

Individual Rights, Minority Rights, and Group Rights

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As is well known, peoples' rights were absent from the Dumbarton Oaks Proposals; they were added only later, mainly at the insistence of the Soviet Union. Peoples' rights are mentioned twice in the United Nations Charter: in Article 1, paragraph 2 and Article 55, both of which refer to "the principle of equal rights and self-determination of peoples."

These same provisions deal with "human rights and fundamental freedoms," but as a distinct concept. One might have questioned, then, whether the drafters of the Charter considered peoples' rights as constituents of human rights. However, these doubts faded with the adoption in 1966 of the UN covenants on human rights; the covenants refer to the right of self-determination, which must therefore be considered at least as closely bound to human rights and, probably, as a collective human right in itself.

Although the inclusion of the right of self-determination in the covenants was decided as early as 1954, the relationship between self-determination and other rights has long been obscured by the exclusive use of the principle of self-determination as a tool to favor decolonization. While all the relevant instruments of the General Assembly (including Resolutions 1514 [XV] and 2625 [XXV]) and the covenants themselves paid lip service to the right of "all peoples" to self-determination, the use of that right was in effect limited to colonial and other assimilated peoples who were the victims of foreign occupation or domination. Moreover, the application of the right to self-determination to occupied or dominated peoples has remained narrowly circumscribed; it has in fact been applied only to the Palestinian people and the South African (and, for a short time, the Southern Rhodesian) black majority. It is significant that the United Nations

never expanded this right to Afghanistan or Lebanon, for example, when there were good grounds to do so.

The reasons for this are obvious: When there were only a few colonial powers, many states in the international community feared that their own territorial integrity or national unity would be threatened by international recognition of the existence of different peoples among their own population. Moreover, a majority of states found it unacceptable to recognize that citizens could have rights against the state, which had long been recognized as the sole subject of international law. States were the only legal entities entitled to exercise rights and to incur legal obligations at the international level.

In order to sustain these prerogatives, the United Nations confined the exercise of the rights of peoples within very rigid limits. First, as noted above, it limited the exercise of the right to self-determination to colonial peoples strictly defined. Second, once decolonization was achieved, formerly colonial peoples were granted no additional rights at the international level (at least no more *real* rights). From the moment of decolonization, the rights of the people concerned were supposed to be exercised by the state. Third, the right to decolonization was, in fact, equated with the right to independence. Despite the fact that it had proclaimed that “the free association or integration with an independent State or the emergence into any other political status freely determined” by the people were means to achieve decolonization,¹ the United Nations in fact favored quasi-exclusively the establishment of sovereign and independent states. Finally, great precautions were taken to maintain the territorial integrity of states, peoples, and territories. Of course, this could be seen as contradicting the principle of a right to independence. This contradiction was resolved through the legal proposition that “the territory of a colony or other non-self governing territory has, under the Charter, a status separate and distinct from the territory of the State administering it.”² Therefore, independence in the framework of the colonial borders does not undermine the territorial integrity of the administering power.

¹ *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States*, General Assembly Resolution 2625 (XXV) (24 October 1970).

² *Ibid.*

One would have thought, consequently, that the right of peoples to self-determination would have been fulfilled with the realization of political decolonization, which, with very rare exceptions, is an indisputable reality today. Such a view is erroneous. In the first place, this was certainly not the intent of the drafters of the Charter. Peoples' rights are in no way limited by the Charter to colonial peoples; indeed, no such link appears anywhere in the Charter, and it is clear from the *travaux préparatoires* that the drafters of the Charter did not intend so narrow an application. Many of the most influential states represented at the Dumbarton Oaks Conversations and San Francisco Conference were themselves colonial powers, and they would certainly not have accepted such a suicidal principle. It is only because of the changes in world politics and balance of power that the shift in the interpretation of the right to self-determination occurred. In fact, what "self-determination" meant was clearly "democracy," even though there was no agreement on the meaning of this term among the drafters. Second, it has been affirmed repeatedly that all peoples—not only colonial peoples—have a right to self-determination. Third, the changes in the world order—in particular political decolonization, the collapse of Communism in Eastern Europe, and the spread of political liberalism and pluralism—have favored a new reading of the Charter that is probably more in accordance with the original meaning of peoples' rights.

