

On the Principle of Self-Determination

1. Self-determination?

Self-determination is the ability of peoples to freely determine their political status and freely pursue their economic, social, and cultural development.¹ In this way, the principle of self-determination affirms peoples' dignity and worth as human beings. Because of this, the United Nations (UN) has recognized this principle as a universal fundamental human right.² The successful practice of this fundamental human right comes hand-in-hand with the ability to freely exercise other fundamental human rights, such as the rights to expression, assembly, and association. The denial of any of these associated rights is often accompanied by the denial of the right to self-determination, and a peoples' subjugation, domination, or exploitation of another people. The UN often places the right to self-determination in the context of a peoples' subjugation, domination, and exploitation by an outside power. Self-determination need not to be exercised solely in the context of shaking off an external force. A peoples' desire for the right to self-determination can also come in an internal context which sees a people oppressed by a minority or majority in their own country.

2. Self-determination in international documents

The principle of self-determination has been recognized and affirmed on the international level by a number of treaties, charters, and declarations, going back at least to the Atlantic Charter signed in 1941. Though the Atlantic Charter is not binding, and cannot compel States to action, the principle is further referenced and discussed in subsequent international documents. Some of the documents reflect international law and are binding upon their State parties. Others, like the Atlantic Charter, are not binding. They are nonetheless important because they demonstrate the importance the international community attaches to the principle.

A. The Atlantic Charter: a non-binding guide post

The Atlantic Charter is one of the first international documents that references self-determination.³ It is a joint declaration by the US and UK expressing the two countries' hopes for the post-World War II future. Among its eight principles is respect for "the right of all peoples to choose the form of Government under which they will live." The signatories state that "They wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them." The declaration holds no legal power, but it demonstrates the importance the two States ascribed to the principle of self-determination, and it portends the principle's inclusion in future documents.

¹ General Assembly resolution 1514 (XV), "Declaration on the Granting of Independence to Colonial Countries and Peoples," A/Res/15/1514, 14 December 1960, <http://www.un.org/en/decolonization/declaration.shtml>

² General Assembly resolution 1514 (XV), "Declaration on the Granting of Independence to Colonial Countries and Peoples," A/Res/15/1514, 14 December 1960, <http://www.un.org/en/decolonization/declaration.shtml>.

³ "The Atlantic Charter," 14 August 1941, http://www.nato.int/cps/en/natohq/official_texts_16912.htm.

B. Setting the tone: The United Nations Charter

The UN Charter, signed on 26 June 1945, is a strong document in international law and a controlling document in most situations.⁴ It references self-determination and self-government in Articles 1, 55, 73, and 76. Articles 1 and 55 state that among the purposes of the UN is the “[development of] friendly relations among nations based on respect for the principle of equal rights and self-determination of people.” In this context the UN sets self-determination as a focal point of its work. Articles 73 and 76 concern non-self-governing territories. They call upon the States that govern these territories to promote and develop the institutions necessary for the achievement of self-governance or independence.

C. Ending Subjugation: The Declaration on the Granting of Independence to Colonial Countries and Peoples

This Declaration, passed on 14 December 1960, is UN General Assembly Resolution 1515. Principle 4 of the Declaration states that subjecting a people to rule by an alien government and exploitation by those governments violates fundamental human rights and contradicts the UN Charter.⁵ It affirms that “All peoples have the right to self-determination,” and states that all people are allowed to freely decide their own political status and to “freely pursue their economic, social, and cultural development.” It continues by stating that a people’s independence cannot be denied them if they are not deemed to be fully prepared. Nor should States use force to stop a people from “peacefully and freely” exercising their right to independence.

D. Strengthening Peace and Security: The Declaration of Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations

The UN General Assembly passed resolution 2625, the Declaration of Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, on 24 October 1970.⁶ The resolution sees the principles of equal rights and self-determination of peoples as central to its goal of maintaining peace and stability between States. It states that “Every State has the duty to refrain from any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of their right to self-determination and freedom and independence.” Not only does every State have the duty to refrain from depriving people of their right to self-determination, but “Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples in accordance with the provision of the [UN] Charter.”

E. Continued focus on self-determination: The Vienna Program and Declaration of Action

The 1993 Vienna Declaration and Program of Action not only affirms that “all peoples have the right to self-determination,” it “recognizes the right of peoples to take any legitimate action, in accordance with

⁴ United Nations, “Charter of the United Nations,” 24 October 1945, 1 UNTS XVI, available at: <http://www.refworld.org/docid/3ae6b3930.html>.

⁵ General Assembly resolution 1514 (XV), “Declaration on the Granting of Independence to Colonial Countries and Peoples,” A/Res/15/1514, 14 December 1960, <http://www.un.org/en/decolonization/declaration.shtml>

⁶ General Assembly resolution 2625 (XXV), “Declaration of Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,” A/Res/25/2625, 24 October 1970, <http://www.un-documents.net/a25r2625.htm>.

the Charter of the United Nations, to realize their inalienable right of self-determination.” It continues further, stating that “the World Conference on Human Rights considers the denial of right of self-determination as a violation of human rights”.⁷

F. Binding with Force of Law: the ICCPR and ICESCR

Many international documents reference self-determination, but not all are binding, and not all reflect international law. However, there are several documents that do have the force of international law for the States that have ratified them. The International Covenant on Civil and Political Rights (ICCPR),⁸ the International Covenant on Economic, Social, and Cultural Rights (ICESCR),⁹ and the Charter of the United Nations have the force of international law for their State parties.

