

# THE UNITED NATIONS' FOUNDATIONAL PURPOSE OF PEACEFUL CO-EXISTENCE AND THE RIGHT TO SELF-DETERMINATION UNDER INTERNATIONAL LAW

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## ABSTRACT

The best application of the people's right to self-determination and the promotion of the international legal orders on people's right to self-determination have been recognized by the United Nations to be the panacea for national and international peaceful co-existence and friendly relations. The starring role of the right to self-determination is to liberate all peoples and nations from all forms of economic and political marginalization or subjugation for the attainment of full independence. The principle of Self-determination has been regarded under several international legal documents as an inherent right belonging to all people by virtue of which they freely determine their political status and pursue their economic, social and cultural developments. Despite being important, however, the application of the right to self-determination is still far from being understood and is often fraught with difficulties and uncertainties. This can mainly be set down to the complex nature of the right being both a political concept as well legal right which is often misconstrued. The right has had several interpretations as the right of decolonization of non-self-governing entities, the right of minorities to determine their political status and the right to secession. Although much has been written on the right, most of the writings are confined to the political secessionary aspect of the right. This paper presents an intriguing analysis of the right to self-determination under international law and a clear understanding of its scope and contents away from secessionary political self-determination. The paper critically assessed from the shadows of human rights and democratic principles, the internal importance of the application of the aspect of the right to self-determination, which helps in promoting peaceful co-existence and liberation of peoples from all forms of subjugation as envisaged by the Charter of the United Nations. The study is

analytical legal research, which relied on facts or information already available from primary and secondary sources.

**Keywords:** Self-Determination, International Law, Secession and Decolonization, United Nations

## INTRODUCTION

The demand for self-determination is growing over the most recent decades, with many indigenous and political groups fighting for their right to self-determination. The flooding of thousands of people to the streets in various countries, from the Scottish movement for independence to the Catalanian of Spain, to Flanders of Belgium, to Kurdistan of Iraq to Venice of Italy, and the state of Texas and Colorado are all chanting for the their right to self-determination.<sup>i</sup> According to some reports, there are about twenty two strong ongoing movements for secession across the globe;<sup>ii</sup> all seeking for self-government, self-determination and greater control of their economic, political, social and cultural lives.<sup>iii</sup> The right to self-determination is one of the most important rights and perhaps controversial in the contemporary international legal system.<sup>iv</sup> The right can be defined as a legal right through which people decide the way to operate their political system, effectively control their economic activities and live their lives according to their accepted norms and values.<sup>v</sup> The right to self-determination is a bundle of many other important people's human rights, such as the right to freedom of speech, the right to practice ones culture and religion, and the right to live ones chosen life.<sup>vi</sup>

Right to self-determination is broadly divide into main components, there is the internal right to self-determination which is identified to be the default right that everybody enjoys as an individual. These internal self-determination rights are the inherent rights belonging to all people which must be safeguarded and promoted by the state for the betterment of the people's lives.<sup>vii</sup> There is also the external right to self-determination which is a right of people to determine their international political identity. It can be exercised by either being part of an independent state or joining another different state or forming altogether a new independent state.<sup>viii</sup>

Based on this background, this article analyzed the principle of self-determination as a legal right under international law. The article is divided into three major parts. Part I is concerned with the general introduction on the principle of self-determination. Part II analyzed all the relevant international legal documents on the right to self-determination. Finally, part III critically examined the components of the principle of self-determination. In the introduction, the essay traced the evolution of the principle of self-determination from the revolution on the monarchical dictatorship system to the famous American and French revolutions and to the adoption of the principle by the United Nations and to the current happenings on the principle. The second part of the article focused on the international legal documents and pronouncements that gave the principle of self-determination a legal support. The third part of the article examined the internal and external components of the principle of self-determination with references to some cases and examples. The article studied the right to secession under the external self-determination and concluded on the note that the principle of self-determination will continue to be relevant as change is a natural phenomenon.

