

Self-determination and human rights vs. terrorist proscription

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Legal Instruments

- United Nations Charter, Arts. 1, 2, 55 and 56.
- ICCPR, Article 1 and General Comment 12(1984).
- ICESCR, Article 1.
- CERD General Comment XXI (1996)
- ACHPR, Article 20.
- General Assembly Resolution 1514 (1960).

Common Article 1 Provision in ICCPR and ICESCR

- All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
- All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
- The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

General Assembly resolution 1514

- 1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.
- 2. 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.
- 3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.

The relationship of self-determination and independence

- Developed as a result of de-colonisation movement
- Independence from colonial domination
- Only later moved from colonial context
- Developed within jurisprudence of ICJ, and General Assembly Resolutions

Namibia Advisory Opinion 1971

- 'the subsequent development of international law in regard to non-self-governing territories, as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to all of them.'

Western Sahara Advisory Opinion 1975

- Court again made linkage between self-determination and the right of peoples under colonial rule
- ‘the principle of self-determination as a right of peoples, and its application for the purpose of bringing all colonial situations to a speedy end’.
- ICJ 1995, East Timor case ‘Portugal’s assertion that the right of peoples to self-determination as it evolved from the Charter and from United Nations practice, has an *erga omnes* character, it is irreproachable.’

Self-determination for peoples under foreign domination

- UN Declaration on Friendly Relations of 1970
- By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

1970 Declaration contd

- Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order:
 - (a) To promote friendly relations and co-operation among States; and
 - (b) To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned;
- and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter.
- The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.

African Charter on Human and People's rights

- Not linked to colonialism
- **Article 20**
- 1. All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.
- 2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.
- 3. All peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

Katanga v. Zaire

- Complaint launched by Katanga's Peoples Congress against Zaire alleging breach of the international law principles of self-determination as set out in Article 20 of the African Charter of Human and People's, and requested that the African Commission recognise a right of secession for Katanga from Zaire
- The request was rejected, on grounds that "The Commission is obligated to uphold the sovereignty and territorial integrity of Zaire", the Commission did suggest that the people of Katanga might have a right to autonomy, as a form of so-called "internal" self-determination.

Lubicon Lake Band Case

- Alleged violation by Canada of the Lubicon Lake Band's right of self-determination heard in Human Rights Committee
- Decision made on basis of violation of minority rights – not rights of peoples but interesting discussion of deprivation of economic rights as part of self-determination
- Again internal self-determination

Reference re secession of Quebec case

- Does international law give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally? In this regard, is there a right to self-determination under international law that would give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally?

Ref. Contd.

- a right to secession only arises under the principle of self-determination of people at international law where "a people" is governed as part of a colonial empire; where "a people" is subject to alien subjugation, domination or exploitation; and possibly where "a people" is denied any meaningful exercise of its right to self-determination within the state of which it forms a part. In other circumstances, peoples are expected to achieve self-determination within the framework of their existing state.

Ref. Contd.

- Quebec does not meet the threshold of a colonial people or an oppressed people, nor can it be suggested that Quebecers have been denied meaningful access to government to pursue their political, economic, cultural and social development. In the circumstances, the "National Assembly, the legislature or the government of Quebec" do not enjoy a right at international law to effect the secession of Quebec from Canada unilaterally.

Advisory Opinion on the Wall decision

- The court assessed the impact of the construction of the wall on right of the Palestinian people to self-determination. The court stated that the right of peoples to self-determination was a right *erga omnes*. The opinion made clear that the existence of a separate Palestinian people was no longer an issue. However, the route of the wall included within the closed area 80% of the Israeli settlers in the Occupied Palestinian Territory. The location of the wall would mean that 160,000 Palestinians would reside in completely circled communities along with 320,000 settlers and therefore “severely impedes the exercise by the Palestinian people of its right to self-determination.”

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Wall contd.

- In her separate opinion Judge Higgins took issue with this assertion arguing that the Court was “detached from reality” if it took the view that it was the wall alone that prevented the exercise of self-determination. Judge Kooijmans argued that it would have been better had the Court left the issue of self-determination to the political process and that issue was imbedded in the wider context.

Kosovo

- Self-determination?
- Internationally administered territory
- Problem with position of Serbia
- Declaration of independence recognised by several states – would not have been possible without activity of KLA (terrorist group?)

Definition of Terrorism

- 1999 International Convention for the Suppression of the Financing of Terrorism
- Any act intended to cause death or serious bodily injury to a civilian, or any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context is to intimidate a population or to compel a government or an international organisation to do or abstain from doing any act.

Terrorist Proscription

- Security Council Resolution 1373
- UK Terrorism Act 2000
- US Patriot Act
- European Union Common Position on Terrorism
- All provide for Proscription of terrorist groups
- ECJ Case March 2008 on PKK

IHL Obligations

- National liberation groups may be involved in internal armed conflict
- Both sides to respect IHL principles of distinction, proportionality and necessity
- Common Article 3
- Or Additional Protocol 1
- GWOT characterised by neglect of human rights and rules of warfare on both sides