

CHAPTER 2:
THE RIGHT TO SELF-DETERMINATION: A CARDINAL PRINCIPLE OF
MODERN INTERNATIONAL LAW

2.1 INTRODUCTION

Historically, the right to self-determination was based on the principles of decolonization and freedom from forceful or illegal occupation. However, following the 1970 Declaration on Principles of International Law Concerning Friendly Relations (Friendly Relations Declaration of 1970), the right to self-determination under international law has expanded beyond the concept of decolonization.

Although time has passed since the first time the concept of the right to self-determination was introduced in international law, much discussion and further research were needed due to the legal void caused by the absence of any institutional framework or guidelines for the examination of self-determination claims under international law. As of now, the legitimacy of the claim to the right to self-determination is based on various grounds and reasons.

To understand the position of the right to self-determination, in this part of the chapter, the position of the right to self-determination under international law and how this status is acquired when the right to self-determination is exercised will be discussed and examined. Aside from that, the various types of self-determination that have been claimed, as well as the party that has the right under the law will be looked into.

2.2 THE RIGHT OF SELF-DETERMINATION UNDER INTERNATIONAL LAW

As an international principle, the legitimacy of self-determination as a right lies in its position under international law. As opposed to domestic law which can be enforced once legislated, international law is enforced based on the acquiescence of the international community to acknowledge such a provision as a law that legally binds them. Examining the legal provisions in the United Nations instruments pertaining to self-determination is unavoidable if one is to have a deeper understanding of its status in law as a right under international law.

The United Nations (UN) is the key holder in regulating international law to maintain international peace and security, as its position allows it to be the primary forum to address transnational issues. As a result, there is no disagreement about making UN instruments the foundation of international law. Since its insertion into the UN Charter, the right to self-determination has evolved from its political notion and gone beyond the concept of decolonization. Apart from freely determining political status, the right now also encompasses economic, social, and cultural development.

Based on the 1981 report on the right to self-determination by the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Aureliu Cristescu, the historical development of self-determination based on UN instruments could be traced back to its earliest inception as a right under international law. A look into the intentions of the Members and the discourse around the insertion of the principle in the UN instruments will give a thorough understanding of the position of the right to self-determination under international law.

2.2.1 United Nations Charter 1945

At the end of World War II, the United Nations (UN) was founded, and the UN Charter was first signed on June 15, 1945, and came into force in October 1945. As the foundation of modern international law, the UN Charter encompasses the basic provisions of current international law. This includes the provisions concerning the fundamental principle of human rights. This Charter was also the first legal document that enshrined the principle of self-determination as part of the international human rights framework.

As previously stated, the right to self-determination was initially held as a political concept or simply an inspiring speech to assuage the fears of people all over the world during the World War campaign. The use of the phrase "self-determination of peoples" in Articles 1 and 55 of the Charter elevated self-determination's status as a legal right (Cristescu A. , 1981).

Article 1 paragraph 2 (Chapter I: "Purposes and Principles")

To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

Article 55 (Chapter IX: "International Economic and Social Co-operation")

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: ...

Under the scrutiny of the principle in the UN Charter, the self-determination of peoples is not fully discussed in the Charter, as there is no specific definition or method to claim the right stated in any part of the Charter. This is not an anomaly, as

the purpose of the Charter was to lay a foundation for the establishment of the UN as opposed to providing an ample stage for a mature discussion of any rights.

To understand the intention behind the insertion of the term "self-determination of peoples" in the UN Charter, it is inevitable to look back at the meeting records prior to its ratification. In both articles, the self-determination of people was specifically stated alongside the mention of the principle of equal rights. It was recorded in the *travaux préparatoires* that the words "based on respect for the principle of equal rights and self-determination of peoples" used in both Article 1(2) and Article 55 of the Charter were not stated in the initial proposals of the Charter¹. It was proposed later in the submitted amendments by the four sponsoring governments during the San Francisco Conference² (Quane, 1998).

