

“Right to Self Determination as Human Right”*Prithivi Raj**Rajiv Gandhi National University of Law,
Punjab***ABSTRACT**

The principles of equal rights and self-determination of peoples is part of the group of human rights and fundamental freedoms. Its recognition is the ineluctable logical consequence of the recognition of human rights. They cannot be separated. Without political freedom, civil rights cannot be fully respected, and the equality of all human beings before the law cannot be ensured unless the nations to which those human beings belong are also recognized as equal. Consequently, the right of peoples to self-determination has the same universal validity as other human rights. The principle of equal rights and self-determination of peoples has played a very important part in the history of the United Nations and has been invoked more often than any other Charter principle of international law, for it profoundly affects the lives of peoples. In the history of the United Nations so far, it has been the moral, political and legal basis for more intensive development of international relations in the direction of eliminating any idea of inequality between States and any subjection of one people by another. It has become one of the guiding concepts of the contemporary world and a powerful spur to political action in a great many situations. The notion of equality and self-determination meets the most heartfelt aspirations of all peoples subjected to colonial or alien subjugation. This paper will explore the principle of self-determination by examining its development from time to time. The author will try to co-relate right to self-determination with human rights and human development.

KEYWORDS: Self- determination, Human Rights, Political choice, Freedom.

INTRODUCTION

The principle of self-determination was for a long time regarded as purely political and was thus deprived of legal character.¹ The political dimension of the principle was clearly formulated in President Woodrow Wilson’s Declaration, which in practice significantly contributed to the emergence of new states after the First World War, particularly in Central Europe.² Self-determination refers to "the right claimed by a 'people' to control their destiny."³ Of course, the emergence of these new states did not entail that the principle of self-determination was implemented in the sense defined in the later provisions of international law, particularly within the United Nations system; the principle of self-determination allows a people to choose its own political status and to determine its own form of economic,

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¹ L. Dembiński, *Self-Determination In The Law And Practice Of The United Nations*, Warsaw 1969, P. 35

² K. Kocot, K. Wolfke, *Wybór Dokumentów Do Nauki Prawa Międzynarodowego*, Wrocław – Warszawa 1978, P. 45.

³ Berman, "Sovereignty In Abeyance: Self-Determination And International Law" In Koskenniemi (Ed), *International Law* (1992) 389, 390

cultural and social development.⁴ Exercise of this right can result in a variety of different outcomes ranging from political independence through to full integration within a state. The importance lies in the right of choice, so that the outcome of a people's choice should not affect the existence of the right to make a choice. In practice, however, the possible outcome of an exercise of self-determination will often determine the attitude of governments towards the actual claim by a people or nation. Thus, while claims to cultural autonomy may be more readily recognized by states, claims to independence are more likely to be rejected by them.⁵ The principle was absent from the provisions of the Covenant of the League of Nations, which established the mandate system, and which was a kind of compromise between the political principle of self-determination and the political and economic interests of the colonial powers. It should be borne in mind that in the practice of the League of Nations the relevant legal aspects of the principle of self-determination were discussed by two committees that were set up to investigate the issue of the Aland Islands. The committees recognised the principle of self-determination, but ruled out the possibility of secession as a road to implementing self-determination in practice.⁶ The principle of self-determination only finally attained the status of a positive, universal principle of international law in the United Nations Charter, two provisions of which merit close attention, namely Article 1 & 2 and Article 55.⁷ It should be borne in mind, however, that in the first years after the adoption of the Charter this principle had *lex imperfecta* character, due to the geopolitical situation, the distinguishing feature of which was the continued existence of the colonial system.⁸ Lee Bucheit used the following analogy to describe the principle of self-determination: As a descriptive phrase the title "Holy Roman Empire" was defective, Voltaire noted, inasmuch as it denoted an entity neither holy, nor Roman, nor an empire. As a legal term of art, "the right to self-determination" fails in much the same fashion. The expression itself gives no clue to the nature of the self that is to be determined; nor does it provide any enlightenment concerning the process of determination or the source and extent of the self's putative right to this process.⁹ The principle of self-determination, along with the principle of respect for human rights and fundamental freedoms, belongs to the fundamental principles of international law that have the character of peremptory norms. The historical and current development of the right to self-determination shows that it has become one of the most important and dynamic concepts in contemporary international life and that it exercises a profound influence on the political, legal, economic, social and cultural planes, in the matter of fundamental human rights and on the life and fate of peoples and individuals.¹⁰ This means

⁴ Ibid.

