**The right to statehood: the case of East Turkestan**

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The right of every people to self-determination of peoples does not mean the right of every people to statehood. But sometimes the right to self-determination does mean the right to statehood. The right to self-determination of the Uyghurs of East Turkestan/ Xinjiang is one of those cases. For Uyghurs, the right to self-determination means a right to statehood.

**Purposes**

The issue of the content of the right to self-determination and in particular whether or not it includes a right of statehood must be approached purposively.[[1]](#footnote-1) The right to self-determination must be read as part of the overall rights amongst which it is found in the international instruments. The right to self-determination needs to be approached from this purposive perspective to set out the conditions under which this right becomes a right to statehood.

Self-determination of a people serves two purposes. One purpose is to ensure a representative, democratic governing framework in which the people can participate. The second is to protect, preserve and develop the people's identity[[2]](#footnote-2). Uyghur statehood would allow for a representative, democratic governing framework in which the Uyghur people could participate and for the Uyghur people to preserve their cultural identity, neither of which is possible now, under Chinese repression.

The right to self-determination is found in both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights[[3]](#footnote-3). Its presence in both Covenants shows it to be a foundation for all rights. These treaties both state in a preambular paragraph that the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights as well as his economic social and cultural rights[[4]](#footnote-4).

Because both Covenants assert the right to self-determination of peoples, this preambular statement can be read to say that the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy the right to self-determination of the people or peoples of which they form part, amongst other rights. In other words, it is necessary for everyone to enjoy the right to self-determination of peoples, amongst other rights, in order for the ideal of free human beings to be achieved. Put in this framework, the question becomes: is the right to statehood necessary in order for the ideal of free human beings to be achieved?

The right of self-determination must be read as part of the overall rights amongst which it is found in the international instruments. Why has the right to self-determination been proclaimed internationally? What is the purpose that the international community wished to achieve by asserting that right? How best can the purpose be realized for which the right to self-determination has been proclaimed? Can that purpose best be realized through creation of a state?

The purposes of human rights, set out in the preamble to the Universal Declaration of Human Rights, are eight in number. The first is achieving respect for human rights. The second is providing a foundation for peace. The third is conforming to the conscience of humanity. The fourth is achieving the highest aspirations of humanity. The fifth is avoiding recourse to rebellion against tyranny and oppression. The sixth is promoting friendly relations amongst nations. The seventh is the promoting social progress and better standards of life. The eighth is achieving a common understanding for the full realization of rights and freedoms. The realization of these purposes requires, I suggest, the creation of the state of East Turkestan. Rejecting the creation of the state of East Turkestan would frustrate the realization of these purposes.

 **Achieving respect for human rights**

Although human rights instruments list many rights, amongst which is the right to self-determination of peoples, at bottom there is only one overall human right, of which the various listed rights are part. That basic right is stated in the Universal Declaration of Human Rights as "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family". The International Human Rights Covenants add: "these rights derive from the inherent dignity of the human person"[[5]](#footnote-5).

In determining the content of any particular human right in the International Bill of Rights (the Universal Declaration, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights) one must ask, can the inherent dignity of the person and the equal and inalienable rights of all members of the human family only be achieved by giving the right the content suggested? Does the content suggested derive from the inherent dignity of the human person?

In particular, in determining whether or not the right to self-determination includes, in a given context, the right to effect statehood, one must ask, can the inherent dignity of the person and the equal and inalienable rights of all members of the human family only be achieved by recognizing a right of statehood? Does a right of statehood derive from the inherent dignity of the human person?

In a situation where the human rights of the people or peoples are being violated in a grave manner either by government or by sections of the population from which the government is either unable or unwilling to offer protection, then the inherent dignity of the person and the equal and inalienable rights of residents could only be achieved by recognizing a right of statehood. A right of statehood, in that context, would derive from the inherent dignity of the human person.

The international law of statehood is akin to international refugee law. It is a backup to protection one expects from the state of which one is a national. It is meant to come into play only in situations when that protection is unavailable. It is surrogate or substitute protection when no other alternative remains.

The right of self-determination was never meant to allow a people to form a state that offers better protection than that from which the people benefits already, where there is already protection[[6]](#footnote-6). There is room for improvement in protection almost everywhere. However, pointing to the need for improvement in an already decent protection system can not justify a right to statehood. Only the absence of protection can do that.

The difference between refugee law and the law of self-determination is that refugee law applies to single individuals. The law of self-determination applies to peoples, to groups of individuals. One individual who no longer has the protection of the state of which he/she is a national is entitled at international law to seek and enjoy the protection of other states. A group of individuals who form a people and who no longer have the protection of the state of which they are nationals are entitled to form a state which can offer them protection[[7]](#footnote-7).

