

## Chapter 3, Problem I

### Section E

#### *Self-Determination and Russia's Invasion of Ukraine*

The February 2022 invasion by Russia of Ukraine, which is discussed in detail in the update to Chapter 13, also involved claims of self-determination. On February 21, Russian President Putin declared that Ukraine as a state was a mere creation of the Soviet Union, with artificial borders. He further announced the recognition of two areas of eastern Ukraine, Donetsk and Luhansk, as independent “People’s Republics.” In his justification for the war in a speech on February 24, he noted that “We had to stop that atrocity, that genocide of the millions of people who live there and who pinned their hopes on Russia, on all of us. It is their aspirations, the feelings and pain of these people that were the main motivating force behind our decision to recognise the independence of the Donbass people’s republics.” He further cited treaties of friendship and mutual assistance with them – ratified on February 22 – as a basis for the action against Ukraine.

In July 2022, after five months of war, Russian Foreign Minister Lavrov stated, “We are determined to help the people of eastern Ukraine to liberate themselves from the burden of this absolutely unacceptable regime.” Shortly thereafter, U.S. Secretary of State Blinken called Russian actions in eastern Ukraine part of a “playbook” that they had used in Crimea. He predicted that “Russia-installed leaders will hold sham referendums to manufacture the fiction that the people in those places want to join Russia.”

#### *Indigenous Peoples and Self-Determination*

International law on self-determination has generally lagged concerning indigenous peoples. States on whose territories indigenous peoples live in large numbers – in particular Australia, Canada, the United States, and New Zealand – were long reluctant to clarify what rights they enjoy in international law. Those states and others feared that such an elaboration would both require new domestic policies as well as expose their own oppressive practices against indigenous peoples, whether from centuries ago or well into the 20th and 21st centuries. Although the Crees of Quebec, discussed in Section E, relied on the concept of a “people” to assert their distinctiveness from the French-Canadian population of Quebec, international law only recently began to offer clearer guidance on the rights of indigenous peoples.

The landmark development in international law was the 2007 [United Nations Declaration on the Rights of Indigenous Peoples](#) (UNDRIP), adopted by the General Assembly by a vote of 144-4-11, after years of preparatory work by governments and indigenous groups around the world. Since 2007, all four of the states opposing the resolution (the same four noted above) have reversed their position and now support the resolution.

Among the key provisions of the resolution are:

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

#### Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

#### Article 3

Indigenous 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.

#### Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

#### Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

#### Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

#### Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

#### Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

#### Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

#### Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

#### Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or 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.

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society. .

UNDRIP's status as a unanimously endorsed General Assembly Resolution is generally regarded as rendering it soft law, though it appears [premature](#) to describe it as reflecting customary international law. Yet the resolution and the various UN processes implementing it have been influential in states' approaches to indigenous peoples. Indigenous peoples have invoked UNDRIP in political venues and legal proceedings, and it has been cited by various courts and tribunals. At the same time, the resolution, which took many years to complete, is not legally binding and has faced resistance from many domestic politicians. For one account of the influence of UNDRIP in Canada, see [this recent news story](#).

Compare UNDRIP to Resolution 1514 and the Friendly Relations Declaration. What differences and similarities do you see? How does the right of self-determination of indigenous peoples set out in UNDRIP differ from that of the population of a state as a whole, colonial peoples, and people within existing states? Should international law differentiate among these groups with respect to the right of self-determination? In particular, should how should the self-determination claims of indigenous peoples compare to those of ethnic or national minorities within a state?

#### Section G

Since the publication of the casebook, Africa has witnessed 10 attempted military takeovers of elected governments. Successful coups took place in Mali (2020), Chad (2021), Guinea (2021), Sudan (2021), Burkina Faso (2022 and 2023), Niger (2023), and Gabon (2023). In most instances, the African Union's institutions and Western states condemned the coup, but as of the fall of 2023, the military has remained in power in all these cases. (In the case of Sudan, the army is fighting a civil war with a quasi-state army led by a former general.). All but Chad have been suspended from the AU; the decision not to suspend Chad received significant

[backlash](#) from civil society organizations. The United Nations has continued to seat the representatives of the new regimes in the sessions of the General Assembly. While some of the coups have ruptured relations with allies (e.g., with France in the case of some of its former colonies), the United States and others have continued to work with military regimes on matters concerning military cooperation.

In 2020, the African Court of Human and People's Rights ruled in the case of [Noudehouenou v. Benin](#) that a political opposition figure who had been wrongfully convicted and imprisoned had been deprived of the right to presumption of innocence under the African Charter on Human and People's Rights. It also found that Benin's amendments to its constitution that impeded the plaintiff's right to participate in public affairs violated the African Charter on Democracy, Election and Good Governance (ACDEG) and ordered Benin to repeal the revision and related laws under it that would have governed Benin's April 2021 election. While not directly reviewing the legality of Benin's elections, the tribunal nevertheless was able to apply African regional law regarding democracy and representative government. However, in response to the ruling, Benin withdrew its declaration that had given its citizens access to the Court.