⁵ Eze, Kenneth Uzor & G. N. Okeke, *The Right Of People To Self-Determination And The Principle Of Non-Interference In The Domestic Affairs Of States*.

⁶ M. Kałduński, *Samostanowienie (Zasada Samostanowienia Narodów)*, In *Leksykon Ochrony Praw Człowieka*, Ed. M. Balcerzak, S. Sykuna, Warszawa 2010, P. 442.

⁷ T. Gadkowski, *Nations And Other Entities Authorized Under The Right Of Self-Determination*, 2016, P. 144 Et Seq.

⁸ M. Perkowski, *Samostanowienie Narodów W Prawie Międzynarodowym*, Warszawa 2001, P. 131

⁹ **Lee C. Bucheit, *Secession: The Legitimacy Of Self-Determination* 9 (1978).**

¹⁰ Aureliu Cristescu, *The Study Of The Historical And Current Development Of The Right To Self-Determination* Para. 679, U.N. Sales No. E.80.Xiv.3 (1980).

that on the one hand the principle of self-determination is essential for the effective guarantee of human rights, while on the other hand the guarantee of human rights is ensured by the principle of self-determination.¹¹ Therefore, such an understanding of the interdependence between the principle of self-determination and human rights entails that in practice it is possible to implement the principle of self-determination in a national legal system as *lex generalis*, through application of the norms of international human rights law as *lex specialis*.¹²

UNITED NATIONS AGREEMENTS OVER RIGHT TO SELF DETERMIANTION

In the practice of the UN, the principle of self-determination has been recognized to mean that all peoples have the right to determine freely their own socio-political and economic circumstance.¹³ Among the UN documents reflecting this position are the Universal Declaration of Human Rights,¹⁴ the Declaration on the Granting of Independence to Colonial Countries and Peoples (the "1960 Declaration")¹⁵ the two covenants on human rights-the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights;¹⁶ the Definition of Aggression;¹⁷ and the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations (the "1970 Declaration").¹⁸

THE UNITED NATIONS CHARTER

The UN Charter expressly mentions the principle of self-determination in articles 1(2)¹⁹ and 55.²⁰ The UN Charter also acknowledges the principle in Chapters XI, XII, and XIII by imposing upon the trustee states of Non Self-Governing and Trust Territories the obligation to help those territories achieve self-government.²¹ Although the UN Charter embraces the notion of self-determination, it contains surprisingly little information about it.²² Therefore, an examination of other pertinent UN documents is necessary to understand the principle of self-determination and its contemporary interpretation.

¹¹ U. Barten, *Minorities, Minority Rights And Internal Self-Determination*, Heidelberg – New York – Dordrecht – London 2015, P. 81

¹² M. Perkowski, *Self-determination of Nations in International Law*, Warszawa 2001, P. 131.

¹³ Christopher O. Quaye, *Liberation Struggles In International Law* 213 (1991).

¹⁴ G.A. Res. 217, U.N. Doc. A/810, At 71, 75 (1948).

¹⁵ G.A. Res. 1514, U.N. Gaor Comm., Sess. Supp. No. 21, At 166, U.N. Doc. A/4684 (1960) [Hereinafter The 1960 Declaration].

¹⁶ Annex To G.A. Res. 2200, 21 U.N. Gaor Supp. (No. 16), At 52, U.N. Doc. A/6316 (1966)

¹⁷ G.A. Res. 3314, 29 U.N. Gaor Supp. (No. 31), At 142, U.N. Doc. A/9631 (1974).

¹⁸ G.A. Res. 2625, Annex, 25 U.N. Gaor Supp. (No. 17), At 66, U.N. Doc. A/5217 (1970) [Hereinafter 1970 Declaration].

