



## **Self-determination – What does international law say?**

*Revised 15 January 2012*

The right of identifiable “peoples” like the Scots to decide their own futures and run their own affairs is one of the most basic principles of international law. It is stressed right in the very first article of the Charter of the United Nations Organisation, which sets out the purposes of the UN. Article 1 Par. 2 of the Charter states:

**"To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;"**

The Charter nails the UN’s colours to the mast with its assertion of the fundamental principle of "equal rights and self-determination of peoples", but the law has been expanded and clarified in several other documents that are constituent parts of the UN’s International Bill of Human Rights. The Bill of Human Rights is actually a portfolio that includes central measures of international law like the Universal Declaration of Human Rights. The European Convention on Human Rights is basically just a legal codification of these universal rights in a judicially actionable form.

The two main instruments of international law that codify self-determination are the **UN International Covenant on Civil and Political Rights**, and the **UN International Covenant on Economic, Social and Cultural Rights**, both of which expand Art.1 Par. 2 of the Charter into more detailed statements. The first articles of both of these Covenants are identical:

## **Article 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.**
- 2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.**
- 3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realisation of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.**

It should be noted that Paragraph 3 lays down an obligation to actively promote the right of self-determination, in addition to respecting it.

The definition of a "people" as an entity entitled to exercise the right of self-determination is not contained in the legal instruments, but is set out in other UN documents. The conditions envisage a cohesive social and cultural entity with its own distinctive character and a lengthy history, and it implies a relationship with a particular territory.

Scotland fulfils all of the conditions many times over, as can be read in the statement of **Scotland's Status as a Nation**, on this website.

These UN statements of the law are the basis for all the others like the Helsinki Final Act, amongst others, all of which are just re-affirmations of the ground principle. The absolute classic is the restatement by the Conference on Security and Cooperation in Europe at its follow-up session in the Hofburg Palace in Vienna in January 1989:

**"[The participating states] confirm that, by virtue of the principle of equal rights and self determination of peoples, and in conformity with the relevant provisions of the [Helsinki] Final Act, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic and cultural development. (Questions Relating to Security in Europe, No. 4)"**

That particular statement by the CSCE resulted in the formation of 24 newly independent states in Central Europe and Western Asia after the breakup of the Communist system.

There have been numerous other re-affirmations of the law on the self-determination of peoples by the UN General Assembly and others. The international law is now crystal clear and unchallengeable, and it overrides anything contained in the devolution or subsequent Westminster legislation.

This international law does not relate directly to independence or any other particular form of government. It is completely neutral in that respect. What it does is to guarantee the Scottish people an absolute right to make their own decision on what form of government they want, to decide that in their own time, and with no interference by anyone else, in London or elsewhere.

It is therefore totally untrue that the Scots must ask permission to hold a referendum on independence, to hold it at any particular moment, or that London has any right of veto over their decision. The relevant actions of the Scottish Government are already perfectly legal under a higher law than that of the United Kingdom.

As a nation falling comfortably within the United Nations definition of a "people" entitled to exercise the right of self-determination, it is up to the Scots, and them alone, to decide their own future and the form of government they wish to adopt.