international human rights law focussing on the uniquely collective nature of Indigenous claims. This new generation of human rights has been

> of dominant "settler" societies, and pleas for respect for their distinct Indigenous cultural and spiritual world views. The claims also seek redress for systemic discrimination against Indigenous peoples in the legal (criminal justice) and political systems, the social services sector, and the workforce.[9]

However, while some equate the desire for self-determination with the pursuit of secession from Canada, this occurs only in a minority of cases. The majority of Aboriginal peoples focus on self-determination as the reinstatement of autonomy over "political, social and cultural development" *within* Canada and freedom from state interference so as to allow the preservation and transmission of cultures to future generations.[10] The key rationale behind these claims is rooted in the historical injustice that Aboriginal peoples have faced, the attempted obliteration of their cultures, laws, knowledge, political authority, and territorial rights, and the corresponding subjugation and assimilation that they have endured as a result of colonialist forces. In seeking self-determination, the power to define how Aboriginal peoples live is returned to those who are properly equipped with the knowledge of what is best for themselves, namely Aboriginal peoples. Ultimately, Aboriginal peoples see the right of self-determination as a prerequisite to all other rights.[11]

However, in international law self-determination is a right vested in "peoples," and this is where much of the controversy lies. How are "peoples" defined at international law? How might this definition be reproduced in the Canadian context? Should Aboriginal peoples be considered "peoples" with a right of self-determination in Canada, and what extent of self-determination powers should they be accorded?

In this article it will be argued that Aboriginal peoples in Canada do indeed constitute "peoples," as that term is used in the context of self-determination. They should, therefore, be accorded the right of self-determination as defined by international law. However, in the Canadian context this right focuses around *internal* forms of self-determination. While it is not assumed at this point that the question of secession might not arise at some point in the future, the quandary of the right of *external* self-determination within a federalist system such as Canada involves the exploration of other legal, jurisdictional, political, social, cultural, and economic nuances. These matters are reserved for another article.

Before dealing with the principal subjects outlined above, a brief historical analysis of the development of Indigenous self-determination in international law is in order. This will help situate the aforementioned debates within the relevant historical context from the perspective of international law. Following this, a closer examination of the concept of self-determination will be explored, specifically from the standpoint of internal versus external forms. This will lead to an application of self-determination to "peoples," and an international legal assessment of who constitutes these "peoples." Ultimately, this will allow for an application to the Canadian context, including legal analyses of the ways in which Aboriginal groups constitute peoples within Canada. In so doing, the relevant defining features of "peoples" and the right of "peoples" to self-determination will be defined in the Canadian context.

2. SELF-DETERMINATION IN INTERNATIONAL LAW

Aboriginal peoples in Canada have found that, in some ways, international legal mechanisms have been more conducive to their goanAW

[9] Turpel, "Indigenous," *supra* note 2 at 580.
[10] *Ibid*. at 593.
[11] Dalee Sambo, "Indigenous Peoples and International Standard-Setting Processes: Are State Governments Listening?" (1993) 3:13 Transnat'l L. & Contemp. Probs. 13 at 23; see *RCAP*, *supra* note 7 at paras. 452-469.

(a) A History of Indigenous Self-Determination

Essentially, the principle of self-determination first gained international political recognition after the First World War as a result of the disintegration of the Austro-Hungarian, Russian, and Ottoman empires.[14] The purpose of negotiating peace at the time ultimately included the specification that peoples and nations should exercise their own sovereign wills, without fear

Rights (*ICESCR*)[23] and the *International Covenant on Civil and Political Rights* (*ICCPR*).[24] Article 1 of each states that "all peoples freely determine their political status and freely pursue their economic, social and cultural development." Moreover, as noted by Daes, the right of self-determination is connected to "what has come to be termed 'permanent sovereignty' over natural wealth and resources'."[25]

