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Lung-chu Chen

New York Law School, lungchu.chen@nyls.edu

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Self-Determination and World Public Order

*Lung-Chu Chen**

As the era of decolonization ushers in the era of democracy, the principle of self-determination faces new challenges under international law. Self-determination, a key component of the demand for freedom in our contemporary world, is the demand of human beings to form groups and to identify with groups that can best promote and maximize their pursuit of values, both in individual and aggregate terms. As our forefathers did, many people are fighting for this freedom in different parts of the globe.

The precept of self-determination has driven both the emancipation of millions from the shackles of colonial rule and the vast proliferation of new states after World War II. With the virtual disappearance of colonial territories, the focus of attention today has shifted from colonial to noncolonial contexts. As decolonization nears its end, will the principle of self-determination be interred? Is it a doctrine with limited historical application or one with universal applicability? How will its role evolve as the world community gropes for a new world order?

The demands of humankind to secure an optimum freedom and wide sharing of power have been made under a variety of legalistic doctrines and contexts. Self-determination may be invoked singly or in combination with other doctrines such as sovereignty, independence, and nonintervention. Comprehensively formulated, claims to self-determination can be divided into two basic categories.

The first category involves a group's claims to separate from an established state and to form a new state with its own internal decision processes and external relations. The present focus relates primarily to these claims. The second category involves claims that do not involve establishing a new state. This category entails three distinct situations: (1) claims of an existing state to be free of

* Professor of Law, New York Law School; Research Affiliate in Law, Yale Law School. This speech is drawn and adapted from the author's previous writings: L. CHEN, AN INTRODUCTION TO CONTEMPORARY INTERNATIONAL LAW: A POLICY-ORIENTED PERSPECTIVE ch. 2 (1989); Chen, Self-Determination as a Human Right, in TOWARD WORLD ORDER AND HUMAN DIGNITY: ESSAYS IN HONOR OF MYRES S. MCDUGAL 198-261 (1976).

external coercion in the management of its political, economic, and other affairs; (2) claims of a people to overthrow their effective rulers and to establish a new, authoritative government, or, simply, claims to the right of revolution; and (3) claims of a group within an established state to such special protection as autonomy.

Deeply rooted in the concept of "nationality," the modern principle of self-determination originated in the sixteenth century with the emergence of the first nation-states.¹ The principle of self-determination crystallized at the end of World War I under the leadership of President Woodrow Wilson. In Wilson's words:

No peace can last, or ought to last, which does not recognize and accept the principle that governments derive all their just powers from the consent of the governed, and that no right anywhere exists to hand people about from sovereignty to sovereignty as if they were property.²

Self-determination's appeal is rooted in human dignity and human rights and is linked to the maintenance of world order.³ Sustained by its system of international trusteeship and non-self-governing territories, the Charter of the United Nations holds self-determination as one of its fundamental principles.⁴ According to Article 1(2) of the Charter, a major purpose 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, and to take other appropriate measures to strengthen universal peace."⁵

Both the International Covenant on Civil and Political Rights⁶ and the International Covenant on Economic, Social and Cultural

1 For a historical survey of the principle of self-determination, see A. COBBAN, *THE NATION STATE AND NATIONAL SELF-DETERMINATION* (1970); 1 S. WAMBAUGH, *PLEBISCITES SINCE THE WORLD WAR 1-45* (1933).

2 54 CONG. REC. 1741, 1742 (1917) (Address by President Woodrow Wilson, U.S. Senate, January 22, 1917).

3 Read, for instance, the following statement:

Self-determination might indeed be regarded as implicit in the idea of democracy; for if every man's right is recognised to be consulted about the affairs of the political unit to which he belongs, he may be assumed to have an equal right to be consulted about the form and extent of the unit.

E. CARR, *CONDITIONS OF PEACE* 37 (1942).

4 U.N. CHARTER arts. 73-91.

5 *Id.* at art. 1, para. 2.

6 *Opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976). As of Dec. 31, 1990, 92 states were parties to this covenant.

Rights⁷ afford a prominent place to the principle of self-determination. In identical words, both covenants state in their first article that "[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."⁸ Numerous United Nations resolutions have affirmed and reaffirmed this principle,⁹ in particular, the landmark Declaration on the Granting of Independence to Colonial Countries and Peoples of 1960 (commonly known as the Declaration on Decolonization)¹⁰ and the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations of 1970 (conveniently known as the Declaration on Friendly Relations).¹¹

As is commonly known, the United Nations has compiled an impressive record in facilitating the independence of former trust territories and non-self-governing territories.¹² In the colonial context, the application of the principle of self-determination has reshaped the world map and has affected the world constitutive process of authoritative decision making. At the end of World War II, more than 750 million people lived in colonial and other dependent territories; today, forty-six years later, less than three million live in such dependencies.¹³ Meanwhile, the membership

7 *Opened for signature* Dec. 19, 1966, 993 U.N.T.S. 3 (*entered into force* Jan. 3, 1976). As of Dec. 31, 1990, 96 states were parties to this covenant.

