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INTERNATIONAL SCIENTIFIC CONFERENCE ON TOURISM AND BUSINESS LOGISTICS - GEVGELIA

GOCE DELCEV UNIVERSITY OF STIP

FACULTY OF TOURISM AND BUSINESS LOGISTICS

P R O C E E D I N G S

THE 2ND INTERNATIONAL SCIENTIFIC

CHALLENGES OF TOURISM AND BUSINESS LOGISTICS IN THE 21ST CENTURY

Stip, September 13th, 2019

North Macedonia

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Contents

SELF – DETERMINATION AS A FUNDAMENTAL PRINCIPLE AND HUMAN RIGHT

Aneta Stojanovska-Stefanova[1]

Abstract

The right of nations to self-determination is a cardinal principle in modern international law (commonly regarded as a jus cogens rule), binding, as such, on the United Nations as authoritative interpretation of the Charter's norms.
From the perspective of international relations and law, self-determination was considered by US President, Woodrow Wilson, as 'an imperative principle of action,' and therefore wanted it incorporated in the Covenant of the League of Nations at the end of World War I for purposes of universality. The US wish was to no avail until the making of the United Nations during the Second World War. At the San Francisco consultations, the former Soviet Union proposed the inclusion of 'based on respect for the principle of equal rights and self-determination of peoples' as an amendment in the text of Article 1(2) and Article 55 of the UN Charter.
Self-determination as a theory in international relations can be looked at from many perspectives. Admittedly the right of self-determination is a human right that belongs to peoples — not to the States. But in practice the right has been all too often violated with impunity, since there is no international enforcement mechanism.

Key Words: *human rights, international law, international relations, nations*
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Introduction

The right of nations to self-determination is a cardinal principle in modern international law (commonly regarded as a jus cogens rule), binding, as such, on the United Nations as authoritative interpretation of the Charter's norms.

Self-determination is a compound word, a combination of 'self' and 'determination.' The two words are quite interesting in terms of their ordinary and applied meanings. Ordinarily speaking, self can be used as an adjective and as a noun. As an adjective, it is generally used to form new words. It means 'same' or 'identical.' It also means 'pure,' unmixed. As a noun, but generally used in the plural form (selves), it means 'an individual known or considered as the subject of his own consciousness; anything considered as having a distinct personality.' It also refers to 'personal interest or advantage.' Most importantly, 'self' is 'anything, class, or attribute that, abstractly considered, maintains a distinct and characteristic individuality or identity' (vide the New International Webster's Comprehensive Dictionary of the English Language).

'Determination,' a noun, is synonymous with a firm resolution or decision. It is an authoritative opinion or conclusion in the context of a judicial decision. In the medical sciences, it is about 'putting an end to.' In other fields, it also means different things. In essence, it is not only an act of resolution, the act of taking the decision, but also about the firmness in taking the

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resolution. Consequently, self-determination is essentially about an individual taking a firm resolution or decision. In the context of international relations and law, the meaning is political and legal, though its origin was fraught with controversies.

Self-determination implies the right of a particular group of people to determine for themselves how and by whom they wish to be governed. The principle was little known for much of human history, as groups were either small self-governing communities whose legitimacy was based on religion or culture or, within kingdoms and empires, communities that had no expectation that people could choose their rulers. In the 18th and 19th centuries, political philosophers began to assert that nations or peoples—groups possessing a shared ethnicity, history, language, and/or culture—should control their "own" government, rather than be subjected to alien or foreign rule. This principle of congruence between the "nation" and political governance became known as nationalism, although it remained only a political principle or goal, as opposed to an international legal norm. The Covenant of the League of Nations proclaimed that it was a "sacred trust" for states to promote the advancement of colonial territories that had previously belonged to the countries defeated in World War I, and these territories were placed under the League's system of international mandates. However, the League rejected calls from US President Woodrow Wilson that the Covenant include specific reference to self-determination, and there was no recognition of a general right for all peoples, nations, or colonies to be self-governing or independent. Twenty years later, the Charter of the United Nations did recognize the "principle of equal rights and self-determination of peoples" and called upon states to develop "free political institutions" in non-self-governing territories under their control. In the 1960s, these general provisions gradually developed into a new international law of self-determination, based not on ethnic or national identity but on non-self-governing status; thus, colonial territories were deemed to possess the right to self-determination and independence, but not the ethnic or cultural "nations" within them. International law has largely maintained this conservative, statist perspective, which rejects the notion that distinct "peoples" within existing states have any right to secession or self-government. The primary self-determination issues debated by contemporary international lawyers, diplomats, and international relations theorists are whether there are any conditions under which groups might acquire a right to external self-determination (independence) and whether self-determination in its internal dimension could imply a right to autonomy or other devolution of power within an existing state for distinct groups within that state[2].

