

FROM PRINCIPLES TO PRACTICE: RESOLVING THE PERCEIVED CONFLICT BETWEEN TERRITORIAL INTEGRITY AND SELF-DETERMINATION IN INTERNATIONAL LAW

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Abstract

Traditionally, the right to territorial integrity and the right to self-determination have been treated as fundamentally in conflict. Governments have used the right to territorial integrity to suppress self-determination movements that seek independence. This paper argues that such a perceived conflict is based on a misunderstanding of the scope and application of these rights. Instead, it demonstrates that the right to self-determination and territorial integrity exist in different spheres entirely, and their perceived conflict is often a result of political manipulation rather than legal incompatibility.

Territorial integrity is a right that applies solely to relations among sovereign states, not between a state and its own people. By contrast, self-determination is an erga omnes right of peoples under international law, which can include the right to secede under certain circumstances. By disentangling the two principles and clarifying their scopes, the article argues that international law accommodates both the protection of state boundaries from external aggression and the legitimate aspirations of

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peoples to determine their own future without the two rights inherently conflicting.

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I. INTRODUCTION

The right to self-determination is an old concept: people, being free, must themselves choose their government. Yet so is the concept that each country has a right to territorial integrity — to be free from attempts by others to usurp its territory.

The right to self-determination emerged as a response to colonialism and oppressive regimes and was meant to empower people in their cultural, economic, and political aspirations.¹ Since states typically resist territorial concessions, when exercising a right to self-determination threatens the state's right to territory, it leads to perceived clashes between the concepts of self-determination and territorial integrity. States argue that secession violates their territorial integrity; after all, it forces a change in the state's borders (likely without its consent). But, under international law, a state's right to territorial integrity does not inherently place limits on the exercise of self-determination in a manner that causes territorial changes.

1. MALCOLM N. SHAW, INTERNATIONAL LAW 227, 230-31 (5th ed. 2003).

While various conflicts are discussed here, this article maintains neutrality and merely seeks to outline current issues and arguments. It provides a brief overview of territorial integrity and the right to self-determination without delving into exhaustive historical contexts. The focus is on the perceived conflict between a state's territorial integrity and a peoples' right to self-determination. This article asserts that peoples' right to self-determination is not limited by state's territorial integrity and, when it is exercised in accordance with international law, it does not violate a state's territorial integrity.

II. TERRITORIAL INTEGRITY

Throughout much of early history, from early kingdoms to later republics, nations pursued territorial expansion through warfare.² Often, these wars of conquest did not have any justification.³ Early efforts to regulate warfare emerged with the “just war” theory, which was aimed to temper the regular violence of the age.⁴ The just war doctrine, as first contemplated by Augustine, was first conceptualized as a theory of protecting communities, not the borders of or the conquest of the state.⁵ From these early theories, the concept of justification to initiate war developed into a more “legal” concept directed towards state action as opposed to intra-community violence.⁶ Even then, nations began to enter into agreements that set out the borders between neighbors⁷ to protect their rights to the territories claimed. These early origins of territoriality were codified somewhat during the peace of Westphalia.⁸ However, the current system of territorial integrity and the concept of the “inviolability of borders” did not truly emerge until the League of Nations.⁹

2. See, e.g., MARY E. O'CONNELL, INTERNATIONAL LAW AND THE USE OF FORCE 118 (Robert C. Clark et al. eds., 2nd ed. 2009).

3. See *id.*

4. See *id.*

5. *Id.*

6. *Id.* at 119, 120.

7. See, e.g., Beth A. Simmons, *Borders Rules*, U. Pa. L. Sch., Pub. L. & Legal Theory Rsch. Paper Series, Research Paper No. 19-07, (forthcoming 2019) (manuscript at 5-6) (on file with author).

8. *Id.* (“A host of ancient and medieval border agreements were concluded well before the formation of the modern state system. The Treaties of Westphalia (1648) were largely territorial agreements that nurtured the connection between physical space and political jurisdiction. Territorial delineation and nation-statehood were largely co-constitutive processes; and interstate borders defined, reflected and helped to solidify national identities.”) (citations omitted).

9. *Id.* (manuscript at 7).

The aftermath of World War I prompted global efforts to prevent future conflicts, culminating in the formation of the League of Nations.¹⁰ Its Covenant, particularly Article 10, underscored the commitment to upholding territorial integrity against external aggression.¹¹ Article 10 committed members (states) of the League “to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League.”¹²

Despite the League’s ultimate failure to avert another world war, the imperative for territorial stability persisted. The United Nations, succeeding the League, reinforced this commitment in the new United Nations Charter, prohibiting the threat or use of force against territorial integrity.¹³ In relevant part, the United Nations Charter Article 2 commits that “[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”¹⁴ The United Nations Charter also codifies internal sovereignty through Article 2(7), which precludes the United Nations from intervening in any country’s internal matters.¹⁵

Subsequent treaties and declarations, such as the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States, reaffirmed the sanctity of territorial integrity.¹⁶ These principles, enshrined in various UN documents, aimed to deter interstate intrusion and foster global stability.

Since the formation of the United Nations, territorial integrity has been invoked in various conflicts worldwide, from Cyprus, Syria, Armenia, Ukraine, and others. States often cite this principle to safeguard their territorial and sovereign rights, whether the legal right applies or not. Similarly in how states often invoke the right to self-defense as they use force that exceeds the parameters of self-defense.

Membership in the United Nations is limited to sovereign states, through their recognized governmental representatives.¹⁷ The United Nations Charter

10. See, e.g., League of Nations Covenant.

11. League of Nations Covenant, *supra* note 10, at art. 10.

12. *Id.*

13. See U.N. Charter art. 2, ¶ 4.

14. *Id.*

15. *Id.* at ¶ 2(7).

16. See G.A. Res. 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and cooperation among States in accordance with the Charter of the United Nations, at 122 (Oct. 24, 1970).

17. See *generally* U.N. Charter, *supra* note 13, at art. 1.

only talks about “members” and the “threat or use of force” against a “state.”¹⁸ This leaves open the possibility that states could seek territorial changes through other means since the charter only prevents other states from interfering with the territorial integrity of another *state* through *the use or threat of force*. Thus, nothing prevents a state from negotiating to give away or take a portion of territory with another state or people.

