Article 15

The present Convention shall remain in force indefinitely but may be denounced by means of one year's notice given to the Pan American Union, which shall transmit it to the other signatory governments. After the expiration of this period the Convention shall cease in its effects as regards the party which denounces but shall remain in effect for the remaining High Contracting Parties.

Article 16

The present Convention shall be open for the adherence and accession of the states which are not signatories. The corresponding instruments shall be deposited in the archives of the Pan American Union which shall communicate them to the other High Contracting Parties.

An alternative view of statehood is offered by Schwarzenberger and Brown who argue that an entity must satisfy a minimum of three conditions before it can be considered an independent state. Those conditions are:

(1) the entity must possess a stable government which does not recognise any outside superior authority;

(2) the government must rule supreme within a territory which has more or less settled frontiers;

(3) the government must exercise control over a certain number of people.

James Crawford[11] identifies five 'exclusive and general legal characteristics of states':

1 In principle, states have plenary competence to perform acts, make treaties, and so on, in the international sphere: this is one meaning of the term 'sovereign' as applied to states.

2 In principle states are exclusively competent with respect to their internal affairs, a principle reflected by Article 2(7) of the United Nations Charter. This does not of course mean that they are omnicompetent, in international law, with respect to those affairs: it does mean that their jurisdiction is *prima facie* plenary and not subject to the control of other states.

3 In principle states are not subject to compulsory international process, jurisdiction, or settlement, unless they consent, either in specific cases or generally, to such exercise.

4 States are regarded in international law as 'equal', a principle also recognised by the Charter (Article 2(1)). This is in part a restatement of the foregoing principles, but it may have certain other corollaries. It does not mean, for example, that all states are entitled to an equal vote in international organisations; merely that, in any international organisation not based on equality, the consent of all the Members to the derogation from equality is required.

5 Finally, any derogations from these principles must be clearly established: in case of doubt an international court or tribunal will decide in favour of the freedom of action of states, whether with respect to external or internal affairs, or as not having consented to a specific exercise of international jurisdiction, or to a particular derogation from equality. This presumption – which is of course rebuttable in any case – is important in practice, as well as

11 James Crawford, *The Creation of States in International Law*, 1979, Oxford: Clarendon Press at p 32.

> providing a useful indication of the status of the entity in whose favour it is invoked. It will be referred to throughout this study as the *Lotus* presumption – its classic formulation being the judgment of the Permanent Court in *Lotus*.
>
> These five principles, it is submitted, constitute in legal terms the hard core of the concept of statehood, the essence of the special position in customary international law of states. It follows from this, as a rule of interpretation, that the term 'state' in any document *prima facie* refers to states having these attributes; but this is of course subject to the context. Courts will tend towards strictness of interpretation of the term 'state' as the context predicates plenitude of functions – as, for example, in Article 4(1) of the United Nations Charter. Conversely, if a treaty or other document is concerned with a specific issue, the word 'state' may be construed liberally – that is, to mean 'state for the specific purpose' of the treaty or document.[12]

5.2.1.1 Population and territory

States are aggregates of individuals and accordingly a permanent population living within a defined territory is regarded as a requirement of statehood. But there are no limits as to size of population or territory – eg Liechtenstein has a population of under 30,000, and Monaco has a territory of less than two square kilometres. It is not a requirement that the population should hold the nationality of the state in question, merely that they should live there with some degree of permanence. As far as territorial boundaries are concerned, there is no requirement for absolutely settled borders merely some identification of the state with a portion of the earth's surface.

> In order to say a state exists ... it is enough that this territory has a sufficient consistency, even though its boundaries have not yet been accurately delimited, and that the state actually exercises independent public authority over that territory.[13]
>
> ... both reason and history demonstrate that the concept of territory does not necessarily include precise delimitation of the boundaries of that territory. The reason for the rule that one of the necessary attributes of a state is that it shall possess territory is that one cannot contemplate a state as a kind of disembodied spirit. Historically, the concept is one of insistence that there must be some portion of the earth's surface which its people inhabit and over which its government exercises authority. No one can deny that the state of Israel responds to this requirement.[14]
>
> There is for instance no rule that the land frontiers of a state must be fully delimited and defined, and often in various places and for long periods they are not, as is shown by the case of the entry of Albania into the League of Nations.[15]

On the other hand, it is possible to cite a few situations where statehood was refused on the basis of unsettled frontiers, the classic example being that of Lithuania, which was refused membership of the League of Nations until border disputes with neighbouring states were settled.