There were concerns raised at the 6th Meeting of Committee 1 of Commission I of the San Francisco Conference following the amendments, where it was mentioned that the insertion of the words, though "corresponded closely to the will and desires of peoples everywhere," would not conform to the original purposes of the Charter as it may imply the right to secession, which transgresses the right of states to territorial integrity. It was proposed that the additional words be replaced with the words "to strengthen international order based on respect for the essential rights and equality of the states and the peoples' right to self-determination."

However, the proposed replacement of words for the amendment was rejected by a two-thirds majority on the ground that the replacement was suggesting, in part, an

¹ 2. To develop friendly relations among nations and to take other appropriate measures to strengthen universal peace. See The Dumbarton Oaks Proposals, 1944.

² See page 622 Amendments Proposed by the Governments of the United States, the United Kingdom, the Soviet Union, and China. Documents of the United Nations Conference on International Organization, San Francisco. Vol. III, G/29, 1945.

entirely new idea that had not been submitted by any delegation, and that, in other part, the words would make Article 1(2) and 55 redundant with Article 2 and Chapter II, Principles. It was later highlighted that paragraph 2 of Article 1 was intended to be a proclamation of equal rights for all people, which included their right to self-determination. Thus, making the principles of equality of rights in the Charter extend to states, nations, and peoples.

It is argued that initially, the insertion of self-determination in the UN Charter was not recognised as a fundamental right (Hannum, 1993). It was viewed that the terms "friendly relations among nations" and "equal rights... of peoples" were limiting contexts for the twice-mentioned principles. It is of the view that the insertion of the principle of self-determination was simply a goal to pursue and has no legal right (Quane, 1998).

Regardless, despite the lack of any explanation in the Charter on the principle of self-determination, its inclusion in the Charter cemented its place as one of the fundamental principles of international human rights (Avgustin, 2020). Though it may not have created any direct legal obligation, the insertion itself can be seen as a soft admission by the international community that the right to self-determination of peoples is part of the fundamental principles of international human rights that need to be protected.

2.2.2 Universal Declarations of Human Rights (UDHR) 1948 and International Bills on Human Rights 1976

In discussing human rights, it is unavoidable for us to look into the provisions of the Universal Declaration of Human Rights (UDHR) for establishing the legal status of the right to self-determination of peoples. Although the UDHR was not a treaty, thus it could not create legal obligations for state members, it is undeniable that it held some weight in any discourse on human rights. UDHR is ultimately an expression of the fundamental values that all members of the international community share. It played a significant role in the development of international human rights law.

Nonetheless, it must be highlighted that, concerning the right to self-determination of people, the right was not explicitly stated. There was no mention of the self-determination of peoples in any part of the declaration, despite having a preambular reference to developing amicable international relations (Hannum, 1993). However, this does not deny the status of the right to self-determination as one of the fundamental international human rights. This is proven by the insertion of the right to self-determination in the International Covenants on Human Rights.

Following the adoption of the UDHR in 1949, the UN Human Rights Commission was tasked by the General Assembly on the same day with developing a body of international human rights law based on the UDHR, which has no legal force, to supplement it³. In December 1966, the UN General Assembly adopted the two

³ See Fact Sheet No.2 (Rev.1), The International Bill of Human Rights, 1996.

International Covenants. Together with the UDHR, these two covenants comprise what is known as the "International Bill of Human Rights."

The International Covenants on Human Rights are two of the first international instruments that established binding legal obligations on international human rights. They are comprised of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Both of the covenants are multilateral treaties that were adopted by UNGA Resolution 2200A (XXI) on the 16th of December 1966 and came into force on the 23rd of March 1976 and the 3rd of January 1976, respectively.

The clauses relating to the right to self-determination can be found in common Article 1 of the two International Bills on Human Rights, which states:

1. *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.*
2. *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 cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.*
3. *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.*

To understand the article, it is inevitable to scrutinise the intention of the Commission on Human Rights and the consideration that they took in drafting the covenants. During the conceptualisation of the covenant⁴, the first proposal for the

⁴ During the Commission's work stage, the covenants was not differentiated in two separate covenants.

insertion of the right to self-determination was presented to the Third Committee during the sixth session of the General Assembly. At this stage, many delegations had proposed to the General Assembly that it agree to the insertion of self-determination in the Covenant⁵.

