

OF STATES AND BEYOND: CONFRONTING THE PEOPLE'S PARADOX

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ABSTRACT

The state and its people of late have been at crossroads with each other. Recent spurt of events in the international arena have from time to time highlighted the contradiction of state as against its entities therein, on question of international law. While the state, to guard its inherent sanctum of sovereignty, struggles to keep and maintain its territory, people and resources, the citizens and interest groups confront to secure to themselves choice and freedom. It is this very contradiction between sovereignty as against choice and freedom which leaves the realm of public international law with certain unanswered questions, which if alienated shall only lead to consequences best not narrated. Thus, it now becomes pertinent for this body of law to approach this complex calculus and reach, if not a conclusion but a compromise. This essay hopes to put upfront the same. Further, it also endeavours to delve into normative assertions and outcomes on the basis of the body of international law which has been achieved so far on.

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I. INTRODUCTION

Self determination and state sovereignty have been at cross roads. The recent crisis at Crimea, the Kosovo question or the statehood claim of Palestine, each of these instances at their very heart contain the question of self determination and its contradiction with state. We observe therein that under international law, the state and its people form different entities on question of self determination. While state's right to self determine involves shaping its international relations, treaty obligations and domestic affairs, the peoples' right to self determination includes right to determine their government, national identity or citizenship and so on.

i. **TERRITORIAL INTEGRITY**

The political independence of a state is an essential pre requisite in exercise of a state's sovereign functions and its inherent rights.¹ Trespass to such political independence constitutes violation of the customary international law, as established by the International Court of Justice in the Nicaragua² case, as per the court, "the principle forbids all States or groups of States to intervene directly or indirectly in the internal or external affairs of other States" and that "a prohibited intervention must accordingly be one bearing on matters in which each State is permitted, by the principle of State sovereignty, to decide freely". This view was reaffirmed in DRC V. Uganda³ wherein the Court noted that Nicaragua case had "made it clear that the principle of non-intervention prohibits a State "to intervene, directly or indirectly, with or without armed force, in support of the internal opposition within a State"⁴ Article 3 of the international Law Commission's Draft Declaration on Rights and Duties of States categorically provides that every state has the duty refrain from intervention in the internal or external affairs of any other state.⁵ The principle of territorial integrity of states is well established and is protected by a series of consequential rules

¹ Robert Jennings and Arthur Watts, *Oppenheim's International Law*, 428, 9th edition, 1992

² *Nicaragua v. United States of America*, 1986 ICJ 14, p181(para 202)

³ *Republic of Congo v. Uganda*, 2003 I.C.J. 3

⁴ ICJ Reports 2005, para.164

⁵ YBILC (1949), P 286

prohibiting interference within the domestic jurisdiction of states⁶. Under international law, other states must respect this territorial sovereignty.⁷

The Declaration on Principles of International Law Friendly Relations and co-operation among states in accordance with The Charter of the United Nations also reiterates that the duty of States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State.⁸

ii. SELF DETERMINATION

Self-determination is the right of peoples to “freely determine their political status”⁹ and includes the option to become an independent state or freely associate or integrate with an independent state.¹⁰ State practice and *opinio juris* since 1945 recognise a customary norm of self-determination.¹¹ This state practice and *opinio juris* is evidenced in the UN Charter,¹² the Security Council’s work relating to non-self-governing territories,¹³ and the General Assembly’s recognition of self-determination as a fundamental human right.¹⁴ The right is also incorporated in the *International Covenant on Civil and Political Rights*¹⁵ and the *International Covenant on Economic, Social and Cultural*

⁶ Malcolm Nathan Shaw, *International law* (Cambridge: Cambridge University Press, 2003) p. 443 et seq.

⁷ BELATCHEW Asrat, PROHIBITION OF FORCE UNDER THE U.N. CHARTER 148-49 (1991) (stating that “[o]ther States have the correlative duty of respecting this base of State authority, which is one of the important elements constituting statehood”). The United Nations codified this principle in article 2(7) of the U.N. Charter, which states that “[n]othing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state.” U.N. CHARTER art. 2, 7

⁸ Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 2625 (XXV).

