

INTRODUCTION

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The aim of the study is to analyse and describe the evolution of the principle of self-determination and to focus on the United Nations' role in the development of this principle. There will be a special focus on application of the concept to the case of East Timor. In a nutshell, the study will attempt to trace the genealogy of the principle of self-determination, its legality and its impact on international politics and UN application of this principle with East Timor as the case study.

The term "self-determination" has gained importance in world politics, especially since the end of Cold War. The disintegration of the Soviet Union and Yugoslavia and the emergence of new states brought the issue of self-determination into focus. To understand the meaning of self-determination a study of its evolution over a period of time is essential. This is especially so because it is not a concept propounded by any single individual or school of scholars. Its evolution has given new scope and depth to its meaning.

The Declaration of American Independence of 1776 and the incorporation of fundamental rights in the French Constitution of 1789 can be said to have given self-determination the status of a political principle. Further, during the same period, self-determination is identified with plebiscite, as evidenced in the annexation of Savoy and Nice to France. By the end of the nineteenth and early twentieth century self-determination came to be spoken of as national self-determination and the self-determination of peoples and nations. Woodrow Wilson's Fourteen

Points, articulated towards the end of the First World War, identified self-determination with minority rights and democracy. After the Second World War, the decolonisation process of colonial countries in Asia and Africa took place under the name of self-determination.

The term self-determination acquired legal character through its incorporation in the Charter of the United Nations. The Charter declares furthering self-determination as one of its purposes. The United Nations, for the first time, paved the way for the implementation of this principle in Asia and Africa through the decolonisation process. The principle of self-determination gained universal acceptance, when the United Nations General Assembly unanimously adopted Resolution 1514(XV)- “The Declaration of Granting of Independence to Colonial Countries and Peoples.” Further, the principle came to be identified with human rights by its inclusion in the International Covenant on Civil and Political Rights and International Covenant on Economic, Social, and Cultural Rights. In addition, it gained legal strength with the adoption of the “Declaration of International Law and Cooperation” by the United Nations General Assembly. It was basically a reiteration of Resolution 1514(XV), conveying its commitment to the implementation of the principle of self-determination.

East Timor is a test case for the role of the United Nations in implementing the principle of self-determination. East Timor figured for the first time in the United Nations deliberations, when the United Nations General Assembly asked Portugal to place its colonies under the Trusteeship Council. However, it refused to do so. In 1975, after the

Indonesian invasion of East Timor, Portugal took the matter to the United Nations Security Council. Since then United Nations has been fully involved in the East Timor conflict. The Security Council, through its resolutions, asked Indonesia to withdraw its forces, which Indonesia ignored.

The United Nations General Assembly from 1975 to 1982 adopted various resolutions regarding East Timor question, which not only condemned Indonesian occupation but also asked Indonesia to allow the East Timorese to exercise their inalienable right of self-determination. The General Assembly resolution 37/30(1982) requested the Secretary-General to initiate a dialogue between the parties concerned and thereon to report to the Assembly. After the resignation of President Suharto, the new regime agreed to conduct a popular consultation to find the wishes of the East Timorese. Therefore, an agreement was reached between the United Nations, Indonesia and Portugal by which the United Nations supervised the consultations.

A number of important studies have been published on the subject of self-determination and the role of United Nations in the implementation of the principle of self-determination. The following review of literature could be classified on the basis of different approaches such as democratic, legal, human rights and nationalist approach.

Democratic approach to self-determination is based on the consent of the people. Here the stress is on the peoples participation in the government. Hence, the corollary is that the right to self-determination is best expressed through democratic form of government. Hurst Hannum in

Autonomy, Sovereignty and Self-Determination: The Accommodation of Conflicting Rights describes three concepts. (i) autonomy, (ii) sovereignty, and (iii) self-determination, and he calls it “conflicting rights”. He explains these three concepts through nine case studies, which include Sri Lanka, Punjab, and Southern Sudan. In many instances, adoption of a federal system or the devolution of meaningful power from the Centre to geographic, linguistic, or ethnic based region is sought. According to Hannum, self-determination holds that “any people, simply because it considers itself to be a separate national group, but uniquely exclusive qualified to determine its own political status, including its desire, the right to its own state.” He describes sovereignty as, “the fundamental authority of a state to exercise its sources without being subsequent to any outside authority.”