International law versus International politics

Some international lawyers, even professors of international law, confuse self-determination with self-execution. Undoubtedly the Kurds, the Tamils, the Saharaouis, the Catalans have the right to self-determination, whether internal in the form of autonomy or external by way of secession[3]. But the existence of this norm of peremptory international law (ius cogens) does not guarantee its automatic implementation. In order to exercise the right of self-determination, the support of a major power is frequently necessary. Thus, the Bangladeshi won their war of independence against Pakistan in 1971, because they had the support of India. By contrast, the Igbos of Biafra were massacred, because no state supported their legitimate claim to self-determination. Whether a people can exercise this right in practice also depends on international

[2]Hurst Hannum, (2017), *Self Determination,* достапно на: https://www.oxfordbibliographies.com/view/document/obo-9780199743292/obo-9780199743292-0125.xml, последно пристапено на 10.10.2019

[3] Alfred de Zayas' Human Rights Corner, link: https://dezayasalfred.wordpress.com/2017/10/11/self-determination-is-a-human-right/, last accessed 28 May 2019

solidarity, which existed in the case of Kosovo, but was missing in the case of the Tamils of Sri Lanka.
Admittedly the right of self-determination is a human right that belongs to peoples — not to the States. But in practice the right has been all too often violated with impunity, since there is no international enforcement mechanism. It is time for the United Nations to establish such a mechanism as a conflict-prevention strategy[4].

Self-determination as a theory in international relations

Self-determination as a theory in international relations can be looked at from many perspectives. Psychologically, Richard M. Ryan and Edward L. Deci of the University of Rochester[5], have shown in their work, entitled "Self-determination Theory and the Facilitation of Intrinsic Motivation, Social Development, and Well-being," that research guided by self-determination theory has three innate psychological needs: competence, autonomy and relatedness. These three needs are required 'for facilitating optimal functioning of the natural properties for growth and integration, as well as for constructive social development and personal well-being.' With this definition, the conception of self-determination has a character of individuality, either as an individual person or corporate person, for development purposes. From the perspective of international relations and law, self-determination was considered by US President, Woodrow Wilson, as 'an imperative principle of action,' and therefore wanted it incorporated in the Covenant of the League of Nations at the end of World War I for purposes of universality. The US wish was to no avail until the making of the United Nations during the Second World War. At the San Francisco consultations, the former Soviet Union proposed the inclusion of 'based on respect for the principle of equal rights and self-determination of peoples' as an amendment in the text of Article 1(2) and Article 55 of the UN Charter. In both articles, emphasis is placed on the belief that peaceful and friendly relations among nations are largely predicated on self-determination. Consequently, self-determination was conceived as a political principle and not as a legal norm. However, with the negotiations and adoption of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant of Economic, Social and Civil Rights (ICESCR), self-determination became a right, and no longer simply a political principle. First, the 1960 United Nations General Assembly (UNGA) Resolution 1514 provides that 'all 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.' Relying on Joshua Castellino, Cop and EymirlioÄŸlu of the University of Nottingham and BaÄŸaziÃ§i University, have explained that 'Resolution 1514 links self-determination to "better standards of life and larger freedom" and therefore this norm "was already accepted to a certain extent as being one that promoted better standards of life and freedom' (vide their article, "The Right of Self-determination in International Law towards the 40th Anniversary of the Adoption of ICCPR and ICESCR," Perceptions, Winter 2005, p.118)[6]. Additionally, on 15th December, 1960, the UNGA adopted Resolution 1541 in condemnation of the Portuguese refusal to give report on its colonies. The resolution not only defined what constitutes a 'full measure of self-government,' but also how 'it must result in a decision where