Finally, two of the most recent developments in the international arena with regard to self-determination, applicable specifically to Indigenous peoples, are the Organization of American States (OAS) and the United Nations *Draft Declaration on the Rights of Indigenous Peoples* (*Draft Declaration*). Within the OAS, the Inter-American Commission on Human Rights approved the *Proposed American Declaration on the Rights of Indigenous Peoples* in February 1997, which is currently undergoing further examination at the request of the OAS General Assembly.[26] Both support the right of self-determination as a fundamental right for Indigenous peoples, but the *Draft Declaration* is more ambitious and less "integrationist."[27] In particular, Article 3 of the *Draft Declaration* states that "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."[28] As noted by Daes, this wording is identical to that found in Article 1 of the above-mentioned *Covenants*, supporting the assertion of many Indigenous peoples of their right to self-determination under international law.[29]

(b) Who are "Peoples"?: External versus Internal Self-Determination

Many critics of the right of self-determination for Indigenous peoples claim that Indigenous peoples do not constitute "peoples" recognised under international law, and therefore the right of self-determination cannot be applied to them, either internationally or domestically in Canada. However, there is no "internationally accepted [definition] of the [term] 'peoples'."[30]

Uncertainty over the meaning of "peoples" often finds its roots in debates over the form that self-determination might take. Such form is often placed on a continuum of external versus internal conceptions of self-determination. External self-determination involves independent statehood, including recognition as a nation under international law, provided that the nation in question has a permanent population, a defined territory, a government, and the capability of entering into relations with other states. Conversely, internal self-determination refers to those rights which support and preserve "Indigenous cultural difference through independent political institutions" within an existing nation-state.[31] While internal self-determination has already been given some support at the Canadian federal and provincial

[23] *International Covenant on Economic, Social and Cultural Rights*, 6 ILM 360 (1967).
[24] *International Covenant on Civil and Political Rights*, 6 ILM 368 (1967).
[25] Daes, "Right of Indigenous Peoples," *supra* note 19 at 49.
[26] Joanna Harrington, "Canada's Obligations under International Law in Relation to Aboriginal Rights," conference paper, Pacific Business & Law Institute, Ottawa, April 28-29, 2004 at 16 [Harrington].
[27] *Ibid*.
[28] United Nations, *Draft Declaration on the Rights of Indigenous Peoples*, Doc. E/CN-4/Sub. 2/1994/2/Add.1, Art. 3, p. 3 [*Draft Declaration*]. For an in-depth analysis of the content, history, and potential benefits of the *Draft Declaration* see Catherine Iorns, "Indigenous Peoples and Self-Determination" (1992) 24 Case W. Res. J. Int'l L. 199 [Iorns].
[29] Daes, "Right of Indigenous Peoples," *supra* note 19 at 55.
[30] Gudmundur Alfredsson, "Different Forms of and Claims to the Right of Self-Determination," in Donald Clark and Robert Williamson, eds., *Self-Determination: International Perspectives* (New York: St. Martin's Press, 1996) 58 at 71 [Alfredsson].
[31] United Nations, *Declaration by the International NGO Conference on Discrimination Against Indigenous Populations in the Americas* (U.N. Doc. E/Cn/ .4/Sub.2/1986/7); Patrick Macklem, *Indigenous Difference and the Constitution of Canada* (Toronto: University of Toronto Press, 2001) at 37 [Macklem, *Indigenous*].

levels through various self-governing arrangements,[32] external self-determination is much more controversial.[33] This is due, in large part, to the depiction of "independent statehood" and "the capability of entering into relations with other States," which could amount to jurisdictional conflicts or secession of

contentious debate over whether Indigenous peoples, including Aboriginal peoples in Canada, constitute minorities rather than peoples or nations. This debate includes significant cultural, historical, and territorial issues which are beyond the scope of this article.[38]

Ultimately, most states need not fear the threat of secession by Indigenous peoples. While many might argue for a right to unilaterally secede under international law, "international law neither forbids nor supports secession"[39] because it is neither proscribed nor sanctioned as a legal right.[40] Additionally, as noted earlier, in the context of Aboriginal peoples in Canada, most groups do not seek secession or other external mechanisms of self-determination.