Michael Freeman, in his article, *Democracy and Dynamite: The Peoples Right to Self-Determination*, writes that, “the right to self-determination is a potent and paradoxical political concept. It is associated with democracy, xenophobia and anarchy.”

Frederic L. Kirgis Jr. in *Degrees of Self-Determination in the UN Era* discusses the UN practice of the principle of self-determination. He accepts the ICJ’s definition of self-determination in the Western Sahara case. Further, he says,

a claim of right to secede from representative democracy is not considered to be a legitimate exercise of the right of self-determination, but claim of right by indigenous groups within the democracy to use their own languages and engage in their non coercive cultural practice is likely to be recognised- not always under the rubric of self-determination, but recognise nevertheless.

The right to self-determination after the World War II is seen as a legal right with its incorporation in the United Nations Charter. The legality of self-determination is further strengthened by the practice of the United Nations and the International Court of Justice. This was seen in the context of freedom struggle of the Afro-Asian colonies. A. Rigo Sureda in *The Evolution of the Right of Self-Determination and UN Practice* analyses various resolutions and the declarations regarding principle of self-determination. According to him, “self-determination is no longer a mere political doctrine. But legal right of peoples, exercisable by them through the instrumentality of the UN.” Further, he says, “within the context of colonialism, self-determination has become a preemptory norm of international law, whereby a state, entitled to a territory having colonial status is void.”

Umozurike Oji Umozurike, in *Self Determination and International Law*, analyses the evolution of the principle of self-determination since Roman times. He examines the legality of the principle of self-determination under the Covenant of the League of Nations and the UN Charter. The word “self-determination” is derived from the German word *sellstbestimmungsrecht*. His definition of self-determination emphasises the right of “All peoples to determine their political future and freely pursue their economic, social and cultural development. Politically, this is manifested through independence as well as self government, local autonomy, merger, association, or some other form of participation in government.” “National”, “Self” and “Determination” mean different things to different peoples. Issues like the

question of “settlers” and or the “critical date”, the irreversibility of “determination”, their right of secession, and the domino theory of secession, the manorial size of viable states and the collision between principle of national self-determination and other international norms and values are discussed. The analysis is based on modern case studies and on the political thought of nationalist ideologues and politicians.

The human rights approach considers the right of self-determination as an individual right. It emphasises that the right of self-determination is a prior right for any individual to enjoy other civil and political rights. Dov Ronen, in his book *The Quest for Self-Determination*, attempts to analyse the origin of the principle of self-determination. The author argues that the “self” in self-determination is the singular human being and not any aggregation of human being. The quest for self-determination, at its source, is not a national or any other group aspiration, but the aspiration of the individual human beings to the vague notions of “freedom” and “good life”. It is only because the instituting of self-determination is not possible, that the aggregation of the “I”s is substituted by the “Us”. He further describes the various stages of self-determination: National self-determination, Class determination, Wilsonian self-determination, Afro-Asian decolonisation and Ethno self-determination are successive quests for self-determination that originated in the French Revolution.

Robert McCorquodale in his article *Self-Determination: Human Rights Approach*, argues that the principle of self-determination is meant

for all peoples who live in independent, trust, or non-self- governing territories.

For some scholars self-determination is national self-determination. National self-determination is nothing but the nationalistic aspirations of a self conscious community. Alfred Cobban, in *Nation State and National Self-Determination*, attempts to study the fundamental issues involved in the demands for the right of self-determination. The book is divided into four main sections: (i) a historical account, the rise of the concept of national self-determination and its triumph in 1918 Peace Conference and its subsequent collapse; (ii) analysis of self-determination as a theoretical and practical principle; (iii) examination of the method adopted by the three great powers, namely, Great Britain, former USSR and US; and (iv) discussion of the strategic and economic implications of the concept in mid-twentieth century.

Benyamin Neuberger, in *National Self-Determination: Dilemmas of Concept*, deals with the principle of national self-determination, its historical roots, interpretations, dilemmas, contradictions, and double standards. An attempt is made to divide the concept into its analytical components. For him self-determination meant the rejection of foreign rule and having a democratic government, i.e., independence and democracy.