Absent a complete breakdown of state protection, it should be assumed that a state is capable of protecting its people or peoples from grave violations of human rights[[8]](#footnote-8). In order for a claim of a failure of state protection from grave violations of human rights to justify a right of a people to form a state, there must be clear and convincing confirmation of the inability to protect. In a nondemocratic state, that confirmation may be readily forthcoming. In a democratic state with an independent judiciary, there is a presumption, albeit rebuttable, that the state will offer protection to its people or peoples[[9]](#footnote-9).

Would the creation of an independent state of East Turkestan enhance the respect for human rights of the Uyghur people? The answer to that, in light of past experience and present reality is obvious. Yes, it would.

 **Providing a foundation for peace**

Respect for human rights is important on its own. Furthermore, internationally it is important in order to preserve peace in the world. The International Bill of Rights refers to respect for human rights as "the foundation of freedom, justice and peace in the world". Respect for human rights is an end in itself. It is also a means to an end[[10]](#footnote-10).

To the same effect is the Charter of the United Nations. The Charter provides the United Nations shall promote universal respect for and observance of human rights and fundamental freedoms with a view to the creation of conditions[[11]](#footnote-11) of stability.

The question then becomes, in assessing whether any particular human right has a proposed content, does the proposed content provides a foundation for peace in the world? Does the proposed content create conditions of stability? In particular, would including the right to statehood in the right to self-determination provide a foundation for peace in the world? Would it create conditions of stability?

The answer in a general sense to these questions is clearly not. On the contrary, including the right to statehood in the right to self-determination would create conditions of instability. If every people had a right of statehood, then almost no state would be stable.

The only situation where interpreting the right of self-determination to include a right to statehood would further stability and peace is a situation where violations of human rights against a people are so severe that these violations are themselves destabilizing, a threat to the peace. In that situation, the creation of a state that puts an end to the violations has a stabilizing and peace generating effect.

Would the creation of East Turkestan as an independent state provide a foundation for peace? The failure to create East Turkestan as an independent state has led to massive violations of the human rights of Uyghurs of Xinjiang, leading to a deterioration of relations between China and other countries. If East Turkestan shad been created much earlier, these massive violations of human rights and the consequent deterioration of relations could have been avoided.

 **Conforming to the conscience of humanity**

The Universal Declaration of Human Rights observes that disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind. The International Bill of Rights is a reaction to those barbarous acts. It is a statement of the standards the disregard and contempt of which outrage the conscience of humanity[[12]](#footnote-12).

In assessing whether any proposed right is part of an asserted right in the International Bill of Rights, it is legitimate to ask whether disregard and contempt for the asserted right would outrage the conscience of humanity, whether disregard and contempt for the asserted right would be considered barbarous. In particular, in determining whether the right to self-determination includes a right of statehood, one must ask whether disregard and contempt for a right of statehood would outrage the conscience of humanity, whether disregard and contempt for a right of statehood would be considered barbarous.

In order to come to a conclusion that disregard and contempt for a right of statehood would outrage the conscience of humanity, in order to come to a conclusion that disregard and contempt for a right of statehood would be considered barbarous, there must be overwhelming universal condemnation of that disregard. A mere trend in support of a right of statehood would not suffice.[[13]](#footnote-13)

However, there is no universal overwhelming condemnation of disregard of the right of statehood. It is even going too far to say that there a trend in support of a right of statehood. Disregard of the right of statehood is not considered barbarous by the international community. Disregard of the right of statehood does not shock the conscience of humanity.

There are two situations in which disregard of the right of statehood would shock the conscience of humanity. One is a situation where violations of human rights are so grave that statehood is necessary in order to protect against the continuing violations. The other is a situation where there were violations that have ceased, but the violations were so atrocious that it would be considered inhumane to expect the people or peoples who are victims of those violations to remain as part of the state that perpetrated or let happen those violations.

Again, here there is an analogy with the refugee situation. A person may be considered to be a refugee even though the person is not at risk of serious violations of human rights where "there are compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality."[[14]](#footnote-14) Violations of human rights which have ceased can justify a refusal to accept the protection of the state of which a people forms part only in extraordinary situations, where the victimization of the people has been so appalling that it alone is sufficient to justify the refusal to accept the protection of the existing state.[[15]](#footnote-15)

Has the disregard and contempt for human rights of the Uyghurs of East Turkestan/ Xinjiang resulted in barbarous acts which have outraged the conscience of mankind? The answer to that question, I am sure you would agree, is yes.