Various questions and opinions had been raised on various aspects of the insertion of the right of people to self-determination in the Covenants in its eighth session in 1952⁶. The definition of the right to self-determination, its economic aspects, and specific issues that may arise as a result of exercising the right was among the topics discussed.

Surprisingly, during the tenth session of the General Assembly, a question was raised about whether an article on the right to self-determination should have been included in the draft of the covenants⁷. The opposing point was that self-determination was referred to as a principle and not a right in the Charter, making it a strong moral force that is too complicated to be interpreted in legal terms.

The discussion also touched on the status of the right to self-determination as a collective right rather than an individual right. This was highlighted due to the fact that the International Covenants were an instrument seeking to establish individual rights, making it rather inappropriate for self-determination to be included. However, an argument was made to counter this point, where it was stated that though the right

⁵ See Official Records of the General Assembly, Sixth Session, Third Committee, 358th, 364th, 367th, 371st, 396th-399th meetings, 1951.

⁶ See Official Records of the Economic and Social Council, Fourteenth Session, Supplement No. 4 (E/2256), 1952.

⁷ See paras. 27-77 of Official Records of the General Assembly, Tenth Session, Annexes, agenda item 28-1, document A/3077, 1955.

was collective in nature, it affects the rights of every individual. To deprive people of their right to self-determination is to deprive them of all their individual human rights.

Initially, the drafted paragraph 1 of Common Article 1 of the Covenants used the words "All peoples and all nations shall have the right of self-determination." However, the word "nations" was later proposed to be deleted as it was considered that the term "peoples" was more than comprehensive enough to include it in its meaning as used in the Preamble to the Charter as it suggests that the principle applies universally (Quane, 1998).

As a result, it is possible to conclude that common Article 1 (1) of the International Covenants on Human Rights was an initiative of the International Community to bind and recognise the legal obligation of peoples' self-determination as a universal right (Cristescu A. , 1981). This is the most probable and plausible way that the principle of self-determination is elevated from a political promise to an enforceable universal legal right in the eyes of the international community. This is regardless of the fact that the state members have a choice to sign and ratify the covenants, choosing to submit themselves to this legal obligation. The fact that the insertion of self-determination into the covenant was proposed at an earlier stage of its conception shows the clear intention of the international community to acknowledge self-determination as a right and was not an afterthought.

2.2.3 United Nations General Assembly (UNGA) Resolutions

Several UNGA Resolutions played crucial roles in affirming the right to self-determination as part of the fundamental rights protected under international law. Although it is known that a Declaration adopted in the General Assembly is not legally binding as opposed to a Declaration adopted in the Security Council⁸, most of the self-determination declarations were made via the General Assembly as opposed to the UNSC following the first declaration made on this matter, the Declaration on the Granting of Independence to Colonial Countries and Peoples in 1960 (Colonial Declaration 1960). The decision was made due to the fact that the three permanent members still retained "colonial" legal ties or associations during its first crystallisation as a part of international law and the existence of veto power over the decision of the UNSC. This was explained in the introductory note to the Declaration written in 2008 in the historic archives of the UN.

In the note, it was further elaborated that following the end of World War II, the UN was still under the shadow of the State Members of the victorious wartime Alliance against Fascism, which has a very narrow base of representation and is limited. The admission of the new states, which include, in Cold War terms, a neutralist or uncommitted majority voting coalition variously styled as the non-aligned bloc, the Group of 77, the Bandung group, and the developing or third world countries, opened the previously limited coalition.

However, be that as it may, the earlier state members may be inclined to reject the process of decolonization, which in part will affect their interest. Thus, it was

⁸ As opposed to Article 25 of the UN Charter, which bound the members of the UN to the decisions of the Security Council, Article 10 of the Charter only provided the General Assembly with the power to make recommendations to the members of the UN and the Security Council.

pointed out that it was a tactical decision to convert potential negative votes in the General Assembly into softer, legally ineffective abstentions in order to solidify the process of decolonization as well as acknowledge the right of peoples to self-determination.

