occurs in international relations among economically strong and economically weak countries, and it occurs in the world order. . . . Latin America and the Caribbean have to take their destiny in their own hands and resign themselves to the fact that we live in an inequitable world and that we have to function in this world . . . .

This foreign economic domination, various states argue, can take numerous forms: a very high level of debt, ideologically-based conditional loans by the International Monetary Fund and the World Bank, or a monopoly over technological advances by the developed countries. A current example of economic domination by monopoly over technological innovation can be witnessed in Japan's domination over its neighbors in Southeast Asia, via its strategic control of technology infiltrating that region.

On the cultural front, periodically there are claims of a lack of external self-determination because of cultural domination of one country over another. A right to cultural self-determination can be traced back to various international treaties, including the International Covenant on


35. Id. at 20. Today, for example, Latin American countries pay as much as 40% of their income annually to service their debt owed to developed countries. On the other hand, Africa's total debt owed to developed countries has increased by 700% between 1979 and 1984. See Africa's Submission to the Special Assembly of the U.N. General Assembly on Africa's Economic and Social Crisis, at 66 U.N. Doc. AJAC. 229/2 (1986).

36. Various developing countries have argued that the policies of the International Monetary Fund and the World Bank, of attaching restrictive conditions on loans advanced to those developing countries, a policy known as structured adjustment programs, only serves to undermine their right to economic self-determination. As one author puts it, "The loss of national economic control has been accompanied by a growing concentration of power without accountability in the international institutions, like the IMF and the World Bank for poor countries, foreign control has been formalized in structural adjustment programs." JEREMY BRECHER & TIM COSTELLO, GLOBAL VILLAGE OR GLOBAL PILLAGE: ECONOMIC RECONSTRUCTION FROM THE BOTTOM UP 31 (1994). For evaluation of IMF and World Bank loan policies, see JOHN DICKEY MONTGOMERY, FOREIGN AID IN INTERNATIONAL POLITICS: AMERICA'S ROLE IN WORLD AFFAIRS SERIES (1967).

Economic, Social, and Cultural Rights\textsuperscript{38} and the International Covenant on Civil and Political Rights.\textsuperscript{39} For example, article 27 of the International Covenant on Civil and Political Rights provides that "persons belonging to . . . minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."\textsuperscript{40} Today, claims of a right to cultural self-determination are being made by various groups, including the French-speaking Walloons of Belgium, who assert that their culture is distinctly different from that of the Dutch Flemings,\textsuperscript{41} and the German-speaking inhabitants of Alsace-Lorraine (France), who feel justified in asserting a cultural self-determination right based on the fact that language is one of the most significant elements of any culture.\textsuperscript{42}

While these claims of a right to external self-determination because of foreign domination (whether militarily, economically, or culturally) are on the rise, they often fall on deaf ears. The international community, in practice, has not acted beyond the mere reassertion of the right of people to be free from foreign domination, except on rare occasions.\textsuperscript{43}

\textbf{B. Internal Self-Determination}

Perhaps more than any other aspect of the principle of self-determination, internal self-determination has aroused the greatest level of

\begin{itemize}
\item \textsuperscript{40} \textit{Id.}
\item \textsuperscript{42} There are an estimated one million German-speaking persons living in Alsace-Lorraine, France, whose claim of self-determination is based, for the most part, on the fact that they communicate in a foreign tongue. \textit{See} Deutsche Presse Agentur, \textit{Unification Makes German Language A Hot Commodity}, SEATTLE TIMES, Mar. 28, 1993, at AS; Rone Tempest, \textit{For Alsace-Lorraine, Fear of Germany is a Thing of the Past Europe: The region has been fought over in three wars. Now, its citizens say they're content to be on the sidelines as the Continent is reshaped}, L.A. TIMES, Apr. 12, 1990, at 11.
\item \textsuperscript{43} Perhaps one of the most vivid exceptions is the international community's reaction to Iraq's invasion of Kuwait, which could be classified as foreign domination by militaristic means. \textit{See} S.C. Res. 660, U.N. SCOR, 45th Sess. at 1, U.N. Doc. S/Res/660 (1990). Where the U.N. Security Council found Iraq guilty of aggression in its occupation of Kuwait. However, an argument can be made that the situation in Kuwait is different, since the Iraqi presence there was an outright annexation, rather than a mere attempt to dominate militarily.
\end{itemize}
debate among nation states and international scholars. Today, the vast majority of claims for self-determination are based on internal self-determination. The viability of that internal right to self-determination has clearly been enhanced by the transition to majority rule in South Africa, and by progress toward resolution of the Palestinian question, not to mention the recent plebiscite in Quebec, or the call for the establishment of an independent, all-black nation in North America by the head of the Nation of Islam, Louis Farakhan.