 **Achieving the highest aspirations of humanity**

The Universal Declaration of Human Rights proclaims that the advent of a world where human rights are enjoyed is the highest aspiration of the common people.[[16]](#footnote-16) In assessing whether any proposed right is part of an asserted right in the International Bill of Rights, we should ask whether enjoyment of the right is one of the highest aspirations of humanity. In particular, in determining whether the right to self-determination includes a right of statehood, one must ask whether enjoyment of a right of statehood is one of the highest aspirations of humanity.

Put this way, a right of statehood not only appears inappropriately included in the right of self-determination of peoples. It appears ludicrous to include a right of statehood in the right of self-determination of peoples. While a self-determination is a credible, legitimate aspiration for the common people at all times everywhere, a right of statehood is not. Statehood may be a necessity, a resort for self-protection in a given context. It cannot possibly be a credible legitimate aspiration in all contexts for all peoples.

The problem here is not just practical; it is conceptual. The right to self-determination is a human right. The right to statehood is not. At most, the right to statehood is a means to realize the right to self-determination. Because it is a means, it becomes subject to the test whether it is the best means or the most appropriate means of realizing the human right of self-determination. In situations where the right to self-determination is realized in other ways, the right to statehood does not exist, because there is no need to resort to the means of statehood to realize the end of self-determination.

One can hardly fault the Uyghur people for failing to try other means besides statehood to recognize respect for their right to self-determination. These other means were tried from the inception of Communist rule over China with disastrous results. The history of these failed attempts is a persuasive argument for an East Turkestan state to offer protection to the Uyghurs of East Turkestan.

 **Avoiding recourse to rebellion against tyranny and oppression**

The Universal Declaration of Human Rights proclaims that it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected[[17]](#footnote-17) This preamble is the closest the International Bill of Rights comes to recognizing the legitimacy of forming a new state. For rebellion, like secession is a rejection of the authority of the state. Rebellion is not recognized, however, as a right, but rather something to which men and women may be understandably driven by tyranny and oppression. Rebellion is not something that is endorsed. Rather, in certain circumstances, those of tyranny and oppression, it is excused.

The forming of a state must be considered in the same light as rebellion. It is not a right in itself, but a resort that is excused in situations of tyranny and oppression. Conversely, where there is neither tyranny nor oppression, rebellion is unnecessary. So is the formation of a state.

It makes no sense to say that the right to rebellion needs to be protected in order to avoid recourse to rebellion. The right to rebel is not a fundamental human right. Rebellion is an understandable reaction to the violation of human rights, not the expression of a right.

It makes no sense to say that the right to form a state needs to be protected in order to avoid recourse to state formation. What needs to be protected are the fundamental human rights and freedoms. In the absence of such protection, recourse to state formation becomes understandable. Again here, because of the absence of protection of Uyghurs from human rights violations by the Chinese state, the creation of a state of East Turkestan is understandable.

 **Promoting friendly relations amongst nations**

The United Nations Charter refers to the principle of self-determination but does not assert the principle as one which the United Nations and its member states should follow. The obligation is rather to develop friendly relations based on respect for the principle of self-determination.[[18]](#footnote-18)

The language of the United Nations Charter is ambiguous. Is the Charter asserting that where there is violation of the principle of self-determination, then unfriendliness is excused legally? Or is the Charter asserting that in order for there to be friendly relations, realistically and practically, there must be respect for the principle of self-determination?

The Universal Declaration of Human Rights resolves this ambiguity in a preambular paragraph, asserting that respect for human rights is essential to promote the development of friendly relations between nations. It becomes impossible to promote friendly relations between nations when human rights, including the right to self-determination of peoples, are being violated. The point being made is the practical one rather than the legal one. Violations of human rights do not excuse legally the rupture of friendly relations. Rather, violations of human rights impede practically the development of friendly relations.

In assessing whether any proposed right is part of an asserted right in the International Bill of Rights, we should ask whether respect for the right is essential to promote the development of friendly relations amongst nations. In particular, in determining whether the right to self-determination includes a right of statehood, one must ask whether it is essential in order to promote the development of friendly relations amongst nations that the right to statehood be respected.

It is hard to see how respect for the right of statehood, in the absence of human rights violations, can promote friendly relations amongst nations. Whether or not the forming of a state is a legal act, it is a decidedly unfriendly act against the state from which the territory of the new state is drawn. Any support of that new state formation would also be considered unfriendly.

Indeed, this has been the Canadian experience. When French President Charles de Gaulle uttered his statement "Vive le Québec Libre", which was interpreted as endorsing a right of statehood of Quebec, that utterance led to a deterioration of relations between France and Canada.

