

CHAPTER 4:

JUXTAPOSITION OF THE RIGHT TO SELF-DETERMINATION AND TERRORISM: AN ANALYSIS ON SELECTED CASE STUDIES

4.1 INTRODUCTION

Despite having numerous issues to exercise the right to self-determination, the struggle for self-determination by the people has never ceased to stop. However, due to the absence of legal provision under international law and the crucial position played by the UN Security Council, the legitimate methods and practise of the right to self-determination has always been a continuous debate. It has been established that the right to self-determination permits the use of force outside the exception provisions under article 39 of the military action approved by the UN Security Council and article 51 of self-defence. An armed conflict in the exercise of the right to self-determination has also been found to have an international character in order for the law of international armed conflict to be applicable.

However, as had been highlighted before, although the use of force is permitted in the struggle for self-determination, it does not constitute a legal right. It also did not erase the possibility of improper use of force by the National Liberation Movements. There are various cases where the use of force was used improperly, and war crimes were committed by the people as opposed to the state force. Nonetheless, a war crime will not illegalise the whole struggle itself.

On the other hand, with the insertion of the possibility of being designated as a terrorist, the plight of the people for self-determination has extended beyond the clear-cut international humanitarian law into the stage of ambiguousness. A struggle for self-determination, despite having legal reasons and effective government, does not necessarily succeed. Throughout the history, there have been several instances of improper use of force and war crimes, in which, each had a different outcome. While some succeed in achieving independence and taking responsibility for their actions, some struggles failed.

In this chapter, a brief case study on some of the practices of self-determination will be done. It will comprise both the successful and unsuccessful self-determination movement to provide a general understanding of how the designation of the freedom fighters and the acquiescence of the international community of the designation impacted the result of the struggle. The selection of the cases was based on several factors, including the legitimacy of the right to self-determination claim, the existence of intimidation tactics used by national liberation movements against civilian populations, the maturity of the legal development of the case, the volume of scholarly and jurisprudential discussion on the matter, the existence of international legal authority opinions or judgments on the conflict, and the involvement of the UN, any state, or any Permanent Member of the UN Security Council. By analysing the selected cases, a comparison of the practice will be used to construct a legal pattern of external self-determination movements.

4.2 THE PRACTICE OF THE RIGHT TO SELF-DETERMINATION

Historically, there are many recorded attempts to exercise the right to self-determination. Some are successful while some are not. In order to study the practicability of exercising the right to self-determination to dissuade any attempt of determining the use of force under this right as an act of terrorism, it is crucial to scrutinise some of the practices by part of the international community, their response to it and how it played out under international law. In this part of the chapter, two prominent case studies of both successful and unsuccessful attempts to exercise the right to self-determination will be analysed.

4.2.1 Successful Self-Determination Movements

In this part, the successful self-determination movement is determined by the struggle that ended with the formation of a state recognised by the international community and is not submitted to alien domination or oppression. Not only that, but the state must also be able to be established and recognised as a State Member of the UN, which provide certain rights including a voting right to any resolutions adopted by the General Assembly. The pure ability to enter into treaties, international or transnationally as a state may not be deemed as a successful movement.

4.2.1.1 East Timor

Timor is an island approximately 430 kilometres off Australia's northwest coast and 2,200 kilometres from Jakarta. It is located on the Sunda Archipelago's eastern end. Portugal and the Netherlands both colonised it. Portugal took control of East Timor and fully colonised it in 1701, while the Netherlands included West Timor as a part of the Dutch East Indies in 1893. During the period of decolonisation, in 1949, after Indonesia gained its independence from the Dutch, West Timor became part of the independent state. On the other hand, East Timor remained colonised by Portugal until 1975 when Portugal withdrew from the island. Before that, in 1960, East Timor has been declared a non-self-governing territory with Portugal as the administering power. Portugal however, only accepted the role in 1974, just before it relinquished its physical control over the territory (Elliott, 1978).

Before relinquishing its power, in 1974, Portugal intends to establish a provisional government and a popular assembly to determine the status of East Timor. There were conflicting views among the peoples, notably FRETILIN who favoured independence and ADOPETI who advocated for integration with Indonesia. Both were rivalling political factions (Chinkin, 1999). The FRETILIN later, backed by China, declared independence from Portugal (Yeh, 2020). The conflicting views by both parties, later on, broke out a civil war which unable to be controlled by Portugal, becoming the decisive factor for its withdrawal from the territory. With the withdrawal of Portugal's physical presence on the territory, Indonesia intervened in East Timor militarily and integrated it as its 27th province in 1976 (Kadir, 2015).

The occupation, condemned by the international community to be an illegal occupation, was marked with brutality, terror, and systematic degradation of East Timorese cultural life (Simpson, 1994). Thousands of East Timor's people suffered from the occupation, claiming the lives of at least around 200,000, about a third of its original population, during the 24 years of Indonesian occupation (Turack, 2000). From 1976 to 1982, several resolutions have been passed by both the UN Security Council and the General Assembly condemning Indonesia's action, calling for its withdrawal, while reaffirming East Timor's right to self-determination. Indonesia maintained that as the territory was integrated as part of Indonesia, all the affairs of East Timor had become part of Indonesia's domestic affairs. With the intense lobbying by Indonesia, the resolutions by the General Assembly were becoming less damning and by 1982 removed entirely from the UN agenda (Simpson, 1994). The focus and interest of the international community, however, was brought back with the tragedy of the Santa Cruz massacre on November 1991 which influenced them to deal with the escalating humanitarian issue by which on February 1997, the then UN Secretary-General Kofi Annan appointed an Ambassador Jamsheed Marker as his personal representative for East Timor (Kadir, 2015).

On a side note, it must be highlighted that in January 1978, Australia became one of the few countries that formally recognised the integration of East Timor as part of Indonesia. In December 1989, eleven years after its recognition, Australia entered into the Timor Gap Treaty with Indonesia for the apportioned of resources of oil and gas and minerals between the two states. These included resources that belonged to the people of East Timor under international law (Anghie, 2018). On February 1991, Portugal filed an application against Australia in ICJ for infringing the right of East

Timorese to self-determination, territorial integrity, and permanent sovereignty over their wealth and natural resources by entering the Timor Gap Treaty¹. Among others, the Court also is to find that Australia has also infringed on Portugal's rights as administering power of East Timor and by failing to negotiate with Portugal regarding Timor Gap, Australia has breached its international obligations and responsibilities (Turack, 2000).

