



What are the Rights and Obligations Arising From the Principle of Self-Determination

Elton Musa¹

Julinda Shehaj²

¹Dr., "Aleksander Moisiu" University of Durres,
Durres, Albania

²Dr., Anti-Terrorism Directorate under the General
Directorate of State Police,
Albania

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Abstract

The purpose of this paper is, among other things, to examine who are, in international law, the holders of the right and the recipients of the obligation included in the principle of self-determination. To solve this problem, we must determine who are the members of the society in which international law manifests and operates. However, we must first establish who are the vital protagonists of the international relationship. In the case of the principle of self-determination, the problem is complicated by the fact that, despite the relevant provisions which undoubtedly refer to the people as a "protagonist" in concrete and historical actions known as the exercise of self-determination, the people are not considered as subjects of international law. The recipients of the obligation, which derives from the principle of self-determination, are the states individually as members of the United Nations. As for the mutual right, there are no strong reasons to declare that it is in the hands of individual nations; As we said before, the fact that we speak of "self-determination of peoples" is not sufficient to conclude that peoples are in fact the holders of this right. An analysis of historical events can shed light in this direction: in the process of decolonization, peoples have previously given birth to independent entities and, only under this idea, have led their liberation struggle as subjects of international law, equivalent to states. In conclusion, the member states of the United Nations are at the same time the recipients of the obligation and the holders of the right to self-determination. (Lattanzi. F. (1987). vol.II, pg.4).

Keywords: International Law, Self-determination of peoples, United Nations, People, Principle of self-determination

1. Introduction

The recipients of the obligation, which flows from the principle of self-determination, are the States individually as members of the United Nations. As far as the mutual right is concerned, there are no strong reasons to declare that it is in the hands of individual nations; as we said before, the fact that we speak of "self-determination of peoples" is not sufficient to conclude that peoples are in fact the holders of this right. An analysis of historical events can shed some light in this direction: in the process of decolonization, peoples have previously given life to independent entities and, only under this idea, have led their liberation struggle as subjects of international law, equivalent to States. In conclusion, the States members of the United Nations are at the same time the recipients of the obligation and the holders of the right to self-determination. (Lattanzi. F. (1987). vol.II, pg.4).

However, it should be noted that not everyone agrees with this conclusion and some researchers are inclined to

annex the principle of self-determination to a political value (*Cassese. A. (1995). pp.56; Pomerance. M. (1982). pp.98*), unlike other principles, which are also included in Article 2 of the United Nations Charter (prohibition of the use of force, peaceful settlement of disputes, etc.), which must be implemented immediately and in their entirety (*Ruiz. A. (1988). vol.IV, pp.1*).

The thesis of assuming a purely political-moral value of the principle of self-determination does not seem to be very widespread. In fact, the United Nations Charter cannot be interpreted as a declaration of principle or a declaration of intent, which should inspire the involvement of states in the life of international relations (*Tomuschat.C. (1994). vol.I, pp.125*). It cannot be denied that the Charter constitutes in all matters a treaty, which contains norms with a binding function, which member states must adapt to their behavior. In this context, one of the most important provisions, without a doubt, is represented, together with its numerous conclusions, by the one that imposes the obligation on states to develop peaceful relations among themselves. And one of the prerequisites of this unbroken obligation is precisely the principle of self-determination, referred to in articles 2 and 55 of the Charter.

In conclusion, we can affirm that the right of peoples to self-determination is the object of a common binding relationship between states in compliance with the Charter of the United Nations and (as we will see) other international treaties, based on general international law. According to it, all states have both the obligation to react in order to ensure the right of peoples to self-determination, and the right to demand compliance with this obligation from each of the other states.

2. The People as Beneficiaries of the Right to Self-Determination

As we have emphasized in the above paragraph, peoples are the beneficiaries of the right to self-determination. This right is established for the benefit of all peoples, without any subjective limitation, as follows from Article 1, paragraph 2 and Article 55 of the Charter. Can we agree that people are necessarily the holders of the right to self-determination?

This conclusion is only one aspect of the broader debate regarding doctrine and practice, on the possibility of recognizing the international legal personality of peoples, attributing to them the legitimacy to be the holders of rights and obligations, and among others, in particular, the right to self-determination.