¹⁹ U.N. Charter Art. 1, Para 2.

²⁰ U.N. Charter Art. 55

²¹ U.N. Charter Art. 73(B)

²² Christopher O. Quaye, *Liberation Struggles In International Law* 213 (1991).

THE SELF-DETERMINATION SECTION OF THE 1970 DECLARATION

The 1970 Declaration contains a separate section on the principle of self-determination entitled: "The principle of equal rights and self-determination of peoples" (the "Self-Determination Section").²³ The Self-Determination Section is an attempt to codify the principle of self-determination and reconcile the divergent opinions that were expressed by the members during the drafting phase of the 1970 Declaration.²⁴ The following paragraphs describe the content of various parts of the Self-Determination Section. Paragraph one of the Self-Determination Section emphasizes that "self-determination is a right and not a mere political concept."²⁵ Paragraph two "imposes the duty on every state to promote equal rights and self-determination of peoples. In addition, paragraph two differentiates between the denial of human rights and the denial of the right to self-determination by stating that "subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle [of equal rights and self-determination], as well as a denial of fundamental human rights."²⁶ Paragraph three reiterates the principle that "every state is to promote respect for human rights and fundamental freedoms." Paragraph four sets out the four "modes by which people may assert their right to self-determination:

- (1) the establishment of a sovereign or independent state,
- (2) the free association with an independent state,
- (3) the integration with an independent state, or
- (4) the emergence into any other political status freely determined by a people".²⁷

It is important to note that this implementation provision is addressed to the people themselves rather than to states or nations, thereby implying that there is a right to self-implementation by a "people."²⁸ Paragraph five "imposes a duty on states to refrain from using force to deprive peoples of their right to self-determination and entitles people that are subject to such forcible action on the part of a state to receive support in their endeavor to resist that force." Paragraph six gives a "colony or other non-self-governing territory a distinct and separate status from the state that is administering it." Finally, and most importantly, paragraph seven appears to recognize that "secession may be a legitimate option under certain circumstances."²⁹ The paragraph is divided into three parts. The first part reaffirms the principle of territorial integrity expressed in the 1960 Declaration.³⁰ It warns that nothing in the preceding paragraphs should be construed as authorizing or encouraging the dismemberment or impairment of the territorial or political unity of sovereign and independent states. A similar admonishment is made in paragraph eight which directs states

²³ G.A. Res. 2625, Annex, 25 U.N. Gaor Supp. (No. 17), At 66, U.N. Doc. A/5217 (1970) [Hereinafter 1970 Declaration].

²⁴ Lee C. Bucheit, *Secession: The Legitimacy Of Self-Determination* 9 (1978).

²⁵ *Ibid.*

²⁶ G.A. Res. 2625, Annex, 25 U.N. Gaor Supp. (No. 17), At 66, U.N. Doc. A/5217 (1970) [Hereinafter 1970 Declaration].

²⁷ Lee C. Bucheit, *Secession: The Legitimacy Of Self-Determination* 9 (1978).

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Ibid.*

to refrain from actions which are aimed at the partial or total disruption of the national unity and territorial integrity of any other state or country.³¹ Paragraph seven implies, however, that only those states "conducting themselves in compliance with the principle of equal rights and self-determination of peoples described above" will enjoy this "guarantee" of sanctity for its borders and political unity."³² The final phrase of paragraph seven implies that "a state will be in "compliance" and therefore protected against violations of its territorial integrity and political unity if its government is representative of "the whole people belonging to the territory without distinction as to race, creed, or color."³³

