

Secession

United Nations Documents:

The United Nations has, since its creation in 1945, been at the heart of the international legal order. It has also played an undeniably significant role in relation to the relationship between international law on one hand and self-determination and secession on the other. The Charter of the United Nations states that one of the purposes of the Organisation is to ‘develop friendly relations between nations based on respect for the principle of equal rights and self-determination of peoples’, and this recognition of the concept in the Charter confers upon it a measure of international legitimacy. More significant still, perhaps, is the subsequent practice of its organs, particularly the General Assembly, which has incrementally developed the right of self-determination and secession in the context of decolonisation. Although the General Assembly has made myriad references to self-determination over the years, a number are particularly revealing, such as Resolutions 637(VII), 3328(XXX) or 35/35(1980), while others are widely considered to have achieved the status of international custom, such as Resolutions 1514(XV) or 2625(XXV). Of great significance, too, are the reports commissioned by various organs of the United Nations, representing as they do a thorough examination of international law on these matters. Although it is arguably true that recent developments mean these reports are now primarily of historical interest, they are almost indispensable for understanding the development of the concept over the life of the United Nations, which in turn holds many insights for the status of the concept today.

- [Charter of the United Nations \(1945\):](#)
- [The Right of Peoples and Nations to Self-determination, UNGA Res 637\(VII\).](#)
- [Recommendation Concerning International Respect for the Right of Peoples and Nations of Self-Determination, UNGA Res 1188\(XII\).](#)
- [Declaration on the Granting of Independence to Colonial Peoples, UNGA Res 1514\(XV\).](#)
- [Strict Observance of the Prohibition of the Threat or Use of Force in International Relations, and of the right of Peoples to Self-Determination, UNGA Res 2160\(XXI\).](#)
- [Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, UNGA Res 2625\(XXV\).](#)
- [Importance of the Universal Realization of the Right of Peoples to Self-Determination and of the Speedy Granting of Independence to Colonial Countries and Peoples for the Effective Guarantee and Observance of Human Rights, UNGA Res 3382\(XXX\).](#)
- [Importance of the Universal Realization of the Right of Peoples to Self-Determination and of the Speedy Granting of Independence to Colonial Countries and Peoples for the Effective Guarantee and Observance of Human Rights, UNGA Res 35/35 \(1980\).](#)
- [Cristescu, The Right to Self-Determination: historical and current development of the basis of United Nations Instruments, Report of the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/404/Rev.1.](#)
- [Gros Espiell, The Right to Self-Determination: Implementation of United Nations Resolutions, Report of the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/SUB.2/405/Rev.1.](#)

- [Boutros-Ghali, An Agenda for Peace: Preventative Diplomacy, Peacemaking and Peace-keeping](#), Report of the Secretary-General pursuant to the Statement adopted by the Summit Meeting of the Security Council on 31 January 1992, A/47/277.

Judgments of National and International Courts:

The treatment of self-determination and secession before national and international Courts has revealed a great deal about the concepts and their relationship with international law. This can particularly be seen in relation to decolonisation and self-determination by non-self-governing peoples, and many of the cases listed here were decided in that context. Although most of the cases here listed were decisions by international courts (principle among them the International Court of Justice), secession has also been at issue in national-level court decisions. The most notable of these is the judgment of the Canadian Supreme Court in the Reference Re Secession of Quebec. Although all of these cases dealt with aspects of secession and self-determination (and although in some, such as the Quebec case, secession was a central issue) the courts' observations on these concepts have tended to be qualified, tangential or piecemeal. As a result, international law still lacks a comprehensive judicial treatment of self-determination, and its status remains unclear. In the absence of an in-depth judicial assessment of the nature and scope of self-determination and secession in international law there is much that can be gleaned from the treatment of the concepts in these cases.