[4]De Zayas Alfred, *World Press,* достапно на: https://dezayasalfred.wordpress.com/2017/10/11/self-determination-is-a-human-right/, последно пристапено на 10.10.2019

[5] Ryan M. Richard and Deci L. Edward, (2000), *Self Determination Theory and the Facilitation of Intrinsic Motivation, Social development and Well-Being",* In: American Psyhologist, Vol.55, No.1. 68-78, DOI: 10.1037//0003-066X.55.1.68

[6] "*The Right of Self-determination in International Law towards the 40th Anniversary of the Adoption of ICCPR and ICESCR,"* Perceptions, Winter 2005, p.118

the people concerned vote in free and fair elections to decide whether to: a) Constitute themselves as a sovereign independent state; b) Associate freely with an independent State; or C) Integrate with an Independent State already in existence.'

Secondly, the ICCPR and the ICESCR were adopted in 1966 and they both provided for 'right of self-determination' in their Common Article 1. The two covenants are important from different perspectives: self-determination ceased to be simply a political principle. It is now a legal right. The covenants reviewed the restriction of self-determination to oppressed and colonial peoples to include 'all peoples.'

Perhaps more importantly, the UNGA, in 1970, adopted Resolution 2625 in which it is stated that 'by virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all people have the right freely to determine… their political status,' and also requires all UN Member States to respect the right of self-determination in accordance with the UN Charter.Without doubt, many issues have been raised by virtue of adoption of self-determination as a political principle and as a legal right. Many scholars now consider self-determination as a peremptory norm of international law, that is, ius cogens, which is not allowed to be derogated. The rationale for the consideration is that, Resolution 2625, entitled, 'Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the UN,' was passed 'with a wide consensus, with no vote against it.'

There is also the issue of territorial integrity versus self-determination. The 1970 Resolution 2625, which provided for the right of self-determination also provided for caution against the dismemberment of a State. As provided for, nothing in the Declaration 'shall be construed as authorising 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 the compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.'

In this regard, some scholars have argued that the 'self' in question must be determined within the accepted colonial framework, while another school of thought has it that it should be within the existing sovereign states. The Canadian Supreme Court has ruled that the exercise of the right of self-determination should be exercised 'within the framework of existing sovereign states' and also noted the need for the maintenance of the territorial integrity of those states.

Put differently, as the Committee on the Elimination of Racial Discrimination (CERD) distinguished between external self-determination and internal self-determination in which there is 'the right of every citizen to take part in the conduct of public affairs at any level,' inability to take part in the conduct of national affairs can justify complaints and calls for self-determination.

Thirdly, there is the issue of secession from an already existing State. Some scholars have posited that self-determination can include the right of secession from a state. Some others have argued that there is uncertainty on the issue of secession as it is neither permitted nor prohibited under international law. However, even though UN Member States do not want unilateral secession, the truth remains that there have been many cases of unilateral secession in international relations: Kosovo, East Timor, Chechnya, etc. Besides, Cop and EymirlioÄŸlu have pointed to two exceptional conditions that can also prompt claims for secession: the

materialisation of secession within post-colonial context and the realisation of secession against undemocratic, authoritarian regimes violating human rights.

Philosophical argument for a concept of self-determination that inheres in national groups with a shared political culture, but which stops short of independent statehood. Minority and majority nations within a state should enjoy equal rights of self-determination, understood as internal self-government. Only the denial of "modified self-determination" would justify unilateral secession[7].

And perhaps more interestingly, Alan Buchanan has also argued that the right to secede should be regarded as a 'remedy of last resort for serious injustices[8].'Additional two cases that can justify claims of secession, Ved. P. Nanda, has contended, are 'persistent and serious violations of individual human rights' and 'past unrepressed unjust seizure of territory'.

