

## Summary

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### The Right of Self-Determination in International Law

1. The right of self-determination is used to some extent in present international relations as a rather vague argument in favour of political action. It therefore has to be more precisely defined and explained, regardless of whether it is used as a sword or as a shield.

2. Since the right of self-determination is used as a legal argument in favour of political action, and since there can and will always be clear-cut cases violating this right, it is appropriate to analyse its legal basis – even if a precise and universally applicable definition relating to the substance of this right and its holders cannot be established. The concept of self-determination is not less clear than other notions accepted in national and international law.

3. At the time, when the prohibition of the use of force was not yet an established rule of international law, the practice of self-determination could not lead to the existence of a corresponding rule of customary international law: the practice of denying a right of self-determination was not then against international law.

4. This situation changed after the prohibition of force and the prohibition of territorial annexations. A right of self-determination can now be based on “practice” and on the conception of its legality at least insofar as clear-cut cases will be legally – and not only politically – identifiable. It is not admissible to restrict the category of “clear-cut cases” to those in the realm of decolonization.

5. The use of the notions “self-determination” and “the right of self-determination” in bilateral and multilateral treaties indicates

that they are meant to stipulate a legal obligation – unless the contrary is clearly established.

6. Since self-determination is part of the principles of the Charter of the United Nations, we can conclude that therefore its practice is based on a legal obligation and not only on a moral aspiration. The same is true for the right of self-determination as included in the drafts of the conventions on human rights of the United Nations.

7. The general principles of law (Art. 38, 1 c of the Statute of the International Court of Justice) are not at present a basis for the right of self-determination, since the various systems of municipal law do not as a whole make any reference to the right.

8. It is not true that the characterization of the subjects of the right of self-determination conceptually requires *a priori* a definition of the substance of the right of self-determination: the substance of this right may also depend upon the respective subject.

9. The entire people of a sovereign state can possess the right of self-determination; however, in the controversial cases of our time, the subject of the right usually is a different group of people.

10. Questions as to the subject of the right of self-determination pose no particular problem for the Soviet view which assumes that the right of self-determination exists in all cases where it serves the cause of class-conflict and so-called socialistic justice.

11. Apart from the entire people of a state, a group of people can hold the right of self-determination, if the following criteria exist: homogeneous cultural structure (in the broadest sense); conviction of homogeneity and intention to preserve it; common historical destiny; common identifiable area of living. We shall find here again that the law can single out only clear-cut cases.

12. The right of self-determination applies to groups and not to individuals; in some cases, however, only the observance of the right of the group will lead to the protection of existing individual rights.

13. The right of the people of a state to choose freely their own form of government does not need to be based upon the right of self-determination, since the prohibition of intervention is part of the present customary international law. The choice of government is within the domestic jurisdiction of each state.

14. Only the Soviet doctrine of self-determination would justify foreign intervention against the will of a government or its people, where there was an attempt to withdraw from the socialist system of where a withdrawal from this order seems imminent.

15. The principles governing the right to choose a government apply as well to the right to dispose of natural resources.

16. The most controversial aspect of the right of self-determination seems to be the alleged right of a group to secede from an existing state. This right poses the profoundest problems since it could be opposed by the general principles of sovereignty and domestic jurisdiction.

17. In those cases where the group claiming the right of self-determination is legally and formally integrated into a state, there is *prima facie* no right of secession.

18. A group will be freed from its duty of allegiance to the state only

- a) if this group is subject to intolerable discrimination, and
- b) this discrimination is essentially directed toward those very characteristics of the group upon which a right of self-determination is usually based.

19. In this case, the recognition of a right of secession would primarily entail the right not to be governed any longer by the discriminating state.

20. If the right to secede from a state is accepted, it implies the freedom to form a new state or to join an existing state.

21. Soviet doctrine would allow the enforcement of an existing right of secession by means of a war of liberation.

22. According to the Western view of self-determination there must be a proportionality in the use of force to vindicate this

right. A liberation by way of force would be permissible only in situations where international law allows humanitarian intervention by third states.

23. The formal agreement or consent of a state not to join up with another state may be void if it infringes the right of self-determination. The validity of such an agreement will be put in doubt if it has been signed under impermissible pressure. Also the *clausula rebus sic stantibus* applies to such agreements.

24. Soviet doctrine maintains that a treaty to prohibit the union of a group with a third state is invalid if such a treaty precludes the establishment of a socialist social order. According to this doctrine, constitutions imposed by third states would not be invalid if class-conflict and a socialist social order would thereby be supported. However, Soviet doctrine does accept that the exercise of the right of self-determination must not be altered, by external force, even if the purposes of communism would be hindered by the exercise of this right; to this extent a concession is made to the principles of sovereignty and coexistence.

25. A third state may assist a group claiming the right of self-determination under the same conditions which entitle this group to resort to self-help.

26. The recourse to the right of self-determination continues to be a legal argument (possibly the only one) which supports the reunification of both parts of Germany.

27. Before the recognition of the German Democratic Republic as a sovereign state, a majority decision of the whole German people could be regarded as a lawful way of exercising the right of self-determination. With the recognition of the German Democratic Republic the population of the two German States can no longer be considered as *one* subject of the right of self-determination.

28. Each part of Germany now having its own right of self-determination, a majority decision by the vote of the entire German people would no longer be binding for the minority – since no lawful exercise of the right of self-determination could be claimed by the majority.

29. The international community is legally bound to respect the claim of the German nation to self-determination in the following respects:

- a) No state would be entitled to oppose the exercise of this right, if both German states agreed upon unification.
- b) The same is true with respect to a unilateral promotion of this aim by one of the German states, inasmuch as it does not thereby intervene illegally in the affairs of the other.