The ICCPR and ICESCR both state that “All peoples have a right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. [...] The State Parties to this present Covenant [...] shall promote the realization of the right to self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.” As Bahrain has acceded to the ICCPR, ICESCR, and UN Charter, it is bound to promote the principle of self-determination, and to respect peoples’ right to determine their political, economic, social, and cultural make-up and development therein.

3. Self-determination in the context of Bahrain

The international community has consistently demonstrated an interest in the principle of self-determination. The demand for self-determination can come in the context of an outside power ruling over a population, or it can apply to a population that is marginalized in its own country. Bahrain fits into the latter category, because it is a country ruled by a hereditary monarch, in which a minority rules over a majority. In the context of Bahrain, self-determination is, in a word, not present. In addition to the macro-level view that sees Bahrain’s Shia majority oppressed by its Sunni ruling minority, Bahrain is also home to a smaller minority: the Ajam; who are descendants of Persian Shia.

As a constitutional monarchy, the Sunni al-Khalifa family rules Bahrain and has the final say in all political and economic matters and all official cultural and social matters. Bahrain has a bicameral system consisting of the Parliament and Shura Council. However, the Shura Council is appointed by the King, and there have been documented issues surrounding voting irregularities and gerrymandering that render Parliament less than fully representative.¹⁰ The Government of Bahrain has passed several laws restricting

⁷ UN General Assembly, Vienna Declaration and Programme of Action, 12 July 1993, A/CONF.157/23, available at: <http://www.refworld.org/docid/3ae6b39ec.html>.

⁸ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.refworld.org/docid/3ae6b3aa0.html>.

⁹ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <http://www.refworld.org/docid/3ae6b36c0.html>.

¹⁰ There have been gerrymandering accusations in the 2002, 2010, and 2014 elections. 2002: http://news.bbc.co.uk/2/hi/middle_east/6172482.stm; 2010: <http://www.reuters.com/article/us-bahrain-elections-fb-idUSTRE69MOTO20101023>; 2014: <https://www.washingtonpost.com/blogs/monkey-cage/wp/2014/12/01/electoral-rules-and-threats-cure-bahrains-sectarian-parliament/>; see also “Apart in Their own Land, Volume 1: government discrimination against Shia in Bahrain,” Americans for Democracy & Human Rights in Bahrain, February 2015, http://adhrb.org/wp-content/uploads/2015/03/ADHRB_Apart-in-Their-Own-Land_web.pdf, pg 16.

the exercise of free speech, print, association, and assembly.¹¹ The government reinforced these laws with anti-terror legislation that has constricted the space for free expression even further.¹²

The effect this legislation and the irregularities and gerrymandering have had on denying Bahrain's Shia and Ajam populations self-determination is considerable. On the one hand, the royal family and its supporters have consolidated power, giving them the authority to make decisions that shape the country. By claiming the sole voice on Bahrain's political status and economic, cultural and social development they have marginalized the rest of Bahrain's population. On the other hand, the imposition of a number of restrictions upon those who oppose the royal family has taken away the voice of the majority of Bahrain's population in their political status and economic, cultural and social development. It is not simply that the majority of Bahrainis do not have a voice in the direction of their country: it is that if they try to claim a voice in the discussion, they face violence, torture, legal penalties, and possibly even death.¹³

The Government of Bahrain's oppression and marginalization of its majority Shia population contravenes its obligations not only under the UN Charter, but also the ICCPR and ICESCR, all three of which it has signed. They call upon countries to not only respect self-determination, but also to facilitate its promotion. Despite this, the Government of Bahrain actively does not allow for self-determination. Where the Declaration on the Granting of Independence to Colonial Countries and Peoples calls on countries not to use force to stop people from exercising their right to self-determination, Bahraini security forces often use violence to suppress peaceful demonstration.¹⁴

The Government of Bahrain's use of force to suppress peaceful demonstrations, and its criminalization of various forms of expression, also contravene the Vienna Program and Declaration of Action. The Declaration recognizes the right of people to take any legitimate action to exercise their right to self-determination. Bahrain's majority Shia have peacefully demonstrated regularly since the February 2011 mass protests, even as the government met the demonstrations with force.

The Vienna Declaration, UN Charter, ICCPR, and ICESCR all affirm the principle of self-determination as a fundamental human right. Those States that sign these documents are obligated by international law to abide by their strictures and language. By signing these documents, the Government of Bahrain agreed to the principle of self-determination, and pledged to respect and facilitate the principle. The actions of the majority of Bahrainis who peacefully demonstrate, vote, and call upon their government to listen to their voices are therefore both sanctioned and encouraged by international law.

¹¹ See the Public Gatherings Law of 1973, Amendments to the Public Gatherings Law of 1973 (Law 32/2006); Law of Protecting Society from Terrorist Acts of 2006; Law of Association of 1989 (Law 21/1989); Press Law of 2002, 2014 Amendments to the Bahraini Penal Code (Law 1/2014).

¹² "Bahrain Law on Counter Terrorism," Bahrain Center for Human Rights, 2 October 2010, <http://www.bahrainrights.org/en/node/3449>.

¹³ "Bahrain protests prompt global concerns," BBC, 15 February 2011, <http://www.bbc.com/news/world-middle-east-12471243>.

¹⁴ "Bahrain: army, police fire on protesters," Human Rights Watch, 18 February 2011, <https://www.hrw.org/news/2011/02/18/bahrain-army-police-fire-protesters>.