8 *Id.* at 5. *Accord* International Covenant on Civil and Political Rights, *supra* note 6, at 173. Paragraph 2 of the International Covenant on Economic, Social, and Cultural Rights embodies what is known as "economic self-determination":

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligation arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

International Covenant on Economic, Social, and Cultural Rights, *supra* note 7, at 173.

9 *See* G. ESPIELL, UNITED NATIONS, THE RIGHT TO SELF-DETERMINATION: IMPLEMENTATION OF UNITED NATIONS RESOLUTIONS, U.N. Doc. E/CN.4/Sub.2/405/Rev. 1 (1980).

10 G.A. Res. 1514, 15 U.N. GAOR Supp. (No. 16) at 66, U.N. Doc. A/4684 (1961).

11 G.A. Res. 2625 and its Annex, 25 U.N. GAOR Supp. (No. 28) at 121, U.N. Doc. A/8028 (1970), *reprinted in* 9 I.L.M. 1292 [hereinafter *Declaration on Friendly Relations*].

12 *See* U.N. DEP'T OF PUB. INFORMATION, THE UNITED NATIONS AT FORTY: A FOUNDATION TO BUILD ON at 60-74, U.N. Sales No. E.85.I.24 (1985) [hereinafter UNITED NATIONS AT FORTY]; U.N. DEP'T OF PUB. INFORMATION, BASIC FACTS ABOUT THE UNITED NATIONS at 158-73, U.N. Sales No. E.90.I.2 (1989).

13 UNITED NATIONS AT FORTY, *supra* note 12, at 60.

of the United Nations has increased dramatically from fifty-one in 1945, to 166 today.

The United Nations' practice in the colonial context during the past forty-six years can be highlighted in terms of "Who gets what, when, and how." First, who is eligible for self-determination? Stipulating the "self-determination of peoples,"¹⁴ the Charter leaves open the question of who is entitled to self-determination—who constitutes a proper self-determining "unit." This key question does not lend itself to an easy answer. However, the sociological, geographical, historical, psychological, and political factors in a particular situation are relevant to making such a determination.¹⁵

Thus, relevant features of a population segment are race, ethnicity, language, religion, and cultural heritage. Another key question is whether the territory involved is an identifiable territory or is sufficiently contiguous to constitute one territorial unit. The wishes of the people—their demands, expectations, and identifications—also have great weight.

After identifying who is entitled to self-determination, decision-makers must decide when and under what conditions self-determination is to be realized. While most Member States favor self-determination for all dependent people without undue delay, they generally agree that cases are too qualitatively different to warrant the adoption of "blanket" timing. Nevertheless, the overall pace of decolonization is breathtaking.¹⁶

The plebiscite, or free election, held under international supervision has proved to be especially useful in implementing self-determination.¹⁷ Article 21, paragraph 3 of the Universal Declaration of Human Rights declares that "[t]he will of the people" forms the bedrock of a government's legitimacy.¹⁸ Widely regarded as declaratory of customary international law, this is the very essence of "popular sovereignty" of people: authority comes from people and rests upon the people as a whole, not a handful of

14 U.N. CHARTER art. 1, paras. 2, 55.

15 See T. Mensah, *Self-Determination Under United Nations' Auspices* 288-329 (1964) (unpublished J.S.D. dissertation available in Yale Law Library).

16 See *supra* notes 13 & 14 and accompanying text.

17 See Chen, *Self-Determination as a Human Right*, in *TOWARD WORLD ORDER AND HUMAN DIGNITY: ESSAYS IN HONOR OF MYRES S. MCDUGAL* 198, 229-35 (1976).

18 *Universal Declaration of Human Rights*, G.A. Res. 217A, U.N. Doc. A/810, at 71, art. 21(3) (1948).

purported rulers. Such popular will can be best expressed in free and genuine elections.

The importance of effective and impartial international supervision of every phase of the plebiscite or election process has been amply demonstrated.¹⁹ Persuasion is obviously a desirable alternative to violence and coercion. But international law also acknowledges that armed struggle may occasionally be the last resort open to a people oppressed under systematic subjugation. As seen in the recent case of South Africa, General Assembly resolutions have recognized the propriety of self-determination-oriented assistance to the military overthrow of an illegal government.