S. James Anaya emphasises internal modes of self-determination, but he does so in tandem with defining "peoples." He outlines three competing approaches to self-determination that are generally applied when attempting to define "peoples." The first denies that self-determination applies to any populations within territories unless they are subject to classical

[38] For further discussion on the debate see *RCAP*, *supra* note 7 at paras. 997-1027, 5719-5727; Macklem, "Normative," *supra* note 34 at 211-215; Patrick Macklem, "Distributing Sovereignty: Indian Nations and Equality of Peoples" (1992-1993) 45 Stan. L. Rev. 1311 at 1353-1355; Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995); Richard Spaulding, "Peoples as National Minorities: A Review of Will Kymlicka's Arguments for Aboriginal Rights from a Self-Determination Perspective" (1997) 47:1 U.T.L.J. 35; John Borrows, "Uncertain Citizens: Aboriginal Peoples and the Supreme Court" (2001) 80 Can. Bar Rev. 15; Leighton McDonald, "Regrouping in Defence of Minority Rights: Kymlicka's Multicultural Citizenship" (1996) 34:2 O.H.L.J. 291.

[39] Robert Coulter, "The Possibility of Consensus on the Right of Self-Determination in The UN and OAS Declarations on the Rights of Indigenous Peoples," Draft Discussion Paper, Indian Law Resource Center, Helena, Montana, 18 October 2002 at 5 [Coulter, "Possibility of Consensus"].

[40] *Ibid*.

> *political autonomy as they are efforts to secure the integrity of the group while rearranging the terms of integration or rerouting its path.*[46]

The significance of this passage is the multidimensional approach that Anaya takes in defining the relationship that exists between "peoples" and self-determination. This relationship is multifaceted, existing in a world where there is continual and increasing integration on a global level between states and peoples within states.[47]

Additionally, Anaya's approach emphasises the role played by internal forms of self-determination, not independent statehood or outright political separation. Such *interdependence* is relevant in the Canadian context, arguably reducing fears of secession as a priority of most Aboriginal groups in Canada. However, what does this mean for Indigenous populations? In light of the competing definitions of "peoples," do Indigenous groups qualify?

Indigenous groups have histories that are directly linked to the history of classical colonialism. This results in very complex and distinctive definitions of Indigenous peoples, including how their pre- and post-contact societies might be described, how their societies were and continue to be connected to their territories, and the ultimate impact of colonialism on Indigenous traditions, cultures, institutions, and laws. Essentially, their histories make defining Indigenous populations a multifaceted and complex task. Such complexity

[46] *Ibid*p o p u l a t i o n

> and limitations as applied to other peoples in accordance with the Charter of the United Nations. By virtue of this, they have the right, *inter alia*, to negotiate and agree upon their role in the conduct of public affairs, their distinct responsibilities, and the means by which they manage their own interests.[61]

In addition to this argument, Daes notes the relevance of Article 31 of the *Draft Declaration* in support of *internal* forms Indigenous self-determination. She asserts that Article 31 provides general guidelines for the exercise of Indigenous self-determination rights through "*autonomy or internal self-government within existing states*."[62] Article 31 states the following:

> Indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resource management, environment and entry by non-members, as well as ways and means for financing these autonomous functions.[63]

While even internal forms of Indigenous self-determination are not yet formally recognised under international law, progress can be seen, as evident in the *Concluding Observations* of the United Nations Committee on Economic, Social and Cultural Rights (CESCR) and the United Nations Human Rights Committee (HRC) in December 1998 and March

[64] The *Concluding Observations*

> The Committee notes that, as the State Par acknowledged, the situation of the Aboriginal peoples remains 'the most pressing human rights issue facing Canadians.' In this conn-1.ion, the Committee is particularly concerned that t State Party has not yet implemented the recommendations of the Royal Commissio on Aboriginal Peoples (RCAP). *With nage ence to the conclusion by RCAP that without a greater share of lands and resources institutions of Aboriginal self-government will fail, the Committee recommends that the right of self-determination requires*, inter alia, *that all peoples must be able to freely dispose of nage wealth and resources* and tha
>
> means of subsistence (art. 1, para. 2). The nage mmittee recommends that decisive ar urgent action be taken towards the full implementation of the RCAP recommendations on land and resource allocation. *The Committee also recommen that the practice of extinguishing inherent Aboriginal rights be abandoned as incompatible with article 1 of the Covenant*.

