



# The self-determination of people and international law

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## 1 INTRODUCTION

demands for greater autonomy or self-government led to demands for full independence. With the disintegration of the Austro-Hungarian and Ottoman empires during World War I, the territory of the old empires demanded new sovereigns (EMERSON, 1971). In this context, the principle of self-determination became the foundation of the new division of Europe by the victorious powers. Until then, self-determination was an element raised only by the nations that were within the territories of the defeated empires. Therefore, it was not thought to apply to overseas colonies (BLAY, 1986).

The self-determination of people is a basic principle of contemporary international law. Therefore, it is recognized in several texts and resolutions and used to support the emergence of new States. Therefore, the referred principle was developed to substantiate the process of decolonization of the African peoples that were under the control of the great powers. Therefore, it is the people's right to define the destiny of their nation (CRISTESCU, 1981).

The principle of self-determination of peoples was and still is claimed by several nations that seek to proclaim their independence. This principle legitimized the independence of the republics that were part of the former Soviet Union. In addition, the right to self-determination served as a subsidy for Kosovo's independence, among other cases (RAIĆ, 2002). In practice, the use of this right is not simple, precisely because it conflicts with the sovereignty and territorial integrity of States.

## 2 OBJECTIVE

Analyze the discussions about the application of self-determination of peoples in contemporary scenarios, that is, after the decolonization processes.

## 3 METHODOLOGY

The research method adopted to carry out this study was deductive-hypothetical. In addition, it was decided to review the literature on International Law and International Relations on the principle of self-determination of people.

## 4 DEVELOPMENT

In the beginning, there was no legal document to deal with the self-determination of people. However, at the end of the First World War, nothing prevented the self-determination of peoples from being



used to justify the disintegration of several Empires, such as the Austro-Hungarian and Russian ones. Only after the Second World War, several international documents, such as the UN Charter, established the self-determination of peoples as an important norm for international law (EMERSON, 1971).

The US president, Woodrow Wilson, proposed a series of principles as an indicator or a guide in the construction of world peace. These principles became known as Wilson's 14 points (QUANE, 1998). The 5th (fifth) point established the right to self-determination of peoples by emphasizing the "absolutely impartial readjustment of colonial claims so that the interests of peoples deserve equal consideration as the aspirations of governments, the foundation of which will have to be determined, or that is, the right to self-determination of peoples", and, the 14th (fourteenth) point listed the need to establish an international organization, by defending "the creation of a general association of nations, to be constituted through specific pacts to mutually guarantee the political independence and territorial integrity of large and small States" (CRISTESCU, 1981).

Wilson's 14 Points referred to specific territorial settlements, including the creation of independent states out of the remnants of the Austro-Hungarian and Ottoman empires. Meanwhile, at that time, the principle of self-determination of peoples was nothing more than an ideal, precisely because it was not incorporated in the Charter of the League of Nations. However, over the years, the self-determination of people acquired greater importance, especially with the creation of the United Nations (UN) in 1945, which is why several articles of the Charter mention it (CRISTESCU, 1981).

It is noteworthy that the self-determination of peoples in 1919 had no relation to the demands of the interested peoples unless they reflected the interests of the great powers, thus, very few popular consultations were carried out to consider the wishes of the individuals affected by the cartography of Versailles. This is because positive law did not recognize the right of national groups to secede from the State simply by wishing to do so, nor did it recognize the right of other States to claim such separation. Generally speaking, granting or withholding the right to a portion of its population to determine its political destiny is an exclusive attribute of state sovereignty (EMERSON, 1971).

Although self-determination and democratic postulates were the basis of Wilsonian principles, the formation of States after 1919 did not correspond to democratic forms of government, since the application of the principle of self-determination in the context of the Treaties of Versailles interfered with the protection of minorities, since it was difficult to identify the criteria that a national group should meet to legitimize its aspirations (HANNUM, 1994).

Wilson's dream was ignored by the League of Nations, but this did not prevent political leaders from seeking the argument of self-determination of peoples as the foundation of their proposals - as was the case of Lenin and Stalin (RAIÇ, 2002). Both saw self-determination as an instrument of class struggle interests, to combat oppressive nations, and to make secession possible. Therefore, the Soviets' support for self-determination and decolonization was more strategic than a philosophical decision (QUANE, 1998).



#### 4.1 SELF-DETERMINATION IN THE CONTEXT OF THE UNITED NATIONS

The principle of self-determination is mentioned only twice in the Charter of the United Nations, both in the context of the development of friendly relations between nations and in conjunction with the principle of equal rights, as implied in Article 2 "to develop friendly relations between nations, based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures for the strengthening of universal peace" (CHARTER OF THE UNITED NATIONS, 1945).

