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## A Legal Comparison of Unilateral Declaration of Independence and Secession

### Abstract

This article defines the term unilateral declaration (UD) from a legal perspective and explores different types thereof. It examines parities and disparities between non-consensual acts of unilateral declaration of independence (UDI), illicit secession and self-determination. The paper concludes by explaining why public international law considers unwarranted acts of UDI as unlawful.

**Key words:** unilateral declaration of independence, secession, self-determination, territorial integrity, state sovereignty

### Introduction

Non-consensual unilateral declaration of independence (UDI) has often been used by secessionist groups as a vehicle to detach territories from sovereign states to which they belong in order to establish independent states of their own. The term UDI poses a host of questions including *inter alia*: the legal and political definitions of the term UDI, its stereotypical forms, notable similarities and differences between a UDI act and an illicit act of secession, and possible legal correlations between an illegitimate UDI act and an act of self-determination.

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The first section of the article examines the literal, political, and legal definitions of the aforesaid term. Section two reviews a few relevant similarities shared between an illegitimate act of UDI and unlawful secession. Section three renders some relevant information pertaining to the UDI act in accordance with prevalent states practice. The article ends with a brief conclusion.

## **Section 1. Literal and legal definitions of the term “unilateral declaration” (UD)**

The term “declaration” is defined by various sources including Merriam-Webster Dictionary (2026), which defines the term “declaration” as “3-a. a statement proclaiming the principles, aims, or policies of a group or government”. The Cambridge Dictionary (1999) defines a “declaration” as “an announcement, often one that is written and official”. Collins Dictionary (2011) states, “A declaration is an official announcement or statement.” Lastly, the Max Planck Encyclopedia of Public International Law (2019) defines “declaration” as follows: “1. Declaration is the means by which subjects of international law express their will, intention, or opinion when acting in the field of international relations.” Based on the cited statement of Max Planck Encyclopedia, it is reasonable to claim that constituent units of states with no international legal personality are ineligible to make unilateral declarations in an endeavor to effectuate their independence.

This conclusion is consonant with the legal opinion rendered by the International Committee of Jurists designated by the Council of the League of Nations pertaining to the Åland Islands Question in 1920, which reads: “Positive International Law does not recognize the right of national groups, as such, to separate themselves from the State of which they form a part by the simple expression of a wish”<sup>1</sup>, and is also concordant with the judgment furnished by the Supreme Court of Canada on the question of Quebec’s quest for secession. The Supreme Court states that:

a right to secession only arises under the principle of self-determination of people at international law where “a people” is governed as part of a colonial empire; where “a people” is subject to alien subjugation, domination or exploitation; and possibly where “a people” is denied any meaningful exercise of its right to self-determination within the state of which it forms a part. In other circumstances, peoples are

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<sup>1</sup> Report of the International Committee of Jurists entrusted by the Council of the League of Nations with the task of giving an advisory opinion upon the legal aspects of the Åland Islands Question, League of Nations Official Journal, Special Supplement No. 3, October 1920.

expected to achieve self-determination within the framework of their existing state [...]. Quebec does not meet the threshold of a colonial people or an oppressed people [...]. In the circumstances, the “National Assembly, the legislature or the government of Quebec” do not enjoy a right at international law to effect the secession of Quebec from Canada unilaterally<sup>2</sup>.

Indeed, both the Åland Islanders and the Quebecers lacked international legal personality and therefore enjoyed no legal capacity to pursue colonial peoples’ right to external self-determination as ordained by international law. It should be noted here, in contrast to the above-mentioned cases of the Åland Islands and Quebec regions, the cases of the Eritrean and Southern Sudanese peoples respectively constitute rare and entirely different situations. That is because the latter separations were based on prior mutual agreements between the respective peoples and their parent states.