[65]

supra note HRC8 -1.15-5.9(v)-2.3(ely. At the ti)5(me, these two)-7.8( )]TJT*[(
19pat 54.

[64] Andrew Orkin and Joanna Birenbaum, "Aboriginal Self-Determination within Canada: Recent Developments in International Human Rights Law"

[62] *Ibid*. at 55 (emphasis in original).

[63] *Draft Declaration*, *supra* note 28. Andrew Orkin and Joanna Birenbaum, this application was significant because it applied the notion of "peoples" and the right of self-determination as embodied in Article 1 to Aboriginal peoples in Canada, adding to the nage and relevance of these terms in the Canadian context.

states are gradually supporting some internal form of self-determination powers for Indigenous populations, this right has not yet been formally recognised under international law and a consensus among states has not yet been achieved.[67] Nevertheless, the fact that some states, including Canada, are starting to emulate the international consideration of Indigenous peoples as constituting "peoples" and "nations" gives credence to Alan Cairns' emphasis on the role of international law affecting the domestic laws of states.

However, even at the level of preliminary, informal recognition of Indigenous peoples as "peoples" under international law, the right of self-determination is still expected to be internal in nature. This is primarily due to the international legal recognition of the sovereignty of states and respect for territorial boundaries; potential secession of Indigenous populations would seriously hinder the territorial integrity of states. However, this does not mean that external self-determination should not be a right accorded to Indigenous peoples in appropriate circumstances, nor does it mean that the present author does not support such a right. Instead, as others have noted, the right of external self-determination may be a crucial component for some Indigenous groups, particularly those suffering from wrongful domination, oppression, and colonialism.[68] This is a significantly large and complex issue, warranting further assessment in another forum.[69]

3. SELF-DETERMINATION OF "PEOPLES" IN THE CANADIAN CONTEXT

What does this mean for Aboriginal groups in Canada? Do they constitute "peoples"? Can and should international legal norms be replicated in Canada? The following discussion will examine the Canadian context with an eye to evaluating whether Aboriginal groups in Canada constitute "peoples" with a right of self-determination.

(a) Replicating International Legal Norms of Self-Determination in the Canadian Context

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[67] Daes, "Right of Indigenous Peoples," *supra* note 19 at 55; Coulter, "Possibility of Consensus," *supra* note 39.

[68] For example, see Coulter, "Possibility of Consensus," *ibid.* at 5; Daes "Right of Indigenous Peoples," *supra* note 19 at 51-55; Erica-Irene Daes, "Some Considerations on the Right of Indigenous Peoples to Self-Determination" (1993) 3 Transnat'l L. & Contemp. Probs. 1 at 6-7.

[69] Under international law, a right of external self-determination, including secession, is permitted under specific circumstances, usually as a basis for "decolonisation of dependent territories," but also under conditions where there is the denial of fundamental human rights, extreme domination, or subjugation. These provisions are laid out in the U.N. General Assembly's *Declaration on Principles of*

general principles found in judicial decisions and scholarly writing.[72]

While customary international law is applicable in the Canadian context, it is necessary for it to be treated as obligatory in order for it to take its full effect. "To the extent that customary law can be established, it is as binding on Canada as ratified treaties. [Fortunately,] [c]ustomary international law is thought to be the law of the land, subject of course to the right of the legislature to override it by enacting a statute."[73] Conventional international law includes self-implementing treaties and non-self-implementing treaties. While Canada might be a signatory to non-self-implementing treaties, such agreements are unenforceable under Canadian domestic law unless they are legislatively implemented by Parliament.[74] Consequently, it is not possible to assume the application of conventional international law in the Canadian context. While international legal norms certainly inform Canadian law, including "statutory interpretation and judicial review,"[75] it is necessary for Canada to play an active role in adhering to international legal norms. This is relevant in the context of the right of Indigenous self-determination under international law and whether it is applicable to Aboriginal peoples in Canada.