- [Case concerning Right of Passage over Indian Territory \(Merits\), Judgement of 12 April 1960, \(1960\) ICJ Reports 6.](#)
- [South West Africa, Second Phase, Judgment, \(1966\) ICJ Reports 6.](#)
- [Legal Consequences for States of the Continued Presence of South Africa in Namibia \(South West Africa\) notwithstanding Security Council Resolution 276 \(1970\), Advisory Opinion, \(1971\) ICJ Reports 16.](#)
- [Western Sahara, Advisory Opinion, \(1975\) ICJ Reports 12.](#)
- [Frontier Dispute, Judgment, \(1986\) ICJ Reports 554.](#)
- [East Timor \(Portugal v. Australia\), Judgment, \(1995\) ICJ Reports 90.](#)
- [Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, \(2004\) ICJ Reports 136.](#)
- [Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, \(2010\) ICJ Reports, 403.](#)
- [Island of Palmas Case \(Netherlands v USA\), \(1928\) II RIAA 829.](#)
- [Katangese Peoples' Congress v Zaire, African Commission on Human and Peoples' Rights, Comm. No. 75/92 \(1995\).](#)
- [Reference re Secession of Quebec, \[1998\] 2 S.C.R 217.](#)

The Kosovo Advisory Opinion

In the Kosovo Advisory Opinion the International Court of Justice was asked by the United Nations General Assembly to give its opinion on whether the Kosovan declaration of independence was in accordance with international law. Although self-determination and secession had been treated incidentally in a number of its previous decisions, this was the first

time that an attempted secession had been the direct subject of a judicial process before the ICJ. The Court found that the declaration was not prohibited by international law, because no international law rule operated to forbid either such declarations in general or this declaration in particular. In so finding, the Court made a notable finding, that territorial integrity is confined to the sphere of inter-State relations, and that non-State actors are non bound by the prohibition on any action which would impair the territorial integrity of States.

While the Court's judgement was undeniably significant it has been strongly criticised, not least by Judge Simma in his Declaration, for failing to consider whether the declaration was enabled by a positive international law right – presumably the right to secede in extremis under the doctrine of remedial secession – in addition to considering whether the declaration was prohibited.

The Court also decided that the question posed by the General Assembly did not require an assessment of the consequences of the declaration, and so did not consider whether Kosovo had achieved (or even whether it was capable of achieving) statehood.

The documents here have been chosen to give a rounded account of the situation in Kosovo leading to the declaration of independence, as well as the ICJ's decision. The factual situation in Kosovo prior to the declaration was highly complex, and an understanding of this background casts further light on the decision and its omissions. A number of States submitted Written Statements to the Court during the written phase of the decision. Six are included below, and have been selected to represent the spectrum of opinions and arguments submitted to the Court. Also included is the declaration of independence of Crimea, of 2014. This document (available here in Russian and Ukrainian) cites the Kosovo Advisory Opinion as authority in support of its declaration.

- [Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, \(2010\) ICJ Reports 403.](#)
- [Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Declaration of Judge Simma, \(2010\) ICJ Reports 478.](#)

Written Statements of States Submitted to the Court during the Written Phase of the Kosovo proceedings:

- [Written Contribution of the Authors of the Declaration of Independence;](#)
- [Written Statement of Cyprus;](#)
- [Written Statement of Germany;](#)
- [Written Statement of the Netherlands;](#)
- [Written Statement of the Russian Federation;](#)
- [Written Statement of Serbia.](#)

Further Written Statements and Written Comments can be found [here](#).

- [Rambouillet Accords, 1999](#) (UN Doc. S/1999/648) esp. p.85 [3].
- [Comprehensive Proposal for the Kosovo Status Settlement](#) (Ahtisaari Plan) (UN Doc. S/2007/168/Add.1); [Summary Report of the Secretary General to the Security Council](#) (S/2007/168).
- [Eide Report on the Situation in Kosovo, 2004](#) (S/2004/932); Eide [Report on the Situation in Kosovo, 2005](#) (S/2005/635).

- [Statement of the President of the Security Council](#), 24 October 2005 (S/PRST/2005/51).
- [Declaration of Independence of Crimea, 2014](#) (available in Russian and Ukrainian).