In order to promote friendly relations amongst states, the formation of new states rather than being endorsed, should be discouraged. Friendly relations amongst states are most likely to be promoted if states do not see other states endorsing their dismemberment.

One must acknowledge that, where human rights are not protected, then it is unrealistic to expect states to be friendly to each other. In such a situation, if formation of a new state occurs or is attempted, one cannot blame the formation of the new state for the worsening of international relations. The blame must fall on the prior grave violations of human rights that prompted the attempt to create the new state.

However, where human rights are protected and formation of a new state is attempted, the blame for the deterioration in friendly relations must fall squarely on the shoulders of the statehood attempt itself. In such a situation, formation of a new state, rather than being a realization of the objectives of the International Bill of Rights and the United Nations Charter, works to frustrate the objective of friendly relations in the International Bill of Rights and the United Nations Charter.

It is stating the obvious to say that assertion by states of the creation of East Turkestan would create a problem in international relations between the Government of China and the asserting states. But it would be perverse to blame the assertion for the worsening of international relations. Rather the blame must fall on the prior grave violations of human rights against the Uyghurs.

 **Promoting social progress and better standards of life**

The Universal Declaration of Human Rights proclaims that the peoples of the United Nations have in the Charter determined to promote social progress and better standards of life in larger freedoms[[19]](#footnote-19). In assessing whether any proposed right is part of an asserted right in the International Bill of Rights, we should ask whether protection of the proposed right helps to promote social progress and better standards of life. In particular, in determining whether the right to self-determination includes a right to form a state, one must ask whether respect for the right to form a state helps to promote social progress and better standards of life.

In a situation of economic and social tyranny and oppression, where a people are subjected to grave violations of economic and social rights, one can say that statehood helps to promote social progress and better standards of life. Otherwise, it does not.

What is at issue here is not the net economic benefits of statehood to the people in the new state, but rather social progress and better standards of life for all humanity. In any country where a richer part secedes from a poorer whole, the richer part will, presumably, be better off after the secession than before. However, humanity as a whole does not benefit socially and economically.

When the Universal Declaration of Human Rights talks about social progress and better standards of life, it is referring to fundamental human economic and social rights, not just economic and social performance indicators. In the absence of violation of social and economic rights directed against a people, there is no linkage between statehood and respect for economic and social rights.

The destruction of the Uyghurs of East Turkestan/ Xinjiang is a loss to all of humanity. It is not just the Uyghurs who suffer. Statehood for the Uyghur people of East Turkestan/ Xinjiang, by offering them protection they do not have now, would be a benefit to all humanity. By protecting Uyghurs of East Turkestan/ Xinjiang from the worst depredations, the existence of East Turkestan as an independent state would be a global boon.

 **Achieving a common understanding for the full realization of rights and freedoms**

Finally, the Universal Declaration of Human Rights proclaims that a common understanding of rights and freedoms is of the greatest importance for the full realization of the rights and freedoms[[20]](#footnote-20). In assessing whether any proposed right is part of an asserted right in the International Bill of Rights, we should ask whether a common understanding that the proposed right is part of the asserted right would assist the full realization of rights and freedoms. In particular, in determining whether the right to self-determination includes a right of statehood, we should ask whether a common understanding that respect for the right of statehood is part of the right to self-determination would be important for the full realization of human rights.

What is at issue here, is not whether there is a common understanding. It is quite clear that there is no common understanding that the right to self-determination includes a right of statehood.

However, the issue is not just whether there is a common understanding of the right to self-determination and what it is. The issue is rather what common understanding of self-determination would be important for the full realization of human rights and freedoms.

A common understanding that a general right to form a state is part of the right of self-determination would not be important for the full realization of all rights and freedoms. Indeed, it is hard to see, in the absence of gross oppression, how forming a state would assist in the full realization of rights and freedoms.

In contrast, where there is or has been gross oppression, a common understanding that the right to form a state is part of the right of self-determination would be important for the full realization of all rights and freedoms. If existing states knew that at international law a right to form a new state arose from gross oppression, then gross oppression would be less likely to occur. Where there is gross oppression, the right to form a state is part of the right of self-determination.

If the genocide inflicted against the Uyghur people of East Turkestan/ Xinjiang does not give these peoples a right of statehood, the lesson human rights violators would draw would be chilling. It would be a form of impunity that humanity should not countenance. A linkage between the Uyghur genocide and the legitimacy of East Turkestan is a warning to would be violators everywhere and at all times that oppression of a minority provides a justification for their statehood they did not have before.