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[72] As clarified by Harrington, there is significant debate surrounding the potential of these sources to constitute international law. However, she does clarify that judicial decisions of international judicial bodies are relevant, as are national court judicial decisions, which hold "weight as…law-identifying source[s] for international law." Scholarly writing is generally given less weight as a "subsidiary source of

themselves',"[79] including the significance of cultural and familial connections to one's overall identity. Most significantly, this decision helped lead to the introduction and implementation by the Canadian Parliament of Bill C-31, the main purpose of which was to reinstate Indian status to those who had lost it under the discriminatory provisions of the *Indian Act*.[80] Ultimately, in

[79] Margaret Jackson, "Aboriginal Women and Self-Government," in John Hylton, ed., *Aboriginal Self-Government in Canada: Current Trends and Issues* (Saskatoon: Purich Publishing, 1994) 181 at 182.

[80] *Ibid*. The amendments became part of the *Indian Act*, R.S.C. 1985, c. I-5. The significance of this bill for those Aboriginal women who had lost their status cannot be overemphasized. However, there has occurred among many Aboriginal communities great difficulty, and even inability, to maintain sufficient resources to cover the increased costs of new and returning Aboriginal members. In other words, Bill C-31 had the effect of increasing the financial burden on many Aboriginal communities who must now provide for those members who previously had been excluded. Consequently, some groups fought against Bill C-31, and therefore, have fought against the renewed rights of those Indian women who have

This Canadian position was reiterated in 2000 at the Commission Working Group on the *Draft Declaration*, and it is still Canada's current position.[82] Similar sentiments are evident in the "Statement of Reconciliation: Learning from the Past," which is part of a larger report entitled, "*Gathering Strength: Canada's Aboriginal Action Plan*," released by the federal government in 1997. The Statement, referring to the Aboriginal peoples of Canada, states:

> For thousands of years before this country was founded, they enjoyed their own forms of government. Diverse, vibrant Aboriginal nations had ways of life rooted in fundamental values concerning their relationships to the Creator, the environment, and each other, in the role of Elders as the living memory of their ancestors, and in their responsibilities as custodians of the lands, waters and resources of their homelands. … The Government of Canada recognizes that policies that sought to assimilate Aboriginal people, women and men, were not the way to build a strong country. *We must instead continue to find ways in which Aboriginal people can participate fully in the economic, political, cultural and social life of Canada in a manner which preserves and enhances the collective identities of Aboriginal communities, and allows them to evolve and flourish in the future.*[83]

While the above quotation does not deal directly with the right of Aboriginal self-determination, it does demonstrate the attitude that the "collective identities" of Aboriginal peoples must be respected and safeguarded by the Government of Canada. Arguably, when viewed together with the previous quotation made by the Canadian delegation at the Commission on Human Rights Working Group, the position of the Government of Canada becomes clear with regard to the right of Aboriginal self-determination. It light of these statements, it would appear that the Government of Canada supports Aboriginal self-determination, however, it must be *internal* in nature, while respecting the territorial integrity of Canada.

Moreover, it is argued that Canada views as important the adoption and support of international legal norms as they relate to Aboriginal peoples. It is seemingly apparent from the above statements that Canada recognises Aboriginal populations as constituting "peoples" with internal self-determination rights, as per the emerging standards of international law. However, the definition of Aboriginal populations as "peoples" in the Canadian context is still vague. As discussed earlier in this paper, there is no precise formal definition of "peoples" or of who constitutes "peoples," either under international law or in the Canadian context. Yet, a further-developed definition of "peoples" would be useful in clarifying and solidifying the place of Aboriginal peoples in Canadian society as "peoples" and "nations" with a right of self-determination.