## **THE GENERAL PRINCIPLE OF SELF-DETERMINATION UNDER INTERNATIONAL LAW**

The principle of self-determination can be defined as a legal right through which people decide how they should be governed, by participating in the activities of their government, and also to decide on how to live their lives according to their accepted norms, values and philosophy.<sup>ix</sup> Self-determination is therefore a principle of law that give people their inherent rights as human beings to achieve their desired goals in life. The principle of self-determination is very wide and complex, it consist in it many other rights that cannot be fully exercised in its absence.<sup>x</sup> The idea of people's rights to self-determination was said to have started as a reaction to the dictatorial nature of the monarchs and the absolute control over their subjects, the monarchs exercised unilateral power to alienate or give out a territory as a gift regardless of people's choices.<sup>xi</sup> That is the starting point of the principle, however it did not gained conventional support until the time of American Declaration independence of 1776 and French revolution of 1789.<sup>xii</sup> From then on it continued to thrive with the changing trend of national identity and nationhood in Europe, Africa and Asia.<sup>xiii</sup> Sequel to the collapse of the Ottoman and Austro-

Hungarian Empires in the First World War,<sup>xiv</sup> together with the influential roles of President Wilson and Lenin, the principle came to a limelight, resulting to the creation of many states out of the collapsed Empires.<sup>xv</sup>

The principle of self-determination appeared in the 20<sup>th</sup> century in an international instrument of the United Nations Charters and it was considered as a political concept not a legal right.<sup>xvi</sup> The principle was later on recognized as a legal right as the widespread support for decolonization from African countries and Russia mounted high.<sup>xvii</sup> The United Nations General council adopted a resolution that will grant independence to the countries under colonial occupation in 1960.<sup>xviii</sup> The resolution of the General Assembly declared that all people have the right to self-determination, by virtue of which they are at liberty to choose how they want their governments to be, and to live their lives according to their accepted common norms and values.<sup>xix</sup> The principle was also further strengthen<sup>xx</sup> when inserted into the human rights covenants, that is, the civil and political covenant<sup>xxi</sup> and the economic, social and cultural covenant.<sup>xxii</sup> The General Assembly also adopted another declaration on friendly cooperation between nations,<sup>xxiii</sup> which expanded the right of self-determination not only to the colonial territories but to other people.<sup>xxiv</sup>

## **THE LEGAL BASIS OF THE PRINCIPLE SELF DETERMINATION**

The principle of self-determination, as mentioned earlier started as a political concept, and with it incorporation into several international conventions and treaties it has now become a customary international law rule. The principle was incorporated and given several meanings by the international treaties and it now covered a wide bundle of rights. The first instrument to incorporate this principle is the UN Charter.<sup>xxv</sup> According to the United Nation Charter, the purpose of its (organization) creation is to maintain international order and promote peaceful and friendly co-existence, and this purpose will only be achieved on the basis of principle of self-determination and equal right.<sup>xxvi</sup> In article 1(2) and 55, the Charter considered self-determination as a cornerstone principle that can bring about peace and security in the world.<sup>xxvii</sup> What this meant therefore was that the charter recognizes this principle as a norm of international law and undertook to safeguard it.<sup>xxviii</sup> The term principle of self-determination,

as contained in the Charter is not a legal right but rather a political concept and this therefore calls for more precise and binding law on the right to self-determination.<sup>xxxix</sup>

The principle of self-determination was later on in a UN General Assembly resolution, considered as a legal right and no more a mere political concept.<sup>xxx</sup> According to the declaration for granting independence to countries under colonial rule, all people are entitled to self-determination right, and by this right, they are at liberty to live their lives according to their culture and pursue their economic aspirations.<sup>xxxi</sup> The resolution is aimed at liberating the countries that are under colonial rule and ensure that their right to determine their political identity is guaranteed, the declaration however, regarded the principle of self-determination (external) to only be applicable to non-self-governing regions and not to be used as a tool for distorting the sovereign integrity.<sup>xxxii</sup>

