

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 3

2021

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Balancing the Right to Self-Determination

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ABSTRACT

*This short article discusses the idea of having a balanced approach towards the right to self-determination in light of other recognized principles of international law such as human rights, the 'territorial integrity of states', 'maintenance of colonial boundaries' (also known as *uti possidetis juris*) and the principle of 'maintaining international peace and security'.*

Keywords: *Self-Determination, International Law, Human Rights, Peoples, Territorial Integrity, Peace.*

I. INTRODUCTION

Essentially, self-determination is a right of the people to freely determine their own political, economic, cultural and social status. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR) provide legal recognition to the principle of self-determination under international law. More or less, right to self-determination is considered to be a part of *jus cogens* in the international community. It is important to keep in mind that self-determination is a right of 'peoples' and not a right of individuals. There is a need to further the idea of a balanced approach towards right of self-determination in consonance with other accepted principles of international law including human rights. The principles of international law such as the 'territorial integrity of states', 'maintenance of colonial boundaries' (also known as *uti possidetis juris*) and the principle of 'maintaining international peace and security' need to be strictly protected along with the right to self-determination.

II. RIGHT TO SELF-DETERMINATION VIS-À-VIS OTHER PRINCIPLES OF INTERNATIONAL LAW

Historically, the development of the right to self-determination can be traced through three different stages. During the first phase, this right was subjected to people of colonial territories which demanded liberalisation and a right to freely determine their political status. Post the

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colonialization era, the scope of this principle was extended to ethnic and cultural groups which were subjected to discrimination within their national territories. The third phase led to the application of this principle to all 'peoples'. Thus, irrespective of the fact that the people belong to a colonized state or ethnic group, the right of self-determination is available to all 'peoples' who are victims of any kind of discrimination, domination or control, which obstructs their free will.

Nevertheless, no right is absolute. The right to self-determination is not absolute as individuals do not exist alone but in a civilised society. Firstly, the principle of territorial integrity must be respected. A mere desire to form a separate state belonging exclusively to a particular ethnic or cultural group is not sufficient to enforce the right to self-determination as per acceptable international standards. The right to secession is not a right guaranteed under international law. However, it isn't prohibited either. It may be enforced if the particular ethnic group has suffered massive and blatant violations of human rights, is forbidden to exercise power and freedom in a sovereign state and continues to suffer oppression. The right to secession is an exceptional remedy and cannot be claimed in every case of recognition of right to self-determination. Therefore, peoples' right of self-determination has to be balanced with a nation's territorial integrity and maintenance of its existing geographical and political state of affairs.

Secondly, the principle of *uti possidetis juris* is another limitation to right to self-determination. The generally accepted notion of this principle in the international law community is laid down in the case of *Burkina Faso v. Republic of Mali*. The International Court of Justice (ICJ) stated it to be '*...a general principle, which is logically connected with the phenomenon of the obtaining of independence, wherever it occurs. Its obvious purpose is to prevent the independence and stability of new States being endangered by fratricidal struggles provoked by the challenging of frontiers following the withdrawal of the administering power.*'² In essence, when the right to self-determination is exercised by peoples of a colonial state, the principle of *uti possidetis juris* becomes applicable for the preservation of already existing territorial boundaries to ensure stability and protection of newly-formed post-colonial states. However, as these post-colonial independent states are constantly evolving, disputes regarding the determination of borders have become increasingly prevalent before the ICJ.³ Therefore, this principle needs to be re-considered as a limitation to right to self-determination.

² 1986 I.C.J 554 at 565

³ Andrew A. Rosen, Economic and Cooperative Post-Colonial Borders: How Two Interpretations of Borders by the I.C.J. May Undermine the Relationship between Uti Possidetis Juris and Democracy, 25 PENN St. INT'L L. REV. 207 (2006).

Lastly, it is essential to balance the right to self-determination with international peace and security as it is one of the most important goal of international law. The States should ensure that their citizens are not discriminated in any manner whatsoever. If the State believes that there is an internal conflict within its territory, it shall act immediately to resolve it. This is important because it takes no time for an internal conflict to become an external conflict. Not all conflicts between different ethnic groups should result in the exercise of the right to self-determination.

III. RIGHT TO SELF-DETERMINATION AS A HUMAN RIGHT

Human rights are inherent and unconditional rights which prohibit discrimination of basis of race, sex, nationality, ethnicity, religion, language or any other status. *“It was not until the Nuremberg trials and the adoption of the Genocide Convention following World War II that the wholesale destruction of ethnic groups was firmly determined to be a violation of international law.”*⁴ Thus, the right to self-determination owes much of its existence to the increased development and recognition of several human right principles in the international community. It has been well established in international jurisprudence and academia that self-determination is a human right, the violation of which is seriously frowned upon in the international community. It is an alienable, indivisible and inseparable right and has developed many nuanced interpretations over the centuries. Simply put, self-determination is a human right because if people belonging to a particular ethnic or cultural group are subjected to discrimination or oppression, they can demand their right to self-determination.

IV. CONCLUSION

To sum up, the right to self-determination, as discussed, is not absolute. It is subject to limitations such as the protection of territorial boundaries and for maintaining peace and order in the international community. If right to self-determination is exercised every single time without exploring other plausible solutions, there will be a situation of chaos with every group demanding a separate territory leading to disorder in the international community. Nonetheless, right to self-determination is undoubtedly an indispensable human right, the exercise of which becomes inevitable in cases where the States fail to live up to their fundamental obligations of non-discrimination and equality.

⁴ Hurst Hannum, Rethinking Self-Determination, 34 VA. J. INT'L L. 1 (1993).