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12 Crawford, *op cit* at pp 32–33 (footnotes omitted).

13 German-Polish Mixed Arbitral Tribunal in *Deutsche Continental Gas-Gesellschaft v Polish State* (1929) 5 AD 15.

14 Philip Jessup – US representative to the UN Security Council, 1948.

15 ICJ in *North Sea Continental Shelf* case [1969] *ICJ Rep* at p 132.

5.2.1.2 Government

> The shortest definition of a state for present purposes is perhaps a stable political community, supporting a legal order, in a certain area. The existence of effective government, with centralised administrative and legislative organs is the best evidence of a stable political community.[16]
>
> Finland did not become a definitely constituted state until a stable political organisation had been created, and until the public authorities had become strong enough to assert themselves throughout the territories of the state without the assistance of foreign troops.[17]

There is a strong case for regarding the possession of effective government as the single most importance criterion of statehood since, arguably, all the other requirements depend upon it. But the actual application of the criterion has been far from straightforward – see, for example, the events surrounding the independence of the Belgian Congo in 1960. More recently the extent to which the state of the Lebanon has had any effective government has been in serious doubt. Moves in the General Assembly of the United Nations have also questioned the requirement of possession of effective government. It is worth noting General Assembly Resolution 1514 (XV) Declaration on the Granting of Independence to Colonial Countries and Peoples which declares that inadequacy of political, economic, social or education preparedness *should never serve as a pretext for delaying independence*.

> The following conclusions suggest themselves. First, to be a state, an entity must possess a government or a system of government in general control of its territory, to the exclusion of other entities not claiming through or under it.
>
> Second, international law lays down no specific requirements as to the nature and extent of this control, except, it seems, that it include some degree of maintenance of law and order.
>
> Third, in applying the general principles to specific cases, the following must be considered: (i) whether the statehood of the entity is opposed under title of international law; if so, the requirement of effectiveness is likely to be more stringently applied; (ii) whether the government claiming authority in the putative state, if it does not effectively control it, has obtained authority by consent of the previous sovereign and exercises a certain degree of control; (iii) in the latter case at least, the requirement of statehood may be liberally construed; (iv) finally, there is a distinction between the creation of a new state on the one hand and the subsistence or extinction of an established state on the other. There is normally no presumption in favour of the status of the former, and the criterion of effective government therefore tends to be applied more strictly.[18]

5.2.1.3 Capacity to enter into international relations/independence/ sovereignty

Most writers seem to be agreed that the capacity to enter international relations listed in Article 1 of the Montevideo Convention could be better expressed as

16 Brownlie, *Principles of International Law*, 1990, Oxford: Oxford University Press at p 73.

17 League of Nations Commission of Jurists in the Aaland Islands Dispute (1920).

18 Crawford, *The Creation of States in International Law*, 1979, Oxford: Oxford University Press at p 45.

'independence' or 'sovereignty' in the sense of having full control over domestic and foreign affairs. The concept of 'capacity to enter into international relations' brings with it a degree of circularity – who has capacity to enter into legal relations? states; what are states? Those entities with capacity to enter into international relations.

> Independence ... is really no more than the normal condition of states according to international law; it may also be described as sovereignty (*suprema potestas*), or external sovereignty, by which is meant that the state has over it no other authority than that of international law.'[19]

Examples can be found where the international community formed the opinion that an alleged state did not have a sufficient degree of independence for full statehood, eg Manchukuo.

There are a number of situations which are not regarded, in international practice, as derogating from formal independence, although if extended far enough, they may derogate from actual independence:

(a) *Constitutional restrictions upon freedom of action*

Provided no outside state has the power to alter the constitution, the fact that the state in question is constitutionally restricted is not seen as a derogation from formal independence, eg the Constitution of the Republic of Cyprus binds the Republic permanently to accept the stationing of foreign (Greek, Turkish and British) military forces on its territory.

(b) *Treaty obligations*

The *Wimbledon* case confirmed the principle that treaty obligations do not derogate from formal independence.

(c) *The existence of foreign military bases*

For example, Cyprus, Germany, United Kingdom.

(d) *The possession of joint organs for certain purposes*

For example, Customs Unions. Of course it is possible for states to unite totally as Syria and Egypt did in the 1950s to form the United Arab Republic and as East and West Germany, North and South Yemen have done more recently – in this case, of course, two states become a single state.