The Eritreans, following the deprivation of their autonomous status within the Ethiopian Empire in 1962, waged a war of independence from Ethiopia which lasted nearly 30 years. They allied themselves with the then *de facto* Ethiopian authority that was ruling the country under the umbrella of the Transitional Period Charter of Ethiopia<sup>3</sup>, which empowered all Ethiopian ethnicities and nationalities to exercise the right to self-determination by stating in Article 2 that: “The right of nations, nationalities, and peoples to self-determination is affirmed.” On April 23–25, 1993, an internationally monitored referendum took place in Eritrea where over 99% of Eritreans voted and chose independence. On May 24, 1993, Eritrea officially declared its *de jure* independence (Wikipedia 2026a).

With respect to the case of the residents of the former Southern Sudan Region, their 22-year-long war for independence ended with the conclusion of a bilateral agreement between the Sudan People’s Liberation Movement/Army (SPLM/SPLA) and the National Congress Party (NCP) representing the Government of the Sudan granting the people of the Southern Sudan Region the right to exercise self-determination. Article 219 of the 2005 Interim National Constitution of the Republic of the Sudan<sup>4</sup> provides that: “The people of Southern Sudan shall have the right to self-determination through a referendum to determine their future status.” Section (2) of Article 222 of the cited constitution adds: “The people of Southern Sudan shall either: (a) confirm unity of the Sudan by voting to sustain the system of government established under the Comprehensive Peace Agreement and this Constitution, or (b) vote for

<sup>2</sup> Supreme Court of Canada, Reference re Secession of Quebec, [1998] 2 S.C.R. 217.

<sup>3</sup> Transitional Period Charter of Ethiopia, *Negarit Gazeta*, 50th Year, No. 1, 22 July 1991.

<sup>4</sup> The Interim National Constitution of the Republic of the Sudan, 2005.

secession.” South Sudan exercised its right to self-determination on January 9 to 15, 2011. With 98.83% of ballots cast in favor of secession, independence was realized and was officially celebrated on July 9, 2011 (Wikipedia 2026b).

## Section 2. Parities and disparities between a unilateral declaration of independence and an illicit act of secession

Achievement of independence from parent states is a core objective behind commission of an act of UDI or secession. Illegality characterizes both cited acts. The UN Security Council regards illicit commission of both acts as a violation of international law norms. The UN Security Council Resolution 169<sup>5</sup> regarded Katanga’s secessionist act as unlawful by stating: “1. Strongly deprecates the secessionist activities illegally carried out by the provincial administration of Katanga.” Also, the UN Security Council Resolution 541<sup>6</sup> labeled the UDI act perpetrated by Turkish Cypriots stating that it: “1. Deplores the declaration of the Turkish Cypriot authorities of the purported secession of part of the Republic of Cyprus; 2. Considers the declaration referred to above as legally invalid and calls for its withdrawal.” Moreover, the ICJ Advisory Opinion explained the illegality of Kosovo’s UDI as follows:

the illegality attached to the declarations of independence thus stemmed from the fact that they were, or would have been, connected with the unlawful use of force or other egregious violations of norms of general international law, in particular those of a peremptory character (*jus cogens*)<sup>7</sup>.

The most salient distinctive trait shared between an act of unlawful UDI and an illicit act of secession is their illegality. In this regard, Eastwood states that:

Recognition of a general right of secession under international law has historically been disfavored by the international community... there is no basis for concluding that recent State practice alone evinces the existence of a secession right under international law (Eastwood 1993, p. 301).

Anderson explains the reason why public international law disregards illicit secession by stating:

<sup>5</sup> UN Security Council, Resolution 169 (1961) of 24 November 1961, S/RES/169(1961).

<sup>6</sup> UN Security Council, Resolution 541 (1983) of 18 November 1983, S/RES/541(1983).

<sup>7</sup> International Court of Justice, *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion of 22 July 2010, ICJ Reports 2010, p. 403, para. 81.

secession represents a challenge to the two most fundamental principles of international law; the sovereignty and territorial integrity of states. Secession is thus viewed negatively and is associated with chaos, schism, fragmentation, and instability (Anderson 2013, p. 343).