However, states facing disputes over secession, such as Serbia, have invoked the right to territorial integrity by arguing that secession would violate the states’ right to territorial integrity.¹⁹ The argument is that by changing the borders of a state without its consent, the territorial integrity of the state is violated. This argument is the main topic of discussion in this article.

III. SELF-DETERMINATION

The right to self-determination is not a new concept but rather has its roots in the theories of individual and community rights from centuries ago. We can see some of the earlier concepts of self-determination in the writings of St. Thomas Aquinas in the thirteenth century, advocating for the right of people to rebel against a tyrant.²⁰ Several centuries later, John Locke would make significant contributions to the modern concept of the right to self-determination by advancing the idea of individual rights and the concept of “consent of the governed.”²¹ His view placed individual rights as supreme to the government and would come to take center stage in revolutions of the seventeenth century, such as the American Revolution.²² While the American revolutionaries did not specifically invoke a “right to self-determination,” that is because the concept had not been solidified by then. However, the U.S. Declaration of Independence and the arguments used for the revolution appeal to the early concepts that would develop into what is known today as the right to self-determination.²³ In particular, Locke’s ideas of the consent

18. *See id.* at art. 2, ¶ 4.

19. *See* Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 2010 I.C.J. (July 10).

20. *See* MARY E. O’CONNELL, *THE ART OF LAW IN THE INTERNATIONAL COMMUNITY* 240 (2019).

21. *See generally* JOHN LOCKE, *TWO TREATISES OF GOVERNMENT* 181-82 (Thomas I. Cook ed., 1947).

22. *See* O’CONNELL, *supra* note 20, at 159.

23. *See* The Declaration of Independence para. 2 (U.S. 1776) (arguing “Governments are instituted among Men, deriving their just powers from the consent of the governed—that whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government”).

of the governed were found prominent in the argument to break away from English rule.²⁴ Years later, the French used similar arguments to overthrow the monarchy, and in the nineteenth century, the Greeks successfully fought the Greek War of Independence against the Ottoman Empire.²⁵ More than anything, the use of the early concepts that would become the building blocks of the right to self-determination showed the practical application of the ideas of human rights rather than the rights of states or monarchs.

The concept of self-determination continued to evolve,²⁶ and by the early twentieth century, it had been solidified enough for world leaders to use it as a justification for foreign policy.²⁷ The right also found more prominence in the twentieth century as the world order shifted significantly, with growing resentment towards the imperial powers. Colonization in the earlier centuries had subjugated millions and imposed on the peoples of colonies tyrannical rule and suffering. With the end of World War II, the calls for independence from the peoples of the colonies finally began to break through.

Thus, when the UN Charter was drafted, it did not simply recognize a right to self-determination. Instead, it states that the *purpose* of the organization is “[t]o develop friendly relations among nations based on respect for the principle of *equal rights and self-determination of peoples*,”²⁸ making a right to self-determination a cornerstone of the United Nations. In 1960, UN Resolution 1514 was adopted in support of decolonization, stating unequivocally that “[a]ll 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.”²⁹ As a result, the

24. Among other arguments, such as the natural law and natural rights of men.

25. See, e.g., O’CONNELL, *supra* note 20.

26. As well as development of international law and international human rights law, which took on a greater role in international affairs and became more sophisticated as a legal tool, rather than merely a political one.

27. Woodrow Wilson used the right to self-determination after World War I as a means of decolonization, though despite his best efforts the right would not become a central pillar of the League of Nations as it later did for the United Nations. See Michael Ajemian, *Territorial Stalemate: Independence of Nagorno-Karabakh Following the Dissolution of the Soviet Union, and its Lingering Effects Decades Later*, 34 SUFFOLK TRANSNAT’L L. REV. 375, 386 (2011) (citing to MALCOLM N. SHAW, *INTERNATIONAL LAW* 178, 225 (5th ed. 2003)). Self-determination would even find itself in domestic law, such as the United Soviet Socialist Republics constitution.

28. U.N. Charter art. 1, ¶ 2 (emphasis added).

29. G.A. Res. 1514 (XV), Declaration on the Granting of Independence to Colonial Countries and Peoples (Dec. 14, 1960) (While some have argued that the declaration was written in the context of colonization and should not be viewed outside of that context, this declaration in conjunction with others that documents which followed set the course of the right to self-determination for all peoples, not only those in the context of colonization. While Declaration 1514 might be about

International Court of Justice (ICJ) would come to state that in its view, the “assertion that the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an *erga omnes* character, is irreproachable,” ending any remaining debate.³⁰ The ICJ in 2019 reaffirmed that self-determination is a “fundamental human right.”³¹ However, despite this, two difficult questions remain unanswered about the exercise of the right to self-determination. The first question is who possesses this right and can legally trigger its exercise. The second question is what the exercise of the right to self-determination entails.

In the UN Charter, self-determination is a right that belongs to all “peoples.”³² A ‘peoples’ is a distinguishable group of people, usually connected by a mutual culture, religion, language, or other characteristics that unite them.³³ The group will be different from the majority of the state’s population in important ways.³⁴ However, understanding whether a particular group is a “peoples” can be a difficult question since a peoples can possess stark differences from the majority of the population, yet share key similarities.³⁵ A further difficulty arises when a particular group claims to be a “peoples” in order to assert their right of self-determination and the state refuses to acknowledge the existence of such a peoples as a distinct group from the general population. In an attempt to prevent the right to self-determination and other rights from attaching, the administrative state will refute that the group is a “peoples” at all.

Not all groups are considered a peoples.³⁶ The members of a political party, for example, would not be considered a peoples even though they are a clearly identifiable group with similar beliefs, nor would the inhabitants of one city or province who are not in any other significant way

colonized people, its importance in the development of the right to self-determination cannot be overlooked).

30. Concerning East Timor (Port. v Austl.), Judgment, 1995 I.C.J. 90 ¶ 29 (June 30).

31. Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, 2019 I.C.J. 95, ¶ 144 (Feb. 25).

32. U.N. Charter, *supra* note 28. This would also be reaffirmed in later resolutions of the UN, statements by states, and the International Court of Justice.

