

Provision of weapons to an opposition group would likely constitute a violation of the prohibition on intervention in the domestic affairs of states. This principle was recognized by the ICJ in *Nicaragua*.¹⁶ This prohibition may not apply, however, to the provision of arms to legitimate self-determination movements, as discussed below.

2.5. Use of Force by Peoples Exercising the Right of Self-Determination

A right of self-determination of peoples exists at international law, both as a matter of treaty and custom. Although mentioned briefly in the *UN Charter*¹⁷, the right finds concrete expression in Common Article 1 of the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Cultural and Social Rights*, which states in part:

1(1). All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

This right is reiterated, *inter alia*, in the *Friendly Relations Declaration*, which provides that:

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

Such widespread international recognition of the principle of self-determination leads to its characterization as a principle of customary international law, in addition to its status as treaty law.¹⁸

With respect to the establishment of a separate state by a people exercising its right to self-determination, this principle most clearly applies in the context of decolonization and alien occupation, where it has overwhelming legal support. The application of this principle in other contexts poses greater difficulty resulting from limitations expressed in, *inter alia*, the *Friendly Relations Declaration*, which provides that the right of self-determination:

shall not 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.

Reconciling the competing principles of state sovereignty and self-determination necessarily requires that self-determination generally be accommodated internally, that is within existing state structures and borders, with external self-determination confined only to exceptional circumstances.

Colonization is the most obvious example of a justification for external self-determination. This principle may be extended to cover other peoples under alien domination with little difficulty. A significantly more controversial argument may also be advanced that a people has the right to external self-determination in the event of significant internal repression (in the absence of colonial domination or alien occupation), on the basis that the repressive state is no longer 'conducting itself in compliance with the principle of equal rights and self-determination of peoples'.¹⁹

Where a people is legally entitled to 'external' self-determination, a strong argument can be advanced that it is entitled to use force to secure the exercise of this right. Support for the use of force by

¹⁶ *Nicaragua*, paras. 187-201.

¹⁷ See, e.g., Articles 1 and 55.

¹⁸ See, e.g., Antonio Cassese, *Self-determination of peoples: A Legal Reappraisal*, Cambridge: Cambridge University Press, 1995 at 171-72; John Currie, *Public International Law*, Toronto: Irwin Law, 2001 at 48; Karl Doehring, "Self-Determination", in Bruno Simma, ed., *The Charter of the United Nations: A Commentary*, Oxford: Oxford University Press, 1994 at 70. See also *Case Concerning East Timor (Portugal v. Australia)*, Judgment, 1995 I.C.J. Rep. 90 at 102.

¹⁹ See, e.g., John Currie, *Public International Law*, Toronto: Irwin Law, 2001 at 51-54.