The notion expressed in this final clause of paragraph seven derives from the beliefs of Woodrow Wilson that government gains its legitimacy from the consent of the governed, and that consent cannot be forthcoming unless it is given by all segments of the population.³⁴ This consent-of-the governed concept has been interpreted to mean that if a government is not representative of the whole people it is illegitimate and in violation of the principle of self-determination. This illegitimate character of the government serves in turn to legitimize "action which would dismember or impair, totally or in part, the territorial integrity or political unity" of the state which is violating the principle.³⁵ In other words, the fact that a government is unrepresentative may provide an oppressed group within a state with the justification for their secession from that state. An unrepresentative or abusive government will be viewed as if it were a colonial power; therefore, the people under its "colonial" rule will have the right to self-determination. The Self-Determination Section of the 1970 Declaration appears to establish that a denial of political freedom and/or human rights is the sine qua non for a valid separatist claim by an oppressed group within an independent state.³⁶

RIGHT TO SELF-DETERMINATION AS INTERNATIONAL LAW

As H. Wilson notes; the ICJ acknowledged the right to self-determination in its Namibia opinion (1971) as "a principle in international law as enshrined in the Charter and its further development in the Declaration on Colonialism (1514(XV)), which refers to a right to self determination".³⁷ The Court moved one step further in the East Timor (Portugal v. Australia) case" by stating that Portugal's allegation that the self-determination has an erga omnes nature, is "irreproachable". The Court also defined the right of self-determination as "one of the essential principles of contemporary international law".³⁸ Finally, it is worthy to note that the Additional Protocol I to the Geneva Conventions of 1949 (1977) clearly recognized the

³¹ Ibid.

³² Ibid.

³³ Ibid

³⁴ Ibid.

³⁵ Ibid

³⁶ Ibid.

³⁷ Heather A. Wilson, *International Law And The Use Of Force By National Liberation Movements* (New York: Oxford

University Press, 1988), Pp. 58-59

³⁸ Malcolm N. Shaw, *International Law, Fifth Edition* (Cambridge: Cambridge University Press, 2003), P. 225

self-determination in its Article 1(4) as “a right in international law”.³⁹ The right of people to self-determination is a pillar of contemporary international law... Since the entry into force of the United Nations Charter in 1945, it has constituted the legal and political basis of the process of decolonization which witnessed the birth of over 60 new states in the second half of the twentieth century. This was a historic victory even if it is coincided with the will of certain great powers to break up the —exclusive preservell of colonial (primarily European) empire of the time.⁴⁰ The Supreme Court of Canada in the Quebec Case held that the recognized sources of international law establish that the right to self-determination of a people is normally fulfilled through internal self-determination—a people’s pursuit of its political, economic, social and cultural development within the framework of an existing state.⁴¹

RIGHT TO SELF DETERMINATION AS BASIC RIGHT

Basic human rights generate claims regardless of their having instrumental value in the securing or realizing other rights. *Derivative* or *nonfundamental* rights generate claims because they contribute to or are preconditions for securing or realizing basic rights. What a person can claim as a matter of human right may include things which, taken on their own (i.e. apart from the contribution they make to other rights), are not fundamental to securing human dignity. For example, the right to due process is usually treated as a basic right: it is treated as important in and of itself, regardless of its contribution to protecting or promoting other rights like the right to free expression. Consequently, it is enough to show that a state has not provided me with due process to show that it has violated my human rights. In contrast, the right to an interpreter during legal proceedings is usually treated as a derivative right: it is treated as a right one has because of its contribution to the right to due process. So if a state can show that in a particular set of circumstances providing me with an interpreter was not necessary for me to enjoy due process, it will have shown that in fact it has not violated my human rights in the circumstances (even though, in most cases, refusal to provide an interpreter is rights-violating).⁴² As a human rights document, the Draft Declaration is stronger for including self-determination on the list of basic rights. Reading the human right of indigenous peoples to self-determination as a particular case of the general principle in international law that all peoples have the right to self-determination suggests that the legal norms that govern states’ obligations to one another and the legal norms that govern states’ obligations to persons as such should be read as mutually informing one another: that the norms that govern behavior towards persons are neither completely separate from the norms that govern relations between peoples, nor completely reducible to them. The Draft

³⁹ Heather A. Wilson, *International Law And The Use Of Force By National Liberation Movements* (New York: Oxford University Press, 1988), Pp. 58-59

⁴⁰ M. Ozden & C. Golay, *The Right Of People Of Self Determination* @ [Http://Www. Law Cornell. Edu/Wex/Self- Determination International Law,](http://www.law.cornell.edu/Wex/Self-Determination/International%20Law)

⁴¹ Reference Re: Secession Of Quebec, [1998] 2 S.C.R. 217, Para. 126.