(e) *Membership of international organisations*

Even if the international organisation has some degree of coercive authority, eg the EEC, the United Nations, this is not seen as derogating from formal independence.

Customs Regime between Germany and Austria Case[20]

Article 88 of the Treaty of Saint-Germain 1919 provided:

> The independence of Austria is inalienable otherwise than with the consent of the Council of the League of Nations. Consequently, Austria undertakes in the

19 Judge Anzilotti in the *Customs Regime between Germany and Austria* case PCIJ Ser A/B, No 41 (1931).

20 PCIJ Ser A/B, No 41 (1931).

> absence of the consent of the said Council to abstain from any act which might directly or indirectly or by any means whatever compromise her independence ...

In 1922 an additional protocol was signed at Geneva which contained similar provisions relating to Austrian economic independence. In 1931 Germany and Austria reached preliminary agreement on a customs union between the two states. The proposal caused widespread international concern and as a result the Council of the League of Nations had requested an Advisory Opinion from the PCIJ whether the proposed customs union would be contrary to the Treaty and Protocol. The court found that the proposed union did not contravene the 1919 Treaty but a majority of eight judges to seven found that the proposed union did contravene the 1922 Protocol. In a separate opinion Judge Anzilotti (who found the proposed union incompatible with both the Treaty and the Protocol) gave some thought to the meaning of independence in international law:

> The conception of independence, regarded as the normal characteristic of states as subjects of international law, cannot be better defined than by comparing it with the exceptional and, to some extent, abnormal class of states known as 'dependent states'. These are states subject to the authority of one or more other states. The idea of dependence therefore necessarily implies a relation between a superior state (suzerain, protector, etc) and an inferior or subject state (vassal, protégé, etc); the relation between the state which can legally impose its will and the state which is legally compelled to submit to that will. Where there is no such relation of superiority and subordination, it is impossible to speak of dependence within the meaning of international law.
>
> It follows that the legal conception of independence has nothing to do with a state's subordination to international law or with the numerous and constantly increasing states of *de facto* dependence which characterise the relation of one country to other countries.
>
> It also follows that the restrictions upon a state's liberty, whether arising out of ordinary international law or contractual engagements, do not as such in the least affect its independence. As long as these restrictions do not place the state under the legal authority of another state, the former remains an independent state however extensive and burdensome those obligations may be.

Admission of Liechtenstein to the League of Nations[21]

Liechtenstein sought admission to the League of Nations. Membership was open to 'any fully governing state, Dominion or Colony ... provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments' (Article 1(2) LN Covenant). Liechtenstein's application was rejected in view of the following report.

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21 Report of the 5th Committee to the First Assembly of the LN, 6 December 1920, 1 *Hackworth* 48–49.

> The government of the Principality of Liechtenstein has been recognised *de jure* by many states. It has concluded a number of Treaties with various states ...
>
> The Principality of Liechtenstein possesses a stable government and fixed frontiers ...
>
> There can be no doubt that juridically the Principality ... is a sovereign state, but by reason of her limited area, small population and her geographical position, she has chosen to depute to others some of the attributes of sovereignty. For instance she has contracted with other Powers for the control of her Customs, the administrations of her Posts, Telegraphs and Telephone Services, for the diplomatic representation of her subjects in foreign countries, other than Switzerland and Austria, and for final decisions in certain judicial cases.
>
> Liechtenstein has no army.
>
> For the above reasons, we are of opinion that the Principality of Liechtenstein could not discharge all the international obligations which would be imposed upon her by the Covenant.

5.2.1.4 Permanence

> A state which has only a very brief life may nevertheless leave an agenda of consequential legal questions on its extinction.[22]

There is no requirement that a state should endure for a specific minimum period – there are examples of states existing for a very short period but they have achieved full statehood, eg Mali Federation 20 June 1960 – 20 August 1960; British Somaliland 26 June 1960 – 30 June 1960.

5.2.1.5 Legality

> In recent years the view has increasingly been put forward that, in addition to the criteria already mentioned, international law does not permit the creation of states in violation of fundamental principles of international law/in violation of *jus cogens*.