⁹ G.A. Res.1514 (XV), Declaration on the Granting of Independence to Colonial Territories and Peoples, 14 December 1960, U.N. Doc.A/RES/1514(XV) (1960). Article 2 stipulates that “all peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” [Hereinafter, Colonial Declaration]

¹⁰ G.A. Res. 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 24 October 1970, U.N Doc. A/8028. [Hereinafter, Friendly Relations Declarations]

¹¹ J. CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW*, 108-121 (2d ed. Oxford: Clarendon Press, 2006); S. RIGA, *THE EVOLUTION OF THE RIGHT TO SELF-DETERMINATION* (Leiden: A.W.Sijthoff, 1973); A. CASSESE, *SELF-DETERMINATION OF PEOPLES* (Cambridge: Cambridge University Press, 1995).

¹² Articles 1(2), 55, 73(b), 76(b) of the Charter of the United Nations, 24 October 1945, 1 U.N.T.S. XVI.

¹³ Question Relating to Angola, SC Res. 163, UN SCOR, 16th Sess., Supp. April-June, U.N. Doc.S/4835 (1961),

¹⁴ Draft International Covenant on Human Rights and Measures of Implementation, GA Res. 421(V), UN GAOR, 5th Sess., Supp. No. 20, U.N. Doc. A/1775 (1950) 42, 43.

¹⁵ International Covenant on Civil and Political Rights, 16 December 1966, 999 U.N.T.S. 171 [Hereinafter, ICCPR].

Rights,¹⁶ The right is so well-established that many eminent publicists consider it to be a *jus cogens* norm.¹⁷ A number of General Assembly Resolutions¹⁸ on self-determination reflect binding customary norms, as they intend to declare law and were adopted by genuine consensus.¹⁹ They clarify the scope and application of self-determination, as their widespread adoption is indicative of state practice and *opinio juris*.²⁰

II. APPLICATION AND SCOPE OF SELF DETERMINATION IN INTERNATIONAL LAW

We observe emergence of self determination of people as a right which has taken legal shape in international law, however its applications remain yet to be adopted. The transformation of this right into actual practise may be one of the ways to solve amicably the manifold existing international conflicts especially with regard to territorial claims. Further, recognizing collective people's liberty within the scope of international law should be regarded as one of the ways to harmonize the state and people's paradoxical claim under international law.

The UN Charter requires that all members must respect the "principle of equal rights and self-determination"²¹ but does not define it positively. However, subsequent legal instruments adopted by the UN expanded the concept of self-determination of peoples. The Declaration on the Granting of Independence to Colonial Countries and Peoples was adopted by the United Nations General Assembly (UNGA) through its resolution 1514 (XV) of 14 December 1960, and affirmed that non-self-governing "peoples" had a right to external, and thus political, self-determination.²²

¹⁶International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 U.N.T.S. 3 [Hereinafter, ICESCR].

¹⁷IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW, 511-512 (6th ed. 2003); Case Concerning the Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain), [1970] I.C.J. Rep. 3, 304 (Separate Opinion of Judge Ammoun)

¹⁸Friendly Relations Declaration; Colonial Declaration; Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter, GA Res. 1541(XV), UN GAOR, 15th Sess., Supp. No. 16, U.N. Doc. A/4684 (1960) 29 [Res.1541].

¹⁹ B. Sloan, *General Assembly Resolutions Revisited* (1987) 58 B.Y.I.L. p. 39, at 93; Fisheries Jurisdiction Case (Second Phase) (United Kingdom v. Iceland), [1974] I.C.J. Rep. 3, 162 (Dissenting Opinion of Judge Petren).

²⁰Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States), [1986] I.C.J. Rep.14, p. 101.

²¹ United Nations Charter, Articles 1(2) and 55.

²²Colonial Declaration, §2; ANTONIO CASSESE, SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL,72 (Cambridge University Press. Cambridge, U.K.1995).