In fact, this view is accepted only by a part of international law scholars and in particular by those who embrace the so-called "peoples' rights" thesis, based on the assumption that an institution has meaning and truth only if it expresses the needs and rights of the people it represents (*Rigaux. F. (1988)., pg.124*), arguing that the function that the state performs as a subject of international law is only a reflection of the role of representing the people, which is expressed (invested) in an institutional manner.

In this regard, the Declaration on the Granting of Independence to Colonial Countries and Peoples (*General Assembly . Rezolution n.1514-XV e 1960., pp.46*), puts an immediate and unconditional end to colonialism in all its forms and manifestations, recognizing the passionate desire for freedom of all dependent peoples and the decisive role of these peoples on the path to independence, thus reaffirming the right of peoples to self-determination, as the right to freely determine their political status and to freely pursue their economic, social and cultural development.

Consequently, the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations argues (*General Assembly . Rezolutio n.2625-XXV e 1970, , pp.243*), among other things, that peoples who react and resist an act of coercion in the exercise of their right to self-determination have the right to seek and receive assistance in accordance with the purposes and principles of the Charter.

Meanwhile, the reference to the jurisprudence of the International Court of Justice should not be neglected here, which has not left unexamined the issue of the right to self-determination and in particular the claim that the principle "responds to the need to respect the free will expressed by the people". With this, I want to emphasize the fact that the obligations, undoubtedly, weigh on the states which are obliged to favor cases of self-determination of peoples.

At the conclusion of our discussion, we can only observe how the concept of the people and the institution of self-determination are closely intertwined, which means that they are closely linked in the socio-political and economic context developed in a particular historical era.

3. Minorities and their Forms of Self-Determination

First of all, the concept of minority can be easily understood (*The definition comes from the Special Report of the United Nations Commission on Combating Discrimination and Protection of Minorities, "Etude des droits des personnes*

appartenant aux minorités ethniques, religieuses et linguistiques”). A minority is described as “a group numerically smaller than the rest of the population of a given state, in a non-dominant position, whose members have the citizenship of the same state, but in terms of ethnic, religious or linguistic characteristics different from the rest of the population, and manifest a sense of solidarity, taking care to preserve their culture, their traditions, their religion or their language”. Practically, this is a community (community) that unites the historical-political character, typical of a people, who, however, are a minority in the territory of a given state (Treves. T. (2005). è, pg.192.).

According to these assumptions, the realization of the principle of self-determination should be done, including, together with the right of the people to form an autonomous and independent political entity, the primary interest in preventing the dissolution of the pre-existing state, in which the minority is only a small, albeit qualified, part. More precisely, in the presence of a relatively small minority in the territory of a separate, more or less homogeneous state, imposing the latter's obligation to ensure self-determination, one cannot automatically assume the need to agree to the secession of this minority, even with the hypothesis that it is willing to remain as an independent state.

In these cases, the minority, instead of taking on a leading role, must rather ensure an acceptable level of preservation of its identity and protection of its rights by the state in which it is located, than to ensure an autonomous political-institutional status. United Nations Secretary-General Boutros Boutros-Ghali in 1992, while on the one hand noting that, if each of the ethnic, linguistic or religious groups were to claim to condition the state, fragmentation would no longer have boundaries and security, peace and economic progress for all would become more difficult to achieve, on the other hand, emphasized the protection of their rights, as one of the conditions that must be met to avoid the problems arising from the dangers of fragmentation, to which Self-Determination could lead (General Assembly Ne Boutros-Ghali, Agenda pour la paix, doc.A/47/277 e S/24111, parag.17 e 19).

In this context, therefore, the so-called “internal self-determination” plays a valuable role, which should lead to an internal structure that ensures the guarantee of fundamental human rights for minorities. Therefore, in the face of the denial of fundamental human rights of persons belonging to minorities, the international community has focused on promoting a pluralist state, based on strong guarantees of the Western-style rule of law, respect for minority rights and the fundamental rights of every individual. According to this logic, self-determination becomes a fundamental organizing principle of governing institutions in multinational states, with the involvement of all functional groups in the recognition of political decisions and thus helps to prevent separatist intentions, which are an inevitable source of serious threats to peace.