As Indonesia was not a party to the brought to the court, the ICJ determined that the jurisdictional issue precluded them from deciding on merits as the legitimacy of Indonesia's occupation of East Timor was the "very subject matter" of the dispute (Turack, 2000). The court decided that the peoples of East Timor have the right to self-determination and this right had an *erga omnes* character (Hilpold, 2017). However, as Indonesia was not a party to the case, a recognised violation of *erga omnes* right to self-determination went unpunished (Ahrens, 2004). Although the decision of this case does not have a direct impact on the plight of the people of East Timor then, it helped established the fact of their entitlement to the right to the territory, undermining Indonesia's authority on the territory which later, in a way helped to create their path to independence (Hilpold, 2017).

Regardless of the opposition of the international community afterwards, Indonesia, led by President Suharto, stood firm with its position on East Timor. It was after he stepped down in May 1998, Indonesia, later led by President Habibie, proposed a grant of special autonomy to East Timor in June 1998. In May of the following year, after much negotiation, Indonesia, Portugal, and the UN signed an agreement to allow the UN to help East Timorese choose the fate of their nation (Fan,

¹ See Case Concerning East Timor, Portugal v. Australia [1995] ICJ Rep. 91.

2007). On August 1999, 98% of registered voters went to poll for a referendum held by the United Nations Mission for East Timor (UNAMET) with the result of 78.5% of them voted against the idea of autonomy, favouring an independent state (Fan, 2007; Kadir, 2015). Despite some violence due to the result in September, the multinational force of the UN managed to restore peace. The final Indonesian personnel left East Timor in late October 1999. On 20th May 2002, with the help of the UN during its transitional process, East Timor became an independent state.

A formal investigation was done by the Serious Crime Unit (SCU), set up by the UN Transitional Administration in East Timor (UNTAET) in 2002 to investigate and prosecute the human rights violation committed between April 1974-October 1999 (Strating, 2014). However, the prosecution was mainly on low-level defendants with almost 75% of the people indicted remaining at large. Despite the investigation implicating the highest levels of Indonesian Government personnel, the Timorese leadership objected to the arrest warrant which was not forwarded to the International Criminal Police Organization (Interpol). In 2004, both of Timor-Leste and Indonesian governments agreed to establish a Commission of Truth and Friendship (CTF), rather than pursuing a judicial process. In its report, both parties acknowledged that the Indonesian military and police as well as the civilian government and militia groups bore responsibility for crimes against humanity committed in 1999.

The case of East Timor displayed the complexity of the practice of self-determination in international law. Although it was a form of colonial application in exercising the right, the matter where a former colony, now independent, tried to impede the exercise of the right to self-determination of other colonies. It also

emphasizes the important elements of the term ‘peoples’ in exercising the right (Bennett, 2005).

Another point to be pointed out was the fact that despite the military atrocities committed by both sides in the civil war as well as by the occupation forces, there was never a concern raised over terrorism. The establishment of the Commission of Truth and Friendship (CTF) by both parties for the sake of bilateral relations despite the investigations shows the reluctance of the parties to pursue any judicial process of the violation committed by the other. As can be seen in this case, the dispute although revolving around the right to self-determination of the peoples of East Timor, the people themselves are not directly involved in the decision-making process aside from the referendum. Despite the involvement of FRETILIN in the dispute as the main self-determination movement, there is no notably organised form of the active role they play in the establishment of East Timor as a state. This is further proven by the continuous presence of the UN in the form of the United Nations Mission of Support in East Timor (UNMISET) and later United Nations Office in Timor Leste (UNOTIL) to assist their nation and peacebuilding (Fan, 2007).

4.2.1.2 Kosovo

Kosovo originally was an autonomous province in Serbia, one of the six republics that made up the former Socialist Federal Republic Yugoslavia (SFRY), with a population consisting of ninety per cent ethnic Albanians. In 1989, Kosovo’s autonomy was revoked by Serbia which led to the declaration of independence of Kosovo. The declaration was followed by various armed group attacks by Kosovar

Albanians under the banner of the Kosovo Liberation Army (KLA). The Serbian government retaliated with repressive actions and policies, for example, ethnic cleansing, which resulted in a massive refugee crisis (Harvard Law Review, 2011). The conflicts continued which resulted in civilian casualties. However, although the massacres and extrajudicial executions by both sides were widely documented, Serbian military and paramilitary units were noted to be “on the massive and systematic scale” against the Kosovar Albanians.

One of the questions arising during this conflict was whether it is a state of war established as none of the parties involved declared it, either by the Serbian government or the KLA. The Serbian authorities constantly purported that the conflict was an act of terrorism and the repercussion no matter how harsh in resolving “an internal Yugoslav affair” (Obradović, 2000). Whilst it might be beneficial for the KLA and the population to declare an internal armed conflict, they did not do so, which is most likely due to a lack of legal knowledge of the situation as they never demanded that international humanitarian law be applied.

This situation where none of the parties declared war made the initial investigation of the war crime by the International Criminal Tribunal for the former Yugoslavia (ICTY) rejected by the Serbian government, who believe the Tribunal was “anti-Serb”, on the ground that the Tribunal was illegitimate as there was no armed conflict and what happened was an internal Yugoslav affair. They believe that the UN Security Council has exceeded its mandate by adopting Security Council resolution 827 in 1993². This was expressed when the visa of the Chief Prosecutor of the

² See Establishment of the International Tribunal for Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, 1993. UN Doc. S/RES/827.

Tribunal and the Tribunal's investigating bodies were denied, stopping any investigation into the alleged violations of humanitarian law.

In January 1999, the Račak massacre became the turning point of the conflict where forty-five Albanian civilians were killed and mutilated by the Serbian paramilitaries. The massacre was graphically revealed by the western press and ceasefire monitors from the Organization for the Security and Cooperation in Europe (OSCE) to the world. The massacre became the turning point as it was what led to NATO's decision to intervene with a high-altitude air strikes campaign against Serbia on March 1999, as it believed that the conflict can only be resolved by the large-scale military intervention (Anderson, 2015). This attack established a state of international armed conflict, as defined by common Article 2 of the Geneva Conventions, as reaffirmed by Additional Protocol I's Article 1, paragraph 3. Although this attack clearly violated the prohibition of the threat or the use of armed force under Article 2 of the UN Charter and can be classified as a form of aggression, this point of law was not discussed further by the international community, mainly due to the severity of the circumstances that led to it.

