

# Rallying For Democracy

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## Self-Determination

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Essentially, the right to self-determination is the right of a people to determine its own destiny. In particular, the principle allows a people to choose its own political status and to determine its own form of economic, cultural and social development. Exercise of this right can result in a variety of different outcomes ranging from political independence through to full integration within a state. The importance lies in the right of choice, so that the outcome of a people's choice should not affect the existence of the right to make a choice. In practice, however, the possible outcome of an exercise of self-determination will often determine the attitude of governments towards the actual claim by a people or nation. Thus, while claims to cultural autonomy may be more readily recognized by states, claims to independence are more likely to be rejected by them. Nevertheless, the right to self-determination is recognized in international law as a right of process (not of outcome) belonging to peoples and not to states or governments.

The preferred outcome of an exercise of the right to self-determination varies greatly among the members of the UNPO. For some, the only acceptable outcome is full political independence. This is particularly true of occupied or colonized nations. For others, the goal is a degree of political, cultural and economic autonomy, sometimes in the form of a federal relationship. For others yet, the right to live on and manage a people's traditional lands free of external interference and incursion is the essential aim of a struggle for self-determination.

### Self-determination in International Law

The principle of self-determination is prominently embodied in Article I of the Charter of the United Nations. Earlier it was explicitly embraced by US President Woodrow Wilson, by Lenin and others, and became the guiding principle for the reconstruction of Europe following World War I. The principle was incorporated into the 1941 Atlantic Charter and the Dumbarton Oaks proposals which evolved into the United Nations Charter. Its inclusion in the UN Charter marks the universal recognition of the principle as fundamental to the maintenance of friendly relations and peace among states. It is recognized as a right of all peoples in the first article common to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights which both entered into force in 1976. 1 Paragraph 1 of this Article provides:

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

The right to self-determination of peoples is recognized in many other international and regional instruments, including the Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States adopted by the UN General Assembly in 1970, 2, the Helsinki Final Act adopted by the Conference on Security and Co-operation in Europe (CSCE) in 1975, 3, the African Charter of Human and Peoples' Rights of 1981, 4, the CSCE Charter of Paris for a New Europe adopted in 1990, 5, and the Vienna Declaration and Programme of Action of 1993. 6, It has been affirmed by the International Court of Justice in the Namibia case 7, the Western Sahara case 8, and the East Timor case 9, in which its erga omnes character was confirmed. Furthermore, the scope and content of the right to self-determination has been elaborated upon by the UN Human Rights Committee 10, and the Committee on the Elimination of Racial Discrimination 11, and numerous leading international jurists.

That the right to self-determination is part of so called hard law has been affirmed also by the International Meeting of Experts for the Elucidation of the Concepts of Rights of Peoples brought together by UNESCO from 1985 to 1991, 12, it came to the conclusion that (1) peoples' rights are recognized in international law; (2) the list of such rights is not very clear, but also that (3) hard law does in any event include the right to self-determination and the right to existence, in the sense of the Genocide Convention.

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The inclusion of the right to self-determination in the International Covenants on Human Rights and in the Vienna Declaration and Programm of Action, referred to above, emphasizes that self-determination is an integral part of human rights law which has a universal application. At the same time, it is recognized that compliance with the right of self-determination is a fundamental condition for the enjoyment of other human rights and fundamental freedoms, be they civil, political, economic, social or cultural.

The concept of self-determination is a very powerful one. As Wolfgang Danspeckgruber put it: "No other concept is as powerful, visceral, emotional, unruly, as steep in creating aspirations and hopes as self-determination." It evokes emotions, expectations and fears which often lead to conflict and bloodshed. Some experts argued that the title holders should be or are limited in international law. Others believed in the need to limit the possible outcome for all or categories of title holders. Ultimately, the best approach is to view the right to self-determination in its broad sense, as a process providing a wide range of possible outcomes dependent on the situations, needs, interests and conditions of concerned parties. The principle and fundamental right to self-determination of all peoples is firmly established in international law.