The role of the guarantee of internal self-determination is then intensified in cases of “failed States”, i.e. in cases where states go through situations of internal disintegration, due to which they are no longer able to ensure that citizens, including those belonging to minority groups, enjoy their fundamental rights. In this regard, the cases of failed states that should be mentioned are those of Somalia, Rwanda, Lebanon and Cambodia. In this context, self-determination has been sought to express the three cores of content that have characterized internal development in the post-colonial era: those related to the right to a procedural democracy, the protection of fundamental human rights, and finally, to the enjoyment of the institutional regime of autonomy.

In these cases, in short, international law has considered the crisis of the state not as an opportunity to create new bases of social coexistence, but rather as a source of danger for coexistence itself, synonymous with a legal vacuum, a vacuum that the community demonstrates as fear, for instability and violation of fundamental values of the same causes. However, it must always be seen whether the coexistence between the principle of the protection of minorities and the right to external self-determination has become an irreconcilable fact in a context in which talking about protection or a guarantee system does not mean much in the face of the desire to build a state that has its own voice, independent and sovereign.

In this regard, the most symbolic case is that of Yugoslavia: in terms of the characteristics of an authoritarian regime (General Assembly ris.2625- XXV del 1970.), the Balkan state was a model of respect in the field of minority protection through federal institutions, but more or less came up against the desire for self-determination in the national sense, of Croatia and Slovenia before and then, Serbia and Kosovo. Ultimately, it is unnecessary to focus on the fact that we cannot deny that the principle of protecting territorial integrity is not absolute, but is above all a condition of humanitarian sustainability. It is clear that “external self-determination” (the so-called corrective secession) should be conceived only as a last resort.

The prohibition that excludes the presentation of separatist demands is paradigmatically expressed in the Declaration of Principles on Friendly Relations of the UN General Assembly, through the clause on the protection of the territorial integrity of a state, which in any case (General Assembly, Rezolution nr, ris.2625-XXV is) “... endowed with a government representing the whole of the people belonging to the territory without distinction of race, creed or color...”,

and in accordance with the principle of equal rights and the right of peoples to self-determination.

Consequently, faced with a multinational or multi-ethnic state, call it what you will, which respects human rights, in general, and those of minorities, in particular, it seems plausible that our principle, far from being motivated by separatist ambitions, more realistically entails the obligation, as we have already said, to ensure the participation of minorities in institutional and political regimes of representation on full and equal footing with the rest of the population, or rather to guarantee them broad administrative and governance autonomy.

Of course, then the prospects, which even in these cases self-determination allows to be established, depend as always on the historical context in which they occur, allowing a minority of a given state to become a majority in its region and transform into a factor of great political upheavals (e.g. the fall of communism, related to the Soviet Union or Yugoslavia), in a new state. But we will return to this argument. Moreover, it should be noted that, since the end of the First World War and onwards, as a result of the territorial changes that have occurred with the subsequent peace treaties, numerous conventions were signed in the treatment of minorities and, in essence, inspired by the need for their protection, located within the territory of a given state.

So, if we can still say today that international legal sources do not recognize the rights of minorities as collective subjects, but only some human rights as individuals, which belong equally to all minorities, there are countless legal acts that deal with it, in different ways. For example, Article 14 of the European Convention on Human Rights prohibits discrimination on the basis of belonging to a linguistic minority, while the document adopted in Copenhagen, on 29 June 1990, by the states participating in the Conference on the Human Dimension of the Conference on Security and Cooperation in Europe, attached importance to the rights of persons belonging to national minorities.

The Declaration on the Rights of Persons Belonging to National and Ethnic, Religious and Linguistic Minorities was later noted (*Adopted in Resolution nr 47/135 del 1992*), where not only the rights of persons belonging to minorities were proclaimed, but also the obligations of states to protect these rights. However, Article 27 of the International Covenant on Civil and Political Rights also deserves special consideration, which provides: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to practice their own religion, or to use their own language."

