

Intervention on Self Determination by National Congress of American Indians and Native American Rights Funds

The United States has proposed to replace the term “self-determination” in Article 3 of the Draft Declaration with a new term, “internal self-determination.”

The National Congress of American Indians and the Native American Rights Fund consider this proposal unacceptable. The concept of internal self determination has no recognition in international law. To downgrade the standard international legal meaning of self-determination and endorse only a limited version for indigenous peoples is discriminatory. Furthermore, the United States concern about secession is unwarranted. The right of secession is a latent right, available to all peoples, but reserved as a political last resort. There are strict limits to its exercise, and even when extreme circumstances justify it, the international community must support a move toward secession before it can succeed politically.

The UN Charter protects the right of self-determination (Article 1 (2)) in the same chapter and almost in the same breath as the right to sovereignty (Article 2 (1)) and the right to territorial integrity (Article 2 (4)). Obviously these rights are meant to coexist peacefully. The United States is incorrect in assuming that territorial integrity and self-determination are necessarily in conflict. Balance of interests between state sovereignty and self-determination of peoples is required by present international law. The Supreme Court of Canada’s decision, In re: Secession of Quebec (1998) affirmed “the right of colonial peoples to ... self-determination by breaking away from ‘imperial’ power.” The Court affirmed, as well, the right of an “oppressed people” to resist “attacks on its physical existence ... or massive violation of its fundamental rights.”¹ But the court concluded that when a people within a sovereign state is neither colonized nor oppressed, partakes equitably in the constitutional rights and privileges of the state, and participates equally in the state’s political processes, there is no right of secession.² In re: Secession

¹ Reference re Secession of Quebec, [1998] 2 S.C.R., 1998 Can. Sup. Ct. LEXIS 39, at 119.

² “[A] right to secession only arises under the principle of self-determination of people at international law where “a people” is governed as part of a colonial empire; where “a people” is subject to alien subjugation, domination or exploitation; and possibly where “a people” is denied any meaningful exercise of its right to

of Quebec held that “well-established international law” protects the right of secession only if a peoples’ self-determination within the sovereign state cannot be fulfilled or is systematically withheld.³

Thus, the dormant right of secession may be triggered by extremes of political disenfranchisement, ruthless exploitation, or material dispossession, but, on the other hand, the right may be neutralized by access to meaningful political participation. “States conducting themselves in compliance with the principles of equal rights and self determination of peoples”, keep secession at bay.⁴ The United States cannot justify its refusal to support full self determination because it fears its own failure to meet that minimum standard. But in any case, the U.S. cannot exempt itself from its peoples’ right of secession by mere fiat. It can only assure that indigenous peoples enjoy sufficient self-determination within its borders so as to render a bid for secession unjustified. Nor can the United States justify its position based upon its speculation about how other countries will treat their indigenous peoples. It is for those countries to come forward and justify to the world why they do not intend to meet such minimum standards.

The right of secession is an inescapable and ever-present part of the international legal landscape – but it remains in the far background in all but the most exceptional cases. It makes no sense for the U.S. to raise this obscure, well-nigh irrelevant issue of secession and use that to erect a barrier to indigenous peoples rights to determine their own futures, foster their own social, political, and cultural values, and secure their economic well-being.

self-determination within the state of which it forms a part. In other circumstances, peoples are expected to achieve self-determination within the framework of their existing state, supra, Secession of Quebec, at 10-11.

³ A state whose government represents the whole of the people or peoples resident within its territory, on a basis of equality and without discrimination, and respects the principles of self-determination in its internal arrangements, is entitled to maintain its territorial integrity under international law and to have that territorial integrity recognized by other states, supra, Secession of Quebec, 11.

⁴ G.A. Res. 2625, U.N. GAOR, 25th Sess., Supp. No. 28, at 121, U.N. Doc A/8028 (1970).