⁴² Cindy Holder, *Self-Determination As A Basic Human Right: The Draft Un Declaration On The Rights Of Indigenous Peoples*, 2004 P. 294

Declaration names peoples explicitly as the subjects of human rights, and treats self-determination as one of the basic rights.⁴³

INTERNATIONAL PARAMETERS OF RIGHT TO SELF-DETERMINATION

Basically, there is a common understanding that the monitoring of plebiscite must relate to the whole process, not merely to the events of the actual election day(s). The preconditions for democratic plebiscite must also not be ignored, leading Elklit and Svensson to the following definitions:⁴⁴

- Freedom contrasts with coercion. It deals primarily with the —rules of the game, such as the legal/constitutional basis and the timing;
- Fairness means impartiality and involves consistency, i.e. the unbiased application of rules and reasonableness; the not-too unequal distribution of relevant resources among competitors. In practice these definitions lead us to more concrete monitoring parameters.

Freedom:

- a) “The ability to initiate a plebiscitary process: Broad access not restricted to governing majorities increases freedom.
- b) The binding/consultative effect of a decision: Non-binding votes create potential for manipulative actions.
- c) The risk of invalidation of a vote by turnout and approval thresholds: High turnout requirements of up to 50% have undemocratic effects, as non- and ‘no’-voters are counted together. Voter abstention is actually promoted instead of avoided.”⁴⁵

Fairness:

- a) “The disclosure of donations and spending in a plebiscite campaign: This is the first step; a second is to apply spending limits; a third step is to introduce —affirmative action.
- b) The access to public media ahead of a plebiscite: There should be voluntarily agreed standards of fairness in the print media as well as free air hours/minutes to designated campaign organisations in a plebiscite process.
- c) The role of government and civil servants in a plebiscite debate: This should be based on the principle of neutrality.”⁴⁶

⁴³ Ibid.

⁴⁴ Bruno K., —The European Challenge From French Revolution To European Integration Facts, Views, And Prospects, International Symposium On Initiatives, Referendums, And Direct Democracy (2003).

⁴⁵ Ibid.

⁴⁶ Ibid.

SELF DETERMINATION AS A TOOL FOR THE PROTECTION OF HUMAN RIGHT

A general definition of the right of self-determination may be framed as follows⁴⁷:

- a) “self-determination is a right of peoples who do not govern themselves;
- b) the identity and desires of such peoples may be ascertained through various means, such as international commissions of inquiry, and facts, such as the actual struggle of a people to assert its identity; and
- c) while self-determination may take various forms, including continued association with an existing state, a strong preference is placed on the bestowal of statehood on the people in question.”

The right of peoples to self-determination is not an individual right; it is a collective right which, in the International Covenants on Human Rights, has been distinguished from other individual rights placed before them and proclaimed as a universal and perpetual right. The inclusion of an article on self-determination of peoples in the International Covenants on Human Rights has been extremely significant in the peoples' struggle to shake off the colonial yoke.⁴⁸

The principle of self-determination is prominently embodied in Article I of the Charter of the United Nations. Earlier it was explicitly embraced by United States President Woodrow Wilson, by Lenin and others, and became the guiding principle for the reconstruction of Europe following World War I. The principle was incorporated into the 1941 Atlantic Charter and the Dumbarton Oaks proposals which evolved into the United Nations Charter. Its inclusion in the United Nations Charter marks the universal recognition of the principle as fundamental to the maintenance of friendly relations and peace among states. It is recognized as a right of all peoples in the first article common to the International Covenant on Civil and Political Rights, 1966 and the International Covenant on Economic, Social and Cultural Rights, 1966, which both entered into force in 1976.⁴⁹ The right to self-determination of peoples is recognized in many other international⁵⁰ and regional⁵¹ instruments. It has been affirmed by the International Court of Justice in the *Western Sahara case*⁵² and the *East Timor case*⁵³, in which its *erga omnes* character was confirmed. Furthermore, the scope and content of the right to self-determination has been elaborated upon by the United Nations Human Rights Committee and the Committee on the Elimination of Racial Discrimination.