From the latter, it cannot be neglected that, from a perspective limited to the European continent, the Framework Convention for the Protection of National Minorities (*Adopted in resolution nr 10 Nentor 1994*), which seems inspired by a considerable protection for minorities (for example, it sanctions the individual right of every person belonging to a minority to choose whether or not to be treated as such, only if any disadvantage may result from this choice, or even by ensuring the commitment of states to take appropriate measures to promote in all areas of economic, social, political and cultural life full and effective equality between persons belonging to a national minority and those belonging to the majority), was not considered sufficiently sharp and not to be able to act within the borders of those states, which have acted more in violating the rights of minorities, due to the express limitation of its effects on national minorities.

However, it seems appropriate to say something more about this treaty, which, among other things, was preceded by the establishment of an "ad hoc Committee for the Protection of National Minorities", composed of representatives appointed by each of the 32 states participating in the convention, with the task of performing the function envisaged by the future convention, monitoring with periodic reports related to the activities of the states and informing public opinion and the states themselves.

The first part is distinguished by the fact that it brings the protection of minorities within the framework of the obligations of cooperation between states, while the second refers to a series of requirements that states must meet to ensure respect for their rights, in particular, the obligation to provide an education in harmony with the culture of specific ethnic groups, cooperation between states that "host" within their borders the same minorities and the active promotion of non-discrimination and equality between minorities and the majority. On the other hand, the third part should mark the step towards stability together with the obligation to ensure a high level of respect for human rights, that of non-interference with control activities, in the exercise of the sovereignty of the State, which is being investigated, while the fourth and fifth parts have technical characteristics and determine the methods of monitoring.

Looking closer, of particular interest is the discovery of Appendix IV of the Peace Treaty between Italy and the Allied Powers, signed in Paris on 10 February 1947. It expressly states the obligation of the Italian State to grant the German-speaking inhabitants of the province of Bolzano "full equality of rights respected by the inhabitants of the Italian language, within the framework of special provisions designed to safeguard the ethnic, cultural and economic development of the German-speaking group." We can therefore be bold and say without fear that the protection of persons belonging to minorities has entered into the fundamental interests protected by the international community and is the source of obligations of the erga omnes principle, such that each of these subjects may demand compliance with

these obligations, seek reparation for their violation and, where appropriate, resort to countermeasures to the extent permitted by the system (ICJ, *Decision*, 1970, pp32.).

As a result, it is possible to say that situations of so-called "grave violations" (i.e., massive, persistent violations of the fundamental rights of persons belonging to minorities) cannot be considered as interference in the sphere of dominance of any state and that third countries are obliged to respect the obligation of non-interference. Finally, it seems right to look at some knowledge of the concept of "Stateless people". This expression refers to those peoples who, while not being able to have an autonomous political entity, are characterized by a prominent ethnic, linguistic and cultural identity and, moreover, display the potential features for the creation of an independent state. It is clear that in these cases, the problem of the rights of nations is complicated, because they do not only seek to call for non-discrimination and protection of their special characteristics within the country, but above all, the issue of political and territorial independence and thus of external self-determination is raised. So, everything inevitably leads to the emergence of armed conflicts for liberation and, if the war is successful, the formation of new national states as an expression of the will of these peoples.

Of course, the realization of cases of self-determination depends on the radicalism and spread of these ideals and, as always, the historical and political context in which they grow. If you look closely, it seems that the line of demarcation between the concept of minority and that of stateless peoples is very narrow and controversial. For this reason, the qualification in one sense or another depends mainly on the point of view of the observer and, ultimately, on the political and legal conditions in which the community is located in the state of reference. When a particular ethnic, cultural, religious, linguistic group of a given grouping is appropriately protected by special provisions of the general system and not subject to inequality or, worse, discrimination, it is clear that the claims to self-determination of this people are addressed to the greater recognition of their identity within the framework of a fully democratic and pluralistic system.

On the other hand, when these preconditions are not met, the claims of "stateless peoples" or minorities can lead to social conflict or a civil war for independence and thus the principle of self-determination comes to the fore, a new perspective in the function of the formation of an autonomous state. It is clear, therefore, that the issue posed in these terms, which concerns minorities and stateless peoples, risks being transformed into a mere terminological issue, excluding the importance of the essence, while the axis of the problem shifts to the degree of equality that a multinational state can ensure.