The bombing, although prompted the Serbian forces to escalate their ethnic cleansing program, displacing approximately 850,000 people from their homes, managed to end the violence in June of the same year. One of the main factors aside from the realization of NATO's resolve was the unwillingness of Russia to intervene. This led to the Serbian government agreeing to the military presence of NATO in Kosovo under the UN headship. The adoption of resolution 1244 by the UN Security

Council after that established a new status for Kosovo³. The resolution established that despite still remaining within Yugoslavia, Kosovo would be under completely separate administrative, political and security arrangements.

On 17 February 2008, the Kosovo Assembly adopted a unilateral declaration of independence, severing its links with Yugoslavia. Despite obvious opposition from the Serbian government, various states recognized Kosovo's independence over the following days including the United States, Britain, France, and Germany. On a side note, the establishment of Kosovo as a state by unilateral declaration was condemned by Russia as illegal whilst China voiced concern over the declaration. Due to that, on October 2008, the UN General Assembly requested an advisory opinion from the ICJ on the legality of the unilateral declaration of independence by the Provisional Institution of Self-Government of Kosovo. The fact-finding by the ICJ concluded by a ten-to-four vote that the unilateral declaration of independence by Kosovo "did not violate any applicable rule of international law."⁴

A point to be highlighted, as stated by President Owada of Japan in the Advisory Opinion, on behalf of the court, the question asked was "narrow and specific", namely whether the international law prohibited the declaration, and not about the legal consequence of the declaration. Thus, the matters involving whether Kosovo had achieved statehood or the validity of other states' recognition of Kosovo were not addressed as it was deemed unnecessary in the court's conclusion. Instead of focusing on affirming Kosovo's right to secede based on its former status as an autonomous federal unit that had suffered severe repression and extreme denial of

³ See The Situation Relating to Kosovo, 1999. UN Doc. S/ Res/1244.

⁴ See Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Request for Advisory Opinion) (2010) ICJ Rep. 403.

fundamental human rights, the court instead focused on the technical question of the legality of the declaration.

However, in a separate opinion, one of the judges, Judge Cançado Trindade of Brazil departed from the narrow approach and defined self-determination expansively by permitting unilateral secession in cases where a population has been subjected to human rights violations and is unable to safeguard their rights inside the existing state. Judge Cançado Trindade argued that when a state denies a people's right to self-determination inside its borders, it effectively forfeits the ability to claim territorial integrity, which is consistent with the *jus cogens* status of the concept of equal rights and non-discrimination. Judge Cançado Trindade argues that, because the right to self-determination is a universal human right, it takes precedence over a state's rights with respect to other states, and that no state can use territorial integrity to violate the rights of people under its authority (Brewer, 2012).

The self-determination of the people of Kosovo was prevalent in this study as it is one of the successful self-determination claims that involved the secession self-determination movement in a non-colonial context and most importantly it was achieved unilaterally. The effect of this secession is the affirmation of the applicability of the right to self-determination in a non-colonial context and the departure of the right from its initial intention.

4.2.2 The Ongoing and Unsuccessful Self-Determination Claims

As opposed to the successful Self-determination movements, unsuccessful self-determination claims are the opposite of it. Different from an ongoing struggle that is yet to reach a result, an unsuccessful claim is when a struggle ceases to exist or there are no known organised efforts made by the people to attain self-determination. It also constitutes the situation where a new state was able to be established but failed to receive any notable recognition or support from the member of the international community and thus cease to exist. On the other hand, ongoing self-determination claims may be in the form where the people are still struggling against their state and also where they managed to form a new state despite the opposition of the international community and persevered to maintain their status while trying to get recognition while still subject to alien domination.

4.2.2.1 Chechnya

Chechnya was a territory located on the northern slope of the Caucasus Mountains' south-eastern section, in which the Chechens appear to have lived for centuries with an ethnically, linguistically, and religiously distinct character (Ahrens, 2004). It was later conquered by imperial Russia in 1864 after a hundred years of bloody struggle. Despite that, the Chechens, the people of Chechnya, have never accepted Russian rule, harbouring dreams of independence throughout the late nineteenth and early twentieth century. After the collapse of imperial Russia, during the 1917 Bolshevik Revolution, Chechnya, and the other Russian mini-mountain-states of Kabardin-Balkaria, Karachay-Cherkess, Ingushetia, and Ossetia attempted

to secede and form a federation together in the Caucasus region. Despite gaining recognition from many governments, the attempt failed, and Chechnya was reconquered by the Soviets in 1921. Thousands of Chechens were later forcibly deported to concentration camps and relocated to Central Asia, justified with a groundless allegation of Nazi-Chechen cooperation (Anderson, 2015). About 22-23% of the entire population died due to this repercussion (Ahrens, 2004). This series of infringements of human rights further embittered Russian-Chechen relations.

In 1991, with the collapse of the Soviet Union, Chechnya, seeing an opportunity, manage to secede, de facto, and unilaterally proclaimed the independence of the Chechen Republic, without major use of force as Russia was undergoing a period of political instability. The period of de facto independence however proved Chechnya's newly elected President's inability to run a government (Ahrens, 2004). It was recorded that Chechnya became the centre of criminal activity of exceptional proportions during this period (Charney, 2001). However, after the stabilisation of Moscow, the new Russian government began to launch a full-scale invasion in 1994 to retake the territory which, however, left Russia in defeat, eighteen months later (Anderson, 2015; Ahrens, 2004). A peace agreement, that postponed the question of Chechen independence until the end of 2001, was signed by a new Chechen leader, Aslan Maskhadov, with Moscow at Kasavyurt in August 1996. The Kasavyurt Agreement pledged the parties to abstain from the use or threat of force and to accept the right to self-determination of the people of Chechnya. A Joint Declaration later confirmed the principles and a Joint Commission with a mandate was established to realise the principles. Maskhadov, later on, wins the Chechen presidential election with 59.3% of the votes.