Being the first of its kind, Resolution 1514 (XV), the Colonial Declaration of 1960 which was adopted on the 14th of December 1960, also marked the determination of the international community towards acknowledging the right of peoples to self-determination in their process of decolonization.

The Colonial Declaration of 1960, in its substantive law stipulations, proposes ordering principles that are intended to be a guide for the progressive development of international law pursuant to the General Assembly's own explicit mandate under Article 13, paragraph 1 (a), of the Charter of the United Nations, which apart from decolonization includes the very subject of the right to self-determination as stated in Article 2 of the Colonial Declaration of 1960.:

that all peoples have the right to self-determination, but that this necessarily includes the right freely to determine their political status and freely to pursue their economic, social, and cultural development.

Thus, although as of now the Colonial Declaration of 1960 does not seem to have any concrete legal or political consequences, it is undeniable that it has served its original legislative objective of consolidating the political process of legally terminating the Colonial Empires.

Following it, several declarations were issued, affirming the right of people to self-determination beyond the context of political speech. The later declarations, albeit

not yet explaining the methods permissible to claim the right, help the international community understand the concept of the right to self-determination itself.

For instance, the Friendly Relations Declaration of 1970 played a great role in extending the right of peoples to self-determination beyond the concept of decolonization, as it included circumstances not limited to colonisation as part of the circumstances where self-determination could be claimed.

The Declaration on the Rights of Indigenous Peoples, first drafted in 1976 and adopted in 2007, was another important legal document in the development of the right of peoples to self-determination as a law. The declaration was the first of its kind to affirm the status of indigenous people as distinct peoples within states, thus acknowledging them to be included in the right to self-determination contained in Article 1(2) of the UN Charter, common Article 1(1) of the ICCPR and the ICESCR, and the Vienna Convention on Law of Treaties 1969⁹.

2.3 TYPES OF SELF-DETERMINATION

Based on the above observation, it is an undeniable fact that self-determination is recognised as a legal right under international law. This is despite the fact that there is no specific provision in any part of international law that explains the legal method permissible under the law to exercise the right. Regardless of that, the right was still utilised and exercised by people in their fight for self-determination. In order to fully

⁹ Having in mind the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force and of universal respect for, and observance of, human rights and fundamental freedoms for all. See Vienna Convention on the Law of Treaties, 1969.

understand the methods that are permissible under international law, it is inevitable to look into these attempts. In general, international law scholars divide self-determination into two types based on attempts for self-determination: internal self-determination and external self-determination (Senese, 1989). This is due to the fact that the right to self-determination encompasses the right to determine their own international status, thus implying both internal and external independence (Cristescu A. , 1981).

2.3.1 Internal Self-Determination

Internal self-determination can be said to be the softer of the two types of self-determination because there is no direct conflict with the dominion state. In general, internal self-determination can be defined as the systematic involvement of all groups in the national democratic process in such a way that their cultural identity and development are preserved on an equal footing with the majority population (Hilpold, 2017). Consequently, democracy cannot be equated with the application of the majority principle.

Internal self-determination referred to the people's independence from state control, or, in simpler wordings, the right to autonomy from the central government in aspects of their political, linguistic, religious, and cultural development within the boundaries of the existing state (Praag & Seroo, 1999).

However, though internal self-determination is usually achieved without direct confrontation with the state's sovereignty, it does not always guarantee a peaceful

conclusion. There are some cases where the dominion states are known to have a hostile attitude toward each of their own autonomous regions. This is especially true when the autonomous region is viewed as having a potential intention to seek external self-determination. This can be seen in the confrontations in the autonomous regions of China and the Philippines.

For example, the Xinjiang Uyghur Autonomous Region in China is currently embroiled in a human rights violation in which thousands of the region's original ethnic, Uyghurs, are alleged to have been wrongfully detained in concentration camps for the purpose of re-education of the Chinese identity (Davis, 2019). Xinjiang, originally named East Turkestan after being incorporated into China, was an autonomous region in China with the Uyghur community as its native ethnic group. They are recognised as one of China's ethnic minorities and the titular people of Xinjiang (Wang, 2015). They practise a different lifestyle and culture from the majority ethnic group, the Han, in mainland China. They aspire to be an independent state, bearing their original name.