Though some equate self-determination with independence, this is not necessarily correct. Arrangements other than independence, when freely chosen by the people concerned, are also acceptable. Viewed from United Nations' practice and the context of world politics, self-determination encompasses alternatives ranging from considerable self-government within an existing state to complete independence from the existing state.²⁰ The fundamental requirement inherent in self-determination is a procedure, not a preset outcome; the fulfillment of a people's genuine desires is more important than achievement of the label "independence." If a people's freedom of choice is sustained, the policy objective of self-determination is achieved. The decisions of the United Nations manifest the flexibility that is realistically adapted to the contextual complexities of world affairs.

Viewing United Nations' practice as a whole, the world community shares the interests of people directly involved in seeking solutions to problems of self-determination. Hence, in dealing with a claim of self-determination, the United Nations has often been concerned with: (1) The prospect of the territory or people concerned becoming a viable state; (2) the present stage of advancement; and (3) the effect of granting or refusing the exercise of self-determination in terms of regional and international peace, the effectuation of authoritative governmental processes and human rights, and the impact on all value processes, both regional

19 See Chen, *supra* note 17.

20 The *Declaration on Friendly Relations* states: "The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people." *Declaration on Friendly Relations, supra* note 11, at 124.

and global. The people directly concerned must have a reasonable prospect of becoming a viable entity—politically, economically, et cetera—in this increasingly interdependent world.²¹

The accelerating pace of decolonization in the post-World War II era has brought about many ministates, each with a total population of less than one million. This phenomenon has caused a great deal of international concern about the viability of the existing ministates and the desirability of adding potential ministates.²² While no formula has been worked out to determine “how small is too small” for the purposes of self-determination, a new entity should be capable of developing itself as a viable entity that acts responsibly in the external arena. The very existence and functioning of a new entity has value consequences far beyond its own borders.

Will the experience gained from the past four and a half decades be relevant for the future? Will the experience gained from the accelerated independence of former trust territories and non-self-governing territories be relevant for the future? Will self-determination be relevant to the case of secession? Yes, indeed! Just witness the rapid changes in Eastern Europe and the Soviet Union following the crumbling of the Berlin Wall. Yet, national elites understandably have approached the subject of secession with great caution and skepticism. “Self-determination, but not in our own backyard” is quite a popular stance.

In a fundamental sense, however, self-determination is an ongoing process through which people forge and express their shared identity and destiny under ever-changing conditions—a process in the collective pursuit of security, power, respect, and other values. As long as social progress moves on, human beings will continue to search for individual and group identities and will seek to associate or disassociate with certain groups. Self-determination is not a one-shot affair. The attainment of independence does not foreclose human beings from searching for appropriate group identification and affiliation in the fulfillment of all important values. This identification and affiliation may manifest itself in secession from an established state. Many people assumed that self-

21 See Chen, *supra* note 17, at 237-38.

22 See U.N. INST. FOR TRAINING AND RESEARCH, *SMALL STATES & TERRITORIES: STATUS AND PROBLEMS* (1971). See also P. BLAIR, *THE MINISTATE DILEMMA* (1967); S. DE SMITH, *MICROSTATES AND MICRONESIA* (1970); *PROBLEMS OF SMALLER TERRITORIES* (B. Benedict ed. 1967); Fisher, *The Participation of Microstates in International Affairs*, 1968 *PROC. AM. SOC'Y INT'L L.* 164.

determination did not include the right of a group to secede from an established nation-state until Bangladesh became an independent state in 1971.²³ The successful birth of Bangladesh has significantly changed people's perceptions. The recent changes leading to the end of the Cold War and the beginning of a new era have intensified and multiplied the demands for self-determination.

Change, for groups as well as individuals, is a cardinal principle in human affairs. It is crucial that demands for change in value fulfillment through group identification, association, and expression, in the name of self-determination, are effected to serve the common interest of the world community. Most importantly, the basic community policy of self-determination as applied to particular instances should facilitate optimum achievement of the common interests in both minimum and optimum world order. Minimum world order is the minimization of unauthorized coercion and violence, and optimum world order is the widest possible shaping and sharing of all values of human dignity.²⁴ These values include respect, power, enlightenment, well-being, wealth, skill, affection, rectitude, and security.²⁵

23 Note, for example, the following statement by the late Secretary-General U Thant:

So, as far as the question of secession of a particular section of a Member State is concerned, the United Nations' attitude is unequivocal. As an international organization, the United Nations has never accepted and does not accept and I do not believe it will ever accept the principle of secession of a part of its Member State.