This period of peace however did not last. In 1999, a series of bombs went off in Moscow. These attacks, which were alleged to be terrorist act involving Chechens, has provided Russia with enough reason to launch another invasion (Ahrens, 2004; Anderson, 2015). This overwhelming military campaign ended with Russia's victory in 2000. In March 2003, Chechnya was reiterated as part of Russia in an alleged 'rigged' referendum, and later in October, in an alleged 'fixed' election, Akhmad Kadyrov was elected as president of Chechnya (Ahrens, 2004). The Chechenisation policy was later introduced by Russia where law enforcement operations, including counterterrorism, became the responsibility of Chechen forces loyal to Moscow (Sakwa, 2010). Thousands of Chechens "disappeared" following the implementation of the policy (Human Rights Watch, 2007).

The unsuccessful struggle for self-determination in Chechnya highlighted the issue of how political influence, though not part of the requirement to achieve statehood, may affect even a clear-cut struggle of peoples for self-determination. The international community has condemned the disproportionate use of force by Russia on the people of Chechnya, which evidently violate international humanitarian law. There were a number of cases submitted against Russia in the European Court of Human Right for the violation committed during the Chechen Wars of which the European Court found that the Russian government had failed to properly investigate the abuses perpetrated by its forces⁵.

However, aside from that, there is no further effort or support given to the people of Chechnya from the international community. In fact, in the period of de

⁵ See Khashiyev and Akayeva v Russia [2005]; Isayeva, Yusupova and Bazayeva v Russia [2005]; Isayeva v Russia [2005]; Estamirov and Others v Russia [2006]; Imakayeva v Russia [2006]; Luluyev and Others v Russia [2006]; and Chitayev and Chitayev v Russia [2006].

facto independence of Chechnya as the Chechen Republic, none of the states, with the exception of Taliban-led Afghanistan, have recognised the declaration of independence. This was alleged to be out of concern for offending Moscow and also citing Russia's right to preserve its sovereignty and territorial integrity (Anderson, 2015). The lack of international support for Chechnya's self-determination was viewed as a sign that the international community acquiescence that Chechnya should remain a part of Russia. Furthermore, the issue of Chechen minority rights has not even been raised nor discussed as an international issue as the other self-determination movement (Charney, 2001). Today, the Chechen Republic still remained as part of the Russian territory.

4.2.2.2 Palestine

Palestine was a region in Western Asia, eastern to the Mediterranean region. In 1922, the population of Palestine mainly consisted of Arabs, comprising both Muslims and Christians, and Jews, not to be confused with the Jewish religion, with the Arabs as the majority of the territory. The historical aspect of the Palestinian struggle for self-determination can be traced back to the establishment of the Palestine Mandate in 1923. During the First World War, in McMahon-Hussein correspondence dating from July 1915 to January 1916, the British and Arabs came under an agreement for the recognition of Arabs independence in the vast area of today's Syria, Israel, Jordan, Iraq and the Arabian Peninsula in exchange for the Arabs to launch the Arab Revolt against the Ottoman Empire. Thus, at the conclusion of the war, the Palestinian territory came under the United Kingdom's governance according to the division of

the Mandates of League of Nations in 1923 on the former empire's colonial and imperial possessions. Aside from Palestine, the Palestine Mandate also include the territory of Transjordan (modern-day Jordan) and indirectly, Iraq. It was intended to be short-lived as the aim of the Mandates is to implement the then-new principle of self-determination of peoples (Akzin, 1939; Smith, 2019). For the sake of this discussion, it will not be further discussed how Jordan and Iraq gained their independence or how the agreement affected them.

According to the practices of the mandates in the other territory, the Palestine Mandate should have ended with the establishment of Palestine as an independent state. However, when the Balfour Declaration came into the equation, the situation on the Palestinian territory became a much more complex situation. The Balfour Declaration was a public statement, made by then-British Foreign Secretary, Arthur Balfour on behalf of the British, has promised the establishment of a national home for Jewish people in Palestine in 1917. The declaration was made to garner economical support from the Jewish in the United States and Russia for their military campaign (Loevy, 2016). The wording used in the Balfour Declaration was pointed out, to establish the Jewish as the majority, a people on their own merits, while the existing Arabs were not mentioned, reduced to be a mere community and minority on the territory⁶. This declaration, supported by the 1922 Churchill White Paper Policy, even with a restrictive interpretation, did not preclude the development of Palestine into a Jewish State. Furthermore, the later interpretation by the British government, as stated in the 1937 Report of Royal Commission, there was a contemplation for the

⁶ "His Majesty's Government view with favour the establishment in Palestine of a national home for the **Jewish people** and will use their best endeavours to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of **existing non-Jewish communities** in Palestine, or the rights and political status enjoyed by Jews in any other country." See Balfour Declaration, 1917.

Jews had it “become a definite majority of the inhabitants, then Palestine would thus become a Jewish Commonwealth” (Akzin, 1939).

Thus, the Zionists, using the White Paper interpretation, have maintained that the Balfour Declaration, despite having little legal importance, has been incorporated into the Palestine Mandate and was a formal form of recognition to the Jewish as the peoples, defined under international law, of the whole territory under the Palestine Mandate (Akzin, 1939). Gaining sympathy over the persecution they went through during the Hitler regime, Jewish immigrants were determined to make Palestine their haven and immigrate there with the support of the United States (Leonard, 1949). This White Paper Policy, despite being declared unanimously by the Permanent Mandates Commission to be inconsistent with the consistent interpretation of the Mandate itself, was used to justify the influx of Jewish immigrants to Palestine with the aim of establishing a Jewish state.

Despite illegally carrying out the immigration based on the White Paper and Palestine Administration's attempts to interfere, the British government and the Permanent Mandates Commission seem to acquiesce the “illegal” immigration to be justified under the circumstances (Akzin, 1939; Taha, 2022). British did try to restrict Jewish immigration in 1939 to 75,000 for five years but with the pressure from the United States for this restriction to be lax, allowing 100,000 admissions⁷, it did not manage to control the flow of immigration (Leonard, 1949).

⁷ “I am very happy that the request which I made for the immediate admission of 100,000 Jews into Palestine has been unanimously endorsed by the Anglo-American Committee of Inquiry. The transference of these unfortunate people should now be accomplished with the greatest dispatch”. See Harry Truman Administration: Statement on the Anglo-American Committee of Inquiry, 1946.

The Palestinians, however, have been consistent in their argument on emphasizing the principle of justice whilst viewing the Israeli's argument on their right to the Palestinian land was based on imperial interests, war efforts and religion. The Palestinians refused the Zionist interpretation of the Balfour Declaration as an expression of justice. They are of the view that it was merely an exercise of power (Israel Law Review, 2016).