**III. Precedents**

The relevant international law precedents are these:

 **Eluent Islands**

There is first the situation of the Eluent Islands in 1921. Before World War I, Finland, which included the Swedish speaking Eluent Islands, was part of Imperial Russia. After the Russian revolution of 1917, Finland broke away from Russia and its Eluent Islands wanted to join Sweden. The Council of the League of Nations, the component of the League charged with settling international disputes, appointed a Commission of Rapporteurs to advise the Council on the dispute between Sweden and Finland over the Islands, whether the Eluent Islands should be part of Sweden or Finland.

The Commission advisory opinion stated:

 "But what reasons would there be for allowing a minority to separate itself from the State to which it is united, if this State gives it the guarantees which it is within its rights in demanding, for the preservation of its social, ethnical or religious character? Such indulgence, apart from every political consideration, would be supremely unjust to the State prepared to make these concessions.

 The separation of a minority from the State of which it forms a part and its incorporation in another State can only be considered as an altogether exceptional solution, a last resort when the State lacks either the will or the power to enact and apply just and effective guarantees."[[21]](#footnote-21)

 In the end, the Eluent Islands remained Swedish speaking and part of Finland, and remains Swedish speaking and part of Finland to this day. One can draw from that advisory opinion these principles. A minority has a right to effective guarantees for the preservation of its social, ethnic or religious character. If those guarantees are not given or, if given, are not effective, then the right of self-determination of the minority becomes a right to separate from the state of which it forms part.

That is the case of the Uyghurs of East Turkestan/ Xinjiang. They do not have, within China, effective guarantees for the preservation of their distinctive social, ethnic and religious character. On the contrary, China under the Communists is engaged in an active effort to obliterate that distinctive character.

 **Zaire**

The second jurisprudential precedent relates to Zaire. The Katangese Peoples' Congress in 1992 requested the African Commission on Human and Peoples' Rights to recognise the Katangese Peoples' Congress as a liberation movement entitled to support in the achievement of independence for Katanga, recognise the independence of Katanga and help secure the secession of Zaire from Katanga. The Commission denied the request, ruling:

 "In the absence of concrete evidence of violations of human rights to the point that the territorial integrity of Zaire should be called to question and in the absence of evidence that the people of Katanga are denied the right to participate in Government ..., the Commission holds the view that Katanga is obliged to exercise a variant of self‑determination that is compatible with the sovereignty and territorial integrity of Zaire." [[22]](#footnote-22)

The implication is that in the presence of concrete evidence of violations of human rights to the point that the territorial integrity of a state should be called into question and of evidence that the people of a state are denied the right to participate in Government, the right to secession arises. That is the case of the Uyghurs of East Turkestan/ Xinjiang. Here there is concrete evidence of violations of human rights to the extent that the territorial integrity of China should be called into question and evidence that the Uyghurs of East Turkestan/ Xinjiang are denied the right to participate in their own governance.

 **Cyprus**

The third jurisprudential precedent is a 1996 case before the European Court of Human Rights about Cyprus. After a coup in Cyprus in 1974 engineered by Greece to unite Cyprus with Greece, Turkey invaded and occupied the northern part of Cyprus. The Turkish Cypriot authorities proclaimed the Turkish Republic of Northern Cyprus and purported to secede from Cyprus.

Titina Loizidou, a Greek Cypriot, complained to the European Commission and Court of Human Rights, that Turkey was denying her access to her property in Northern Cyprus. The Court held in favour in principle of Ms. Loizidou without giving her a remedy on the basis that the decision on remedy was not ready for decision.

Turkey, in answer to the claim of Ms. Loizidou that they had violated the European Convention on Human Rights, argued that the violation, if it existed, was not theirs but rather that of the Turkish Republic of Northern Cyprus. Turkey further argued that the Court should recognize the Turkish Republic of Northern Cyprus as the responsible state based on the right to self-determination of the Turkish people of Northern Cyprus.

Judge Wildhaber, joined by Judge Ryssdal, in a separate concurring opinion, wrote:

 "Until recently in international practice the right to self‑determination was in practical terms identical to, and indeed restricted to, a right to decolonisation. In recent years a consensus has seemed to emerge that peoples may also exercise a right to self‑determination if their human rights are consistently and flagrantly violated or if they are without representation at all or are massively under‑represented in an undemocratic and discriminatory way. If this description is correct, then the right to self‑determination is a tool which may be used to re‑establish international standards of human rights and democracy.