4. National Liberation Movements as Subjects that Benefit From the Right of Self-Determination

Among the subjects that benefit from the right to self-determination, an important place is certainly occupied by national liberation movements that represent entities of the peoples from which they come, who have been denied the realization of their cases for self-determination. Regarding the role of these organizations, in function of the presentation of our principle, the theses proposed in the doctrine are different.

According to some scholars of the past, it was necessary for a people, which reacts in the exercise of its right to self-determination, to organize itself in the national liberation movement, in order to enjoy the protection granted to it by the internationals. Only in this way, the people in question can give life to a war of national liberation and then enjoy the rights and guarantees, which are normally provided by the warring parties.

In fact, there is a version that illustrates a mistaken assumption that the beneficiaries of our principle are liberation movements and not just the people as such, with the result that the people in the struggle for self-determination will necessarily have to build, transporting the issue from their positions, to the international level. As long as the people give their lives for such a movement, in the end it is expected to be judged as legitimate, or at least on the international level, the intervention from outside by third parties is expected, in the conflict between the people and the state that denies them freedom.

In fact, this intervention is only legal if the people are organized in a liberation movement. On the other hand, the dominant orientation today is confirmed by the practice of the United Nations and it differs from these theses, for which the recognition of the international significance of the conflict is independent of the existence of a genuine representative movement of the people in conflict and is based on the interpretation of the combination of the provisions of Article 2, paragraph 4 (which obliges Member States to refrain in their international relations from the use or threat of force, both against the territorial integrity and political independence of any State, and in any other manner inconsistent with the purposes of the United Nations) and Article 1, paragraph 2 of the San Francisco Charter (which, as we know, indicates one of the purposes of the United Nations to stabilize international relations based on respect for the principle of self-determination of peoples).

This interpretative approach was fully legitimized by the support of the United Nations bodies when they dealt with colonial wars, and short conflicts in the wake of foreign occupations, or in reaction to racist regimes: in these cases, the UN considered the liberation war to be internationally appropriate, despite the fact that to a large extent they were characterized by the lack of an alternative subject to be powerful and, in principle, representative of the self-determining community, as the violation of the principle of self-determination arose. Of course, the possibility of being or not, part of the recognition was not without consequences, because on this depended the application of the international law of war (*ius in bello*), and the fundamental principle of neutrality, which requires states to refrain from intervention in the conflict. However, if one accepts the nature and effects of this recognition by the international community of the conditional recognition of states, the conclusion would be that such a practice would have neither the constitutional nor the declarative fact of the existence of the movement. It exists and will affect the life of international relations only to the extent of fulfilling some actual activities, independently of the acts of recognition.

This will reveal more about how a state's willingness to establish stable relations with that movement reflects, should they borrow from them direct or indirect assistance, should they defend their territorial and political interests against possible occupations. So, since the liberation movement has received such recognition, which in fact derives from the legitimacy of the demands and the provision of assistance by third states, members of the organization, but also from the granting of the status of legal combatants, the same militants, as recognized in the important declaration of the United Nations General Assembly. (*General Assembly Resolution „Pisa, 1974, pp.200*)

Furthermore, with reference to national liberation movements, major and important developments in humanitarian law are presented that are reflected in the two Additional Protocols to the Geneva Conventions of 1949, opened for signature in 1977. They operate, in fact, with a fundamental difference, in the context of internal or civil conflicts, founded ultimately, pushed by those fighting against the government, to decide for peoples, who rise up against colonial, racist or foreign regimes, in the exercise of "the right of peoples to self-destruction", to apply the first protocol (*Ronzitti. N. (1975). pp.192*), which is valid for traditional conflicts between states, for insurgents fighting for other purposes, to apply the second protocol, which provides a more limited protection. In particular, it should be noted that the application of the First Protocol implies the existence of an institutional structure representative of the self-determining people, that is, to achieve the functioning of the Conventions and the Protocol by means of a simple declaration of a unilateral commitment, addressed to the depositary.