The Åland Islands

The Åland (Aaland) Islands are an archipelago of 20,000 islands and low-tide elevations, with a total area of 13,517km², a land area of 1,527km², and a population of fewer than 30,000 people. The Islands lie between Finland and Sweden and, while being Swedish-speaking, are an autonomous region of Finland. Their renown, at least in the field of law, stems from their involvement in the first internationalised self-determination “case”. In the 1920’s the Islanders sought to secede from Finland and to unite with Sweden, and the ensuing dispute was referred to the Council of the League of Nations by Sweden. With the agreement of Finland, the Council proceeded to consider the matter. They appointed, first, a Committee of Jurists to determine whether or not the Council had jurisdiction to consider the dispute. Following the Jurists’ affirmative reply, the Council appointed a Commission of Rapporteurs to make substantive recommendations as to the resolution of the dispute.

The Åland Islands case was the first self-determination conflict to be submitted to international adjudication, and is significant for this reason alone. The reports of the Jurists and the Rapporteurs are of further interest, though, for the insights that they yield into the scope and status of self-determination in 1920-1. There are a number of substantive differences between the reports, not least that while the Jurists held that self-determination had acquired a (weak) legal character, the Rapporteurs opined that it remained a political principle. The tone of the reports is also very different. The Rapporteurs’ Report has been criticised for its redolence of colonialism, and the patronising tone with which it addresses the capacities, desires and intentions of the Islanders (and, at points, Finland). Although there is no doubt that the Report is the unfortunate product of its time, it can nevertheless contribute to an historical account of the development of self-determination and its earliest treatment by a quasi-judicial body on the international plane.

- [Report of the International Committee of Jurists entrusted by the Council of the League of Nations with the task of giving an advisory opinion upon the legal aspects of the Aaland Islands question](#), (1920).
- [Report Presented to the Council of the League of Nations by the Commission of Rapporteurs](#), (1921).

Claims to Self-Determination

Claims to self-determination often form part of the rhetoric of independence or secession movements. Whatever its status as a legal right, there is no doubt that self-determination is a powerful idea, and one that carries with it a strong moral claim of right. Thus, in independence documents it often serves two functions: it stands, first, as a claim that the separation of one people from another is morally justified either as an exercise of the former’s separate national character and their will or because of continuing abuses suffered by that people; and, secondly, a claim that their separation is authorised by an established

norm. Whether or not this second claim can be considered correct, this double legitimacy claim is an important aspect of self-determination claims often found in independence rhetoric.

It is by no means true that every declaration of independence references self-determination, however. Self-determination does not feature, for example, in the speech by the Prime Minister of Togo on the occasion of its independence, except by implication. Thus, while it can be argued that the speech relies on similar principles in establishing a claim of right of the first kind identified above, it makes no claim of the second kind. (Although it may be that this is explicable because, as the speech was made on the occasion of Togo's independence rather than in pursuit of that independence, a claim of the second kind was not necessary on that occasion.) Likewise, the declaration of independence of Crimea makes no direct mention of self-determination, rather premising its claim to authorisation on the judgement of the Kosovo advisory opinion. Many other declarations of independence exist, and the list below makes no claim to be representative of this vast and diverse class. For those interested in reading further declarations, an excellent starting point is the list of post-1776 declarations compiled by Armitage (David Armitage, *The Declaration of Independence: a Global History* (Harvard University Press 2007; the list is not exhaustive, but provides good coverage of the period 1776-1993).

Finally, two constitutions are included below. These documents are remarkable because, uniquely, they provide a constitutional right to their regions to secede, and set down the procedures necessary to effect such a secession. The St. Kitts and Nevis Constitution provides a right to the Island of Nevis to separate from the union, while the Ethiopian Constitution provides a general right of which any region could avail itself.

- [Speech of the Prime Minister of Togo](#) on the occasion of its independence, 1960.
- [Declaration of Independence of the Republic of Biafra](#), 1967.
- [The Saint Christopher and Nevis Constitutional Order](#), 1983, s.113(1-8).
- [Palestinian Declaration of Independence](#), 1988.
- [Declaration of Independence of the Republic of Moldova](#), 1991.
- [Declaration of Independence of Ukraine](#), 1991.
- [Compact of Free Association between Palau and the United States of America](#), 1994.
- [Constitution of Ethiopia](#), 1994, s.39(1), 39(5).
- Declaration of the Eelam Tamil Diaspora ([Declaration of Independence of Tamil Eelam](#)).
- [Declaration of Independence of Crimea](#), 2014 (available in Russian and Ukrainian).