A well-argued positivist analysis of public international law finds no support for an international legal right to secession in the postcolonial context but identifies a trend toward recognizing the internal aspect of self-determination, which implies a right to democracy for the population of the state as a whole and perhaps a developing right to autonomy for indigenous peoples[9].

Noting that the meaning of self-determination "remains as vague and imprecise as when it was enunciated by President Woodrow Wilson and others at Versailles" (p. 2), maintains that the international law of self-determination necessarily implies independent statehood only in the context of decolonization. Advocates a human right–based approach that would encourage autonomy within a state as a means of balancing state sovereignty and group demands for self-government[10].

Grosso modo, the conception of self-determination is still ambiguous, especially in terms of who has a right to self-determination as provided for in many international human rights documents. Is it a group, a people, a nation? What is the content of the right to self-determination or what does it really confer as a right? Is it autonomy or statehood? Whatever is the case, Patricia Carley[11] of the US Institute of Peace, in her report on "Self-Determination: Sovereignty, Territorial Integrity and the Right to Secession," has noted that 'it is impractical to assume that legal principles alone will resolve what are essentially territorial and political disputes.'

In other words, what is important to note is that the concept of self-determination has become a rule of general application, that the UN does not encourage arbitrary secession but does not also condone the abuse of human rights and dictatorship, and that self-determination is an ambiguous concept. Consequently, self-determination is permissible as a peremptory norm of

[7] Moltchanova, Anna. *National Self-Determination and Justice in Multinational States*. Dordrecht, The Netherlands: Springer, 2009. DOI: 10.1007/978-90-481-2691-0

[8] Buchanan, A. (1992). Self-Determination and the Right to Secede. *Journal of International Affairs, 45*(2), 347-365. Retrieved from http://www.jstor.org/stable/24357361

[9] Christakis, Théodore. *Le droit à l'auto-détermination en dehors des situations de décolonisation*. Paris: La documentation française, 1999.

[10] Hannum, Hurst. "Rethinking Self-Determination." *Virginia Journal of International Law* 34 (1993): 1–69.

[11] Carley Patricia, (1996) SELF-DETERMINATION Sovereignty, Territorial Integrity, and the Right to Secession, линк: https://www.usip.org/sites/default/files/pwks7.pdf, last accessed 30 may 2019

international law, and therefore should not be derogated. Incumbent governments hardly accept self-determination even though their countries have signed international agreements requiring its protection.

For instance, there are some countries, like Turkey, whose constitutions do not allow for secession. However, acts of secession have occurred for various reasons of force majeure. The Turkish Cypriots is a good illustration of this point. Even in Nigeria, the story is not different. Nigeria's 1999 Constitution, as amended, provides for non-divisibility of the country, and yet, a portion of the territory was ceded to Cameroon. What is Nigerian territory is not supposed to have been tampered with without plebiscite, unless the ceded territory was never Nigerian ab initio. More disturbingly, all the leaders of Nigeria, Presidents and Heads of State, always swear, on oath, at the time of taking over power, to defend the political sovereignty and territorial integrity of Nigeria. There is nothing to suggest, however, any respect for the oaths taken in light of the cession of the Bakassi Peninsula to Cameroon under the pretexts of very controversial ICJ Ruling and Green Tree Accord.

This may not be the end. Further dismemberment of Nigeria appears again in sight with the quit order given by Arewa youths to all the members of Ndigbo residing in all the constitutive States of the North. The quit order not only raises the issue of internal self-determination, but also has the great potential of completely destabilising the whole country, if not permanently disintegrating it in such a way that there may not be any Nigeria at all.

There may not be any Nigeria at all because the geo-political dynamics of the unity of purpose that informed the understanding and cooperation between the South West and the North during the 1967-1970 war of national unity are no more there as at today. The Igbo, unable to understand Chief Obafemi Awolowo, when he said the Yoruba would go if the Igbo people leave Nigeria. In the interpretation of the Ibo leaders, the moment the Igbo people declare their autonomy, the Yoruba would simply do the same. This appears to be a wrong interpretation of what Chief Awolowo meant[12].