In essence, the complexity of the situation escalated when the Zionists, who believe in the idea of Jews returning to Zion, interpreted the declaration to be a recognition that Palestine is the home for all the Jews around the world and will be established as a Jewish state despite the opposition of the inhabitant of the land (Israel Law Review, 2016; Taha, 2022). Following the mounting unrest, with both the Palestinian and Jewish immigrants claiming the right to the territory, the British trying to solve the problem, together with the United States, sent a joint Anglo-American Committee of Inquiry to Palestine to investigate and find a possible solution in resolving the conflict in 1946. Failing to gain approval of the recommendations given by both conflicting parties, the British government turned to the UN General Assembly for assistance in resolving the conflict. This led to the 1947 UN Partition Plan for Palestine which recommended a separate independent Arab and Jewish states while the City of Jerusalem, where the Holy Places, sacred to three world religions, Islam, Christianity, and Jews, will be protected by a Special International Regime⁸.

This unfavourable situation led to violent conflicts up to the time the Mandate was lifted. The violence escalated to the 1947-1949 Palestine War between the Israeli and Palestinian which end up with the Israeli victory. During the duration of the war,

⁸ See Resolution Adopted on the Report of the Ad Hoc Committee on the Palestinian Question (UN Partition Plan), 1947. UN Doc. A/RES/181 (XVII).

15,000 Palestinians were killed, almost 800,000 Palestinian Arabs had to seek refuge in neighbouring countries, and almost 500 Arab Palestinian villages were destroyed, as admitted by Israeli General, Moshe Dayan (Said, 1989; Avgustin, 2020). The war was later recorded as the War of Independence by Israel and *Nakba* (the disaster) by the Palestinian. In the duration of the war, in conjunction with the British release of the Mandate, Israel declared their statehood in April 1948, with no mention of the actual borders of the state, with the recognition of fifty-four governments and admitted to membership in the United Nations (Leonard, 1949; Said, 1989). In fact, after the 1967 War, Israel occupied West Bank, Gaza Strip, and other Arab territories, illegally enlarging its borders beyond the 1947 UN Partition Plan.

Using the State status it gained, Israel has done many altercations to justify its status as the legitimate people of the land. One of the many methods was by denying the historical existence of the Palestinians in Palestine before the Jewish came to the land (Said, 1989). It was recorded that an Israeli prime minister, Golda Meir, once blatantly question the very existence of Palestinians in 1969 after being questioned on the Israeli heavy response to the *intifada*, the uprising self-determination movement, by the Palestinians. It was known that Israel has been consistently designing any military resistance made by the Palestinian as an act of terrorism and using heavy repercussions in response to that in the name of counterterrorism. For example, the designation of Palestine Liberation Organization (PLO) as a terrorist organisation in 1964 for the military action it took against Israel (Avgustin, 2020).

The UNGA has been affirming the right to self-determination of the people of Palestine since 1969. Various resolutions have been passed affirming the inalienable right of the people of Palestinian and condemning members that did not acknowledge

this right⁹. In 1975, the General Assembly established the Committee on the Exercise of the Inalienable Rights of the Palestinian People with a mandate designed to enable the Palestinian people to exercise their rights to self-determination without external interference and to national independence and sovereignty. The committee presented a draft resolution to the Security Council that affirmed the rights of the Palestinian people. However, this resolution failed due to the veto by the United States, one of the few state members besides Israel, that did not recognise the Palestinian right to self-determination. In 1988, an independent Palestinian State was declared following the Palestinian Declaration of Independence with the recognition of the international community despite opposition by Israel and the US.

The construction of the wall in the Occupied Palestinian Territory, separating the Palestinian land and Jews, brought back the plight of the people of Palestine to the eyes of the international community. The Advisory Opinion of ICJ on the construction of the wall almost unanimously, besides the consistent against vote by the Judge Buergenthal of the United States, find that Israel has violated international law and has the obligation to cease and remedy the violation.

A point to be highlighted, although the UN has consistently acknowledged the right of the people of Palestine to exercise their rights without external interference, as mentioned in the introduction, the UN and the Quartet Members¹⁰ did not

⁹ See United Nations Relief and Works Agency for Palestine Refugees in the Near East, 1969. UN Doc. A/RES/2535 (XXIV) [B]; 1970. A/RES/2672 (XXV) [C]; Invitation to the Palestine Liberation Organization, 1974. UN Doc. A/RES/3210 (XXIX); Observer status for the Palestine Liberation Organization, 1974. UN Doc. A/RES/3237 (XXIX); Question of Palestine, 1975. UN Doc. A/RES/3376 (XXX); Effective Guarantee and Observance Of Human Rights, 1977. UN Doc. A/RES/32/14.

¹⁰ The Quartet is a diplomatic grouping comprised of The United States, the United Nations, the European Union and Russia. They were responsible for developing the text of the Middle East peace proposal which was formally presented to the Government of Israel and the Palestinian Authority on 30 April 2003. See Letter dated 7 May 2003 from the Secretary-General addressed to the President of the Security Council, 2003. UN Doc. S/2003/529.

acknowledge the democratic result of an election where the Palestinian has elected Hamas as the representative government of the people of Palestine in 2007. This, however, is in line with the straight mention of UNGA's recognition of the (PLO) as "the sole legitimate representative of the Palestinian people" in resolution 3210 (XXIX) in 1974. Disagreeing with Hamas's military approach as opposed to the PLO's peaceful approach. UN's failure to recognise Hamas as the representative elected by the people of Palestine has created a justification for states to legitimately design Hamas as a terrorist group in their struggle for Palestine's independence as they are not deemed as a combatant in the eyes of international law.

The transgression of Israel has been continuous, with many records of violations against the precepts of humanity such as the controversial use of the illegal biological weapon, white phosphorus in Gaza in 2008-2009 and the illegal settlement expansion beyond the 1947 UN Partition (Benoliel & Perry, 2010). These violations have been brought up time and again in the UNSC meeting and various resolutions drafted condemning the actions of Israel. However, each of these resolutions has been vetoed by the United States, exercising its right as a permanent member of the UNSC on the escalation of violence and tensions in Gaza and the high number of casualties among Palestinian civilians.