Self-determination

While discussion of the political principle of self-determination has a long history, the process of establishing it as a principle of international law is of more recent origin. It was discussed in the early days of the League of Nations and the Mandate system was to some degree a compromise between outright colonialism and principles of self-determination. In the period 1920–22 many of the treaties concluded by the Soviet Union enshrined self-determination as a legal right. However the biggest impetus to recognition of self-determination as a legal principle came with the United Nations Charter:

> The purposes of the United Nations are:
>
> 2 To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples (Article 1).
>
> With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples ... (Article 55).

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22 Brownlie, *Principles of Public International Law*, 4th edn, 1979, Oxford: Oxford University Press at p 77.

> All 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 (Article 2(4)).

While it clearly enunciated the principle of self-determination, it left unclear the precise legal ramifications and this fact was seized upon by many Western jurists to deny that self-determination was in any way a legally enforceable right. In 1952 the General Assembly stated (in Resolution 637A (VII)) that 'the right of peoples and nations to self-determination is a prerequisite to the full enjoyment of all fundamental human rights' and is recommended that the United Nations' members 'shall uphold the principle of self-determination of all peoples and nations' while promoting 'realisation of the right of self-determination' for the peoples of colonial territories. Again the resolution left unclear the precise legal implications of the principle.

In 1960 General Assembly Resolution 1514 (XV) entitled Declaration on the Granting of Independence to Colonial Countries and Peoples was adopted 89:0 with nine abstentions (Australia, Belgium, Dominican Republic, France, Portugal, South Africa, Spain, UK, US):

> The General Assembly ...
>
> Declares that:
>
> 2 All 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 ...
>
> 3 Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence ...
>
> 6 Any attempt at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.

In 1966 two conventions on human rights were signed – the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Both entered into force in 1966 and at present over 90 states have ratified them. The Covenants have a common Article 1 which states:

> 1 All 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.

Subsequently the Declaration of Principles of International Law Concerning Friendly Relations (General Assembly Resolution 2625 (XXV)) confirmed the principle that self-determination is a right belonging to all peoples and that its implementation is required by the UN Charter in the case of alien subjugation or foreign domination. The Declaration went further in recognising that peoples resisting forcible suppression of their claim to self-determination are entitled to seek and receive support in accordance with the purposes and principles of the Charter.

> The principle of self-determination of peoples is rightly considered to be a successor to the political principle of nationality, which became widely recognised in 19th century Europe and related to the emergence of nation states.

Since then, hardly any political or legal principles have been as highly praised and supported by some and as strongly denied by others as has that of self-determination.

After World War I the principle received a new boost. In 1917, in the famous Decree of Peace, Lenin wrote:

> If any nation whatsoever is retained within the boundaries of a given state by coercion, and despite its expressed desire it is not granted the right by a free vote ... with the complete withdrawal of the forces of the annexing or generally more powerful nation, to decide without the slightest coercion the question of the form of state existence of this nation, then it is an annexation ...

President Wilson was an ardent proponent of the principle. In his 'Fourteen Points' he enunciated that 'peoples and provinces must not be bartered from sovereignty to sovereignty as if they were chattels or pawns in a game', and that territorial questions should be decided 'in the interest of the population concerned'.

But at the same time Secretary of state Lansing wrote in a note of 30 December 1918:

> The more I think about the President's declaration as to the right of 'self-determination', the more convinced I am of the danger of putting such ideas into the minds of certain races. It is bound to be the basis of impossible demands on the Peace Congress and create trouble in many lands ... The phrase is simply loaded with dynamite. It will raise hopes which can never be realised. It will, I fear, cost thousands of lives.

Senator Moynihan quotes Frank P Walsh, to whom President Wilson himself had acknowledges that when he had uttered the words on the right to self-determination he had done so without any knowledge that nationalities existed which were coming to them day after day.

Already at that time proponents of the principles interpreted it not only differently, they also interpreted it as being not simply an end in itself but as a means of achieving different ends. For Lenin this principle was subordinated to interests of socialism and was considered as a stage and condition of the final merger of all nations into one socialist society. Hurst Hannum is quite right that it 'should be underscored that self-determination in 1919 had little to do with the demands of the peoples concerned, unless those demands were consistent with the geopolitical and strategic interests of the Great Powers'.