But despite the high number of claims for internal self-determination, controversy persists over the true definition of internal self-determination. The two most common responses are that first, the right to internal self-determination is merely the right to have a representative, democratic government. Second, internal self-determination encompasses the right of minorities and indigenous people to secede from an already existing state, and form their own independent state.

1. Internal Self-Determination As The Right To Have A Representative Government

The practice of assuming that where one finds internal self-determination one will certainly find a representative government stems from various international treaties. For example, article 25 of the International Covenant on Civil and Political Rights provides that:

> [e]very citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2, and without unreasonable restrictions: a) To take part in the conduct of public affairs, directly or through freely chosen representatives; b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be by secret ballot, guaranteeing the free expression of the will of the electors; c) To have access,

44. Fox, supra note 18, at 734.
46. Mr. Farakhan believes that the only way to reach justice for blacks in America is by "complete separation" by blacks to form their own independent state. See Metro Desk, Louis Farrakhan, L.A. TIMES, Sept. 30, 1993, at 6.
47. Iorns, supra note 16, at 273; Beigbeder, supra note 1, at 18.
48. Nanda, supra note 21, at 271; Lloyd, supra note 7, at 419.
on general terms of equality, to public service in his country. 49

But despite the argument among those who assert that the internal right of self-determination is limited to the right of having a representative government, there still exist both theoretical and practical limitations to the notion of limiting internal self-determination to having a representative government.

On a theoretical level, there is disagreement as to what a representative government truly means. Various nation states have argued that a representative government does not necessarily connote a western-style form of democracy, and thus, these nations argue that their own form of government is the true, representative government. 50 For example, the Russians have argued for over seventy years that a true, representative government is a Communist form. Also, various African nations have argued that a representative government "need not be a democratic one." 51 On the other hand, East Asian countries believe that "western-style democracy is not applicable to East Asia." 52 Furthermore, a large number of international scholars agree that a western-style form of government "has not emerged as a binding, international law, but it appears to be moving in that direction." 53

Second, even if nation states accepted the notion that a western-style government is the only way to achieve a truly "representative government," 54 still, the western-style democracy is based on the idea that decisions are made by a majority vote, which means that "the interests of the minority too often are overridden by the interests of the majority." 55 Therefore, since internal self-determination is often asserted by minorities, having a democratic form of government does not necessarily guarantee those minorities a genuine right to internal self-determination. Today, the world over, minorities who are living under a supposedly democratic government are still being deprived of the right to have a representative government, thus denying them the right to internal self-determination.

50. Idns, supra note 16, at 274.
51. Id.
52. See Kim Dae Jung, A Response to Lee Kuan Yew: Is Culture Destiny? The Myth of Asia's Anti-Democratic Values, 73 FOREIGN AFF. 189 (1994). Former Prime Minister of Singapore, Lee Kuan Yew, had argued that a western form of democracy had failed in East Asia.
54. Id. at 310.
55. Id.
Three cases in point can be found among the Aborigines of Australia, the Koreans in Japan, and the Native Americans in the United States.

Yet even if we were able to overcome these theoretical limitations on the right to internal self-determination as entitlement in a representative government, some practical limitations still exist that would serve to undermine such a right. First, in order to achieve a truly representative government that is the basis for internal self-determination, there must be free and fair elections which would enable the people, especially minorities, to elect a representative government. While the United Nations, on numerous occasions, has stressed the importance of free and fair elections, nation states have managed to develop various techniques to

56. Aborigines comprise about 1.8% of the total Australian population, approximately 300,000 individuals, who are not only under-represented in the political process, but also ill-treated. See Theresa Simpson, Claims of Indigenous People to Cultural Property in Canada, Australia, and New Zealand, 18 HASTINGS INT’L COMP. L. REV. 195, 204-05 (1994); Australian PM Pledges Better Aborigine Treatment, REUTER LIBR. REP., (Dec. 10, 1992) available in LEXIS, Nexis Library, World File. For historical view of the Australian’s treatment of Aborigines, see generally RICHARD BROOME, ABORIGINAL AUSTRALIANS: BLACK RESPONSE TO WHITE DOMINANCE 1788-1980 (1982).


58. Despite their alleged autonomy, Native Americans in the United States are not only discriminated against, but for the most part, severely under-represented in the American democratic process. For a history and evaluation of the status of Native Americans, see VINE DELORIA, AMERICAN INDIAN POLICY IN THE TWENTIETH CENTURY (1985).

ensure that their elections are anything but fair and free, especially to the minorities who are living within the boundaries of those states.