The recent development on the struggle of the Palestinian people for self-determination was, in 2012, Palestine managed to upgrade their status from a non-member observer entity of the UN to a non-member observer state, despite strong opposition from Israel. This status, despite not being a full-fledged member of the UN, is a formal acknowledgement of Palestine's status as an independent state. It allows Palestine to be a signatory to treaties, where the UN secretary-general is the

depository, a privilege that was previously unable to be enjoyed by the Palestinians due to their status. As of now, there are 11 UN treaties regarding human rights had been ratified by the State of Palestine¹¹. Palestine also ratified the Four Geneva Conventions including all the Additional Protocols and Convention on the Rights of the Child, with its Optional Protocol and almost all the related humanitarian treaties regarding methods and means of warfare, cultural property, and criminal repression. In fact, with the ratification of the Rome Statute, Palestine has managed to bring up a case in the International Criminal Court which currently undergoing Investigation by the Office of the Prosecutor of the International Criminal Court. With the expectation that the General Assembly will also adopt the resolution, the Special Political and Decolonization Committee, the UN General Assembly's Fourth Committee passed a resolution at the end of 2022 that addressed the Israeli violations of the human rights of the Palestinians in the occupied territories¹².

The fight for self-determination of the people of Palestine includes various elements in its complexity. The presence of Israel as a third party, brought to the Palestinian land by British, the foreign administering power, was the sole reason of the complication. Even though, British was under obligation to govern and help the Palestinian to establish an independent nation, and had indeed initially promised the territory to the Palestinian as the original occupants of the land, the situation became worse when they at the same time had also promised the said land to the third party.

¹¹ To name a few: Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), on 2 April 2014; both of International Human Rights Covenants: International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) on 2 April 2014 and others.

¹²See Israeli Practices Affecting Human Rights of the Palestinian People in the Occupied Palestinian Territories, Including East Jerusalem- GA Draft Resolution, 2022. UN Doc A/C.4/77/L.12/Rev.1.

The situation was further intricated by the presence of a fourth party, the US, who has considerable influence, acknowledging the third party, State of Israel, as the indigenous of the territory based on the third party's claim. Even with a clear-cut case of self-determination against colonialism, the dispute over the Palestinian land was made inconclusive without an amicable solution due to the complexity stated above.

Based on the aforementioned case studies, several legal patterns can be observed, including the need for historical ties to the territory in question, recognition of the National Liberation Movement as the people's representative, and the fact that the struggle for self-determination will be successful if it receives the support of any member of the UN Security Council and faces no direct opposition from any of them. The following table will further illustrate the observations made in the case studies:

Case Studies	People	Alien Domination/ Occupier	Use of Force	Extreme Oppression (Threat of Death)	UNSC Permanent Members Support/ Opposition	Representative of National Liberation Movement	Unilateral Declaration of Independence	Existence of War Crime Elements	Formal Investigation by UN/ICC	NLM Designed as Terrorist by Opposition Party
East Timor (1976-2002)	East Timorese	Indonesia/ Portugal	Both	Yes	Supported by China	FRETILIN	No (Referendum)	Both	Yes	No
Kosovo (1989-2008)	Kosovar	Serbia	Both	Yes	Supported by United States, United Kingdom, France	Kosovo Liberation Army	Yes	Both	Yes	Yes
Chechnya (1917-2003)	Chechen	Soviet Union/ Russia	Both	Yes	Opposition by Russia	Chechen Republic	Yes	Both Undetermined	No	Yes
Palestine (1923-Now)	Palestinian	Israel	Both	Yes	Opposition by the United States	HAMAS (Not recognised as Representative NLM by Quartet)	Yes	Both Undetermined	Ongoing	Yes

Table 2.0: Summary of Analysis of the Case Studies

4.3 DISSECTING REALITY BETWEEN THE RIGHT AND TERROR

4.3.1 A General Comparison of the Practices of Exercising the Right to Self-Determination and Acts of Terrorism

As has been discussed in the previous chapter, there is no specific international law to govern terrorism. As of now, the law on terrorism is domestic in nature allowing wide interpretation by the states on what constitutes an act of terrorism, who can be designated as a terrorist and the appropriate measure that can be legally taken to counter it, according to domestic criminal law. In general, however, based on the interpretation of the act of terror in some state members, the international community has been of the same view that an act of terrorism is an act of instilling terror among the general public in pursuance of their agenda. This act can either be made to cause harm to the general public directly or indirectly. This interpretation of the act of terrorism itself has no obvious difference between state members.

In comparison to a similar act done in exercising the right to self-determination, as has been discussed previously, an armed conflict in exercising the right to self-determination is international in character. Thus, it is governed under international humanitarian law as provided under the Geneva Conventions. An act of terrorism has a specific provision mentioning it under international humanitarian law. The general interpretation of the act of terrorism provided under the Geneva Convention and Additional Protocol I did not divert from the interpretation of an act of terrorism in various state domestic laws. It can be concluded that there is a silent agreement between the international community on what constitutes an act of terrorism.

On the other hand, on the matter involving the identification of a terrorist and the appropriate action to counter it, it is found that state members have some disagreement regarding this. Generally, a terrorist group is attributed to non-state actors rather than state actors, although historically, the term first referred to a state-instigated terror¹³ (Blocher, 2011). This is reflected in most provisions of law where the discussion on state-sponsored terror is rarely discussed. Any transgression by a state that has a similar nature to an act of terror uses a different wording and designation, such as genocide and crimes against humanity, without relating the act to any connotation of control or influence, as terrorism implies. This might be due to the fact, as stated before, the state is obliged to be the protector of its people's interest, thus making the crime of terrorism to be a direct contrast to this obligation. As of that, a state could not be designated as a terrorist state as it will negate the nature of a state under international law.

As such, the designation of a terrorist identification strictly becomes a state right to any non-state actor that falls under the interpretation of a terrorist under state domestic law. However, as has been highlighted before, due to the nature that different states have different values and interests, the designation of terrorist is heavily influenced by the state's political interest and what it interpreted as endangering the state's peace and security. This situation is reflected in the cases of Kosovo and Palestine, where, in both circumstances, states that are directly confronting the Kosovar and Palestinian armed struggles for self-determination designate them as terrorists. However, the different outcomes for both cases brought forward the question of the international support of the course, in particular, the

¹³ The term "terrorism" was initially used to describe the Jacobins' reign of terror following the French Revolution. See Siegel, 2005.

permanent members of the UNSC. This will further be discussed in the latter part of this chapter.