By the turn of the millennium the principle of the self-determination of peoples has travelled the long road from its original political slogan to being one of the fundamental principles of international law. But as Hannum writes: 'Yet the meaning of and the content of that principle remain as vague and imprecise as when they were enunciated by President Woodrow Wilson and others in Versailles.'[23]

In the 1990s the self-determination of peoples is once more not only a topical subject for dissertations, but has become a slogan of political struggle in different parts of the world. If after the First World War the principle was applied only to Eastern European nations which had hitherto been parts of the Ottoman and

23 H Hannum, *Autonomy, Sovereignty, and Self Determination: The Accommodation of Conflicting Rights*, 1990, Philadelphia: University of Pennsylvania Press at p 28.

Austro-Hungarian empires, and in the 1960s determined outcomes of the anti-colonial struggle in Africa and Asia, at the end of the 1980s came the turn of the Russian (Soviet) Empire.

All Soviet republics, while seeking independence from the USSR or demanding more autonomy from the centre, vigorously claimed the right to self-determination. But even before these republics could achieve their independence, different ethnicities living in their territories where they constituted minorities (for example, Tartars and Chechens in Russia; Crimeans in Ukraine; Crimean Tartars in their turn in the Crimean peninsula, which was their historical motherland; and Ossetians and Abkhazians in Georgia) started to use the same slogan in the furtherance of their claims.

It seems that the chain of fission is a law not only of the physical worlds but of the social world as well. When a society breaks up, not only are other societies affected by way of example, but newly born states themselves often start a new round of disintegration.

The birth and existence of the Soviet Union had a twofold effect on world society. On the one hand, it was a source of expansion of communist ideas and a resource for different left wing organisations all over the world. On the other hand, the Soviet experience served as a warning for different peoples, averting them from repeating this social experiment.

In the same vein, recent and even some current events in the former Soviet Union as well as in the former Yugoslavia, though certainly providing a source of inspiration for many secessionist movements in other counties should, at the same time, sound as a warning.

Generalisations, of course, should always be made cautiously, because seemingly identical events may have their roots in different reasons and lead to different results. But there may have been something symbolic in the picture I observed in Geneva in autumn 1992 at the time when Georgians and Abkhazians were killing each other in the Caucasus, when ethnic cleansing was in progress in the territories of the former Yugoslavia, and the UN Human Rights Committee, of which I was a member, considered emergency reports of Bosnia-Herzegovina, Croatia, and Yugoslavia (Serbia and Montenegro) on their implementation of such basic human rights as the right to life and freedom from torture and other inhuman forms of treatment. Looking out of the windows of the Palais des Nations one could see the 179 flags of the UN member states fluttering in the cold autumn wind. At that moment I did not feel especially proud of seeing so many new member states' flags, but thought more of the cost of every flag in human lives and suffering. And this notwithstanding the fact that in 1991-92 I was myself actively involved in the process of the dissolution of the Soviet Union as Deputy Foreign Minister of Estonia.

No one doubts any more that the principle of the self-determination of peoples is a legal principle and many declare it to be a *jus cogens* norm of international law. What is much less clear is the content of the principle and its relation to other principles of international law having the same legal force. This last aspect is especially important because such grandiose events like those which have taken place in the erstwhile USSR and in Eastern Europe are never governed only by one principle or norm of international law. Different principles and norms, all being expressions of different real values and interests, if taken in isolation, may often indicate opposite outcomes. Therefore the task of an international lawyer is to apply these principles and norms creatively to concrete events, taking into account not only these legal principles but also important extra-legal factors and possible outcomes as well.

The right of peoples to self-determination is not only one of fundamental principles of international law governing inter-state relations. It is at the same time a very important human rights norm and therefore rightly belongs to both Covenants on human rights. The Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in June 1993 emphasises that the Conference considers the denial of the right of self-determination as a violation of human rights and underlies the importance of the effective realisation of this right.

This is so because, first, its so-called internal aspect, that is the right of all peoples freely (there are some limitations of even this freedom as I will show later) to determine their political status and to pursue their economic, social and cultural development is the entitlement of all peoples to democracy. Second, even its external aspect, that is the right of peoples freely (so far as this freedom does not infringe upon the freedom of other peoples) to determine their place in the international community of states, is becoming more and more influenced by other human rights norms.

When this principle of self-determination as a legal norm started its development in the context of the process of decolonisation, this link between self-determination and human rights meant that individuals could not be free if the peoples to which they belonged were under an alien yoke.