⁴⁷ Marija Batistich, The Right To Self-Determination And International Law, Auckland University Law Review

⁴⁸ Aureliu Cristescu, The Right To Self-Determination, 1981

⁴⁹ Eze, Kenneth Uzor & G. N. Okeke, The Right Of People To Self-Determination And The Principle Of Non-Interference In The Domestic Affairs Of States

⁵⁰ Declaration Of Principles Of International Law Concerning Friendly Relations And Cooperation Among States Adopted By The Un General Assembly In 1970

⁵¹ The African Charter Of Human And Peoples' Rights Of 1981, The Conference On Security And Cooperation In Europe Charter Of Paris For A New Europe Adopted In 1990.

⁵² (1975) I.C.J. Rep.12

⁵³ (1995) I.C.J. Rep. 90

The inclusion of the right to self-determination in the International Covenants on Human Rights and in the Vienna Declaration and Programme of Action, referred to above, emphasizes that self-determination is an integral part of human rights law which has a universal application.⁵⁴ At the same time, it is recognized that compliance with the right of self-determination is a fundamental condition for the enjoyment of other human rights and fundamental freedoms, be they civil, political, economic, social or cultural. The interrelatedness of individual human rights and the collective right of a people to self-determination are clear to the people involved in struggles for self-determination. In most cases, the individual human rights abuses are a consequence or a symptom of a more fundamental problem, often a conflict over the exercise of self-determination. Those abuses are unlikely to end until the underlying cause is addressed.⁵⁵ The United Nations has called the right to self-determination a prerequisite to the enjoyment of all other human rights. To separate the two issues is, therefore, artificial and not helpful.⁵⁶ In our era of decolonization and the elimination of colonialism, the principle of equal rights and self-determination of peoples is of vital importance, for it represents the essential objective of peoples and countries struggling against colonial domination and exploitation — an objective for which those subject peoples have made enormous sacrifices. For peoples which are still subjected to colonial domination and which aspire to equality, sovereignty, independence, political self-determination, the integrity of their national territory and the right to establish and strengthen their national State without outside intervention, this principle is the goal to be attained. Moreover, all the peoples which have won their independence at great sacrifice have also resolved to do everything necessary to strengthen that independence and to defend their right to decide their own future. For these peoples, the principle is important because it entails the prohibition of any attack from outside against what they have been able to achieve through the exercise of the right of self-determination. Independence is an essential factor in political, economic and social development. Therefore, throughout the world, the will to attain independence and the desire to be masters of their fate are mobilizing peoples against colonialism and against any imperialist policy of interference in the domestic affairs of States and peoples.⁵⁷ This interrelatedness is also clear with respect to the practice of population transfer, which often violates the human rights of peoples transferred but also of the people into whose territories settlers are being transferred.⁵⁸ Population transfer not only violates human rights in this manner, the practice also undermines the right to self-determination, and by intentionally manipulating and changing the demographic composition of the territory whose indigenous people claim the right to self-determination. Individual human rights and the group rights of minorities, religious groups etc. are closely linked to the right to self-

⁵⁴ Eze, Kenneth Uzor & G. N. Okeke, *The Right Of People To Self-Determination And The Principle Of Non-Interference In The Domestic Affairs Of States*

⁵⁵ *Ibid.*

⁵⁶ *Self-Determination In Relation To Individual Human Rights, Democracy And The Protection Of The Environment*, Conference Report Of Unrepresented Nations And Peoples Organisation International Conference, The Hague (1993) Pp. 12 – 13.