Further development of the right to self-determination took place with the creation of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which were simultaneously adopted for signature by the UNGA on 16 December 1966 through resolution 2200A (XXI). The common Article 1 of the ICCPR and the ICESCR is considered to contain the basic definition of the right to self-determination of peoples, and reads in the affirmative for self determination.²³

While it is evident that the main purpose of the clause is to safeguard the territorial integrity of States, the manner in which it is formulated actually brings to the foreground an exception from this sacred right of sovereign States. The territorial integrity of a State must be respected to the extent that the said State possesses a government that in turn does not deny governmental representation to racial and religious groups. It follows logically that where a State is not in compliance with equal rights, an oppressed people could have a valid claim for impairing the State's territorial integrity through the vehicle of secession. In other words, if a State does in fact discriminate against said groups, its right to territorial integrity might be compromised.

In 1975, the Conference on Security and Cooperation in Europe (CSCE) adopted the Helsinki Final Act which grants the right of self-determination to peoples in accordance with the principles of the UN Charter and other international legal norms, whilst specifically mentioning territorial integrity.²⁴ The Act furthermore states that “all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development.”²⁵

The Algiers Declaration of 1976 considers the possibility of a people to exercise its right to self-determination inexorably tied to its fundamental human rights, and goes much further in allowing for the secession of minority groups when the survival of its identity is at stake through the

²³ “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.”

²⁴ Helsinki Final Act, principle VIII, para 1.

²⁵Ibid, principle VIII, para 2.

denial of these rights.²⁶ The Algiers Declaration, on the contrary, does not consider the territorial integrity of States inviolable, and quite clearly allows for secession by minority groups under certain conditions.²⁷

i. SECESSION AS AN EXPRESSION TO SELF DETERMINATION

The Written comments from United Nations member states submitted to the Special Committee that drafted the Declaration on Friendly Relations indicate that the majority of United Nations members did not recognize secession as a legitimate form of self-determination.²⁸ Further, if unilateral secession impliedly leads to a jus cogens violation then the unilateral secession would be held illegal. The view was conformed to by the Hon'ble Court in the Kosovo case.²⁹ Legality of secession is generally envisaged through constitutional means,³⁰ if secession does not follow the same it may not be recognized as such³¹

International law traditionally supported a right to secede only as an expression of the right to self-determination where that right has been suppressed by colonial domination or foreign occupation. Beyond these recognised contexts, references to self-determination offer little support for breakaway movements, and international law recognises no general right to secede. Indeed, attempts at unilateral secession are trumped by a foundational and clear principle of the international order under the UN Charter: the territorial integrity of sovereign states. The principle of territorial integrity prohibits secession because secession dismembers the territory of the state.³²The more

²⁶Articles 5-7, Algiers Declaration, 19 January 1981, 20 ILM 223, 230 (1981); 1 Iran-US CTR 9 (1983); 75 AJIL 422 (1981) [Hereinafter, Algiers Declaration]; 19-21; ANTONIO CASSESE, SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL,299 (Cambridge University Press. Cambridge, U.K.1995).

²⁷ Article 21, Algiers Convention.

²⁸Buchheit, *supra* note 3 89-90.

²⁹Kosovo advisory opinion, para 81; The court stated that, "the illegality attached to [some other] declarations of independence ... stemmed not from the unilateral character of these declarations as such, but from the fact that they were, or would have been, connected with the unlawful use of force or other egregious violations of norms of general international law, in particular those of a peremptory character (jus cogens)."

³⁰ Anna Stepanowa, International Law and Legality of Secession in Crimea, Cambridge Journal of International and Comparative Law, (2014), also "see" cjl.org.uk/2014/04/20/international-law-legality-secession-crimea/

³¹Kohlhaas v. Alaska 147 p 3d 714 (2006); Reference re secession of Quebec, 1998 2 S.C.R. 217

³² James Crawford, "State Practice and International Law in Relation To Unilateral Secession," in Self-determination in International Law: Quebec and Lessons Learned, ed. Anne Bayefsky, Cambridge: Kluwer Law international, 60 (2000)

commonly accepted interpretation is that self-determination is to be exercised within the territory and political framework of the independent State.³³

ii. WHO FORM “PEOPLE” UNDER INTERNATIONAL LAW?