When the new changes in central government policy stressed Chinese empowerment and identity, most of the autonomous regions were affected, especially the Uyghur. Despite being an autonomous region, the state policy was lacking in self-determination and self-governance (Yeh, 2020). The central government has been a driving force in instilling Chinese identity in the ethnic community, which has resulted in outbreaks of ethnic violence in which Uyghurs have faced disproportionate security crackdowns. There are many reports of the transgression of human rights has been done against China's central government which cover the dubious arrest of

Uyghur ethnicity government officers, forced marriage between Uyghur women and Han men and false imprisonment in the correctional camp (Wan, 2020).

The same tension and conflict with the Chinese central government can also be seen in the confrontations of the people in the autonomous regions of Hong Kong and Tibet (Davis, 2019; Amnesty International, 2017). The new policy has been more restricting and controlling on the cultural development of the said region, which the people have been confronted with. The central government did not hesitate to use harsher and more violent methods to curb the unrest.

Whereas in the Philippines, the autonomous region of Mindanao has always been under constant tension with the central government. In contrast to the Christian Catholic Central government, the region controlled by the Muslim majority Bangsamoro has always had a different narrative and culture (Harris, 2012). To add to the confusion, the region itself was constantly in civil unrest due to a conflict of interests within the community. This further encourages the attitude of the central government towards the region.

However, it needs to be highlighted that most of the autonomous regions that faced the hostility of the central government did so because the people of the region had been continuously questioning the sovereignty of the dominion state over their land. This is because the majority of the people in the region believed they had been occupied by the dominion state, so they still aspire for total independence and the right to external self-determination.

2.3.2 External Self-Determination

External self-determination, as opposed to internal self-determination, seeks a complete separation of power and independence for the people from its dominion, a division of powers between two entities (Özden & Golay, 2010). Another term usually used to describe the right to external self-determination is the right to secession. This type of self-determination has a direct conflict with the sovereignty of the dominion over the region in dispute, as the claim aims to secede from the dominion state.

There have been many disputes over whether the international legal order provides such rights. As the origins of the right occurred during the period of the UN decolonization movement, some scholars and states believed that the right to self-determination does not cover the right to secede by people who are not subjugated or occupied by alien forces, or in other terms, a democratic right to external self-determination, whereas others supported the right (Driest, 2013). The lack of a definition of the people who have the right in international law has prolonged the debate even further.

However, it has to be emphasized that, based on the record, the recognition of the entitlement of a certain group of people to their right to external self-determination is affected by the political interests of the state members. When the left clashes with the political interests of state members, they tend to be sceptical and object to such notions, and vice versa.

For example, after World War II, when the war was won by the Allied Forces, Germany, Austria, and Hungary changed their political stance from opposing the right to self-determination to its most fervent advocates (Hilpold, 2017). This practice is

still practised today in various claims to self-determination. For example, some state members are reluctant to recognise the right of Palestinians to self-determination because it conflicts with their political interests, even though they were among the first to recognise the struggles for self-determination in South Sudan and East Timor. The lacuna in the law regarding self-determination itself allows this practice to be prevalent.

2.4 MEANING OF “PEOPLE” TO WHOM THE RIGHT INHERES

Pursuant to Article 1(2) and 55 of the UN Charter, it is an undeniable truth that the right to self-determination was provided to peoples. However, the Charter was silent on the definition of the term "peoples" making it a debatable issue whenever a group claim self-determination, whether they are legible for the right. The UDHR also did not define the term, nor did it put any mention of the right of peoples. Most of its provisions had used the term "everyone" instead of "peoples", apart from a few¹⁰. This omission by claiming that many states were afraid of including references to the concept of the people, which they presumed could conjure up images of Nazi totalitarianism. It can be inferred that fully accepted and clearly defined concepts of the notion of "peoples" are not assumed by the international legal order (Aldeanueva, 2018). Thus, making the concept itself did not clearly define the limits nor a unanimous meaning and scope.

¹⁰ For example, Article 11(3) of the Universal Declaration of Human Rights 1948, referred to "the will of the people", while Article 27(1) mentioned the "cultural life of the community" and Article 29 on the "duties to the community".