⁵⁷ Aureliu Cristescu, *The Right To Self-Determination*, 1981

⁵⁸ *Human Rights Dimensions Of Population Transfer*, Conference Report Of Unrepresented Nations And Peoples Organisation International Conference, The Hague (1992) P.2.

determination in other ways also. This principle of the equal right of self-determination of all peoples and the need to protect all minorities, is enshrined in the Unrepresented Nations and Peoples Organisation Covenant, 1991.⁵⁹ The right of peoples to self-determination and the other fundamental human rights have the same foundation: the recognition of human dignity. Respect for these rights contributes to the achievement of the purposes of the United Nations — the maintenance of international peace and security and the development of friendly relations and international co-operation. These rights are interrelated in the conventional law of the United Nations by the Charter and the International Covenants on Human Rights. As a result, they play a prominent part not only in conventional law, but in all United Nations activities.⁶⁰ Similarly, a recognition of a people's right and ability to act as a separate entity entails also an obligation of that entity to respect universal norms of human rights of the individuals under its authority. The right to self-determination though is a collective right which belongs to a whole people, is also a right possessed by the individual belonging to that people. A violation of the right of the people, is therefore a violation of the individual's right also. The principle of equal rights and self-determination of peoples has been embodied in the Charter and has been reaffirmed and developed in several fundamental instruments of the United Nations and in other instruments concluded between States, it is continually being violated in various parts of the world. The international scene affords many examples of denial of the right of peoples to self-determination. This situation represents a threat to international peace, security and co-operation. Whatever the way, in which the principle of equal rights and self-determination of peoples is violated, it is the duty of all States and of the international community as a whole to ensure strict respect for this principle.⁶¹

CONCLUSION

There is no doubt that the principle of self-determination is a particularly important universal norm of international law of a peremptory character, which gives rise to *erga omnes* obligations. The essential element is the right of peoples to self-determination, the exercise of which is realized in the right to establish their own state, the right to integrate through unification with another state, and the right to free economic, social and cultural development. The right of self-determination puts upon states not just the duty to respect and promote the right, but also the obligation to refrain from any forcible action which deprives peoples of the enjoyment of such a right. In particular, the use of force to prevent a people from exercising their right of self-determination is regarded as illegal and has been consistently condemned by the international community. The principle and fundamental right to self-determination of all peoples is firmly established in international law. It would be mutually beneficial for states, claimant peoples and all others whose rights are engaged by a self-determination claim if states were to recognise the capacity of the human rights approach to transform their relationship to the concept of self-determination. With the development of

⁵⁹ Preamble And Article 5 Of The Unrepresented Nations And Peoples Organisation Covenant, 1991.

⁶⁰ Aureliu Cristescu, The Right To Self-Determination, 1981

⁶¹ Aureliu Cristescu, The Right To Self-Determination, 1981

human rights cultures in domestic settings, international legal standards on self-determination and human rights bear greatly enhanced positive potential. In sum, "National aspirations must be respected; people may now be dominated and governed only by their own consent. Self-determination is not a mere phrase; it is an imperative principle of action."⁶² By extension the term self-determination has come to mean the free choice of one's own acts without external compulsion. All peoples have the right to self-determination. By virtue of that right they shall determine their political status and freely pursue their economic, social and cultural development.⁶³ From the above analysis of the regulations of modern international law, it is evident that there is a clear connection between the principle of self-determination and human rights law. Despite the fact that the right to self-determination is classed as a collective human right, it is necessary to analyse and assess this right in a much broader context. Its implementation is a prerequisite for the proper exercise, promotion and development of all individual human rights which have been defined in the norms of universal international human rights law. This position has been put forward in the discussions of the various organs of the United Nations, which can be seen from both numerous General Assembly resolutions and the invaluable general commentaries of the Human Rights Committee, the treaty body of the International Covenant on Civil and Political Rights. Now-a-days the opportunities for exercising the right to self-determination in practice are significantly more limited than they were in the second half of the twentieth century, but the principle of self-determination will remain an essential element in the process of implementing the norms of international human right law.

⁶² Woodrow Wilson In His Famous Self-Determination Speech On February 11, 1918 After He Announced His Fourteen Points On January 8, 1918.

⁶³ Supreme Court Of Canada In The Quebec Case [1998] 2 S.C.R. 217, Para. 126,