First, there is the technique of manipulating the voters’ eligibility, so as to exclude those whom the government does not want to vote. For example, Cambodia designed its election laws in such a way that they denied its minority Vietnamese settlers the right to vote. This was accomplished by requiring, among other things, that at least one parent be born in Cambodia. This very same technique was implemented by the Namibian government to exclude South Africans residing there from voting.

Second, there is the technique of forced movement of people in order to manipulate an election. This can take many forms. In Bosnia-Herzegovina, the complete expulsion of potential voters from the territory, known as ethnic cleansing, was utilized. Other forms include moving the potential voters into another territory in the country in order to stack voter rolls, which occurred in Morocco, and murdering potential voters, as has occurred in Rwanda.

The third technique used by states to prevent minorities from electing a representative government is by allowing ballot fraud, such as allowing people to vote more than once, destroying ballot boxes, and threatening those who attempt to vote. Perhaps the best example of recent ballot fraud was during the Haitian election in June 1995. Despite the active role which the United Nations plays in monitoring these elections,
there still remains an embarrassingly large number of minorities throughout the world who are deprived of the opportunity to participate in genuinely fair and free elections.

Finally, even if these minorities were able to overcome all of the above mentioned obstacles and were able to freely and fairly participate in the election of a representative government, there is no guarantee that such government would act according to their will.

2. Internal Self-Determination as the Right to Secede

In the post cold war era, virtually all claims of a right to self-determination assert the right to secede, whether those claims were made by Chechynans, Southern Sudanese, Quebecois, or Kurds. Nation states are quick to point out that minorities do not have the right to secede, since secession would not only violate their territorial integrity guaranteed them by the United Nations Charter, but would also be violative of the doctrine of Uti Posseditis Juris. Adopted by the International Court of Justice in Bukrina Faso v. Republic of Mali, Uti Posseditis Juris requires the respect of the pre-established borders and frontiers. On the contrary, proponents of the right to secede argue that the territorial integrity of a state, as well as the pre-established borders and frontiers, have been arbitrarily drawn by colonial powers without regard to the ethnic minorities living within them. Proponents also insist that a genuine enjoyment of human rights must include the right to secede, since “it is for people to determine the destiny of the territory, not [for] the territory [to determine] the destiny of the people.”

However, those in favor of the right to secede also point out that not every group of minorities has such a right, and that each group must possess the following characteristics in order to qualify for the right to secede:

1. a pattern of systematic discrimination or exploitation against a sizable, self-defined minority; 2. the existence of a distinct, self-defined community or society within a state, compactly inhabiting a region, which overwhelmingly supports separatism; 3. a realistic prospect of conflict.


69. Cass, supra note 2, at 32.
70. Cass, supra note 2, at 24 (quoting Judge Dillard in his separate opinion in the Western Sahara Case, 1975 I.C.J. 12, 114 (Oct. 16)).
resolution and peace within and between the new [and] old state as a result of the envisaged self-rule or partition; and
4. the rejection of compromise solutions on the part of the central government.\textsuperscript{71}

These requirements, however, discriminate against the large number of minority groups not in possession of them. For example, Coptic Christians living in Egypt will not qualify since they are scattered in small numbers across Egypt. Thus, they lack the second requirement of compactly inhabiting a region.\textsuperscript{72} Also under these requirements, Quebecois, and similar groups, will be deprived of the right to secede since they lack the first requirement of "systematic discrimination or exploitation." This is due to the fact that their claim to secession is based solely on common language and culture.

But even if a particular group possesses all of the criteria required for secession, such a group would still have to overcome one more major obstacle, namely, international recognition. While it has been accepted that there are no binding rules in international law that create an obligation for an existing state to recognize the appearance of a new state. On the contrary, recognition that may be considered premature may qualify as a tortious act against the lawful government; it is a breach of international law.\textsuperscript{73}

However, there are some internationally accepted standards that define when an entity becomes entitled to recognition as a state. For example, the Montevideo Convention on Rights and Duties of States cites four criteria for recognition. First, a defined territory; second, a permanent population; third, an organized government; and finally, the capacity to conduct foreign relations.\textsuperscript{74} In addition, the I.C.J. has set forth additional criteria which must be fulfilled in order for a new state to achieve recognition.\textsuperscript{75} But meeting all of these criteria does not necessarily