The incorporation of the principle in the international human rights covenants of 1966<sup>xxxiii</sup> significantly changed the landscape of the principle in the international law. The two covenants are both treaties adopted by the General Assembly contributing immensely to the development of international human rights law and safeguarding people's right to self-determination.<sup>xxxiv</sup> According to the article one of the covenants, all people have the right to self-determination and the right to participate in their political activities and freely pursue their economic and social activities.<sup>xxxv</sup> And they have the right also to dispose with their wealth and resources as deemed fit, on the principle of mutual benefit not as an obligation imposed upon it by any other people.<sup>xxxvi</sup> In these two covenants, the right to self-determination is considered to be a universal right applicable to all people not only limited to the colonial territories, and therefore all people are entitle to the right to decide their political status once recognized as a people.<sup>xxxvii</sup>

The principle is also incorporated into the General Assembly declaration on friendly relation, the declaration adopted by the general assembly resolution 2625(XXV) recognizes the right to self-determination as a universal right that is accessible to all peoples, and according to the language of the declaration, respect for territorial integrity would depend on how the state embrace all, and treated them based on the principle of Justice and equality.<sup>xxxviii</sup> The declaration in its paragraph 4, mentioned the forms of which self-determination can be exercised as, thus, establishment of an independent state by the people, or association with

other independent state, or emergence of a new political status.<sup>xxxix</sup> There are other legal instruments that may not have been mentioned here which also provides for the right.

## COMPONENTS OF SELF DETERMINATION

Self-determination as a principle of international law is broadly classified into two major components, that is, the internal self-determination and the external self determination.<sup>xl</sup> The internal self-determination is seen as the right of people to freely choose and determine their economic, social, cultural and political rights within a given territory while the external self-determination means the people's right to freely choose and maintain their international political status.<sup>xli</sup>

### *Internal self determination*

Internal self-determination as defined by several international legal instruments is the people's right to freely participate in the democratic processes and activities of the state, and to pursue their economic activities and live their lives according to their cultural values, without any form of domination, marginalization or exploitation by the central government.<sup>xlii</sup> Therefore the right to internal self-determination can said to be attained when people living in an independent state were able to participate in the decision making of the state and achieved their desired political, economic and social goals. The state has the responsibility not only to prevent discrimination, but must also create a good condition to enable the development of its people's religion, traditions, customs and ways of living.<sup>xliii</sup> Internal self-determination in other words is an increase observance and promotion of basic democratic values in a given society, such as free speech, suffrage, minorities' right.<sup>xliv</sup> Internal self-determination is therefore considered as a norm of international law available to all peoples and groups at all the time.<sup>xlv</sup>

The right of internal self-determination involves a new approach to the principle of self-determination which can guarantee right to minority groups within a territory without necessarily disintegrating into different small entities as a state. In other words, the principle of internal self-determination can support the introduction of policies that can accommodate all people even in a pluralistic society, for example, federalism, confederalism, regional government, local government and some other forms which can protect the rights of all peoples

in the way they achieve their desired goals and also protect the territorial integrity of the state.<sup>xlvi</sup>

The desire to change the internal political order of a state can be achieved through exercise of the right to internal self-determination without necessarily making a case for secession.<sup>xlvi</sup> This is seen in the recent Arab uprising against their dictator leaders, for example the regime change in Libya in 2011 is a clear manifestation of people's choice in changing the government of the state for a better one without necessarily changing the international political status of the state, the right to Internal self-determination is therefore seen as a stepping stone for external self-determination, and until and unless internal self-determination could not solve the problems of the minority groups, no external self-determination (break up) may be contemplated.<sup>xlvi</sup>