(b) Canadian Legal Analyses of "Peoples" and "Self-Determination"

In addition to a small number of relevant judicial decisions, the *Royal Commission on Aboriginal Peoples* (*RCAP*) offers important insight into Aboriginal populations as constituting "peoples" with a right of self-determination. The following discussion will review some of the central arguments made by the *RCAP* to this effect, in addition to undertaking a legal analysis of two central judicial decisions related to the subject. The purpose herein is to develop a more advanced, concrete definition of how to define Aboriginal "peoples" in the Canadian context in order to allow for greater ease in applying a right of self-determination beyond the international arena, in the Canadian context.

1996), Statement on Article 3, the Right to Self-Determination (emphasis added).

[82] Coulter, "Possibility of Consensus," *supra* note 39 at 4.

[83] Minister of Indian Affairs and Northern Development, *Gathering Strength: Canada's Aboriginal Action Plan* (Ottawa: Public Works and Government Services Canada, 1997) at 4-5 (emphasis added).

(i) *Royal Commission on Aboriginal Peoples*: Defining Aboriginal Peoples

One of the central sources dealing with the issue of defining Aboriginal communities as constituting "peoples" is the *RCAP* Report, released in 1996. Volume 2, entitled, "Restructuring the Relationship," assesses various factors which can help to determine which Aboriginal peoples in Canada can be classified as "peoples" with a right of self-determination, thereby providing some insight into defining "peoples," more generally, within the Canadian federation.[84] For instance, the *RCAP* Report asserts the basic premise that Aboriginal peoples are nations vested with self-determination powers.[85] The *RCAP* Report clarifies this further in the following detailed quotation:

> By Aboriginal nation, we mean a sizeable body of Aboriginal people with a shared sense of national identity that constitutes the predominant population in a certain territory or group of territories. There are 60 to 80 historically based nations in Canada at present, comprising a thousand or so local Aboriginal communities.
>
> Aboriginal peoples are entitled to identify their own national units for purposes of exercising the right of self-determination. …
>
> The more specific attributes of an Aboriginal nation are that the nation has a collective sense of national identity that is evinced in a common history, language, culture, traditions, political consciousness, laws, governmental structures, spirituality, ancestry and homeland; it is of sufficient size and capacity to enable it to assume and exercise powers and responsibilities flowing from the right of self-determination in an effective manner; and it constitutes a majority of the permanent population of a certain territory or collection of territories and, in the future, will operate from a defined territorial base.[86]

While this definition is not necessarily complete, it does allude to issues of identity and culture as discussed in earlier statements regarding the international legal context. It also incorporates the relevance of territories and a permanent and "sizeable" population as important components of Aboriginal "nationhood." It suggests that, by limiting the right of self-determination to sizeable Aboriginal nations, a balance is struck between very small Aboriginal communities and much larger Aboriginal populations:

> Which Aboriginal groups hold the right of self-determination? Is the right vested in small local communities of Aboriginal people, many numbering fewer than several hundred individuals? Were this the case, a village community would be entitled to opt for the status of an autonomous governmental unit on a par with large-scale Aboriginal groups and the federal and provincial governments. In our opinion, this would distort the right of self-determination, which as a matter of international law, is vested in 'peoples.' Whatever the more general meaning of that term, we consider that it refers to what we will call 'Aboriginal nations.'[87]

The above statements provide significant descriptive detail about how to define Aboriginal "peoples." Equally important, the *RCAP* Report demonstrates significant support for the recognition of various Aboriginal communities as constituting peoples with a right of self-determination.

(ii) The *Quebec Secession Reference*: Self-Determination and "Peoples"

[84] Of course, this neither denies nor diminishes the *individual* right of self-determination, also known as the right to life and liberty, which is accorded to everyone, provided that such a right is exercised within the confines of law (*Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11, s. 7).