Press Conference of U Thant, Secretary General of the United Nations, *reprinted in* 7 U.N. MONTHLY CHRONICLE Feb. 1970 at 34, 36.

24 For elaboration of the concepts of minimum world order and optimum world order, see L. CHEN, AN INTRODUCTION TO CONTEMPORARY INTERNATIONAL LAW: A POLICY-ORIENTED PERSPECTIVE 85-92, 316-37, 433-59 (1989).

25 Values are preferred events—what people cherish. These eight values can be defined succinctly:

Respect: Freedom of choice, equality, and recognition.

Power: Making and influencing community decisions.

Enlightenment: Gathering, processing, and disseminating information and knowledge.

Well-being: Safety, health, and comfort.

Wealth: Production, distribution, and consumption of goods and services; control of resources.

Skill: Acquisition and exercise of capabilities in vocations, professions, and the arts.

Affection: Intimacy, friendship, loyalty, positive sentiments.

Rectitude: Participation in forming and applying norms of responsible conduct.

In a decentralized world, the effective power of state participants is patently discrepant. Decisions to support or reject particular claims for self-determination will remain essentially decentralized in the absence of effective collective decisions.²⁶ Hence, appropriate criteria must be articulated and formulated to guide rational decision making, unilaterally or otherwise. Any serious review of a demand for self-determination from general community perspectives requires a contextual scrutiny to systematically and rigorously appraise the features of the situation. A supportable claim depends on the features of the situation, with the significance of any one feature being dependent upon the total configuration.

Therefore, the basis for either granting or rejecting the demands of a group should not be whether a given situation is "colonial" or "noncolonial," but whether the decision would move the situation closer to goal values of human dignity. This decision should include consideration of the aggregate value consequences on both the group directly concerned and the larger communities affected. In other words, does separation or unification better promote security and facilitate effective shaping and sharing of power and other values? In a world of ever-increasing interdependence, a proper balance between freedom of choice and the viability of communities must be maintained.

It is essential to examine alternative consequences of either granting or rejecting claims for separation or unity. Specific consideration should be given to the following: (1) The degree to which the demanding group can form a viable entity, both in terms of its internal processes and its capacity to function responsibly in its relations with other entities; (2) the probable consequences of separation for the remaining people in the entity of which it has been a part; and (3) the consequences of the demanded independence or unity for the aggregate pattern of value shaping and sharing for the peoples of surrounding communities and for the world at large. All of these probable consequences must be distinguished and tested in a given context by a careful

The aggregate of all these values may be described as "security." See M. MCDUGAL, H. LASSWELL & L. CHEN, HUMAN RIGHTS AND WORLD PUBLIC ORDER 7-37, 84-86 (1980). See also L. CHEN, *supra* note 24, at 209-11.

²⁶ These decisions often find expression in "recognition" decisions by individual states. See L. CHEN, *supra* note 24, at 39-49.

analysis of the factors involved: participants, perspectives, situations, base values, strategies, outcomes, and effects.

Some of the more salient points about relevant features may be indicated briefly. A complete perspective must verify the intensity of a population's demands by observing the degree and intensity of support accorded by the elite and the rank and file, respectively. Identifications are crucial, especially the intensity and inclusivity of identification with a territorial community, and the range and degree of identification with regional and global communities. Thus, it is vital to establish: (1) The degree to which the elite and the rank and file of the aspiring group identify with an existing or projected territorial community; (2) the extent to which members of the aspiring group associate themselves with all members of an existing or projected territorial community; (3) the degree to which members of the aspiring group identify with a single class, or an ethnic, political, religious, or linguistic group; (4) the degree of territorial inclusivity; and (5) the range and degree of identification with regional and global communities, and the degree of conformity to regional and global public policies. Another component is the matter-of-fact expectations about the past, present, and future entertained by the different participants. It is important to explore in which direction and to what extent alternative courses of action will affect these expectations.

A particular group that makes a demand for separation should be observed to see how it corresponds with territorial and functional groups. The changes in participation sought by demanders should be compared with the actions of those who oppose the demand. Do the people concerned participate actively in making the demand? What choices were available to these people in the past? What choices would be open to them in the future? Would granting the demand lead to significant shaping and better distribution of values? Would participation in the relevant value processes be effectively widened?

Regarding situations, compare the present and proposed structures of authority, both functionally and territorially, and ascertain the degree to which they share a common destiny in reference to the larger community. Note the length of time over which previous factors have been integrated and consider alternative time intervals for future integration and consolidation, taking into account circumstances of crisis.