 ... where the modern right to self‑determination does not strengthen or re‑establish the human rights and democracy of all persons and groups involved, as it does not in the instant case, it cannot be invoked to overcome the international community's policy of non‑recognition of the 'TRNC'"[[23]](#footnote-23)

The implication of this reasoning is this. Take a situation where the human rights of a people are consistently and flagrantly violated. Or suppose a situation where a people are without representation at all or are massively under‑represented in an undemocratic and discriminatory way. Assume further that the claim of the people to statehood would strengthen or re‑establish the human rights and democracy of all persons and groups involved. Then, in that context, the right to self-determination could be invoked to accept the right to statehood.

These criteria apply to the situation of Uyghurs in East Turkestan/ Xinjiang. Their human rights are consistently and flagrantly violated. They are unrepresented in the Chinese government system. What formal representation does exist is undemocratic and discriminatory. Statehood could realize respect for the human rights and democracy of Uyghurs. In that context, the right to self-determination of the Uyghurs means the right to statehood.

 **Quebec**

The next significant jurisprudential development was the Secession Reference in the Supreme Court of Canada. Quebec held referenda in 1980 and 1995 about seceding from Canada. The 1980 referendum defeated secession by a vote of almost 60% against. The 1995 referendum result was a lot closer, with only slightly less than 51% against secession.

The second referendum prompted the Government of Canada to ask the Supreme Court of Canada a set of questions, two of which related specifically to international law:

 "Does international law give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally? In this regard, is there a right to self-determination under international law that would give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally?"

Part of the answer that the Court gave to these questions was this:

 "when a people is blocked from the meaningful exercise of its right to self‑determination internally, it is entitled, as a last resort, to exercise it by secession."

The Court also wrote:

 "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 recognized by other States. Quebec does not meet the threshold of a colonial people or an oppressed people, nor can it be suggested that Quebecers have been denied meaningful access to government to pursue their political, economic, cultural and social development."[[24]](#footnote-24)

The implication is that if the people of Quebec were an oppressed people or if the people of Quebec had been denied meaningful access to government to pursue their political, economic, cultural and social development, then the people of Quebec would be entitled to secede from Canada at international law. The Uyghurs of East Turkestan/ Xinjiang meet these criteria. They are a colonial, oppressed people and they have been denied meaningful access to the Government of China to pursue their political, economic, cultural and social development.

 **Southern Cameroon**

Fourteen individuals brought a communication on their behalf and on behalf of the people of Southern Cameroon to the African Commission on Human and Peoples' Rights against the Republic of Cameroon, claiming a right to statehood for Southern Cameroon under the African Charter on Human and Peoples' Rights. The claim was denied. The Commission acknowledged that the rights of the Southern Cameroonians had been violated, but not sufficiently to justify a right to statehood.

The Commission in May 2009 wrote:

 "The Commission has so far found that the Respondent has violated Articles 2, 4, 5, 6, 7, 11 and 19 of the Charter. It is the view of the Commission, however that, in order for such violations to constitute the basis for the exercise of the right to self-determination under the African Charter, they must meet the test set out in the Katanga case, that is, there must be: 'concrete evidence of violations of human rights to the point that the territorial integrity of the State Party should be called to question, coupled with the denial of the people, their right to participate in the government as guaranteed by Article 13.1.'"[[25]](#footnote-25)

 **Kosovo**

The fifth legal precedent I want to mention is the case of Kosovo. The United Nation General Assembly in October 2008 asked the International Court of Justice for an advisory opinion on this question: "Is the unilateral declaration of independence by the Provisional Institutions of Self‑Government of Kosovo in accordance with international law?"

The Court, in July 2010, the concluded that the declaration of independence of Kosovo of February 2008 did not violate international law. Justice Abdulqawi Yusuf, in a separate opinion addressed the international law of self-determination. He wrote:

 "Turning now to the issue of self‑determination itself, it should be observed at the outset that international law disfavours the fragmentation of existing States and seeks to protect their boundaries from foreign aggression and intervention. It also promotes stability within the borders of States, although, in view of its growing emphasis on human rights and the welfare of peoples within State borders, it pays close attention to acts involving atrocities, persecution, discrimination and crimes against humanity committed inside a State. To this end, it pierces the veil of sovereignty and confers certain internationally protected rights to peoples, groups and individuals who may be subjected to such acts, and imposes obligations on their own State as well as other States. The right of self-determination, particularly in its post‑colonial conception, is one of those rights.

 8. It is worth recalling, in this context, that the right of self‑determination has neither become a legal notion of mere historical interest nor has it exhausted its role in international law following the end of colonialism. .... It is a right which is exercisable continuously particularly within the framework of a relationship between peoples and their own State.

