THE UNITED NATIONS LAW ON SELF-DETERMINATION AND INDIGENOUS PEOPLES

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Introduction

This paper is part of the contribution to the study of one of the legal issues involved in the problems facing indigenous peoples. It is concerned with questions of human rights with a particular interest to that of self-determination: specifically, "the United Nations law on self-determination and indigenous peoples". The primary objective of the paper is to investigate and demonstrate the relevance and application of the United Nation law of self-determination to the indigenous peoples: tribes or nations. The subject is based upon the presentation and analysis of the legal and political international documents on the matter; with emphasis on some of their aspects as recognized, developed and particularized through the activities of the United Nations; and their relations to questions affecting the full enjoyment of human rights of these peoples.

1. Self-Determination

1.1. The Emergence of the principle of Self-Determination at the International Forum

The principle of self-determination received wider importance on the sphere of international politics following the First World War. In both East and the West, proposals were echoed not only to give international recognition to the principle, but even to consider it as a standard for the behaviour of States.

The basic document of the Soviet proclamation recognizing the rights of nations to self-determination as a new principle of international law, is contained in the Decree of Peace of 8 November 1917, which declared the illegality of annexing small or weak peoples without their clear and voluntary, expressed consent and desire.¹ The guiding principles of Marxist philosophy on the question of self-determination, as worked out by J. Stalin and V. I. Lenin called for the rights of nations to arrange their lives in the way they wish, including by creating independent statehood of their own. This principle was declared as a right, on 15 December 1917, in the "Declaration of the Rights of the Peoples of Russia" and later incorporated in the 1918 constitution of the USSR (RSFSR).

The document asserting Western recognition of this principle was presented for practical consideration in the "Fourteen Points" Message of President Woodrow Wilson of the United States. In this Message to the Congress, dated January 8, 1918, the President proposed for adjustment of the colonial claims that followed the First World War, on the basis of "a strict observance of the principle that in determining

all such questions of sovereignty, the interest of the population concerned must have
equal weight with the equitable claims of the government. The practical significance
of this principle was emphasized in his February 11, 1918 message in the following
words:

"The rights of nations to self-determination is no mere phrase, it is an imperative
principle of action, which will be disregarded by statesmen in future only at their
own risk." 3

The principle of self-determination received a vivid legal recognition as a vital
universal principle following the Second World War. The Atlantic Charter of 1941
regarded it as a principle of policy entailing respect for "the right of all peoples to
choose the form of government under which they will live" 4 and the United Nations
Charter elevated its value to one of the most important principles which should serve
as a guide for the behaviour of States.

1.2. Self-Determination in the Charter of the United Nations

The Charter of the United Nations expressly recognized self-determination under
Art. 1 par. 2 as one of its principles and purposes and under Art. 55 as the basis for
international economic and social co-operation, and for peaceful and friendly rela-
tions among nations. Although aspects of the principle were treated under Chapters
XI and Chapter XII in the Declaration regarding Non-Self-Governing Territories and
the International Trusteeship System, the Charter provisions were broad, as could be
seen from the following:

According to Art. 1 par. 2, one of the three major purposes of the United Nations
is "to develop friendly relations among nations based on respect for the principle of
equal rights and self-determination of peoples," 5 and to take other appropriate
measures to strengthen universal peace" (emphasis added).

2. For the official statements of Western States, see Chapter 2 of Hermann Rashhofer,
"The Right of Self-Determination From the Western Viewpoint", in Rudolph Laun (ed.)
International Law and Diplomacy (Verlag Wissenschaft und Politik: Köln, 1962).

3. Quoted in Hermann Rashhofer, ibid., p. 28. This position was again reiterated by the
President on 6 April 1918 in a speach held in Baltimore as: "The right of nations to free
self-determination is a principle on which the whole of the modern world is based."

4. The Atlantic Charter was initially the Joint Declaration of the President of the United
States and the Prime Minister of the United Kingdom (proclaimed on 14 August 1941).
The Soviet Union joined the group later, in spite of the fact that the content of self-
determination in this Charter does not accord with the Marxist viewpoint. Tunkin explains
the Soviet intention in joining this Charter not as being acceptance of the contents of the
principles as such. "At the height of a difficult war against fascism, in an interallied
conference at London in September 1941", he writes, "the Soviet government, striving to
strengthen the anti-Hitler Coalition, declared its agreement with the basic principles of
the Atlantic Charter." G. I. Tunkin, Theory of International Law (Allen & Unwin: London,

5. The Dumbarton Oaks draft of the Charter of the United Nations in its original form
did not contain this important element, "based on respect for the principle of equal rights
and self-determination". The Four Powers amended the initial Dumbarton Oaks proposal
at the San Francisco Conference, upon the instigation of the Soviet Union. See: Documents