However, it ought to be highlighted here that there are no connections whatsoever between the principle of self-determination as an indispensable norm of public international law and either non-consensual acts of UDI or secession. This fact appears conspicuously in states' practice as reflected in their views expressed in written proclamations before the ICJ. To furnish just a few examples, the People's Republic of China underlined in paragraph (d) under Section III in its Written Statement rendered to the ICJ on 17 April 2009 that:

the self-determination in international law is different in nature from secession from a sovereign State by its part. Secession is not recognized by international law and has always been opposed by the international community of States. (People's Republic of China 2009, para. d).

The Republic of Cyprus held a similar opinion as expressed in its written statement furnished to the ICJ on 17 April 2009:

[...] neither the General Assembly resolutions, nor the human rights Covenants, nor any other rule of customary or treaty law gives any basis for an argument that there is a right of external self-determination for a part of the population of an existing State. Accordingly, the Kosovo population cannot draw from the right of self-determination any right to dismember the State of Serbia (Republic of Cyprus 2009).

Last but not least, Spain underlines in its written statement in Section VI paragraph 2 that: "the unilateral declaration of independence by the Provisional Institutions of Kosovo is not in accordance with international law." (Kingdom of Spain 2009, para. 2). As a *prima facie*, the above declared positions by the cited states unquestionably were embraced with the intention of mustering international support for their own national policies towards Taiwan, the Turkish Republic of Northern Cyprus (TRNC), and Catalonia respectively, rather than expressing sincere adherence to the letter and spirit of international law.

### Section 3. Classification of acts of unilateral declaration of independence (UDI)

Generally speaking, acts of UDI may be categorized into two main types: unauthorized acts of UDI pursued by subjugated peoples living under colonial domination, and unauthorized acts of UDI exercised by a secessionist group of nationals of a sovereign state without its consent.

## Unauthorized acts of UDI pursued by subjugated peoples within the colonial context

This type of unauthorized act of UDI is perceived by the author as figuratively resembling self-determination. In accordance with the prevalent practice of the United Nations within the context of decolonization, subject peoples living under colonial domination, alien subjugation, or foreign military occupation are legally entitled to declare their independence unilaterally and to pursue their right to self-determination in order to resolve and elect their future political status without any need for prior consent being granted by the alien reigning authority. In this regard, the UN General Assembly Resolution 2625 (XXV)<sup>8</sup> provides under the principle of equal rights and self-determination of peoples that:

The establishment of a sovereign and independent State, the free association or integration with an independent State or emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.

Based on the cited UN instruments, it is appropriate to claim that the legitimate pursuit of acts of unauthorized UDI within the context of licit pursuance of self-determination in order to achieve any of the above-mentioned political statuses is exclusively reserved for subjugated peoples. By invoking this right, some peoples of such territories have factually exercised acts of unauthorized UDI by non-amicable means including armed struggle conducted by national liberation movements. To furnish just a few examples, these include the former Portuguese colonies of Angola (Wikipedia 2026c), Mozambique (Wikipedia 2026d), and Guinea-Bissau (Wikipedia 2026e).

## Unauthorized acts of UDI perpetrated by secessionist nationals of a sovereign state

From a legal perspective, utilization of illicit acts of UDI as a means to impair the coherence and efficacy of sovereign states is unquestionably deemed illegal. Toleration of such illegitimate acts constitutes unreasonable leniency towards activities that aim at undermining the international legal order based on respect for independent states' sovereignty, territorial integrity, and political unity. Adherence to the above-cited international law peremptory norms with *jus cogens*

<sup>8</sup> UN General Assembly, *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations*, Resolution 2625 (XXV) of 24 October 1970, A/RES/2625(XXV).

status constitutes a prime prerequisite for safeguarding the very existence and endurance of the universal legal order based on sovereign states. Commission of unlawful acts of UDI most likely will not lead to the establishment of sound states. Opinion No. 2 of the Badinter Arbitration Commission<sup>9</sup> states in paragraph 1 that:

it is well established that, whatever the circumstances, the right to self-determination must not involve changes to existing frontiers at the time of independence (*uti possidetis juris*) except where the States concerned agree otherwise.