33. See JAN KLABBERS, INTERNATIONAL LAW 129-30 (2nd ed. 2018).

34. See *id.*

35. *Id.* (Klabbers shows the difficulty through Americans and Australians, who share the same language, but few would think constitute one people. At the same time, the history of the Catalans is tied closely with the Spanish, but the Catalans themselves feel strongly different from the Spanish. While Klabbers gives these examples of difficult situation, there are cases where there could not be much argument that a group of peoples constitutes a Peoples, such as the Kurds who have a distinct culture, language and identity.).

36. See generally *id.*

indistinguishable from the state's general population.³⁷ Thus, states can refute that a group claiming to be a peoples with the right to self-determination does not actually satisfy the requirements to have standing to exercise the rights.³⁸

A group must possess some characteristics which will support their assertion that they are, in fact, a "peoples." Even though there is no specific checklist, a distinct culture, language, religion, and other similar characteristics can be a guide to determining whether a group constitutes a peoples.³⁹ Since this area has many subjective elements, there remains a level of uncertainty and ambiguity. This unclarity has, in turn, led to states arguing that the group in question is actually similar to the general population. On the other hand, in some cases, the existence of a peoples is much clearer. For example, no credible debate exists that the Kurds or the Sami are not a peoples.⁴⁰

The second issue—how and when the right to self-determination can be utilized—is much more contentious. Neither the UN Charter nor other international documents of wide acceptance contain a road map of how to apply the right to self-determination. This has resulted in different theories of when the right to self-determination can be used, how it can be used, and how it is regulated or limited. It is generally accepted that there is a right to internal and external self-determination.⁴¹ Internal self-determination is not as controversial as external self-determination.⁴² A peoples can exercise their internal right to self-determination by working with the state to promote their social, cultural, and economic rights. For example, since Sweden's reversal

37. *See generally id.*

38. This has occurred even when it is clear that a group is a peoples. For example, Sweden did not recognize the Sami until 2010, after which it has tried to give them a level of self-determination internally. *See, e.g.,* James Anaya, *Report of the Special Rapporteur on the rights of indigenous peoples*, Human Rights Council, U.N. Doc. A/HRC/18/35/Add.2, United Nations, (June 6, 2011); *see, e.g.,* United Nations Committee on the Elimination of Racial Discrimination, concluding observations on the combined nineteenth to twenty-first periodic reports of Sweden, adopted by the Committee at its eighty-third session, U.N. Doc. CERD/C/SWE/CO/19-21, (Sept. 23, 2013); *see, e.g.,* United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review-Sweden*, U.N. Doc. A/HRC/29/13, 4 (Apr. 13, 2015).

39. *See* Klabbers, *supra* note 33; *see generally* James Summers, PEOPLES AND INTERNATIONAL LAW, (2d ed. 2007).

40. *See Who are the Kurds?* BBC (Oct. 15, 2019), <https://www.bbc.com/news/world-middle-east-29702440>; *Sami in Sweden*, SWEDISH INST. (July 17, 2024), <https://sweden.se/life/people/sami-in-sweden>.

41. Vladyslav Lanovoy, *Self-determination in International Law: A Democratic Phenomenon or an Abuse of Right?* 4 CAMBRIDGE J. INT'L COMP. L. 388, 391-92 (2015).

42. *Id.* (This is not to say that internal self-determination is not rife with issues or that people fighting for internal self-determination to not face significant challenges from their governments.).

of its stance and recognition of the Sami as a peoples, an indigenous people living in parts of Sweden and other countries, they have worked with the Swedish government to form a parliament to represent their interest, including their rights to language, culture, and other aspects of importance to them.⁴³ While there still remain legitimate concerns about the Sami's rights in Sweden⁴⁴ and whether the Swedish government has allowed the proper exercise of their rights to self-determination in certain aspects or instances, the Sami's right to self-determination within the borders of Sweden is recognized and there are mechanisms in place to guarantee and advance them.⁴⁵ States have tried to argue that self-determination only applies in this way, through internal means. Commonly, a state's right to territorial integrity is used as the crucial point for advancing this argument. However, it is accepted that in some instances, the right to self-determination can be an external right, which would allow a group to secede from the state.⁴⁶

External self-determination is more controversial because the states guard their territories quite jealously. The exercise of external self-determination will be an attempt by the peoples to secede from the state and, as a result, take with them territory the state perceives to belong to it.⁴⁷ While states might begrudgingly give some autonomy or special status to a minority group, no state wants to give up a scarce resource — territory on earth — and whatever other resources such territory encompasses. This very reason has driven states to declare their commitment to territorial integrity in cases where self-determination has upset state borders. However, there are examples that show states' willingness to recognize external self-determination as a viable option in some circumstances, despite it affecting internationally recognized borders of other states. The recognition of Kosovo

43. *Id.*

44. Anaya, *supra* note 38.

45. *Id.* (The same can be said of the Sami in Norway and Finland).

46. *See* Reference Re Secession of Quebec, [1998] 2 S.C.R. 217, para. 134 -35 (Can.) (Even the Canadian Supreme Court, which ruled that Quebec did not have a right to unilaterally declare independence under Canadian law or international law recognized that there is a legitimate argument that people whose right to internal self-determination has been frustrated might have recourse by exercising their right externally. The Canadian Supreme Court refused to consider this issue since it found that Quebec's circumstances did not even approach such a threshold.).

47. *Id.* ¶¶ 126, 134-35.

by over one hundred states,⁴⁸ Taiwan by twelve states,⁴⁹ and a more limited recognition of other states such as Abkhazia are some examples.⁵⁰

However, that is not to say that external self-determination does not have its inherent limitations, just as many other human and states' rights do. First, the exercise in the external context is seen as a last resort, which should be utilized only if the oppression rises to such a level that the peoples have no reasonable way of exercising self-determination within the state's territory.⁵¹ "Importantly, though, before ethnic-cleansing began, the Kosovar Albanian right to self-determination was thought to be exercisable only within the broader Yugoslav federation (concerns for territorial integrity coming to the fore)."⁵²

Second, as has been discussed, this right is vested only for "peoples." There are also practical considerations that will hamper most attempts to secede, ranging from economic and geographic issues to security concerns. However, practical considerations do not affect the legal considerations.⁵³

Many states⁵⁴ and scholars have argued that the exercise of self-determination is contrary to states' right to territorial integrity. Concerns for the territorial integrity of the state are always brought to the forefront when external self-determination issues arise. This has created in the minds of many an inherent clash between the rights of a peoples and the rights of the state.