With regard to base values, consideration should be given to the consequences of accepting or denying a particular demand in

terms of values. What are the present distributions of values of different groups? What changes are demanded in terms of authority and controlling values? What are the available alternatives and the probable consequences for the affected people, territory, institutions, and resources? Concerning viability of a political community, inquiry can be made in terms of security, power, wealth, and other values. The most important of all these features is the outcome—in terms of the impact upon different values expected to attend each option—for the aspiring group, the old entity to which the aspiring group belongs, and the larger surrounding communities, including the global community. The critical test, therefore, in considering a claim of self-determination is to evaluate the aggregate value consequences of honoring or rejecting the claim for all affected communities, potential as well as existing. Then, after fully estimating the relative costs and benefits of the different options for each of those communities, the option that will promote the largest net aggregate of common interest should be honored.

This recommendation is not intended to oversimplify or underestimate the enormous complexity and difficulty accompanying many of the seemingly intractable controversies about self-determination. Notice, for example, the claims for self-determination made by the following peoples: In Asia, the Palestinians, the Lebanese, the Kurds, the Tamils, the Koreans, the Tibetan people, and the Taiwanese; in Europe, the Baltic peoples, the Armenians, the Croats and Slovenians of Yugoslavia, the Germans of Romania, the Scots, the Welsh, the Catholics of Northern Ireland, and the Catalans and Basques of Spain; in Africa, the Ibos, the South Sudanese, the Eritreans, and the Somalis; and in the Americas, the French Canadians of Quebec, the Puerto Ricans, and various indigenous populations. Because the list is nearly inexhaustible, this is not the time and place to engage in individual case studies.²⁷

27 See generally L. BUCHHEIT, SECESSION: THE LEGITIMACY OF SELF-DETERMINATION (1978); L. CHEN & H. LASSWELL, FORMOSA, CHINA AND THE UNITED NATIONS (1967); H. HANNUM, AUTONOMY, SOVEREIGNTY, AND SELF-DETERMINATION (1990); R. PEARSON, NATIONAL MINORITIES IN EASTERN EUROPE 1848-1945 (1983); W. REISMAN, PUERTO RICO AND THE INTERNATIONAL PROCESS: NEW ROLES IN ASSOCIATION (1975); D. RONEN, THE QUEST FOR SELF-DETERMINATION (1979); THE RIGHTS OF PEOPLES (J. Crawford ed. 1988); U. UMOZURIKE, SELF-DETERMINATION IN INTERNATIONAL LAW (1972); Chen & Reisman, *Who Owns Taiwan?, A Search for International Title*, 81 YALE L.J. 599 (1972); Kiss, *The People's Right to Self-Determination*, 7 HUM. RTS. L.J. 165 (1986); Przetacznik, *The Basic Collective Human Right to Self-Determination of Peoples and Nations as a Prerequisite for Peace*, 8 N.Y.L. SCH. J. HUM. RTS. 49 (1990).

The utility of the suggested framework of analysis would be greatly enhanced if all factors and interests and alternative consequences relevant to a particular context were brought into proper focus and subjected to systematic and rigorous scrutiny.

Although the trend of past decisions indicates that the United Nations often stresses the basic distinction of colonial and noncolonial issues, this distinction need not be conclusive, particularly when colonialism is narrowly understood to be the domination by whites over nonwhites. The essence of self-determination is human dignity, human rights, and authority of the people. Underlying the concept of human dignity is the individual's insistent demand to form groups freely and to identify with groups that can maximize the pursuit of values. The formation and reformation of groups are ongoing processes.

As exemplified by the interplay between self-determination and territorial integrity, legal doctrines operate in complementary pairs. Is the seeming conflict between territorial integrity and self-determination irreconcilable? For whom is territorial integrity sought, or for what purpose, and with what social consequences? Is genocide an acceptable alternative to independence or autonomy?

The absolute adherence to territorial integrity is no virtue when the people who demand freedom are subjected to systematic deprivations on a vast scale. In such a case, territorial integrity is self-defeating. The principle of territorial integrity must not serve as a shield for tyrants, dictators, or totalitarian rulers; it must not become a screen behind which human deprivations are sought to be justified, condoned, and perpetuated. Today the world is too interdependent, and humankind is living too closely together to permit the doctrines of domestic jurisdiction or territorial integrity to become instruments of oppression, politicide, and deprivation.

Empires rise and fall; nation-states and territorial boundaries come and go. But the demands of humankind for freedom and human dignity will remain strong. An ongoing process in the search of the self in relation to others, self-determination is infused with the very essence of human dignity. When decisions regarding self-determination are rationally and adequately made, they will greatly contribute to the common interest of humankind in achieving both minimum and optimum world order.