Questions arise on what the term "peoples" means and what the elements that are compounded in the term "people" will legitimate their claim to the right to self-determination. These became critical questions especially involving the right to external self-determination where the sovereignty of the dominion State is directly challenged. In pursuing to identify the meaning of the term "people" in the fight for self-determination, it is unavoidable to examine the relation of the term "people" with "nation" and "states".

2.4.1 The Concept of People, Nations, and States

In the international legal community, the usage of the terms "peoples", "nations" and "states" has varied in many forms and is sometimes used interchangeably. Especially in the usage of the term Nations and State. This might be due to the fact that in the initial conceptualisation of the members of the League of Nations, the predecessor of the now-known United Nations, it had defined its members to be "Any fully self-governing State, Dominion or Colony not named in the Annex"¹¹. This is further proven when the Preamble of the UN Charter used the term "We the people of the United Nations" which is modelled from the "We the people of United States", the opening phrase for the Preamble to the US Constitution (Kelsen, 1946; Fassbender, 2008).

Thus, though there was a lack in the definition of "nations" in any international legal documents, based on the inference that "states" and "nations" held the same notions, the definition of "states" was used to define the term "nations" (Quane, 1998).

¹¹ See Article 1(2) of The Covenant of the League of Nations, Treaty of Versailles, 1919.

In the 1933 Montevideo Agreement, the Convention on Rights and Duties of States (inter-American), in Article 1, has defined a "state" to have four major requirements: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states. Thus, to exist, it can be inferred that a state must have three elements: population (citizens), territory and a government exercising sovereignty over the territory and the population.

Another point to be highlighted, "states" and "peoples" were commonly mentioned in the Declaration separately indicating both of them have distinct concepts as can be seen in Article 7 of the Colonial Declaration 1960 which read:

*[7] All **States** shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights, and the present Declaration on the basis of equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all **peoples** and their territorial integrity.*

Similar distinctions are also shown in the Friendly Relations Declaration of 1970, Article 5, paragraph 2, where "States" and "peoples" are both mentioned separately.

*[2] 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,*

Under the understanding of the above observation, it can be concluded that the term "peoples" used in relation to self-determination does not have a similar meaning to "states" and "nations" under international law instruments. As of that, there should be no confusion about the distinctive meaning of the terms.

2.4.2 Colonial or Non-Colonial Domination

In the specific question on the right to external self-determination, various scholars with a differing opinion had argued the two questions before, what does the term "peoples" means and what are the elements that are compounded in the term "peoples", in whether the term should be extended to the non-colonial context or limited to colonial context, making them controversial (Hannum, 1993; Quane, 1998; Pullar, 2014). This also includes the right of peoples to unilateral non-colonial secession (Anderson, 2015).

In answering both questions, due to the lack of direct definition, one must closely peruse the declarations available made regarding self-determination aside from the UN Charter and the UDHR, which are the Friendly Relations Declaration of 1970 and the Declaration on the Occasion of the Fiftieth Anniversary of the United Nations (Fiftieth Anniversary Declaration 1995) along with the Colonial Declaration 1960 mentioned before.

In Article 2 of the Colonial Declaration 1960, the term "all peoples" enjoy the right to self-determination was used which heavily indicates that "peoples" is an expression of broad and general applicability that extend to the colonial and non-colonial context (Anderson, 2013). This is further reaffirmed when the exact same term was used in Article 1 of the Fiftieth Anniversary Declaration 1995 in reaffirming the right to self-determination:

*[1] Continue to reaffirm the right of self-determination of **all peoples**, taking into account the particular situation of peoples under colonial or other forms of alien domination or foreign occupation, and recognize the right of peoples to take legitimate action in accordance with the Charter of the United Nations to realize their inalienable right to self-determination.*

Further, in the Declarations, the term "peoples" had been indicated to extend beyond a colonial context where the addendum "subjection of peoples to alien subjugation, domination and exploitation" is contrary to the U.N. Charter supplements of the provision. This can be seen in Article 1 of the Colonial Declaration of 1960:

[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.