The study deviates from the existing scholarship in that it traces the historical origins of the idea of self-determination to Greek and Chinese civilizations and the Vedic period in India. It will also study the right to self-determination of the peoples of occupied territories. Further,

few works have dealt with the role of the United Nations in the implementation of the principle of self-determination with East Timor as a case study.

The study is seeking to test the following hypotheses:

- The role of the United Nations is an important determinant in the evolution of the principle of self-determination.

- The role of the United Nations in East Timor is an instance of the implementation of United Nations General Assembly Resolution 1514(XV)- the Granting of Independence to Colonial Countries and Peoples, i.e., the application of the principle of self-determination.

- The Indonesian claim on East Timor on historical, cultural and ethnic basis is not well founded and is only an attempt to suppress the separate East Timorese identity.

- The Catholic Church, the only institution to represent the entire community, played the role of a catalyst in the self-determination struggle of the East Timorese by attracting the attention of the international community.

The methodology adopted in pursuing this study is historical and analytical. The study is based on a variety of primary sources including the UN General Assembly and Security Council Resolutions, Special Committee Reports and Visiting Mission Reports. UN Chronicles and Newsletters were consulted. Further, memoirs, state papers and other secondary materials were studied. The study also included a field visit to Australia and Singapore. The visits gave an opportunity to collect

valuable materials and interact with various scholars and experts in the field.

Chapter I deals with the meaning and evolution of the principle of self-determination. It traces back the origin of the principle of self-determination to the Greek civilization. It also traces elements of self-determination in Chinese civilization and in the Vedic Age of India, to highlight the fact that elements of democracy were existent even in the Orient. In the modern period, the urge for self-determination began from the American Declaration of Independence in 1776. Further, the chapter narrates the evolution the concept in the nineteenth century through the unification of Germany and Italy. In the twentieth century the Wilsonian Fourteen points gives primacy to the principle and identifies with democracy and minority rights in the Empire States of Europe.

Chapter II examines the legality of the self-determination and its content. The chapter begins with the League of Nations' experiment in the implementation of the principle of self-determination in the Aaland Island case. An early example of the application of the principle, the League appointed a committee jurists to examin whether it was a fit case for exercising the right to self-determination. The principles incorporation in the United Nations Charter gave legitimacy to it. The applicability of the principle of self-determination was evident from the decolonisation process. The International Court of Justice's advisory opinions enhanced the legality of the principle. Further, the United Nations practice looked at the principle as a basic right to enjoy any other human rights.

Chapter III focuses on the application of the principle of self-determination under the United Nations. Eritrea and the Kashmir were taken as case studies. In the case of Eritrea, the UN initially accepted the federal arrangement with Ethiopia as self-determination. However, Ethiopia violated the federal arrangement leading to discontent among the Eritreans. This time a referendum was conducted to find the wishes of the people. Eventually this led to the independence of Eritrea. In the case of Kashmir, the study is confined to the United Nations' role till 1965. It analyses the role United Nations Commission on India and Pakistan and single member commissions in Kashmir.

Chapter IV narrates the history of East Timor from its colonisation by Portugal in seventeenth century to the 1975 Indonesian invasion. The rule of Portugal created discontent among the East Timorese and led to revolts in 1910 and 1959. These revolts were quelled with a heavy hand and Portuguese continued with its existing policy. After becoming member of the UN, Portugal began to introduce reforms under the pressure of the UN General Assembly. In 1974, the military regime announced the establishment of progressive autonomy for its colonies. It led to the formation of various political organizations in the territory, such as Fretilin, UDT, and Apodeti. Among them Fretilin was the most popular organization which believed in socialism as well as stood for the independence of East Timor. This policy of Fretilin created suspicion in the minds of Indonesian rulers that East Timor would be the refuge of Indonesian communists. So Indonesia invaded East Timor in 1975.

Chapter V describes the role of the UN in East Timor question. After the Indonesian invasion, Portugal brought the matter to the Security Council. The resolutions of the Security Council asked Indonesia to withdraw its forces. However, it ignored the Security Council's demand. At the same time the General Assembly from 1975 to 1982 adopted various resolution insisting on the inalienable right of the East Timorese. The hard and long struggle by the East Timorese combined with the Indonesian economic crisis in the 1990s forced the Indonesian government to agree for popular consultation. The popular consultation resulted in the independence of East Timor.