Herein, there lie two broad views. As per the first, although a state’s territorial integrity is protected by international law,³⁴ the right of self determination cannot be overridden by the competing territorial claims of states.³⁵ In this context, the definition of ‘peoples’ is not only limited to the population of a fixed territorial entity but also encompasses indigenous groups and potentially some minorities. Although there is no fully accepted definition of peoples, references are often made to a definition proposed by UN Special Rapporteur Martínez Cobo in his study on discrimination against indigenous populations.³⁶

It is in light of the same, it may be construed that there exists a right to self determination, even against the sovereignty of state, in certain cases.

The principle of self-determination has evolved into a part of positive international law. In the East Timor (Portugal v. Australia) Case, the ICJ recognised that the right of peoples to self-determination “has an *erga omnes* character” and “is one of the essential principles of contemporary international law.”³⁷ A basic principle of international law is that “all peoples have the right to self-determination.”³⁸

³³ Malcolm N. Shaw, *The Role Of Recognition And Non-Recognition With Respect To Secession: Notes On Some Relevant Issues*, In *Secession And International Law* 243, 248 (Julie Dahlitz Ed., 2003)

³⁴Friendly Relations Declaration, Principle 5(7).

³⁵Western Sahara, Advisory Opinion, ICJ GL No 61, [1975] ICJ Rep 12, ICGJ 214 (ICJ 1975), 16th October 1975, ICJ,p. 36.

³⁶ Jose R. Martinez Cobo, *Study of the Problem of Discrimination Against Indigenous Populations*, Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, U.N. Doc. E/CN.4/Sub.2/1986/7/Add.4 (1986). ‘Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.

³⁷East Timor (Portugal v Australia) 1995 ICJ Rep, 102. In 1991, Portugal instituted proceedings against the Australia alleging that Australia had failed to observe the obligations to respect the duties of Portugal as the administering power of East Timor and the right of the people of East Timor to self-determination. East Timor (Portugal v Australia) Case, 94-95.

³⁸ U.N. Charter Article 1, para. 2

The Supreme Court of Canada in the Reference re Secession of Quebec (the “Quebec Case”) sought to clarify this ambiguity by affirming that “a people” may include only a portion of the population of an existing state.³⁹ The Canadian Supreme Court embraced this view in an opinion concerning the right of the province of Quebec to secede from Canada. The court noted how restricting the term “people” to the “population of existing states would render the granting of a right to self-determination largely duplicative.”⁴⁰

According to a subjective sense of identity, a “people” may exist if it is perceived to exist. This self-awareness of group identification may exist because the group perceives itself as existing, or because outsiders define the group as distinct from them, or some mixture of internal and external identification. Sartre, for example, argued that “the Jew is a man that other men consider to be Jewish . . . it is the anti-Semite that makes the Jew.”⁴¹

International criminal tribunals have embraced a similar subjective identification of groups in the context of genocide. The trial chambers of the International Criminal Tribunal for the former Yugoslavia (ICTY), for instance, have found that attempting to define a national, ethnical or racial group today using objective and scientifically irreproachable criteria would be a perilous exercise whose result would not necessarily correspond to the perception of the persons concerned by such categorization. Therefore, it is more appropriate to evaluate the status of a national, ethnical or racial group from the point of view of those persons who wish to single that group out from the rest of the community.⁴²

As per the second school of thought, term ‘people’ is a concept which throughout international legal history has signified the inhabitants of either nation-states or non-self-governing territories, as well as ethnic groups.⁴³ However, it is generally agreed that, at least in the 1960s, ‘self-

³⁹Reference re Secession of Quebec 1998 2 S C R 217; 37 ILM, 1998, 1342, at para 124.

⁴⁰Ibid.

⁴¹JEAN-PAUL SARTRE, ANTI-SEMITE AND JEW: AN EXPLORATION OF THE ETIOLOGY OF HATE, 69 (New York: Schocken Books, 1948).

⁴²Prosecutor v. Jelisic, 1999 IT-95-10-T, para 70.