In this context, a practical calculation (which does not seem to have been given general importance) has been made by the United Nations to invite as permanent observers, national liberation movements recognized by the Organization of African Unity or by the League of Arab States. Moreover, it would be arbitrary to assume that from this legal status of recognition of national liberation movements by international law, it follows that a full subjectivity comparable to that of a state is dedicated to them (*Marcelli. F. (1994), pp.430* .). However, practice has shown how the intervention of such an entity in the process of self-determination can be expected to contribute to the achievement of the objectives of this process. In general terms, there are some who point out that *"...in every liberation process, there is always a small group of people assigned to organize and who, little by little, develop an activity on the intellectual, political and military level until the independence of their own country.. (Decision of the International Court of Arbitration, dt.31 July 1989..)*

Once it is organized institutionally and makes its objectives clear, these movements come out of emigration and start working on the political and diplomatic level, in addition to the military and guerilla. However, the element that appears critical to the success or failure of its mission is not so much the fact of its birth, but the need for competition in its share of the common will in relation to the people it represents and, ultimately, the verification of the international scope of its activities. These dimensions can only be found when it becomes an abnormal event in the life of a state, such as its incitement to take extraordinary measures in order to try to control events.

Based on the above, we can agree with the traditional doctrine in believing that in the careful purpose of recognition, given the great international recognition of the national liberation movement, these two elements must be integrated: 1) An institutionally established organization. 2) The actual pursuit of activities that have international scope, or more briefly the elaboration of an embryonic governmental authority, structured politically and militarily, in a part of the territory.

What is ultimately taken into account is the difference in terms of the political motive that drives national liberation movements and, respectively, insurgents. While the latter are organized on the occasion of a civil war or internal revolutionary movements, with the main aim of replacing the current government with a new government (the so-called *de facto* general government), or of creating a new state in a part of the existing territory (known as *de facto* local government), the first task is to liberate the people they represent from colonial or racist, or generally foreign, rule.

5. Conclusions – Recommendations

The thesis of the assumption of a purely political-moral value of the principle of self-determination does not seem to be very widespread. In fact, the Charter of the United Nations cannot be interpreted as a declaration of principle or a declaration of purpose, which should inspire the involvement of states in the life of international relations (Tomuschat. C. (1994). *vol.I, pp.125.*). It cannot be denied that the Charter constitutes in all matters a treaty, which contains norms with a binding function, which member states must adapt to their behavior. In this context, one of the most important provisions, without a doubt, is represented, together with its numerous conclusions, by the one that imposes the obligation on states to develop peaceful relations among themselves. And one of the prerequisites of this unbroken obligation is precisely the principle of self-determination, referred to in articles 2 and 55 of the Charter.

In conclusion, we can affirm that the right of peoples to self-determination is the subject of a common binding relationship between states in compliance with the Charter of the United Nations and (as we shall see) other international treaties, based on general international law. According to it, all states have both the obligation to react in such a way as to ensure the right of peoples to self-determination, and the right to demand compliance with this obligation from every other state.

Regarding the violation of ethnic rights, researchers and lawyers from the Third World have given their ideas and statements, that the only way to make a concrete solution will be achieved by implementing the right to self-determination and their best development. According to various opinions, powerful countries from a political and economic aspect intervene in developing countries and these countries are those of the Third World. Many large corporations, being with their epicenter in the Western world, have goals to intervene in their politics and interfere in the internal politics of Third World countries.

They are to a large extent linked to the military-industrial complex, which is also largely controlled by the West, with the USA being the main actor in this field. The issue of armaments leads or influences the destabilization of states that already lack political stability, being considered in this way, together with the complete absence of democracy, or even the possibility of democratization, as a major obstacle to the realization of human rights, starting with fundamental rights, the right to self-determination and the right to development (Jack. D. (1998) *pp132.*). The most well-known example of these types of interventions are the record interventions of the United States in their "backyard", (N. J. Udombana. (2000).) in South and Central America, but also in the Middle East and Southeast Asia. And in the case of Nicaragua they have effectively been found guilty of serious violations of international law.

In studying the principle, I can say that Third World lawyers have had a main focus on the fact that the protection of the rights of groups can only be effective if the above-mentioned problems are listed and documented. But what is also clear is that during the study it becomes clear to us that a distinction must be made between Third World lawyers and Third World regimes. The former do not attribute all human rights violations in their countries to the historical process of colonization and its continuation in the form of neocolonialism and imperialism, but they recognize that many complex factors, including internal political conditions, interact to create the current situation.

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