Furthermore, the UN Charter specifically chapters XI, and XII, implicitly dealt with the principle of self-determination of peoples by listing two categories of territory with the possibility of liberation from the control of the powers, that is, non-autonomous territories and territories under guardianship. For territories under a trust (Articles 73, 75, and 85 of the UN Charter) independence was foreseen, while for non-self-governing territories (Articles 73, 74, and 75 of the UN Charter) a gradual process to acquire self-government was possible (QUANE, 1998).

The guardianship system replaced the mandate system. This was created by the League of Nations, provided for in Article 22 of the Charter of the organization, authorizing certain territories to leave the control of a country and become subject to the jurisdiction of another country. Thus, with the defeat of Germany and the Ottoman Empire, the winning powers decided to take control of the territories in Asia and Africa that before the war had been under the administration of Germany and the Ottoman Empire (BLAY, 1986).

With the creation of the UN, the mandate system is replaced by the guardianship system, established to administer some territories where people could not choose their government, that is, the colonies. Most of these territories were in Africa and the Pacific Ocean. For example, French Cameroon was administered by France from 1922 until 1960, when it gained independence, and British Cameroon was administered by the United Kingdom in 1922. After a plebiscite, Northern Cameroon became part of Nigeria in May 1961 and Southern Cameroon joined the Republic of Cameroon in October 1961. It should be noted that from 1960 to 2002, 54 (fifty-four) territories achieved independence or self-government. Although, currently, there are some non-autonomous territories including Western Sahara, Gibraltar, and Bermuda (EMERSON, 1971).

The articles listed in the UN Charter on the self-determination of peoples do not make it clear in which cases this right can be exercised, so several resolutions of the UN General Assembly were published to delimit this issue. Therefore, the UN General Assembly adopted two resolutions to try to resolve the issue of colonization (CRISTESCU, 1981).

Resolution 1514(XV) of 1960, called the Declaration on the granting of independence to colonial countries and peoples, sought to guarantee the principle of self-determination of peoples, condemning colonialism. This resolution established the need to put an end to colonialism in all its forms and



manifestations, that is, territories under guardianship and autonomous territories must be able to become independent (HANNUM, 1994).

In this way, the UN sanctioned the right of self-determination of peoples in the event of decolonization, favoring the right to independence. Thus, the said document declares that all peoples have the right to self-determination; under this right, they freely determine their politics, and their status and freely pursue their economic, social, and cultural development (CRISTESCU, 1981).

Paragraph 6 determines that “any attempt aimed at the partial or total disruption of the national unity and integrity of the territory of a country is incompatible with the purposes and principles of the Charter of the United Nations.” In the same sense, the 7th paragraph ratifies “the sovereign rights of all peoples and their territorial integrity”.

Furthermore, it clarifies that a non-autonomous territory under Chapter XI of the Charter can achieve a full measure of self-government by emerging as a sovereign independent State, associated or integrated with the independent State (RAIÇ, 2002). Meanwhile, in addition to these options, the Declaration on Friendly Relations foresees the emergence of any other political status freely determined by a people as a way of implementing the right of self-determination (BLAY, 1986).

The UN General Assembly also published Resolution 1541 (XV), called Principles that should guide Member States to determine whether or not there is an obligation to transmit the information in article 73 (e) of the Charter of the United Nations (CRISTESCU, 1981).

*Article 73. Members of the United Nations who have assumed or assume responsibility for the administration of territories whose peoples have not attained the full capacity of self-government, recognize the principle that the interests of the inhabitants of those territories are of the highest importance, and accept, as a sacred mission, the obligation to promote to the highest degree, within the system of international peace and security established in this Charter, the well-being of the inhabitants of these territories (...)* (CARTA DAS NAÇÕES, 1945).

The attribution to the States of being responsible for non-autonomous territories is envisaged, in addition to providing information on their local administration, to verify respect for the rights of the population, listed in article 73. Furthermore, the Resolution established that regarding the process to become independent, the territories could follow some paths: (i) become an independent sovereign State; (ii) associate with another independent State; (iii) integrate freely into another State (HANNUM, 1994).

In summary, the way for autonomous territories to exercise the right to self-determination is through the free and voluntary manifestation of peoples, that is, through a democratic procedure, whether a plebiscite or another form of voting. Therefore, since 1954, the UN has organized and supervised various elections and plebiscites in non-autonomous territories to guarantee their independence or their association with other States (QUANE, 1998).

It should be noted that self-determination in the context of decolonization concerns the external aspect, that is, it is the right of people residing in non-autonomous territories and under guardianship to



define whether they want independence or not. Meanwhile, the self-determination of people in its internal aspect concerns the right of a people to determine its economic and political regime. In other words, the self-determination of people in its external sense ceases to exist when it is implemented, but the self-determination of people in its internal sense has a permanent character (HANNUM, 1994).