⁴³Borgen, Christopher J. “the language of law and the practice of politics: great powers and the rhetoric of selfdetermination in the cases of Kosovo and south Ossetia”. Chicago Journal Of International Law. Vol. 10, no. 1, p. 8 (2009)

determination of peoples' really referred to the right to independence of former colonies, i.e. non-self-governing territories.⁴⁴

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Throughout international legal history, "the term 'people' has been used to signify citizens of a nation-State, the inhabitants in a specific territory being decolonized by a foreign power, or an ethnic group."⁴⁷ Indeed, from the preparatory work of the Covenants, it is clear that 'people' in the context of Article 1(1) does not refer to national minorities. It is not national or ethnic minorities that possess a right to internal self-determination in relation to the majority population of a sovereign State; rather, it is that State's population as a whole that has a right to govern itself

⁴⁴Carley, Patricia. Self-Determination: Sovereignty, Territorial Integrity, and the Right to Secession. 4 (Peace works no 7. United states institute of peace, 1996) Available at: www.usip.org/files/resources/pwks7.pdf

⁴⁵ DGICCP, §2; Cassese, Antonio. Self-Determination Of Peoples: A Legal Reappraisal, 72 (Cambridge university press. Cambridge, UK., 1995)

⁴⁶ ICCPR/ICESCR, Art. 1

⁴⁷ Christopher J. Borgen, Kosovo's Declaration Of Independence: Self-Determination, Secession And Recognition (Asil Insights, Feb. 29, 2008) available at www.asil.org/insights/080229.cfm.

independently of foreign involvement.⁴⁸ This is further supported by the explicit mentioning of rights pertaining to ethnic, religious, and linguistic minorities in Article 27 of the ICCPR, wherein is not included a right to self-determination.⁴⁹

In particular, self-determination has been limited at international law to apply only to groups that constitute “peoples” and whose territorial claims fit a particular colonial mould. In this manner, international law provided a limited window for colonized peoples to break free from their colonizers though not from colonially established borders.⁵⁰

With passage of time we find that the former view gains more ground as against the latter in theory and practise both, since it shares a broader outlook and confers greater basis to justify one’s right to self determination.

III. RECONCILING TERRITORIAL INTEGRITY AND SELF DETERMINATION

The principle of self-determination is supposed to consist of two components. Under the principle of internal self-determination, all people have the right to determine the political and social regime under which they live, to pursue economic development and to solve all matters under their domestic jurisdiction.⁵¹ The principle of external self-determination encompasses the right of a people to pursue their political, cultural and economic wishes without the interference or coercion of outside States.⁵² In theory, the right of external self-determination may be exercised through State dissolution, State union or merger, or through secession.⁵³ In practice, States have opposed any exercise of the right to self-determination through secession.⁵⁴ The international law expects right to

⁴⁸ Cassese Cassese, Antonio, *Self-Determination Of Peoples: A Legal Reappraisal* 61 (Cambridge University Press. Cambridge, U.K, 1995

⁴⁹ ICCPR, art. 27

⁵⁰ James Mayall, *Nationalism, Self-Determination, and The Doctrine of Territorial Unity*, in *Settling Self-determination Disputes: Complex Power-Sharing in Theory and Practice* 5, 9–12 (Marc Weller & Barbara Metzger eds., 2008). As Mayall explains, the doctrine of *uti possidetis* holds that “in the absence of a negotiated boundary adjustment, successor states would accept the borders that they had inherited at independence.” *Id.* At 10

⁵¹ Zejnullahgruda, ‘Some Key Principles for A Lasting Solution of The Status Of Kosova: *Uti possidetis*, The Ethic Principle, And Self-Determination’ 80 *Chicago-Kent Law Review* 353, 381. (2005)

⁵² Lee C. Buchheit, *Secession: The Legitimacy of Self-Determination* 14 (Yale University Press, 1978)

⁵³ David Raič, *Statehood And The Law Of Self-Determination* 289 (Kluwer Law International, 2002)

⁵⁴ Gruda, above n 72, 381

be exercised “within the framework of existing sovereign states and consistently with the maintenance of territorial integrity”.⁵⁵

The only international instruments which contain a reference, and even then only implicit, to a right of secession are the 1970 Friendly Relations Declaration⁵⁶ and the 1993 Vienna Declaration.⁵⁷ However, the Friendly Relations Declaration does not explicitly recognise an unlimited right to secession, and instead affirms that this declaration “shall not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States”.⁵⁸ While recognising that “all peoples have the right of self-determination”, the Vienna Declaration also discourages actions that would dismemberer impair the territorial integrity of sovereign States.⁵⁹