According to Christopher B, a group is said to have enjoyed internal self-determination as long as the central government ensure the minority group could meaningfully practice their culture, freely speak their languages, and effectively participate in the state politics<sup>xlvi</sup> In the Quebec secessionist movement case<sup>1</sup> the people of Quebec in Canada decided to secede from Canada to form an independent state, the Quebecers argued that there were threats to their culture even though there was no physical threat to the Quebec people, they based their secession movement claim on the principle that secession is justified if there is threat to the survival of peoples culture.<sup>li</sup> The Canadian Supreme Court while it recognizes the principle that a cultural threat can justify secession, it however decided that the right will not be available to the people who were afforded meaningful exercise of the right to self-determination within the territory and the Quebec people were not denied their right to self-determination in the state of Canada.<sup>lii</sup> The Canadian Supreme Court distinguished internal self-determination from external and held that the right to external self-determination would only be available to Quebec if the State refuse to respect their internal self-determination right.<sup>liii</sup> This means that the external self-determination can be invoke only if there is a serious violation of internal self-determination by the central administration and can be proven by the people.<sup>liv</sup>

The principle was also restated in the case of *Katanga v Zaire*,<sup>lv</sup> where the Katangese people submitted a request to the African commission on human right to recognize the independence of Katangese people, the commission held that the right to external self-determination can only

be available if evidence can be adduced as to the serious violation of internal self-determination, and in the case of Katangese people, no evidence of that serious violation of human right and no evidence that the people were denied the right to participate in the decision making of Zaire was adduced as to warrant the secession of Katangese.<sup>lvi</sup> The setting of a high standard of proof for the violation of internal self-determination before invoking the external self-determination is to protect the territorial integrity of the states, and the international community is concerned about the resultant consequences of an unscrupulous granting of the right, as it will encourage an unmerited claim which will make the international community highly fragmented, unstable, and incapable of addressing global challenges.<sup>lvii</sup>

### ***External self determination***

The right to External self determination, according to the committee on racial discrimination<sup>lviii</sup> refers to people's equal right to determine and choose their international political status. According to the supreme court of Canada external self-determination refers to the establishment of a sovereign independence state. External self-determination as a right, is clearly established in several international documents,<sup>lix</sup> in article 1(2) and 55 UN charters,<sup>lx</sup> the international human rights covenants Article 1,<sup>lxi</sup> the 1970 friendly relations declaration,<sup>lxii</sup> the declaration on granting independence to colonial territories,<sup>lxiii</sup> the European Helsinki Final Act.<sup>lxiv</sup> All these documents provided for the right to external self-determination and gave the guiding principles of what the right should be, and how it should be exercised by the recipients of the right. Among these laws, the 1970 Friendly declaration explained in two broad categories how the right to external self-determination should be addressed under international law, thus;<sup>lxv</sup> first, the right to external self-determination should be respected and observed in accordance with the principle of territorial integrity in international law. What this simply means is that even though the right is provided in the international law, it must not be used to disrupt the unity and integrity of the territory of a state.<sup>lxvi</sup>

Therefore, a group even when qualified as a people in the context of international law and the principle of self-determination would not have the right to unilaterally declare its independence or secede from a sovereign state.<sup>lxvii</sup> This principle has been restated in the Republic of Tatarstan case.<sup>lxviii</sup> In this case, the people of Tatarstan under Russian federation organized a referendum in March 1992 to decide their international political status, the case was brought to

Court for judicial review and the court while deciding, cited the international documents on self-determination that set limit to the right of self-determination based on the principle of territorial integrity and national unity therefore rule against the Tatarstan's attempt to secede.<sup>lxxix</sup> On the second part, the declaration considered the external self-determination right to be accessible to a group when there are extreme or serious violations of the people's fundamental human rights in the state, after all possible means to bring an end to the violations prove abortive.<sup>lxxx</sup> Meanwhile, the rights will be applicable only to the oppressed people whose basic fundamental rights have been infringed by the state and were subjected to serious human right abuses. In this situation the right to external self-determination can be resorted to by the people and it may take the form of seceding to form an independent state by the oppressed people.<sup>lxxxi</sup> In the case of East Timor,<sup>lxxxii</sup> the people of East Timor which is a territory incorporated by Indonesia after Portugal left the territory were subjected to serious violation of human rights as a result of the fight on the ownership of the territory.<sup>lxxxiii</sup> The Security Council in its resolution 1264<sup>lxxxiv</sup> express concern on the serious violations of human rights and international humanitarian laws in the region, and because of this subjugation, the people of East Timor were eventually granted their independence in May 2002 and declared as a Democratic Republic of Timor-leste.<sup>lxxxv</sup>

The right to external self-determination may take other forms and does not necessarily take the form of secession or Independence, it can sometimes take the form of a loose federation where the oppressed people can run their government and take control over their activities. They may also choose to merge with another state.<sup>lxxxvi</sup> However the most popular form of the external self-determination right remained secession.