In this way, self-determination in its external sense is that intended to form an independent state. Therefore, considering the internal aspect of the self-determination of peoples, the State must guarantee the people the right to support democratic and representative governments – as it is how minorities, ethnic groups, indigenous peoples, and racial groups can manifest (BLAY, 1986).

Furthermore, the definition of peoples and the existence of the right to self-determination outside the context of decolonization were addressed in the Declaration on Principles of International Law on Friendly Relations and Cooperation between States - hereinafter the Declaration on Friendly Relations. Said Declaration reiterates (i) the prohibition of intervention in the internal affairs of a State; (ii) the duty of States to promote human rights by the Charter; (iii) and the principle of sovereign equality of States.

Likewise, it declares that the use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention, as well as determining that every State must promote the principle of equal rights and self-determination of people, but this may not imply authorization to dismember or harm the territorial integrity or political unity of sovereign and independent States. In this way, the territorial integrity and political independence of the State are inviolable (HANNUM, 1994).

#### 4.2 SELF-DETERMINATION BEYOND THE CONTEXT OF DECOLONIZATION

Much is discussed about whether the principle of self-determination of peoples can be applied in all cases when the population claims independence, that is, whether it has a universal nature. Taking UN Resolution 1514(XV) into consideration, the self-determination of peoples is intended for cases of the abolition of the domination of any people by a foreign people and in any form or manifestation (BLAY, 1986).

Therefore, the independence of these people must be political, economic, and cultural, and free from all influence or pressure. Therefore, the self-determination of people, in this sense, can be considered a universal principle, that is, subject to application in all cases. This is visible in the two Covenants of 1966 - the Covenant on Civil and Political Rights; and, the Covenant on Economic, Social, and Cultural Rights. Article 1 common to both Covenants reveals the universal nature of the right to self-determination (CRISTESCU, 1981).



## ARTICLE 1

1. *All peoples have the right to self-determination. By this right, they freely determine their political status and freely ensure their economic, social, and cultural development.*

2. *To achieve their objectives, all peoples may freely dispose of their wealth and natural resources, without prejudice to the obligations arising from international economic cooperation, based on the principle of mutual benefit, and from International Law. In no case may a people be deprived of their means of subsistence.*

3. *States Parties to the present Covenant, including those having responsibility for administering non-self-governing territories and territories under trust, shall promote and respect the exercise of the right to self-determination, following the provisions of the Charter of the United Nations ( ICESCR, 1966).*

Note that the 1st paragraph states that all peoples have the right to self-determination. While paragraph 2 establishes the sovereignty of the people over their natural resources, and this implies control by the population over the riches of a territory. Therefore, Article 1 expresses internal self-determination, by establishing the right of the population to exercise the rights that are functional to express the popular will. While the following paragraphs complement this idea, as it deals with the rights of all peoples to dispose of their wealth and resources, and so on. In short, it is clear that the right to self-determination of peoples is not something exclusive to the decolonization process, that is, it is not intended only for non-autonomous territories and territories under guardianship (HANNUM, 1994).

Resolution 2625 (XXV), of 1970, called "Declaration on principles of friendship and cooperation among States", establishes the relationship between the principle of self-determination and development. This Resolution extended the range of situations that allow the exercise of the right to self-determination beyond the people subjected to the colonial regime, that is, the self-determination of peoples can be exercised by those subjected to subjugation, domination, and external exploitation. Furthermore, it confirms paragraph 3 of article 1 of the Covenant, which does not limit the exercise of the right of self-determination by peoples to non-autonomous territories and territories under guardianship (QUANE, 1998).

### 4.3 SELF-DETERMINATION AND THE INTEGRITY OF THE TERRITORY

Dealing specifically with the self-determination of peoples, in the external dimension and the context of decolonization, it is perceived that this occurs through the formation of an independent State, the integration or association with a third State, that is, the right to self-determination in its external aspect can be implemented as the dissolution of a State, the merger of one State with another and through secession. Likewise, it is possible when the territory was occupied by another State in violation of international law (QUANE, 1998).



It should be noted that other hypotheses allow the exercise of the right to self-determination of peoples outside the colonial context, namely: (i) the consensual dissolution of a State and the always consensual fusion with another State; (ii) the exercise of self-determination by a population whose territory has been annexed by another State. As an example, Czechoslovakia, in 1993, dissolved into two states - the Czech Republic and Slovakia. There was also the dissolution of the Soviet Union in 1991, giving rise to 14 states (HANNUM, 1994).