But the process of development of the principle of respect for human rights – one of the most rapidly and radically evolving principles of international law – has influenced many international law principles and norms and the principle of self-determination of peoples has not remained unaffected either because, as was said in the 1970 Friendly Relations Declaration, all principles of international law and each principle should be construed in the context of other principles. Though in the Friendly Relations Declaration the principle of respect for human rights was still absent, there is no doubt that the following developments in international law have confirmed the place of this principle amongst the fundamental principles of international law. The Final Act of the Conference on Security and Co-operation in Europe contains the principle of respect for human rights and fundamental freedoms and also stresses that all principles should be interpreted whilst taking the others into account.

The principle of respect for human rights has been particularly dramatically developed in the framework of the Helsinki process. The Document of the Copenhagen Conference on the Human Dimension of 1990 not only speaks of concrete rights and freedoms and elaborates respective monitoring mechanisms, but for the first time gives the parameters of a society conducive to the protection of individual rights. And for the first time an international document states *expressis verbis* that freedom of choice by peoples of their political, social, economic and cultural systems is not absolute. Peoples are free to establish their respective political, social and economic systems so far as these systems guarantee respect for international standards of human rights. the states' parties to the Conference on the Human Dimension of the CSCE confirmed that:

> ... they will respect each other's right freely to choose and develop, *in accordance with international human rights standards* [emphasis added], their political, social, economic and cultural systems. In exercising this right, they will ensure that their laws, regulations, practices and policies conform with their obligations under international law and are brought into harmony with the provisions of the Declaration on Principles and other CSCE commitments.

One may at first assume that such a clause limits the freedom of choice of peoples with regard to the formulation of their respective economic, social and

political systems. In reality, however, it does not curb peoples' right to self-determination but, on the contrary, strengthens the principle by placing limits on rulers or other antidemocratic forces in a society.

The link between principles of the self-determination of peoples and respect for human rights – or maybe it would be better to say the filling of the principle of self-determination with humanitarian content – found further development in the processes of the dissolution of the USSR and Yugoslavia and especially in the reaction of the world community of states to these processes.

On 16 December 1991, the Council of the European Communities adopted a Declaration on 'Guidelines on the Recognition of New states in Eastern Europe and in the Soviet Union'. This document establishes the criteria and conditions for the recognition of new states which, following the historic changes in the region, have constituted themselves on a democratic basis, have accepted the appropriate international obligations and have committed themselves in good faith to a peaceful process and to negotiations. The Declaration refers specially to the principles of self-determination as a basis for recognition.

Application of the principle of the self-determination of peoples is strongly influenced (or one may say, balanced) also by the principles of the inviolability of frontiers and territorial integrity of states. 'The sovereignty, territorial integrity and independence of states within the established international system, and the principle of self-determination of peoples, both of great value and importance, must not be permitted to work against each other in the period ahead', states a report prepared by the Secretary General of the UN, Dr Boutros-Ghali. The principles of the self-determination of peoples, the inviolability of frontiers and the territorial integrity of states are inseparable and support each other, which means that they should be balanced in the same way as justice and order need to be balanced in any society. One cannot have justice without order, while order without justice is not only inhuman but it also does not last long. Max Kampelman rightly observes that '[t]he inviolability of existing boundaries is an integral part of this process [of self-determination], not because the boundaries are necessarily sound or just, but because respect for them is necessary for peace and stability'.

The principle of the self-determination of peoples developed in the UN mainly in the context of the process of decolonisation. Though no document confines the principle for the decolonisation of colonies of overseas parent states (so-called 'salt water' colonialism), it was natural that at that time this aspect of the principle became the most prominent, and for some states even the only one.[24] Therefore Hector Gross Espiell wrote:

> The United Nations established the right of self-determination as a right of peoples under colonial and alien domination. The right does not apply to peoples already organised in the form of a state which are not under colonial and alien domination, since Resolution 1514 (XV) and other United Nations

24 India made the following reservation to article 1 of the Covenant on Civil and Political Rights: 'With reference to Article 1 of the International Covenant on Civil and Political Rights, the government of the Republic of India declares that the words "the right of self-determination" appearing in [that Article] apply only to the peoples under foreign domination and that these words do not apply to sovereign independent states or to a section of a people or nation – which is the essence of national integrity' (UN Doc CCPR/C/Rev 3, 12 May 1992, p 18). France, Germany and the Netherlands strongly objected to this reservation by India *(ibid*, pp 39–40).