A point to be pointed out, as the power to design a group as a terrorist was within the interpretation of the state, this in a way being the biggest boulder for the struggle of peoples for self-determination. This is because, with the designation of the group as a terrorist organisation, the domestic criminal law that governs terrorism in that particular state will be applicable. States that are allied to the particular state will tend to similarly design the group as terrorist as in the case of the designation of Hamas as a terrorist organisation by Israel, the US, the UK, Canada, and the EU also follow suit in the designation. Although the EU court once decided to strike Hamas out of the EU's list of terrorist organisation in 2019, the latest ruling by the union's highest court has reinstated it back on the list¹⁴.

This brought forth the question of whether the exercise of the right to self-determination by the people is subjected to the recognition of the dominion state. Following the various provisions of international humanitarian law and the right to self-determination discussed before, an armed struggle of the people in exercising their right to self-determination should not be subjected to domestic criminal law. Thus, any armed forces representing the people should not be designated as a terrorist organisation.

However, as has been understood in the previous discussion, the practicability of international law was relying on whether states allowed themselves to be subjected to the law. International law cannot be practised without the consent of the state. This

¹⁴ See Council of the European Union v Hamas [2021].

also stands true to the matter regarding the right to self-determination. The applicability and practicability of exercising the right to self-determination without the fear of being designated as a terrorist group for any act contrary to the international humanitarian law were heavily relying on whether the right to self-determination of the peoples itself was recognised by the dominion state and the international community.

Although the right of the people might be *erga omnes* in character, as can be referred to the case of East Timor, a violation of the right can only be punishable when the state violating the right was brought before the international court, in this particular case, the ICC. Today, after the ratification of the Rome Statute on the 1st of July 2002, any violation of international law for genocide, crimes against humanity, violations of the Geneva Conventions and crimes of aggression will be under the jurisdiction of the ICC. On the question of terrorism, should it be established as a violation of international humanitarian law under Additional Protocol I, will fall under the jurisdiction of the ICC as opposed to the domestic criminal court. This, however, is impractical in the pursuit of justice when the state in question might not be a State Party to the Rome Statute. A state that is not a party to the Statute however can only be brought before the court if it was referred to the ICC Prosecutor by the UNSC¹⁵. This part is of the utmost importance for the people struggling for independence as they are not yet an independent state and thus unable to ratify the Statute. This can be seen in the case of Palestine, where ICC, with the support of ICJ, decide that it was able to assert its jurisdiction over the crimes alleged committed by Israel against Palestine when Palestine acceded to the Rome Statute thus becoming a state party to

¹⁵ See Article 13 of the Rome Statute of the International Criminal Court (ICC).

it¹⁶. This achievement was only possible when Palestine achieved a non-member state observer.

4.3.2 Legal Criteria of External Self-Determination Movements

The right to self-determination, as has been highlighted before, directly contrasts with the state's right to territorial integrity. This is especially so in the struggle seeking external self-determination. Based on the observation of the legal patterns existed in the cases referred to above, there are four fundamental legal criteria, aside from satisfying the criteria of statehood in the Montevideo Convention, that can determine or influence whether the struggle of external self-determination by the people has the possibility to succeed or not.

4.3.2.1 The People Have Historical Ties or Cultural Claim to the Area

The first one is the historical identity of the peoples themselves to the territory claimed. They must establish that they have the access to the right to self-determination as the rightful peoples of the territory should the circumstances arise. In this regard, the people struggling to exercise their right to self-determination must establish the historical ties they had with the territory as this right is not accessible to mere minorities. Failing to establish the historical claim may cause the struggle to be

¹⁶ See Situation in the State of Palestine (Pre-Trial Chamber I Decision) [2021] ICC-01/18.

dismissed or delegitimised by the international community. This situation can be seen reflected in the case of Palestine's struggle for their right to self-determination.

From the early days of their struggle till today, the Israelis have been constant with their claim on the Palestinian territory as their historical homeland by claiming historical culture of the land as theirs (Israel Law Review, 2016). In claiming the land, one of the allegations by the Israelis to dismiss Palestinian's claim for self-determination was the inexistence of the State of Palestine prior was reason enough to rebuke the existence of Palestinians themselves (Khalil, 2005). This situation led to Palestinian being denied their identity and existence in the land of Palestine. Due to this, all the struggles that they had been through were delegitimised as an act of terrorism. The passing of UNGA Resolution 2535 B (XXIV) in 1969 was the first international recognition of the Palestinian's right to self-determination that led to their struggle to be recognised onwards.

4.3.2.2 There Was an Extreme Oppression Due to the Special Character of the People

Another legal pattern that can be seen to be recurrent in the successful struggle for external self-determination is the existence of the element of fundamental human rights abuses *in extremis*. This criterion can be seen to be recurring in all three cases where the right of self-determination of the people is acknowledged. In comparison, in the case of Quebec and Catalonia, both struggles for external self-determination were not acknowledged as the people failed to establish that their fundamental rights were abused or oppressed aside from deprivation in cultural and economic aspects.

In reference to the Advisory Opinion in the case of Kosovo, the court laid the criterion of the existence of human rights abuses *in extremis* to be the ultimate reason that enable the Kosovar Albanians who are struggling for self-determination to seek the right of secession. This is due to the fact that with the existence of this criterion, the peoples seeking for right to secession have managed to prove that the dominion state is unable to fulfil their obligations as their protector. The criterion itself proved that the dominion state has gone beyond failing the obligation to protect its people by becoming their own abuser. This criterion has been proven to be important enough that it can transgress the requirements of an effective government enumerated in Article 1 of the Montevideo Convention to establish statehood as reflected in the case of Kosovo and East Timor.

4.3.2.3 Recognition of National Liberation Movement as a Legal Combatant

Another important criterion closely related to recognition that needs to be established by the people, to legally use force in their exercise of their right to self-determination, as stated before, was to establish an organisation as their legal representative, recognised by the international humanitarian law. This is a crucial aspect to distinguish the organisation, as people seeking the right to self-determination, from a terrorist who is subject to domestic criminal law. This can be done by establishing it as a legal combatant, protected by the Geneva Convention.

As stated previously, provided under Article 4 of the Third Geneva Convention, read with Article 2, for a combatant to be entitled to the Convention's

protection, they must distinguish themselves from common civilians. This entailed the need for a clear command structure, a distinctive sign, and clear carrying of weapons and their operations in accordance with the customs of war, as stated before. Failing to do so may entitle them to be classified as illegal combatants that are not protected by the convention. In other words, if the organisation failed to establish itself as a combatant, according to international law, it may be subjected to domestic criminal law and is not entitled to combatant immunity.