 9. In this post‑colonial conception, the right of self‑determination chiefly operates inside the boundaries of existing States in various forms and guises, particularly as a right of the entire population of the State to determine its own political, economic and social destiny and to choose a representative government; and, equally, as a right of a defined part of the population, which has distinctive characteristics on the basis of race or ethnicity, to participate in the political life of the State, to be represented in its government and not to be discriminated against. These rights are to be exercised within the State in which the population or the ethnic group live, and thus constitute internal rights of self‑determination. They offer a variety of entitlements to the concerned peoples within the borders of the State without threatening its sovereignty.

 10. In contrast, claims to external self‑determination by such ethnically or racially distinct groups pose a challenge to international law as well as to their own State, and most often to the wider community of States. Surely, there is no general positive right under international law which entitles all ethnically or racially distinct groups within existing States to claim separate statehood, as opposed to the specific right of external self‑determination which is recognized by international law in favour of the peoples of non‑self‑governing territories and peoples under alien subjugation, domination and exploitation. Thus, a racially or ethnically distinct group within a State, even if it qualifies as a people for the purposes of self‑determination, does not have the right to unilateral secession simply because it wishes to create its own separate State, though this might be the wish of the entire group. The availability of such a general right in international law would reduce to naught the territorial sovereignty and integrity of States and would lead to interminable conflicts and chaos in international relations.

 11. This does not, however, mean that international law turns a blind eye to the plight of such groups, particularly in those cases where the State not only denies them the exercise of their internal right of self-determination ..., but also subjects them to discrimination, persecution and egregious violations of human rights or humanitarian law. Under such exceptional circumstances, the right of peoples to self‑determination may support a claim to separate statehood provided it meets the conditions prescribed by international law, in a specific situation, taking into account the historical context. Such conditions may be gleaned from various instruments, including the Declaration on Principles of International Law Concerning Friendly Relations and Co‑operation among States in Accordance with the Charter of the United Nations, which, ... reflects customary international law. The Declaration contains, under the principle of equal rights and self‑determination of peoples, the following saving clause:

 'Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self‑determination of peoples ... and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.'

 12. This provision makes it clear that so long as a sovereign and independent State complies with the principle of equal rights and self‑determination of peoples, its territorial integrity and national unity should neither be impaired nor infringed upon. It therefore primarily protects, and gives priority to, the territorial preservation of States and seeks to avoid their fragmentation or disintegration due to separatist forces.

 However, the saving clause in its latter part implies that if a State fails to comport itself in accordance with the principle of equal rights and self-determination of peoples, an exceptional situation may arise whereby the ethnically or racially distinct group denied internal self‑determination may claim a right of external self‑determination or separation from the State which could effectively put into question the State's territorial unity and sovereignty.

 16. To determine whether a specific situation constitutes an exceptional case which may legitimize a claim to external self‑determination, certain criteria have to be considered, such as the existence of discrimination against a people, its persecution due to its racial or ethnic characteristics, and the denial of autonomous political structures and access to government. A decision by the Security Council to intervene could also be an additional criterion for assessing the exceptional circumstances which might confer legitimacy on demands for external self-determination by a people denied the exercise of its right to internal self-determination. Nevertheless, even where such exceptional circumstances exist, it does not necessarily follow that the concerned people has an automatic right to separate statehood. All possible remedies for the realization of internal self‑determination must be exhausted before the issue is removed from the domestic jurisdiction of the State which had hitherto exercised sovereignty over the territory inhabited by the people making the claim. In this context, the role of the international community, and in particular of the Security Council and the General Assembly, is of paramount importance." [[26]](#footnote-26)

The Uyghurs of East Turkestan/ Xinjiang have exhausted all possible remedies in China for the realization of internal self-determination. The issue of self-determination can accordingly be removed from the domestic jurisdiction of China.

**IV. Conclusion**

So, in conclusion, the right to self-determination of a people does not always mean a right to statehood. However, it coalesces into a right to statehood whenever the rights of a people are violated in so gross and flagrant a manner without local remedy that to expect the people to remain under the government of the perpetrators would be inhumane.

The rights of Uyghurs of East Turkestan/ Xinjiang have been violated in so gross and flagrant a manner without remedy in China that to expect them to remain under the government of their Chinese perpetrators would be inhumane. The right to self-determination of these people has become a right to statehood in East Turkestan.

The right to self-determination of peoples means that the State of East Turkestan has to be created. Rejecting the existence of East Turkestan as an independent state means rejecting the right to self-determination of peoples.