In congruence with the international legal norm *uti possidetis juris*, the African Commission on Human and Peoples' Rights in its Resolution on the Human Rights Situation in the Democratic Republic of Congo<sup>10</sup> highlights that rigorous respect for human rights is regarded as an indispensable prerequisite for sustaining endurance of the bequeathed internationally recognized frontiers of the DRC by stating that it: "ALSO REMINDS the parties of the principle of the intangibility of borders inherited from decolonization (*Uti possidetis juris*)."

Noteworthy, it is self-evident that the norms of international law, including the maxim *uti possidetis*, are not always honored by superpowers. To give just two examples, Turkey and some Member States of NATO have overtly provided military and diplomatic support to secessionist groups to break away from their independent parent states: Turkish Cypriots to break away from Cyprus and establish the Turkish Republic of Northern Cyprus; and Kosovar separatists to break away from Serbia and establish the Republic of Kosovo. This fact triggers the following question: Does recognition by some countries change the illicit status under which the Turkish Republic of Northern Cyprus and the Republic of Kosovo were established?

Researchers are divided on this issue. Some scholars argue that recognition *per se* does not change the illegitimate nature of the fact under which the said states were established, citing respectively Article 3 of the Montevideo Convention on the Rights and Duties of States (1933)<sup>11</sup>, which provides that: "The political existence of the state is independent of recognition by the other

<sup>9</sup> Conference on Yugoslavia Arbitration Commission (Badinter Arbitration Commission), Opinion No. 2 of 11 January 1992, International Law Reports, Vol. 92, 1993, pp. 167–169.

<sup>10</sup> African Commission on Human and Peoples' Rights, Resolution on the Human Rights Situation in the Democratic Republic of Congo, ACHPR/Res.627 (LXXXII) 2025.

<sup>11</sup> Convention on Rights and Duties of States adopted by the Seventh International Conference of American States (Montevideo Convention), 26 December 1933, 165 LNTS 19.

states”, and Article 13 of the Charter of the Organization of American States (1948)<sup>12</sup>, which asserts: “The political existence of the State is independent of recognition by other States.”

Undoubtedly, recognition enables states like the Turkish Republic of Northern Cyprus and the Republic of Kosovo to establish relations with the international community of nations, which helps them to attenuate their isolation. However, withdrawal of awarded recognition casts negative effects on the disavowed state. At present, only one country (Turkey) has recognized the Turkish Republic of Northern Cyprus (Wikipedia 2026f). With regard to the Republic of Kosovo, based on information provided by *Be In Kosovo* (2025), as of December 19, 2025, the independence of Kosovo has been recognized by 121 states. However, Serbia discredits the number mentioned by Kosovo, claiming that numerous countries rescinded or froze their recognition, reducing the valid total closer to 84. Wikipedia (2026g) notes that as of 19 December 2025, Kosovo has received 110 diplomatic recognitions by UN member states.

*Prima facie*, the withdrawal of recognition of the Turkish Republic of Northern Cyprus and the Republic of Kosovo may undermine the capacity of those states to freely navigate the intricate international diplomatic environment and thus may hinder their accession to international bodies such as the European Union, NATO, and the United Nations.

## Conclusion

In conclusion, it is obvious that in the absence of freely expressed consent on the part of the sovereign parent state, any commission of an illicit act of UDI or illegal act of secession by a constituent unit is deemed illegitimate and regarded as categorically null and void.

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<sup>12</sup> Charter of the Organization of American States, 30 April 1948, 119 UNTS 3.

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