The Right of Self-Determination of Peoples
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Self-determination consists of the political and legal processes and structures through which a people gain and maintain control over their culture, society, and economy. With the creation of the United Nations (UN), self-determination of peoples became an established principle of international law. The principle is embodied in the UN Charter and in both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Common Article 1(1) of these Covenants provides that: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

The UN General Assembly invoked this principle in its 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples, in which it stated that subjection of peoples to alien domination constitutes a denial of fundamental human rights and violates the peoples’ right to freely determine their political status and pursue their economic, social and cultural development. This declaration also reaffirmed the principle of the territorial integrity of existing states and gave rise to the so-called "salt water test" (which limits the rights of self-determination to colonized lands that exist across the oceans from the colonizing country). In accordance with the principle of self-determination and the salt-water test, the UN supported the independence of overseas colonies in Africa, Asia and elsewhere. Once these colonies became independent, however, they too became reluctant to recognize their own ethnically distinct citizens' full right to self-determination, fearing it might lead to demands for separation and secession.

Although there is no international legal definition of "peoples," who are entitled to the right of self-determination, the term is generally used to describe a population who shares the following characteristics: (1) a common historical tradition; (2) self-identity as a distinctive cultural group; (3) a shared language; (4) a shared religion; and (5) a traditional territorial connection.

Today, many indigenous communities throughout the world are claiming the right to self-determination. These are peoples, such as American Indians and Australian Aborigines, who constitute a "first people," with a prior history of territorial occupation and an ancestral attachment to their land before it was conquered and occupied by others. At various international fora, spokespersons for indigenous groups have claimed that their situations are identical to those of colonized peoples who have been conquered and then ruled by others. They argue that the salt water test should not apply to them. Both the UN's Draft Declaration on the Rights of Indigenous Peoples and the Inter-American Draft Declaration on the Rights of Indigenous People provide for the right of self-government or autonomy for indigenous peoples within their states of residence. Neither draft, however, recognizes a right of complete territorial and political independence. For example, the UN Draft Declaration states that "as a specific form of exercising their right of self-determination, [indigenous peoples] have the right to autonomy or self-government in matters related to their internal and local affairs."

Although the exercise of self-determination can include secession from an existing state and the creation of a new one, it also includes other less dramatic choices. The UN General Assembly's 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States explains that implementation of the right to self-determination need not conflict with the
territorial sovereignty or political unity of a state. The Declaration provides that a people exercising their right of self-determination may choose to form a federation with an existing state, integration into an existing state as an autonomous region, or "any other political status freely determined by a people" short of secession.

The Declaration goes on to explain the conditions under which peoples are not justified in seeking secession and independence from a sovereign state. It states that independent countries possessing a government that effectively represents the whole of their population (ethnic minorities included) are considered to be conducting themselves in conformity with the principle of equal rights and self-determination of peoples. For example, if an indigenous people or ethnic minority reside in a democratic state that enables them to participate effectively in the political process and economy and to practice their religion and culture, then they are exercising their right of self-determination and have no cause to secede.

The right to secede is an option of last resort, justified by serious government violations of human rights, persistent discrimination, and other grave injustices. Self-determination examples of secession in recent decades include the dissolution of the Soviet Union and Yugoslavia, the separation of East Pakistan from West Pakistan to form Bangladesh, and the separation of East Timor from Indonesia.

Examples of self-determination within an existing state include Italy's five special autonomous regions with extensive local powers defined by the constitution: Trentino-Alto Adige (containing the German-speaking people of the South Tyrol), Friuli-Venezia Giulia (containing Slovene and Friulian speakers), Val d'Aosta (containing French speakers), as well as the islands of Sardinia and Sicily. Each of these regions has unique, "non-Italian" cultural, linguistic, and historical characteristics that have justified extensive delegations of powers from Rome to the regional authorities to permit decision-making on local educational, economic, cultural, and budgetary issues. Some other autonomy arrangements include the Sami Parliaments in the Nordic countries, the Nunavut territory in Canada, and the ancestral territory of indigenous people in Panama.

The trend in world politics has been for enlightened states to attempt sincerely to accommodate the self-determination aspirations of their ethnic minorities and indigenous peoples, while other states continue to suppress and deny subjugated peoples this fundamental right.

For an expanded treatment of this topic with a relevant bibliography, readers are referred to: Paul J. Magnarella, "The Evolving Right of Self-Determination of Indigenous Peoples," St. Thomas Law Review, v. 14, n. 2, pp. 425-47 (2001). Those wishing to receive an electronic version of this article may contact the author at paulmag@anthro.ufl.edu