

# Self-Determination in the Modern European and World Politics

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# ***Historical Background***

- Concept of self-determination goes back to American Declaration of Independence (1776):
  - Governments derived “their just powers from the consent of the governed”
  - “Whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it”
- In the 19th century and at the beginning of the 20th century, the principle was used both for uniting and dissolving states in Europe

# ***Historical Background***

- Even the Bolshevik movement found the principle useful in its own way
- Principle became crystallised in the Woodrow Wilson's Fourteen Points (1918)
- Despite these developments,
  - Principle was not incorporated into the Covenant of the League of Nations
  - Principle remained a political rather than a legal concept
  - Its substance was not elaborated

# ***Historical Background***

- Atlantic Charter (1941) proclaimed:
  - ‘No territorial changes that do not accord with the freely expressed wishes of the peoples concerned’
  - ‘Right of all peoples to choose the form of government under which they will live’
  - ‘Sovereign rights and self-government restored to those who have been forcibly deprived of them’
- These ideas influenced the drafting-process of the United Nations Charter but were not included in such a specific manner

# ***United Nations Charter***

- Article 1(2)

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

- Article 55

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 ...

# ***United Nations System***

- Inclusion of the principle in the United Nations Charter did not, in itself, turn the principle into a legal concept
- Declaration on the Granting of Independence to Colonial Countries and Peoples (1960) links the principle substantively to the decolonization
- Principle is found in two 1966 international covenants on human rights which characterise the principle as a essential prerequisite for the existence and realisation of individual human rights

# ***United Nations System***

- Friendly Relations Declaration (1970):
  - Right to freely determine, without external interference, their political status and to pursue their economic, social and cultural development
  - Duty of every state to respect this right in accordance with the provisions of the United Nations Charter
- Potential choices:
  - Establishment of a sovereign and independent state
  - Free association or integration with an independent state
  - Emergence into any other political status

# ***Self-Determination as a Binding Rule***

- Principle may have a legal dimension:
  - Part of an agreement used to settle a dispute or a situation
  - Foundation for decolonisation
  - Additional argument in deciding the issue of territorial sovereignty
  - Basis to choose a political system
- Self-determination is a collective right, consequently involving uncertainties and practical difficulties, e.g.:
  - Who belong to the “people”?
  - How to exercise the right?
  - What about the system as a whole?



# ***Who Belong to the “People”?***

- Group of individual human beings who enjoy some or all of the following common features:
  - Common historical tradition
  - Racial or ethnic identity
  - Cultural homogeneity
  - Linguistic unity
  - Religious or ideological affinity
  - Territorial connection
  - Common economic life
- Group as a whole must have the will to be identified as a people or the consciousness of being a people

# ***How to Exercise the Right?***

- How to define exactly who are the members of the group?
- How does the group express its will?
- How to realise the expressed will?
- Who is the duty-bearer regarding right to self-determination and what exactly are the duties involved?

# ***Friendly Relations Declaration***

- “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 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”

# ***What about the system as a whole?***

- Principle of self-determination conflicts with other fundamental principles of international legal system
- Notably, how to reconcile self-determination with territorial integrity?
- Has the principle of self-determination lost its significance after the decolonisation?
- One possible middle-ground is found in dividing the principle of self-determination into internal (autonomy) and external (secession) self-determination

# ***Friendly Relations Declaration***

“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”

# ***Kosovo Advisory Opinion***

- International Court of Justice was asked:  
“Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?”
- ICJ twisted the question
- ICJ took a simple approach and followed an old principle that what is not forbidden under international law is therefore permitted

# ***Kosovo Advisory Opinion***

- What did the court say?
  - Declarations of independence are not prohibited
  - But the declaration of independence violates international law if it was achieved with the use of force
  - Creation of state is not merely a question of fact
  - Principle of territorial integrity applies between states
  - Right of self-determination and especially the right of remedial secession was not confirmed

# ***Kosovo vs Crimea***

- Western states often claimed that Kosovo was a unique case and it is not a precedent
- However, in 2014, Kosovo was used as a precedent by Russia to support its claim to Crimea
- Russia's comments to the ICJ:  
“outside the colonial context, international law allows for secession of a part of a State against the latter's will only as a matter of self-determination of peoples, and **only in extreme circumstances**, when the people concerned is continuously subjected to most severe forms of oppression that endangers the very existence of the people”



# ***Kosovo vs Crimea***

- Russia's comments to the ICJ:

“primary purpose of the ‘safeguard clause’ [in the Friendly Relations Declaration] is **to serve as a guarantee of territorial integrity of States**. It is also true that the clause may be construed as authorizing secession under certain conditions. However, those conditions should be limited to **truly extreme circumstances**, such as an outright armed attack by the parent State, **threatening the very existence of the people in question**. Otherwise, all efforts should be taken in order to settle the tension between the parent State and the ethnic community concerned within the framework of the existing State”

# ***Kosovo vs Crimea***

- Who controlled the territory?
  - Kosovo was under the international administration established by the Security Council when declaring independence
  - Crimea was under the unilateral and illegal control of Russia when the referendum was held and independence declared
- How long before declaring independence?
  - Kosovo: almost nine years
  - Crimea: less than a month

# ***Kosovo vs Crimea***

- Was internal self-determination ruled out?
  - Forceful destruction of Kosovo's autonomy starting 1989 and internationally recognised occurrences of war crimes, crimes against humanity, ethnic cleansing and massive human rights violations
  - No comparable situation in Crimea
- Any efforts for reconciliation?
  - Numerous efforts to find a political solution to determine the final status of Kosovo
  - Seemingly, no meaningful and good faith efforts to settle the concerns and differences with Ukraine