48. *List of Recognitions*, REPUBLIC OF KOS. MINISTRY OF FOREIGN AFF., <https://mfa-ks.net/lista-e-njohjeve/> (Serbia and those who opposed the recognition of Kosovo used territorial integrity as one of the, if not the, primary reason. The recognition by over one hundred countries shows that states do not see the maintenance of borders as an absolute rule.)

49. *Diplomatic Allies*, CHINA (TAIWAN) MINISTRY OF FOREIGN AFF., <https://en.mofa.gov.tw/AlliesIndex.aspx?n=1294&sms=1007>.

50. *See The Syrian Arab Republic recognized the independence of the Republic of Abkhazia*, MINISTRY OF FOREIGN AFFAIRS OF THE REPUBLIC OF ABKHAZIA (May 29, 2018), https://mfaapsny.org/en/allnews/news/othernews/siriyskaya-arabskaya-respublika-priznala-nezavisimost-respubliki-abkhaziya/?sphrase_id=102167 (As of 2018, six United Nation Member states had recognized Abkhazia. Importantly, the states which recognize Abkhazia are those who opposed the recognition of Kosovo. Their willingness to recognize Abkhazia despite Georgia's claims of territorial integrity show that the opposition to Kosovo is not based on territorial integrity but rather a political one.)

51. *See* Reference Re Secession of Quebec, *supra* note 46, para. 134 (*citing* to the Vienna Convention on the Law of Treaties, Multilateral, May 23, 1969).

52. Rodney Pails, *Self-Determination, the Use of Force and International Law: An Analytical Framework*, 20 TASMANIA L. REV. 70, 84 (2001).

53. *See generally* Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, 1971 I.C.J. 1 (June 21).

54. Especially those facing secessionist movements within their borders.

IV. THE ALLEGED CLASH BETWEEN SELF-DETERMINATION AND TERRITORIAL INTEGRITY

Territorial integrity and self-determination are usually invoked in the same context by opposing sides. This has created the perception that the two clash. Scholars and government officials have been arguing about the clash of these two rights for decades with numerous scholarly articles dedicated to the discussion of how to resolve the “inherent” conflict between territorial integrity and self-determination,⁵⁵ while governments usually argue for one side or the other in any given conflict based on their own interest in territorial integrity or self-determination.

The abundance of documents, statements, and resolutions that purport to support territorial integrity and self-determination at the same time do not help clear this confusion. For example, while the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States⁵⁶ declares that “any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or country or at its political independence is incompatible with the purposes and principles of the Charter,” the document also goes on to state that “[e]very State has the duty to refrain from any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of their right to self-determination and *freedom and independence*.”⁵⁷ This same document also states that “[n]othing 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.”⁵⁸

Does the forgoing mean that a state, which is not in compliance with the principles of equal rights and self-determination, can have its territorial integrity or political unity dismembered, contrary to what was said a few

55. See Constantine Pitykakis, *An Assessment of the Right to Self-Determination and Secession in Regards to International Security* 21 (2018) (M.A. dissertation, University of Plymouth) (on file with University of Plymouth) (arguing that since territorial integrity and self-determination appear together and the attitude of states toward secession, then self-determination yields to territorial integrity); Lanovoy *supra* note 41, at 391 (stating that territorial integrity is a limitation on the right to territorial integrity); see generally Mark W. Zacher, *The Territorial Integrity Norm: International Boundaries and the Use of Force* 55 INT’L ORGS. 215 (2001).

56. See G.A. Res. 2625 (XXV), *supra* note 16.

57. *Id.* (emphasis added).

58. *Id.* at 124 (emphasis added).

sentences above it? The attempts by United Nations members to protect their territories while also heeding to human rights in resolutions and other documents has resulted in much confusion. Their actions are also contradictory. For example, NATO members and the organization supported the independence of Kosovo, citing the right to self-determination, while at the same time, NATO member states did not recognize the Republic of Artsakh, a democratic unrecognized *de facto* state, referring to Azerbaijan's right to territorial integrity as the reason for refraining from engaging with the officials from Artsakh.⁵⁹

The fact that territorial integrity is continuously brought up during discussions of self-determination creates the impression of a clash. Several states even made this argument in the ICJ during the advisory opinion of Kosovo.⁶⁰ The ICJ avoided much of what many wished it would have addressed in that case.⁶¹ However, the ICJ had no choice but to state that the arguments for territorial integrity were simply out of context and not address them further, as discussed more in depth later in this paper.⁶²

The Helsinki Final Act, which attempted to reduce tensions worldwide during the Cold War, also followed this confusing trend.⁶³ First, the Act stated that “participating states will respect the equal rights of peoples and their right to self-determination, acting at all times in conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States.”⁶⁴ This conforms to the Declaration on Friendly Relations and Co-operation Among States text, but the Helsinki Act goes a little further. The following paragraph states that under the principle of self-determination, all peoples have the right to determine their “internal *or external political status*, without external interference, and to pursue as they wish their political, economic, social and cultural development.”⁶⁵ This would seem to support the idea that peoples have a right to external self-determination, despite territorial integrity being mentioned just above it. The

59. See Kimberley Kruijver & Visar Xhambazi, *Kosovo's NATO Future: How to Square the Circle*, NETH. INST. INT'L. REL., (Democracy for Dev., Neth.), Dec. 2020; See NATO Riga Summit, *Riga Summit Declaration*, ¶ 43 (Nov. 29, 2006).

60. See Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 2010 I.C.J. 1, ¶ 79-80 (July 22).

61. See *id.* at 405-06.

62. See *id.* ¶ 79-80.

63. See *id.* ¶ 80; see generally Conference on Security and Co-Operation in Europe Final Act, Aug. 1, 1975, 14 I.L.M. 1292 [hereinafter Helsinki Final Act].

64. Helsinki Final Act, *supra* note 63, at 7.

65. *Id.* (emphasis added).