\textsuperscript{71} Lloyd, supra note 7, at 432.
\textsuperscript{72} There are an estimated six million Coptic Christians living in Egypt, constituting ten percent of Egypt's population, who face constant discrimination and exploitation by the Muslim majority. See Edward Wakin, A Lonely Minority: The Modern Story of Egypt's Copts (1963); Mae Ghalwash, Minority Large, But Invisible and Maligned, NEW ORLEANS TIMES-PICAYUNE, Feb. 29, 1996, at A17.
\textsuperscript{74} Montevideo Convention on Rights and Duties of States, Dec. 26, 1933, 165 L.N.T.S. 19, art. 1.
\textsuperscript{75} These additional criteria were established by the court, in its advisory opinion regarding the interpretation of the U.N. Charter, article 4, paragraph 1. The court stated that for the newly emerging entity to be recognized by the United Nations, such entity must "1) be a
guarantee recognition. Rather, the decision to recognize a new state, in practice, is often a political decision, often made without regard to the new state's legal qualifications. As one scholar puts it:

The majority of states blend both law and politics into their decision to recognize a secessionist movement. In fact, from the empirical evidence that exists, a strong argument can be made that subjective political considerations far outweigh objective legal ones when states decide how to react to a secessionist claim of independence. There is little evidence that governments shape their response to civil war adversaries by reference to legal rules and procedures but rather shape policy mainly on the basis of calculations of prudence and military necessity. Because recognition often has a direct impact on whether a secessionist movement actually becomes a new and lasting state, it should not be surprising that other states try to use the tool of recognition to produce a favorable outcome.  

History provides a great deal of support for the notion that the recognition of a new state is, for the most part, a political and self-serving decision. For example, consider "how the Soviet and American positions on the right of Eritrea to secede flipped after a pro-western government in Ethiopia was replaced by a Marxist one."  

In more recent context, some argue that had the Quebecois chose to secede from Canada (during their recent plebiscite in October 1995), the United States would have had to seriously consider the question of whether or not it would recognize Quebec as a sovereign state. "The United States' recognition of a sovereign Quebec will depend more upon the American national economic interest than on the legal basis for extending recognition; the United States is apt to seek Quebec's accession on renegotiated terms."  

Against that theoretical background, it is beneficial to explore the current state practice with regard to recognition of a secessionist movement. While the number of secessionist movements across the globe is considerable (which seem to generate tremendous sympathy within the state, 2) be peace loving, 3) accept the obligations of the charter, 4) be able to carry out those obligations, and 5) be willing to do so." See Conditions on Admission of a State to Membership in the United Nations, 1948 I.C.J. 57, 63 (May 28).


77. *Id.* at 533.

international community), international recognition was awarded recently to a mere two cases: the Baltic States and the States of the former Yugoslavia.

In 1991, the United States of America formally recognized the Baltic States as independent states. Other countries soon followed suit. During that same year, the three Baltic nations were admitted as new members of the United Nations. However, the recognition of the Baltic States was not perceived as a trend-setting event, whereby the international community would suddenly be willing to recognize secessionist movements. Rather, the recognition of the Baltic States was described by President George Bush as "a special case." This is due to the fact that those Baltic States were independent states and members of the League of Nations before they were annexed by the Soviet Union in the 1920s. Thus, the recognition of the Baltic States is merely "a recognition of a limited secession right applicable to illegally annexed territories, rather than a general right of secession." The same analysis will also be applicable to the international recognition of the former Soviet Republic in central Asia, since those republics were also independent states prior to the Soviet annexation that occurred shortly after the Bolshevik revolution.

The second recent act of recognition of a secessionist movement by the international community is the case of Yugoslavia. The European Community formally recognized Croatia and Slovenia on January 16, 1992. Four months later, the United Nations accepted the Republics of Slovenia, Croatia, and Bosnia-Herzegovina as official members. For some, such recognition is particularly significant because, outside the colonial context, it represents the first time that a wide-spread international

79. The Iraqi Kurds, for example, gained tremendous sympathy from the international community during and after the Gulf War. However, such sympathy fell far short of formal recognition as an independent, new state. See S.C. Res. 688, U.N. SCOR, 46th Sess., 2982d mtg., reprinted in 30 I.L.M. 858 (1991) (condemning Iraq's actions against the Kurds, and sympathizing with the Kurd's struggle); Staff Writer, U.S. May Seek Autonomous Kurdish Region, CHI. TRIB., May 5, 1991, at 19.


84. Id. at 321.


state practice has favored secessionist movements still engaged in armed struggles for independence. For others, however, such recognition is not necessarily a recognition of secessionist movements per se. On the contrary, it is international recognition of "state dissolution rather than secession." Such a distinction is crucial, since international recognition of a new state will depend, for the most part, on the question of whether this new state has emerged as a result of the disintegration of an old state, or merely as a result of a meritorious secessionist movement attempting to secede from an already existing state. While the Arbitration Commission on Yugoslavia seems to acknowledge that Yugoslavia was actually dissolving, not that the republics were seceding, some scholars insist that because this dissolution was marked by many unilateral declarations of independence, and given the fact that the socialist republic of Yugoslavia was brought to an end by only Serbia and Montenegro, rather than by a conference of all republics (as was the case with the Soviet Union), this process can be better described as a series of secessions.