## **RIGHT TO SECESSION UNDER INTERNATIONAL LAW**

International law does not support the right for people to secede from a sovereign state in absolute terms, and likewise it does not also generally prohibit secession, what determine the success of secession depends on the circumstance of the case.<sup>lxxxvii</sup> Basically, there are two normative theories of secession as pointed out by Buchanan, these are; the Remedial right theory and the Primary right theory.<sup>lxxxviii</sup> These theories examine the doctrine of secession

under international law and came up with their positions on when secession is said to be available to people.

According to the Remedial right theory, the right to secession is considered as the last resort for the exercise of people's right to self determination. According to this theory, a group may have the right to secession only if it can prove serious injustice that cannot be dealt with except through secession.<sup>lxxxix</sup> They argued that only in extreme cases that secession will be justifiable. Like the Kosovo case<sup>lxxx</sup> where the international community found that there was serious humanitarian crisis and violation of human rights, to the extent of international community taking control of the territory, and despite that, the situation remained terrible with no other alternative except by allowing the Kosovo people to exercise their right to self-determination through declaration of independence.<sup>lxxxi</sup> The remedial right theory also consider secession as something similar to revolution, with the only differences being that secession apply to a particular group in some part of a territory, aiming to breakup and not simply to overthrow the government of the state.<sup>lxxxii</sup> However according to the remedial right theory while the general rule permitting secession should always be a serious act of injustices, it recognizes an exception where secession may take place not as a result of injustice these instances are: where a sovereign state granted a group right to secede example of Norway breaking from Sweden in 1905; or where the right is included in the constitution of a state example of the Republic of Yugoslavia which added the principle of self-determination and secession in its constitution; or where from the point of unification of a nation there was an understanding that secession is permissible in future.<sup>lxxxiii</sup>

While the Remedial theory argued that secession is the last resort, according to the primary right theory of secession, people have the right to break up from any state even without any form of injustice, and what confers the right to secession to a group is simply the voluntary will of the group members to form an independent state not necessarily because of any injustice they suffered.<sup>lxxxiv</sup> The theory considered the group's right to break up from a state even when the state perform all its constitutional duties by safeguarding all their fundamental rights.<sup>lxxxv</sup> A good example of this scenario is the Scottish secessionist movement which even though it has remain for a long time, still there was no report of abuse of peoples human rights by the

central administration of UK, but despite this, (notwithstanding the outcome of the referendum) the Scottish people succeeded in taking a referendum.<sup>lxxxvi</sup>

## CONCLUSION

The application of the right to secession according to the principle of international law is regulated by certain principles. Among this is that it is only available to a group with common identity living in a defined territory as a people, and the criteria for those peoples entitlement to secession are basically divided into two.<sup>lxxxvii</sup> First, for people to succeed on this claim, the common historical bond, inherited cultural values, language, religious affinity, Race and territorial connection must be ascertained.<sup>lxxxviii</sup> Secondly, another issue that has to be ascertained is the extent to which the individual members in the group recognize themselves as a collective distinct group of people coming together for common goal of forming an independent state.<sup>lxxxix</sup> Once a group satisfies these criteria, it is qualified to be referred to a people under the principle of international law. If they can show cogent evidence of serious violation of human rights or domination by the state, the right to self-determination can be exercisable through secession to form an independent state.<sup>xc</sup>

From the discussion above so far, the article tried to explain what self-determination is, and the various laws that provide for it. The article also examined the two components of self-determination, that is, the internal and external right. In addition, it assessed the concept of secession under the international law and in conclusion, the study argued that the right to self-determination is an inherent right of all people to determine how to live their lives.

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