IV. RESTRICTIVE APPLICATION OF THE RIGHT TO SELF DETERMINATION

The implementation and exercise of the right to self-determination by “peoples” in the past has been confined primarily to the colonial context and within the process of decolonisation. The Declaration was adopted by the United Nations General Assembly (UNGA) through its resolution 1514 (XV) of 14 December 1960, and affirmed that non-self-governing peoples had a right to external, and thus political, self-determination.⁶⁰

The Commission of Rapporteurs in the League of Nations’ Aaland Islands dispute found that “the separation of a minority from the State of which it forms a part and its incorporation in

⁵⁵ Reference re Secession of Quebec 1998 2 S.C.R 217; 37 ILM, 1342, at para 122. (1998)

⁵⁶ Declaration On Principles Of International Law Concerning Friendly Relations And Cooperation Among States (G.A Res. 2625 (Xv), U.N. GAOR, 25th Sess., Supp. No. 28, At 121, U.N Doc. A/8028 (24 October 1970)

⁵⁷ 1993 Vienna Declaration And Programme Of Action, World Conference On Human Rights (1993) 32 ILM 1661, 1663 (25 June 1993)

⁵⁸ Friendly Relations Declaration Principle 5, para 7, (1970)

⁵⁹ Principle 2, paragraph 3 of the 1993 Vienna Declaration provides that “in accordance with the Declaration On Principles Of International Law Concerning Friendly Relations And Cooperation Among States in accordance with the charter of the united nations ... [the right of self-determination] shall not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a government representing the whole people belonging to the territory without distinction of any kind”.

⁶⁰ Declaration On The Granting Of Independence To Colonial Countries And Peoples, Adopted On 14 December 1960, GA Res 1514 (Xv)§2.

another State can only be considered as an altogether exceptional solution, a last resort when the State lacks either the will or the power to enact and apply just and effective guarantees.”⁶¹

A right to secession may be inferred, but it is to be applied restrictively: only when a people’s right to internal self-determination is completely frustrated and it is totally denied governmental representation may secession be considered.⁶² The Supreme Court of Canada in the Quebec Case suggested that “when a people is blocked from the meaningful exercise of its right to self-determination internally, it is entitled, as a last resort [emphasis added], to exercise it by secession.”⁶³

Antonio Cassese argues that secession may be permitted when very stringent requirements have been met, namely, when “the central authorities of a sovereign State persistently refuse to grant participatory rights to people, grossly and systematically violate their fundamental rights, and deny the possibility of a peaceful settlement within the framework of the existing State.”⁶⁴ He maintains that the only three instances where the principle entails a right to external self-determination concern colonial peoples, peoples under foreign military occupation and racial groups being denied access to government.⁶⁵

Thus, we find gradual emergence of jurisprudence in favour of self determination as against territorial sovereignty, in certain situations.

V. CONCLUSION

The principle of self-determination has come a long way from being a mere political device. Its role in contemporary international law is indisputable. This international legal principle has grown from focusing merely on the realisation of external self-determination of non-self-governing territories, to encompassing a right of internal self-determination for all peoples, to arguably allowing for the possibility of secession upon the denial of that right.

We gradually observe a greater degree of liberal outlook growing in favour of self determination as against territorial integrity. It is probably due to the want of self determination inextricably leading to instability as regards the latter. In times of peace, we find self determination as

⁶¹ The Aaland Islands Question: Report Submitted To The Council Of The League Of Nations By The Commission of Rapporteurs, League Of Nations Doc. B7.21/68/106, At 28 (1921)

⁶² Vienna Declaration Section I, §2 (1993)

⁶³ Secession of Quebec, supra note 66, at 282

⁶⁴ Antonio Cassese, Self-Determination of Peoples: A Legal Reappraisal 119 (Cambridge University Press, 1995)

⁶⁵ Cassese, Antonio. International Law 61 (2nd edn. Oxford university press 2005)

function of facilitation towards territorial integrity, however instances of aggression leaves both of these at cross roads. There remains no thumb rule to judge the superiority of one as opposed to another, yet there is requisite need to regard self determination and territorial integrity as equal players, the importance of each of whom is contingent on the situation at hand.