

SELF-DETERMINATION

<i>What is self-determination?</i> Definition: the right of all peoples to freely determine their political status and freely pursue their economic, social, and cultural development: <i>Art 1–6, Declaration on the Granting of Independence to Colonial Countries and Peoples (1960)</i> - Reflects custom: <i>Chagos Archipelago [2019], [140]-[162]</i>	
<i>Step 1: What is a people?</i> No permanent, universally acceptable list of criteria for a 'people' exists (<i>Joseph and Castan, 2013</i>)	
<i>Joseph and Castan (2013)</i>	Various conditions or characteristics of 'peoples' have been put forward: - common historical tradition; - racial or ethnic identity; - cultural homogeneity; - linguistic unity; - religious or ideological affinity; - territorial connection; - common economic life; - consisting of a certain minimum number
<i>Step 2: Do the people have a right to internal self-determination?</i> Definition: a people's pursuit of its political, economic, social and cultural development within the framework of an existing state: <i>Re Secession of Quebec [1998], [126]</i> - e.g. the right to take part in national decision-making processes; the right to recognition of their identity	
<i>Re Secession of Quebec [1998]</i>	The right to SD is normally fulfilled through internal SD; external SD only arises in the most extreme cases - Rationale: the right to SD must be sufficiently limited to prevent threats to an existing state's territorial integrity or the stability of relations between sovereign states: <i>[126]-[127]</i>
<i>Step 3: If no internal self-determination, do the people have a right to external self-determination?</i> Definition: the right by which certain peoples can choose to exercise free will over their status relative to the outside world (i.e. independence): <i>Re Secession of Quebec [1998], [126]</i>	
<i>Step 3.1: Who has a right to external self-determination?</i> Source: <i>UNGA Declaration on the Granting of Independence to Colonial Countries and Peoples (1960)</i> - Reflects customary international law: <i>Chagos Archipelago [2019], [140]-[162]</i>	
<i>Category 1: Peoples under colonial rule and non-self-governing territories</i>	Colonial rule: entity is controlled by another country - e.g. Nauru was a UN trust territory under Australian administration Non-self-governing territories: the UN maintains an official list: <i>Ch XI, UN Charter</i> - e.g. the French territory of New Caledonia - Peoples in non-self-governing territories have a right to self-determination over their whole land - Any separation (by the administering power) contrary to the will of the people is contrary to the right to self-determination: <i>Chagos Islands [2019]</i>

	<i>Chagos Islands [2019]:</i> Facts: Chagos used to be administered by the UK as part of the British colony of Mauritius - 1965: the UK detached Chagos from the territory of Mauritius (without the consent of Mauritius people) - 1968: Mauritius became independent; Chagos remained a British colony A number of people from Chagos were displaced because the British Government leased the land for US military purposes Judgement: the detachment of Chagos from Mauritius was done without the free and genuine expression of the Mauritius people - The UK's continued administration of Chagos is a wrongful act entailing state responsibility To complete the process of decolonisation in Chagos: - the UK must bring an end to its administration in Chagos ASAP - all UN members must also cooperate with the UN to complete the decolonisation process - Why? Every state has the duty to promote the principle of self-determination, especially to bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned: <i>Principle E, Friendly Relations Declaration (1970)</i> - Additionally, any state has standing to complain, if the right is not respected - e.g. Australia could complain about the treatment of the Chagos people - Nonetheless, this duty is particularly relevance states that have colonies (i.e. UK must complete decolonisation process)
<i>Category 2: Peoples subject to alien (foreign) subjugation, domination or exploitation</i>	Definition: peoples who are subject to alien subjugation, domination, or exploitation outside a colonial context: <i>Re Secession of Quebec [1998], [133]</i> - e.g. Palestinian territories have largely been under Israeli occupation; ICJ alluded to Palestinian people's right to SD: <i>Wall in the Occupied Palestinian Territory [2004]</i> Alien subjugation: forced control by a foreign power without consent - e.g. a foreign army takes over a region against the locals' wishes Alien domination: foreign rule overriding local governance - e.g. a foreign government replaces local leaders with its own officials Alien exploitation: use of resources or labour for foreign gain - e.g. foreign company extracts all minerals, leaving locals poor
<i>Category 3: (Possibly) Cases involving remedial secession</i>	Definition: when a people is blocked from the meaningful exercise of internal SD, they are entitled, as a last resort, to exercise it by secession - Note: it is unclear whether this is reflected in custom Even if it exists, it is limited to exceptional cases: <i>Re Secession of Quebec (1998): unsuccessful</i> Facts: Quebecers sought to secede from Canada - Quebecers have their own distinctive cultural and linguistic characteristics Judgement: remedial secession failed because Quebecers possess internal SD: <i>[135]-[136]</i> - Quebecers occupy prominent positions within the Canadian Government; and - Quebecers freely make political choices and pursue economic, social and cultural development within Canada