At first, it is thought that the self-determination of peoples violates territorial integrity, especially after reading Article 2(4) of the UN Charter (QUANE, 1998).

4. All Members shall avoid in their international relations the threat or use of force against the territorial integrity or political dependence of any State, or any other action inconsistent with the Purposes of the United Nations (CARTA DAS NAÇÕES UNIDAS, 1945).

It is a corollary of the principle of sovereignty, as well as legitimizing the State to protect its territory against intervention. Initially, this principle prohibited the States that administered the non-autonomous territories and under guardianship from dismembering them (CRISTESCU, 1981). Therefore, in the context of decolonization, the right to external self-determination of colonial peoples was interpreted in the light of the principle of territorial integrity, that is, colonial peoples should preserve the integrity of their territory and declare the independence of all of it, and not just a part. However, it should be noted that, in this case, the self-determination of peoples and the principle of territorial integrity do not prevent African States from respecting the existing borders at the time of achieving independence (BLAY, 1986).

In summary, the right to self-determination of people must respect the territorial integrity of the State, which is why no State accepts a segment of its population to secede or become independent, or join its neighbor. In other words, there is no absolute right to secession, as this must be exercised taking into account the territorial integrity of a State. Likewise, the principle of territorial integrity is not absolute, as there are cases in which the right to secede is admitted (QUANE, 1998).

Given this, when the State violates the right to internal self-determination, it grants the right to the people to exercise external self-determination through the instrument of unilateral secession. However, if the State respects a people's right to internal self-determination and human rights, any act of unilateral secession that seeks to implement the right to self-determination in the external sense constitutes a violation of the right to self-determination itself (HANNUM, 1994).

Therefore, secession only finds support when, cumulatively: (i) there is the presence of a people who, even though they are a minority about the total population of the State, are the majority in an area of the territory; (ii) the State prevents the exercise of internal self-determination and/or commits serious and systematic violations of the fundamental rights of minorities; (iii) there is no other mechanism capable of



peacefully resolving the conflict (RAIČ, 2002). Finally, it is emphasized that the 1993 Vienna Declaration ratifies the 1970 Resolution when determining the right of peoples to self-determination cannot violate the territorial integrity or political unity of the sovereign and independent State, whenever the State observes human rights and internal self-determination (BLAY, 1986).

## FINAL CONSIDERATIONS

Ethnic issues are still a reality in international and national environments. The search for greater political autonomy reflected in the struggle to promote values intrinsic to minority groups - especially about the purpose of creating a sovereign state -, reveals how international law becomes a fundamental normative instrument to resolve this type of conflict. controversy. Moreover, the autonomy so desired by the minority can mean the prohibition against discrimination and the preservation of their values, language, traditions, and customs, among other elements that constitute the group.

In short, self-determination becomes a principled and normative element that underlies the claims of a given ethnic group. This is visible in the struggle they play in reaffirming their identity in the face of a dominant group, although the pretense of guaranteeing human rights, equality, and prohibition of discrimination is not always enough to protect the relevance that such groups have in society. , especially when the minority's values are contrary to the majority's project.

In this way, structural inequality and the failure of government institutions to promote respect for ethnic diversity can be seen in practice, which is why there are several separatist movements across the globe. Therefore, nationalism acquires importance when referring to separatist conflicts, since when traditional ties between members of society are loosened, the cultural values of minority groups are strengthened.

Thus, prejudice and intolerance take shape, especially on the part of those who want to maintain the status quo. And even when individuals belonging to a certain minority group aim to participate in a larger group, they will be driven to defend their rights when faced with solidified racism in society. Therefore, state repression against human rights violations can reach the level of an armed conflict. Likewise, the use of indiscriminate force by the government against members of a minority group, who oppose political structures, undermines the implementation of moderate and peaceful solutions between both sides of the conflict.

The understanding that every state is a nation, or that all sovereign states are national states, has clouded our understanding of political realities, mainly because there are few, if any, nation-states that reflect an entirely homogeneous ethnic and cultural community. Therefore, the search for homogeneity can lead to human rights violations, instead of guaranteeing plurality and tolerance. Even if they defend the





State as a sovereign entity, the concept of sovereignty cannot be raised to justify the atrocities perpetrated by the State or society.

Sovereignty is considered the corollary of the State, as it is an intrinsic element to its existence, and presupposes independence among its peers. In short, it is the cornerstone of the state structure. Likewise, the concept of sovereign equality of states implies that the rights of each independent political unit are limited by the equal sovereign rights of other states. Likewise, the understanding that all people are free to determine their political status and seek their economic, social, and cultural development is one of the maxims raised in recent times. Because of this, the analysis presented regarding the contemporary understanding of self-determination is justified, especially after the colonial processes.

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