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1. Vienna Convention on the Law of Treaties, Article 31(1) [↑](#footnote-ref-1)
2. See the Saskatoon Statement on Self Determination, March 6, 1993, adopted at the Martin Ennals Memorial Symposium. [↑](#footnote-ref-2)
3. Common article 1(1) [↑](#footnote-ref-3)
4. The International Covenant on Civil and Political Rights, preambular paragraph three; International Covenant on Economic, Social and Cultural Rights, preambular paragraph three. [↑](#footnote-ref-4)
5. Universal Declaration of Human Rights, preambular paragraph 1; International Covenant on Civil and Political Rights, preambular paragraphs 1 and 2; International Covenant on Economic, Social and Cultural Rights, preambular paragraphs 1 and 2. [↑](#footnote-ref-5)
6. *Ward v. AG of Canada*, Supreme Court of Canada case number 21937, June 30, 1993, at pages 16, 37 and 38 [↑](#footnote-ref-6)
7. Universal Declaration of Human Rights, Article 14(1) [↑](#footnote-ref-7)
8. *Ward v. AG of Canada*, Supreme Court of Canada case number 21937, June 30, 1993, at page 36; *Zalzali v. M.E.I.* (1991) 3 F.C. 605 (F.C.A.); *M.E.I. v. Villafranca*, A-69-90, December 18, 1992, Federal Court of Appeal [↑](#footnote-ref-8)
9. *Ward v. AG of Canada,* Supreme Court of Canada case number 21937, June 30, 1993, at pages 16, 37 and 38; *M.E.I. v. Satiacum* (1989) 99 N.R. 1717 (F.C.A.) at 176 [↑](#footnote-ref-9)
10. Universal Declaration of Human Rights, preambular paragraph 1; International Covenant on Civil and Political Rights, preambular paragraph 1; International Covenant on Economic, Social and Cultural Rights, preambular paragraph 1. [↑](#footnote-ref-10)
11. Article 55 [↑](#footnote-ref-11)
12. Universal Declaration of Human Rights preambular paragraph 2 [↑](#footnote-ref-12)
13. *Re Kindler and Minister of Justice* (1991) 67 C.C.C.(3d) 1 at 11. (S.C.C.) [↑](#footnote-ref-13)
14. 1951 Convention Relating to the Status of Refugees, Article 1C(5); Immigration Act, Continuing Consolidation of the Statutes of Canada, Chapter I-2, section 2(3); United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status, paragraph 136. [↑](#footnote-ref-14)
15. *M.E.I. v. Obstoj* (1992) 2 F.C. 739 (F.C.A.); *Hassan and Hassan v. M.E.I.*, A-653-92, May 4, 1994 (F.C.T.D.) [↑](#footnote-ref-15)
16. Universal Declaration of Human Rights preambular paragraph 2 [↑](#footnote-ref-16)
17. Universal Declaration of Human Rights preambular paragraph 3 [↑](#footnote-ref-17)
18. Articles 1(2), 55; David Matas "Can Quebec separate?" (1975) McGill Law Journal 387 at 399 [↑](#footnote-ref-18)
19. Universal Declaration of Human Rights preambular paragraph 5; United Nations Charter article 55(a) [↑](#footnote-ref-19)
20. Universal Declaration of Human Rights preambular paragraph 7. [↑](#footnote-ref-20)
21. Report Presented to the Council of the League of Nations by the Commission of Rapporteurs page 4, <https://www.ilsa.org/Jessup/Jessup10/basicmats/aaland2.pdf> [↑](#footnote-ref-21)
22. *Katangese Peoples Congress v Zaire* (Communication no. 72/92) [1992] ACHPR 3; (1 January 1992) paragraph 6 <https://africanlii.org/afu/judgment/african-commission-human-and-peoples-rights/1992/3> [↑](#footnote-ref-22)
23. Council of Europe, European Court of Human Rights, (Grand Chamber), case of *Loizidou v. Turkey*, (application no. 15318/89), Judgment, Strasbourg, 18 December 1996,

<https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Loizidou%20v%20Turkey.pdf> [↑](#footnote-ref-23)
24. *Reference re Secession of Quebec*, 1998 CanLII 793 (SCC), [1998] 2 SCR 217 <https://www.canlii.org/en/ca/scc/doc/1998/1998canlii793/1998canlii793.html?searchUrlHash=AAAAAQATc2VjZXNzaW9uIHJlZmVyZW5jZQAAAAAB&resultIndex=1> [↑](#footnote-ref-24)
25. Paragraph 194, 266/03: *Kevin Mgwanga Gunme et al / Cameroon*, 27 May 2009, Communication No. 266/2003 [↑](#footnote-ref-25)
26. Accordance with international law of the unilateral declaration of independence in respect of Kosovo, Advisory Opinion of 22 July 2010

<https://www.icj-cij.org/public/files/case-related/141/141-20100722-ADV-01-02-EN.pdf> [↑](#footnote-ref-26)