It is premature to try to describe in any detail the new legal situation, but trends can be seen even if they are not yet consolidated. The central idea is certainly that the right of all peoples to self-determination must not be and is not an empty formula. The problem is that the Charter nowhere defines what constitutes a "people," nor is there any universally accepted definition. In fact, as James Crawford has aptly said, "peoples rights embodies a category, not a definition. What constitutes a people may be different for the purposes of different rights."³ Furthermore, principles of equal rights and self-determination do "not imply that the category 'peoples' rights' requires that the term 'peoples' should have the same meaning for the purposes of all rights accepted as falling within the category."⁴ This seems

³ James Crawford, "The Rights of Peoples—Some Conclusions," in James Crawford, ed., *The Rights of Peoples* (London: Oxford University Press, 1988), 170.

⁴ *Ibid.*, 166.

very sensible and entirely in keeping with the contemporary practice of the United Nations, even if the legal definition of ‘peoples’ is far from completely clear at this date.

The present trends are as follows: First—and this must be stressed again—*all* peoples have a right to self-determination whether they are colonized, under foreign domination, or a minority. Second, such a right does not imply a right to independence; it does so only for colonial or assimilated peoples. Other categories of peoples certainly do not have such a right, and it is significant that neither the United Nations nor any other international forum has proclaimed any right to independence in favor of minorities in the former Yugoslavia or the former Soviet Union. The 1992 Declaration on the Rights of Persons Belonging to Minorities does not hint in any manner at such a possibility, although it shyly envisages that minorities—and not only the persons belonging to minorities—can hold certain legal rights.⁵ Third, it seems quite clear that minorities are considered increasingly as “peoples,” as is shown by the term “indigenous peoples,” a special category of minorities clearly established by the practice of the UN Human Rights Committee on the basis of Article 27 of the 1966 Covenant on Economic, Social, and Cultural Rights. Minorities and indigenous peoples also are being recognized as having specific rights that do not, however, amount to a right to sovereignty. Finally, apart from specific peoples that constitute minorities and indigenous peoples, the present practice of the United Nations suggests that all groups that show a real coherence and share a similar view of their own future and the same global values have special rights. The two most important of these rights are the right to self-identity (i.e., the right of all individuals who see themselves as part of the group to be recognized as such) and the right to democratic governance and participation.

This latter right remains in its infancy. However, efforts by the United Nations in recent years to send missions to monitor and control democratic electoral processes in various countries and the adoption by the General Assembly of a series of resolutions calling for “enhancing the effectiveness of the principle of periodic and genuine elections” clearly tend in this

⁵ General Assembly Resolution 47/135 (18 December 1992).

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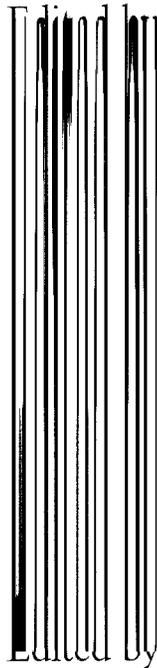
direction.⁶ The UN operations in Cambodia, for example, are also evidence of this same trend.

If a conclusion may be drawn from all this, it is the following: Far from having disappeared with colonization, the right of peoples to self-determination has gained a new vigor with the changes in the world order. It is now up to the United Nations and its member states to consolidate the trend toward democratic governance and participation and to make the principle as strong a tool for reinforcing democracy as it used to be for facilitating decolonization. This would be in keeping with the intent of the Charter's framers, who first met at Dumbarton Oaks fifty years ago.

⁶ General Assembly Resolutions 44/146 (25 December 1989), 45/150 (18 December 1990), 46/137 (17 December 1991), and 47/138 (18 December 1992).

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