Helsinki Act was signed by most European states, Canada, the United States, and the Soviet Union.⁶⁶

The argument that self-determination violates territorial integrity sounds logically consistent until one takes a closer look at the subjects of the rights. States will point out that any secessionist movement, if successful, will result in portions of the State being separated. Hence, there will be a disruption to the territoriality of the state and its recognized borders will need to be changed, which, States argue, violates the right to territorial integrity. Sounds logical. However, once the right to territorial integrity is examined closer, it becomes clear that states are twisting the right and taking it out of context in order to “legalize” their argument.

V. LEGAL DECISIONS

The ICJ has had several opportunities to hear cases regarding the right to self-determination. In these cases, while self-determination was central, the court did not take the opportunity to clarify the debates and ambiguities surrounding the rights to self-determination, especially as it relates to rights of secession.⁶⁷ The questions posed to the ICJ, and its own reading of the questions, were narrow and avoided engaging in that debate. Nevertheless, the ICJ cases regarding Namibia (South West Africa), Western Sahara, and Kosovo provide pertinent discussions, as does the widely cited to Canadian Supreme Court’s decision regarding Quebec.⁶⁸

A. *Practical limitations do not affect the legal rights of peoples*

In the 1970s, South Africa retained effective control over Namibia.⁶⁹ The Security Council of the United Nations had declared, several years prior, that South Africa did not have any right to “administer” the territory.⁷⁰ Despite the international pressure, South Africa had persisted in its control

66. *See id.* at 2.

67. *See* Gentian Zyberi, *Self-Determination Through the Lens of The International Court of Justice* 56 NETH. INT’L L. REV. 430, 435, 449 (2009).

68. *See generally* Case Concerning the Frontier Dispute (Burk. Faso v. Mali), Judgment, 1986 I.C.J. 69 (Dec. 22); *see* Case Concerning East Timor (Port. v. Austl.), Judgment, 1995 I.C.J. 84 (June 30); *see* Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (Mauritius v. U.K.), Advisory Opinion, 2019 I.C.J. (Feb. 25) (discussing the rights to self-determination and territorial integrity in this context, which falls too much outside the scope of this article).

69. *See* Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa), Advisory Opinion Request, 1970 I.C.J. 1, at 9 (July 29).

70. *See* S.C. Res. 276 (Jan. 30, 1970).

over Namibia, claiming it had a right under international law to do so.⁷¹ The Security Council requested an advisory opinion from the ICJ.⁷² Since this case arose in the context of decolonization, territorial integrity was not a factor. Nevertheless, the Court's ruling here provided important guidance towards the rights of peoples as it relates to self-determination.⁷³

One argument advanced by South Africa was that "limitations" needed to be considered by the Court.⁷⁴ South Africa argued that while the people may have a right to self-determination, tribal and cultural differences could create such practical limitations that the population was "practically restricted to some kind of autonomy and local self-government within a larger arrangement."⁷⁵ In rejecting this argument, the Court noted that such an approach "in effect means a denial of self-determination as envisaged in the Charter of the United Nations."⁷⁶ South Africa had used this argument to preclude Namibia from gaining its independence. But the Court's rejection of that argument clarified that attempting to impose a lesser form of self-determination, ostensibly for the population's own good or due to practical limitations, was a de facto denial of the right. While practical considerations can pose hurdles in practice, they cannot be used as a factor to deny legal rights. Namibia gained its independence on March 21, 1990.⁷⁷

B. Referendum is the means through which a Peoples can express their right to self-determination

The ICJ made another important decision in 1975 when it provided an advisory opinion for the conflict surrounding Western Sahara.⁷⁸ A conflict was brewing in Western Sahara involving territorial claims by both Morocco and Mauritania.⁷⁹ Spain had formerly colonized the territory but wanted to set in motion decolonization based on the self-determination of the people of the territory.⁸⁰ The ICJ was asked to determine whether Western Sahara was

71. See Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa), Advisory Opinion Request, 1970 I.C.J. 1, at 9 (July 29).

72. *Id.* at 3.

73. See Zyberi, *supra* note 67, at 436.

74. See Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, 1971 I.C.J. 53, at 63 (June 21).

75. *Id.*

76. *Id.*

77. Zyberi, *supra* note 67, at 436.

78. See Western Sahara, Advisory Opinion, 1975 I.C.J. 61 (Oct. 16).

79. See *id.* ¶ 65.

80. See *id.* ¶ 61.

at the time of colonization by Spain *terra nullius*⁸¹ and if not, what were the legal ties with Morocco and Mauritania?⁸²

The court was aware that the opinion was requested for a practical purpose—helping the General Assembly find a solution to the decolonization process.⁸³ The ICJ answered the first question, whether the territory was *terra nullius*, in the negative.⁸⁴ The ICJ then considered the legal ties to Morocco and Mauritania. Without delving into the factual discussions, the Court determined that while there were some territorial ties with Morocco and Mauritania, none were enough to establish territorial sovereignty by either state.⁸⁵

The court noted that the existing legal ties did not affect the “decolonization of Western Sahara and, *in particular, of the principle of self-determination* through the free and genuine expression of the will of the peoples of the Territory.”⁸⁶ The ICJ’s opinion here also sets certain norms for exercising self-determination rights. Namely, the application of self-determination requires the *free* and *genuine* expression of the people’s will.⁸⁷ After this opinion, it was also accepted that a referendum was the accepted means of consulting the people.⁸⁸

C. *Confines of territorial integrity are relations among states*

In 2008, the assembly of Kosovo voted to declare independence from Serbia.⁸⁹ Serbia viewed the declaration as illegal under international law and sought clarification from the ICJ.⁹⁰ A request for an advisory opinion was sent to the ICJ through a United Nations General Assembly resolution.⁹¹ The question posed to the ICJ was a narrow one: “is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?”⁹²

81. *See id.* ¶ 79 (*Terra Nullius* means land that belongs to no one).

82. *Id.* at ¶ 1(2).

83. *Id.* ¶ 20.

84. *Id.* ¶ 82.

85. *Id.* ¶ 162.

86. *Id.* (emphasis added).

87. *Id.* ¶ 55.

88. Zyberi, *supra* note 67, at 438.

89. Kosovo Advisory Opinion, *supra* note 60, ¶ 52.

90. *See id.* ¶ 77.

91. *Id.* ¶ 1.