Conclusion

In a nutshell, the right to self-determination gives peoples a free choice which allows them to determine their own destiny. According to Article 1 (1) of the International Covenant on Civil and Political Rights and theInternational Covenant on Economic, Social and Cultural Rights, self-determinationis the right of all peoples to 'freely determine their political status and freely pursue their economic, social and cultural development'. This right can be exercised in a variety of ways, and traditionally a distinction has been made between external and internal self-determination. The external aspect of self-determination developed in the colonial context and, as will be seen later, resulted in self-determination becoming almost 'synonymous' with decolonisation and independence.

The Human Rights Committee has issued a General Comment on selfdetermination, which supports the existence of a right to selfdetermination beyond decolonisation. In General Comment 12, on Article 1 of the International Covenant on Civil and Political Rights, the Committee pointed out that 'Paragraph 3, in the Committee's opinion, is particularly important in that it imposes specific obligations on States parties, not only in relation to their own peoples

[12] Alfred de Zayas' Human Rights Corner, link: https://dezayasalfred.wordpress.com/2017/10/11/self-determination-is-a-human-right/, last accessed June 2019

but vis-à-vis all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to selfdetermination.

It is important to note that the Committee is of the opinion that the right to self-determination 'and the corresponding obligations concerning its implementation are interrelated with other provisions of the Covenant', which clearly points to the internal aspect of selfdetermination13. As noted before, many international instruments on selfdetermination contain a provision on the right of self-determination, while at the same time emphasizing the territorial integrity of sovereign and independent States. According to Raic, numerous authors have pointed out that if this paragraph is read a contrario, it implies that the territorial integrity or political unity of a sovereign and independent State will no longer be protected if it does not conduct itself in compliance with the principle of equal rights and self-determination of peoples and if the government is unrepresentative. In other words, if a State persistently denies a people its right of internal self-determination that State forfeits its right to territorial integrity, and consequently the people may have the remedy of external self-determination, i.e. unilateral secession.

According to Boutros-Ghali: "the sovereignty, territorial integrity and independence of States within the established international system, and the principle of self-determination for peoples, both of great value and importance, must not be permitted to work against each other in the period ahead". Despite the fact that many have argued that the right of selfdetermination is exhausted once a colonial people have acquired independence, it cannot be denied that the end of the Cold War and the subsequent developments in Europe in the early nineties set the stage for all kinds of new developments in international law, including a renewed emphasis on the internal aspect of self-determination. Regarding this, we could point out, that the right of self-determination is not confined to colonial situations, but is an 'ongoing' right with universal application. As the International Court of Justice pointed out, the essence of the right of self-determination is 'the need to pay regard to the freely expressed will of peoples'[14]. Self-determination as a theory in international relations can be looked at from many perspectives. Admittedly the right of self-determination is a human right that belongs to peoples — not to the States. But in practice the right has been all too often violated with impunity, since there is no international enforcement mechanism. But, since only States have standing before the Court, the only way the Court may be entrusted with the task of considering self-determination claims is by means of an Advisory Opinion, which would require the support of the General Assembly. Without doubt, the Human Rights Committee would be the most suitable body to protect the right of self-determination of peoples outside the colonial context. Lastly, as a human right occupying a fundamental position under international law, the right of self-determination suffers from a serious lack of effective enforcement mechanisms. Therefore, the international community should also strive to develop a common position on recognition, for example by adopting a General Assembly Resolution on this issue in the near future.

[13]Raic, refers to 'the right to freedom of thought (Article 18) and expression (Article 19), the right of peaceful assembly (Article 21), the right to freedom of association (Article 22), the right to take part in public affairs, to vote and to be elected (Article 25), as well as the provision on the prohibition of discrimination (Article 26)'.

[14] Louise Arbour, 2008, '*The responsibility to protect as a duty of care in international law and practice', Review of International Studies,* Vol. 34, , p. 447.

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