However, based on the observations of the above cases, it can be concluded that, although this element must be fulfilled to ensure that the people who are using force in exercising their right to self-determination are protected, this is not a sure guarantee for them that they will be recognised as a combatant. As can be seen in the case of Palestine where although the requirement of Article 4 of the Third Geneva Convention was satisfied, the struggle of Hamas as the resistance armed forces representing the peoples were designated as terrorist forces by the international community. This is due to the fact that Hamas, albeit democratically elected, was not recognised by the international community as the representative of the people of Palestine, following resolution 3210 (XXIX) in 1974. This fact is further supported by the event where the UN, once, stopped the humanitarian supplies to the Palestinians in response to the election in 2006, claiming fear of misuse of the supplies to support terrorist activities¹⁷.

¹⁷ See Middle East Quartet Statement London, 2006. UN Doc. SG/2104, PAL/2042.

4.3.2.4 Capacity to Enter into Relations with the Support of Great Power Nations

Besides that, the legal pattern shows that another criterion for the success of exercising the right to external self-determination is recognition and support by the international community. This requirement is in line with the criteria of statehood on the ability of the newly formed state to enter relations with other states. Without recognition or support by the international community, even a rightful struggle under international law may be unsuccessful as was reflected in the case of Chechnya. The case highlights the significance of recognition of the plight for self-determination of the people. Without the recognition, an armed conflict in exercising the people's right to self-determination may be dismissed as an act of insurgency that is subjected to domestic criminal law.

Another point to be highlighted is that, in gaining recognition by the international community, it is imperative that the people gained recognition and support from the permanent members of the UNSC due to their veto power provided under Article 27 of the UN Charter. The support or lack of opposition by the permanent members has the ability to heavily influence the possibility of success of the struggle for external self-determination by the people. This can be referred to in the case of Kosovo, where the lack of opposition by Russia in a way helped in clearing Kosovo's path for independence. As opposed to that, in the case of Palestine, the continuous veto by the US in support of Israel has been hindering the Palestinian struggle for self-determination.

In addition, if the peoples seek external self-determination, it is inevitable that they want to build an independent state that is universally recognized. As of that, the recognition or lack of opposition by the permanent members of the UNSC is important. This is due to the fact that to be universally recognised, it is imperative that the state has to become a member of the United Nation, and to become a UN state member, a state must have the recognition of at least two-thirds of the existing UN members after gaining the approval by the UNSC¹⁸. With the veto power of the UNSC permanent members, states that faced any opposition from any of the permanent members will have the risk of not being recognised as a state member (Brown, 2020). This is reflected in the case of Palestine, although declared its independence in 1988 and acknowledged by the General Assembly¹⁹ in the same year, has yet to receive the full status of State Members of the UN.

¹⁸ If the Security Council recommends the applicant State for membership, the General Assembly shall consider whether the applicant is a peace-loving State and is able and willing to carry out the obligations contained in the Charter and shall decide, by a two-thirds majority of the members present and voting, upon its application for membership. See Rule 136 of The United Nations Rules of Procedure. UN Doc. A/520/Rev.20.

¹⁹ See “43/177. Question of Palestine”, 1988. UN Doc. A/RES/43/177.

PROBLEM STATEMENT: THERE IS NO SPECIFIC GOVERNING LAW OVER THE EXTERNAL RIGHT TO SELF-DETERMINATION				
Propose Solution: Legal Criteria Based on Legal Observation				
	Legal Criteria	Elements	Source of Law	Example in Practice
1	The People have Historical ties or cultural claims to the area	- The people have a clear identity and their own special characteristics; - Have common history that implies a relationship with the territory	- Report by Special Rapporteur of the Sub-commission on Prevention of Discrimination and Protection of Minorities - Question of Palestine. UN GA Res. 3376 (XXX) (1975)	- Palestine - Kosovo - East Timor
2	There Was an Extreme Oppression Due to the Special Character of the People	- The people must have fundamental human rights that are abused <i>in extremis</i>; - The abuse must be due to their own special characteristic and identity.	- Reference Re Secession of Quebec [1998] 2 SCR 217 - Kosovo Advisory Opinion (2010) ICJ Rep. 403	- Kosovo - East Timor - Palestine - Quebec - Catalonia
3	Recognition of National Liberation Movement as a Legal Combatant	- The NLM must establish an armed force that can be distinguished from common civilians. - The forces' objective must be the struggle for self-determination.	- Art. 4 (read together with Art. 2) of the Third Geneva Convention	- Palestine (HAMAS) - East Timor - Kosovo
4	Capacity to enter into Relations with the support of any of the UNSC Permanent Members	- The NLM must be recognised by the International Community - The struggle must be supported by UNSC Permanent Members without any direct opposition	- Art. 1 of the Montevideo Convention - Art. 27 of the UN Charter - Rule 136 of UN Rules of Procedure	- Biafra - Chechnya - East Timor - Kosovo - Palestine

Table 3.0: Summary of Legal Criteria of Right to Self-Determination

4.4 CONCLUSION

In the observations of the case studies, although there are no clear provisions of the law on how to exercise the external right to self-determination, based on the practises of the successful and unsuccessful struggles for self-determination, a legal pattern on how the right can be exercised can be distinguished. However, as the nature of international law was based on the ratification of the state members whether to bind themselves to the law or not, there is a possibility of the struggle to be unsuccessful although all the patterns have been satisfied.

An interesting point that emerged in this discussion was whether an influx of non-indigenous people to the population of the occupied territory will affect the right to self-determination of the original people of the land. Based on the observations on the similar practice of the former colonial territory such as the United States, Australia and others in comparison to the case of East Timor, the right to self-determination will remain with the peoples, not the immigrant, in the event where there was an influx of immigrant that later make up the majority of the territory should the right to self-determination was not sought directly by the peoples themselves. However, in comparison to the situation in Palestine, where the immigrants were brought in by the colonial forces and become the majority of the territory, it believes that the right will not be transferred to the immigrant even if the immigrants are seeking it themselves as this situation was reflecting a continuity of colonisation.

In short, although a legal pattern can be established on how a right to external self-determination can be exercised, due to the nature of international law, the right can be successfully exercised with the reliance on the recognition of the international

community. A right will not be right without the acknowledgement or recognition that it exists in the first place.