92. *Id.* ¶ 49.

The ICJ, in answering the question posed by the General Assembly evaded commenting on some issues which relate to self-determination but also provided key insights into the interplay between the different rights claimed in this case. The ICJ's narrow reading of the question allowed it to avoid any claims of judicial activism and protect the judiciary's credibility. Nonetheless, the decision by the ICJ was one of the most important recent developments in the field.

First, the ICJ answered the question by stating that a unilateral declaration of independence is not illegal under international law.⁹³ The ICJ did not attempt to answer the question regarding how this ruling affects territoriality, the inviolability of borders, or secession as a right to self-determination since this would be venturing outside of the narrow question presented to the court.⁹⁴ Moreover, the ICJ refused to opine on whether self-determination outside the colonization context had developed to the point where a right to secession existed, whether as a manifestation of the right to self-determination or as what some describe as a right to "remedial secession."⁹⁵

However, the court did address the arguments regarding territorial integrity since several states had submitted arguments against Kosovo's position, based on a States right to territorial integrity. Those States argued that the right to territorial integrity under international law inevitably meant that a unilateral declaration of independence was illegal.⁹⁶ In dismissing these arguments as irrelevant, the court stated that "the scope of the principle of territorial integrity is confined to the sphere of relations between States."⁹⁷

The ICJ's position was that territorial integrity does not make a declaration of independence illegal since territorial integrity simply does not apply to the situation. The court, having declared territorial integrity arguments irrelevant to the question before it, moved on without commenting

93. *Id.* ¶ 122.

94. *Id.* ¶ 83 ("The General Assembly has requested the Court's opinion only on whether or not the declaration of independence is in accordance with international law...To answer that question, the Court need only determine whether the declaration of independence violated either general international law or the *lex specialis* created by Security Council resolution 1244 (1999).").

95. *Id.* at 406; Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, 2019 I.C.J. 95, ¶ 144 (Feb. 25) (The ICJ in its most recent advisory opinion regarding self-determination hinted that a right outside of decolonization might be forming. The Court stated that "[t]he Court is conscious that the right to self-determination, as a fundamental human right, has a broad scope of application. However, to answer the question put to it by the General Assembly, the Court will confine itself, in this Advisory Opinion, to analyzing the right to self-determination in the context of decolonization.").

96. See Kosovo Advisory Opinion, *supra* note 60, ¶ 80.

97. *Id.*

further. Unfortunately, given the Court's narrow decision, arguments about the limitation of self-determination by territorial integrity rights persist.

The ICJ's decisions and advisory opinions show that self-determination is a fundamental right that is to be afforded to all peoples irrespective of practical barriers or challenges. States cannot use their perceived concerns to deny peoples a right to self-determination and must give peoples an opportunity for a free and genuine expression of their will and respect the result of such expression. Territorial integrity, while an important principle of international law in other contexts, does not play a role if there is a genuine strive for self-determination by peoples.

VI. WHY THE TWO RIGHTS DO NOT CONFLICT

Since the ICJ has not explicitly stated that territorial integrity cannot be a limitation to the right to self-determination, but rather only signaled it, this argument has persisted. As was discussed above, the international documents drafted by states usually tend to declare both their commitment to self-determination as a human right and to territorial integrity. However, while both are important rights, these rights are not as intertwined as some believe. Territorial integrity came about as a concept that was meant to prevent war between nations, and it continues to have an important role to play in that context. Yet, territorial integrity does not play a limiting role in the right to self-determination.⁹⁸

While it might seem that states were attempting to intertwine the right to self-determination with the right to territorial integrity by including both rights together in these documents, there is a much more practical reason why these rights are discussed simultaneously. For example, let us consider the Helsinki Final Act, which, as discussed above, states that participating states will respect the right to self-determination and act at all times in conformity with the Charter of the United Nations, including those relating to territorial integrity.⁹⁹ This paragraph is aimed at the state, not people. It demands two things: 1) that a state must respect self-determination, and 2) that the state must act in conformity with international norms, including territorial integrity.¹⁰⁰ A state acting in conformity with this requirement must respect the right to self-determination of peoples within and outside of its territory. But, by its structure the Act precludes states from using claims of a peoples'

98. See Inigo Urrutia Libarona, *Territorial Integrity and Self-Determination: The Approach of the International Court of Justice in the Advisory Opinion on Kosovo*, S.S.R.N. 107, 110 (2012) (That is not to say that self-determination does not have any limitations, but those limitations exist internally within the right to self-determination).

99. See Helsinki Final Act, *supra* note 63, at 7.

100. *Id.*

right to self-determination within another States territory to annex territory or interfere with the state's internal affairs. By making it clear that in "respecting" the right to self-determination states must consider the right to territorial integrity of other states, the Act is attempting to prevent pushing peoples within the territory of another state to declare independence. However, this does not create any obligation on the part of the peoples towards the State's territorial integrity.

For example, when Iraq invaded Kuwait, that was a violation of the territorial integrity of Kuwait by another state, Iraq.¹⁰¹ Territorial integrity — a right not to have its territorial integrity violated or threatened to be violated by other states — is a right that all states enjoy. A violation may be physically or through other means. However, in the context of a self-determination struggle, there is the state and the peoples of a territory, which is at the time wholly within the state. There can, of course, be outside supporters, such as NATO in Kosovo; however, their actions and repercussions will be discussed later. It is enough to say for now that third parties' actions do not jeopardize a peoples' legal rights to self-determination. As was discussed above, the states argue that since their borders will inevitably change if an external self-determination movement is carried out to its conclusion, they will at that time suffer a violation of their territorial integrity. Let us consider this argument in light of ICJ opinions.¹⁰²

A. The right to self-determination through a practical hypothetical

To demonstrate this argument in the clearest way possible while not delving into the political and cultural issues of real-world examples, a hypothetical scenario is proposed with the following actors:

- 1) Group A: the indigenous peoples of a territory.
- 2) State 1: the state within whose broader territory Group A resides.