[85] *RCAP*, *supra* note 7 at para. 543.

[86] *Ibid*. at paras. 454-455, 5757-5760.

[87] *Ibid*. at para. 5729.

Canadian common law, and in particular Supreme Court judgments, have not dealt with the right of self-determination of "peoples" to

The Court continued with a definition of who constitutes "peoples," noting that there is uncertainty under international law. The Court's definition of "peoples" is not overly detailed, but this is partly because to do so might restrict various conceptions of "peoples." Instead, the Court clarified that a "people" might be just one portion of an entire population, and is often bound by various factors such as a common language or common culture.[93] In addition, it was specified that the right of self-determination as accorded to "peoples" has developed as a human right. The Court made the following important point:

> The right to self-determination…is generally used in documents that simultaneously contain references to "nation" and "state." The juxtaposition of these terms is indicative that the reference to "people" does not necessarily mean the entirety of a state's population. To restrict the definition of the term to the population of existing states would render the granting of a right to self-determination largely duplicative, given the parallel emphasis within the majority of the source documents on the need to protect the territorial integrity of existing states, and would frustrate the remedial purpose.[94]

Following these explanations the Court assessed internal and external forms of self-determination, as discussed earlier in this paper. While it is not necessary to repeat this information at this point, it should be noted that, despite apparent restrictions on external forms of self-determination, the Court determined that internal self-determination and territorial integrity are not fundamentally at odds with each other; they are not mutually exclusive:

> While the *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights* do not specifically refer to the protection of territorial integrity, they both define the ambit of the right to self-determination in terms that are normally attainable within the framework of an existing state. There is no necessary incompatibility between the maintenance of the territorial integrity of existing states, including Canada, and the right of a "people" to achieve a full measure of self-determination. 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 own internal arrangements, is entitled to the protection under international law of its territorial integrity.[95]

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[93] *Ibid*. at paras. 123-125.
[94] *Ibid*. at para. 124.

community acceptance, along with a shared "common way of life" and "geographical area," accentuate community, collective identity, and culture. In addition, the importance of territory is apparent, while the overall emphasis on community ultimately includes communal activities such as customs and traditions. These aspects are strikingly similar to those included in Daes' definition of "peoples" and to the definition of Aboriginal peoples as constituting "nations," as discussed in the *RCAP* Report.

While none of these specifications constitute formal recognition of Aboriginal peoples as constituting "peoples," they certainly allow for a more detailed, thorough conception of how Aboriginal populations, including the Métis, constitute "peoples." This, in turn, supports the argument that, as "peoples," Aboriginal peoples in Canada should have a right of self-determination, as provided for under international law.

4. CONCLUDING REMARKS: THE CASE FOR ABORIGINAL PEOPLES' RIGHT OF SELF-DETERMINATION IN THE CANADIAN CONTEXT

Many Aboriginal people, including Métis people, live off-reserve, in urban centres, or away from their communities, and therefore, their attachment to a land base or shared territory may be uncertain. It becomes very challenging to define these people as constituting "peoples" if some sort of land base or territorial attachment is a requirement, as posited in several of the above discussions. In such circumstances, one option might be to look to national Aboriginal organisations or home communities to speak for one's interests and to embody the right of self-determination. However, this option does not deal with other issues such as isolation from one's community, difficult personal circumstances, loss of culture, loss of language, or other factors which may diminish the likelihood of involvement in one's own Aboriginal group. Consequently, even the best attempts at defining Aboriginal "peoples" with a right of self-determination may fall short, ultimately excluding individual members for a variety of reasons. This serves to demonstrate the complexity of these issues.

Nevertheless, this article has shed light on a number of important issues relating to the difficult task of defining Aboriginal "peoples" with an accompanying right of self-determination. The form that the right of self-determination should take has been evaluated, ultimately demonstrating that