In the Fiftieth Anniversary Declaration 1995, the remainder in the first sentence of Article 1 for the term "all peoples" which recognises the "particular situation of peoples under colonial or other forms of alien domination or foreign occupation" further reaffirmed the distinct differences of "colonial domination" and "alien domination".

This is due to the fact that the "alien subjugation, domination and exploitation" situations are not unique to colonisation (Anderson, 2013). Though "alien domination" includes colonial situations, it had a much wider definition which extends to the non-colonial context where peoples are subjected to alien or foreign rule. Thus, based on these provisions, it is reasoned that the right to external self-determination is not limited to colonial domination.

2.4.3 Distinction of Peoples and Minorities

In reflecting on the previous discussion on the intention behind the insertion of the right to self-determination in international law, of how the right does not extend to the minorities to avoid the erasure of national unity. Under Article 27 of the ICCPR,

minorities' rights did not include political control which is the most essential part of the right to self-determination provided under Article 1(1) of the Covenant. Thus, this sets a crucial difference between peoples and minorities.

However, further analysis needs to be done on the term "minorities" to differentiate the basic distinction of minorities group and peoples. As of now, there is yet any official definition of minority as is peoples. However, based on Francesco Capotorti, the special rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, a minority can be defined as:

A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members-being nationals of the State possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly a sense of solidarity, directed towards preserving their culture, traditions, religion or language.

However, it has to be highlighted, the definition of minority given above has rather similarities to the definition of "peoples" suggested by scholars on the emphasizing of the common history aspect of the group and their state of mind of wanting some sort of preservation of their common history (Barten, 2015). In the study of the right to self-determination, Aureliu Critescu, also a special rapporteur of the Sub-commission on Prevention of Discrimination and Protection of Minorities, laid out the crucial criterion in defining people who inhere the right to self-determination:

- a) *The term "people" denotes a social entity possessing a clear identity and its own characteristics;*
- b) *It implies a relationship with a territory, even if the people in question have been wrongfully expelled from it and artificially replaced by another population;*

He further highlighted that the term “people” should “not be confused with ethnic, religious or linguistic minorities” whose rights and existence are recognised in Article 27. In his definition, people are associated with the concept of territory where a minority who has a common history with the territory they reside in, will inhere the right to self-determination.

This criterion of distinction is in the context of self-determination because the principle of self-determination was not intended to cause discord among states by authorising the disintegration or amputation of sovereign states. It was suggested that the principle should be used as a point of unity for people on a voluntary and democratic basis to avoid secessionist movements in the sovereign states (Cristescu A. , 1981).

Given this, it can be concluded the right to self-determination was not extended to minorities as the right does not support the disintegration of State Territorial Integrity. The distinction is laid out to prevent the misuse of the right to question the frontiers established between states and create disruption of national unity and territorial integrity.

2.5 CONCLUSION

Following the direct interpretation of the stated provisions, it can be understood that when a group has been declared to be within the interpretation of people, they hold a legitimate right to seek self-determination. However, as can be seen in the events following World War II, the national element of the group has to be

recognised on the international level. Alternative protective measures had to be devised if the elements of a nation in an ethnic, cultural, or linguistic sense remained unprotected by a state, and they may be found in various kinds of national self-determination or the protection of minorities.

Despite having a legal ground, the right to self-determination was silent on the extent of how self-determination may be achieved. The discussion on the right to secession during the inception of the principle of self-determination in the UN Charter extends the possibility of secession to be one of the methods that can be used to exercise self-determination. Despite that, the right to secession was never discussed in any part of the international legal provisions as discussed above. This reflects the reluctance of the international community in recognising claims to self-determination.

One of the important aspects that might be the crucial reason for the reluctance of the international community to recognise any claim to the right to self-determination is the notion of the right itself is a direct confrontation to the right to the territorial integrity of State that is one of the fundamental rights that are promised to be protected to the members of the UN (Pullar, 2014). However, the ambiguousness of the right to self-determination will only further complicate the situation. The international community must face the problem straightforwardly to help solve or minimise the unavoidable conflicts that had been escalated due to the absence of a recognised interpretation and methods.