A group of peoples called Group A is indigenous to a specific region, which falls in the territory of State 1. Group A practices a different religion than the majority of State 1 and has a distinct culture and language. Their identity as a peoples of the territory is clear and not subject to debate. Unfortunately, Group A has no rights under the constitution of State 1, is harassed, and often killed. Members of Group A have been living under oppressive conditions for years and have no means of achieving self-

101. See MARC WELLER, *IRAQ AND THE USE OF FORCE IN INTERNATIONAL LAW* 18, 19 (Oxford Univ. Press, 2010).

102. This paper does not consider the decolonization context of self-determination as that issue has mostly been settled, at least legally, if not practically. Moreover, the argument that territorial integrity somehow limits self-determination does not often arise in the context of decolonization.

determination internally; in fact, the situation is only getting worse year by year and the members of Group A fear genocide. Group A organizes itself and decides to declare independence from State 1, claiming the territory to which they are indigenous. Group A holds a referendum in the territory, asking whether those living in the area wish to form an independent state. The results are a vote for independence, so Group A declares independence. Up to this point, Group A has followed the ICJ's opinion in holding a referendum, as long as it was a free and genuine vote of the people and declaring independence legally under international law. Some would argue that it is at this point that this paper loses its point. Surely, it appears that once Group A secedes from State 1, the state's right to territorial integrity has been violated. However, that is not so. State 1 never had a right to territorial integrity as to the people living within its borders. It only possesses that right as to other recognized states. So, the people of Group A have not violated any right of State 1 because they are incapable of violating a right that only States have the capacity to violate.

Once Group A has declared independence, State 1 has two options. State 1 can either:

- 1) Recognize Group A as an independent state or, and more likely,
- 2) Refuse to recognize Group A as an independent state.

At this point, while Group A might have de facto control over its territory, it does not have international recognition as a state. Whether or not State 1 has lost control over a certain portion of its territory, the issue continues to be an internal matter for State 1. That is not to say that international law has no role. International human rights law creates obligations for states in relation to their own people as well.¹⁰³ Additionally, it may create obligations to third party states that have their own obligations under international law. Nevertheless, if no other state is involved in the attempt by the people to secede, any grievance that State 1 has is against a peoples — not a state with an international character and the capacity to violate the states territorial integrity.¹⁰⁴

103. See U.N. Human Rights Office of the High Commissioner, International Human Rights Law (last visited Oct. 16, 2024), <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law> (These could be *erga omnes* rights, customary international law or specific treaties which obligated State 1 to protect certain human rights laws. Whether Group A now constitutes another state or not, State 1 would still not be able to enslave people since that would be a violation of human rights, whether carried out against one's own people or another states).

104. See Ved P. Nanda, *Self-Determination and Succession under International Law*, 29 DENV. J. INT'L L. & POL'Y 305, 314 (2021). This presumes that Group A has a free and genuine expression of their free will without the control from a third-party state to declare independence as a means of

B. The third parties to any conflict

In the case of armed conflict, there is a debate regarding the right to rebellion. Some argue that no such right exists and that any self-determination movement must be carried out through peaceful means.¹⁰⁵ On the other hand, others argue that a right to struggle against oppressors is a right or a manifestation of the right to self-determination.¹⁰⁶ The theoretical debate about the right to rebellion is outside the scope of this article. However, to understand the practical effect of the argument presented here, we must consider the scenario where the exercise of self-determination turns to an armed conflict and third parties support one side or the other, as secession movements tend to go. In secession movements, it is common for third-party states to back such a movement. For that reason, we must consider the violation of territorial integrity which might arise through the involvement of those third-party states.

Let us consider the possible involvement of third-party states. If State 1 decides to use force to retake the territory under the control of Group A and quell the secession movement, a third-party state has a number of possible involvements with different repercussions. Let us consider each one.

If the third-party state (“State 2”) decides to provide military assistance against State 1 in order to protect Group A, what are the legal repercussions? In such a scenario, State 1 might have a legitimate grievance that State 2 has violated its right to territorial integrity. The United Nations Charter applies to State 2 since it is a member state and it has a duty to refrain from the threat or use of force against State 1, unless an exception applies.¹⁰⁷ But these grievances are between State 1 and State 2. Despite any grievance that State 1 might have against State 2, this does not change the legal rights afforded to Group A. Group A cannot be penalized for a violation that was committed by a different entity that has different capacities, rights, and obligations, unless Group A is merely an extension of State 2’s attempts to interfere in the internal affairs of the other.

interfering in the affairs of State 1. Such actions by a third-party state would be a violation of international law and raise questions about the free and genuine nature of the exercise of self-determination rights.

105. See O’CONNELL, *supra* note 2, at 247-48.

106. See *id.* at 246.

107. It is possible that collective self-defense between State 2 and Group A, a Security Council Resolution, or humanitarian intervention might apply. Humanitarian intervention is a controversial topic. For a discussion on the use of force generally and a discussion on humanitarian intervention through armed force exists, see O’CONNELL, *supra* note 2, at 118-38. There can also be an argument that State 2 had a duty to protect Group A, since self-determination is an *erga omnes* right.

C. *Post limited statehood*

Finally, let us consider the effect the above-mentioned has if Group A becomes a state. Let us suppose it has been numerous years since the facts mentioned above. For Group A to become a state, it must meet certain minimal thresholds.¹⁰⁸ Group A has managed to successfully create a state which has a permanent population within the territory which they claimed as part of their declaration of independence from State 1. Moreover, Group A has managed to create a government with all the necessary agencies to carry out the duties of a state. Not only that, but Group A's efforts have gained it the recognition of most states around the world, despite the continued protestations of State 1. Does State 1 now have a claim that its territorial integrity has been violated by Group A? The answer is no. In this case, State 1 continues to view Group A as its citizens, living within its borders. So, from the perspective of State 1, this issue continues to be internal by nature. Nothing has changed from State 1's perspective because no separate state exists within the territory of Group A, which is separate from State 1. On the other hand, State 1 might have a grievance against those other states which have recognized Group A as an independent country, subject to the same arguments regarding the nature of self-determination rights, but not against the peoples of Group A. Territorial integrity does not mean that State 1 has an inalienable right to its internationally recognized borders under any and all circumstances. Territorial integrity is only meant to protect a state from other states. Its citizens, on the other hand, are not limited in the same way, giving Group A the right to external self-determination, which cannot be limited by State 1's rights against other states.