Thus, while there is no clear answer as to whether the new, emerging states in the former Yugoslavia have emerged as a result of a disintegration of an old state, or simply as a result of genuine secessionist movements that were successful in gaining independence, the international community remains divided as to when a particular secessionist movement is entitled to recognition.

Finally, even if the secessionist movement were able to gain independence and international recognition, there still remains the very real possibility that the former parent state will try to exercise control over the newly independent secessionist movement. "A secessionist movement cannot be successful in its internal aim if the parent state retains control over substantial military forces within the secessionist state, and insists on having effective control over its policies and laws, even if such control is only exercised sparingly." A case in point is that of the former Soviet Republics in central Asia. Despite their new-found independence, Russia is still in control, both militarily and economically. This situation has lead

87. Eastwood, supra note 83, at 322.
88. Id. at 328.
91. Frankel, supra note 76, at 528.
some scholars to question whether secession is truly the ultimate prize in the fight for self-determination.92

IV. CONCLUSION

The right of self-determination has long been recognized as an indisputable prerequisite to any genuine appreciation and enjoyment of human rights. It is a positive, legal obligation established by customary international law, multinational and bilateral treaties, including the United Nations Charter, in addition to various advisory opinions articulated by the International Court of Justice. It has been advocated for by leaders of great stature, such as Woodrow Wilson, to more obscure minority groups, such as the South Sudanese. Yet, despite the popularity of the principle of self-determination, a great deal of ambiguity as to its scope and breadth continue to undermine its true effectiveness as an affirmative right for those who are searching for a means by which to determine their own destiny and future.

For those who assert external self-determination as a means for achieving freedom from foreign domination, their screams consistently fall on deaf ears. State practice has barely recognized self-determination in the context of economic or cultural domination of one state over another. At the same time, the end of the colonization era has brought with it an end to all self-determination claims in the colonial context.

For those who assert internal self-determination as the right to have a representative government, despite some encouragement from the international players, they continue to be short changed. Nation states argue their own form of government is the only true example of a representative government, or create tremendous obstacles intended to prevent those minorities from electing their own representative government, such as the forced movement of potential voters, election fraud, or even mass murders.

However, those who asserted that internal self-determination entitled them to the right to secede faced the most challenging obstacles of all. They not only had the obligation to demonstrate that they fit the definition of a secessionist movement, but they also had to provide enough political and economic incentives to other international players to achieve recognition. Even after recognition has been granted, there is no guarantee that the mother state will not try to control them once again.

Recent state practice indicates that international recognition of secessionist movements takes the form of sympathy, rather than true

diplomatic recognition. Over the years, a number of secessionist movements were able to secede, but failed to gain recognition. Examples include Biafra, in Nigeria, and Katanga, in Congo. But for those fortunate enough to earn this recognition (namely the Baltic States and former Yugoslavian Republics), they are classified as special cases. This distinguishes them from the classical secessionist movements. For example, the Baltic States were once recognized as independent states before the Soviet annexation. In addition, the former Yugoslavian Republics were, perhaps, recognized not as a secessionist movement, but as new states that emerged as a result of the disintegration of an old state.

Today, thousands of people are killed in their search for the illusive goal of self-determination. From Chechnya to South Sudan, and from Yugoslavia to Kurdistan, their search has led them to a dead-end road full of obstacles, resentments and a lack of recognition. But these people continue to put their lives on the line, hoping that those noble words of self-determination amount to much more than political rhetoric. So they continue to die, hoping that maybe, there is a genuine right of self-determination.

93. On May 30, 1967, Biafra was able to secede from Nigeria and declare itself the republic of Biafra. While few African states recognized the republic of Biafra, the U.N. and most of the international community refused to grant recognition to the republic of Biafra. This lack of recognition, as well as a bloody civil war, caused the Biafran government to surrender to the Nigerian government and end its secession on January 12, 1970. For a history of the Biafran movement, see Eastwood, supra note 84, at 307-10.

94. The Katanga region of Congo declared its independence from Congo on August 4, 1960. The leader of the Katangan movement, Tshombe, asked for both international recognition and U.N. membership. However, such request was denied. No state recognized Katanga as an independent state. The Security Council issued resolutions calling for the military assistants to the Congolese government to take back the Katangan region; Eastwood, supra note 84, at 304-07.