No matter what stage of the secession process, a peoples do not have the capacity to violate a state's right to territorial integrity. Only states possess such a capacity. Thus, invoking territorial integrity as an argument against the right to self-determination is misplaced. However, does this mean that as long as a peoples declares independence, there is no argument that States have to prevent them from seceding from the State? The answer to that is no; however, that argument does not rest on the right to territorial integrity but within the limitations of the right to self-determination.

108. Montevideo Convention on the Rights and Duties of the States, Multilateral, Dec. 26, 1933, art. 1 (The convention, though not signed by all states, is a good example of what is required: a permanent population, a defined territory, a government and capacity to enter into relations with the other states).

VII. INHERENT LIMITATIONS OF SELF-DETERMINATION

Exercising the right to self-determination is not an easy task because the right has internal checks. While there are concerns about attempts to abuse the right to self-determination, these concerns cannot be used as justification to limit human rights.¹⁰⁹ Indeed, it is notoriously difficult to exercise external self-determination and states can legitimately challenge any attempts of secession by arguing through the right of self-determination, instead of using unrelated state's rights.

The first condition to any attempt to exercise self-determination, whether internally or externally, is that there must be a people who are attempting to exercise such a right.¹¹⁰ Not every, or even most, distinguishable groups in society constitute a people. This is the very first hurdle that any group must be able to surpass in order to claim a right to external self-determination. This is the first opportunity for a state to challenge any group's attempt to secede. However, if the group is clearly a people, external self-determination also has other limitations.

It is widely accepted that self-determination can take on an external or internal characteristic.¹¹¹ If a group has internal self-determination, it is difficult to argue that there is justification to secede from a state. Internal self-determination does not mean that every wish or demand of the group must be met; it means that there must be mechanisms in place for the group to have the opportunity for internal self-determination and that they be given an opportunity to exercise it.¹¹² In fact, arguments for a right to external self-determination usually turn into a discussion of the peoples being oppressed. External self-determination is seen as a last resort. Even if there are internal disagreements about what internal self-determination means or what falls under that right, small disagreements are not enough. A state can challenge an attempt to external self-determination by showing that the group was given rights and opportunities for internal self-determination within the territory of the state. For example, when people in Quebec attempted to

109. See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa)*, Advisory Opinion Request, 1970 I.C.J. 1, at 63 (June 29) (The ICJ pointed out that practical "limitations" could not be used to deny people their right to self-determination in the case of Namibia and it makes little sense why unproven fears would be enough. Moreover, abuse is possible in the case of state rights as well.); see U.N. Charter art. 51 (For example, states use UN Article 51, the right to self-defense, as a justification for military action when the required condition for self-defense has clearly not been met. Yet, it would not be prudent to say the abuse of a right to self-defense by some should lead to the abolishing of any right to self-defense).

110. Lanovoy, *supra* note 41, at 388-89, 391-92.

111. See *id.* at 391-92.

112. See *id.*

secede from Canada, the Canadian Supreme Court was quick to point out that “Quebecers occupy prominent positions within the government of Canada. Residents of the province freely make political choices and pursue economic, social and cultural development within Quebec, across Canada, and throughout the world.”¹¹³ There was no legitimate argument that the Quebecers did not have opportunities to exercise their rights to self-determination internally, so their attempt to exercise external self-determination failed at that stage. This is the second way that a state may challenge a particular group’s attempt to exercise external self-determination.

Third, self-determination requires the free and genuine expression of the peoples of a territory.¹¹⁴ This does not mean only the peoples who are part of the group, but all people who reside in the territory which would secede. If a referendum is held on the issue, there are two different ways that a state can challenge it. The first would be to contest the free and genuine characteristic of the vote.¹¹⁵ If there are claims of serious voter harassment, corruption, or other forms of activities that the state believes show that the vote was not the free and genuine expression of the people, it can argue that the referendum is void. Second, it is possible that a portion of the population residing within the Territory is completely excluded from the vote,¹¹⁶ which would disqualify the referendum since all people within the territory must be able to vote, not only the group attempting to secede.

During different stages of the process, a state has ample opportunity to argue against a secessionist movement within its borders. A state can show that the secessionists are not a peoples recognized to hold the right, that they have internal self-determination, and that a process by which they attempted to gain independence was not the free and genuine expression of the will of the people. Moreover, it is even possible that a genuine attempt to reconcile differences at an early enough stage could warrant transitioning to internal self-determination rather than an external one.

113. Re Secession of Quebec, *supra* note 46, ¶ 136.

114. Sahara Advisory Opinion, *supra* note 78, ¶ 55.

115. See Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, 2019 I.C.J. 95, ¶ 157 (Feb. 25).

116. This is referring to a purposeful effort by the secessionists to exclude some people of the territory that is attempting to secede, not a boycott by a voluntary minority or abstention. Though this type of referendum would be expected to have a high voter turnout, there is no requirements that every resident must vote.

VIII. CONCLUSION

Self-determination is an *erga omnes* right in international law. Its development throughout history points to the struggle against oppressors, and the development of human rights strongly correlates with the right to self-determination. Exercising the right to self-determination is not an easy task, and it is not done lightly. There are examples of many peoples who continue to live within a state, as long as they have meaningful rights to internal self-determination. If people make the difficult decision to move towards external self-determination, they must be ready to overcome not only the practical difficulties which will arise but also to satisfy the legal requirements to exercise their right to self-determination.

On their part, states have often argued that territorial integrity is a limitation on the right to self-determination since exercising the right externally would change the state's territory. However, this flawed argument presupposes that a state has an absolute right to its territory vis-a-vis its people. That is not the case. States have a right to territorial integrity against attempts by other states to encroach on their land.¹¹⁷ States that do not have such a claim against their own people. The government is merely the one who carries out the will of the people. If states wish to argue against the right to self-determination of a certain group within their territory, they can do so but must base that argument on the limitation of the right to self-determination.

Too often, states have made the easier argument that there will be a violation of their territorial integrity. Unfortunately for the states, territorial integrity protects it against intrusions by other states, but it cannot be a shield against the free and genuine expression of the will of the peoples of the state itself. The principle of territorial integrity operates within the sphere of interstate relations, while self-determination is a principle of a peoples right.

117. U.N. Charter art. 2, ¶ 4.